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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2380                      **Hearing Date:** June 28, 2016  
**Author:** Alejo  
**Version:** April 18, 2016  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *Defendants: Minor Children*

## HISTORY

Source: Author

Prior Legislation: None

Support: Peace Officers Research Association of California; Monterey County Department of Social Services

Opposition: None known

Assembly Floor Vote: 78 - 0

## PURPOSE

*The purpose of this bill is to require the court, at the arraignment of a defendant charged with a felony who is the sole custodial parent of a minor child, to provide specified information on options regarding the care of the child.*

*Existing law* states that the arraignment consists of reading the accusatory pleading to the defendant, providing the defendant a copy of the accusatory pleading, and asking the defendant whether he or she pleads guilty or not guilty to the accusatory pleading. (Penal Code, § 988.)

*Existing law* states that if the defendant appears at arraignment without counsel, the court shall inform defendant of the right to counsel being arraigned, and shall ask the defendant whether he or she desires the assistance of counsel. (Penal Code, §§ 858(a); 987(a).)

*Existing law* requires the court to advise defendants at arraignment that there are special provisions of law applicable to those who have active duty or veteran status, and shall inform the defendant that if he or she is a member of the military or a veteran that he or she may request the Judicial Council form explaining those special rights. (Penal Code, § 858 (d).)

*Existing law* requires, prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, the court to advise the defendant on the record about the potential immigration consequences of a plea. (Penal Code, § 1016.5 (a).)

*This bill* provides that at the arraignment of a defendant who is charged with a felony and who is the sole custodial parent of one or more minor children, the court shall provide the following to the defendant:

- The Judicial Council form the “Guardianship Pamphlet.”
- Information regarding a Power of Attorney for a minor child.
- Information regarding trustline background examinations pertaining to childcare providers.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and

- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

Recently in California a pilot flying a helicopter with seven firefighters on board who were battling a blaze threatening nearby homes, saw a four-rotor drone only 10 feet from his windshield. This forced him to make a hard left to avoid a collision about 500 feet above ground. In another incident, the sighting of five drones in the area of a wildfire that closed Interstate 15 in Southern California and destroyed numerous vehicles, grounded air tanker crews for 20 minutes as flames spread. The unregulated and irresponsible use of drones is placing Californians, our firefighters and emergency response personnel in increasing danger.

The existing Penal Code section dealing with interfering with police, fire and EMTs does not specifically state that the crime can be committed by using a drone. By clarifying existing law, police, fire and EMTs will be able to tell drone operators that the use of an unmanned aircraft that interferes with their official activities is a crime and that they must discontinue their use or face being charged.

Unmanned aircraft or the use of a drone is an emerging industry and technology that is rapidly gaining in popularity. The sheer numbers of drones is creating problems and concerns about how and where they should be used and it is only now that they are being regulated by the FAA. AB 1680 recognizes the fact that drones will need additional federal and state regulation but takes a common sense intermediate approach to doing so.

Last year the Joint Legislative Committee on Emergency management and the Senate Judiciary Committee held a hearing on drones in California. While the use of drones has been presenting increasing numbers of problems and difficulties, many of those testifying recommended moving slowly to see what the Federal Aviation Administration's response would be in regulating unmanned aerial vehicles.

AB 1680 is a modest step in ensuring that drones do not interfere with law enforcement, fire fighters and emergency personnel.

### 2. Care Options for Children of Incarcerated Parents

Parental incarceration can be traumatic for children, and it can have damaging impacts on a child's education, health, and social relationships. For children who do not have another parent at home, being placed with a relative is often the most stable option, allowing a child to maintain relationships and, ideally, to live at or near his or her home and attend his or her regular school.

For a parent who is sentenced to prison and who is the sole guardian, options exist for formalizing the relationship between a chosen caregiver and a parent's child(ren). These can include more informal arrangements, such as completing a Caregiver's Authorization Affidavit,

which is a two-page form that an authorized relative can sign which allows a qualified relative to enroll a child in school and agree to school-related medical care for the child. This option does not give a caregiver legal custody over a child. Another option is to grant Power of Attorney to a caregiver, which authorizes an individual to act as a caregiver for a child, and to make decisions regarding the child on behalf of parent. More formal options could also be sought, including legal guardianship, whereby the court may appoint an individual to have custody of a child indefinitely. Legal guardianship does not terminate a parent's rights, but suspends them. These, and other, options each come with various benefits and drawbacks, depending on the circumstances, and parents need to consider their family's particular needs and situation when deciding which, if any, option to pursue.

### **3. TrustLine**

TrustLine, created by the California Legislature in the 1980s, is a registry of license-exempt child care providers who have cleared a criminal background check run by the Department of Social Services that includes a check of the Child Abuse Central Index (CACI) administered by the Attorney General and the California Department of Justice's California Criminal History System, and can involve a check of criminal history records at the Federal Bureau of Investigation. Child care providers listed on TrustLine do not have either of the following: disqualifying criminal convictions or substantiated reports of child abuse found on CACI. AB Applicants for the registry must complete a form, submit fingerprints, and pay a one-time fee to DSS. Fees can vary, and start at approximately \$135. Parents are able to check if an individual is listed on the registry by calling a toll-free number.

### **4. Arraignment**

The arraignment is the defendant's first court appearance. At this time, the defendant is informed of the nature of the charges, is given a copy of the accusatory pleading, and is also given an opportunity to enter a plea. (Penal Code § 988.) At this time the judge or magistrate also advises the defendant of the right to counsel and the right to a court appointed attorney, if he or she is indigent.

At arraignment, this bill would also have the judge provide a defendant who is the sole custodial parent of one or more minor children: a Judicial Council form called the "Guardianship Pamphlet"; Information regarding a Power of Attorney for a minor child; and information regarding trustline background examinations.

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