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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 703                      **Hearing Date:** June 9, 2015  
**Author:** Bloom  
**Version:** April 13, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** AA

**Subject:** *Juveniles: Attorney Qualifications*

## HISTORY

**Source:** East Bay Children's Law Offices; Youth Law Center

**Prior Legislation:** SB 166 (Liu) – 2013, held on suspense in Senate Appropriations  
SB 988 (Liu) – 2013, held on suspense in Senate Appropriations

**Support:** American Civil Liberties Union of California; The Anti-Recidivism Coalition; California Public Defenders Association; California State PTA; Children's Advocacy Institute; Children's Defense Fund – California; Children Now; Judicial Council of California; League of Women Voters' of California; National Alliance on Mental Illness; National Center for Lesbian Rights; Office of the Sacramento County Public Defender; Pacific Juvenile Defender Center; Public Defender of the City and County of San Francisco

**Opposition:** None Known

**Assembly Floor Vote:** 78 - 0

## PURPOSE

*The purpose of this bill is to 1) establish specified requirements for attorneys appointed to represent minors in the juvenile justice system, and 2) require the Judicial Council to establish minimum hours of training and education necessary in order to be appointed as counsel in delinquency proceedings by July 1, 2016, as specified.*

*Current law* provides that minors under the age of 18 years may be adjudged to be a ward of the court where they “persistently or habitually refuse to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian,” are “beyond the control of that person,” “violated any ordinance of any city or county of this state establishing a curfew based solely on age . . . ,” or are habitually truant, as specified. (Welfare and Institutions Code (“WIC”) § 601.)

*Current law* further provides that minors under the age of 18 years may be adjudged to be a ward of the court for violating “any law of this state or of the United States or any ordinance of any city or county of this state defining crime,” as specified. (WIC § 602.)

*Current law* generally provides that when a minor is adjudged a ward of the court on the ground that he or she is *delinquent* – delinquency generally pertaining to the status and criminal conduct described above – the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court, as specified. (WIC § 727(a).)

*Current law* requires that counsel appointed in a dependency case “shall have a caseload and training that ensures adequate representation of the child. The Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel for children . . . .” (WIC § 317(c); *See also* California Rule of Court 5.660(d)<sup>1</sup>.)

*This bill* would require that counsel appointed to represent youth in delinquency proceedings, as specified (Sections 601 and 602), shall do all of the following:

- 1) Provide effective, competent, diligent, and conscientious advocacy and make rational and informed decisions founded on adequate investigation and preparation.
- 2) Provide legal representation based on the client’s expressed interests, and maintain a confidential relationship with the minor.
- 3) Confer with the minor prior to each court hearing, and have sufficient contact with the minor to establish and maintain a meaningful and professional attorney-client

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<sup>1</sup> California Rule of Court 5.660(d) provides: “(d) Competent counsel (¶) Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel. (1) Definition. “Competent counsel” means an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs. (2) Evidence of competency. The court may require evidence of the competency of any attorney appointed to represent a party in a dependency proceeding. (3) Experience and education. Only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. In addition to a summary of dependency law and related statutes and cases, training and education for attorneys must include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts. Within every three years attorneys must complete at least eight hours of continuing education related to dependency proceedings. (4) Standards of representation. Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child’s ability to communicate verbally, to contact social workers and other professionals associated with the client’s case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child’s legal representation. (5) Attorney contact information. The attorney for a child for whom a dependency petition has been filed must provide his or her contact information to the child’s caregiver no later than 10 days after receipt of the name, address, and telephone number of the child’s caregiver. If the child is 10 years of age or older, the attorney must also provide his or her contact information to the child for whom a dependency petition has been filed no later than 10 days after receipt of the caregiver’s contact information. The attorney may give contact information to a child for whom a dependency petition has been filed who is under 10 years of age. (6) Caseloads for children’s attorneys. The attorney for a child must have a caseload that allows the attorney to perform the duties required by section 317(e) and this rule, and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet the requirements stated in (3), (4), and (5).”

relationship, including in the post dispositional phase.

- 4) When appropriate, delinquency attorneys should consult with social workers, mental health professionals, educators, and other experts reasonably necessary for the preparation of the minor's case, and, when appropriate, seek appointment of those experts pursuant to Sections 730 and 952 of the Evidence Code.

*This bill* would provide that nothing in its provisions shall be construed to modify the role of counsel pursuant to subdivision (b) of Section 657 (relating to a minor admitting in a detention hearing to the allegations of a petition and waiving the jurisdictional hearing).

*This bill* would require the Judicial Council, by July 1, 2016 and in consultation and collaboration with delinquency defense attorneys, judges and other justice partners including child development experts, to adopt rules of court to do all of the following:

- 1) Establish minimum hours of training and education, or sufficient recent experience in delinquency proceedings in which the attorney has demonstrated competence, necessary in order to be appointed as counsel in delinquency proceedings. Training hours that the State Bar has approved for Minimum Continuing Legal Education (MCLE) credit shall be counted toward the MCLE hours required of all attorneys by the State Bar.
- 2) Establish required training areas that may include, but are not limited to, an overview of juvenile delinquency law and procedure, child and adolescent development, special education, competence and mental health issues, counsel's ethical duties, advocacy in the post dispositional phase, appellate issues, direct and collateral consequences of court involvement for a minor, and securing effective rehabilitative resources.
- 3) Encourage public defender offices and agencies that provide representation in proceedings under Sections 601 and 602 to provide training on juvenile delinquency issues that the State Bar has approved for MCLE credit.
- 4) Provide that attorneys practicing in juvenile delinquency courts shall be solely responsible for compliance with the training and education requirements adopted pursuant to this section.

*This bill* contains uncodified legislative findings and declarations concerning the complexity of representing minors in the juvenile justice system and the importance of ensuring competent legal representation in delinquency proceedings, as specified.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”( Defendants’ February 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).

While significant gains have been made in reducing the prison population, the state now 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. Stated Need for This Bill

The author states:

Juvenile delinquency practice is a specialty area of the law, with its own ethical duties, procedures, timelines, and case law. It requires counsel to be knowledgeable in traditional criminal law, but also in adolescent development and rehabilitative services. Although young people in juvenile delinquency proceedings have the right to be represented by competent legal counsel, close to half of California delinquency defense counsel begin their practice with zero training in juvenile specific law and practice. This results in wrongful conviction, over incarceration, unnecessary costs in legal challenges, and a variety of costs in relation to future delinquency, when youth do not have their needs addressed. Because the system depends on all players in the court process being able to competently uphold their part, ill-trained attorneys also harm the integrity of the

juvenile justice system. Further, young people who are represented by such attorneys understandably perceive the system as unfair – not the kind of civics lesson we want them to receive.

Many of the most common mistakes made by delinquency counsel could be avoided if counsel had basic knowledge about their ethical duties and training in the essentials of juvenile law and procedure, how to work with adolescents, and how to assure that their clients receive appropriate rehabilitative services. Dependency counsel for children are already required to have such training, but California has not yet assured that lawyers for youth in delinquency cases have the requisite knowledge and skills to provide competent representation.

This bill sets forth the basic duties of juvenile delinquency defense counsel with respect to representing the expressed interests of the client, confidentiality, investigation of the case, use of experts, and maintenance of an ongoing relationship with the client. The bill also requires the Judicial Council, by July 1, 2016, to establish minimum hours of training and education necessary to be appointed as counsel in delinquency proceedings, required training areas, and provisions for exemption of experienced attorneys. The required training will count toward the State Bar required continuing legal education requirements that California attorneys must complete. This is a modest change that will vastly improve current practice in the state and help to ensure the integrity of the juvenile justice system.

## **2. Background: Delinquency Proceedings; Attorney Training and Education**

In 2010, 185,867 juveniles were arrested in California. Of those, over 95,000 were referred to the juvenile court for disposition.<sup>2</sup>

In April of 2008, the Administrative Offices of the Court released its Juvenile Delinquency Court Assessment. With respect to attorneys practicing before the juvenile court, the report concluded in part:

Results from both surveys indicate that many prosecutors and defense attorneys are new to juvenile delinquency. This is particularly true for prosecutors and public defenders; many are in their first juvenile delinquency assignment and few reported having prior professional roles in the juvenile system. These findings may raise some concerns regarding the general lack of experience of some attorneys working in the juvenile delinquency courts. In describing the qualifications for prosecutors, the National Prosecution Standards . . . on the Standards for Juvenile Justice recommends that training and experience should be required for handling juvenile delinquency cases and that entry-level attorneys working in juvenile delinquency should receive training related to juvenile matters. According to the National Juvenile Defender Center's Principles in Practice, legal representation of children is considered to be a specialized area that requires ongoing, delinquency-specific training. Although no specific recommendation is made regarding the level of expertise necessary for juvenile

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<sup>2</sup> Juvenile Justice in California 2010 (California Dept. of Justice) (<http://ag.ca.gov/cjsc/publications/misc/jj10/preface.pdf>).

delinquency attorneys, the principles do state that new defenders should be supervised by more experienced attorneys to ensure high-quality legal work and manageable caseloads.

Given the complexity and the unique nature of the juvenile delinquency court setting, having experienced, well-trained attorneys is critical in order to ensure the fair processing of delinquency cases and quality representation for youth who enter the delinquency system. The fact that there are many professionals who are new to the delinquency system indicates the importance of early training when first entering a juvenile delinquency assignment. Training, along with other practices that allow for attorneys with delinquency-related experience to handle or supervise delinquency cases, should be encouraged by district attorneys' and public defenders' offices.<sup>3</sup>

As part of this report, the Family and Juvenile Law Advisory Committee recommended that judicial officers, attorneys, and probation should be adequately trained and educated to understand the myriad issues in delinquency court and the importance of the work.<sup>4</sup>

A law review article<sup>5</sup> published in 2012 addressed the quality of counsel in delinquency cases, and argues for the type of minimum education and training standards proposed by this bill. The article states in part:

The quality of legal representation plays a critical role in assuring justice for individual youth, reducing the societal costs of juvenile crime, and assuring the integrity of the justice system. With so much at stake, youth need legal assistance that is knowledgeable, skilled and zealous. Delinquency representation requires a complex set of specialized skills that includes knowledge of criminal and juvenile law, juvenile court procedure, trial and appellate skills, adolescent development, juvenile adjudicative competence, rehabilitative services, and collateral consequences of court involvement. The systems providing appointed counsel for young people in juvenile proceedings must be designed to provide this specialized legal representation.

Research into appointed counsel contracts in California reveals a disappointing lack of attention into these basic components of delinquency representation. The prevalent use of generic contracts for multiple kinds of cases means that cases are regularly handled without reference to critical issues such as post-disposition representation. The failure of many contracts to include qualifications for employment represents a missed opportunity for contracting agencies to obtain experienced, well-trained counsel and to provide ongoing training requirements and quality assurance. More importantly, counsel appointed under these contracts are left with little idea of what is expected of them, and no basis from which to negotiate resources and conditions of employment that are needed to provide competent representation. The contracts also provide a window into troubling

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<sup>3</sup> *Juvenile Delinquency Court Assessment: Attorney Report* (AOC, April 2008) (<http://www.courts.ca.gov/documents/JDCA2008V2Ch4.pdf>).(Footnotes omitted).

<sup>4</sup> *Juvenile Delinquency Court Assessment 2008* (AOC, Center for Families, Children & the Courts), p. 8 (<http://www.courts.ca.gov/documents/JDCA2008V1Full.pdf>).

<sup>5</sup> The article is written by a Staff Attorney at the Youth Law Center, a co-sponsor of this bill.

deficiencies with respect to compensation, oversight, and lack of independence for appointed counsel.

Competent representation is most likely to occur if appointed counsel contracts include the elements that make juvenile delinquency representation its own specialty, and provide adequate compensation for each element. Appointed counsel systems are most likely to uphold the right to competent delinquency representation if attorneys are experienced and properly trained. The integrity of the system is most likely to be protected if appointed counsel systems operate independently and have meaningful oversight.

By including delinquency-specific ethical requirements, scope of work, experience, training, compensation, quality assurance and oversight, and independence of the appointment system, contracts will help to ensure that youth are represented by qualified counsel who know what is expected and that counsel are compensated for providing the full range of services required for competent representation. In this way, both the parties to the contract, and the youth whose lives are in the balance, will receive the benefit of the bargain.<sup>6</sup>

According to an article in the Los Angeles Times last year, a Loyola Law School report released in 2013 analyzed about 3,000 Los Angeles County juvenile cases and concluded that, on average, youths represented by panel attorneys got more severe convictions and heavier sentences than those represented by public defenders. “The researchers also found that public defenders were more active than panel attorneys in filing motions, bringing in experts and seeking pretrial release of their clients.” Advocates for youth attribute the discrepancy in quality, among other things, to greater experience and training of attorneys working in the public defender’s office and flat fees for panel attorneys, which according to critics, result in a disincentive to investigate cases and file motions. (<http://articles.latimes.com/2014/feb/11/local/la-me-juvenile-defense-20140212>)

Low-quality legal representation in juvenile delinquency cases has a disproportionately negative impact on economically disadvantaged families and communities of color. According to the author:

In 2013, there were 58,001 juvenile court petitions filed in California, and youth in 43,198 (92%) of those petitions were represented by a court appointed attorney. That number includes 31,489 represented by a public defender, and 11,709 by other appointed counsel. (Source: Juvenile Justice in California 2013, California Department of Justice, Criminal Justice Statistics Center, Table 20.)

Of the 43,198 cases in which youth were represented by appointed counsel in 2013, fully 35,618 involved youth who are Black, Latino or of other non-white race/ethnicity. (Source: Juvenile Justice in California 2013, California Department of Justice, Criminal Justice Statistics Center, Table 20.)

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<sup>6</sup> Burrell, *Contracts for Appointed Counsel in Juvenile Delinquency Cases: Defining Expectations* (Winter 2012) UC Davis Journal of Juvenile Law & Policy Vol. 16:1.

**3. Prior Legislation**

SB 988 (Liu) in 2012 required defense attorneys in delinquency cases to have a minimum of 8 hours of continuing education. This bill passed this Committee (5-1) and was held on suspense in Senate Appropriations. SB 166 (Liu) in 2013 required the Judicial Council to establish minimum training and education standards for attorneys in juvenile delinquency cases. This bill passed this Committee (5-1) and also was held on suspense in Senate Appropriations.

**-- END --**