
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1004 **Hearing Date:** April 12, 2016
Author: Hill
Version: March 28, 2016
Urgency: No **Fiscal:** Yes
Consultant: AA

Subject: *Transitional Youth Diversion Program*

HISTORY

Source: Author

Prior Legislation: None

Support: California Police Chiefs Association; California Public Defenders Association
Chief Probation Officers of California

Opposition: Pacific Juvenile Defender Center

PURPOSE

The purpose of this bill is to authorize specified counties to establish a 3-year deferred entry of judgment pilot program under which young adults (18-20) convicted of non-violent, non-serious and non-sex crimes and who are otherwise suitable would serve their custodial time in a juvenile hall instead of a jail, as specified.

Existing law includes various diversion and deferred entry of judgment programs under which a person arrested for and charged with a crime is diverted from the prosecution system and placed in a program of rehabilitation or restorative justice. Upon successful completion of the program, the charges and underlying arrest are deemed to not have occurred, with specified exceptions. Generally, deferred entry of judgment programs are created and run at the discretion of the district attorney. (See Penal Code § 1000.) Pre-plea, true drug diversion programs are implemented upon the agreement of the district attorney, the court and the public defender. Some examples of these provisions are:

- Post-plea deferred entry of judgment (Penal Code § 1000);
- Pre-plea diversion for drug possession. (Pen. Code 1000.5);
- Misdemeanor diversion, excluding driving under the influence, crimes requiring registration as a sex offender, crimes involving violence, as specified (Pen. Code §§ 1001, 1001.50-1001.55.) ; and
- Bad check diversion. (Pen. Code §1001.60.)

Existing law provides that when “any person under 18 years of age is detained in or sentenced to any institution in which adults are confined, it shall be unlawful to permit such person to come or remain in contact with such adults.

(b) No person who is a ward or dependent child of the juvenile court who is detained in or committed to any state hospital or other state facility shall be permitted to come or remain in contact with any adult person who has been committed to any state hospital or other state facility as a mentally disordered sex offender under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6, or with any adult person who has been charged in an accusatory pleading with the commission of any sex offense for which registration of the convicted offender is required under Section 290 of the Penal Code and who has been committed to any state hospital or other state facility pursuant to Section 1026 or 1370 of the Penal Code.

(c) As used in this section, “contact” does not include participation in supervised group therapy or other supervised treatment activities, participation in work furlough programs, or participation in hospital recreational activities which are directly supervised by employees of the hospital, so long as living arrangements are strictly segregated and all precautions are taken to prevent unauthorized associations. (WIC § 208.)

Existing law provides that “(a) Notwithstanding any other law, in any case in which a minor who is detained in or committed to a county institution established for the purpose of housing juveniles attains 18 years of age prior to or during the period of detention or confinement he or she may be allowed to come or remain in contact with those juveniles until 19 years of age, at which time he or she, upon the recommendation of the probation officer, shall be delivered to the custody of the sheriff for the remainder of the time he or she remains in custody, unless the juvenile court orders continued detention in a juvenile facility. If continued detention is ordered for a ward under the jurisdiction of the juvenile court who is 19 years of age or older but under 21 years of age, the detained person may be allowed to come into or remain in contact with any other person detained in the institution subject to the requirements of subdivision (b). The person shall be advised of his or her ability to petition the court for continued detention in a juvenile facility at the time of his or her attainment of 19 years of age. Notwithstanding any other law, the sheriff may allow the person to come into and remain in contact with other adults in the county jail or in any other county correctional facility in which he or she is housed.

(b) The county shall apply to the Corrections Standards Authority for approval of a county institution established for the purpose of housing juveniles as a suitable place for confinement before the institution is used for the detention or commitment of an individual under the jurisdiction of the juvenile court who is 19 years of age or older but under 21 years of age where the detained person will come into or remain in contact with persons under 18 years of age who are detained in the institution. The authority shall review and approve or deny the application of the county within 30 days of receiving notice of this proposed use. In its review, the authority shall take into account the available programming, capacity, and safety of the institution as a place for the combined confinement and rehabilitation of individuals under the jurisdiction of the juvenile court who are over 19 years of age and those who are under 19 years of age. (WIC § 208.5.)

This bill would enact a deferred entry of judgment program for certain young adult offenders entitled the “Transitional Youth Diversion Program” (“program”), with the following features and requirements.

Permissive Juvenile Hall Pilot Program in Specified Counties

This bill would provide that the following counties may establish a pilot juvenile hall program “to operate a transitional youth diversion program for eligible defendants,” as specified below:

- (1) County of Alameda.
- (2) County of Butte.
- (3) County of Napa.
- (4) County of Nevada.
- (5) County of Santa Clara.

Eligibility: Ages 18 – 20, Qualified Offenses, Guilty Plea, and Suitability

This bill would provide that a “defendant may participate in a transitional youth diversion program within the county’s juvenile hall if that person is charged with committing an offense, other than the offenses listed (below), he or she pleads guilty to the charge or charges, and the probation department determines that the person meets all of the following requirements:

- (1) Is 18 years of age or older, but under 21 years of age on the date the offense was committed.
- (2) Is suitable for the program after evaluation using a risk assessment tool, as specified.
- (3) Shows the ability to benefit from services generally reserved for delinquents, including, but not limited to, cognitive behavioral therapy, other mental health services, and age-appropriate educational, vocational, and supervision services, that are currently deployed under the jurisdiction of the juvenile court.
- (4) Meets the rules of the juvenile hall.
- (5) Does not have a prior or current serious or violent offense conviction, as specified.
- (6) Is not required to register as a sex offender.

This bill would require probation, in consultation with the superior court, district attorney, and sheriff or other operator of the county jail, to develop an evaluation process using a risk assessment tool to determine eligibility for the program.

Ineligible Offenses and Sentences

This bill would provide that the “commission by the defendant of one or more of the following offenses makes him or her not eligible for the program:

- (1) A “serious” felony, as defined in Penal Code section 1192.7(c).
- (2) A “violent” felony, as defined in Penal Code section 667.5(c).
- (3) A serious or violent crime as defined in juvenile law, WIC section 707(b).

This bill would provide that the program would apply “to a defendant that would otherwise serve time in custody in a county jail. Participation in a program pursuant to this section shall not be authorized as an alternative to a sentence involving community supervision.”

Deferred Entry of Judgment if Defendant Agrees to Participate in the Program

This bill would require the court to “grant deferred entry of judgment if an eligible defendant consents to participate in the program, waives his or her right to a speedy trial or a speedy

preliminary hearing, pleads guilty to the charge or charges, and waives time for the pronouncement of judgment.”

Standard Criminal Proceedings if Defendant is not Diverted to the Program

This bill would provide that if the probation officer determines that the defendant is not eligible for, or does not consent to participating in the program, the proceedings shall continue as in any other case.

Return to Court if Probation Concludes Defendant Performing Unfavorably

This bill would provide that, if “it appears to the probation department that the defendant is performing unfavorably in the program as a result of the commission of a new crime or the violation of any of the rules of the juvenile hall or that the defendant is not benefiting from the services in the program, the probation department may make a motion for entry of judgment. After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered. If the court finds that the defendant is performing unfavorably in the program or that the defendant is not benefiting from the services in the program, the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code, and the probation department, in consultation with the county sheriff, shall remove the defendant from the program and return him or her to custody in county jail. The mechanism of when and how the defendant is moved from custody in juvenile hall to custody in a county jail shall be determined by the local justice stakeholders.”

Dismissal of Criminal Charge(s) if Defendant Performs Favorably

This bill provides that, if “the defendant has performed favorably during the period in which deferred entry of judgment was granted, at the end of that period, the court shall dismiss the criminal charge or charges.”

Reentry Services

This bill would require probation to “develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program.”

This bill would require probation to “submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county.”

No Contact with Minors

This bill would require that a defendant participating in the program “shall not come into contact with minors within the juvenile hall for any purpose, including, but not limited to, housing, recreation, or education.”

This bill would require that a county that establishes this program “shall work with the Board of State and Community Corrections to ensure compliance with requirements of the federal Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. Sec. 5601 et seq.), as amended, relating to “sight and sound” separation between juveniles and adult inmates.”

Sunset

This bill would sunset on January 1, 2020.

Legislative Findings

The California Constitution provides that, “(a) All laws of a general nature have uniform operation. (b) A local or special statute is invalid in any case if a general statute can be made applicable.” (Cal. Const., Art. IV, Sec. 16.)

This bill contains legislative findings that “a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances in the Counties of Alameda, Butte, Napa, Nevada, and Santa Clara. Recent research on the adolescent brain development has found that brain development continues well after an individual reaches 18 years of age. This bill would therefore allow for the criminal justice system to apply the most recent brain development research to its practices in these counties by allowing certain transitional age youth access to age-appropriate rehabilitative services available in the juvenile justice system when an assessment determines that the individual would benefit from the services, with the aim of reducing the likelihood of the youth continuing in the criminal justice system.”

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. Stated Need for This Bill

The author states:

Under current law, young adult offenders convicted of specified crimes serve their sentence locally in county jails. But while legally they are adults, young offenders age 18-21 are still undergoing significant brain development and it’s becoming clear that this age group may be better served by the juvenile justice system with corresponding age appropriate intensive services. Research shows that people do not develop adult-quality decision-making skills until their early 20’s. This can be referred to as the “maturity gap.” Because of this, young adults are more likely to engage in risk-seeking behavior which may be cultivated in adult county jails where the young adults are surrounded by older, more hardened criminals.

As such, in order to address the criminogenic and behavioral needs of young adults, it is important that age appropriate services are provided, services they may not get in adult county jails. Juvenile detention facilities have such services available for young adults including, but not limited to, cognitive behavioral therapy, mental health treatment, vocational training, and education, among others.

2. What This Bill Would Do

As explained in detail above, this bill would authorize five counties – Alameda, Butte, Napa, Nevada, and Santa Clara – to operative a pilot program where certain young adult offenders would serve their time in a juvenile hall instead of a jail. The young adults must be under the age of 21, and not convicted of a serious, violent or sex crime. They also would have to be assessed and found suitable for the program.

As structured by the bill, this would be a deferred entry of judgment program – which means while participants would have to plead guilty to be eligible for the program, if they succeed in the program the criminal charges would be dismissed. Probation would be required to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. The bill has a 3-year sunset.

Members and the author may wish to discuss why the pilots this bill would authorize are limited to the five counties specified in the bill.

3. Human Brain Development

As noted by the author, and considered by the Committee in many prior hearings on juvenile law and sentencing youthful offenders, the science of adolescent brain development has become very relevant in crafting state and national law and policy. With respect to the importance and progression of that development, Laurence Steinberg, Ph.D., the Distinguished University Professor and Laura H. Carnell Professor of Psychology at Temple University and a leading expert on adolescence, explained in a 2014 white paper:

There is now incontrovertible evidence that adolescence is a period of significant changes in brain structure and function. Although most of this work has appeared just in the past 15 years, there is already strong consensus among developmental neuroscientists about the nature of these changes. And *the most important conclusion to emerge from recent research is that important changes in brain anatomy and activity take place far longer into development than had been previously thought*. Reasonable people may disagree about what these findings may mean as society decides how to treat young people, but there is little room for disagreement about the fact that adolescence is a period of substantial brain maturation with respect to both structure and function.

. . . These structural and functional changes do not all take place along one uniform timetable, and the differences in their timing raise two important points relevant to the use of neuroscience in public policy. First, *there is no simple answer to the question of when an adolescent brain becomes an adult brain. Brain systems implicated in basic cognitive processes reach adult levels of maturity by mid-adolescence, whereas those that are active in self-regulation do not fully mature until late adolescence or even early adulthood*. In other words, adolescents mature intellectually before they mature socially or emotionally, a fact that helps explain why teenagers who are so smart in some respects sometimes do surprisingly dumb things.

To the extent that society wishes to use developmental neuroscience to inform public policy decisions on where to draw age boundaries between adolescence and adulthood, it is important to match the policy question with the right science.¹

¹ Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?* (2014) (<https://drive.google.com/folderview?id=0B4e3FILdCieReTNUb3M5Sk1adVU&usp=sharing&tid=0B4e3FILdCieRVjhmX1M2SIY0YzQ>)

4. Opposition

The Pacific Juvenile Defender Center, which opposes this bill, argues in part:

Though we strongly support efforts to allow transitional age youth to access rehabilitative services, the approach taken by SB 1004 runs counter to the research that shows that incarceration and detention of youth may increase recidivism and impede successful life outcomes.

The program outlined in SB 1004 is troubling primarily because the program is based in a custodial setting and appears to be intended for those charged with misdemeanor offenses.^ Such individuals would be better served by a community-based, out-of-custody rehabilitation setting than an in-custody program provided by probation. Studies have shown that incarcerating youth can increase recidivism.^ Researchers have reported higher levels of substance abuse, school difficulties, delinquency, violence and adjustment difficulties in adulthood for those who have been treated in settings where deviant/delinquent youth are brought together for treatment.*

. . . Of equal concern to PJDC is that the creation of such a program for misdemeanants will have the unintended consequence of net-widening of the criminal justice system: increasing the number of incarcerated individuals at a time when jurisdictions across the country are turning away from incarceration as a solution and pursuing community-based alternatives for treatment and rehabilitation. . . . The proposed legislation states that only individuals who would otherwise serve time in custody are eligible for this program; however, this provision alone does not provide enough protection that individuals who would otherwise get probation, or a minimal number of days in county jail, could still be placed in this program. And though the program also provides reentry services, even the best-laid reentry plan often fails because of the difficulties of transitioning back to the community after a period of incarceration . . .

Lastly, this bill is troubling because this program could very well have a greater impact on communities of color. As it stands, African Americans and Latinos make up a disproportionate percentage of drug arrests and jail and prison populations. Without any purposeful measures to ensure against such overrepresentation by African American and Latino defendants, these diversion programs could be yet another reflection of that disproportionate impact.

Members may wish to discuss these and other potential unanswered concerns or details about the bill. For example:

- The bill provides that the pilot “applies to a defendant that would otherwise serve time in custody in a county jail. Participation in a program pursuant to this section shall not be authorized as an alternative to a sentence involving community supervision.” Is this language sufficient to ensure that the pilot would not increase the likelihood that a youthful offender would receive a custodial sanction instead of community supervision?

- Could this pilot influence plea bargaining, and cause defendants to plead to custodial sanctions (in the juvenile hall instead of the jail) which otherwise may not have been part of their sentence?
- What would be the time limits on these sentences -- how long could a young adult end up serving in juvenile hall?
- The bill is silent on oversight of these piloted projects except for ensuring federal sight and sound separation laws between juveniles and adults are met. Should the Board of State and Community Corrections, which now inspects juvenile hall, have a stronger role in inspecting these pilot programs, including to ensure minors in juvenile hall are not being adversely affected, even remotely, by the new population of young adults?
- While the bill would require pilots to “submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county,” is this sufficient to evaluate the impact of the pilot?

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