SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	SB 1168	**Hearing Date:**	April 24, 2018
Author:	Anderson		
Version:	April 2, 2018		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SJ		

Subject: ***Juveniles: Division of Juvenile Facilities***

HISTORY

Source: California District Attorneys Association

Prior Legislation: AB 324 (Buchanan), Ch. 7, Stats. of 2012
SB 81 (Committee on Budget and Fiscal Review), Ch. 175, Stats. of 2007
AB 191 (Committee on Budget), Ch. 257, Stats. of 2007

Support: Unknown

Opposition: California Public Defenders Association

PURPOSE

The purpose of this bill is to permit a person who has been adjudged a ward of the juvenile court, as specified, to be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF) if one of the offenses alleged in the most recent petition and admitted or found to be true by the court is any of specified serious or violent offenses, or any of specified sex offenses.

Existing law provides that any person who is under 18 years of age when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court, except as provided. (Welf. & Inst. Code (WIC), § 602.)

Existing law prohibits a ward of the juvenile court who meets any condition described below from being committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities:

a) The ward is under 11 years of age.
b) The ward is suffering from any contagious, infectious, or other disease that would probably endanger the lives or health of the other inmates of any facility.
c) The ward has been or is adjudged a ward of the court, and the most recent offense alleged in any petition and admitted or found to be true by the court is not a serious or violent offense as described in Section 707 subdivision (b) or a specified sex offense. (Welf. & Inst. Code, § 733.)

COMMENTS

1. Need for This Bill

According to the author:

> WIC §733 states that a person can only be sent to DJJ if the "the most recent offense alleged in any petition and admitted or found to be true" is a WIC §707(b) offense. This leads to absurd outcomes as illustrated by a recent Merced County case *In re M.V* (now before the court of appeals).
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> In *M.V.*, the minor assaulted his 68-year-old grandmother causing an injury to her arm, a violation of PC 245(a)(4) which is a WIC 707(b) offense. The minor then picked up the victim's dog and tossed it off the second floor balcony killing the dog. The minor told the victim, "you're next." Killing the dog is a violation of PC §597 – animal cruelty.
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> The minor admitted both charges and was sentenced to DJJ. The case is now up on appeal because the "most recent charge" animal cruelty is not a WIC §707(b) crime. Therefore, the minor cannot be sentenced to DJJ.
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> The minor's appeal is completely in line with prior court rulings denying DJJ because the last crime charged in a petition was not a 707(b) offense, see *In Re D.B.* (2014) 58 Cal. 4th 941. A simple fix to this problem is redraft WIC §733 to state that a minor is eligible for DJJ if the latest petition contains a 707(b) charge.

2. Background: SB 81 (2007)

In 2007, SB 81 was passed and signed into law as part of the budget. That measure included provisions to narrow eligibility for commitment to DJF to the most serious juvenile offenders. Due in part to this "realignment" of the juvenile offender population, the DJF population has dropped dramatically. At the time SB 81 was implemented, there were 2,480 wards at DJF; last month, there were fewer than 700.[1]

The bill's final floor analysis indicates that the Legislature's intent was to "stop the intake of youthful offenders adjudicated for non-violent, non-serious offenses (non-707b offenses) to the state Division of Juvenile Facilities within the CDCR on September 1, 2007." (Sen. Rules Com., Off. of Sen. Floor Analyses, Unfinished Business analysis of Sen. Bill No. 81 (2007-2008 Reg. Sess.) as amended Jul. 20, 2007.)

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[1] CDCR, Division of Juvenile Justice Research and Data Analytics, Average Daily Population March 2018. https://www.cdcr.ca.gov/Juvenile_Justice/docs/DJJ_ADP_Monthly_Report_2018/ADP_MONTHLY_REPORT_2018.03.pdf

3. WIC section 733 and *In re D.B.*

WIC section 733 provides:

A ward of the juvenile court who meets any condition described below shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities:

a) The ward is under 11 years of age.
b) The ward is suffering from any contagious, infectious, or other disease that would probably endanger the lives or health of the other inmates of any facility.
c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and *the most recent offense alleged in any petition and admitted or found to be true by the court* is not described in subdivision (b) of Section 707 or subdivision (c) of Section 290.008 of the Penal Code.

The proponents of the bill argue that WIC section 733 needs to be amended as a result of *In re D.B.* (58 Cal. 4th 941). In that case, the California Supreme Court held that the plain language of WIC section 733 (c) prohibits a minor from being committed to DJF unless the most recently committed offense that is alleged in any petition and admitted or found true is listed in WIC section 707 (b) or Penal Code section 290.008 (c). The court further held that when a minor is alleged to have committed a series of offenses, including serious or violent offenses, the minor may not be committed to DJF if the last offense in the series is nonviolent. The court explained:

> [T]he People contend section 733(c) allows a DJF commitment to be based on any of the offenses alleged in a juvenile's most recent section 602 petition. This interpretation is both broader and narrower than the language of the statute supports….In essence, the People's interpretation would invert the statutory language to hold that *any offense* alleged in *the most recent petition* can be the basis for DJF eligibility. No matter how sensible this interpretation might be in practice, we may not distort the plain language of the statute to reach that result.
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> …In *Greg F.*, we observed: "Although section 733(c) premises eligibility for DJF on the nature of 'the most recent offense alleged in any petition,' focusing on the most recently committed offense could lead to arbitrary and potentially absurd results in a multicount case…."
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> These potential consequences are certainly troubling. However, they are not so *absurd* that we must override the plain meaning of the statutory language. To justify departing from a literal reading of a clearly worded statute, the results produced must be so unreasonable the Legislature could not have intended them. (See *Cassel v. Superior Court* (2011) 51 Cal.4th 113, 136 [119 Cal. Rptr. 3d 437, 244 P.3d 1080].) We cannot so conclude here. Section 733(c) was enacted as part of comprehensive realignment legislation. (*Greg F., supra,* 55 Cal.4th at p. 409.) The Legislature's primary purpose in enacting the statute was to reduce the number of juvenile offenders housed in state facilities by shifting responsibility to the county level " 'for all but the most serious youth offenders.' " (*In re N.D.* (2008) 167 Cal.App.4th 885, 891
> [84 Cal. Rptr. 3d 517]; see *Greg F.*, at pp. 409–410.)

> When statutory language is unambiguous, we must follow its plain meaning " ' "whatever may be thought of the wisdom, expediency, or policy of the act, even if it appears probable that a different object was in the mind of the legislature." ' " (*People v. Weidert (*1985) 39 Cal.3d 836, 843 [218 Cal. Rptr. 57, 705 P.2d 380]; see *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632 [59 Cal. Rptr. 2d 671, 927 P.2d 1175].) The language of section 733(c) is clear. It prohibits a DJF commitment unless the most recent offense alleged in any petition and admitted or found true is listed in section 707(b) or Penal Code section 290.008(c). (§ 733(c).) We are not free to rewrite the law simply because a literal interpretation may produce results of arguable utility. The Legislature, of course, remains free to amend section 733(c) if the language it has enacted is now understood to create unintended consequences. (58 Cal. 4th 941, 947-48).

4. What This Bill Does

This bill seeks to address the issue raised in *In re D.B.* and would amend WIC section 733 to read:

A ward of the juvenile court who meets any condition described below shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities:
(a) The ward is under 11 years of age.
(b) The ward is suffering from any contagious, infectious, or other disease that would probably endanger the lives or health of the other inmates of any facility.
(c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and *all offenses alleged in the most recent petition and admitted or found to be true by the court are not described in subdivision (b) of Section 707 or subdivision (c) of Section 290.008 of the Penal Code.*

This language is intended to permit a court to commit a minor to DJF if any of the offenses alleged in the most recent petition and admitted or found true by the court is a WIC 707 (b) offense or an offense listed in Penal Code section 290.008. The sponsor of this bill argues that this change is necessary so that a court is not prohibited from committing a minor—who has committed a series of offenses—to DJF solely because the most recent offense is not one that would make the minor eligible for DJF commitment. However, as the court in *In re DB* noted, the issue that arises in these cases can be avoided. For example, the prosecutor may elect not to allege nonqualifying offenses when doing so would affect a minor's DJF eligibility. The court also pointed out that prosecutors can dismiss nonqualifying offenses before a jurisdictional finding or as part of plea negotiations.

5. Argument in Support

The sponsor of the bill, the California District Attorneys Association, writes:

> This bill would clarify the circumstances in which a juvenile who has committed a serious or violent crime may be committed to the Division of Juvenile Justice

> (DJJ) within the California Department of Corrections and Rehabilitation (CDCR).
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> Under existing law, Welfare & Institutions Code section 733, a juvenile can only be sent to DJJ if "the most recent offense alleged in any petition and admitted or found to be true" is an offense included within WIC 707(b). These include crimes like murder, robbery, sexual assault by force, and kidnapping. Unfortunately, ambiguity in WIC 733 about petitions that contain both 707(b) and non-707(b) offenses has led to some absurd outcomes.
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> …These interpretations of WIC 733 would allow for the absurd situation where a juvenile murders someone, then forms the intent to steal the dead person's wallet, but could not be sentenced to DJJ if both theft and murder were alleged in the same petition, because the theft happened after the murder.
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> SB 1168 simply provides that if any of the charges found to be true in the most recent sustained petition are for WIC 707(b) offenses, the juvenile may be sentenced to DJJ. This common-sense clarification will keep our communities safe, and help ensure that juvenile offenders are properly placed to receive appropriate treatment and rehabilitative services.

6. Argument in Opposition

The California Public Defenders Association writes:

> This legislation seeks to fix a problem that does not exist. This legislation would expand the juvenile eligible to be committed to DJF, thereby circumventing one of the main purposes of the comprehensive realignment legislation which enacted this section: reducing the number of juveniles housed in State facilities. Additionally, the current version ensures only the most serious youth offenders are sent to DJF. In *In re D.B.* (2014) 58 Cal.4th 941, the California Supreme Court explained that any difficulties the current legislation presents to prosecutors can be overcome by taking care in charging and adjudicating juvenile offenses. *In re D.B.* (2014) 58 Cal.4th 941, 948. Prosecutors can simply not allege a non-qualifying charge. Enabling prosecutors to take less care in their decisions, especially in the prosecution of potentially violent or dangerous youth is not in anyone's best interest.

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