
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 448 **Hearing Date:** April 11, 2023
Author: Becker
Version: February 13, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juveniles: detention hearings*

HISTORY

Source: Pacific Juvenile Defender Center

Prior Legislation: None known

Support: California Attorneys for Criminal Justice; California Public Defenders Association; Children's Defense Fund-CA; Communities United for Restorative Youth Justice; Fresh Lifelines for Youth; San Francisco Public Defender; Santa Cruz Barrios Unidos; Young Women's Freedom Center

Opposition: None known

PURPOSE

The purpose of this bill is to prohibit the juvenile court from basing the decision to detain a minor in custody on the minor's county of residence.

Existing law provides that, any minor who is between 12 and 17 years of age that violates any law of this state or of the United States or any ordinance of any city or county other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, and may be adjudged to be a ward of the court. (Welf. & Inst. Code, § 602, subd. (a).)

Existing law provides that a peace officer may, without a warrant, take into temporary custody a minor when there is reasonable cause for believing that such minor will be adjudged a ward of the court or charged with a criminal action, or that the minor has violated an order of the juvenile court or escaped from any commitment ordered by the juvenile court, or the minor is found in any street or public place suffering from any sickness or injury which requires medical treatment, hospitalization, or other remedial care. (Welf. & Inst. Code, § 625.)

Existing law provides that an officer who takes a minor into temporary custody may do any of the following: release the minor; deliver or refer the minor to a public or private agency with which the city or county has an agreement or plan to provide shelter, counseling, or diversion services; prepare a written notice to appear before the probation officer of the county in which the minor was taken into custody at a specified time and place; or take the minor without necessary delay before the probation officer of which the minor was taken into custody. (Welf. & Inst. Code, § 626.)

Existing law requires, when an officer takes a minor before a probation officer at a juvenile hall or to any other place of confinement, the officer take immediate steps to notify the minor's parent, guardian, or a responsible relative that such minor is in custody and the place where he is being held. (Welf. & Inst. Code, § 627.)

Existing law requires the probation officer to immediately investigate the circumstances of the minor and the facts surrounding his or her being taken into custody and immediately release the minor to the custody of his or her parent, legal guardian, or responsible relative unless it can be demonstrated upon the evidence before the court that continuance in the home is contrary to the minor's welfare and one or more of the following conditions exist:

- Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor or reasonable necessity for the protection of the person or property of another.
 - The minor is likely to flee the jurisdiction of the court.
 - The minor has violated an order of the juvenile court.
- (Welf. & Inst. Code, § 628, subd. (a)(1).)

Existing law requires the probation officer to release a minor to his or her parent, guardian, or responsible relative on home supervision unless one of the above conditions exists. (Welf. & Inst. Code, § 628.1.)

Existing law requires, except as provided, that a minor taken into custody be brought before a judge or referee of the juvenile court for a hearing to determine whether the minor must be further detained as soon as possible and no later than the next judicial day after a petition has been filed. Provides that such a hearing be referred to as a "detention hearing." (Welf. & Inst. Code, § 632, subd. (a).)

Existing law requires, upon the minor's appearance before the court at the detention hearing, the minor and the minor's parent or guardian, if present, to be informed of the reasons why the minor was taken into custody, the nature of the juvenile court proceedings, and the right of the minor to be represented at every stage of the proceedings by counsel. (Welf. & Inst. Code, § 633.)

Existing law provides that the court examine the minor, his or her parent, legal guardian, or other person having relevant knowledge, hear relevant evidence the minor, his or her parent, legal guardian, or counsel desires to present, and, unless it appears that the minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that he or she be detained or that the minor is likely to flee to avoid the jurisdiction of the court, the court must make its order releasing the minor from custody. (Welf. & Inst. Code, § 635, subd. (a).)

Existing law provides that the circumstances and gravity of the alleged offense may be considered, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that the minor be detained. (Welf. & Inst. Code, § 635, subd. (b)(1).)

Existing law provides that if a minor is a dependent of the court, as defined, the court is prohibited from basing the decision to detain on the minor's status as a dependent of the court or the child welfare services department's inability to provide a placement for the minor. (Welf. & Inst. Code, § 635, subd. (b)(2).)

Existing law requires the court to order the release of the minor from custody unless a prima facie showing has been made that the minor will be adjudged a ward of the court or charged with a criminal action. (Welf. & Inst. Code, § 635, subd. (c)(1).)

Existing law provides that if it appears upon the hearing that the minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court, or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that the minor be detained or that the minor is likely to flee to avoid the jurisdiction of the court, and that continuance in the home is contrary to the minor's welfare, the court may make its order that the minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days. Requires the court to enter the order together with its findings of fact in support in the records of the court. (Welf. & Inst. Code, § 636, subd. (a).)

COMMENTS

1. Need For This Bill

According to the author:

Some children involved with the juvenile justice system are separated from their families, their education, and their communities, solely due to their zip code. This injustice happens at an increased level for children in urban counties, as they often fall on county boundaries, and cross county lines for school or work needs.

The current juvenile courts system considers several factors in the decision to detain children, including the gravity of the alleged offense and county of residence. When children are detained outside of their county, juvenile courts cannot exercise the same discretion on probation alternatives because these programs are provided by each county.

Because of this, children who are arrested and detained out of their county of residence are likely to remain detained for several weeks until their cases have a detention hearing, even if it was a minor offense.

SB 448 will restore equity in alternatives to detention for children in the juvenile justice system. The Equity for Youth in Detention Act removes county of residence as a determining factor for youth detention, creates equal treatment of all children, and allows judges to refocus on the purpose of the juvenile justice system: the best interests of the child.

2. Detention Hearings

When a minor is taken into custody, the minor must be taken before a juvenile court judge or referee for a hearing to determine whether the minor must be further detained. (Welf. & Inst. Code, § 632, subd. (a).) The detention hearing must take place as soon as possible and no later than the next judicial day after a petition has been filed with the court. (*Id.*) At the detention hearing, the minor and the minor's parent or guardian are informed of the reasons why the minor was taken into custody, the nature of the juvenile court proceedings, and the right of the minor and the minor's parents or guardian to be represented at every stage of the proceedings by an attorney. (Welf. & Inst. Code, § 633.) During the detention hearing, the court will question the minor, the minor's parent or legal guardian, or other individuals with relevant knowledge, and hear relevant evidence the minor, the minor's parent or legal guardian, or their attorney presents. (Welf. & Inst. Code, § 635, subd. (a).)

The court is required to order the release of the minor from custody unless the court finds that the prosecutor has made a prima facie case that the minor has committed a crime and that one of the following is true: the minor has violated a juvenile court order, the minor has escaped from the commitment of the juvenile court, that it is a matter of immediate and urgent necessity for the protection of the minor, that it is reasonably necessary for the protection of the person or property of another that the minor be detained, or that the minor is likely to flee to avoid the jurisdiction of the court. (Welf. & Inst. Code, § 635, subds. (a), (c).) The court may consider the circumstances and gravity of the alleged offense, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that the minor be detained. (Welf. & Inst. Code, § 635, subd. (b)(1).) If the minor is a dependent of the court under section 300, the court is prohibited from basing the decision to detain on the minor's status as a dependent of the court or the child welfare services department's inability to provide a placement for the minor. (Welf. & Inst. Code, § 635, subd. (b)(2).)

If the court finds that the minor has violated a juvenile court order, the minor has escaped from the commitment of the juvenile court, that it is a matter of immediate and urgent necessity for the protection of the minor, that it is reasonably necessary for the protection of the person or property of another that the minor be detained, or that the minor is likely to flee to avoid the jurisdiction of the court, and continuance in the home is contrary to the minor's welfare, the court may order the minor detained in juvenile hall or another suitable placement. (Welf. & Inst. Code, § 636, subd. (a).) If the court finds that 24-hour supervision is not necessary, the minor must be released on home supervision. (Welf. & Inst. Code, §§ 628.1, 636, subd. (b).)

Proponents of this bill argue that youth who are accused of committing crimes outside of their county of residence are regularly being detained solely due to their out-of-county status when they otherwise would not be detained and instead, would be placed on home detention or subject to electronic monitoring. This bill is designed to address that issue by prohibiting the juvenile court's decision to detain the minor from being based on the minor's county of residence. Notably, the bill's language does not prohibit a minor's county of residence from being the sole basis of the decision to detain, but rather, prohibits it from being considered at all.

3. Argument in Support

According to the Children's Defense Fund-California:

While juvenile courts are prohibited from keeping a minor based on their dependency status, the law is silent on whether the court can keep a minor in detention based on their county of residence. As a result, even if detention is not a matter of urgent necessity for the protection of the minor or that of another person or property, the courts tend to detain an out-of-county youth because of where they live.

Detained out-of-custody youths are rarely considered for less restrictive alternatives to detention, therefore they remain in custody for weeks pending adjudication of their cases. This separation from their family, education, and community can have detrimental impacts on their future development and growth. Just as the court cannot base their detention decision on the youth's dependent status or lack of placement, the same standard should apply for county of residence.

SB 448 will allow all youth to be considered for the same alternatives to detention, regardless of their county of residence, and prevent children from unnecessary exposure to the juvenile justice system.

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