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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 882                      **Hearing Date:** April 12, 2016  
**Author:** Hertzberg  
**Version:** January 15, 2016  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** ML

**Subject:** *Crimes: Public Transportation: Minors*

### HISTORY

**Source:** Children's Defense Fund; Western Center on Law & Poverty; Youth Justice Coalition

**Prior Legislation:** None

**Support:** California Attorneys for Criminal Justice; California Public Defenders Association; Californians United for a Responsible Budget; California Association of Local Conservation Corps.; Children's Defense Fund; Western Center on Law & Poverty; California PAN-Ethnic Health Network; California Association of Local Conservation Corps; Comite Civico del Valle; Community Asset Development Redefining Education; Children's Advocacy Institute; Children Now; Coalition of California Welfare Rights Organizations, Inc.; Courage Campaign; El Rancho Unified School District; Ella Baker Center for Human Rights; First Place for Youth; L.A. Conservation Corps; Larkin Street Youth Services; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Legal Services for Prisoners with Children; A New Way of Life Re-entry Project; National Center for Youth Law; PolicyLink; Public Counsel Children's Rights Project; Root & Rebound; Rubicon Programs

**Opposition:** California State Sheriffs' Association; California Police Chiefs Association

### PURPOSE

*The purpose of this bill is to provide that minors shall not be subject to an infraction or misdemeanor for evading a transit fare.*

*Existing law* states that every person who avoids fare payment on a public transit system, including the misuse of transfer passes, tickets and tokens when a transit system representative asks for proof of fare payment, shall be punished by an infraction or misdemeanor. (Penal Code § 640.)

*This bill* would provide that a minor shall not be charged with an infraction or a misdemeanor for evading a transit fee, as specified.

## 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:

According to data from the L.A. County Probation Department, riding transit without fare is the number one reason why youth are cited in L.A. County, and youth of color receive a disproportionate number of citations in L.A. County.<sup>1</sup> These citations can result in heavy fines or court appearances, which can require students, take time out of school to attend court and can create stress for students and families.<sup>2</sup> First-time court appearance during high school quadruples a student's odds of dropping out.<sup>3</sup> Ending criminal prosecution for riding transit without fare will greatly reduce the criminalization of young people and give them a better shot at success in life. Furthermore, prosecution for fare evasion unnecessarily burdens public safety systems while undermining a youth's future. In contrast, increasing access to public transportation is crucial to vulnerable populations, and helps reduce traffic congestion.

### 2. Effect of Legislation; Background

The inability to afford transportation to and from school is one of the most frequently cited barriers that low-income youth face in attending school, which equates to about tens of thousands of youth each year across California, particularly those who usually do not have the few dollars requisite to ride transportation, receive fare citations and experience the hardships of heavy fines (up to \$250) and/or court appearances.<sup>4</sup> SB 882 prevents youth under 18 from being charged with a penal code infraction for a fare evasion citation and reduces the likelihood that they will enter the criminal justice system alongside reducing the expenses of both trying and detaining them. The legislation will not impact the ability of transit authorities to charge and collect a financial penalty.

In San Francisco, the criminal penalty for juveniles costs up to \$123.97 in fare evasion fines, including court fees. The fare evasion fine for youth escalates with each offense. It is also useful to look at the effects of the San Francisco Municipal Transportation Agency's (SFMTA) decriminalization of fare evasion for adults in February 2008 in order to reduce fare evasion citations on traffic court dockets and to increase SFMTA fine revenue collections. Prior to the transition, the adult fine, with court fees, totaled \$123.97, and the bulk of the fine was kept by the court. By instituting a \$50 administrative fine in its place, the SFMTA keeps 100 percent of all citation revenue. The change also effectively lowered the penalty for adult fare evasion by up to 60 percent.<sup>5</sup> The same report recommended that in order to dissuade fare evasion and decrease the gap between an adult and juvenile penalty, the Board of Supervisors should either revert fare evasion a criminal citation (only because of the current law criminalizing youth fare evasion) or

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<sup>1</sup> Data from the Los Angeles County Probation Department, as presented to the School Attendance Taskforce on March 5, 2015.

<sup>2</sup> Los Angeles County Department of Public Health

<sup>3</sup> Sweeten G. Who will graduate? Disruption of high school education by arrest and court involvement. Justice Quarterly 2006;23(4):462-80

<sup>4</sup> <http://www.reimaginepe.org/node/328>

<sup>5</sup> <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=19123>

increase the base fine for adult fare evasion to be closer to the city's juvenile fine and also create an escalating penalty for repeat offenders.<sup>6</sup>

### 3. Support

The sponsors, Children's Defense Fund, Western Center on Law & Poverty, and Youth Justice Coalition, state:

#### **Tickets Resulting from Riding Transit without Fare Have Significant Negative Impacts on Children**

According to data from the L.A. County Probation Department, riding transit without fare is the number one reason why youth are cited in L.A. County, and youth of color receive a disproportionate number of citations in L.A. County.<sup>7</sup> These citations can result in heavy fines or court appearances, which can require students, take time out of school to attend court and can create stress for students and families.<sup>8</sup> First-time court appearance during high school quadruples a student's odds of dropping out.<sup>9</sup> Ending criminal prosecution for riding transit without fare will greatly reduce the criminalization of young people and give them a better shot at success in life...

California only transports one in eight students to school, down from one in four in the late 1970s. According to the Legislative Analyst's Office, state funding for transportation is locked at early 1980s reimbursement rates, and some districts charge parents fees for bus service, including the San Diego Unified School District, which charges \$500 per school year for one student, \$250 for a sibling and no additional charge for other siblings. Other districts have decided to no longer offer bus service except for students with disabilities.<sup>10</sup>

According to a recent report by California Attorney General Kamala Harris, poverty and financial instability is a significant cause of absenteeism and truancy in the state.<sup>11</sup> ...A survey of Oakland youth found that 61% of students reported they sometimes use their lunch money to ride the bus, and nearly half of low-income students reported that it was harder to get to school, to jobs, or to after-school programs without a free transit pass.

Unlike California, many states guarantee transportation to and from school for public school students who live beyond a certain distance from their school and a diverse array of cities and communities provide free transit passes – including San Francisco - to children and youth.<sup>12</sup> Until California ensures access to

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<sup>6</sup> Ibid.

<sup>7</sup> Data from the Los Angeles County Probation Department, as presented to the School Attendance Taskforce on March 5, 2015.

<sup>8</sup> Los Angeles County Department of Public Health.

<sup>9</sup> Sweeten G. Who will graduate? Disruption of high school education by arrest and court involvement. *Justice Quarterly* 2006;23(4):462-80.

<sup>10</sup> Review of School Transportation in California, Mac Taylor, Legislative Analyst's Office (LAO), February 25, 2014

<http://www.lao.ca.gov/reports/2014/education/school-transportation/school-transportation-022514.pdf>

<sup>11</sup> <https://oag.ca.gov/truancy>

<sup>12</sup> Youth Justice Coalition: Metro Pass Campaign Survey Results. February 2015. And Iny, Julie and Lila Hussain. Free Transportation to Get Our Education. *Race, Poverty and the Environment*, Winter 2005/2006.

transportation for every child, criminally charging children for not paying the fare on transit is unfair and undermines opportunity for our poorest youth.

#### **Minor Financial Crimes Should Be Treated As Such**

Given most children who ride a bus without the proper fare do so because they don't have the few dollars requisite to ride public transportation, addressing fare evasion through the penal code essentially criminalizes youth for poverty. SB 882 does not condone the practice of youth riding transit without fare or eliminate financial penalties for fare evasion. It simply ends the practice of punishing children for failure to pay a transit fare through our penal code and in our youth detention and probation systems. By ending the criminalization of youth who ride transit without paying the fare, we can reduce the likelihood that they will enter the criminal justice system and reduce the expense of trying and detaining them.

#### **4. Opposition**

The California State Sheriffs' Association opposes this bill, stating in part:

We understand the desire to eliminate the impacts that unlawful fare evasion can have on minors. That said, we do not agree that simply saying that a minor cannot be held accountable for an act still deemed to be illegal is the appropriate way to achieve this goal.

Perhaps transit agencies could be encouraged or compelled not to charge a fare to riders under a certain age. Schools could contract with transit providers to cover the costs of transporting school-bound children. However, simply allowing one cohort of individuals to escape liability for something that remains illegal will frustrate law enforcement and encourage bad behavior.

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