SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	AB 2005	**Hearing Date:**	June 14, 2016
Author:	Ridley-Thomas		
Version:	May 31, 2016		
Urgency:	No	**Fiscal:**	No
Consultant:	AA		

Subject: ***Juveniles: Out-of-State Placement***

HISTORY

Source: Communities United for Restorative Youth Justice; Youth Law Center

Prior Legislation: SB 933 (M. Thompson) Ch. 311, Stats. 1998

Support: Aspiranet; California Alliance for Youth and Community Justice; California Catholic Conference; California Correctional Peace Officers Association; Center on Juvenile and Criminal Justice; Communities United for Restorative Youth Justice; Ella Baker Center for Human Rights; Fair Chance Project; Legal Services for Prisoners with Children

Opposition: Chief Probation Officers of California

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to provide that, with respect to the placement of delinquent wards in private, out-of-state residential facilities, 1) the court must make specified findings by "clear and convincing evidence"; 2) the court must find that a case plan for the minor demonstrates that the out-of-state placement is the most appropriate and is in the best interests of the minor, and that in-state facilities or programs have been considered and are unavailable or inadequate to meet the needs and best interests of the minor; and 3) the existing authority of the court to place a delinquent ward in a juvenile home, ranch, camp, or forestry camp shall not be construed to authorize a court to commit a minor to one of these facilities located outside of the state.

Under current law, the purpose of juvenile court law "is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public." (Welfare and Institutions Code ("WIC") § 202.)

Current law provides that when a minor is adjudged a delinquent ward of the court, "the court may make any reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, . . ." (WIC § 727.)

Current law provides that it is the sole responsibility of probation to determine the appropriate placement for the ward once the court issues a placement order. In determination of the appropriate placement for the ward, the probation officer is required to consider any recommendations of the child and family. The probation agency may place the minor or nonminor in any of the following:

- The approved home of a relative or the approved home of a nonrelative, extended family member, as specified.
- A foster home, the approved home of a resource family, or a home or facility in accordance with the federal Indian Child Welfare Act, as specified.
- A suitable licensed community care facility, as specified.
- A foster family agency, in a suitable program in a family home, as specified.
- Commencing January 1, 2017, a minor or nonminor dependent may be placed in a short-term residential treatment center, as specified. (WIC § 727 (a) (4).)

Out-of-State Placements

Current law provides that a court "shall not order the placement of a minor in an out-of-state group home, unless the court finds, in its order of placement, that all of the following conditions have been met:

(1) The out-of-state group home is licensed or certified for the placement of minors by an agency of the state in which the minor will be placed.

(2) The out-of-state group home meets the requirements of Section 7911.1 of the Family Code.

(3) In-state facilities or programs have been determined to be unavailable or inadequate to meet the needs of the minor. (WIC § 361.21(a).)

Current law requires that at least every six months, the court shall review each out-of-state placement in order to determine compliance with this section. (WIC § 361.21(b).)

Current law provides that a county shall not be entitled to receive or expend any public funds for the placement of a minor in an out-of-state group home unless these requirements are met. (WIC § 361.21(c).)

Current law provides that "when the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement, . . . the decision regarding choice of placement, . . . shall be based upon selection of a safe setting that is the least restrictive or most family like, and the most appropriate setting that meets the individual needs of the minor and is available, in proximity to the parent's home, consistent with the selection of the environment best suited to meet the minor's special needs and best interests. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment . . . . " (WIC § 727.1(a).)

Current law further provides that unless otherwise authorized by law, the court may not order the placement of a delinquent minor "in a private residential facility or program that provides 24-hour supervision, outside of the state, unless the court finds, in its order of placement, that all of the following conditions are met:

(1) In-state facilities or programs have been determined to be unavailable or inadequate to meet the needs of the minor.

(2) The State Department of Social Services or its designee has performed initial and continuing inspection of the out-of-state residential facility or program and has either certified that the facility or program meets the greater of all licensure standards required of group homes or of short-term residential treatment centers operated in California, or that the department has granted a waiver to a specific licensing standard upon a finding that there exists no adverse impact to health and safety," as specified. (WIC § 727.1(b).)

(3) The requirements of Section 7911.1 of the Family Code are met.

This bill would revise this provision to require the court to establish these conditions by "clear and convincing evidence."

This bill further would revise condition (1) above to instead require the court to find that the "case plan for the minor, developed in strict accordance with Section 706.6, demonstrates that the out-of-state placement is the most appropriate and is in the best interests of the minor and that in-state facilities or programs have been considered and are unavailable or inadequate to meet the needs and best interests of the minor."

This bill would add a cross-reference to this section in Welfare and Institutions Code section 727.4, concerning notice of hearings.

Current law provides that when a minor is adjudged a delinquent ward of the court, the court may order any of the types of treatment referred to above, and as an additional alternative, may commit the minor to a juvenile home, ranch, camp, or forestry camp. If there is no county juvenile home, ranch, camp, or forestry camp within the county, the court may commit the minor to the county juvenile hall. (WIC § 730.)

This bill would revise this provision to state that, this "subdivision shall not be construed to authorize a court to commit a minor to a juvenile home, ranch, camp, or forestry camp located outside of the state."

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:

> Unlike the adult criminal justice system, the juvenile justice system is primarily focused on rehabilitation rather than punishment. To this end, counties and state juvenile facilities provide significantly more education, treatment, and counseling programs to juvenile offenders as compared to adult offenders.

Taking into account the recommendations of probation department staff, juvenile court judges decide whether to make the offender a ward of the court and, ultimately, determine the appropriate placement and treatment for the juvenile. Placement decisions are based on such factors as the juvenile's offense, prior record, criminal sophistication, and the county's capacity to provide treatment.

Juveniles are typically placed in a county facility for treatment, such as juvenile hall or camp, or supervised at home. Some juveniles are placed in out-of-state facilities. In 2015, approximately 235 juveniles under the jurisdiction of county probation departments were living out-of-state.

Placing juveniles in out-of-state facilities is counter to the state's goal of rehabilitation. To improve outcomes for juveniles affected by the criminal justice system, California must keep them near their family, loved ones, and support networks. According to best practices, allowing people to remain close to their support network while incarcerated helps their transition after release and reduces recidivism. Placing a juvenile in out-of-state facilities should only be used as a last resort.

2. Background

The placement of children who are wards of the court in out-of-state facilities has long been a concern of state and local policymakers. As explained in an extensive article published in ProPublica in December of last year:

> More than 15 years ago, California was shaken by a tragedy that grew out of sending children out of state with little oversight to ensure their safety.
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> On March 2, 1998, a 16-year-old from Sacramento named Nicholaus Contreraz died at the Arizona Boys Ranch, a "tough-love" boot camp in the desert. In the days prior, the camp's staff had forced him to endure physical exercises so intense, in heat so extreme, that his body began to rebel against itself. He ultimately collapsed and succumbed to a respiratory infection. His chest cavity had swelled with two-and-a-half quarts of pus.
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> California officials immediately demanded to know why a boy born in the state capital had been sent to Arizona as punishment for a juvenile offense. It turned out Contreraz was one of roughly 1,000 California children in who had been sent to boot camps, juvenile detention centers and other programs in other states. California lawmakers quickly discovered the wave of children sent across state lines had been set in motion by two key factors:
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> Juvenile justice judges and probation officials in the state's 58 counties were appalled by conditions in California's notoriously violent youth prisons. Sending California's children out of state seemed safer. Also, it was often cheaper.
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> After Contreraz's death, then-Gov. Pete Wilson signed a bill prohibiting California children from being sent to out-of-state facilities that permitted corporal punishment or barred parental visits. Wilson put the California

> Department of Social Services in charge of enforcing that mandate, and quickly California children were returned home.
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> But now, the tide has been reversed and the reasons are familiar enough. California's detention facilities grew so bad they have been all but eradicated. And its group homes proved such failures that the latest reform plan calls for drastically limiting them, as well.[1]

California statutes reflect the legislative scrutiny of these placements that occurred in the 1990s. Legislative findings and declarations concerning placing wards of the court children out-of-state placements include:

- The health and safety of California children placed by a county social services agency or probation department out of state pursuant to the provisions of the Interstate Compact on the Placement of Children are a matter of statewide concern.

- The Legislature therefore affirms its intention that the State Department of Social Services has full authority to require an assessment and placement recommendation by a county multidisciplinary team prior to placement of a child in an out-of-state group home, to investigate allegations of child abuse or neglect of minors so placed, and to ensure that out-of-state group homes, accepting California children, meet all California group home licensing standards.

- The Legislature also affirms its intention that, on and after January 1, 2017, the licensing standards applicable to out-of-state group homes certified by the department shall be those required of short-term residential treatment centers operated in this state. (Family Code § 7911.)

The State Department of Social Services (DSS) or its designee is required to investigate any threat to the health and safety of children placed by a California county social services agency or probation department in an out-of-state group home pursuant to the provisions of the Interstate Compact on the Placement of Children. "This authority shall include the authority to interview children or staff in private or review their file at the out-of-state facility or wherever the child or files may be at the time of the investigation. . . . (DSS) or its designee shall require certified out-of-state group homes to comply with the reporting requirements applicable to group homes licensed in California . . . for each child in care regardless of whether he or she is a California placement, ...(Family Code § 7911.1.)

DSS also is required to "perform initial and continuing inspection of out-of-state group homes in order to either certify that the out-of-state group home meets all licensure standards required of group homes operated in California or that the department has granted a waiver to a specific licensing standard upon a finding that there exists no adverse impact to health and safety." (Family Code § 7911.1(c).)

A county must "obtain an assessment and placement recommendation by a county multidisciplinary team prior to placement of a child in an out-of-state group home facility." (Family Code § 7911.1(d).) "A multidisciplinary team shall consist of participating members

[1] Sapien, *Out of Options, California Ships Hundreds of Troubled Children Out of State*, ProPublica (December 2015) (https://www.propublica.org/article/california-ships-hundreds-of-troubled-children-out-of-state.)

from county social services, county mental health, county probation, county superintendents of schools, and other members as determined by the county. . . .Participants shall have knowledge or experience in the prevention, identification, and treatment of child abuse and neglect cases, and shall be qualified to recommend a broad range of services related to child abuse or neglect." (Family Code § 7911.1(f).)

Another statute states that the Legislature "affirms its intention that children placed by a county social services agency or probation department in out-of-state group homes be accorded the same personal rights and safeguards of a child placed in a California group home," and that the Interstate Compact on the Placement of Children administrator "may temporarily suspend any new placements in an out-of-state group home, for a period not to exceed 100 days, pending the completion of an investigation, . . . regarding a threat to the health and safety of children in care. During any suspension period the department or its designee shall have staff daily onsite at the out-of-state group home." (Family Code § 7912.)

3. Support

The California Alliance for Youth and Community Justice (CAYCJ), which supports this bill, states in part:

> The proposed change in AB 2005 is essential to improve outcomes for California youth impacted by the criminal justice system. Our state must attempt, at all costs, to keep youth near family and their support systems. Best practices speak to how important retaining a connection to one's community is when returning from detention. This bill allows young people to stay closer to their networks of support. In turn, young people are able to defeat the struggles our state faces with high levels of recidivism. When youth are sent to out of state facilities they are far away from family and community. This results in further isolation and can lead to detrimental outcomes for youth. Support must be gathered at all levels for young people to successfully reenter our communities. Not only is family a source of support, but so are community-based organizations and other community resources that creative a eco-system of support.

4. Opposition

The Chief Probation Officers of California, which opposes this bill, states in part:

> While we appreciate the stated intent of the bill and share the desire to place and work with kids locally, there are times that out of state placements are most appropriate given the specific factors involved with the minor. We are concerned that this bill will further exacerbate placement challenges that could result in the minor remaining in the juvenile hall longer, which is not in the best interests of the minor.
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> Based on the amendments taken May 31, our concerns center around the new language relative to the legal criteria of clear and convincing evidence which was added as well as the language change in WIC 727.1(b)(1) which is redundant to what is already included in WIC 706.6. Further, WIC Section 727.1 is not a hearing; rather it is the criteria for placing a minor out of State. Therefore, there is no need to add this section to WIC 727.4 as the bill now reads.

We share (the author's) desire to make placement decisions that are in the best interests of the safety and well-being of the minor. We believe existing law takes into account the myriad of factors involved in these decisions and already sets forth a process with probation, the courts, minor and involved parties in making these determinations.

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