
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2595 **Hearing Date:** June 12, 2018
Author: Obernolte
Version: April 9, 2018
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Wards: Confinement*

HISTORY

Source: Conference of California Bar Associations

Prior Legislation: AB 1628 (Committee on Budget), Ch. 729, Stats. of 2010
SB 81 (Budget and Fiscal Review Committee), Ch. 175, Stats. of 2007

Support: Unknown

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to clarify that the limitations on the length of the physical confinement of a ward committed to the Division of Juvenile Justice (DJJ), do not limit the powers of the Board of Juvenile Hearings (BJH) and the committing juvenile court.

Existing law provides 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 in Welfare and Institutions Code section 707. (Welf. & Inst. Code, § 602.)

Existing law provides that if the court has found that the minor is a person described by Welfare and Institutions Code section 601 or 602, a court may, without adjudging the minor a ward of the court, place a minor on supervised probation for six months, and if the minor fails to comply with the conditions of probation, the court may order and adjudge the minor a ward of the court. (Welf. & Inst. Code, § 725, subd. (a).)

Existing law provides if the court has found that the minor is a person described by Welfare and Institutions Code section 601 or 602, it may order and adjudge the minor to be a ward of the court. (Welf. & Inst. Code, § 725, subd. (b).)

Existing law requires the court, in determining the judgment and order to be made, to consider the age of the minor, the circumstances and gravity of the offense committed by the minor, and

the minor's previous delinquent history in addition to other relevant and material evidence. (Welf. & Inst. Code, § 725.5.)

Existing law provides that the court may make any reasonable orders for the care, supervision, custody, conduct, maintenance, and support, including medical treatment, of a minor or nonminor adjudged a ward of the court. (Welf. & Inst. Code, § 727, subd. (a)(1).)

Existing law provides that a ward may be ordered to be on probation without supervision of the probation officer, as specified. (Welf. & Inst. Code, § 727, subd. (a)(2).)

Existing law provides that in all other cases, the court is required to order the care, custody, and control of the minor or nonminor to be under the supervision of the probation officer. (Welf. & Inst. Code, § 727, subd. (a)(3).)

Existing law provides that it is the responsibility of the probation agency to determine the appropriate placement for the ward once the court issues a placement order. (Welf. & Inst. Code, § 727, subd. (a)(4).)

Existing law provides that every minor adjudged a ward of the juvenile court is entitled to participate in age-appropriate extracurricular, enrichment, and social activities. (Welf. & Inst. Code, § 727, subd. (a)(4)(F).)

Existing law provides that the court has no authority to order services unless it has been determined through the administrative process of an agency, that the minor, nonminor, or nonminor dependent is eligible for those services. (Welf. & Inst. Code, § 727, subd. (b)(2).)

Existing law provides that the court may retain jurisdiction over any person who is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains 21 years of age, except as provided. (Welf. & Inst. Code, § 607, subd. (a).)

Existing law provides that the court shall not discharge any person from its jurisdiction who has been committed to DJJ so long as the person remains under the jurisdiction of DJJ, including periods of extended control ordered pursuant to Welfare and Institutions Code section 1800. (Welf. & Inst. Code, § 607, subd. (c).)

Existing law provides that the court may retain jurisdiction over any ward who commits a specified serious offenses until that person attains 25 years of age, if the person was committed to DJJ. (Welf. & Inst. Code, § 607 subd. (b).)

Existing law provides that the court may retain jurisdiction over any person who commits a specified serious offenses, and has been confined in a state hospital or other appropriate public or private mental health facility, until that person attains 25 years of age. (Welf. & Inst. Code, § 607, subd. (d).)

Existing law provides that every person committed by the juvenile court to DJJ on and after July 1, 2012, for the commission of specified serious offenses shall be discharged upon the expiration of a two-year period of control, or when the person attains 23 years of age, whichever occurs later, unless an order for further detention has been made by the committing court, as specified. (Welf. & Inst. Code, § 607, subd. (f).)

Existing law provides that if a minor is a ward of the court, the court may order treatment, order the ward to make restitution, commit the ward to a sheltered-care facility, order the ward and the ward's family to participate in counseling, and commit the ward to DJJ. (Welf. & Inst. Code, § 731.)

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.)

Existing law provides that a ward committed to DJJ may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed upon an adult convicted of the offense or offenses that brought or continued the minor under the jurisdiction of the juvenile court. (Welf. & Inst. Code, § 731, subd. (c).)

Existing law provides that a ward committed to DJJ may not be held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section. (Welf. & Inst. Code, § 731, subd. (c).)

Existing law specifies that a ward committed to DJJ may not be in physical custody for a period exceeding the maximum length of confinement that could be imposed on an adult convicted of the offense that brought the minor under the jurisdiction of the court. (Welf. & Inst. Code, § 731, subd. (c).)

Existing law provides that every person committed to DJJ by a juvenile court shall be discharged upon the expiration of a two-year period of control or when he or she attains 21 years of age, whichever occurs later, except as provided. (Welf. & Inst. Code, § 1769, subd. (a).)

Existing law provides that every person committed to DJJ by a juvenile court who has been found to have committed specified serious offenses shall be discharged upon the expiration of a two-year period of control or when he or she attains 25 years of age, whichever occurs later, except as provided. (Welf. & Inst. Code, § 1769, subd. (b).)

Existing law provides that every person committed by the juvenile court to DJJ after July 1, 2012, for the commission of a specified violent or sex offense, shall be discharged upon the expiration of a two-year period, or when the person attains 25 years of age, whichever occurs later, unless an order for further detention has been made by the committing court. (Welf. & Inst. Code, § 1769, subd. (c).)

Existing law authorizes the BJH to set a date on which a ward shall be discharged from DJJ and placed under the supervision of probation and subject to the jurisdiction of the committing court. (Welf. & Inst. Code, § 1766, subd. (a)(1).)

Existing law authorizes the BJH to deny discharge of a person committed to DJJ, subject to the limitations of the maximum length of confinement, as specified. (Welf. & Inst. Code, § 1766, subd. (a)(2).)

Existing law provides that the county of commitment shall supervise the reentry of a ward still subject to the court's jurisdiction and discharged from DJJ. (Welf. & Inst. Code, § 1766, subd. (b)(1).)

Existing law provides that the court shall retain jurisdiction over any person who has been discharged from the physical custody of DJJ, until the person attains the age of 25 years unless the court terminates jurisdiction as otherwise specified or if jurisdiction is terminated by operation of any other applicable law. (Welf. & Inst. Code, § 607.1.)

This bill prohibits the confinement of a ward in DJJ in excess of the term of confinement set by the committing court.

This bill authorizes a court to set a term that is necessary to rehabilitate the ward and that is based upon the facts and circumstances of the matter that brought the ward under the jurisdiction of the court.

This bill provides that the limitations on the length of the physical confinement of a ward committed to DJJ do not limit the power of the BJH to discharge a ward.

This bill provides that the committing court may retain jurisdiction of the ward upon the ward's discharge from DJJ and may establish the conditions of supervision of a ward eligible for discharge from DJJ.

COMMENTS

1. Need for This Bill

According to the author:

W&I Code §731(c) specifies generally that a juvenile committed to DJJ cannot be held in physical confinement any longer than an adult could be sentenced for the same offense and provides specified that the subdivision does not limit the Board of Parole Hearings to retain the youth on parole status for the period permitted by W&I Code §1769 (either two years or until the offender reaches the age of 21 or 23, depending on the offense). In addition to the fact that the code section references the wrong agency (it's now the Board of Juvenile Hearings), its language has been interpreted by some courts as restricting their ability to retain jurisdiction over the youth, limit the term of commitment, and particularly to craft terms of probation supervision that will benefit the individual youth.

AB 2595 seeks to correct this misinterpretation by making clear in statute that the committing court retains jurisdiction, in most cases, until the age of 25 (W&I

Code §607.1) and has the ability to establish post-release terms and conditions of probation supervision (W&I Code §1766(b)). This clarification is consistent with the objectives of realigning the juvenile justice system, from state to local control, endorsed by the voters of California, to provide locally accountable and relevant dispositions to DJJ and local supervision, detention and rehabilitative services upon release. With less than 700 youth confined at DJJ, in a state with a population close to 40 million, the average juvenile court bench officer, district attorney and defense attorney will handle very few DJJ dispositions over the course of their juvenile careers, so it is critical that this code section, which governs the confinement period at DJJ, needs to clearly state the law and reference the code sections governing DJJ commitments.

2. Background

In the past several years, California's juvenile justice system has undergone a significant transformation. In 2007, SB 81 changed the eligibility criteria from youth who could be committed to DJJ. In doing so, only youths found to have committed serious or violent offenses could be committed to DJJ; all other youths were to be supervised locally or held in county facilities. In 2010, AB 1628 realigned supervision of juveniles released from DJJ from the state to the counties. Over the years, several juvenile justice-related bills have amended various sections of the relevant codes but have left in place outdated language. One example is the subject of this bill, Welfare and Institutions Code Section 731 subdivision (c).

Section 731 subdivision (c) limits the amount of time a juvenile may be held in physical custody at DJJ. Under this subdivision, the committing court may only commit a juvenile for a time period based on the facts and circumstances that brought the juvenile under the jurisdiction of the court. Additionally, a juvenile may only be confined in DJJ for a period not exceeding the maximum time that an adult convicted of the same offense could receive. Other sections of the code specify that, notwithstanding the statutory maximums in Section 731 subdivision (c), the BJH has the authority to discharge an eligible ward from custody of DJJ, and upon discharge, the ward is to remain under the jurisdiction of the committing court, and will be supervised locally by probation.

The proponents of this bill argue that Section 731 subdivision (c) reflects an outdated version of the law as it existed prior to juvenile realignment. Specifically, subdivision (c) provides that the limitations on the amount of time a juvenile can be confined in DJJ do not limit the power of the Board of Parole Hearings to retain the ward on parole status for the period permitted. This language reflects the wrong agency, and individuals who are discharged from DJJ are no longer supervised on parole.

This bill would update subdivision (c) to reflect current law. Specifically, this bill deletes the outdated reference to the Board of Parole Hearings. This bill also clarifies that the limitations on the length of the physical confinement of a ward committed to DJJ do not limit the power of the BJH to discharge a ward and that the juvenile court may retain jurisdiction of a ward discharged from DJJ as well as establish the conditions of supervision of a ward eligible for discharge from DJJ.