SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	AB 2390	**Hearing Date:**	June 14, 2016
Author:	Brown		
Version:	February 18, 2016		
Urgency:	No	**Fiscal:**	No
Consultant:	AA		

Subject: ***Juveniles: Honorable Discharge: Release From Penalties***

HISTORY

Source: Conference of California Bar Associations

Prior Legislation: SB 81 (Committee on Budget and Fiscal Review) (Ch. 175, Stats. 2007)
AB 1628 (Committee on Budget) (Ch. 729, Stats. 2010)
SB 1021 (Committee on Budget and Fiscal Review) (Ch. 41, Stats. 2012)

Support: Anti-Recidivism Coalition; California Attorneys for Criminal Justice; California Department of Justice; California Public Defenders Association; Los Angeles Area Chamber of Commerce; National Association of Social Workers; California Chapter; Pacific Juvenile Defender Center; SEIU Local 1000

Opposition: Chief Probation Officers of California

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to provide a mechanism for honorable discharges for persons discharged from the Division of Juvenile Justice, as specified.

DJJ Commitments, Discharges and Subsequent Community Supervision

Current law authorizes the commitment of a delinquent ward of the juvenile court to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, as specified. (Welfare and Institutions Code [WIC] § 731.)

Current law provides that 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 ("DJJ"):

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 a serious or violent offense, as specified. [1]This subdivision shall be effective on and after September 1, 2007. (WIC § 733.)

Current law additionally authorizes the commitment of convicted persons under the age of 21 under certain circumstances. (WIC § 1731.5.)

Current law provides that DJJ shall accept a ward eligible for DJJ commitment "if the Chief Deputy Secretary for the Division of Juvenile Justice believes that the ward can be materially benefitted by the division's reformatory and educational discipline, and if the division has adequate facilities, staff, and programs to provide that care. A ward subject to this section shall not be transported to any facility under the jurisdiction of the division until the superintendent of the facility has notified the committing court of the place to which that ward is to be transported and the time at which he or she can be received." (WIC § 736.)

Current law authorizes the Juvenile Parole Board to do the following:

(1) Set a date on which the ward shall be discharged from the jurisdiction of DJJ and permitted his or her liberty under supervision of probation and subject to the jurisdiction of the committing court, as specified.
(2) Order his or her confinement under conditions the board believes best designed for the protection of the public, as limited.
(3) Discharge him or her from any formal supervision when the board is satisfied that discharge is consistent with the protection of the public. (WIC § 1766 (a).)

Current law provides that if the Juvenile Parole Board determines that a ward is ready for discharge to county supervision, the board shall set a date for discharge from the jurisdiction of DJJ no less than 14 days after the date of such determination. The board is required to record any postrelease recommendations for the ward, which are sent to the committing court responsible for setting the ward's conditions of supervision no later than seven days from the date of such determination. (WIC § 1766(b) (5).)

Current law requires the committing court to convene a reentry disposition hearing for a ward once DJJ has delivered the ward to the custody of the probation department of the committing county, as specified. (WIC § 1766(b)(6).)

Current law provides that the county of commitment shall supervise the reentry of any ward still subject to the court's jurisdiction and discharged from the jurisdiction of DJJ. The conditions of the ward's supervision shall be established by the court, as specified. (WIC § 1766 (b).)

Current law provides that the Department of Corrections and Rehabilitation shall have no further jurisdiction over a ward who is discharged by the board. (WIC § 1766(b) (7).)

Current law establishes the Youthful Offender Block Grant Fund, under which counties receive state funding for necessary services relating to wards released from DJJ, as specified. (WIC § 1951 *et seq.*)

[1] Specifically, an offense described in subdivision (b) of Section 707, unless the offense is a sex offense set forth in paragraph (3) of subdivision (d) of Section 290 of the Penal Code.

Honorable Discharges; This Bill

Current statute provides that when a person is paroled from DJJ and "has proved his or her ability for honorable self-support, the Youth Authority Board shall give him or her honorable discharge. Any person on parole who violates the conditions of his or her parole may be returned to the Youth Authority." (WIC § 1177.)

Current statute provides that DJJ "may grant honorable discharge to any person committed to or confined in any such school. The reason for that discharge shall be entered in the records." (WIC § 1178.)

Current statute provides that all persons honorably discharged from control of DJJ "shall thereafter be released from all penalties or disabilities resulting from the offenses for which they were committed, including, but not limited to, any disqualification for any employment or occupational license, or both, created by any other provision of law. However, that a person shall not be eligible for appointment as a peace officer employed by any public agency if his or her appointment would otherwise be prohibited," as specified. (WIC § 1179(a).)

Current statute provides that a person may be appointed and employed as a peace officer by DJJ "if (1) at least five years have passed since his or her honorable discharge, and the person has had no misdemeanor or felony convictions except for traffic misdemeanors since he or she was honorably discharged by the board, or (2) the person was employed as a peace officer by the department on or before January 1, 1983. No person who is under the jurisdiction of the department shall be admitted to an examination for a peace officer position with the department unless and until the person has been honorably discharged from the jurisdiction of the department by the Youth Authority Board." (WIC § 1179(b).)

Current law provides that upon "the final discharge or dismissal of any such person, (DJJ) shall immediately certify the discharge or dismissal in writing, and shall transmit the certificate to the court by which the person was committed. The court shall thereupon dismiss the accusation and the action pending against that person." (WIC § 1179(c).)

This bill would revise section 1179 (described in the last three paragraphs) as follows:

- Include persons "honorably discharged" "from the control of the county probation department by the juvenile court"; and
- Make additional and related technical revisions to this section.

Current law provides that except as specified, every person honorably discharged from control by DJJ who has not, during the period of control by DJJ, been placed by DJJ in a state prison "shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, and every person discharged may petition the court which committed him or her, and the court may upon that petition set aside the verdict of guilty and dismiss the accusation or information against the petitioner who shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, including, but not limited to, any disqualification for any employment or occupational license, or both, created by any other provision of law." (WIC § 1772(a).)

Current law further provides that persons subject to this section "shall not be eligible for appointment as a peace officer employed by any public agency if his or her appointment would otherwise be prohibited . . . . However, that person may be appointed and employed as a peace officer by (DJJ) if (A) at least five years have passed since his or her honorable discharge, and the person has had no misdemeanor or felony convictions except for traffic misdemeanors since he or she was honorably discharged by (DJJ), or (B) the person was employed as a peace officer by (DJJ) on or before January 1, 1983. No person who is under the jurisdiction of (DJJ) shall be admitted to an examination for a peace officer position with the department unless and until the person has been honorably discharged from the jurisdiction of the Youth Authority Board." (WIC § 1772(b).)

This bill would revise this provision as follows:

- Include persons "honorably discharged" "from the control of the county probation department by the juvenile court"; and
- Make additional and related technical revisions to this section.

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:

> Among other things, AB 1628 of 2010, the Corrections Budget Trailer Bill for that year, established "Juvenile Parole Realignment," which shifted responsibility for the supervision of offenders released from state juvenile facilities from the state Juvenile Parole Board to county probation departments. However, the amended law failed to authorize anyone at the local level to issue honorable discharges pursuant to Welfare and Institutions Code §1772 and §1179. This oversight effectively rendered inoperable the existing "honorable discharge" program which enabled juvenile offenders who successfully completed parole after custody and demonstrated an "ability for honorable self-support" to clear their records and qualify for employment or licensure.
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> Courts that have confronted the issue have acknowledged that the removal of this authority was inadvertent, but have stated that the problem must be fixed by corrective statutory amendment (see In re J.S., 237 Cal.App.4th 452 (2015).
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> The intent of AB 2390 is to re-establish the "honorable discharge" program by empowering counties at the local level to grant this status, after appropriate consideration, to juveniles who successfully completed their supervision.

2. Background; Juvenile Justice Realignment and "Honorable Discharge" from DJJ

In 2007, the jurisdiction of the DJJ – formerly the California Youth Authority, now technically the Department of Corrections and Rehabilitation, Division of Juvenile Facilities – was narrowed to allow DJJ commitment only for delinquent wards of the court who had been found to have committed a serious or violent offense, as specified. As part of the broader juvenile justice "realignment" in California that has occurred over the past several years, probation departments now supervise wards of the juvenile court upon their release from DJJ. A ward discharged from DJJ is no longer subject to the jurisdiction of DJJ or CDCR. The county of commitment is required to supervise the reentry of any ward who has been discharged from the jurisdiction of

DJJ and subject to the court's jurisdiction. The conditions of the ward's supervision are established by the court.

Prior to juvenile realignment, the Board of Parole Hearings (and before that, the Youthful Offender Parole Board) retained jurisdiction over a ward released from a DJJ institution during the period of parole; DJJ parole agents supervised the ward's parole in the community. The honorable discharge provisions that are the subject of this bill operated at a time when DJJ retained jurisdiction over a ward during both custody and parole. With the passage of AB 1628 in 2010, the jurisdiction and supervision responsibilities for wards coming out of DJJ passed from the state to the counties and the courts once a ward was discharged from a DJJ institution into local jurisdiction.

None of the measures enacting or revising the juvenile realignment amended the DJJ honorable discharge statutes. These provisions remain intact in the code, unchanged since 2004. As explained above, this bill essentially revises some of these provisions to include a reference to persons "honorable discharged" from "the control of the county probation department by the juvenile court."

The application of the DJJ honorable discharge provisions in statute was considered by an appellate court decision issued in June of last year. In *In re J.S., 237* (2015) Cal.App.4th 452, a DJJ ward was released after the enactment of AB 1628 in 2010. As a result, the ward was supervised by local probation instead of DJJ parole. The court explained, "the Board of Parole Hearings (Board) did not, as they had been required to in the past, make a finding upon release as to whether his discharge from parole was honorable or otherwise." The ward petitioned the trial court to make the honorable discharge finding in the place of DJJ, and the court of appeal affirmed the trial court's denial of the petition, noting its (the appellate court's) conclusion that "the Legislature should amend the statutory scheme to be consistent with Realignment . . . ."

In re J.S. lays out the issue this bill attempts to address:

> Prior to Realignment, once a youth completed his commitment at the DJJ and parole period, the Board determined his eligibility for discharge. As part of this determination, the Board was required to give the youth an honorable discharge where the Board found that the "person so paroled has proved his or her ability for honorable self-support." Otherwise, the Board could award a general or dishonorable discharge. If honorably discharged, a youth was automatically entitled to release from all penalties and disabilities resulting from the offense or crime for which he was committed. . . . (W)hether honorably discharged, generally discharged or dishonorably discharged, any youth can also petition the juvenile court to set aside the verdict of guilty and dismiss the accusation or information against the youth, and thereafter the youth would be eligible for release from all penalties and disabilities.
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> . . .
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> . . . . Because DJJ-administered parole no longer exists, the Board cannot make an honorable discharge determination prior to release, as mandated by section 1177.

> The Legislature did not repeal or amend section 1177 to make it consistent with the new local procedures. Under the law as currently written, there is no other entity authorized to make the honorable discharge finding. The Legislature, in enacting Realignment, neither set up another mechanism for determining eligibility for honorable discharge, nor did it amend section 1772, subdivision (a) to remove the automatic relief provision in the statute based on such a finding. Currently, therefore, the automatic provision of section 1772, subdivision (a), which is triggered by an honorable discharge finding under section 1177, is de facto inoperable. Appellant is correct that this appears to be an oversight by the Legislature.
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> . . .
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> Even if we were inclined to intervene, we cannot presume to know how the Legislature would harmonize these statutes. In correcting this inconsistency, the Legislature could do a number of things. It could transfer the authority to make the honorable discharge finding to the trial court as appellant suggests, or it could choose to eliminate the entire concept of honorable discharge, eliminating along with it the automatic relief portion of section 1772, subdivision (a). (*In re J.S., supra*, (citations omitted).)

3. Considerations

Members of the Committee and the author may wish to discuss whether this bill effectively addresses the objectives of the author and resolves the issues raised by the appellate decision described above. As currently drafted the bill would reference persons discharged "from the control of the county probation department by the juvenile court" in statutory sections pertaining to persons honorably discharged from DJJ. The statute that authorizes an honorable discharge – which pertains only to the "Youth Authority Board" (now, the Juvenile Parole Board) – is not amended by this bill. Therefore, without this section revised it is not clear that this bill would provide authority for an honorable discharge to be granted.

Members additionally may wish to consider a number of details relating to how honorable discharges for DJJ wards post-realignment could be determined, including:

- Since wards discharged by DJJ are supervised in the community by probation, should courts make honorable discharge decisions? If so, on what basis and under what procedure should these decisions be made? Should wards or former wards be required to petition the court?
- Should honorable discharges be automatic, or based on objective criteria relating to the petitioner's conduct? Would a noticed hearing be required, or could this be done administratively?
- Should DJJ or the Juvenile Parole Board have a role in the court's consideration?
- Should DJJ or the Juvenile Parole make honorable discharge decisions? If so, could that decision be administrative, or would it require some kind of procedural decision-making process?

4. Support

The Anti-Recidivism Coalition, which supports this bill, states in part:

AB 2390 aims to remove significant barriers to successful re-entry from the lives of those honorably discharged from The Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ). This bill is in keeping with "ban the box" efforts proliferating around the county, and would remove all collateral consequences flowing from a juvenile conviction, including crucial disqualifications from employment, licensing, and housing opportunities.

Overwhelmingly, ex-offenders have tenuous relationships to the labor market. Approximately 70% have dropped out of high school, contributing to their unemployability.1 Moreover, time spent incarcerated can make the matter worse by depriving those incarcerated the chance to develop the job skills and social capital necessary for success in the labor market later in life.1 These existing barriers to employment and successful reintegration are further exacerbated by existing policies that automatically disqualify ex-offenders from pursuing certain positions, acquiring licenses and even obtain stable housing.

AB 2390 removes these obstacles. With these obstacles removed, ARC members and many other Californians will be able to qualify for a larger number of the type of meaningful job opportunities that we know help drive down recidivism rates.

5. Opposition

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

We appreciate the objective of this legislation and share the intent to set forth a path for juvenile offenders to obtain employment, education, and related services to support their reentry and rehabilitative efforts. However, inserting county probation departments into a statute written for the California Division of Juvenile Justice is very problematic from an operational and implementation perspective.

Under AB 1628 in 2010, juvenile parole functions were realigned to county probation. As such, these minors have been legally converted to wards of the local court. Therefore, the provisions of the honorable discharge program, which were created during a time that the DJJ had jurisdiction of juvenile parole functions, does not reflect local practices nor does it operationally work to fit probation and county court procedures into existing statute. Conversely, setting up an entirely new honorable discharge program within each county would be costly and require a significant amount of coordination and involvement of the impacted stakeholders.

We very much welcome further discussions on how best to set forth opportunities for this specific population. However, we believe that in order to appropriately address the intent of the bill, as well as set up a system that would be workable, it would require the stakeholders to have a more comprehensive, and longer-term, discussion on how best to achieve the desired outcomes.

-- END –