
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1106 **Hearing Date:** April 3, 2018
Author: Hill
Version: March 19, 2018
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Young Adults: Deferred Entry of Judgment Pilot Program*

HISTORY

Source: Author

Prior Legislation: SB 1004 (Hill), Ch. 865, Stats. of 2016

Support: California Probation, Parole, and Correctional Association; Chief Probation Officers of California; Ventura County Board of Supervisors

Opposition: Center on Juvenile and Criminal Justice

PURPOSE

The purpose of this bill is to extend the operative date of the existing Transitional Age Youth pilot program to January 1, 2022, and to expand the scope of the program to include Ventura County.

COMMENTS

Existing law provides that the following counties may establish a pilot program to operate a deferred entry of judgment pilot program for eligible defendants, as specified:

- County of Alameda.
- County of Butte.
- County of Napa.
- County of Nevada.
- County of Santa Clara. (Pen. Code, § 1000.7, subd. (a).)

Existing law provides that a defendant may participate in a deferred entry of judgment pilot program within the county's juvenile hall if that person is charged with committing a felony offense, except as specified, he or she pleads guilty to the charge or charges, and the probation department determines that the person meets all of the following requirements:

- Is 18 years of age or older, but under 21 years of age on the date the offense was committed;
- Is suitable for the program after evaluation using a risk assessment tool, as specified;

- Shows the ability to benefit from services generally reserved for delinquents, including; but not limited to, cognitive behavioral therapy, other mental health services, and age-appropriate educational, vocational, and supervision services, that are currently deployed under the jurisdiction of the juvenile court;
- Meets the rules of the juvenile hall developed in accordance with the applicable regulations;
- Does not have a prior or current conviction for committing an offense listed under Penal Code sections 1192.7 (c) or 667.5 (c), or Welfare and Institutions Code section 707 (b); and,
- Is not required to register as a sex offender, as specified. (Pen. Code, § 1000.7, subd. (b).)

Existing law requires the probation department, in consultation with the superior court, district attorney, and sheriff of the county or the governmental body charged with operating the county jail, to develop an evaluation process using a risk assessment tool to determine eligibility for the program. (Pen. Code, § 1000.7, subd. (c).)

Existing law provides that if the defendant is required to register as a sex offender, as specified, or if he or she has been convicted of one or more of the following offenses, he or she is not eligible for the program:

- A “serious” felony, as defined in Penal Code section 1192.7(c);
- A “violent” felony, as defined in Penal Code section 667.5(c); or
- A serious or violent crime as defined in juvenile law, Welfare and Institutions Code section 707 (b). (Pen. Code, § 1000.7, subd. (d).)

Existing law requires the court to grant deferred entry of judgment if an eligible defendant consents to participate in the program, waives his or her right to a speedy trial or a speedy preliminary hearing, pleads guilty to the charge or charges, and waives time for the pronouncement of judgment. (Pen. Code, § 1000.7, subd. (e).)

Existing law provides that if the probation department determines that the defendant is not eligible for the deferred entry of judgment pilot program or the defendant does not consent to participate in the program, the proceedings shall continue as in any other case. (Pen. Code, § 1000.7, subd. (f)(1).)

Existing law provides that if it appears to the probation department that the defendant is performing unsatisfactorily in the program as a result of the commission of a new crime or the violation of any of the rules of the juvenile hall or that the defendant is not benefiting from the services in the program, the probation department may make a motion for entry of judgment. After notice to the defendant, the court is required to hold a hearing to determine whether judgment should be entered. (Pen. Code, § 1000.7, subd. (f)(2).)

Existing law provides that if the court finds that the defendant is performing unsatisfactorily in the program or that the defendant is not benefiting from the services in the program, the court is required to render a finding of guilt to the charge or charges pleaded, enter judgment, and schedule a sentencing hearing as otherwise provided in this code, and the probation department, in consultation with the county sheriff, is required to remove the defendant from the program and return him or her to custody in county jail. The mechanism of when and how the defendant is moved from custody in juvenile hall to custody in a county jail shall be determined by the local multidisciplinary team, as specified. (*Id.*)

Existing law provides that if the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the court is required to dismiss the criminal charge or charges. (Pen. Code, § 1000.7, subd. (f)(3).)

Existing law prohibits a defendant from serving longer than one year in custody within a county's juvenile hall pursuant to the program. (Pen. Code, § 1000.7, subd. (g).)

Existing law requires the probation department to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. (Pen. Code, § 1000.7, subd. (h).)

Existing law requires the probation department to submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county. (Pen. Code, § 1000.7, subd. (i).)

Existing law prohibits a defendant participating in the program pursuant to this section from coming into contact with minors within the juvenile hall for any purpose, including, but not limited to, housing, recreation, or education. (Pen. Code, § 1000.7, subd. (j).)

Existing law provides that prior to establishing a pilot program pursuant to this section, the county is required to apply to the Board of State and Community Corrections for approval of a county institution as a suitable place for confinement for the purpose of the pilot program. The board is required to review and approve or deny the application of the county within 30 days of receiving notice of this proposed use. In its review, the board is required to take into account the available programming, capacity, and safety of the institution as a place for the confinement and rehabilitation of individuals within the jurisdiction of the criminal court, and those within the jurisdiction of the juvenile court. (Pen. Code, § 1000.7, subd. (k).)

Existing law requires the Board of State and Community Corrections to review a county's pilot program to ensure compliance with requirements of the federal Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. Sec. 5601 et seq.), as amended, relating to "sight and sound" separation between juveniles and adult inmates. (Pen. Code, § 1000.7, subd. (l).)

Existing law provides that the statutes related to this pilot program apply to a defendant who would otherwise serve time in custody in a county jail. Participation in this pilot program is prohibited as an alternative to a sentence involving community supervision. (Pen. Code, § 1000.7, subd. (m)(1).)

Existing law requires each county to establish a multidisciplinary team that is required to meet periodically to review and discuss the implementation, practices, and impact of the program. The team is required to include representatives from the following:

- Probation department.
- The district attorney's office.
- The public defender's office.
- The sheriff's department.
- Courts located in the county.
- The county board of supervisors.
- The county health and human services department.
- A youth advocacy group. (Pen. Code, § 1000.7, subd., (m)(2).)

Existing law requires a county that establishes a pilot program pursuant to this section to submit data regarding the pilot program to the Board of State and Community Corrections (BSCC). The data submitted is required be as specified. (Pen. Code, § 1000.7, subd., (n)(1).)

Existing law requires the board to conduct an evaluation of the pilot program's impact and effectiveness. The evaluation is required to include, but not limited to, evaluating each pilot program's impact on sentencing and impact on opportunities for community supervision, monitoring the program's effect on minors in the juvenile facility, if any, and its effectiveness with respect to program participants, including outcome-related data for program participants compared to young adult offenders sentenced for comparable crimes. (Pen. Code, § 1000.7, subd. (n)(2).)

Existing law requires each evaluation to be combined into a comprehensive report and submitted to the Assembly and Senate Committees on Public Safety. (Pen. Code, § 1000.7, subd. (n)(3).)

Existing law provides that the board may contract with an independent entity, including, but not limited to, the Regents of the University of California, for the purposes of carrying out the duties of the board pursuant to this subdivision. (Pen. Code, § 1000.7, subd. (n)(4).)

Existing law provides that this chapter shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date. (Pen. Code, § 1000.7, subd. (o).)

This bill extends the sunset date of the Transitional Age Youth pilot program to January 1, 2022.

The bill expands the scope of the program to include Ventura County.

1. Need for This Bill

According to the author:

The SB 1004 pilot program is currently underway; however, the existing sunset date in the bill is January 1, 2020. Once the bill was enacted, there were processes completed by the Board of State and Community Corrections to certify the programs for compliance with State and Federal requirements. Further, there were efforts to establish the county multidisciplinary team, develop criteria for the program, and coordinate with local stakeholders. As a result of this thorough implementation process, the programs were not fully operational by the enactment date. Because the pilot program requires an evaluation to be conducted on the program and its effectiveness, it's important the sunset date be extended to January 1, 2022 to account for the implementation time at the beginning of the pilot as well as authorize the program to operate for a length of time that delivers the most comprehensive and evidence based evaluation.

Additionally, by adding in Ventura County it will add to the dataset and provide valuable information.

2. Transitional Age Youth Pilot Program

a. Establishment of the Pilot Program

SB 1004 (Hill) authorized five counties—Alameda, Butte, Napa, Nevada, and Santa Clara—to operate a three-year pilot program in which certain young adult offenders would serve their time in juvenile hall instead of jail. The bill recognized that although 18 to 21 year olds are legally adults, “young offenders...are still undergoing significant brain development and...may be better served by the juvenile justice system with corresponding age appropriate intensive services.” (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 1004 (2015-2016 Reg. Sess.) as amended on Mar. 28, 2016.)

The pilot is a deferred entry of judgment program, meaning that participants have to plead guilty to be eligible for the program, and if they succeed in the program then the criminal charges are dismissed. The young adults must be between the ages of 18 and 21, and must not have a prior or current conviction for a serious, violent, or sex crime. Participants must consent to participate in the program, be assessed and found suitable for the program, and show the ability to benefit from the services generally provided to juvenile hall youth. Probation is required to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. Finally, a person participating in the program cannot serve more than one year in juvenile hall.

b. Implementation

In order to establish a pilot program pursuant to Penal Code section 1000.7, a county must apply to the BSCC for approval of a county institution as a suitable place for confinement for the purpose of the pilot program. The BSCC must approve or deny a county’s application within 30 days of receiving notice of the proposed use.

According to the bill’s author, a significant part of the first year of the three-year pilot program was consumed by the bill’s implementation. The BSCC had to create an approval process for county applications, and county probation departments had to prepare for the program as well. As a result, the programs were not fully operational by January 1, 2017. For example, Alameda County did not receive approval for its program from the BSCC until January 2018. (<http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_03_13_18/PUBLIC%20PROTECTION/Regular%20Calendar/Probation_260984.pdf> [as of Mar. 27, 2018].)

Participating counties are required to submit data regarding their program to the BSCC, and the BSCC is then required to evaluate the pilot program’s impact and effectiveness. The author believes that an extension of the pilot program’s sunset date is necessary in order for enough data to be collected. The bill also adds Ventura County to the group of counties included in the pilot. The rationale behind adding Ventura County is to add a mid-sized county to the pilot to improve the scope and breadth of the data that would be collected.

Although no comprehensive evaluation or analysis has been completed yet, counties are beginning to compile data on their programs. Anecdotal evidence suggests that although the statute authorizes participants to be confined in juvenile hall for up to one year, many counties are trying to get participants back into the community and providing reentry-like services.

3. Argument in Support

The Chief Probation Officers of California write:

SB 1004 authorized the counties of Alameda, Butte, Napa, Nevada and Santa Clara to voluntarily enact a deferred entry of judgment pilot program that allows young adult offenders age 18-21 to be housed in a juvenile detention facility, instead of county jail. Because these young adults will be housed in juvenile detention facilities they will have services available to them such as mental health, vocational, and education services.

While legally adults, young offenders age 18-21 are still undergoing significant cognitive brain development. Research shows this age group can be better served by the juvenile justice system with corresponding age appropriate intensive services...intended to specially address the needs of the emerging adolescent brain.

...Once the bill was enacted, there were processes completed by the Board of State and Community Corrections to certify the programs for compliance with State and Federal requirements....

As a result of this thorough implementation process, the programs were not fully operational by the enactment date. Because the pilot program requires an evaluation to be conducted on the program and its effectiveness, it's important the sunset date be extended to January 1, 2022 to account for the implementation time at the beginning of the pilot as well as authorize the program to operate for a length of time that delivers the most comprehensive and evidence based evaluation.

Additionally, in light of the existing eligibility for this program and the number of participants in the various pilot counties, adding additional counties to the pilot will help provide a more robust sample size to accurately and efficaciously study the results of the program.

4. Argument in Opposition

The Center on Juvenile and Criminal writes:

The Center on Juvenile and Criminal justice strongly opposes Senate Bill 1106 (Hill), which would extend a yet unevaluated pilot program for an additional two years. Currently, the SB 1004 pilot program authorizes district attorneys to place young adults in a juvenile hall for up to one year of incarceration through deferred entry of judgment....

County juvenile facilities, including juvenile halls, camps, and ranches, are operating well below their rated capacity. In June 2017, the population of these facilities comprised just 35 percent of bed capacity and, in juvenile halls alone, there are approximately 5,300 empty institutional beds. This unprecedented excess capacity is the result of historic declines in juvenile felony arrests....Despite these trends, county juvenile facility capacity has remained

relatively flat; from 1999 to 2017, the number of beds in local juvenile halls, camps, and ranches increased by 14 percent.

With the highest vacancy rate in recent history, it is clear that California has overbuilt its juvenile justice system. Through Senate Bill 81 (2007) and Assembly Bill 1628 (2010), the state has invested \$300 million in the construction of new county-run facilities for youth. The purpose of this investment was to allow counties to serve high-needs youth who would otherwise be placed in the state youth correctional system, the Division of Juvenile Justice (DJJ). Yet counties continue to commit high numbers of youth to the troubled DJJ facilities....

In 2016, CJCJ opposed SB 1004 with concern that existing juvenile hall vacancies need not be filled by young adults who would be better served outside of an incarceration setting. Specifically, SB 1004 authorized courts in Alameda, Santa Clara, Butte, Napa, and Nevada counties to place young adults in juvenile halls for up to one year upon condition of an admission of guilt. It provided no guarantee against the incarceration of young adults who might otherwise be served in the community.

As a condition of participation, young adults must be charged with non-serious, non-violent, and non-sexual offenses, meaning that many participants are low-risk. Research shows that low-risk individuals are better served in their communities....

The existing pilot places young adults in facilities with youth under 18, requiring participating counties to maintain sight and sound separation during housing, recreation, and education. Maintaining this separation restricts movement throughout facilities and may limit the time younger youth can spend in recreational and rehabilitative spaces.

For these reasons, we opposed SB 1004 and ask that the pilot sunset in 2020 without a time extension or an expansion to a broader population or larger cohort of counties. An expansion of the SB 1004 pilot would set a problematic precedent for local juvenile facilities and needlessly expand the population at a time of natural decline.

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