

COMMONWEAL

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October 17th, 2017:

California Legislative Report--

BILLS SIGNED AND VETOED BY THE GOVERNOR

This is the final tracking report for the year on bills covering the subjects of juvenile justice, youth crime and violence prevention, youth mental health, probation foster care and related matters. The Governor's final day to sign or veto 2017 bills was October 15th. Bills signed into law are preceded by an asterisk (*). Bills are effective January 1, 2018 unless otherwise noted. The full text of each bill can be accessed on the California legislative website at www.leginfo.legislature.ca.gov. More information on legislation, budget and policy in the youth justice field is available on the Commonweal Juvenile Justice Program website-- www.comjj.org.

Assembly bills

* **AB 90 (Weber, D. – San Diego).** *“Fair and Accurate Gang Database Act”*. AB 90 removes the administration and oversight of law enforcement gang data bases from the CalGang Executive Board, vesting those responsibilities instead in the state Department of Justice. Requires DOJ to adopt regulations for a retooled gang data base framework. Re-designs the petition and court process for challenging law enforcement agency refusals to remove individuals from the gang data base. Establishes a state-level technical advisory committee for all shared gang data bases with designated representatives. Imposes a moratorium beginning 1/1/18 on adding data to the CalGang data base and on accessing CalGang data until DOJ certifies that the data base has been properly purged in accordance with the new criteria in the bill. Makes related changes. *Signed into law, Stats.of 2017, Chapter 695.*

* **AB 507 (Rubio, D. – West Covina).** *Resource family training*. Under the state's Continuum of Care Reform (CCR), as embodied in AB 403 (2015) and subsequent bills, children's group homes are being phased out and replaced with alternative placement options for dependent and delinquent wards. The CCR scheme includes expanding family-based care for former group care residents through the recruitment and training of "resource families". As amended in July, the bill no longer requires the development of a training plan for each resource family. Instead, the bill now provides that a portion of the annual resource family training shall support the case plans, goals, and needs of children in the resource family home, if there are any children in the home, in accordance with departmental directives and regulations. The bill also permits a county to require one or more hours of specialized training for resource families in addition to the 8 hours of caregiver training otherwise required by current law. *Signed into law, Stats.of 2017, Chapter 705.*

*** AB 529 (Stone, D. – Santa Cruz). Sealing of juvenile offense records.** This bill amends Section 786 of the Welfare and Institutions Code to require the juvenile court to order the sealing of arrest and related records held by law enforcement and probation agencies and the Department of Justice, in cases where a petition filed to declare the minor a ward of the court has been dismissed or has resulted in an acquittal on the charges. As amended, within six months of an order to seal a record of a dismissed petition, the prosecutor may access the record, with the approval of the court, in order to refile the petition based on alleged new circumstances. As further amended, the bill requires probation departments to seal records pertaining to a juvenile who completes a diversion program to which he or she is referred in lieu of the filing of a petition (including WIC Section 654 informal supervision), and it permits probation departments to access a record that has been sealed under Section 786 in order to determine eligibility for subsequent supervision programs under WIC Section 654.3. *Signed into law, Stats.of 2017, Chapter 685.*

***AB 766 (Friedman, D. - Burbank). Foster care independent living to include university and college housing.** As amended, provides that a minor aged 16 or older who is otherwise eligible for AFDC-FC (foster care) benefits may directly receive those payments if he or she is enrolled in a postsecondary educational institution, living independently in a dormitory or other designated school housing and where the education placement is made pursuant to a supervised placement agreement and transitional independent living plan as described in the bill. AB 766 further provides that foster care payments made to a minor enrolled in a postsecondary education placement at the University of California or California Community Colleges shall not be counted in considering the minor's eligibility for financial aid. *Signed into law, Stats.of 2017, Chapter 710.*

AB 811 (Gipson, D. – Carson). Access to computer technology and internet for confined and placed juveniles. As amended requires the Division of Juvenile Justice (DJJ) starting in 2021 to provide “minors” confined in its facilities with “reasonable access to computer technology and the Internet for the purposes of education and maintaining contact and maintaining contact with parents, guardians, siblings, children, and extended family members.” Provides that DJJ may adopt policies to limit or deny such access in individual cases based on safety, security or staffing reasons. In addition, and effective January 2018, AB 811 amends multiple sections of the Welfare and Institutions Code to guarantee reasonable access to computer technology and the internet by juveniles in county juvenile halls, camps or ranches, subject to the authority of the chief probation officer (or his or her designee) to deny such access for safety, security or staffing reasons. Section 362.05 of the Welfare and Institutions Code is amended to require that dependent wards of the juvenile court, including those placed in group homes or STRTCs, shall be entitled to participate in age appropriate extra-curricular, enrichment and social activities that would now include reasonable access to computer technology and the internet. **Vetoed by the Governor.** *In his veto message the Governor said that he agreed with the intent but balked at an estimated \$15 million in state compliance costs and questioned the “reasonable access” standard as vague. He said he is directing the state Div. of Juvenile Justice to come with a plan to provide computer and internet access.*

***AB 878 (Gipson, D. – Carson). Mechanical restraints used on minors during transportation from local juvenile justice facilities.** As amended, permits the use of “mechanical restraints” (including handcuffs, chains, irons, straightjackets) on a juvenile during transportation to or from a local secure juvenile facility (including probation camps or ranches) “only upon a determination made by the probation department, in consultation with the transporting agency, that the mechanical restraints are necessary to prevent physical harm to the juvenile or another person or due to a substantial risk of flight.” Requires that if the restraints are used, only the least restrictive form of restraint consistent with the legitimate security needs of the juvenile is to be used. Requires that a probation department choosing to use mechanical restraints other than handcuffs shall adopt procedures documenting their

use and reasons for use. Limits the use of restraints during a court proceeding to situations where the court determines that the minor's behavior in custody or in court makes the use of restraints necessary to prevent physical harm or flight, with the burden on the prosecution to demonstrate the need for restraints, and then requires that the least restrictive form of restraint be used and that the reasons for use of the restraint be documented. *Signed into law, Stats.of 2017, Chapter 660.*

AB 935 (Stone, D. – Santa Cruz). Juvenile competency in delinquency proceedings. This bill overhauls the process of current law in WIC Section 709 for determining the competency of minors in delinquency proceedings. AB 935 expands the definition of incompetency, beyond inability to understand the proceedings or assist counsel, to include elements related to mental illness, development disability and immaturity. Under the bill, where doubt is raised as to the competency of a minor in a WIC 601 or 602 proceeding, the court must appoint an expert to evaluate the minor's condition and competency. AB 935 sets out qualifications for the expert including expertise in child and adolescent development, and it includes detail on the methods that must be employed by the expert in making his or her determination and recommendation to the court. Provides that additional experts may be retained by the district attorney or minor's counsel to supplement the testimony of the court appointed expert. Requires the competency determination to be made in an evidentiary hearing with a presumption that the minor is competent. If the minor is determined to be incompetent, the delinquency proceedings are to be suspended and the minor must be referred for remediation services designed to restore competency. If it is determined that competency cannot be restored through remediation within six months, the court must dismiss the delinquency petition. If the court finds within this period that the minor has been remediated, the proceedings are to be reinstated. Provides that secure confinement may not extend beyond six months after a finding of incompetency, but a late amendment allows the confinement to be extended by the court for up to one year under specified circumstances. The total remediation period remains limited to one year from the finding of incompetency. Requires the Judicial Council to adopt court rules to implement the revised procedure. A September 7th fiscal amendment states that the bill's provisions shall apply to a county only to the extent that the state provides funding for any increase in county cost incurred as a result of the legislation. ***Vetoed by the Governor who expressed concern about the "rare instances in which youth are accused of very serious crimes". He applauded the author for "addressing a subject that is in need of review" and he invited "further review".***

***AB 1008 (McCarty, D.- Sacramento, with members Weber, Holden, Gipson and Reyes). Ban the box/ fair employment limits on employer inquiry into criminal history.** This bill revises and expands California fair employment law by declaring it to be an unlawful employment practice for an employer to a) ask about conviction history on a job application, b) enquire about conviction history until after the applicant has been made a conditional job offer, or c) in conducting a background check to consider or use certain types of criminal history including arrest without conviction, diversion only and information contained in sealed records. As amended in July, these provisions would apply only to employers having five or more employees. A ban on background checks into certain misdemeanors was also removed by amendment in July. The safeguards against inquiry into criminal history would not apply to certain background checks otherwise required by law, including background checks required for employment with a state or local agency or with a designated criminal justice agency. Sets out requirements for informing applicants about reasons for denial of employment related to criminal history and provides for a five-day period in which persons denied employment can challenge the accuracy of the information on which rejection was based. This bill does not alter the 2016 Labor Code amendment that imposed new limits on employer inquiry into juvenile offense history (AB 1843, Stone). *Signed into law, Stats.of 2017, Chapter 789.*

***AB 1308 (Stone, D. – Santa Cruz). Eligibility for parole consideration for prisoners whose offenses were committed while age 25 or younger.** This bill expands the coverage of recently enacted bills that provide for parole board review of long and life prison sentences imposed on individuals who were under the age of 23 at the time of commission of the offense. AB 1308 raises the eligibility threshold for parole consideration to cover prisoners who were age 25 or younger at the time of their commitment offense (from age 23 under current law). Prisoners meeting the bill’s age criteria become eligible for release on parole after 15, 20 or 25 years of incarceration depending on the sentence originally imposed. AB 1308 requires the parole board, in making its determination, to consider maturity and development factors pertaining to juveniles and young adults and to provide “a meaningful opportunity for release”. Sets out a range of future dates by which the parole board must complete sentence reviews for those made eligible for release by the bill, depending on the type of sentence that was imposed. *Signed into law, Stats.of 2017, Chapter 675.*

Senate bills

***SB 54 (DeLeon, D. – L.A.) Ban on law enforcement coordination with federal immigration enforcement agencies.** SB 54 prohibits a state or local law enforcement agency, including school police or security officers, from engaging in certain activities supporting immigration enforcement by federal agencies. The bill bars law enforcement agencies from engaging in a lengthy list of activities that may facilitate federal immigration enforcement including investigation, arrest, detention, and sharing custody or release information with federal authorities on undocumented or noncitizen individuals. Certain exceptions apply whereby a law enforcement agency may supply limited information to federal immigration authorities—for example, in response to federal inquiry into criminal history on the CLETS information system, where the individual in question has a history of human trafficking or where the federal inquiry relates to a person convicted or imprisoned for a listed serious or violent felony. The bill puts California more firmly into conflict with recent U.S. Department of Justice policy that would cancel or withhold federal criminal justice grants to states or local units of government having “sanctuary” policies that are incorporated into SB 54. *Signed into law, Stats.of 2017, Chapter 495.*

***SB 190 (Mitchell, D. – L.A. and Lara, D. – L.A.) Elimination of costs imposed by counties for juvenile detention, placement, legal services and related charges.** This bill reintroduces the content of last year’s SB 941, eliminating costs that could be imposed on minors and parents by juvenile justice agencies. SB 190 would delete provisions in multiple sections of the Welfare and Institutions Code that now permit counties to assess minors and parents for the costs of juvenile processing, defense representation, detention, drug testing and placement. The bill is comprehensive in the sense that it strikes cost language from nearly every section of the Welfare and Institutions Code from Section 207.2 through and including Section 904. On the adult side, the bill limits fees that can be imposed on adult defendants for home detention, drug testing and electronic monitoring to those who are over age 21. Extensive July amendments modify additional sections of the Welfare and Institutions and Penal Codes to provide additional relief from liability of parents or juveniles from having to pay the costs of designated juvenile court and probation services or operations. *Signed into law, Stats.of 2017, Chapter 678.*

***SB 233 (Beall, D. – San Jose). Education records and rights for foster youth.** States the intent of the Legislature to ensure educational success for foster youth by supporting appropriate uses of pupil records and improved coordination between education stakeholders for foster youth. Adds complex new provisions governing access to and use of foster youth education records. as specified, by caregivers including foster parents, resource families, foster family agencies and Short Term

Residential Therapeutic Programs (STRTPs). Redefines certain responsibilities of education rights holders appointed by the court and social workers with regard to pupil records and education decision making. For hearings on termination of parental rights or to establish guardianship under WIC Section 366.26, requires the child welfare agency assessment for the hearing to include additional health and education records including the identification of any educational rights decision maker. Makes additional changes to foster care/education provisions of current law. *Signed into law, Stats.of 2017, Chapter 829.*

SB 304 (Portantino, D. - Glendale). Joint transitional plans for juveniles transferring from court schools to public schools. Current law requires the county office of education and the county probation department to have a joint transitional planning policy providing for the effective transfers of pupils and their records from juvenile court schools to public schools. As amended in July, the bill now requires that where a pupil is detained in the juvenile justice system for a period exceeding 20 consecutive days, an individualized transition plan must be developed by the county office of education in collaboration with the probation department. The plan must be developed prior to the pupil's release from custody and must address the academic, behavioral, social-emotional and career needs of the pupil, as well as the programs and services necessary to assure the pupil's successful transition from juvenile detention. Requires the county office of education to compile and provide a "transition portfolio" for each juvenile detained for more than 20 days containing the transition plan and other specified items. **Vetoed by the Governor on the basis that prior legislation, AB 2276 enacted in 2014, is "sufficient to get the job done".**

***SB 312 (Skinner, D. – Berkeley). Sealing of juvenile offense records involving listed serious (WIC Section 707 b) offenses.** SB 312 modifies the Proposition 21 (year 2000) lifetime ban on sealing of a juvenile record involving a WIC Section 707 (b) offense committed at age 14 or older. SB 312 will allow former 707/over 14 youth to petition the court to seal the record using the same process that is currently available to non-707 youth (WIC Section 781). However, certain limitations apply to the sealing process and results in these cases. Youth who become eligible for record sealing under SB 312 must meet special wait periods before they can ask the court to consider sealing—until age 21 and completion of local probation for those who were committed to the Division of Juvenile Justice, and until age 18 and completion of local probation for those with 707 offenses receiving local dispositions. As amended, the bill now excludes persons who are required to register as juvenile sex offenders from eligibility for record sealing. For eligible youth, the court will consider the petition in a hearing where the individual must demonstrate that he/she has remained crime-free and has achieved rehabilitation to the satisfaction of the court. Sealing granted by the court in these cases is more restrictive than sealing provided to individuals under current law. For youth covered by the bill, the sealed record can be accessed by prosecutors and others for purposes of a subsequent felony proceeding against the individual. SB 312 also clarifies eligibility for record sealing in cases where a 707(b) offense has been reduced to a misdemeanor or dismissed by the court. The bill provides that where a 707 finding is dismissed or reduced to a misdemeanor, the individual would become eligible for sealing under the "auto sealing" statute (WIC Sec. 786) or the sealing-by-petition statute (WIC Sec. 781). In this respect, the bill responds to the request of the Sixth District Court of Appeals asking the Legislature to "remedy unjust results" by allowing sealing to go forward in WIC 707 misdemeanor reduction cases (*In re. G.Y.*). SB 312 requires a 2/3 vote of each house as an initiative amendment. *Signed into law, Stats.of 2017, Chapter 679.*

***SB 384 (Wiener, D.- SF and Anderson, R.- Alpine). Tiered sex offender registration.** (Note: SB 384 is an 11th hour replacement bill for SB 421 (Wiener). After SB 421 was stopped in the Assembly Appropriations Committee, its contents were moved into SB 384). SB 384 modifies the lifetime sex offender registration requirement in current law by establishing three tiers of registration with different durations (10 years, 20 years or lifetime) depending on the severity of the underlying offense and on other factors, such as repeat offense history and risk scores on the SARATSO risk instrument. SB 384 establishes a process by which a Tier 1 or Tier 2 registrant may petition the Superior Court for relief from registration and removal from the state registry. The bill sets out evidentiary and other criteria the court must follow in determining whether the individual qualifies for relief. The bill provides for situations in which a Tier 3 lifetime registrant may petition the court to be moved to Tier 2. Juvenile sex offender registration requirements are modified by SB 384 as follows. First, the bill includes a provision that its changes shall not be construed to expand the juvenile sex offender requirements of current law. Additionally, the bill amends Penal Code Section 290.008 to establish Tier 1 and Tier 2 registration periods for juveniles required to register after release from the Division of Juvenile Justice. Based on the underlying offense, juvenile registrants fall either into Tier 1 (5 years) or Tier 2 (10 years of registration). Upon meeting performance criteria during the registration period, the juvenile registrant may petition the Juvenile Court in the county of residence for removal from registration. The criteria applied by the Juvenile Court to rule on removal are the same criteria that apply to adult sex offense petitioners in Superior Court. The juvenile tier registration provisions do not take effect until January of 2021. These provisions—including the juvenile tier classifications and the registration removal procedures—present implementation issues that may need to be resolved in later remedial legislation. *Signed into law, Stats.of 2017, Chapter 541.*

***SB 394 (Lara, D. – L.A. and Mitchell, D. -L.A.). Parole hearings for persons sentenced to LWOP for crimes committed prior to age 18.** This bill expands the coverage of recently enacted bills that provide for parole board review of long prison sentences imposed on individuals who were under the age of 23 at the time of commission of the offense. SB 394 adds and provides for parole board review of a Life-Without-Parole (LWOP) sentence for an individual who received the LWOP sentence for a crime committed prior to age 18 and who has served at least 25 years of his or her sentence. Requires parole hearings for those whose eligibility is expanded by the bill to completed on or before July 1, 2020. See a related measure, AB 1308 (Stone) above, that would expand eligibility for parole board review in listed non-LWOP cases to include those whose controlling offenses were committed prior to age 25 (versus age 23 under current law). *Signed into law, Stats.of 2017, Chapter 684.*

***SB 395 (Lara, D. -L.A. and Mitchell, D. – L.A.). Juvenile interrogation and counsel rights.** SB 395 requires that a youth 15 years of age or younger, prior to any custodial interrogation, and prior to the waiver of any Miranda rights, shall consult with counsel either in person, by telephone or by video conference. This right to consultation with counsel may not be waived. The bill requires a court, in considering the admissibility of any statements by the minor, to consider the effect of any failure to comply with the counsel consultation requirement. The SB 395 consultation requirement does not apply to the admissibility of any statement obtained without consultation for situations in which the law enforcement officer reasonably believed that the information sought was necessary “to protect life or property from an imminent threat”. The bill also states that a probation officer acting in the normal performance of referral and investigation activities as specified is not subject to the requirement of the counsel consultation. A late (9/7) amendment lowers the ages affected by the bill from 18 to 15. *Signed into law, Stats.of 2017, Chapter 681.*

SB 421 (Wiener, D. – S.F.). Tiered sex offender registration, now including juvenile sex offenders. The contents of SB 421 have been moved into SB 384. See SB 384 above.

***SB 462 (Atkins, D. – San Diego). Accessing juvenile case files for data reports and evaluations.** A juvenile case file is the court’s record of documents and reports pertaining to juvenile dependency or delinquency proceedings. By definition the case file includes individual records in the custody probation agencies. Welfare and Institutions Code Section 827 generally provides that these records are confidential and may be accessed only by certain agencies or individuals for defined uses. As amended August 31st, SB 462 adds a new WIC Section 827.12 authorizing a law enforcement agency, probation department or any other state or local agency having custody of the juvenile case file to access and utilize the record for purposes of complying with grant reports or with data reports required by other laws, as long as no personally identifying information accessed under the bill is further released, disseminated or published. The bill also allows a chief probation officer to ask a court to authorize release of juvenile case file information for “data sharing” or for research and evaluation purposes with the ban on release of personally identifying information. *Signed into law, Stats.of 2017, Chapter 462.*

***SB 612 (Mitchell, D. – L.A.). Transitional housing placement program (THPP) definitions and rules.** SB 612 changes the code definition of a “Transitional housing placement provider” to describe an organization licensed by the Dept. of Social Services “to provide transitional housing to foster children who are at least 16 years of age to promote their transition to adulthood”. The bill recasts the requirements for THPP programs as to staffing, adult supervision, program location, lease signing and other features. Different requirements apply to THPP programs serving minor foster children than those serving older nonminor dependents. The bill also provides new options governing who can share a bedroom with a youth in the THPP residence. The bill also specifies new qualifications for THPP program managers. *Signed into law, Stats.of 2017, Chapter 731.*

***SB 613 (De Leon, D. – L.A.). Removal of mandate for cooperation by the Division of Juvenile Justice (DJJ) with the U.S. Bureau of Immigration.** SB 613 deletes WIC Section 1008 which now requires that DJJ must cooperate with the US Bureau of Immigration in arranging for the deportation of aliens committed to the Division of Juvenile Justice. The bill deletes similar provisions requiring state-federal cooperation on deportation between the US Immigration Bureau and California Departments of Developmental Services and State Hospitals. *Signed into law, Stats.of 2017, Chapter 774.*

***SB 625 (Atkins, D. – San Diego). Honorable Discharge from the Division of Juvenile Facilities.** Prior to the realignment of state youth parole to counties in 2010, Honorable Discharge status could be awarded to wards paroled from the Division of Juvenile Facilities (also known as the Div. of Juvenile Justice or “DJJ”). After DJJ parole was realigned to counties, this practice became dormant. AB 625 would now authorize the Board of Juvenile Hearings (BJH) to award Honorable Discharge to DJJ wards who have been released to the county on local probation supervision. Individuals seeking this status must petition the BJH for an honorable discharge determination. Those eligible include all persons discharged from DJJ after the effective date of DJJ parole realignment (October 2010). The petition may not be considered by BJH until at least 18 months have passed since the ward’s released. When a request for honorable discharge is made, the probation department must furnish a report to BJH on the ward’s performance on local supervision. The bill lists criteria for honorable discharge to be considered by the Board including offense history since discharge and the “efforts made by the petitioner toward successful community reintegration, including employment history, educational achievements or progress toward obtaining a degree, vocational training, volunteer work, community engagement, positive peer and familial relationships, and any other

relevant indicators of successful reentry and rehabilitation”. If honorable discharge is granted, the individual is “thereafter be released from all penalties or disabilities resulting from the offenses for which the person was committed, including, but not limited to, penalties or disabilities that affect access to education, employment, or occupational license”, with special limitations applicable to employment as a peace officer. A June amendment also specifies that an individual granted honorable discharge is not relieved from any requirement to register as sex offender. *Signed into law, Stats.of 2017, Chapter 683.*

Bill digests by David Steinhart, Director, Commonweal Juvenile Justice Program. Updated reports are posted on our website at www.comjj.org.