



TO: Interested Parties
FROM: Youth Law Center, San Francisco
DATE: October 27, 2010
RE: Analysis of DJJ Parole Realignment to the Counties

On October 19, 2010, the Public Safety budget trailer bill, A.B. 1628, was signed into law by the Governor, effective immediately upon this date of enactment. This new law included language that amends the Welfare & Institutions Code (WIC) and reorganizes and realigns juvenile parole from the state Division of Juvenile Justice (DJJ) to the counties' probation departments. This is the Youth Law Center's preliminary analysis of the language of the bill, and should not be considered a final or definitive interpretation of the bill.

The changes will affect three populations of youth differently depending upon their status on the day the bill was enacted on Oct. 19, 2010:

- (a) Youth on DJJ parole in the community
(*L.H. v. Schwarzenegger*¹ class members);
- (b) Parole violators who are in a DJJ or other facility on revoked status
(*L.H. v. Schwarzenegger* class members);
- (c) Youth who are in a DJJ facility on a first commitment from a county
("first-commits," not *L.H. v. Schwarzenegger* class members).

A new category of youth will exist as of January 19, 2011 (90 days from the enactment of the budget bill): (d) paroled youth in the community under county supervision.

The new supervision system will be implemented beginning January 19, 2011, and all supervision will be transferred to the counties by July 1, 2014.

The bill authorizes counties to establish Juvenile Reentry Funds to receive money allocated to county probation for the supervision of the youth discharged from DJJ. (A.B. 1628, Sec. 23, creating WIC §§ 1980 *et seq.*) The money should be used to "provide evidence-based supervision and detention practices and rehabilitative services" to youth. (WIC 1981(c)). The monies provided to the county probation

¹ *L.H. v. Schwarzenegger*, 519 F.Supp.2d 1072 (E.D. Cal. 2007), is a federal class action lawsuit filed in September 2006 in the Eastern District of California that alleged that DJJ systematically violated the constitutional rights of juvenile parolees in revocation proceedings.. The case has been settled and has led to an ongoing effort to reform the juvenile parole process. See <http://www.ylc.org/pdfs/StipulatedOrderforPermanentInjunctiveRelief.pdf> for a copy of the agreed-upon settlement of the case. See http://www.cdcr.ca.gov/Juvenile_Justice/Policy_Procedure/Policy.html for copies of the DJJ Policies and Procedures governing the parole process.



departments for parole supervision may not be used to supplant any existing funding from local agencies. (WIC 1981(d)). The counties will receive a pro-rated amount of \$15,000 per year per youth to supervise them in the community. (WIC 1984(b)). The counties will receive a pro-rated amount of \$115,000 per year for any youth who are incarcerated in a local juvenile hall, camp or ranch for a violation of supervision (WIC 1984(c)), but no additional amount of money beyond the \$15,000 per year if the youth is housed in county jail for a violation of the terms of supervision. (WIC 1984(f)).

This memo details the new parole processes in the budget bill language: the new parole process for *L.H.* class members (either in the community or in custody on Oct. 19, 2010), the new parole process for non-*L.H.* class members, and the new revocation process for all youth who have been returned to the supervision of the committing county. The statutory references are the new sections of the Welfare and Institutions Code (WIC) that A.B. 1628 created or amended.

I. PAROLE PROCESS FOR *L.H.* CLASS MEMBERS AS OF OCT. 19, 2010

A. Parolees in Community as of Oct. 19, 2010 (*L.H.* Class Members)

There were 1,539 youth on parole in community as of 9/30/10

If revocation proceedings are initiated on these youth before January 19, 2011: Revocation will be by the Juvenile Parole Board (JPB) under current procedures and policies pursuant to the *L.H.* settlement. They will continue to be supervised by DJJ Parole Services. (A.B. 1628, Sect. 15).

If revocation proceedings are initiated on this group of youth after January 19, 2011: If their committing offense was a non-707(b) and they are still under DJJ Parole supervision, they will be transferred to the commitment county upon the suspension of parole, and the county will process the parolee as they do with all other non-707(b) parolees pursuant to S.B. 81. (AB 1628, Sect. 18(c), amending WIC 1767.35).

If their committing offense was a 707(b) and they are under DJJ Parole supervision, they will be revoked by JPB under current procedures and policies. However, once they are revoked and in custody, upon their inevitable release, they will be released to the court and probation supervision of the county of commitment. (see I.B.2 below)

As of July 1, 2014, any remaining parolees who were in the community as of Oct. 19, 2010 and are still under supervision of DJJ Parole Services (i.e. never revoked from 10/19/10 through 7/1/14 and haven't yet turned 25) will be transferred to supervision of the committing county probation department. This will likely be a small number of youth, if any.

B. Parolees in Custody on Revoked or Pending Revocation Status as of Oct. 19, 2010 (L.H. Class Members)

285 parolees total in custody as of 9/30/10

1. Parolees in Custody Who are Released to Parole Supervision Between Oct. 19, 2010 and Jan. 19, 2011

Nothing in the bill changes the current system of release of in-custody parolees in the next 90 days, governed by *L.H.* policies and procedures. These youth will be released on their revocation release date (RRD) to the supervision of DJJ Parole Services and will be treated like the youth in the category of I.A. above. (AB 1628, Sect. 18).

2. Parolees in Custody Who are Released to Supervision After Jan. 19, 2011

These parolees' release will be governed by Sec. 17 of AB 1628, which creates a new WIC 1776.01, and the youth will be released to the county of commitment and discharged from DJJ jurisdiction. To the extent that any of the statutory changes to procedure are in conflict with the U.S. Constitution or the Stipulated Injunction in *L.H.*, the federal Injunction and law will trump state law.

The release process after January 19, 2011 is as follows:

- No later than 60 days before the parolee's scheduled discharge hearing DJJ must provide county probation and the youth's attorney notice of the hearing and the most recent written case review of the parolee. (1766.01(c)(2)).
- No later than 30 days before the discharge hearing, DJJ must notify the youth of the date and location of the hearing. (1766.01(c)(3)).
 - Youth may call witnesses for this discharge hearing, (1766.01(c)(3)(A)), and "nothing in this paragraph shall be construed to limit the right of a ward to an attorney under any law." (1766.01(c)(3)(D))
- No later than 30 days prior to the discharge hearing, county probation may provide DJJ with any written plan for the youth's reentry and supervision. The JPB shall consider a plan submitted by the county. (1766.01(c)(4)).
- JPB will set a date for DJJ discharge "no less than 14 days after the hearing" and record any post-release recommendations for the youth. (1766.01(c)(5)). Any JPB recommendations must be sent to the committing court within seven days.
 - Id.
 - This language of "no less than 14 days" is rather open-ended and sets no parameters for JPB in release dates. Furthermore, it contradicts the *L.H.* injunction, which says that in-custody parolees will automatically be released on a fixed RRD, and that their release is not up to the discretion of the JPB.

- The court of commitment will hold a reentry disposition hearing on or prior to the date for DJJ discharge. (1766.01(c)(6)). DJJ will transport the youth to the custody of the county's probation department at least one and no more than four days prior to the "reentry disposition hearing." (*Id.*). The probation reentry plan and any DJJ recommendations will be reviewed at the hearing. (*Id.*). All relevant due process rights and procedural rights of any other juvenile court hearing or proceeding, including the right to counsel, will be provided to the youth at this reentry hearing. (*Id.*, cross-referencing WIC 675 *et. seq.*) (emphasis added).
 - See also California Rules of Court, Title 5, Chapter 13 for relevant court rules governing juvenile hearings.
- These youth will now be supervised by county departments of probation.
- See Section III for details on how the county can revoke parole.

Upon release to the county, the "Department of Corrections and Rehabilitation will have no further jurisdiction over a ward who is discharged by the board." (1766.01(c)(7)).

II. PROCESS FOR NON-LH CLASS MEMBERS ("FIRST COMMITS") IN CUSTODY AS OF OCTOBER 19, 2010

Approximately 938 first commits in DJJ custody as of 9/30/10

A. Wards Who are Released to Supervision between Oct. 19, 2010 and Jan. 19, 2011

The JPB will have discretion to release as to they do now at parole consideration hearings pursuant to the current system under WIC 1766. (AB 1628, Sect. 15)

Non-707(b) wards who are released at a PCH between now and January 19, 2011, will continue to be transferred to county for supervision per current policy under WIC 1766(b) (SB 81, 2007).

707(b) wards who are released at a parole consideration hearing before January 19, 2011 will be released to the supervision of DJJ Parole Services and treated like the LH class members in I.A.1. (AB 1628, Sect. 18)

B. Wards Who are Released on Parole to Supervision after Jan. 19, 2011

These wards' release will be governed by Sec. 17 of AB 1628, which creates a new WIC 1776.01, and the youth will be released to the county of commitment and discharged from DJJ jurisdiction.

The release process after January 19, 2010 is as follows:

- No later than 60 days before the ward's scheduled discharge hearing DJJ must provide county probation and the youth's attorney notice of the hearing and the most recent written review case of the parolee. (1766.01(c)(2)).
- No later than 30 days before the discharge hearing, DJJ must notify the youth of the date and location of the hearing. (1766.01(c)(3)).
 - Youth may call witnesses for this discharge hearing, (1766.01(c)(3)(A)), and "nothing in this paragraph shall be construed to limit the right of a ward to an attorney under any law." (1766.01(c)(3)(D)).
- No later than 30 days prior to the discharge hearing, county probation may provide DJJ with any written plan for the youth's reentry and supervision. The JPB shall consider a plan submitted by the county. (1766.01(c)(4)).
- If JPB determines ward is ready to discharge, they will set a date for DJJ discharge "no less than 14 days after the discharge hearing" and record any post-release recommendations for the youth. (1766.01(c)(5)). Any recommendations made must be sent to the committing court within seven days. Id.
 - This language of "no less than 14 days" is rather open-ended and sets no parameters for JPB in release dates.
- The court of commitment will hold a reentry disposition hearing on or prior to the date for DJJ discharge. (1766.01(c)(6)). DJJ will transport the youth to the custody of the county's probation department at least one and no more than four days prior to the reentry disposition hearing. (Id.). The probation reentry plan and any DJJ recommendations will be reviewed at the hearing and must be incorporated into the disposition order to the extent deemed appropriate by the court. (Id.). All relevant due process rights and procedural rights of any other juvenile court hearing, including the right to counsel, will be provided to the youth at this reentry hearing. (Id., cross-referencing WIC 675 *et. seq.*)
 - See also California Rules of Court, Title 5, Chapter 13 for relevant court rules governing juvenile hearings.
- These youth will now be supervised by county probation.
- See Section III for details on how the county can revoke parole.

Upon release to the county, the "Department of Corrections and Rehabilitation will have no further jurisdiction over a ward who is discharged by the board." (1766.01(c)(7)).

III. REVOCATION PROCESS FOR YOUTH WHO ARE UNDER COUNTY SUPERVISION AFTER JANUARY 19, 2011

The process for the county probation supervision and juvenile court revocation is spelled out in Section 20 of AB 1628, which creates a new WIC 1767.36.

- All proceedings must be conducted consistent with the rules, rights, and law applicable to juvenile court hearings, including the right to counsel. (1767.36(b)).
 - Under WIC 634, appointment of counsel can occur at the detention hearing, or even earlier (see WIC 630.1).
 - See also California Rules of Court, Title 5, Chapter 13 for relevant court rules governing juvenile hearings.
- If Probation has probable cause to believe that a ward has violated any of the court-order conditions of supervision, they may initiate proceedings to modify the conditions of supervision. (WIC 1767.36(b)).
- The youth may be detained pending a hearing to modify the conditions of supervision. (Id.)
 - Under WIC 632 and Rule of Court 5.752(f)-(h), a youth should have a detention hearing by the next court date of the filing by probation of the petition for modification, or no later than 48 hours after arrest or detention in a facility, to determine whether pursuant to WIC 635, the continued detention is necessary for the protection of the youth or the person or property of others, that the youth is likely to flee, or that the youth has violated a court order. [Detention hearing no later than 15 calendar days if out of custody].
 - WIC 630 and 630.1 describe the process by which notice of a filing of a petition must be provided to the youth and counsel.
 - All relevant due process rights and procedural rights of any other juvenile court hearing, including the right to counsel, will be provided to the youth in the modification proceedings. (WIC 1767.36(b), cross-referencing WIC 675 *et. seq.*) (emphasis added).
- If the youth is detained, the court must hold within 15 days of detention, a modification hearing to consider the alleged violation of conditions of supervision, the youth's risks and needs, and available programs. (1767.26(b)).
 - Title Five, Section 13, Article 3 of the California Rules of Court and the corresponding sections of the Welfare and Institutions Code define the standards used in detention hearings. Rule of Court 5.810 and WIC 727.2 govern the conduct of six month review hearings. The bill is silent as to which standards, including standards of proof, should be used at the modification hearings.
- Among the available sanctions to the juvenile court judge is reconfinement in a juvenile hall or other local juvenile facility (if youth is under 18 or is between the ages of 18-21 and qualifies for juvenile facility confinement under WIC Sec. 208.5); or reconfinement in adult jail (if youth is over 18) as a custodial sanction lasting not longer than 90 days. (1767.26(b) and (c)).
 - There is no discussion in the bill as to what the revocation terms are for any given violation offense. This is something that will either need to be clarified by the Administrative Office of the Courts with a matrix of sanctions, or left to the discretion of individual juvenile court judges.

- There is no discussion in the bill as to which procedures will be used for the youth's release from jail or juvenile hall, either prior to or upon the end of the reconfinement term. This will need to be clarified by the Administrative Office of the Courts.
- Another sanction available is to return the youth to the custody of DJJ for a specified amount of time no less than 90 days and no longer than one year. (1767.26(d)).
- In order to return a youth to DJJ's custody, the court must make the following findings on the record: (1) appropriate local options and programs have been exhausted, and (2) the youth has available confinement time that is greater than or equal to the length of return.
 - There is no discussion in the bill as to which procedures will be used for the youth's release from DJJ on the date of the end of the sentence, but it seems most likely that the procedure would be that spelled out above in Section I.B. This will need to be clarified by the Administrative Office of the Courts and/or DJJ.

For more information, contact:
Corene Kendrick or Sue Burrell
Youth Law Center
415-543-3379
ckendrick@ylc.org and sburrell@ylc.org.

DJJ Parole Realignment

October 19, 2010

January 19, 2011

July 1, 2014

