COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

IN RE SEAN W.,	)	
	)	Court of Appeal
A Person Coming Under the Juvenile Court Law,	)	No. A107500
	)	
THE PEOPLE OF THE STATE OF CALIFORNNIA,	)	Contra Costa Superior Court
	)	No. J0401191
Plaintiff and Respondent,	)	
vs.	)	
SEAN W.,	)	
Defendant and Appellant.	)	

AMICUS CURIAE BRIEF OF YOUTH LAW CENTER IN SUPPORT OF DEFENDANT AND APPELLANT SEAN W.

ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT FOR THE CONTRA COSTA COUNTY SUPERIOR COURT, HONORABLE LOIS HAIGHT, JUDGE

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Table of Contents

TABLE OF AUTHORITIES

Cases

Bills and Bill Histories

Session Laws

Statutes and Regulations

Other Legislative Authorities

Constitutions

Other Authorities

INTRODUCTION[1]

This case presents the question whether Senate Bill 459 ("S.B. 459") changed the law to give juvenile courts increased power to set maximum confinement time in cases involving Youth Authority commitments. (Stats. 2003, c. 4 (S.B. 459), § 1, eff. April 8, 2003, operative Jan. 1, 2004.)

Prior case law has construed Welfare and Institutions Code section 726 as requiring juvenile courts to impose the maximum confinement time an adult could receive for the same offense. S.B. 459 changed Welfare and Institutions Code section 731, subdivision (b), the Code section that specifically addresses Youth Authority commitments, as follows:

> A minor committed to the Department of the Youth Authority also 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 which brought or continued the minor under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section." (*Id.*)

The amendment does two things. First, it continues the longstanding policy that juveniles may not be held in physical confinement *for longer than* the maximum term an adult could receive for the same offense. (Welf. & Inst. Code § 726, subd. (c).) And second, it provides that in Youth Authority commitments, the "maximum term of physical confinement [is] set by the court based upon the facts and circumstances" involved. (Welf. & Inst. Code § 731, subd. (b), bracketed material added.)

The addition of the words providing for the court to set a term based on the facts and circumstances, represent a "material alteration" of the statute, and signals a legislative intent to change the meaning. (*Watts v.*

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[1] We hereby adopt and incorporate by reference the Statement of the Case and Statement of Facts contained in the Appellant's Opening Brief submitted by Defendant and Appellant, Sean W.

Crawford (1995) 10 Cal. 4th 743, 753.) The words of the statute are clear. The juvenile court sets a maximum term of confinement based on the facts and circumstances of the matter(s) before the court.

Providing increased local power over confinement time was just one piece of a comprehensive legislative package designed to give counties more control over their Youth Authority commitments, and address inappropriate practices of the Youthful Offender Parole Board in setting confinement time. Thus, S.B. 459 sought to reduce unnecessary confinement time by creating a new Youth Authority Board designed to be in much closer touch with ward treatment needs and institutional operations. It called for Youth Authority to develop a standardized system for disciplinary sanctions. The legislation also increased accountability for timely provision of services by requiring Youth Authority to provide counties with case treatment plans for each ward; an estimated time frame for completion of the treatment; and annual reviews. It further clarified the juvenile court's ability to remove wards from Youth Authority if the minor does not receive the treatment that justified commitment.

The clear words of the amendment, its legislative background, and the historical context in which it was enacted, all indicate that the Legislature intended to change the juvenile courts dispositional powers in Youth Authority commitments.[2]

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[2] "Statutes are to be interpreted in accordance with their apparent purpose . . . and various extrinsic aids, including the history of the statute, committee reports, and staff bill reports" (*Kaiser Foundation Health Plan, Inc. v. Lifeguard, Inc.* (1993) 18 Cal.App.4th 1753, 1762), as well as "the wider historical circumstances of its enactment." (*Watts v. Crawford, supra*, 10 Cal. 4th 743, at p. 753.)

I. THE LEGISLATURE GAVE COURTS THE POWER TO SET YOUTH AUTHORITY MAXIMUM CONFINEMENT TIME AS PART OF A COMPREHENSIVE STRATEGY TO GIVE COUNTIES MORE CONTROL OVER YOUTH AUTHORITY LENGTH OF STAY AND TREATMENT

Senate Bill 459 represents the culmination of several years of legislative concerns over problems at the California Youth Authority ("CYA") and discussions over counties' need for increased control over length of stay. In the period before the bill, there was mounting evidence that the Youthful Offender Parole Board ("YOPB") was escalating length of confinement for improper reasons, and that this worked against the rehabilitative goals of the system. In addition, the Legislature recognized counties' interest in having more power to control length of stay in the face of increased financial responsibility for CYA commitments. Further, a growing awareness of serious problems in the CYA system provided impetus for statutory changes that increased county control over confinement time. The amendments to Welfare and Institutions Code section 731, subdivision (b), were part of a deliberate, comprehensive legislative strategy to respond to these concerns.

A. Legislature Knew of Longstanding Problems With Confinement Time Set by the YOPB and the Desirability of Increased County Control Over CYA Commitments

Long before S.B. 459, the Youthful Offender Parole Board drew criticism for its role in lengthening confinement time for Youth Authority wards. Through a combination of repeatedly revising the Board's parole guidelines in an upward direction; setting parole consideration dates well above the Board's own guidelines; and adding time ostensibly for additional treatment or disciplinary reasons, YOPB dramatically increased length of CYA commitments over the past several decades. Unfortunately,

many "time adds" were based on vague or flimsy evidence, and wards were often ordered to stay longer to receive programming that either did not fit their needs or was not available. (DeMuro, et al, *The California Youth Authority Report. Part Three - Reforming the CYA* (1988) Commonweal Research Institute, pp. 23-26.) Staff at CYA reported that wards felt increasingly demoralized, and that this contributed to more disciplinary problems with resultant "maxing out" because youth had no incentive to try to do well. (*Id.*, at p. 28.) As early as 1988, policy advocates called for the abolishment of YOPB. (*Id.*, at p. 14.)

By the dawn of the new century, the Legislature was aware of these issues and the need for legislation to address them. The Legislative Analyst's Office Analysis of the 1999-00 Budget Bill, noted that the YOPB was holding less serious offenders for twice as long as they would be held at the county level. (Legislative Analyst's Office, *Analysis of the 1999-00 Budget Bill*, Department of the Youth Authority (5460), "Counties Should Have Input Into Length of Stay Decisions.")[3] The *Analysis* also noted the counties' interest in controlling length of stay, since the sliding scale payment system means that counties must now pay 50% to 100% of the cost for less serious offenders. The Legislative Analyst's Office urged that counties "...have a greater say in the length of stay of wards that they send to the Youth Authority." (*Id.*)

B. Sliding Scale Payment Scheme Prompted Legislative Proposals Offering More County Control Over Length of Stay

Counties were increasingly concerned with CYA length of stay for purely fiscal reasons. In 1996, the Legislature had enacted a sliding scale

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[3] Electronically available at http://www.lao.ca.gov/analysis_1999/crim_justice/crim_justice_issue_toc_anl99.html.

payment scheme requiring counties to pay monthly fees that were determined by the ward's commitment offense – the less serious the category of the offense, the more the county had to pay. (Stats 1996, c. 6, (S.B. 681), § 4 and § 5, amending Welf. & Inst Code §§ 912 and 912.5.)[4]

Before this legislation, counties paid the State only $25 a month, for each offender sent to CYA. (West's California Juvenile Laws and Court Rules (1996), Welf. & Inst Code § 912.) The sliding scale legislation increased the basic fee to $150 per offender per month, and added the sliding scale payments for less serious offenders. This translated into an annual fee of $1,800 for the most serious offenders. (Stats 1996, c. 6, (S.B. 681), § 4, amending Welf. & Inst Code § 912.) But for the least serious category, the sliding scale system now required counties to pay 100% of the institutional cost, with the 1996-97 level capped by legislation (Stats. 1998, c. 632 (S.B. 2055), § 1, adding Welf. & Inst. Code § 912.1.) The cost at that time was about $ 32,000 – almost 18 times as much as the basic fee for more serious offenses. (Sen. Rules Com., Off. of Sen. Floor Analyses, Rep. on Sen. Bill No. 2055 (1997-98 Reg. Sess.) as amended August 28, 1998.)[5]

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[4] The sliding scale ranges from 50% of the per capita institutional cost of the Youth Authority for category 5 offenses (category 1 being the most serious, and category 7 the least serious); 75% for category 6 offenses; and 100% for category 7 offenses. (*Id.*)

[5] Electronically available at http://www.leginfo.ca.gov/pub/97-98/bill/sen/sb_2051-2100/sb_2055_cfa_19980828_125655_sen_floor.html. As a point of reference, recent estimates for annual cost of Youth Authority commitments are $80,000 for male wards and $143,000 for females. (*Reforming Corrections: Report of the Corrections Independent Review Panel* (June 2004), Chapter 9, pages 208-209; unpaginated version electronically available at http://www.report.cpr.ca.gov/indrpt/corr/index.htm.) Although these are not the figures used for the per capita institutional cost, counties will surely be asked to pay some of the escalating institutional costs.

Not surprisingly, the sliding scale legislation dramatically heightened county awareness of CYA length of stay. It prompted discussion with legislators about what could be done to shorten length of stay for youth in the less serious offense categories, and what could be done to give counties more control over the youth they committed.

C. Widely Publicized Reports of Abusive Conditions at CYA Encouraged Legislative Efforts to Give Counties More Control Over Commitments

In addition to the growing concerns over the YOPB and the counties' desire to have more control over length of stay for fiscal reasons, the period just before S.B. 459 was filled with front page news of abusive conditions and practices in the Youth Authority system.[6] In May 2000, the Legislature held a full day hearing on problems in the system. (Joint Senate and Assembly Committees on Public Safety, "Informational Hearing on the California Youth Authority," May 16, 2000.) Several of the witnesses presented materials relating to the YOPB's role in escalating length of stay, and the desirability of increased county control over confinement time. (*Id.*)

At the hearing, the Legislative Analyst's Office presented a checklist of issues to be considered, including the need to re-examine the role of the YOPB. The Office specifically recommended to legislators that, "Counties will need greater say in length of stay for wards in Youth Authority, especially given higher fees charged to counties, and types of services wards receive." (Legislative Analyst's Office, "Challenges and Strategies

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[6] Written materials prepared for the May 16, 2000, Joint Senate and Assembly Public Safety Committee, "Informational Hearing on the California Youth Authority," contained more than two dozen newspaper articles from late 1999 to early 2000, detailing Youth Authority abuses and problems. (*Id.*, section captioned "Newspaper Articles.")

for Reform of the Youth Authority," (May 16, 2000), p. 3), included in materials for the Joint Senate and Assembly Committees on Public Safety, "Informational Hearing on the California Youth Authority," May 16, 2000.) The "Executive Summary" of the *Report* published after the Joint Public Safety hearing, stated:

> If the CYA is only to provide correctional programs for juvenile court commitments there is no use for a Youthful Offender Parole Board. Minimum lengths of stay could be better established by the committing court and the release and revocation decisions within that dictate could then be made by program persons. This is the model that is followed by a majority of states in the nation. (Joint Senate and Assembly Committees on Public Safety, *Joint Oversight Hearing of the Senate and Assembly Committees on Public Safety on the Department of the Youth Authority (May 16, 2000). Report*, "Executive Summary" (June 15, 2000), p. 2.)[7]

As a result of the Joint Public Safety Committee hearing, the Youth and Adult Correctional Agency was requested to implement series of follow up actions to address systemic problems at the Youth Authority. Among the actions was a Quality Assurance process, convened by the Board of Corrections. That process resulted in a number of recommendations, including one to "Develop legislation that, in cooperation with the department [CYA] gives juvenile courts complete authority for setting wards' length of stay and determining their readiness for parole, thereby eliminating the need for the Youthful Offender Parole Board (YOPB)." (Board of Corrections, Institutions Operational Quality Assurance Project for the California Youth Authority, *Recommendation*

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[7] Electronically available at http://www.senate.ca.gov/ftp/SEN/COMMITTEE/STANDING/PUBLICSAFETY/_home/YOUTH_AUTHORITY_REPORT.HTM.

Development Worksheets – Technical Assistance Plan, Appendix F (October 2000), Recommendation 31, p. 34, material in brackets added.)[8]

D. Legislative Antecedents to Senate Bill 459 Would Have Provided Even More Dramatic Changes to Juvenile Court Powers

In February 2002, Senator John Burton introduced Senate Bill 1793 ("S.B. 1793"), the "Youth Authority Accountability Reform Act of 2002." The bill called for elimination of the YOPB, and placed the power to set parole dates in the superior court of the committing counties. (Sen. Bill No. 1793 (2001-2002 Reg. Sess.) as introduced February 22, 2002.)[9] In addition, the bill shifted parole and parole revocation functions to local probation and juvenile courts. The bill went through several amendments, and as amended August 23, 2002, contained the language at issue in this case, amending Welfare and Institutions Code section 730.1, subdivision (c), to give courts the power to set maximum confinement time based on the facts and circumstances of the matter(s) that brought the minor before

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[8] Additional impetus for legislative attention came in the form of a civil rights case challenging conditions at CYA. The case was initially filed in federal court by the Prison Law Office, Latham & Watkins, Pillsbury Winthrop, and Disability Rights Advocates. (*Stevens v. Harper* (E.D. Cal.) No. CIV-S-01-0675, filed January 24, 2002.) Subsequently that action was terminated and the litigation proceeding by way of a taxpayer action in state court. (*Farrell v. Harper*, No. RG 03079344, Superior Court for the State of California, County of Alameda, filed January 16, 2003. As of November 24, 2004, the parties have entered into a consent decree in the case (http://www.prisonlaw.com/pdfs/farrellcd.pdf), but during 2002 and 2003, frequent news stories highlighted the serious problems at CYA, and legislators were asked to consider the Department of Justice initial request for $4.3 million to fight the case. (Legislative Analyst's Office, *Analysis of the 2003-04 Budget Bill*: Department of Justice (0820); electronically available at http://www.lao.ca.gov/analysis_2003/crim_justice/cj_03_0820_anl03.htm.)

[9] Electronically available at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1751-1800/sb_1793_bill_20020222_introduced.html.

the court.[10] The Senate Committee on Public Safety Analysis of the Bill for the May 7, 2002 hearing stated that a purpose of the Bill was to "Increase accountability for the Youth Authority by giving more control in establishing the terms of stay and custodial treatment for youthful offenders." (Sen. Com. on Pub. Safety, Analysis of Sen. Bill No. 1793 (2001-2002 Reg. Session) as amended April 25, 2002, p. K.)[11] The analysis noted that juvenile courts are far better suited for the responsibility of determining how long wards stay at CYA because they hear directly from probation, prosecutors, the juvenile victims as they consider how each case shall be handled. (*Id.*, at p. L.)

While probation and the judges liked the idea of more control over CYA commitments, the S.B. 1793 discussions took place amidst a deepening fiscal crisis for the counties, and some eventually balked at the potential costs of the total shift in responsibility. Even with these concerns, the legislation passed in both legislative houses with the section 730.1, subdivision (c) language as part of the package. However, Governor Davis

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[10] Senate Bill 1793, section 3 (as amended August 23, 2002), added section 730.1, subdivision (c), to the Welfare and Institutions Code, providing, in pertinent part, that "Subject to any procedural requirements imposed by this article, the court also shall set a maximum term of physical confinement based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court, which shall not exceed the maximum period of adult confinement determined pursuant to Section 731." Electronically available at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1751-1800/sb_1793_bill_20020823_amended_asm.html.
This language was in the version ultimately passed by the Legislature and enrolled. (Sen. Bill No. 1793 (2001-2002 Reg. Sess.) Enrolled - Bill Text (September 9, 2002); http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1751-1800/sb_1793_bill_20020830_enrolled.html.)

[11] Electronically available at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1751-1800/sb_1793_cfa_20020509_101420_sen_comm.html.

vetoed the Bill on September 30, 2002. (Sen. Bill No. 1793, Complete Bill History (2001-2002 Reg. Sess.).)[12]

E. The 2002 Inspector General's Report to Senator Burton Confirmed Ongoing YOPB Overreaching and the Need for Increased Local Control Over Confinement Time

In March, 2002, as S.B. 1793 was making it's way through the Legislature, Senator Burton, then Chairman of the Senate Rules Committee, asked the Office of the Inspector General to review YOPB and CYA practices. (Office of the Inspector General, "Review of the Process Used by the California Youth Authority and the Youthful Offender Parole Board to Establish Ward Program Requirements" (December 2002), Executive Summary, p. 3.)[13] The Inspector General found that having the YOPB conduct initial hearings added little value to the process and frequently resulted in parole consideration dates that exceeded regulatory guidelines. (*Id.*, at p. 11.)

The Inspector General found that the YOPB particularly exceeded parole consideration dates beyond Title 15, California Code of Regulations guidelines for less serious offenders.[14] A records review found that 70% of wards committed in the least serious categories of offense received parole consideration dates that exceeded Title 15 guidelines, by an average of 5.47 months per ward. (*Id*, at p. 12.) By comparison, in 1993 only 17% of wards in these categories received parole consideration dates that exceeded guidelines. The Inspector General's report also found that the YOPB

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[12] Electronically available at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1751-1800/sb_1793_bill_20021130_history.html.

[13] Electronically available at http://www.oig.ca.gov/pdf/Cya-yopb1202.pdf.

[14] California Code of Regulations, title 15, sections 4951 through 4957.

frequently disregarded the recommendations of Youth Authority staff with respect to time adds and time cuts. (*Id.*, at p. 13.)

This report confirmed concerns about length of confinement in CYA, and the YOPB's role in increasing length of stay.[15] The depth of these problems and near success of S.B. 1793 convinced Senator Burton to continue his efforts with respect to increased county control over Youth Authority length of stay and treatment needs.

F. Senate Bill 459 Provided County Control Over Youth Authority Length of Stay Without the Heavy Fiscal Impact

Just months after the Inspector General's report, Senator Burton introduced the measure at issue in this case, S.B. 459. (Sen Bill No. 459 (2003-2004 Reg. Sess.) as introduced February 20, 2003.)[16] This legislation gave the counties more control over California Youth Authority commitments, without placing full parole responsibility in the superior court. It still eliminated the YOPB, but placed parole duties in a new entity, the Youth Authority Board. That Board was to be headed by the Director of the Youth Authority, and was designed to be much more closely tied to the CYA system. (*Id.*, § 11.)

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[15] In every offense category, average length of stay was substantially longer than 10 years earlier. For example, in 1993, wards committed for category 7 offenses (the least serious, including misdemeanors) served an average 13.1 months; an and in 2002, an average of 19.3 months. In 1993, wards committed for category 6 offenses (the next to least serious, including second degree burglary and car theft) wards served an average of 15 months; and in 2002 an average of 23.9 months. (California Youth Authority, Average Time Added of Cut by Board Category By Calendar Year (First Releases 1993 to 2003), California Youth Authority Research Division, Rudy Haapanen (April 14, 2004).)

[16] Electronically available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-0500/sb_459_bill_20030220_introduced.html.

Thus, by amending Welfare and Institutions Code section 1717 to impose background experience requirements, and by requiring training of Board members, the legislation sought to reduce past problems with Board ordered requirements for programs that were inappropriate or unavailable. (Sen Bill No. 459 (2003-2004 Reg. Sess.) Enrolled – Bill Text (April 7, 2003), § 14.)[17] By amending Welfare and Institutions Code section 1719, subdivision (d), to require CYA to develop and implement a system of graduated sanctions for addressing ward disciplinary matters, the bill also provided a way to standardize and potentially limit time adds. (*Id.*, § 16.)

Like S.B. 1793, this legislation went far beyond the parole board issues to enhance county control over CYA confinement. It did so in several ways. By amending Welfare and Institutions Code section 731, the bill allowed the court to set the maximum confinement time based on the facts and circumstances of the case, thus giving local courts increased power to control length of stay. (Sen Bill No. 459 (2003-2004 Reg. Sess.) Chaptered – Bill Text (April 8, 2003), § 1.) By amending Welfare and Institutions Code section 1720, to require Youth Authority to provide counties with treatment plans; estimated timeframes for completion of treatment; and annual case progress reviews, the bill increased Youth Authority accountability for treatment, and gave counties a mechanism for receiving ongoing feedback about what is actually happening to their youth. (*Id.*, § 17.) And by amending Welfare and Institutions Code section 779 to clarify the ability of courts to set aside or modify commitments, the bill gave courts increased power over cases where the youth does not received the benefits that initially justified commitment. (*Id.*, §2.)

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[17] Some of the provisions in the version of S.B. 459 ultimately enacted were moved around or changed during the course of the legislative session, so citations in this section may be to the bill as chaptered. Electronically available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-0500/sb_459_bill_20030408_chaptered.html.

The Legislative Counsel's Digest at the time the bill was introduced, stated that among other things, "The bill would also provide that a minor 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, as specified." (Sen. Bill No. 459 (2003-2004 Reg. Sess.) as introduced February 20, 2003.)[18] The bill did this by amending section 731, subdivision (b), specifically providing for the court to set the maximum term of confinement based upon the facts and circumstances, for a period not to exceed the maximum time an adult could receive for the offense(s):

> A minor committed to the Youth Authority also may not be held in physical confinement for a period of time in excess of the maximum term of confinement set by the court based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section. (*Id.*)

G. The Language Conferring Powers in the Juvenile Court to Set Maximum Confinement Time in CYA Commitments Was Specifically Considered by Multiple Committees in Each House and Legislative Floor Analyses

The bill was thoroughly considered by the Legislature. It was heard before the Senate Committee on Public Safety, the Senate Committee on Appropriations, the Assembly Committee on Public Safety, and the Assembly Committee on Appropriations. Moreover, the bill was amended four times. (March 10, 2003; March 12, 2004; March 17, 2004; and April 3, 2004; Sen. Bill No. 459 (2003-2004 Reg. Sess.) Senate Bill - History - Complete Bill History.)[19] While significant changes were made to

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[18] Electronically available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-0500/sb_459_bill_20030220_introduced.html.

[19] Electronically available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-0500/sb_459_bill_20030408_history.html.

language in other parts of the bill, the proposed section 731 language remained the same throughout. Following this considerable deliberation, the bill passed both houses on April 7, 2003, without a single "No" vote. The Governor signed S.B. 459 into law the very same day. (*Id.*)

Each amended version and the bill ultimately enrolled and chaptered contained precisely the same language amending section 731, subdivision (b), that appeared in the bill at the time it was introduced. Each amended version and the bill ultimately enrolled and chaptered referred to this language in the Legislative Counsel's Digest: "The bill would also provide that a minor 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, as specified." (Sen. Bill No. 459 (2003-2004 Reg. Sess.) Enrolled – Bill Text (April 7, 2003).)[20] In addition, a series of committee analyses clearly informed legislators that S.B. 459 intended a change in juvenile court dispositional powers with respect to confinement time for Youth Authority commitments.

1. The Senate Committee on Public Safety Analysis

The initial analysis, prepared for the March 13, 2003 hearing of the Senate Committee on Public Safety, included the change in its listing of "Key Issues" in the bill:

> Should juvenile courts be authorized to set a maximum confinement in the CYA based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court? (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, p. B).[21]

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[20] Electronically available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-0500/sb_459_bill_20030408_chaptered.html.

[21] Electronically available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-0500/sb_459_cfa_20030313_100751_sen_comm.html.

The Senate Committee on Public Safety analysis highlighted the change by including the then existing language of section 731, as contrasted with the proposed language. (*Id.*, at p. E.) It then underlined the changed language, specifically informing legislators that:

> This bill would authorize the court to additionally set maximum terms of physical confinement in the CYA based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court. This new provision would provide for court consideration of factors about the offense and the offender's history which would be comparable to those now employed for the triad sentencing of adults, and have those considerations reflected in the CYA confinement term ordered by the court. (*Id.*, at p. I, emphasis added.)

The analysis went on to explain that experts and advocates had expressed serious concerns about the YOPB for many years, and that the 2000 Technical Assistance plan administered by the Board of Corrections recommended the elimination of YOPB. (*Id.*, at p. J.) The analysis also referenced the Inspector General's findings that, while the initial parole consideration dates given to wards in 2001 was 17.8 months, the average length of stay was actually 28.3 months, largely because of YOPB time adds for disciplinary reasons or for failure to complete Board-ordered programs. (*Id.*) The Inspector General had found that many of these time adds occurred because the YOPB unreasonably imposed program orders, and that Board members lacked expertise in treatment needs. (*Id.*)

The analysis finally noted that, "State policies have increasingly recognized the need to strengthen the local juvenile justice system and its array of alternatives and graduated sanctions for juvenile offenders." It specifically spoke of this need in the context of the sliding scale fee legislation enacted in 1996, which imposed much greater financial

responsibility on counties sending less serious offenders to Youth Authority. (*Id.*, at p. L.)

2. The Senate Rules Committee Floor Analysis

Similarly, the floor analyses prepared for legislators addressed the change in sentencing powers. The Senate Rules Committee Analysis for the March 17, 2003, Third Reading, included among the reforms, that the bill "Authorizes the court to set a maximum term that is not necessarily the adult term maximum." (Sen. Rules Com, Office of Senate Floor Analyses, 3d reading analysis of Sen. Bill No. 459 (. 2003-2004 Reg. Sess), as amended March 17, 2003, p. 3.)[22] Like the Senate Committee on Public Safety Analysis, the floor analysis by the Senate Rules Committee set out the then existing language of section 731 and then the proposed language. (*Id.*, at pgs. 3-4.) The analysis also included, almost verbatim, the Senate Committeeon Public Safety discussion of the policy need to remove power from the YOPB and to strengthen the local juvenile justice system and its array of alternatives and graduated sanctions. (*Id.*, at pgs. 5-6.)

3. The Assembly Committee on Public Safety Analysis

The "Summary" in the analysis of S.B. 459 for the Assembly Committee on Public Safety for the March 20, 2003 hearing stated that the bill, "Provides that a minor committed to CYA may not be held in physical confinement for a period of time in excess of the maximum term of confinement set by the court based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court." (Ass. Com. on Public Safety, analysis of Sen. Bill No. 459 (2003-2004 Reg. Sess.) as amended March 17, 2003, p.

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22 Electronically available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-0500/sb_459_cfa_20030317_135832_sen_floor.html.

3.)[23] In the section on what the bill does, the analysis repeated the Senate Public Safety language:

> This bill authorizes the court additionally to set maximum terms of physical confinement in the CYA based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court. This new provision would provide for court consideration of factors about the offense and the offender's history (which would be comparable to those now employed for the triad sentencing of adults), and have those considerations reflected in the CYA confinement term ordered by the court. (*Id.*, at p. 6, emphasis added.)

Like the earlier analyses, the Assembly Committee on Public Safety analysis presented data on criticisms of the YOPB, particularly in imposing extended length of stay, and the need for increased county control. (*Id.*, at pgs. 6-7.)

4. The Senate Rules Committee Second Floor Analysis

When S.B. 459 returned to the Senate after being passed out of the Assembly, the floor analysis remained clear and consistent with respect to the change in juvenile court dispositional powers. The Senate Rules Committee floor analysis for the bill as amended April 3, 2003 again stated that the bill "Authorizes the court to set a maximum term that is not necessarily the adult term maximum." (Sen. Rules Com, Office of Senate Floor Analyses, analysis of Sen. Bill No. 459 (Reg. Sess. 2003-2004), as amended April 3, 2003, p. 4.)[24] Again, the analysis for the Senate Rules Committee set out the then existing language of section 731, as contrasted with the proposed language. (*Id.*) And again, the analysis included, almost verbatim, the Committee on Public Safety discussion of the policy need to

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[23] Electronically available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-0500/sb_459_cfa_20030319_142207_asm_comm.html.

[24] Electronically available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-0500/sb_459_cfa_20030404_125958_sen_floor.html.

remove power from YOPB and to strengthen the local juvenile justice system and its array of alternatives and graduated sanctions. (*Id.*, at p. 6.) Moreover, this analysis contained statements from the League of Women Voters stating, among other things, that they "support the proposal to involve the county juvenile justice systems in determining the treatment programs and length of stay of young people they commit to CYA. The juvenile court judges and probation officers know the wards and understand what rehabilitation efforts are needed before the young people can return to their communities." (*Id.*, at p. 9.)

The "Summary" of S.B. 459 as amended April 3, 2003, for the Senate Third Reading again contained among the changes, that the bill "Provides that a minor committed to CYA may not be held in physical confinement for a period of time in excess of the maximum term of confinement set by the court based upon the facts and circumstances of the matter which brought or continued the minor before the juvenile court." (Sen. Com. On Public Safety, 3d reading analysis of Sen. Bill No. 459 (2003-2004 Reg. Sess.), as amended April 3, 2003, p. 2.)[25]

5. The Published 2003 Bill Summary

The description of S.B. 459 in the Senate Committee on Public Safety *2003 Bill Summary,* stated that the bill makes changes in juvenile court law, including "authorizing the juvenile court to set a maximum term of confinement that is not necessarily the adult term maximum." (Senate Committee on Public Safety, *2003 Bill Summary: Measures Signed and Vetoed (October 2003),* p. 55.) The intention to grant juvenile courts the power to set a maximum confinement time that was less than the adult maximum term was clear in the language of the enactment and in the consistent legislative analyses that accompanied it through the Legislature,

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[25] Electronically available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-0500/sb_459_cfa_20030407_152701_asm_floor.html.

and the published desciption of the enactment. The Legislators knew they were voting to change section 731 to allow the court to set a term that was less than the maximum adult term.

II. ARGUMENTS THAT THE FAILURE TO CHANGE WELFARE AND INSTITUTIONS CODE SECTION 726 NEGATES THE CHANGE TO SECTION 731;THAT ACCEPTING THE CHANGE WOULD SOMEHOW UNDO INDETERMNINATE SENTENCING FOR JUVENILES; OR THAT THE CHANGE CREATES AN EQUAL PROTECTION PROBLEM, ARE WITHOUT MERIT

We are aware that, despite the clear language changing section 731, subdivision (b), and the abundant and uncontroverted evidence of legislative intention to make the change, there are grumblings that the failure to also change Welfare and Institutions Code section 726 negates the change. Respondent argues that recognizing the change in section 731 would somehow undo California's indeterminate sentencing scheme for juveniles (Respondent's Brief, pp. 14-21), or that the change would create an equal protection problem. (Respondent's Brief, pp. 22-24.) We disagree.

The changes to Section 731, subdivision (b) do not conflict with the general sentencing scheme set out in section 726. S.B. 459 simply carves out an exception in the case of Youth Authority commitments based on the Legislature's desire to provide a mechanism to limit confinement time based on the "facts and circumstances of the matter." The two sections are in perfect harmony. (*Johnston v. Sonoma County Agricultural Preservation & Open Space Dist.* (2002) 100 Cal.App.4th 973, 986.) Welfare and Institutions Code section 726, subdivision (c) provides:

> If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an

> adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

This language is in complete harmony with amended section 731, which provides that the court, in setting a term based on the facts and circumstances, cannot exceed the maximum adult term.[26] The cases cited by Respondent with respect to maximum confinement time (*e.g.*, *In re Eric J.* (1979) 25 Cal.3d 522, pp. 531-532; *In re James A.* (1980) 101 Cal App.3d 332, 337; Respondent's Brief, p. 18), are still good law with respect to confinement in settings other than Youth Authority. But for good policy reasons, the Legislature has acted to give courts more power in Youth Authority cases.

Nor does S.B. 459 undo the indeterminate "sentencing" scheme for juveniles. (Respondent's Brief , pp. 17-22.) Under the bill, the newly created Youth Authority Board still determines actual length of stay. (Stats. 2003, c. 4 (S.B. 459, §§16, 20, eff. April 8, 2003, operative Jan. 1, 2004, amending Welf. & Inst. Code §§ 1719, 1723.) The changes to section 731 allow the juvenile court to set a different outside limit to that

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[26] Further, the definitional language in section 726 does not change this result:

> As used in this section and in Section 731, "maximum term of imprisonment" means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled. . . . If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the "maximum term of imprisonment" is the longest term of imprisonment prescribed by law.

Again, this language simply defines "maximum term of imprisonment." It does not conflict with the courts power to set a shorter term in Youth Authority commitments based on the facts and circumstances of the case pursuant to amended section 731.

indeterminate period, but the basic system for parole based on the decision of a parole board remains intact.

Finally, the argument that allowing the court to set maximum confinement time in Youth Authority commitments raises equal protection concerns (U.S. Const., 14th Amend., Cal. Const., art. IV, § 16), is similarly without merit. *Manduley v. Superior Court* (2002) 27 Cal.4th 537, the case referenced by Respondent for this proposition (Respondent's Brief, p. 24) actually resulted in a Supreme Court finding that prosecutorial discretion in deciding which cases to file in adult court did *not* result in an equal protection violation. (*Manduley*, 27 Cal. 4th at p. 573.) But more importantly, the amendment to section 731 requires the court to determine maximum confinement time based on "the facts and circumstances" of the individual case. This gives the court the ability to tailor maximum time to the offense and offender, as opposed to the pre-S.B. 459 system which treated misdemeanants and murderers alike for purposes of Youth Authority maximum confinement time. There is less chance of arbitrary or disparate treatment than under previous law, and Respondent points to no evidence that such treatment has occurred.

Thhe bill achieves exactly what the Legislature wanted – a way for counties to limit confinement time, when the court so chooses based upon the facts and circumstances of the case. While courts may still elect to impose the maximum term, the amendment to section 731 provides a much-needed mechanism to control confinement time, particularly for less serious offenders.

CONCLUSION

Escalating costs to the counties and unchecked confinement time at Youth Authority demanded the Legislature's attention. S.B. 459 represents a remarkable example of legislative response to a public need. The paper

trail for S.B. 459 is unequivocal in demonstrating that the Legislature's intent was to empower the court to set a maximum term of confinement in Youth Authority cases that is not necessarily the adult term maximum.

Dated this 10th day of January, 2005, at San Francisco, California.

Respectfully submitted,

YOUTH LAW CENTER
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DECLARATION AND PROOF OF SERVICE

I, Robin Bishop, declare as follows:

I am a resident of the State of California and employed in the County of San Francisco. I am over the age of 18, and not a party to the within action. My business address is 417 Montgomery Street, Suite 900, San Francisco, California 94104.

On the date indicated below I send the following document:

Amicus Curaie Brief of Youth Law Center in Support of Defendant and Appellant Sean W.

to the parties listed below by placing a true and correct copy of such document in an envelope and placing such envelope in a United States Post Office box, postage prepaid:

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I, Robin Bishop, declare under penalty of perjury that the foregoing is true and correct. Served and executed on this 10th day of January, 2005.

Robin Bishop