
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No: AB 901 **Hearing Date:** September 10, 2019
Author: Gipson
Version: September 6, 2019
Urgency: No **Fiscal:** Yes
Consultant: Brandon Darnell

Subject: Juveniles

SUMMARY

This bill, commencing July 1, 2021, limits the authority of a probation department to supervise and provide services to minors who are within the jurisdiction of the juvenile court and eliminates truancy as an offense subject to the jurisdiction of the juvenile court.

BACKGROUND

Existing law:

- 1) Requires a school district, upon a pupil's initial classification as a truant, to notify the pupil's parent or guardian using the most cost-effective method possible, which may include electronic mail or a telephone, that, among other things, the pupil may be subject to prosecution. (Education Code § 48260.5)
- 2) Provides that if a minor pupil in a school district of a county is a habitual truant, or is a chronic absentee, or is habitually insubordinate or disorderly during attendance at school, and if the district attorney or the probation officer has not elected to participate in the truancy mediation program, the school attendance review board or probation officer may direct the county superintendent of schools to, and, upon that direction, the county superintendent of schools shall, request a petition on behalf of the pupil in the juvenile court of the county. Upon presentation of a petition on behalf of a pupil, the juvenile court of the county shall hear all evidence relating to the petition. The school attendance review board or the probation officer shall submit to the juvenile court documentation of efforts to secure attendance as well as its recommendations on what action the juvenile court should take in order to bring about a proper disposition of the case.
- 3) Requires any pupil who has once been adjudged an habitual truant or habitually insubordinate or disorderly during attendance at school by the juvenile court of the county, who is reported as a truant from school one or more days or tardy on one or more days without valid excuse, in the same school year or in a succeeding year, or habitually insubordinate, or disorderly during attendance at school, to be brought to the attention of the juvenile court and the pupil's probation or parole officer within 10 days of the reported violation. (EC § 48267)
- 4) Authorizes a court, in addition to any judgment it may make regarding the pupil, to render judgment that the parent, guardian, or person having the control or

charge of the pupil shall deliver the pupil beginning of each schoolday, for the remainder of the school term, at the school from which the pupil is a truant, or in which he has been insubordinate or disorderly during attendance, or truant or to a school designated by school authorities. (EC § 48268)

- 5) Authorizes probation departments to engage in activities designed to prevent juvenile delinquency; specifies that these activities include rendering direct and indirect services to persons in the community; specifies that probation departments shall are not limited to providing services only to those persons on probation being supervised, but may provide services to any juveniles in the community. (Welfare & Institutions Code § 236)
- 6) Specifies the procedures for when a minor is before the court on the basis of truancy. (WIC § 258)
- 7) Provides that if a minor between 12 years of age and 17 years of age, inclusive, has four or more trancies within one school year, as defined, or a school attendance review board or probation officer determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or probation officer or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court. (WIC § 601)
- 8) Authorizes any peace officer or school administrator to issue a notice to appear to a minor who is within the jurisdiction of the juvenile court. (WIC § 601)
- 9) Authorizes the district attorney or the probation officer, or both, to request the parents or guardians and the child to attend a meeting in the district attorney's office or at the probation department to discuss the possible legal consequences of the minor's truancy if the district attorney or the probation officer receives notice from the school district that a minor continues to be classified as a truant after the parents or guardians have been notified, or if the district attorney or the probation officer receives notice from the school attendance review board, or the district attorney receives notice from the probation officer that a minor continues to be classified as a truant after review and counseling by the school attendance review board or probation officer. (WIC § 601.3)
- 10) Requires the district attorney and the probation officer to coordinate their efforts and to cooperate in determining which office is best able to operate a truancy mediation program in their county. (WIC § 601.3)
- 11) Requires a probation officer, whenever any person applies to the probation officer to commence proceedings in the juvenile court shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced. If the probation officer determines that it is appropriate to offer services to the family to prevent or eliminate the need for

removal of the minor from his or her home, the probation officer shall make a referral to those services. (WIC § 653.5)

- 12) Provides that if a probation officer concludes that a minor is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, the probation officer may, in lieu of filing a petition to declare a minor a dependent child of the court or a minor or a ward of the court or requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court and with consent of the minor and the minor's parent or guardian, delineate specific programs of supervision for the minor, for not to exceed six months, and attempt thereby to adjust the situation that brings the minor within the jurisdiction of the court or creates the probability that the minor will soon be within that jurisdiction. Does not prevent the probation officer from filing a petition or requesting the prosecuting attorney to file a petition at any time within the six-month period or a 90-day period thereafter. Requires the probation officer to immediately file a petition or request that a petition be filed by the prosecuting attorney if the probation officer determines that the minor has not involved himself or herself in the specific programs within 60 days. (WIC § 654)
- 13) Authorizes the probation officer with consent of the minor and the minor's parent or guardian to provide the following services in lieu of filing a petition: placement in a sheltered-care facility or crisis resolution home, and vocational skill training via counseling and educational centers.
- 14) Existing law establishes the Local Control Funding Formula (LCFF) with per-pupil base grants; supplemental grants for local educational agencies (LEAs), including county offices of education (COEs) serving students who are low-income, English learners, or foster youth; and concentration grants for LEAs serving a high percentage of those students. Under the LCFF, COEs receive base grant, supplemental grant, and concentration grant funding for each probation-referred student, and COEs are authorized to enroll those students in a county community school. (EC §§ 1981 and 2574)

ANALYSIS

This bill, commencing July 1, 2021, limits the authority of a probation department to supervise and provide services to minors who are within the jurisdiction of the juvenile court and eliminates truancy as an offense subject to the jurisdiction of the juvenile court. Specifically, this bill:

- 1) Repeals the requirement that the school notify the pupil's parent or guardian using the most cost-effective method possible, which may include electronic mail or a telephone, that, among other things, the pupil may be subject to prosecution.
- 2) Strikes references to pupils that have been insubordinate or disorderly during attendance in provisions that authorize a court to render judgment that the parent, guardian, or person having the control or charge of the pupil shall deliver the pupil to school, as identified above in existing law (4).

- 3) Repeals the authority (and associated requirements stemming therefrom) of the school attendance review board or probation officer to direct the county superintendent of schools to request a petition on behalf of the pupil in the juvenile court of the county, as identified in existing law above in (2).
- 5) Specifies that services or programs offered to minors or minor's parents or guardians who are not on probation are voluntary and shall not include probation conditions or consequences as a result of not engaging in or completing those programs or services. This provision is operative January 1, 2020.
- 6) Specifies, for minors not on probation, that the provision of services or programs shall not be construed to allow probation departments to maintain a formal or informal caseload, establish formal or informal contracts with minors or minor's parents or guardians, or create mandated-probation conditions.
- 7) Repeals the procedures for when a minor is before the court on the basis of truancy.
- 8) Repeals the provision that provides that a minor is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court, when a minor between 12 years of age and 17 years of age, inclusive, has four or more trancies within one school year, as defined, or a school attendance review board or probation officer determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or probation officer or to services provided.
- 9) Repeals the authority of any peace officer or school administrator to issue a notice to appear to a minor who is within the jurisdiction of the juvenile court and instead authorizes any peace officer to issue a notice to appear to a minor who is within the jurisdiction of the juvenile court for persistently or habitually refusing to obey the reasonable and proper orders or directions of the minor's parents, guardian, or custodian, or who is beyond the control of that person, or when the minor violated any ordinance of any city or county of this state establishing a curfew based solely on age; requires a peace officer to refer a minor to community-based diversion before issuing a notice to appear; and requires the probation department to offer the services if community-based diversion is unavailable.
- 10) Requires the district attorney and the probation officer to coordinate their efforts and to cooperate in determining whether another public agency, a community-based organization, the probation department, or the district attorney is best able to operate a truancy mediation program in their county.
- 11) Requires a probation officer, if the probation officer determines that it is appropriate to recommend services to the family to prevent or eliminate the need for removal of the minor from the minor's home, to refer the youth to services

provided by a health agency, community-based organization, LEA, an appropriate non-law enforcement agency, or the probation department.

- 12) Defines “community-based organization” to mean a public or private nonprofit organization of demonstrated effectiveness that is representative of a community or significant segments of a community and provides educational, physical, or mental health, recreational, arts, and other youth development or related services to individuals in the community.
- 13) Repeals the authority for a probation officer to take actions when the probation officer concludes that a minor will probably soon be within that jurisdiction, and revises that actions that a probation officer is authorized to take when the probation officer concludes that a minor is within the jurisdiction of the juvenile court by making the following revisions:
 - a) Provides that if a probation officer concludes that a minor is within the jurisdiction of the juvenile court, or would come within the jurisdiction of the court if a petition were filed, then the probation officer may, in lieu of requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court and with consent of the minor and the minor’s parent or guardian, refer the minor to services provided by a health agency, community-based organization, school district, an appropriate non-law enforcement agency, or the probation department.
 - b) Authorizes the probation officer to delineate specific programs of supervision for the minor if the services are provided by the probation department.
 - c) Eliminates the ability of the probation officer to file a petition during the six-month period services are being offered or during the 90 days following, but retains language authorizing the probation officer to request that the prosecuting attorney file a petition during that time period.
 - d) Eliminates the mandate that the probation officer file a petition or request that a petition be filed by the prosecuting attorney if the probation officer determines that the minor has not participated in the specific programs within 60 days, and instead gives the probation officer the discretion to do those things.
- 14) Encourages, instead of requires, parents or guardians of a minor subject to a program of supervision to participate with the minor in counseling or education programs, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court.
- 15) Repeals provisions of law authorizing reimbursement by a minor’s parent or guardian for services rendered, and revises existing provisions of law to authorize probation to contract with community-based organizations or public agencies to provide services, including counseling and mental health resources,

educational supports, and arts, recreation, and other youth development services, and other youth development services.

- 16) States that it is the intent of the Legislature that:
 - a) Cities and counties work closely with minors, parents or guardians of minors, school districts, community partners, and system officials to create coordinated diversion opportunities in their counties.
 - b) Cities and counties work closely with youth, parents or guardians, school districts, community partners, and system officials to serve and protect youth only as needed, avoiding any contact with the juvenile justice system.
 - c) Truancy and other status offenses be diverted from citation, arrest, and court.
 - d) Probation officers serve to intervene in the lives of young people to prevent further involvement in the justice system and recidivism, including prioritizing pre-filing diversion when a minor is brought by law enforcement to probation custody, serving youth who are already in court as an alternative to further court involvement, serving as an alternative to court for youth who receive citations, serving as an alternative to detention or incarceration, providing a noncustodial alternative to incarceration for a violation of probation, or providing a county-based alternative to state custody within the Division of Juvenile Facilities.
- 17) Revises the LCFF for COEs to ensure that COEs continue to receive the same elevated level of LCFF funding for students who were previously eligible to be probation-referred to a county community school for truancy, and authorizes COEs to continue to newly enroll that same category of students in a county community school if they are instead referred to the COE by a school attendance review board.
- 18) Makes all of these provisions, unless otherwise noted, operative July 1, 2021.
- 19) Makes related Legislative findings and declarations related to these provisions.
- 20) Makes other technical and conforming changes.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “The Welfare and Institutions Code gives probation departments broad powers to target “any juvenile in the community” for probation department interventions. In many jurisdictions, youth who have never been accused of any criminal behavior and who have not had any prior criminal justice system contact are referred to probation programs and subjected to “voluntary” probation programs, often through their schools.

The vast majority of these youth are referred to probation for academic performance, attendance, or general school behavior issues to prevent juvenile delinquency. These youth are disproportionately youth of color. Despite these programs being labeled “voluntary,” parents and youth often feel coerced into these programs and do not have the benefit of speaking to an attorney.

Youth subjected to “voluntary” probation are then criminalized: required to check in with a probation officer, subjected to random searches, curfews, surprise home visits and interrogations.

Current law, Welfare and Institutions Code (WIC) 236, gives probation departments the board authority to supervise mixed caseloads – including “at-risk youth” as well as youth with more formal probation statuses under WIC sections 602, 790, 725 and 654.

Assembly Bill 901 seeks to encourage appropriate interventions for youth who are “at risk” as opposed to being further criminalized in “voluntary” probation.

This bill would ensure that youth receive appropriate interventions and are not criminalized for academic reasons or typical child/adolescent behavior by: limiting probation departments’ overbroad discretion to provide services to any youth in the state they deem “at-risk,” as well as ensuring that truancy or disobeying a teacher alone is not a reason to place a child under the jurisdiction of the juvenile court system.”

- 2) ***Truancy, habitual truancy, chronic truancy, and chronic absenteeism.***
Existing law. Existing law defines a truant as a student who is subject to compulsory full-time or continuation education who is absent from school without a valid excuse three full days in one school year or tardy or absent for more than a 30-minute period during the school day without a valid excuse on three occasions in one school year, or any combination of those.

Existing law also provides that a student who has been reported as a truant three or more times per school year, and after an appropriate district officer or employee has made a conscientious effort to hold at least one conference with a parent or guardian of the student and the student is deemed a habitual truant. Existing law defines chronic truant as a student who is subject to compulsory full-time or continuation education who is absent from school without a valid excuse for 10 percent or more of school days in one school year.

As noted above, when a student is a habitual truant, or is habitually insubordinate or disorderly during school, the student may be referred to a school attendance review board or to the county probation department. The student may also be referred to a probation officer or district attorney mediation program. The intent of these interventions is to divert students with serious attendance and behavioral problems from the juvenile justice system and to reduce the number of students who drop out of school.

- 3) ***School to prison pipeline.*** As noted by the Senate Public Safety Committee, While there is a consensus that truancy and chronic absenteeism are associated

with adverse outcomes, there is less agreement about the best approach to dealing with truancy.

The school-to-prison pipeline refers to policies and practices that push students out of school and into the juvenile and criminal justice systems. These policies and practices include zero-tolerance discipline policies, policing in schools, and court involvement for minor offenses in school. Educational failure is one factor in the school-to-prison pipeline. The Center for American Progress published a report in August 2015, *The High Cost of Truancy*, which recommended reducing punitive policies in connection with truancy. That report recommended that schools, districts, and states should evaluate their anti-truancy policies, including zero-tolerance policies, and make punitive consequences, such as ticketing, fines imposed on students and/or their parents and guardians, or any punishment that removes students from the classroom, a last resort. The report additionally recommended that punitive policies should be replaced with systems that support students and reinforce the importance of attendance. The report concluded that decriminalizing truancy will foster a positive and inclusionary school climate where students feel welcome and wanted and will reduce students encountering the legal system.

This bill would repeal current Welfare and Institutions Code section 601, subdivision (b). In doing so, truants would no longer be within the jurisdiction of the juvenile court. This bill makes other conforming changes.

- 4) ***School Attendance Review Boards (SARBs)***. According to the California Department of Education, SARBs, composed of representatives from various youth-serving agencies, help truant or recalcitrant students and their parents or guardians solve school attendance and behavior problems through the use of available school and community resources. County SARBs are convened by the county superintendent at the beginning of each school year. In any county where no county SARB exists, a school district governing board may elect to establish a local SARB, which shall operate in the same manner and have the same authority as a county SARB. In many counties, the county SARB provides consultant services to the local SARBs. It is important to note that county SARBs are required to include representatives from the county probation department and the county district attorney's office. Conversely, their participation is optional in a local SARB. According to information provided by the author's office, 13 counties (Amador, Imperial, Inyo, Kern, Mariposa, Mendocino, Monterey, Riverside, San Diego, San Francisco, San Joaquin, Siskiyou, and Yuba) do not have county SARBs, and of those, at least six (Amador, Inyo, Mariposa, Mendocino, Monterey, and Siskiyou) also do not have a local SARB.
- 5) ***County community school funding concerns***. According to the CDE, "county community schools are public schools operated by county offices of education to serve students in kindergarten through twelfth grade who are expelled from their regular schools, referred by a School Attendance Review Board (SARB) or at the request of the pupil's parent or guardian, referred by probation (pursuant to the Welfare and Institutions Code sections 300, 601, 602, 654), on probation or parole and are not in attendance in any school, or homeless.

County community schools provide an educational placement for students who are expelled or referred by juvenile court, probation, or a SARB. County offices of education operate the county community schools and provide for the administration and operation. County community schools are typically supported by resources from caseworkers, family and community members, mental health counselors, and intensive supervision and educational guidance that fit the student's needs to ensure that the appropriate services and educational needs of the student are met.

Outcomes include: dropout prevention; recovery of out-of-school youth; increased student graduation rates for students at risk of failure of completing high school; educational, emotional, and counseling services; support for foster youth; diversion from the criminal justice system; and support for pregnant and parenting students.

Base funding for county community schools is either the base revenue rate of the referring school district or the county's juvenile court school rate, depending on how the student was assigned to the county community school and the age of the student. For probation-referred students, the county office of education is funded pursuant to the county's LCFF and includes a combination of base grant, supplemental and concentration grants. The resulting increased level of funding allows the county to provide comprehensive services to address the higher needs of these students. Some of the support and interventions that a county office of education might fund for these students include clinical counseling – mental health, drug/alcohol, behavioral health; school counselors; attendance and truancy interventions; family and community liaisons; nursing; school social workers; small classes; availability of technology; para-educators; and tutors.

Concerns have been raised that the bill's drafting will make it more difficult for some students to receive these valuable services because the bill's drafting requires that these students, who were previously referred for truancy issues by probation will now need to be referred by a SARB in order to attend a county community school and received that additional level of funding. However, as noted above, at least six counties lack both county SARBs and local SARBs. Accordingly, truant students in those counties would not be eligible for the increased level of funding or community school enrollment. ***The committee may wish to consider*** the impact of this bifurcation on truant students in those counties.

- 5) ***Double-referred.*** This bill was double referred to the Senate Committees on Public Safety and Education. The bill was heard on July 2, 2019 by the Senate Public Safety Committee. Please see that committee's analysis for a thorough discussion of informal supervision and the Juvenile Justice Prevention Act.
- 6) ***Previous legislation.*** AB 2195 (Achadjian, Chapter 898, Statutes of 2014) authorizes a juvenile hearing officer to hear cases in which a minor is alleged to come within the jurisdiction of the juvenile court on the basis of truancy, as specified.

SUPPORT

ACLU of California (co-source)
Public Counsel (co-source)
Youth Justice Coalition (co-source)
ALECTRONICS Research Center International, Inc.
Alliance for Boys and Men of Color
Anti-Recidivism Coalition
California Attorneys for Criminal Justice
California Public Defenders Association
Center on Juvenile and Criminal Justice
Children's Defense Fund- California
Children's Initiative
Children's Law Center of California
Communities United for Restorative Youth Justice
Courage Campaign
Disability Rights California
Dolores Huerta Foundation
Ella Baker Center for Human Rights
Fair Chance Project
Fathers & Families of San Joaquin
Felony Murder Elimination Project
Homeboy Industries
League of Women Voters of California
MILPA
National Center for Youth Law
National Institute for Criminal Justice Reform
National Juvenile Justice Network
Owens Small Family Home
Pacific Juvenile Defense Center
San Francisco Public Defender's Office
Santa Cruz County Chief Probation Officer
Social Justice Learning Institute
W. Haywood Burns Institute
Women's Foundation of California
Western Center on Law and Poverty

OPPOSITION

Alameda County District Attorney
California County Superintendents Educational Services Association
California District Attorneys Association
California School Boards Association
Chief Probation Officers of California
Del Norte County Probation Department
Fraternal Order of Police
Kern County Superintendent of Schools
Los Angeles County Probation Officers Union, AFSCME Local 685
Riverside County Superintendent of Schools
Sacramento County Board of Supervisors
Solano County Board of Supervisors

-- END --