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Date of Hearing: June 26, 2007
Counsel: Kathleen Ragan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Jose Solorio, Chair

SB 518 (Migden) - As Amended: June 21, 2007

SUMMARY : Creates the Youth Bill of Rights to provide specified rights to youth confined in a juvenile or adult facility. Specifically, this bill :

1)Includes legislative findings and declarations as follows:

- a) Youth confined in juvenile or adult facilities are harmed by discrimination based on actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, and HIV status.
- b) Youth are detained in juvenile facilities, adult facilities or in non-secure shelter settings pending the filing and resolution of juvenile court cases or pending transfer to other facilities, programs, or placements.
- c) Youth are committed to the Division of Juvenile Facilities or other juvenile facilities in order to provide them an opportunity for rehabilitation. These rehabilitation opportunities shall include the provision of educational, therapeutic or other necessary services to ensure that these youth become successful and productive members of their communities.
- d) All youth confined in juvenile facilities or adult facilities have the constitutional right to a safe and secure environment.
- e) All Division of Juvenile Facilities and local juvenile facilities are committed to treating all people with dignity, respect, and consideration and demonstrating behavior that is fair, honest, and ethical.
- f) There is a need to inform youth confined in juvenile or

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adult facilities about their rights and to train officers about their legal responsibilities.

- g) Initial and ongoing training for juvenile facility officers, state juvenile correctional officers and administrators, Corrections Standards Authority staff, and juvenile probation officers is crucial to enable all persons involved in providing care, rehabilitation and treatment services to children in juvenile facilities to fulfill their responsibilities to provide safe and non-discriminatory environments.
- 2)Defines "youth" as any of the following:
- a) A person under 18 years of age;
 - b) A person over 18 years of age who is under the jurisdiction of the juvenile court;
 - c) A person under 18 years of age whose case is in the adult criminal court system as a result of any of the following:
 - i) After a finding that he or she is not a fit and proper subject to be dealt with under juvenile law;
 - ii) After being charged directly in a court of criminal jurisdiction;
 - iii) After being transferred to a court of criminal jurisdiction under Section 707.01 of the Welfare and Institutions Code.
- 3)Defines "juvenile facility" as a place of confinement that is operated, or contracted for, by a county or state agency, for the purpose of detention or commitment of youth who are taken into custody and alleged to be within the description of Section 601 or 602 or are adjudged to be a ward of the court.

- 4) Defines "adult facility" as a facility that is operated, or contracted for, by a state or local agency for the purpose of the detention or imprisonment of adults under the jurisdiction of a criminal court.
- 5) Defines "extended family members" as any adult related to the

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- youth by blood, adoption, or marriage, and any adult who has an established familial or mentoring relationship with the youth, including but not limited to, godparents, clergy, teachers, neighbors, and family friends.
- 6) Defines "committed" as placed in a jail or juvenile facility pursuant to a court order, independent of, or in connection with, other sentencing alternatives.
- 7) Defines "detained" as held in a secure confinement in a juvenile or adult facility pending filing or resolution of a juvenile court case or pending transfer to other facilities, programs, or placements.
- 8) Creates the Youth Bill of Rights, which provides that it is the policy of the State that all youth confined in a juvenile facility or an adult facility housing youth shall have the following rights:
- a) To live in a safe, healthy and clean environment conducive to treatment and rehabilitation and where they are treated with dignity and respect.
 - b) To be free from physical, sexual, emotional or other abuse, or corporal punishment.
 - c) To receive adequate and healthy food and water, sufficient personal hygiene items and clothing that is adequate and clean.
 - d) To receive adequate and appropriate medical, dental, vision and mental health services.
 - e) To refuse the administration of psychotropic and other medications consistent with applicable law or unless immediately necessary for the preservation of life or the prevention of serious bodily harm.
 - f) To not be searched for the purpose of harassment or humiliation or as a form of discipline or punishment.
 - g) To maintain frequent and continuing contact with parents, guardians, siblings, children, and extended family members through visits, telephone calls, and mail.

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- h) To make and receive confidential telephone calls, send and receive confidential mail, and have confidential visits with attorneys and their authorized representatives, ombudspersons and other advocates, holders of public office, state and federal court personnel, and legal service organizations.
- i) To have fair and equal access to all available services, placement, care, treatment and benefits, and to not be subject to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry or national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.
- j) To have regular opportunity for age-appropriate physical exercise and recreation, including time spent outdoors.
- aa) To contact attorneys, ombudspersons, and other advocates and representatives of state or local agencies regarding conditions of confinement or violations of rights, and to be free from retaliation for making these contacts or complaints.
- bb) To participate in religious services and activities of their choice.
- cc) To not be deprived any of the following as a

disciplinary measure: food, contact with parents, guardians or attorneys; sleep; exercise; education; bedding; access to religious services; a daily shower; a drinking fountain; a toilet; medical services; reading materials, or the right to send and receive mail.

- dd) To receive a quality education that complies with state law, to attend age-appropriate school classes and vocational training, and to continue to receive educational services while on disciplinary or medical status.
- ee) To attend all court hearings pertaining to them.
- ff) To have counsel and a prompt probable cause hearing whenever detained on probation or parole violations.
- gg) To make at least two free telephone calls within an hour

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after initially being placed in an adult or juvenile facility following an arrest.

- 9) States that every juvenile facility and adult facility shall provide each youth who is placed in the facility with an age and developmentally appropriate orientation that includes an explanation and copy of the rights of the youth, as specified, and that addresses the youth's questions and concerns.
- 10) Requires that copies of the Youth Bill of Rights be posted in a conspicuous location. States that the Office of the Ombudsperson of the Division of Juvenile Justice (DJJ) shall design posters and provide the posters to each Division of Juvenile Facilities facility subject to this subdivision. Requires that the posters in the facilities of the Division of Juvenile Facilities to include the toll-free number of the Office of the Ombudsperson of the DJJ.
- 11) States that all juvenile and adult facilities shall ensure the safety and dignity of all youth in their care, and shall provide care, placement and services to youth without discriminating on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability or HIV status.
- 12) Creates statutory protections from harassment and discrimination based on actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, and HIV status.
- 13) Requires the Office of the Ombudsperson, in consultation with specified groups, including the Chief Probation Officers, youth advocate and support groups and other interested parties, to develop, no later than July 1, 2008, standardized information explaining the Youth Bill of Rights in age-appropriate language.
- 14) Specifies actions to be taken by the Office of the Ombudsperson of the DJJ, including:
 - a) Disseminate information on the rights of children and youth in the custody of the Division of Juvenile Facilities, as specified, and the services provided by the

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Office;

- b) Investigate and attempt to resolve complaints made by or on behalf of youth in the custody of the Division of Juvenile Facilities, related to their care, placement or services, or, in the alternative, refer appropriate complaints to another agency for investigation.
- c) Notify the complainant in writing of the intention to investigate or the decision to refer the complaint to another agency within 15 days of receiving the complaint. If the office declines to investigate a complaint, the office shall notify the complainant of the reason for this decision.
- d) Update the complainant on the progress of the investigation and notify the complainant in writing of the final outcome, steps taken during the investigation, basis

for the decision, and any action to be taken as a result of the complaint.

- e) Document the number, source, origin, location, and nature of the complaints.
 - f) Provide a toll-free telephone number for the Office of the Ombudsperson of the Division of Juvenile Facilities.
 - g) Compile and make available to the Legislature and the public all data collected over the course of the year including but not limited to the number of contacts to the toll-free telephone number, the number of complaints made, the number of investigations performed by the office, the number of referrals made, the issues complained about, the number of sustained complaints, the actions taken as the result of the sustained complaints and the number of unresolved complaints, including the reasons the complaints could not be resolved.
- 15)Creates within the Corrections Standards Authority an Office of the Ombudsperson, responsible for receiving, investigating and responding to complaints by or on behalf of youth confined in local juvenile facilities about violations of their rights under the Youth Bill of Rights
- 16)States that the Office of the Ombudsperson in the Corrections

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Standards Authority shall have these same responsibilities to disseminate information to, and investigate and resolve complaints by or on behalf of, youth detained or committed to juvenile facilities administered by county agencies or under contract with county agencies to provide detention or rehabilitation services.

- 17)Requires that all State juvenile correctional officers and administrators, staff of the Correctional Standards Authority and juvenile facility officers and probation officers who have regular contact with confined youth shall receive initial and ongoing training on the rights of youth in juvenile facilities to have fair and equal access to all available services; placement; care; treatment; and benefits; and shall not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.
- 18)Requires the Department of Corrections and Rehabilitation to adopt regulations to implement and monitor compliance with this law.
- 19)Requires each juvenile facility to adopt a policy prohibiting harassment and discrimination.
- 20)States that if the Commission on State Mandates determines that this act contains costs mandated the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to specified sections of the Government Code.

EXISTING LAW :

- 1)Requires the board of supervisors in every county to provide and maintain, at the expense of the county, in a location approved by the presiding judge of the juvenile court, a suitable house or place for the detention of wards and dependent children of the juvenile court. Specifies that such place shall be known as the juvenile hall of the county. States that wherever, in any provision of the law, reference is made to detention homes for juveniles, such reference shall be deemed and construed to refer to juvenile halls. [Welfare and Institutions Code (WIC) Section 850.]

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- 2)States that except as otherwise provided, the juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be, nor treated as, a penal institution. Further provides that it shall be a safe and supportive homelike environment. (WIC Section 851.)
- 3)Provides that the juvenile hall shall be under the management

- and control of the probation officer. (WIC Section 852.)
- 4) Requires the county board of supervisors to provide a suitable superintendent to have charge of the juvenile hall, and for such employees as may be needed for its efficient management, and shall provide for payment, out of the general fund of the county, of suitable salaries for such superintendent and other employees. (WIC Section 853.)
- 5) States that the board of supervisors may provide for the establishment of a public elementary school and of a public secondary school in connection with any juvenile hall, day center, juvenile ranch or juvenile camp, or residential or nonresidential boot camp for the education of the children in those facilities. (WIC Section 856.)
- 6) States that in order to more advantageously apply the salutary effect of a safe and supportive home and family environment, and also in order to achieve a better classification and segregation of wards according to their capacities, interests, and responsiveness to control and responsibility, and to give better opportunity for reform and encouragement of self-discipline in those wards, juvenile ranches or camps may be established. (WIC Section 880.)
- 7) Provides that juvenile ranches or camps or forestry camps shall be in the charge of a superintendent or director and may be established in conjunction with the probation department, or in any manner determined by the board of supervisors. (WIC Section 882.)
- 8) States legislative intent to ensure an appropriate educational program or wards committed to [the former] Department of the Youth Authority. States that the objective of the program shall be to improve the academic, vocational, and life survival skills of each ward so as to enable these wards to return to the community as productive citizens. [WIC Section

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1120(a).]

- 9) Requires the Department to assess the educational needs of each ward upon commitment and at least annually thereafter until the ward is released on parole. States that the initial assessment shall include a projection of the academic, vocational, and psychological needs of the ward, and shall be used both in making a determination as to the appropriate educational program for the ward and as a measure of progress in subsequent assessments of the educational development of the ward. Provides that the educational program shall be responsive to the needs of all wards, including those who are educationally handicapped or limited-English speaking wards. [WIC Section 1120(b).]
- 10) Requires the statewide educational program to include, but not be limited to, all of the following courses of instruction [WIC Section 1120(c)]:
- a) Academic preparation in the areas of verbal communication skills, reading, writing, and arithmetic.
 - b) Vocational preparation including vocational counseling, training in marketable skills, and job placement assistance.
 - c) Life survival skills, including preparation in the areas of consumer economics, family life, and personal and social adjustment.
- 11) States that all of the aforementioned courses of instruction shall be offered at each institution within the jurisdiction of the department, except camps and those institutions whose primary function is the initial reception and classification of wards. At such institutions and camps, the educational program shall take into consideration the purpose and function of the camp and institutional program. [WIC Section 1120(c).]
- 12) Provides that the educational programs shall focus on value-based character education, emphasizing curriculum leading to a crime-free lifestyle. States that in furtherance of this goal, the department shall establish the office of the Superintendent of Education, which shall oversee educational programs under the jurisdiction of the department. [WIC Section 1120.1(a).]

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- 13)States that subject to the availability of adequate state funding for these purposes, [the former] Department of the Youth Authority shall provide all wards at each penal institution, including camps, with information about behavior that places a person at high risk for contracting the human immunodeficiency virus (HIV) and about the prevention of transmission of acquired immune deficiency syndrome (AIDS.) Provides that the director shall provide to all wards who are within one month of being released or being placed on parole, with information about agencies and facilities that provide testing, counseling, medical and support services for AIDS victims. States that information about AIDS prevention shall be solicited from the State Department of Health Services, the county health officer, or local agencies providing services to persons with AIDS. (WIC Section 1123.)
- 14)Provides that it is the intent of the Legislature that all persons in the custody of an institution under the supervision of the Department of the Youth Authority shall be afforded reasonable opportunities to exercise religious freedom. (WIC Section 1705.)
- 15)Provides that commencing July 1, 2005, any reference to the Youth Authority Board refers to the Board of Parole Hearings. As of that date, the Youth Authority is abolished. (WIC Section 1716.)
- 16)States that commencing July 1, 2005, any reference to the Director of the Youth Authority shall be to the Chief Deputy Secretary for Juvenile Justice in the Department of Corrections and Rehabilitation, unless otherwise provided. (WIC Section 1711.)
- 17)Provides that the Director shall establish and maintain a fair, simple, and expeditious system for resolution of grievances of all persons committed to the Youth Authority regarding the substance or application of any written or unwritten policy, rule, regulation or practice of the department or of an agent or contractor or any decision behavior or action by an employee, agent, contractor, or other person confined within the Youth Authority which is directed toward the grievant, other than matters involving individual discipline. Specifies that the system should include various procedures regarding time limits for responses, provision of

priority in the processing of grievances which are of an emergency nature; provide for safeguards against reprisals; provide for a full hearing of the grievance at which all parties to the controversy and their representatives shall have the opportunity to be present and to present evidence and

contentions regarding the grievance, and provide a method of

appeal. (WIC Section 1766.5)

- 18)States that notwithstanding any other provision of law, a person under the supervision or control of the Youth Authority is obligated to submit to a test for the probable causative agent of AIDS upon a determination of the chief medical officer that clinical symptoms of AIDS or AIDS-related complex, as recognized by the Center for Disease Control, is present in the person. If the subject refuses the test, the department may seek a court order to require him or her to submit to the test. [WIC Section 1768.9(a).]
- 19)Provides that, prior to ordering a test for AIDS, the chief medical officer shall assure that the subject of the test receives specified pre-test counseling. [WIC Section 1768.9(b).]

FISCAL EFFECT : Unknown

COMMENTS :

1)Author's Statement : According to the author, "County and State juvenile correction and detention facilities vary in protocol regarding anti-discrimination and harassment grievances. A report on the California Youth Authority revealed that wards are given a very basic introduction to their rights as part of the orientation process, but the content of this introduction is not consistent amongst institutions. In addition wards are usually given a copy of the Ward's Rights Manual, but they are often lost as the wards moved to new institutions. Several of the living units did not have copies of the manuals for wards and staff to consult. The content of the ward's rights manual has not been updated since 2000 and the information about ward rights that is included is not mandated by statute or regulation.

"There are serious personal rights violations occurring in DJJ and county facilities through ward on ward attacks and

excessive force by staff. In addition, there is specific

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evidence of discrimination, harassment, sexual assault and violence against lesbian, gay, bisexual and transgender (LGBT) youth who are incarcerated or detained.

"Prompted by litigation, the State has been making systemic changes that will result in an overhaul of the organization of the DJJ. The development of personal rights for wards is consistent with the goals of the reform stemming from this litigation, but it is not duplicative, as much of the reform connected with this litigation will be through policies that are developed internally and are not codified. In addition, the changes prompted by the litigation concern the State DJJ system only and not county juvenile halls, camps, and ranches, where the bulk of wards are housed.

"SB 518 establishes the 'Youth Bill of Rights' within both the State DJJ system and county probation departments and facilities, sets up anti-discrimination policies and procedure, and a toll free hotline for youth to call if they are encountering problems with discrimination or violence."

2)Background : According to background information provided by the author, "Current California law that governs operations of state and local juvenile justice facilities, the WIC, provides no statutory nondiscrimination protections for youth. In addition, only a handful of facilities have policies prohibiting discrimination or provide training for staff on how to create a safe and equitable environment for youth. The Legislature can serve a critical role in reform of the juvenile justice system by establishing basic nondiscrimination standards, streamlining the process for youth to file complaints for rights violations, and requiring that facility staff be trained to properly protect youth from harassment and violence. These steps will especially benefit populations of youth who may be particularly vulnerable to abuse in juvenile facilities, such as LGBT youth.

"Each California county is required by law to provide and maintain a 'juvenile hall' for 'wards and dependent children of the juvenile court' and for 'persons alleged to come within the jurisdiction of the juvenile court.' (WIC Section 850.) By statutory mandate, the juvenile hall is not to be 'treated as a penal institution,' but instead is required to be 'a safe and supportive homelike environment.' (WIC Section 851.)

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"California Penal Code Section 673 states 'it shall be unlawful to use in the reformatories, institutions, or any other . . . county . . . institution any cruel, corporal or unusual punishment or to inflict any treatment or allow any lack of care whatever that would injure or impair the health of the . . . person confined.' WIC Section 736 states that the Department of Juvenile Justice shall only accept a ward 'if it has adequate facilities to provide . . . care.' WIC Section 1766.5 describes the grievance procedure requirements related to persons in the custody of the Department of Juvenile Justice."

The author also provided the following information about LGBT youth: "Precise information about the numbers of LGBT youth in the juvenile justice system in California is not available, partly because LGBT youth are socialized to hide their identities for their safety. However, according to a recent study of over 400 youth in Santa Cruz County conducted by Ceres Policy Research, LGB youth are more than four times as likely to have spent time in juvenile hall as non-LGBT youth (38% vs. 9%). (Angela Irvine, Ceres Policy Research, 2006.)

"LGBT youth are highly vulnerable once they enter the juvenile justice system because of inadequate policies, protections, and support services. A few of the documented threats that LGBT youth face are:

- a) "Court and juvenile justice officials' lack of understanding about sexual orientation and gender identity issues.
- b) "Verbal, physical and sexual abuse by staff and fellow residents in court-ordered placements.

- c) "Unnecessary use of isolation and segregation in confinement.
- d) "Inappropriate placement or labeling as a "sex-offender".
- e) "Overt attempts by juvenile justice officers to change their sexual orientation or gender identity.

"Dr. Barry Krisberg, an expert appointed in the Farrell litigation, related his concerns about the vulnerability of

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LGBT youth to sexual assault to the National Prison Rape Elimination Commission in testimony provided on June 1, 2006. Dr. Krisberg explained that LGBT youth are at risk for sexual violence in California juvenile justice facilities and that the current grievance system in place is not adequate, especially for gay youth who reported to him that when they have told staff of sexual assault, the staff's general attitude was that it was consensual and therefore did not need to be investigated or taken seriously. Dr. Krisberg discussed that one reason for this problem is that 'staff have relatively little training in adolescent psychological development or the particular needs and victimization of gay, bisexual, lesbian, transgender youth.' (Testimony of Dr. Krisberg to the National Prison Rape Elimination Commission, 2006.)

"LGBT young people have the same rights as other youth in the juvenile justice system, including protection from harassment and harm, and fair and respectful treatment. Juvenile justice professionals desperately need more information, training and resources to ensure that LGBT youth are treated fairly."

3) Litigation About Juvenile Custodial Facilities in California :

According to the analysis of this bill by the Senate Public Safety Committee, "For the past several years, DJJ (formerly the California Youth Authority) has been under intense scrutiny and criticism because of violence in its institutions, ward suicides, and its wholesale failure to provide mandated education and treatment to wards, most of whom have significant mental health problems. The DJJ currently is under a court-ordered consent decree to improve its conditions pursuant to a class action lawsuit brought by the Prison Law Office. (Farrell v. Warner) In the mid-1990's, the DJJ population exceeded 10,000; now, fewer than 3,000 wards populate its facilities, and another 4,100 are on parole.

"Only a fraction of all juvenile offenders are committed to DJJ; the overwhelming majority of juvenile offenders receive local correctional services, including out-of-home placement. The Corrections Standards Authority reported that, for the third quarter of 2005, the average daily population for county juvenile halls, camps, and other placements exceeded 13,000.

"In September 2006, a complaint was filed by the Prison Law

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Office in state court against DJJ and the Corrections Standards Authority for injunctive and declaratory relief relating to conditions in county juvenile facilities. The complaint cites a number of allegations relating to local juvenile facilities, such as deficiencies in medical and mental health care, sanitation, use of chemical spray, and insufficient protection from harm. In 2001, the United States Department of Justice found that the conditions of confinement of children in Los Angeles violated their federal constitutional rights. [See Complaint in Waters v. Tilton et al. ., filed in San Francisco Superior Court on September 22, 2006.]

The complaint in the Waters v. Tilton case contains some startling allegations. For example, it is alleged that "for years, the Corrections Standards Authority found San Diego County's Kearny Mesa Juvenile Hall out of compliance with the state's minimum standards due to overcrowding - lacking adequate toilets and showers and space for the youth to move around and exercise - but has allowed the facility to operate under a Suitability Plan that increases the 'allowed' population from 338 to 517."

"[T]he overcrowding leads to living conditions that harm the

minors. Youth report living under filthy conditions, with feces and bodily fluids on the walls, ceilings and floors, a violation of minimum state standards on sanitation. [15 C.C.R. Section 1510.] The overcrowded conditions also lead to the excessive use of force such as 'slamming' in which staff throw a youth into the wall or onto the floor, and excessive use of pepper spray. [Placed with overcrowded conditions, San Diego County also resorts to the excessive and improper use of psychotropic medications." [Complaint for Injunctive and Declaratory Relief, Waters v. Tilton, Case No. Dec06-451449, Superior Court for the State of California, County of San Francisco.]

The complaint further alleges that 'between February and June 2001, the United States Department of Justice conducted an investigation into conditions at three Los Angeles County juvenile halls. The United States Department of Justice (US DOJ) found conditions of confinement for minors at the halls "so abysmal that they violated the minors' federal constitutional and statutory rights: youth suffered harm or the risk of serious harm from deficiencies in the facilities'

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medical and mental health care, sanitation, use of chemical spray, and insufficient protection from harm." The US DOJ further found that the County violated minors' federal rights through its failure to provide proper rehabilitation, education, opportunities to use the telephone and participate in religious programming, insufficient provision of translation services for limited-English proficient youth, and an ineffective grievance system."

[http://www.usdoj.gov/crt/split/documents/la_county_juvenile_findlet.pdf.]

The complaint further alleges, as to Alameda County, that the juvenile hall placed boys "at risk of contracting certain communicable diseases because it distributed underwear to them that had not been properly sanitized and had obvious permanent stains. The public health report stated that this practice placed the boys at risk for pinworm, pubic lice, scabies and genital herpes." Despite the serious findings of non-compliance with state regulations; e.g., 15 C.C.R. Section 1480 ('undergarments shall be freshly laundered and substantially free of stains') and 15 C.C.R. Section 1484 ('there shall be written policies to control the contamination and spread of vermin in all minors' personal clothing'), the Corrections Standard Authority allegedly refused to find this juvenile hall out of compliance and to require a corrective plan. "

The above examples from the Waters v. Tilton complaint are merely a few of many more along the same lines. The complaint's allegations are verified to large extent by the US DOJ's own report on the deficiencies in California's juvenile system.

A more recent complaint was filed in June 2007, in the Superior Court for the County of Sacramento, entitled Porter v. Speirs et al ., Case No. 06AS03654, against the Sacramento County juvenile halls, which are alleged are not being operated as safe and supportive homelike environments are instead treated in many respects as penal institutions. The complaint alleges that youth in the Sacramento County juvenile halls are regularly subjected to excessive force; verbal and emotional abuse; denial of basic needs (such as sufficient food and clean living environment); lack of education in the receiving unit and lock-up unit; administration of psychotropic medications without parental notification; failure to meet the

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special education needs of some youth; and disability discrimination. Like the other court complaints and the DOJ report, this complaint is replete with detailed descriptions of horrendous conditions at the Sacramento County juvenile halls.

4)Basis for the US DOJ Report : In April 2003, the US DOJ wrote its findings from a review of Los Angeles County's juvenile facilities in a letter to the County. The letter quickly made the following point: "As described more fully below, based on our documentary review and on-site investigations, we conclude that certain conditions at the juvenile halls violated the constitutional and federal statutory rights of the youth residents. We find that persons confined suffered harm or the

risk of serious harm from deficiencies in the facilities' medical and mental health care, sanitation, use of chemical spray, and insufficient protection from harm. In addition, we conclude that failure to provide proper rehabilitation, education, opportunities to use the telephone and participate in religious programs, insufficient provision of translation services for Limited English Proficient (LEP) youth, and an ineffective grievance system also violated residents' rights under the 14th Amendment and other applicable laws."

The US DOJ provided its authority for conducting its investigation: The US DOJ has the authority to investigate and take appropriate action to enforce the constitutional rights and the federal statutory rights of juveniles in juvenile facilities. [42 U.S.C. Section 1997.] Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994, [42 U.S.C. Section 14141] makes it unlawful for any governmental authority with responsibility for the incarceration of juveniles to engage in a pattern or practice of conduct that deprives incarcerated juveniles of constitutional or federal statutory rights. Section 14141 grants the Attorney General authority to file a civil action to eliminate the pattern or practice. The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. Section 2000cc, prohibits governmental imposition of substantial burdens on institutionalized individuals' religious exercise unless the government demonstrates that imposition of the burden is the least restrictive means of furthering a compelling governmental interest. RLUIPA applies to programs or activities receiving federal funding, or when the substantial burden affects interstate or international

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commerce or commerce with Indian tribes.

"The Due Process clause of the Fourteenth Amendment to the Constitution governs the standards for conditions of confinement of juvenile offenders and those awaiting juvenile justice hearings." [Gary H. v. Hegstrom , 831 F.2d 1430 (9th Cir. 1987).] "Confinements of youth in conditions that amount to punishment or in conditions that represent a substantial departure from accepted professional judgment violate the Due Process clause." [Youngberg v. Romeo , 457 U.S. 307 (1982); Bell v. Wolfish , 441 U.S. 520 (1979); Alexander S. v. Boyd , 876 F. Supp. 773, 796-799 (D.S.C. 1995), aff'd in part and rev'd in part on other grounds, 113 F.3d 1373 (4th Cir. 1997), cert. denied, (1998).] "The Fourteenth Amendment prohibits imposing on incarcerated persons who have not been convicted of crimes conditions or practices not reasonably related to the legitimate governmental objectives of safety, order, and security. Bell v. Wolfish , 441 U.S. at 539-540.]"

"The County has an obligation to assure the reasonable health, safety, and freedom from undue restraint of the youths in its custody." [See Youngberg v. Romeo , 457 U.S. 307 (1982); Gary H. v. Hegstrom , 831 F.2d 1430 (9th Cir. 1987); Alexander S. v. Boyd , 876 F. Supp. at 786-7; Santana v. Collazo , 793 F.2d 41 (1st Cir. 1984); D.B. v. Tewksbury , 545 F. Supp. 896 (D. Or. 1982).] "Youth must be provided adequate medical and mental health care." [H.C. v. Jarrard , 786 F.2d 1080 (11th Cir. 1986); Morgan v. Sproat , 432 F. Supp. 1130 (S.D. Miss. 1977); Thomas v. Mears , 474 F. Supp. 908 (E.D. Ark. 1979); Ahrens v. Thomas , 434 F. Supp. 873 (W.D. Mo. 1977), aff'd in part, 570 F.2d 286 (8th Cir. 1978).]

"Because the purpose of the juvenile justice system is rehabilitative and not penal, incarcerated juveniles have a Due Process right to rehabilitative services including adequate education, counseling, vocational training, individual mental health treatment and programming reasonably geared towards helping juveniles correct their conduct." [Gary H. . , 831 F.2d at 1433; A.J. v. Kierst , 56 F.3d 849, (8th Cir. 1995); Nelson v. Heyne , 491 F.2d 352, 358-60 (7th Cir. 1974); Reaves v. Peace , 1996 WL 679396 at *8 (E.D.Va.) March 21, 1996); Alexander S. v. Boyd , 876 F. Supp. 773, 798 (D. S.C. 1995); Miletic v. Natalucci-Persichetti , 1992 WL 1258522 at *4 (S.D. Oh. February 6, 1992); Morgan v. Sproat , 432 F. Supp. 1130, 1140-41 (S.D. Miss. 1977).]

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"Youth are entitled to seek redress with the government for their grievances, without fear of punishment for doing so." [Bradley v. Hall , 911 F. Supp. 446 (D.Or. 1994); aff'd, 64

F.3d 1276 (9th Cir. 1995).] "Incarcerated youth have a right to access to telephones, subject to reasonable security limitations." [Strandberg v. City of Helena, 791 F.2d 744, 747 (9th Cir. 1986).] "In addition, as applicable to this investigation, juvenile detainees also possess federal statutory rights under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and the Americans with Disabilities Act, 42 U.S.C. 12101 et seq."

"Recipients of federal financial assistance may not discriminate on the basis of national origin. Services must be provided in ways that allow Limited English Proficient individuals to have meaningful access to benefits and services, and to have the information they need for their health and safety while detained. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; 28 CFR 42.104."

5)US DOJ Findings : The US DOJ review resulted in multiple findings, including that the juvenile halls in Los Angeles County were failing to meet the serious mental health needs of detained youth; the County failed to routinely provide psychological testing; the juvenile halls continued to fail to comport with professional standards with respect to mental health counseling; the juvenile halls failed to manage psychotropic medications properly and safely; custodial staff interfered with youth access to mental health services; failure to properly evaluate youth subject to physical restraint; inappropriate chemical spraying of youth who should not have been subject to this treatment, because of physical or mental health reasons, such as pregnant girls, and youth on psychotropic medications; low staffing levels resulted in failure to protect youth from physical harm; the halls failed to accommodate youths' desires to participate in religious services of their choice; and numerous other findings.

6)Civil Rights of Prisoners : Current law [Penal Code Section 2600 et seq.] sets forth the civil rights of persons sentenced to imprisonment in the state prison. Such persons may be deprived during the period of confinement of such rights, and only such rights, as is reasonably related to legitimate

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penological interests. [Penal Code Section 2600.]

The existing law states that subject to Penal Code Section 2600, each person imprisoned in the state prison shall have the following civil rights [Penal Code Section 2601]:

- a) Except as otherwise provided, to inherit, own, sell, or convey real or personal property, subject to any restrictions imposed for conveyances made for business purposes.
- b) To correspond, confidentially, with any member of the State Bar or holder of public office, provided that prison authorities may open and inspect incoming mail to search for contraband.
- c) To purchase, receive, read any and all newspapers, periodicals and books accepted for distribution by the U.S. Post Office. Pursuant to this section, the prison authorities may exclude any of the following:
 - i) Obscene publications or writings, and mail containing information about where such information may be obtained;
 - ii) Any matter of a character tending to incite murder, arson riot, violent racism, or any other form of violence; and,
 - iii) Any matter concerning gambling or a lottery.
- d) States that nothing in this section shall be construed as limiting the right of prison authorities to do the following:
 - i) Open and inspect any and all packages received by an inmate;
 - ii) Establish reasonable restrictions as to the number of newspapers, magazines and books that an inmate may have in his or her cell at one time;
 - iii) To initiate civil actions, subject to a \$3 filing fee to be collected by the CDCR, in addition to any other filing fee authorized by law;

- iv) To marry;
- v) To create a power of appointment;
- vi) To make a will; and,
- vii) To receive all benefits provided for in specified sections of the Labor Code.

7)Rights of Children in Foster Care : The WIC [Section 16000 et seq.] lists the rights of all children in foster care, including, but not limited to, the right to live in a safe, health and comfortable home where he or she is treated with respect [WIC Section 16001.9(a)(1)]; to be free from physical sexual emotional, or other abuse or corporal punishment [WIC Section 16001.9(a)(2)]; to receive adequate and healthy food, adequate clothing, and for youth in a group home, an allowance [WIC Section 16001.9(a)(3)]; to receive medical, dental, vision and mental health services [WIC Section 16001.9(a)(4)]; to make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order [WIC Section 16001.9(a)(9)]; to have fair and equal access to all available services, placement, care, treatment and benefits and to not be subject to discrimination or harassment on the basis of actual or perceived race, ethnic group identification; ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status [WIC Section 16001.9(a)(23)]; and numerous other rights.

It should be noted that the language of WIC Section 16001.9(a)(23) is identical to the language proposed by this bill for detained youth in juvenile or adult facilities.

8)The Unruh Civil Rights Act : The Unruh Civil Rights Act provides that all persons within the jurisdiction of California are free and equal and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges or services of business establishments of every kind whatsoever. [Civil Code Section 51(b).]

The Unruh Civil Rights Act further states that "sex, race,

color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation" includes a perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristics within the listed categories. [Civil Code Section 51(e)(5).]

It is clear from reading the language specifying the rights of children in foster care and that of the Unruh Civil Rights Act, that the Youth Bill of Rights proposed by this bill is in accord with existing law on the rights of minor children consigned to foster care and with the general categories specified in the Unruh Civil Rights Act.

9)The Juvenile Justice System : "The objectives of the juvenile justice system differ from those of the adult criminal justice system, and thus justify a less punitive approach to those who stand accused (and not yet to be found criminally culpable) before the court. The United States Supreme Court has acknowledged the objectives of the juvenile justice system 'are to provide measures of guidance and rehabilitation for the child . . . not to fix criminal responsibility, guilt and punishment', citing Kent v. United States , (1966) 383 U.S. 541, 554)." [Tiffany A. v. Superior Court , (2007) 150 Cal. App. 4th 1344, 1361.]

The Ninth Circuit Court of Appeals discussed the history of the juvenile justice system in Mendez-Alcaraz v. Gonzales , 464 F.3d 842, 848 (9th Circuit 2006.) In discussing an Oregon statute, the Court discussed "'the traditional aim of the juvenile justice system, which, since its introduction in Illinois in 1899, has sought to discard the 'rigidities, technicalities, and harshness' of the criminal justice system and replace it with treatment and rehabilitation." [In re Gault , 387 U.S. 1, 15 - 16 (1967).] The Court stated that the juvenile justice system was 'rooted in social welfare philosophy rather than in the corpus juris.' [Kent v. United States , 383 U.S. 541, 554 (1966).] Juvenile courts have historically centered on guiding and rehabilitating children

for the betterment of themselves and society as a whole.
(Id.)

"The strong moral, legal, and policy reasons for distinguishing between juvenile delinquents and adult criminals are 'too

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obvious to require extended explanation'." [Thompson v. Oklahoma, 487 U.S. 815, 835 (1988).] The Supreme Court has highlighted three such reasons. "First, juveniles lack the maturity and developed sense of responsibility we attribute to adults. Second, they are more susceptible to negative influences and peer pressure than are adults. Third, their personality traits are more transitory and less fixed, indicating a higher likelihood of rehabilitation of juveniles than of adults. [F]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." [Mendez-Alcaraz v. Gonzales , supra, 464 F.3d at p. 848.]

California appellate courts, the Ninth Circuit Court of Appeals, and the United States Supreme Court have all emphasized that the priorities of the juvenile justice system are treatment and rehabilitation. On the basis of the cited litigation and the US DOJ report on the California juvenile justice system, it may be a rhetorical question to ask whether California is meeting the stated objectives of the juvenile justice system.

At the least, a Youth Bill of Rights for detained youth may be a starting point for the long-sought return to the traditional goals of the juvenile justice system.

10) Arguments in Support :

a) Ally Action states "recent attention has been focused on the mounting crisis of overcrowding and violence in California's juvenile justice system. The condition of these facilities has been the subject of both litigation and special hearings of the California Legislature held in 2005. In addition, current California law that governs operations of state and local juvenile justice facilities, the Welfare and Institutions Code provides no statutory non-discrimination or provide training for staff on how to create a safe and equitable environment for all youth.

"The Juvenile Justice Safety and Protection Act would help California to better protect all youth who are in the custody of state and county facilities by creating a Youth Bill of Rights; creating statutory protections from harassment and discrimination. . . . Juvenile Justice

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professionals desperately need more information, training and resources to ensure that LGBT youth are treated fairly. The goal of SB 518 to ensure that LGBT young people have the same rights as other youth in the justice system, including protection from harassment and harm is one that Ally Action strongly supports."

b) Asian Americans for Civil Rights and Equality "expresses support for SB 518, legislation that will address bias-related discrimination and harassment in the juvenile justice facilities. [O]nly a handful [of juvenile justice facilities] have policies prohibiting discrimination or provide training for staff on how to create a safe and equitable environment for all youth."

c) The Gay and Lesbian Adolescent Social Services, Inc. (GLASS) states "GLASS supports this bill because:

- i) "LGBT youth who are detained in local juvenile facilities report being harassed by detainees and staff. They feel powerless without any recourse or place to report these harmful incidents;
- ii) "This bill would require state and local employees to be trained on the right of a child in custody to have fair and equal access to all available services, placement, care, treatment, and benefits; and,
- iii) "SB 518 would require the Office of the Ombudsperson of the DJJ to disseminate information, investigate

complaints, provide information regarding complaints it does not investigate, compiling and making available data to the Legislature, and provide a toll-free telephone number."

d) The Prison Law Office states, "Precise information about the numbers of LGBT youth in the juvenile justice system in California is not available, partly because LGBT youth are socialized to hide their identities for their safety. However, according to a recent study of over 400 youth in Santa Cruz county conducted by Ceres Policy Research, LGBT youth are more than four times as likely to have spent time in juvenile hall as non-LGBT youth (38% vs. 9%). LGBT youth are also highly vulnerable once they enter the juvenile justice system because of inadequate policies,

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protections and support services."

e) Taxpayers for Improving Public Safety states "this legislation is vitally important in the effort to reduce criminal recidivism in California. Past descriptions of the violence and lack of opportunity for rehabilitation in the juvenile incarceration system now demand immediate action. [T]his is the type of proactive intervention which will reduce the California prison population over time, save lives of innocent individuals, and should be considered as an example of how to cure the disease of criminality, rather than treating the symptoms by merely increasing the number of security beds."

f) The Friends Committee on Legislation of California states that it "supports SB 518, to enact a Youth Bill of Rights, for wards housed in Juvenile Justice Division facilities and local juvenile facilities. Rehabilitation requires a culture of civility and respect. To the contrary, we are convinced that California's culture of punishment and retribution has spilled over to our juvenile justice system and negatively impacts the treatment of incarcerated young people. How people are treated during their incarceration has a direct relationship on their behavior when they leave prison; more so with young people who are impressionable and still developing. Moreover, many of our state's gang problems are exacerbated in prisons when wards learn that correctional staff cannot guarantee their safety. As corrections in California moves toward a purported emphasis in rehabilitation, we must take reasonable steps to change the culture within our institutions."

11) Prior Legislation : AB 458 (Chu) Chapter 331, Statutes of 2003, established the rights of children in foster care to have fair and equal access to all available services, placement, care, treatment and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

REGISTERED SUPPORT / OPPOSITION :

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Support

Alliance for Children's Rights
 Ally Action
 Asian Americans for Civil Rights and Equality
 Asian Law Caucus
 Baart Behavioral Health Services, Inc.
 California Coalition for Youth
 California State PTA
 Equality California
 Friends Committee on Legislation of California
 Gay and Lesbian Adolescent Social Services, Inc.
 Gay Lesbian Straight Education Network of Orange County
 Gay Straight Alliance Network
 Lambda Letters Project
 Lavender Youth Recreation and Information Center
 Our Family Coalition
 Prison Law Office
 Respect California
 Taxpayers for Improving Public Safety

Teen Line
Transgender Law Center
Youth Law Center

Opposition

None _

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