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**SB-448 Juveniles: detention hearings.** (2023-2024)

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**Senate Bill No. 448**

**CHAPTER 608**

An act to amend Sections 635 and 636 of the Welfare and Institutions Code, relating to juveniles.

[ Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 448, Becker. Juveniles: detention hearings.

Existing law requires a court to determine whether a minor in custody will be released from, or detained in, custody, considering, among other things, whether it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another and whether continuance in the home is contrary to the minor's welfare.

This bill would prohibit the court from basing the decision to detain solely on the minor's county of residence and would require the court to give the minor equal consideration for release on home supervision. This bill would grant the court the authority to order the minor to be placed on home supervision, with or without electronic monitoring.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 635 of the Welfare and Institutions Code is amended to read:

**635.** (a) The court will examine the minor, their parent, legal guardian, or other person having relevant knowledge, hear relevant evidence the minor, their parent, legal guardian, or counsel desires to present, and, unless it appears that the minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that they be detained or that the minor is likely to flee to avoid the jurisdiction of the court, the court shall make its order releasing the minor from custody.

(b) (1) The circumstances and gravity of the alleged offense may be considered, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that the minor be detained.

(2) The court's decision to detain shall be based on the above factors, and shall not be based solely on the minor's county of residence. A minor shall be given equal consideration for release on home supervision pursuant to Section 628.1, which may include electronic monitoring pursuant to Section 628.2, regardless of whether the minor lives in the county where the offense

occurred. The juvenile court has authority to order the minor be placed on home supervision, with or without electronic monitoring, regardless of the minor's county of residence.

(3) If a minor is a dependent of the court pursuant to Section 300, the court's decision to detain shall not be based on the minor's status as a dependent of the court or the child welfare services department's inability to provide a placement for the minor.

(c) (1) The court shall order release of the minor from custody unless a prima facie showing has been made that the minor is a person described in Section 601 or 602.

(2) If the court orders release of a minor who is a dependent of the court pursuant to Section 300, the court shall order the child welfare services department either to ensure that the minor's current foster parent or other caregiver takes physical custody of the minor or to take physical custody of the minor and place the minor in a licensed or approved placement.

(d) If the probation officer has reason to believe that the minor is at risk of entering foster care placement as described in Section 11402, then the probation officer shall submit a written report to the court containing all of the following:

(1) The reasons why the minor has been removed from the parent's custody.

(2) Any prior referrals for abuse or neglect of the minor or any prior filings regarding the minor pursuant to Section 300.

(3) The need, if any, for continued detention.

(4) The available services that could facilitate the return of the minor to the custody of the minor's parents or guardians.

(5) Whether there are any relatives who are able and willing to provide effective care and control over the minor.

**SEC. 2.** Section 636 of the Welfare and Institutions Code is amended to read:

**636.** (a) If it appears upon the hearing that the minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that the minor be detained or that the minor is likely to flee to avoid the jurisdiction of the court, and that continuance in the home is contrary to the minor's welfare, the court may make its order that the minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days and shall enter the order together with its findings of fact in support thereof in the records of the court. The circumstances and gravity of the alleged offense may be considered, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another that the minor be detained. The court's decision to detain shall be based on the above factors, and shall not be based solely on the minor's county of residence. A minor shall be given equal consideration for release on home supervision pursuant to Section 628.1, which may include electronic monitoring pursuant to Section 628.2, regardless of whether the minor lives in the county where the offense occurred. The juvenile court has authority to order the minor be placed on home supervision, with or without electronic monitoring, regardless of the minor's county of residence. If a minor is a dependent of the court pursuant to Section 300, the court's decision to detain shall not be based on the minor's status as a dependent of the court or the child welfare services department's inability to provide a placement for the minor.

(b) If the court finds that the criteria of Section 628.1 are applicable, the court shall place the minor on home supervision for a period not to exceed 15 judicial days, and shall enter the order together with its findings of fact in support thereof in the records of the court. If the court releases the minor on home supervision, the court may continue, modify, or augment any conditions of release previously imposed by the probation officer, or may impose new conditions on a minor released for the first time. If there are new or modified conditions, the minor shall be required to sign a written promise to obey those conditions pursuant to Section 628.1.

(c) If the probation officer is recommending that the minor be detained, the probation officer shall submit to the court documentation, as follows:

(1) Documentation that continuance in the home is contrary to the minor's welfare shall be submitted to the court as part of the detention report prepared pursuant to Section 635.

(2) Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the minor from the home and documentation of the nature and results of the services provided shall be submitted to the court either as part of the detention report prepared pursuant to Section 635, or as part of a case plan prepared pursuant to Section 636.1, but in no case later than 60 days from the date of detention.

(d) Except as provided in subdivision (e), before detaining the minor, the court shall determine whether continuance in the home is contrary to the minor's welfare and whether there are available services that would prevent the need for further detention. The

court shall make that determination on a case-by-case basis and shall make reference to the documentation provided by the probation officer or other evidence relied upon in reaching its decision.

(1) If the minor can be returned to the custody of the minor's parent or legal guardian at the detention hearing, through the provision of services to prevent removal, the court shall release the minor to the physical custody of the minor's parent or legal guardian and order that those services be provided.

(2) If the minor cannot be returned to the custody of the minor's parent or legal guardian at the detention hearing, the court shall state the facts upon which the detention is based. The court shall make the following findings on the record and reference the probation officer's report or other evidence relied upon to make its setting determinations:

(A) Whether continuance in the home of the parent or legal guardian is contrary to the minor's welfare.

(B) Whether reasonable efforts have been made to safely maintain the minor in the home of the minor's parent or legal guardian and to prevent or eliminate the need for removal of the minor from the minor's home. This finding shall be made at the detention hearing if possible, but in no case later than 60 days following the minor's removal from the home.

(3) If the minor cannot be returned to the custody of the minor's parent or legal guardian at the detention hearing, the court shall make the following orders:

(A) The probation officer shall provide services as soon as possible to enable the minor's parent or legal guardian to obtain any assistance as may be needed to enable the parent or guardian to effectively provide the care and control necessary for the minor to return to the home.

(B) The minor's placement and care shall be the responsibility of the probation department pending disposition or further order of the court.

(4) If the matter is set for rehearing pursuant to Section 637, or continued pursuant to Section 638, or continued for any other reason, the court shall find that the continuance of the minor in the parent's or guardian's home is contrary to the minor's welfare at the initial petition hearing or order the release of the minor from custody.

(e) For a minor who is a dependent of the court pursuant to Section 300, the court's decision to detain the minor shall not be based on a finding that continuance in the minor's current placement is contrary to the minor's welfare. If the court determines that continuance in the minor's current placement is contrary to the minor's welfare, the court shall order the child welfare services department to place the minor in another licensed or approved placement.

(f) For a placement made on or after October 1, 2021, each placement of the minor in a short-term residential therapeutic program shall comply with the requirements of Section 4096 and be reviewed by the court pursuant to Section 727.12.

(g) For a placement made on or after July 1, 2022, each placement of the minor in a community treatment facility shall comply with the requirements of Section 4096 and be reviewed by the court pursuant to Section 727.12.

(h) Whether the minor is returned home or detained, the court shall order the minor's parent or guardian to cooperate with the probation officer in obtaining those services described in paragraph (1) of, or in subparagraph (A) of paragraph (3) of, subdivision (d).