

JUVENILE JUSTICE REALIGNMENT - 2021
Senate Bill No. 92

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Introduction

On May 14, 2021, [Senate Bill No. 92](#)¹ became law, effective immediately. It provides additional changes to implement the realignment of youths from the Department of Juvenile Justice (DJJ) to county-based custody. [Senate Bill No. 823](#),² which became effective on September 30, 2020, is the genesis of reformation of the juvenile justice system.³

The highlights of Senate Bill No. 92 concern:

- setting June 30, 2023 as the date DJJ closes;
- requiring courts to consider local placement as an alternative to committing DJJ eligible youth to DJJ;
- requiring DJJ to develop a plan by January 1, 2022 for transfer of specified youth from DJJ to local custody;
- authorizing counties to establish secure youth treatment facilities (SYTF) for eligible youths and setting forth the criteria;
- directing courts to set baseline and maximum terms of confinement;
- requiring the Judicial Council to develop and adopt a matrix of offense-based classifications for use by the courts;
- requiring courts to approve an individual rehabilitation plan for the minor and hold progress review hearings at least once every six months;
- providing the procedure for probation discharge hearings and additional SYTF commitment time up to one year based on substantial risk of imminent harm to others in the community;
- providing a process for extending the commitment of youths who are physically dangerous to the public; and

¹ Stats. 2021, ch. 18 (Sen. Bill No. 92).

² Stats. 2020, ch. 337 (Sen. Bill No. 823).

³ See ADI's article [Juvenile Justice Realignment - Senate Bill No. 823](#).

- setting forth provisions pertaining to funding.

Some of the various changes become operative July 1, 2021, or operative that date and terminate upon closure of DJJ, or inoperative that date and repealed on January 1, 2022.⁴

The article will also identify some potential issues for appellate practitioners to look out for.

DJJ closure, court commitments, and transfer plan

DJJ will close on June 30, 2023. (Sen. Bill No. 92 (2021-2022 Reg. Sess.), § 10; Welf. & Inst. Code, § 736.5, subd. (e).)

Courts may not commit a youth to DJJ commencing July 1, 2021, except for *eligible* youths until final closure of DJJ. (Sen. Bill No. 92, §§ 8, 9; Welf. & Inst. Code, §§ 731, subds. (a) & (c); 733.1, subd. (a) & (b); 736.5, subd. (b) & (c).) A DJJ eligible minor is one who is adjudged a ward under Welfare and Institutions Code section 602, has committed a Welfare and Institutions Code section 707, subdivision (b)/Penal Code section 290.008, subdivision (c) offense, has been the subject of a motion filed to transfer the ward to the jurisdiction of the criminal court as provided in Welfare and Institutions Code section 736.5, subdivision (c), and is not otherwise ineligible for commitment to the division under section 733.⁵ (Sen. Bill No. 92, §§ 8, 10; Welf. & Inst. Code, §§ 731, subd. (a), 736.5.) Senate Bill No. 92 requires the court to consider placement of these DJJ eligible youths in local programs as an alternative to a DJJ commitment. (Sen. Bill No. 92, § 10; Welf. & Inst. Code, § 736.5, subd. (c).)⁶

⁴ The article is intended as a general overview. Therefore, not all changes promulgated by Senate Bill No. 92 are reflected or discussed in detail. (See e.g., Sen. Bill No. 92, §§ 1-7, 13-23, some of which concern funding.) The reader is encouraged to carefully review Senate Bill Nos. 92 and 823, the corresponding statutes, and ADI's article [Juvenile Justice Realignment - Senate Bill No. 823](#).

⁵ This section pertains to prohibited commitments of children under 11 years old or suffering a contagious disease or whose most recent offense is not described in Welfare and Institutions Code, section 707, subdivision (b), or Penal Code section 290.008, subdivision (c). (Welf. & Inst. Code, § 733.)

⁶ This directive is dependent upon allocation of funds to the counties. (See Sen. Bill No. 92, §§ 9, 20, Welf. & Inst. Code, §§ 733.1, subd. (c), 1991.) In this limited circumstance, the provision also permits the court to commit a youth to another state-

DJJ must devise a plan, by January 1, 2022, for the transfer of jurisdiction of youth remaining at DJJ who are unable to discharge or otherwise move pursuant to law prior to final closure on June 30, 2023. (Sen. Bill No. 92, § 10; Welf. & Inst. Code, § 736.5, subd. (f).)

Secure Youth Treatment Facilities

Senate Bill No. 823 set forth the Legislature’s intent to establish a separate dispositional track for higher-need youth. (Sen. Bill No. 823, § 30; Welf. & Inst. Code, § 736.5, subd. (e).)⁷ Senate Bill No. 92 executes this intent and authorizes counties to establish SYTFs. It sets forth the framework, who can be placed in the SYTF, baseline and maximum confinement times, requirements of a rehabilitation plan and progress reviews, the process of redress where the SYTF has failed the minor, the process for discharge and extended confinement, criteria for SYTFs, and other related procedure. (Sen. Bill No. 92, §§ 11, 12; Welf. & Inst. Code, §§ 779.5, 875.)

SYTF Eligibility —

Welfare and Institutions Code, section 875 permits a court to commit a youth who is 14 years of age or older to the SYTF if the youth committed a Welfare and Institutions Code, section 707, subdivision (b) offense; it is the most recent offense; and the court finds, after considering evidence and recommendations of counsel, the probation department, and any other agency or individual designated by the court to advise on the disposition, that a less restrictive, alternative disposition for the youth is unsuitable. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (a)(1)-(3).) The court’s determination must be based on all of the following criteria:

- (A) the severity of the offense(s), the youth’s role and behavior, and the harm done to victims;
- (B) previous delinquent history and previous attempts to rehabilitate;
- (C) whether the programs, treatment, and education provided in the SYTF meets the treatment and security needs of the youth;
- (D) whether the goals of rehabilitation and community safety can be achieved by

funded facility once DJJ is closed. (Sen. Bill No. 92, § 9, Welf. & Inst. Code, § 733.1, subd. (c).)

⁷ Senate Bill No. 92 amended Welfare & Institutions Code, section 736.5, subdivision (e) by replacing the expressed intent with the date of DJJ closure. (Sen. Bill No. 92, § 10; Welf. & Inst. Code, § 736.5, subd. (e).)

placing the youth in an alternative, less restrictive setting; and (E) age, developmental maturity, mental/emotional health, sexual orientation, gender identity and expression, and any disabilities or special needs which would affect the safety or suitability of the SYTF commitment.

(Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (a)(3)(A)-(E).)

Baseline Confinement Term —

In making its order of commitment to the SYTF, the court is required to set a baseline confinement term that is based on the most serious recent offense and on the discharge date guidelines applied by DJJ. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (b).) The use of DJJ guidelines is temporary. By July 1, 2023, the Judicial Council is required to develop and adopt a matrix of offense-based classifications to be applied by all counties for setting the baseline confinement term. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (h)(1)-(2).) Pending adoption of Judicial Council guidelines, a court may modify the baseline term by plus or minus six months and also at progress review hearings. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subds. (b) & (e).)

Maximum Confinement Term —

A court is also required to set the maximum term as the longest term of confinement that a youth may serve subject to the following. The maximum period of confinement is limited to the middle term of imprisonment that can be imposed upon an adult convicted of the same offense(s). (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (c)(2) & (i); see also Sen. Bill No. 92, §§ 7, 8; Welf. & Inst. Code, §§ 726, subds. (d)(1)-(2), 731, subd. (b).) A youth cannot be held in secure confinement beyond 23 years of age, or two years from the date of the commitment, whichever occurs later. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (c)(1).) If the offense would yield an aggregate sentence of seven or more years, if convicted in adult criminal court, the youth cannot be held in secure confinement beyond 25 years of age or two years from the date of the commitment, whichever occurs later. (*Ibid.*)⁸

⁸ See also Welfare and Institutions Code section 607 which covers age requirements for court jurisdiction over a minor, discussed in ADI's article [Juvenile Justice Realignment - Senate Bill No. 823](#), discharge, and extended detentions. (Sen. Bill No. 92, § 4; Welf. & Inst. Code, § 607.)

Rehabilitation Plan —

Within 30 days of commitment to the SYTF, the court must review and approve an individual rehabilitation plan for the youth. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (d)(1).) The plan may be developed in consultation with a multidisciplinary team of youth service, mental and behavioral health, education, and other treatment providers with input from the prosecutor and defense counsel. (*Ibid.*) The plan must:

- (A) identify the youth's treatment, education, and development needs, including any special needs related to physical, mental or emotional health, disabilities, or gender-related or other special needs;
- (B) describe the programming, treatment, and education to be provided to meet the minor's needs;
- (C) reflect “trauma-informed, evidence-based, and culturally responsive care”; and
- (D) provide the youth and family the opportunity to give input regarding the minor's needs and report the input.

(Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (d)(2)(A)-(D).)

Progress Review and Modification of Placement —

Progress review hearings are to be held “not less frequently than once every six months.” (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subds. (e)(1).) At the hearings, the court evaluates progress, determines whether the baseline commitment period should be adjusted, and may also order that the youth be placed in a less restrictive program, such as a halfway house, camp or ranch, or community residential or nonresidential service program. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subds. (e)(1) & (f)(1).)

The youth may seek modification of placement under Welfare and Institutions Code, section 875, subdivision (f)(1). “Upon a motion from the probation department or the ward, the court may order that the ward be transferred from a secure youth treatment facility to a less restrictive program.” (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (f)(1).) Approval of the request “shall be made only upon the court's determination that the ward has made substantial progress toward the goals of the individual rehabilitation plan . . . and . . . placement is consistent with the goals of youth rehabilitation and community safety.” (*Ibid.*) In making its determination, the court shall consider the youth's overall progress and the programming and community transition services that will be provided to the youth by the less restrictive program. (*Id.* at § 875, subd. (f)(1)(A)-(B).)

After placement in a less restrictive program, if the court finds that the youth has “materially failed to comply with the court-ordered conditions of placement,” the court may modify the terms and conditions or it may return the youth to the SYTF, subject to confinement limits. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (f)(2).)

The youth’s confinement time may not be extended for disciplinary infractions or other in-custody behaviors. Such infractions or behaviors are to be handled by alternative means. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (e)(2).)

Discharge hearing/additional and extended SYTF confinement —

At the conclusion of the baseline confinement term or, where a minor had been transferred from the SYTF and placed in a less restrictive program, at the end of the period of placement, the court shall conduct a probation discharge hearing. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (e)(3)-(4).) If the court orders probation, it must also order reasonable conditions that suitably meet the youth’s developmental needs and circumstances and to facilitate the youth’s reentry into the community. (*Ibid.*)

After placement on probation, if the court finds that the youth has “failed materially to comply with the reasonable orders of probation,” the court may return the youth to the SYTF or to a less restrictive program, subject to confinement limits. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (e)(4).)

At the discharge hearing, if the court determines the youth poses a “substantial risk of imminent harm to others in the community” if released, it may order continued custody in the SYTF for up to one additional year of confinement, subject to review and probation discharge hearing provisions and subject to maximum confinement limitations. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (e)(3).)

Senate Bill No. 92 provides for application of the juvenile extended detention scheme, as set forth in Welfare and Institutions Code, section 1800 et seq., to SYTF youths “physically dangerous to the public,” pending development of a specific commitment process for realigned persons. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, §§ 875.5, subds. (a) & (c), 876, subds. (a)-(g).) Welfare and Institutions Code section 876 sets forth the interim procedure — minor is entitled to, inter alia, notice, appointed counsel, a probable cause hearing, a jury trial, and the right to appeal. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, §§ 875.5, subd. (b), 876, subds (a)-(g).) The Governor and the Legislature shall work with stakeholders (e.g., DJJ, State Dept. of Hospitals, the Chief Probation Officers of California, California Assoc. of Counties, advocacy organizations representing youth, and the Judicial Council) to develop language to replace section 876

by July 1, 2021 “with a commitment process that ensures the treatment capacity, legal protections, and court procedures are appropriate to successfully serve persons realigned from” DJJ. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875.5, subd. (b).) The legislative intent is to enact legislation, effective July 1, 2022, to extend detention of persons physically dangerous to the public who are in SYTFs. (Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875.5, subd. (c).)

Redress where SYTF failed, or is unable to, meet youth’s needs —

A youth or the probation department may, by written application, request the court to modify or set aside the SYTF commitment order upon a showing of good cause that the facility “has failed, or is unable to, provide the ward with treatment, programming, and education that are consistent with the individual rehabilitation plan . . . , that the conditions under which the ward is confined are harmful to the ward, or that the juvenile justice goals of rehabilitation and community safety are no longer served by continued confinement of the ward in a secure youth treatment facility.” (Sen. Bill No. 92, § 11; Welf. & Inst. Code, § 779.5.) Evidence from the youth, the probation department, and any behavioral health or other specialists may be presented to the court and the court shall make its findings on the record. (*Ibid.*)

SYTF Criteria —

(1) The SYTF must be secure,⁹ and the county of commitment must operate, utilize, or access it to provide appropriate programming, treatment, and education of youths.

(2) It “may be a stand-alone facility, such as a probation camp or other facility operated under contract with the county, or with another county, or may be a unit or portion of an existing county juvenile facility, including a juvenile hall or probation camp, that is configured and programmed to serve the” youth and comply with specified standards.

(3) By July 1, 2023 the Board of State and Community Corrections (“board”) shall review existing juvenile facility standards and implement modifications or new standards pertaining to any facility that is used by the court as an SYTF. The board and the Office of Youth and Community Restoration are to coordinate in this effort.

⁹ Neither Senate Bill No. 823 nor Senate Bill No. 92 specifically define “secure.”

(4) Counties proposing to establish SYTFs must notify the board and submit a description of the facility. Starting July 1, 2022, the board must biennially inspect SYTFs that were used during the preceding calendar year. The board must utilize the standards in existing regulations if new standards are not yet in place.

(5) A county may contract with another county which has an SYTF to accept commitments of youths.

(6) “A county may establish a secure youth treatment facility to serve as a regional center for commitment of juveniles by one or more other counties on a contract payment basis.”

(Sen. Bill No. 92, § 12; Welf. & Inst. Code, § 875, subd. (g).)

Potential Issues for Appeal

No doubt execution of Senate Bill 92 will produce issues pertaining to statutory and related constitutional violations. Below is a list of some potential issues to consider. Counsel is encouraged to communicate with trial counsel who would be the best source to disclose the challenges that are being encountered which may produce more issues.

- Did the juvenile court lack authority to commit the youth to DJJ? Was the youth DJJ eligible, i.e., adjudged a ward, committed a Welfare and Institutions Code section 707, subdivision (b)/Penal Code section 290.008, subdivision (c) offense, has been the subject of a transfer motion, and is not otherwise ineligible for commitment? (Welf. & Inst. Code, §§ 731, subds. (a) & (c); 733; 733.1, subd. (a) & (b); 736.5, subd. (b) & (c).)
- In light of the Legislature’s directive that the court consider placement of DJJ eligible youths in an SYTF as an alternative to a DJJ commitment, did the juvenile court abuse its discretion in committing the youth to the DJJ rather than the SYTF? (Welf. & Inst. Code, § 736.5, subd. (c).)
- Did the juvenile court abuse its discretion in committing a youth to an SYTF rather than a less restrictive, alternative disposition? (Welf. & Inst. Code, § 875, subd. (a)(1)-(3).) Was the determination properly based on the required criteria? (Welf. & Inst. Code, § 875, subd. (a)(3)(A)-(E).)
- In making its order of commitment to the SYTF, did the juvenile court properly set a baseline confinement term that is based on the most serious recent offense

and on the discharge date guidelines? (Welf. & Inst. Code, § 875, subds. (b), (e) & (h)(1)-(2).)

- Did the juvenile court err in failing to properly compute the maximum term of confinement which is the middle term of imprisonment that can be imposed upon an adult convicted of the same offense(s)? (Welf. & Inst. Code, §§ 875, subds. (c)(1)-(2) & (i), 726, subds. (d)(1)-(2), 731, subd. (b).)
- Did the courts timely approve an individual rehabilitation plan for the youth and does the rehabilitation plan comply with statutory mandated criteria? (Welf. & Inst. Code, § 875, subds. (d)(1) & (d)(2)(A)-(D).)
- At the progress review hearings, did the juvenile court err in any modification of the baseline commitment period? (Welf. & Inst. Code, § 875, subds. (e)(1)-(2).)
- Did the trial court abuse its discretion in denying a motion by the SYTF youth or probation to transfer the youth to a less restrictive program? (Welf. & Inst. Code, § 875, subds. (e)(1) & (f)(1)(A)-(B).)
- After placement in a less restrictive program, did the court err in finding that the youth materially failed to comply with court-ordered conditions of placement and in either modifying the terms and conditions or returning the youth to the SYTF? (Welf. & Inst. Code, § 875, subd. (f)(2).)
- At the probation discharge hearing, did the juvenile court abuse its discretion in failing to order reasonable probation conditions that suitably meet the youth's developmental needs and circumstances and to facilitate the youth's reentry into the community? (Welf. & Inst. Code, § 875, subd. (e)(3)-(4).)
- At the probation discharge hearing, did the juvenile court abuse its discretion in finding that the youth poses a "substantial risk of imminent harm to others in the community" if released and returning the youth to the SYTF? (Welf. & Inst. Code, § 875, subd. (e)(3).)
- After placement on probation, did the court abuse its discretion in finding that the youth has "failed materially to comply with the reasonable orders of probation," and returning the youth to the SYTF or to a less restrictive program? (Welf. & Inst. Code, § 875, subd. (e)(4).)
- Did the juvenile court abuse its discretion in extending detention of the youth and

finding that the youth is “physically dangerous to the public?” (Welf. & Inst. Code, §§ 875.5, subds. (a)-(c), 876, subds. (a)-(g).)

- Did the juvenile court abuse its discretion in denying the application by the youth or the probation department to modify or set aside the SYTF commitment order where good cause demonstrates that the facility “has failed, or is unable to, provide the ward with treatment, programming, and education that are consistent with the individual rehabilitation plan . . . , that the conditions under which the ward is confined are harmful to the ward, or that the juvenile justice goals of rehabilitation and community safety are no longer served by continued confinement of the ward in a secure youth treatment facility?” (Welf. & Inst. Code, § 779.5.)