

February 11, 2021

California Governor Gavin Newsom
1303 10th Street, Suite 1173
Sacramento, CA 95814

Members of the Legislature
State Capitol
Sacramento, CA 95814



RE: Division of Juvenile Justice Realignment and Secure Track

Dear Governor Newsom and Legislative Leaders:

The Juvenile Court Judges of California (JCJC), a section of the California Judges Association, urge you to consider the following principles and issues in implementing realignment of responsibility for youth from the Division of Juvenile Justice (DJJ) to the counties.

After review of the Department of Finance's Trailer Bill Language, we are optimistic that there will be consensus on most of the proposals, including that the new local Secure Youth Treatment Facilities ("SYTF") continue to be the disposition of last resort.

A. Creating a new "secure track" by March 1, 2021, as intended by Welf. & Inst. Code § 736.5(e).

The new secure disposition track must first and foremost meet the needs of the intended youth population without net-widening, provide for public safety, and avoid the unintended consequence of increasing transfers to adult court. Implicit in these goals is the provision of adequate funding to the counties.

1. Eligibility for commitment to the new local secure youth treatment facility ("SYTF").

Eligibility for commitment to the SYTF should be limited to youth ages 14 or older whose most recent adjudication is for a violation of a serious violent felony listed in Welf. & Inst. Code § 707(b) as long as there is a safeguard that requires consideration of whether the local secure facility has appropriate programming and is safe for younger youth.

Section 707(b) offenses include offenses in which the youth personally used a weapon or caused great bodily harm to a victim. While the seriousness of the offense is not the sole factor in determining the appropriate disposition for a youth, the juvenile court must consider "public safety and protection."¹ Eligibility for 14 and 15 year old youth should be continued until more developmentally appropriate and positive youth development-oriented solutions are developed within the continuum of care.

¹ Welf. & Inst. Code § 202(b).

2. Required Court Findings at the Disposition Hearing.

The SYTF should continue to be disposition of last resort and ordered only when less restrictive alternative dispositions are unsuitable. Proposed Section 875(a)(3) specifies new findings that the court must make when considering whether commitment to a SYTF is the appropriate disposition for a youth. We understand that there is a proposal that would additionally require the court to consider the role of youthfulness and the availability of trauma-informed and culturally responsive care at the SYTF. The California Supreme Court already requires the court to consider at disposition “a juvenile offender’s ‘chronological age and its hallmark features— among them, immaturity, impetuosity, and failure to appreciate risks and consequences.’”² We agree with both proposals, which are consistent with the United States Supreme Court and California Supreme Court cases requiring youthfulness and developmental immaturity to be considered as mitigating factors at disposition.³

3. Statewide Standards for Length of Commitment and Avoiding Justice by Geography.

Current law and regulations establish standardized baseline offense-based terms prior to parole consideration. Likewise, commitments to the new local secure youth treatment facilities must have statewide standards to prevent “justice by geography.” We agree with keeping the Title 9 offense-based classification (Cal. Code Regs., tit. 9, § 30805, et seq.) in place until a new classification system is developed by the Judicial Council.

The baseline term should be based upon the actual sustained offense. The juvenile court should have discretion to set a term of confinement less than the baseline term.

The Judicial Council should have discretion to include a process for a youth to earn credits for time served based on positive behavior in the new matrix after consultation with stakeholders.

4. Rehabilitation-driven programming and Progress Review Hearings.

The title of the planning document has significance. We recognize that the words we choose to describe this process should send the right message. The phrase “case plan” already has a legal definition in Welf. & Inst. Code § 706.6 for young people committed to out-of-home placement and foster care. The phrase “treatment” is often associated with mental health services and does not fully capture the scope of our mission. We propose calling the plan an “**Individual Rehabilitation Plan.**”

The Individual Rehabilitation Plan submitted by probation must be informed by a multidisciplinary team and include input from the young person and their family.

² People v. Gutierrez (2014) 58 Cal.4th 1354, 1388.

³ e.g. “*Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” Miller v. Alabama (2012) 567 U.S. 460, 472.

Multidisciplinary teams include other agencies working with the youth, including child welfare, the school district, behavioral health, and regional center. Consultation with these other agencies will ensure information sharing and the availability of current service plans if the young person is committed to the SYTF.

Welf. & Inst. Code § 706.6 specifies what must be included in a case plan when foster care is recommended. Likewise, the secure track statutes should specify the elements for the Individual Rehabilitation Plan. The Plan should include the young person's strengths and needs in relation to education, physical health, mental or emotional health, developmental status, family contact, restorative justice, and any other individualized needs.

At a disposition hearing, the juvenile court must receive any "relevant and material evidence" in addition to the report of the probation officer and any statement by the victim, including evidence offered by the youth.⁴ The secure track statute should likewise be inclusive of evidence to assist the juvenile court in making such an important decision, especially when probation's recommendation is for the most serious disposition. It is not uncommon for alternative plans to be submitted on behalf of the youth, and these should be considered by the court as well.

After consideration of the evidence, the juvenile court should have discretion to modify the plan and when appropriate, order specific types of treatment. The juvenile court has discretion to order specific treatment in all other types of cases, including out-of-home placements.⁵

Following commitment, the juvenile court can provide oversight through regular progress review hearings. Regular feedback is part of adolescent development, from school report cards to DJJ annual reviews. These SYTF progress review hearings should be non-adversarial and treatment-oriented and youth-focused. Court reviews are an established oversight role of juvenile court to monitor the delivery of services and the youth's progress toward rehabilitative objectives, and a requirement for other youth who are removed from their homes.⁶ Likewise, these progress reviews should occur no less frequently than every six months from the time of commitment. The rehabilitation plan should be updated for each six month hearing reflecting the youth's progress and current strengths and needs.

⁴ Welf. & Inst. Code § 706.

⁵ Welf. & Inst. Code § 727: "The court may, after receipt of relevant testimony and other evidence from the parties, affirm or reject the placement determination. If the court rejects the placement determination, the court may instruct the probation department to determine an alternative placement for the ward, or the court may modify the placement order to an alternative placement recommended by a party to the case after the court has received the probation department's assessment of that recommendation and other relevant evidence from the parties."

⁶ Similarly for DJJ wards, the Board of Juvenile Hearings is tasked with reviewing "verification of the treatment or program goals and orders for the ward to ensure the ward is receiving treatment and programming that is narrowly tailored to address the correctional treatment needs of the ward and is being provided in a timely manner that is designed to meet the discharge consideration date set for the ward; an assessment of the ward's adjustment and responsiveness to treatment, programming, and custody; a review of the ward's disciplinary history and response to disciplinary sanctions; and a review of any additional information relevant to the ward's progress." Welf. & Inst. Code § 1720(e).

JCJC requests the following amendments to Welf. & Inst Code § 875(d) in the DOF Trailer Bill Language:

- Change “individual case plan” to “individual rehabilitation plan.”
- Include consideration of plans submitted by other entities in addition to probation, including those designated by the court, and the youth.
- Change the permissive option for probation to consult with the multidisciplinary team to a mandatory requirement.
- Specify the elements of the individual rehabilitation plan and the deadline for the plan’s submission.
- Require the plan to be developed in consultation with the youth and their family.

JCJC requests the following amendments to Welf. & Inst Code § 875(e)(1) in the DOF Trailer Bill Language:

- Strike “The court may, at this hearing, consider requests from the probation department or the ward to modify the commitment based on a showing of good cause that the placement is not appropriate to meet the treatment and security needs of the ward consistent with the individual case plan.” Such requests should be made upon noticed motion, giving victims a fair opportunity to be heard, and not detract from the collaborative nature of the progress review hearings.
- Clarify “The Court may also modify the commitment order to adjust the placement.” This appears to be in reference to a step-down procedure but “adjusting the placement” is unclear.

5. Step-Down, Probation Discharge Hearing, and Reentry

JCJC supports a statutory provision that permits youth to serve a portion of their commitment at a step-down program as a more effective means of transitioning youth back to their communities. For some youth, this is a critical phase to re-develop skills of individual agency and responsibility, such as holding a wallet and making appointments. These step-down programs will likely include existing programs, such as supervised placement with wraparound services. The step-down provision should include sanctions for material failures to comply with the step-down program that may include returning to the SYTF for the remainder of the baseline term. Whether to utilize a step-down program should be determined on an individualized case-by-case basis.

Prior to completing their commitment, young people should participate in a reentry planning meeting with their treatment team, similar to Child and Family Team (CFT) Meetings. The probation department should submit the reentry plan to the court for approval. Reentry planning is currently contemplated in Welf. & Inst. Code § 1766(b)(4).

At the conclusion of the baseline confinement term, the court should hold a discharge hearing. We agree with the provision that permits retention of the youth in the SYTF for up to one additional year if the youth presents an ongoing risk to public safety, subject to the review hearing and discharge hearing provisions and the maximum confinement limitation. The proposed language “substantial risk of imminent harm to others in the community if released from custody” appears to introduce a new legal standard. In comparison, existing Welf. & Inst. Code § 1765 states: “The [Youth Authority Board] shall discharge that person as soon as in its opinion there is reasonable probability that he or she can be given full liberty without danger to the public.” One standard at the initial detention hearing is “reasonably necessary for the protection of the person or property of another.”⁷ We recommend striking the word “imminent” from Section 827(e)(3) in the trailer bill language.

There should also be consideration for post-release supervision and possible reconfinement for violations of reentry supervision. Current law describes the procedures for violations of reentry supervision in Welf. & Inst. Code § 1767.35.⁸ Consequences include “an order for the reconfinement of a ward under 18 years of age in a juvenile facility, or for the reconfinement of a ward 18 years of age or older in a juvenile facility as authorized by Section 208.5, or for the reconfinement of a ward 18 years of age or older in a local adult facility as authorized by subdivision (b), or the Division of Juvenile Facilities as authorized by subdivision (c).” Section 1767.35(c) further limits reconfinement to DJJ as a sanction for a period of no less than 90 days and no longer than one year. These procedures and guidelines should be included in the realignment as well.

JCJC requests the following amendments to Welf. & Inst Code § 875(e)(4) in the DOF Trailer Bill Language:

- Consideration of guidelines for reconfinement as a sanction for “failure to materially comply” with post-release supervision conditions similar to the provisions in existing Section 1767.35. Any reconfinement as a sanction must not result in the youth serving time in-custody exceeding the maximum confinement time for the underlying case.
- Please note that reconfinement in the SYTF as a sanction will be in addition to the baseline term initially ordered by the court as the baseline term will have been completed prior to discharge to reentry supervision.

⁷ Welf. & Inst. Code § 636(a).

⁸ “[The] juvenile court may, upon a finding that the ward violated his or her conditions of supervision and after consideration of the recommendation of the probation officer and pursuant to a hearing conducted according to the provisions of subdivision (a), order that the person be returned to the custody of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, for a specified amount of time no shorter than 90 days and no longer than one year. This return shall be a sanction consistent with the reentry goals and requirements imposed by the court pursuant to paragraph (6) of subdivision (b) of Section 1766. A decision to return a ward to the custody of the Division of Juvenile Facilities can only be made pursuant to the court making the following findings: (1) that appropriate local options and programs have been exhausted, and (2) that the ward has available confinement time that is greater than or equal to the length of the return.” Welf. & Inst. Code § 1767.35

B. “Realigning” other key procedures for modifying or extending DJJ commitments.

1. Changing, modifying, or setting aside an order of commitment.

Current law authorizes the juvenile court to change, modify, or set aside an order of commitment to DJJ upon a showing of good cause that DJJ is unable to, or failing to, provide appropriate treatment. (Welf. & Inst. Code § 779). This procedure should be available for the new local SYTF and should be separate from the anticipated progress review hearings. Similarly, current DJJ annual reviews are distinct from parole board hearings. Progress review hearings should be a non-adversarial opportunity to review the rehabilitation plan and focus on a young person’s progress. Allowing the possibility of early discharge or vacating the commitment at the six month progress review hearing will distract from the review hearing’s purpose, potentially create unreasonable expectations for youth, and will likely be disruptive to victims.

Requiring a noticed motion will also lead to a more appropriate opportunity for victims to participate, as they will have a right to attend these hearings pursuant to Welf. & Inst. Code § 676.5 and time to prepare their statements. The motion can be made by the youth, district attorney, or probation.

JCJC recommends realigning Section 779 as a separate procedure for youth committed to the local SYTF to petition for vacating the commitment and early release.

2. Extending detention for young people who are physically dangerous to the public.

Current law authorizes the juvenile court to extend detention for a ward who “would be physically dangerous to the public because of the person’s mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior.” (Welf. & Inst. Code § 1800, et seq.) Extended detention is possible only after due process including a jury trial. While such extended detentions are not common, it is important to have this procedure available under realignment.

JCJC agrees with realigning these provisions for the SYTF. Our understanding, without having the benefit of data, is that Section 1800 trials are rare. We agree with convening stakeholders to review the commitment process as proposed in Section 875.5.

C. Effective and quality programming at the local secure youth treatment facility.

Quality programming is central to the success of realignment. Programming should be designed around principles of positive youth development, trauma-informed care, gender-inclusion, and cultural responsiveness, and other evidence-based practices.

From a pragmatic point of view, JCJC supports flexibility for counties to design local programs, including options to:

- Jointly operate the SYTF with other counties;
- Contract to use the SYTF in another county; and
- Operate other tracks of secure programs within the same secure youth treatment facility if appropriate safeguards are put in place.

Special attention is required to address the needs of young people for juvenile sexual responsibility (JSR) treatment and high level mental health treatment. The number of youth committed to DJJ for JSR treatment from across the state is relatively small. It will likely be impracticable for individual counties to create local alternatives with the level and quality of services needed. There must be options for regional approaches for specialized treatment needs.

The nature of secure programs for young women call for additional thought as the economy of scale may very well require a regional approach in balance with keeping young women connected to their families and communities.

JCJC takes no position regarding which agency or agencies should develop the standards for the new SYTF as this is beyond our purview. As with programming, standards should be consistent with evidence-based practices and principles including, but not limited to, positive youth development, trauma-informed care, gender-inclusion, and cultural responsiveness.

D. SB 823 Clean Up

1. Location of secure detention for young people ages 18 and older.

The proposed amendment to Welf. & Inst. Code § 208.5 regarding the rebuttable presumption of housing in juvenile facilities is unclear. Does replacing the word “originated” with “adjudicated” mean that young people ages 18 and up may be held in an adult facility *pending* adjudication or *pending* transfer motion or after a transfer motion has been granted?

Prior to SB 823, Welf. & Inst. Code § 208.5 made clear that an 18 year old could remain in contact with minors in the juvenile hall until age 19, but allowed flexibility in how 18 year olds are housed.⁹ SB 823 amended Section 208.5 so that the probation department cannot petition to have an 18 year old housed in an adult facility. Section 208.5(d) now provides a mechanism for 18 year old youth currently detained in an adult facility for their juvenile matter to be returned to a juvenile facility.

The proposed amendment does not clearly address how youth ages 18 and older should be housed prior to adjudication in the juvenile court. Also, by deleting the word “originated,”

⁹ See K.C. v. Superior Court (2018) 24 Cal.App.5th 1001.

Section 208.5 provides less flexibility for housing 18 year old youth when a transfer motion is pending than before SB 823.

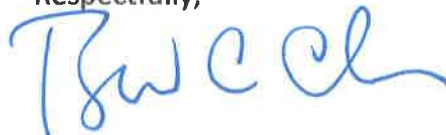
For a youth transferred to adult court, SB 823 amended Welf. & Inst. Code § 707.1, deleting the provision that a youth detained in juvenile hall upon turning 18 years old “shall be delivered to the custody of the sheriff unless the court finds that it is in the best interest of the person and the public that he or she be retained in juvenile hall.” The proposed amendment to Section 208.5 in conjunction with the new Section 707.1 will provide the 18 year old who was transferred to adult court with less protections than prior to SB 823.

Another issue is whether a youth transferred to adult court can be treated in the SYTF as part of the adult sentence. SB 823 added Welf. & Inst. Code § 1955.2 which provided discretion for youth transferred to adult court and sentenced to state prison to be transferred to state prison upon reaching their 18th birthday. Sections 707.2 and 1731.5 permit youth convicted of certain offenses in adult court to be committed to DJJ until July 1, 2021. The realignment does not address whether individuals under age 25 who were transferred to adult court could receive treatment in the new SYTF.

E. Unique Role of the Juvenile Court

As juvenile court judges, we are aware of the complex needs of the youth who are eligible for and actually committed to DJJ. Standard 5.40 also requires us to “be familiar with all detention facilities, placements, and institutions used by the court” and to exercise our “authority by statute or rule to review, order, and enforce the delivery of specific services and treatment for at-risk children and their families.” We appreciate the opportunity to provide our perspective. Thank you for your consideration. Please contact Mike Belote at (916) 441-5050 or mbelote@caladvocates.com.

Respectfully,



Hon. Roger Chan

Vice-Chair

Juvenile Court Judges of California

cc: Hon. Katherine Lucero, Chair
Hon. Jerilyn Borack, Vice-Chair
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Cliff Costa