

[Home](#)[Bill Information](#)[California Law](#)[Publications](#)[Other Resources](#)[My Subscriptions](#)[My Favorites](#)**SB-92 Juvenile Justice.** (2021-2022)**As Amends the Law Today****[As Amends the Law on May 14, 2021](#)****SECTION 1.** Section 3056 of the Penal Code is amended to read:

**3056.** (a) Prisoners on parole shall remain under the supervision of the department but shall not be returned to prison except as provided in subdivision (b) or as provided by subdivision (c) of Section 3000.09. A parolee awaiting a parole revocation hearing may be housed in a county jail while awaiting revocation proceedings. If a parolee is housed in a county jail, they shall be housed in the county in which they were arrested or the county in which a petition to revoke parole has been filed or, if there is no county jail in that county, in the housing facility with which that county has contracted to house jail inmates. Additionally, except as provided by subdivision (c) of Section 3000.09, upon revocation of parole, a parolee may be housed in a county jail for a maximum of 180 days per revocation. When housed in county facilities, parolees shall be under the sole legal custody and jurisdiction of local county facilities. A parolee shall remain under the sole legal custody and jurisdiction of the local county or local correctional administrator, even if placed in an alternative custody program in lieu of incarceration, including, but not limited to, work furlough and electronic home detention. When a parolee is under the legal custody and jurisdiction of a county facility awaiting parole revocation proceedings or upon revocation, the parolee shall not be under the parole supervision or jurisdiction of the department. Unless otherwise serving a period of flash incarceration, whenever a parolee who is subject to this section has been arrested, with or without a warrant or the filing of a petition for revocation with the court, the court may order the release of the parolee from custody under any terms and conditions the court deems appropriate. When released from the county facility or county alternative custody program following a period of custody for revocation of parole or because no violation of parole is found, the parolee shall be returned to the parole supervision of the department for the duration of parole.

(b) Inmates paroled pursuant to Section 3000.1 may be returned to prison following the revocation of parole by the Board of Parole Hearings until July 1, 2013, and thereafter by a court pursuant to Section 3000.08.

(c) Until July 1, 2021, a parolee who is subject to subdivision (a), but who is under 18 years of age, may be housed in a facility of the Division of Juvenile Justice, Department of Corrections and Rehabilitation.

**SEC. 2.** Section 208 of the Welfare and Institutions Code is amended to read:

**208.** (a) When any person under 18 years of age is detained in or sentenced to an adult facility, including a jail or other facility established for the purpose of confinement of adults, it shall be unlawful to permit that person to come or remain in contact with adults confined there.

(b) A person who is a ward or dependent child of the juvenile court who is detained in or committed to any state hospital or other state facility shall not be permitted to come or remain in contact with any adult person who has been committed to any state hospital or other state facility as a mentally disordered sex offender under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6, or with any adult person who has been charged in an accusatory pleading with the commission of any sex offense for which registration of the convicted offender is required under Section 290 of the Penal Code and who has been committed to any state hospital or other state facility pursuant to Section 1026 or 1370 of the Penal Code.

(c) As used in this section, "contact" does not include participation in supervised group therapy or other supervised treatment activities, participation in work furlough programs, or participation in hospital recreational activities which are directly supervised by employees of the hospital, so long as living arrangements are strictly segregated and all precautions are taken to prevent unauthorized associations.







(5) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) or (6) of subdivision (b) of Section 727.3, at which time, for educational decisionmaking, the foster parent, relative caretaker, or nonrelative extended family member, as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code, and for decisions relating to developmental services, unless the court specifies otherwise, the foster parent, relative caregiver, or nonrelative extended family member of the planned permanent living arrangement has the right to represent the child in matters related to developmental services.

(c) An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational decisions. The limitations applicable to conflicts of interest for educational rights holders shall also apply to authorized representatives for developmental services decisions pursuant to subdivision (b) of Section 4701.6. For purposes of this section, "an individual who would have a conflict of interest" means a person having any interests that might restrict or bias their ability to make educational or developmental services decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys' fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because the foster parent receives compensation for the provision of services pursuant to this section.

(1) If the court limits the parent's educational rights pursuant to subdivision (a), the court shall determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child and who is available and willing to serve as the child's educational representative before appointing an educational representative or surrogate who is not known to the child.

If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child and paragraphs (1) to (5), inclusive, of subdivision (b) do not apply, and the child has either been referred to the local educational agency for special education and related services or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

(2) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, before each review hearing held under Article 10 (commencing with Section 360), provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

(3) Nothing in this section in any way removes the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures as required by state and federal law, including Section 1415(b)(2) of Title 20 of the United States Code, Section 56050 of the Education Code, Section 7579.5 of the Government Code, and Rule 5.650 of the California Rules of Court.

If the court appoints a developmental services decisionmaker pursuant to this section, they shall have the authority to access the child's information and records pursuant to subdivision (u) of Section 4514 and subdivision (y) of Section 5328, and to act on the child's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, and as set forth in the court order.

(d) (1) If the minor is removed from the physical custody of the minor's parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the middle term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

(2) As used in this section and in Section 731, "maximum term of imprisonment" means the middle of the three time periods set forth in paragraph (3) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled.

(3) If the court elects to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the "maximum term of imprisonment" shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code, which includes any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal Code, and Section 11370.2 of the Health and Safety Code.

(4) If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the "maximum term of imprisonment" is the middle term of imprisonment prescribed by law.

(5) "Physical confinement" means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in ~~a secure youth treatment facility pursuant to Section 875, or in~~ any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Justice.

(6) This section does not limit the power of the court to retain jurisdiction over a minor and to make appropriate orders pursuant to Section 727 for the period permitted by Section 607.

**SEC. 8.** *Section 731 is added to the Welfare and Institutions Code, to read:*

*731. (a) If a minor is adjudged a ward of the court on the grounds that the minor is a person described by Section 602, the court may commit the ward to the Department of Corrections and Rehabilitation, Division of Juvenile Justice if the ward has committed an offense described in subdivision (b) of Section 707 or subdivision (c) of Section 290.008 of the Penal Code, and has been the subject of a motion filed to transfer the ward to the jurisdiction of the criminal court as provided in subdivision (c) of Section 736.5 and is not otherwise ineligible for commitment to the division under Section 733.*

*(b) A ward committed to the Division of Juvenile Justice shall not be confined in excess of the term of confinement set by the committing court. The court shall set a maximum term based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the court and as deemed appropriate to achieve rehabilitation. The court shall not commit a ward to the Division of Juvenile Justice for a period that exceeds the middle term of imprisonment that could be imposed upon an adult convicted of the same offense. This subdivision does not limit the power of the Board of Juvenile Hearings to discharge a ward committed to the Division of Juvenile Justice pursuant to Sections 1719 and 1769. Upon discharge, the committing court may retain jurisdiction of the ward pursuant to Section 607.1 and establish the conditions of supervision pursuant to subdivision (b) of Section 1766.*

*(c) This section shall become operative on July 1, 2021, and shall remain in effect until the final closure of the Division of Juvenile Justice.*

**SEC. 9.** Section 733.1 of the Welfare and Institutions Code is amended to read:

**733.1.** (a) Notwithstanding any other law, except as otherwise provided in this section, a ward of the juvenile court shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice on or after July 1, 2021.

(b) A court may commit a ward to the Department of Corrections and Rehabilitation, Division of Juvenile Justice as authorized in subdivision (c) of Section 736.5.

(c) Effective July 1, 2021, a person adjudged a ward of the court pursuant to Section 602, shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, as long as allocations required by Section 1991 are authorized in statute and disbursed by September 1, 2021, and September 1 annually thereafter. To the extent that the allocations required by Section 1991 are not authorized in statute and disbursed annually thereafter, it is the intent of this section that wards adjudged wards of the court pursuant to Section 602 for an offense described in subdivision (b) of Section 707 of this code or subdivision (c) of Section 290.008 of the Penal Code may be committed to the Division of Juvenile Justice or, upon the final closure of the Division of Juvenile Justice, another state-funded facility, if the ward could have been committed to the Division of Juvenile Justice pursuant to Section 731, as that section read on January 1, 2021, and Sections 733, 734, and 736.5. For the purpose of determining the state's compliance with this subdivision, the presumption shall be that the state is meeting its commitment in Section 1991 if that section is not materially changed from the law in effect on the operative date of this section.

**SEC. 10.** Section 736.5 of the Welfare and Institutions Code is amended to read:

**736.5.** (a) It is the intent of the Legislature to close the Division of Juvenile Justice within the Department of Corrections and Rehabilitation, through shifting responsibility for all youth adjudged a ward of the court, commencing July 1, 2021, to county governments and providing annual funding for county governments to fulfill this new responsibility.

(b) Beginning July 1, 2021, a ward shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, except as described in subdivision (c).

(c) Pending the final closure of the Department of Corrections and Rehabilitation, Division of Juvenile Justice, a court may commit a ward who is otherwise eligible to be committed under existing law and in whose case a motion to transfer the minor from juvenile court to a court of criminal jurisdiction was filed. The court shall consider, as an alternative to commitment to the Division of Juvenile Justice, placement in local programs, including those established as a result of the implementation of Chapter 337 of the Statutes of 2020.

(d) All wards committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice prior to July 1, 2021 or pursuant to (c), shall remain within its custody until the ward is discharged, released or otherwise moved pursuant to law, or until final closure of the Division of Juvenile Justice.

(e) The Division of Juvenile Justice within the Department of Corrections and Rehabilitation shall close on June 30, 2023.

(f) The Director of the Division of Juvenile Justice shall develop a plan, by January 1, 2022, for the transfer of jurisdiction of youth remaining at the Division of Juvenile Justice who are unable to discharge or otherwise move pursuant to law prior to final closure on June 30, 2023.

**SEC. 11.** *Section 779.5 is added to the Welfare and Institutions Code, to read:*

**779.5.** *The court committing a ward to a secure youth treatment facility as provided in Section 875 may thereafter modify or set aside the order of commitment upon the written application of the ward or the probation department and upon a showing of good cause that the county or the commitment facility has failed, or is unable to, provide the ward with treatment, programming, and education that are consistent with the individual rehabilitation plan described in subdivision (d) of Section 875, 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. The court shall notice a hearing in which it shall hear any evidence from the ward, the probation department, and any behavioral health or other specialists having information relevant to consideration of the request to modify or set aside the order of commitment. The court shall, at the conclusion of the hearing, make its findings on the record, including findings as to the custodial and supervision status of the ward, based on the evidence presented.*

**SEC. 12.** *Article 23.5 (commencing with Section 875) is added to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, to read:*

**Article 23.5. Secure Youth Treatment Facilities**

**875.** (a) *In addition to the types of treatment specified in Sections 727 and 730, commencing July 1, 2021, the court may order that a ward who is 14 years of age or older, be committed to a secure youth treatment facility for a period of confinement described in subdivision (b) if the ward meets the following criteria:*

(1) *The juvenile is adjudicated and found to be a ward of the court based on an offense listed in subdivision (b) of Section 707.*

(2) *The adjudication described in paragraph (1) is the most recent offense for which the juvenile has been adjudicated.*

(3) *The court has made a finding on the record that a less restrictive, alternative disposition for the ward is unsuitable. In determining this, the court shall consider all relevant and material evidence, including the recommendations of counsel, the probation department, and any other agency or individual designated by the court to advise on the appropriate disposition of the case. The court shall additionally make its determination based on all of the following criteria:*

(A) *The severity of the offense or offenses for which the ward has been most recently adjudicated, including the ward's role in the offense, the ward's behavior, and harm done to victims.*

*(B) The ward's previous delinquent history, including the adequacy and success of previous attempts by the juvenile court to rehabilitate the ward.*

*(C) Whether the programming, treatment, and education offered and provided in a secure youth treatment facility is appropriate to meet the treatment and security needs of the ward.*

*(D) Whether the goals of rehabilitation and community safety can be met by assigning the ward to an alternative, less restrictive disposition that is available to the court.*

*(E) The ward's age, developmental maturity, mental and emotional health, sexual orientation, gender identity and expression, and any disabilities or special needs affecting the safety or suitability of committing the ward to a term of confinement in a secure youth treatment facility.*

*(b) In making its order of commitment for a ward, the court shall set a baseline term of confinement for the ward that is based on the most serious recent offense for which the ward has been adjudicated. The baseline term of confinement shall represent the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community. The baseline term of confinement for the ward shall be determined according to offense-based classifications that are approved by the Judicial Council as described in subdivision (h). Pending the development and adoption of offense-based classifications by the Judicial Council, the court shall set a baseline term of confinement for the ward utilizing the discharge consideration date guidelines applied by the Department of Corrections and Rehabilitation, Division of Juvenile Justice prior to its closure and as set forth in Sections 30807 to 30813, inclusive, of Title 9 of the California Code of Regulations. These guidelines shall be used only to determine a baseline confinement time for the ward and shall not be used or relied on to modify the ward's confinement time in any manner other than as provided in this section. The court may, pending the adoption of Judicial Council guidelines, modify the initial baseline term with a deviation of plus or minus six months. The baseline term shall also be subject to modification in progress review hearings as described in subdivision (e).*

*(c) In making its order of commitment, the court shall additionally set a maximum term of confinement for the ward in a secure youth treatment facility. The maximum term of confinement shall represent the longest term of confinement in a facility that the ward may serve subject to the following:*

*(1) A ward committed to a secure youth treatment facility under this section shall not be held in secure confinement beyond 23 years of age, or two years from the date of the commitment, whichever occurs later. However, if the ward has been committed to a facility based on adjudication for an offense or offenses for which the ward, if convicted in adult criminal court, would face an aggregate sentence of seven or more years, the maximum period of confinement shall not exceed the ward attaining 25 years of age or two years from the date of the commitment, whichever occurs later.*

*(2) The maximum period of confinement shall not exceed the middle term of imprisonment that can be imposed upon an adult convicted of the same offense or offenses.*

*(d) (1) Within 30 days of making an order of commitment to a secure youth treatment facility, the court shall receive, review, and approve an individual rehabilitation plan that meets the requirements of paragraph (2) for the ward that has been submitted to the court by the probation department and any other agencies or individuals the court deems necessary for the development of the plan. The plan may be developed in consultation with a multidisciplinary team of youth service, mental and behavioral health, education, and other treatment providers who are convened to advise the court for this purpose. The prosecutor and the counsel for the ward may provide input in the development of the rehabilitation plan prior to the court's approval of the plan. The plan may be modified by the court based on all of the information provided.*

*(2) An individual rehabilitation plan shall do all of the following:*

*(A) Identify the ward's needs in relation to treatment, education, and development, including any special needs the ward may have in relation to health, mental or emotional health, disabilities, or gender-related or other special needs.*

*(B) Describe the programming, treatment, and education to be provided to the ward in relation to the identified needs during the commitment period.*

*(C) Reflect, and be consistent with, the principles of trauma-informed, evidence-based, and culturally responsive care.*

























