

Secure Dispositional Track for Higher-Need Youth (SB 823)

January 29, 2021

Section ____ 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, 14 years of age or older, be committed to a secure youth treatment facility for a period of confinement described in subdivision (b) if:

(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 that a less restrictive, alternative disposition for the ward is unsuitable. In determining this, the court shall consider the recommendations of counsel, the probation department, and any other agency 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.

(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 for the ward shall be determined according to offense-based classifications that are approved by the Judicial Council as described in subdivision (g). 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 California Department of Corrections and Rehabilitation, Division of Juvenile Justice prior to its closure and as set forth in Sections 4950 to 4956, inclusive, of Title 9 of the

California Code of Regulations, 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) In making an order of commitment to a secure youth treatment facility, the court shall receive an individual case plan for the ward that has been submitted to the court by the probation department. The plan shall identify the programming to be provided to the ward during the period of confinement in the facility. The plan may be developed in consultation with a multidisciplinary team of youth service, behavioral health, education, and other treatment providers who are convened by the probation department for this purpose.

(2) When a court makes a commitment order under this section, probation shall place the ward in a facility that can provide programming, treatment, and education that are consistent with the ward's individual case plan.

(e) (1) The court shall, during the term of commitment, schedule and hold a progress review hearing for the ward not less frequently than once every six months. In the review hearing, the court shall evaluate the ward's progress toward rehabilitation and shall determine whether the baseline term of confinement is to be modified. The court shall consider the recommendations of counsel, the probation department and any behavioral, educational, or other specialists having information relevant to the ward's progress in confinement. 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. At the conclusion of the review hearing, the court may order that the ward remain in custody for the remainder of the baseline term or may order that the ward's baseline term be modified downward by a reduction of confinement time not to exceed six months. The court may also modify the commitment order to adjust the placement.

(2) The ward's confinement time shall not be extended beyond the baseline confinement term for disciplinary infractions or other in-custody behaviors. Any infractions or behaviors shall be addressed by alternative means which may include a system of graduated sanctions for disciplinary infractions adopted by the operator of a secure youth treatment facility and subject to any relevant state standards or regulations that apply to juvenile halls generally.

(3) The court shall, at the conclusion of the baseline confinement term, including any modified baseline term, hold a probation discharge hearing for the ward. At the discharge hearing, the court shall review the ward's progress toward meeting the terms of the individual case plan and the recommendations of counsel, the probation department, and any other agencies or individuals having information the court deems necessary. At the conclusion of the hearing, the court shall order that the ward be discharged to a period of probation supervision in the community under conditions approved by the court, unless the court finds that the ward constitutes a substantial risk of imminent harm to others in the community if released from custody. If the court so finds, the ward may be retained in custody for up to one additional year of confinement, subject to the review hearing and probation discharge hearing provisions of paragraphs (1) and (2) and subject to the maximum confinement provisions of subdivision (c).

(4) If the ward is discharged to a program of probation supervision, the court shall determine the reasonable conditions of probation that are suitable to meet the developmental needs and circumstances of the ward and to facilitate the ward's successful reentry into the community. The court shall periodically review the ward's progress under probation supervision and shall make any additional orders deemed necessary to modify the program of supervision in order facilitate the provision of services or to otherwise support the ward's successful reentry into the community. If the ward fails to materially comply with the reasonable orders of probation imposed by the court, the court may order that the ward be returned to custody.

(f) A secure youth treatment facility, as described in this section, shall meet the following criteria:

(1) The facility shall be a secure facility that is operated, utilized, or accessed by the county of commitment to provide appropriate programming, treatment, and education for wards having been adjudicated for the offenses specified in subdivision (a).

(2) The facility 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 population described in subdivision (a) and has been approved for this use as provided in paragraph (3).

(3) The Board of State and Community Corrections shall by July 1, 2023, review existing juvenile facility standards and modify or add standards for the establishment, design, security, programming and education, and staffing of any facility that is utilized or accessed by the court as a secure youth treatment facility under the provisions of this section. The standards shall specify how the facility may be used to serve or to separate juveniles, other than juveniles described in subdivision (a) serving baseline confinement

terms, who may also be detained in or committed to the facility or to some portion of the facility. Pending the final adoption of these modified standards, a secure youth treatment facility shall comply with applicable minimum standards for juvenile facilities in Title 15 and Title 24 of the California Code of Regulations. A county proposing to establish a secure youth treatment facility for wards described in subdivision (a) shall notify the board of the operation of the facility.

(4) In lieu of establishing its own secure youth treatment facility, a county may contract with another county having a secure youth treatment facility to accept commitments of wards described in subdivision (a).

(5) 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.

(g) (1) By July 1, 2023, the Judicial Council shall develop and adopt a matrix of offense-based classifications to be applied by the juvenile courts in all counties in setting the baseline confinement terms described in subdivision (b). Each classification level or category shall specify a set of offenses within the level or category that is linked to a standard baseline term of years to be assigned to youth, based on their most serious recent adjudicated offense, who are committed to a secure youth treatment facility as provided in this section. The classification matrix may provide for upward or downward deviations from the baseline term and may also provide for a system of positive incentives for time served. In developing the matrix, the Judicial Council shall be advised by a working group of stakeholders which shall include representatives from prosecution, defense, probation, behavioral health, youth service providers, youth formerly incarcerated in the Division of Juvenile Justice, and youth advocacy and other stakeholders and organizations having relevant expertise or information on dispositions and sentencing of youth in the juvenile justice system. In the development process, the Judicial Council shall also examine and take into account youth sentencing and length-of-stay guidelines or practices adopted by other states or recommended by organizations, academic institutions, or individuals having expertise or having conducted relevant research on dispositions and sentencing of youth in the juvenile justice system.

(2) Upon final adoption by the Judicial Council, the matrix of offense-base classifications shall be applied in a standardized manner by juvenile courts in each county in cases where the court is required to set a baseline confinement term under subdivision (b) for wards who are committed to a secure youth treatment facility. The discharge consideration date guidelines of the Division of Juvenile Justice that were applied on an interim basis, as provided in paragraph (2) of subdivision (b), shall not thereafter be utilized to determine baseline confinement terms for wards who are committed to a secure youth treatment facility under the provisions of this section.

(h) A court shall not commit a juvenile to any juvenile facility, including a secure youth treatment facility as defined in this section, for a period that exceeds the middle term of imprisonment that could be imposed upon an adult convicted of the same offense or offenses.

875.5. (Continued confinement of persons physically dangerous to the public)

(a) It is the intent of the Legislature to apply Division 2.5, Article 6 (Sections 1800, et seq.) governing extended detention of persons physically dangerous to the public who are served by the Division of Juvenile Justice, to persons physically dangerous to the public who are committed to a secure treatment facility pursuant to Section 875, pending development of a specific commitment process for realigned persons pursuant to (b).

(b) The Governor and the Legislature shall work with stakeholders, including but not limited to: the Division of Juvenile Justice, the Department of State Hospitals, Chief Probation Officers of California, California State Association of Counties, advocacy organizations representing youth, and Judicial Council to develop language by July 1, 2021 to replace Section 876 with a commitment process that ensures the treatment capacity, legal protections and court procedures are appropriate to successfully serve the persons realigned from the Division of Juvenile Justice to the counties by SB 823, Chapter 337, Statutes of 2020.

(c) Effective July 1, 2022, extended detention of persons physically dangerous to the public, who are in a secure treatment facility, shall be governed by the enacted commitment process developed in (b).

876. (Continued confinement of persons physically dangerous to the public)

(a) If a probation department determines that the discharge of a person confined in a secure youth treatment facility from the control of the court at the time required by Section 875 would be physically dangerous to the public because of the person's mental or physical condition, disorder, or other problem that causes the person to have serious difficulty controlling their dangerous behavior, the department shall request the prosecuting attorney to petition the committing court for an order directing that the person remain subject to the control of department beyond that time. The petition shall be filed at least 90 days before the time of discharge otherwise required. The petition shall be accompanied by a written statement of the facts upon which the department bases its opinion that discharge at the time stated would be physically dangerous to the public, but the petition may not be dismissed and an order may not be denied merely because of technical defects in the application.

(b) The prosecuting attorney shall promptly notify probation of a decision not to file a petition.

(c) If a petition is filed with the court and, upon review, the court determines that the petition, on its face, supports a finding of probable cause, the court shall order that a hearing be held. The court shall provide notification of the hearing to the person whose liberty is involved and, if the person is a minor, the minor's parent or guardian, if the minor's parent or guardian can be reached, and, if not, the court shall appoint a person to act in the place of the parent or guardian and shall afford the person an opportunity to appear at the hearing with the aid of counsel and the right to cross-examine experts or

other witnesses upon whose information, opinion, or testimony the petition is based. The court shall inform the person named in the petition of their right of process to compel attendance of relevant witnesses and the production of relevant evidence. When the person is unable to provide their own counsel, the court shall appoint counsel to represent them. The probable cause hearing shall be held within 10 calendar days after the date the order is issued pursuant to this subdivision unless the person named in the petition waives this time.

(d) At the probable cause hearing, the court shall receive evidence and determine whether there is probable cause to believe that discharge of the person would be physically dangerous to the public because of the person's mental or physical condition, disorder, or other problem that causes the person to have serious difficulty controlling dangerous behavior. If the court determines there is not probable cause, the court shall dismiss the petition and the person shall be discharged from the control of the secure youth treatment facility at the time required by Section 875 as applicable. If the court determines there is probable cause, the court shall order that a trial be conducted to determine whether the person is physically dangerous to the public because of their mental or physical condition, disorder, or other problem.

(e) If a trial is ordered, the trial shall be by jury unless the right to a jury trial is personally waived by the person, after the person has been fully advised of the constitutional rights being waived, and by the prosecuting attorney, in which case trial shall be by the court. If the jury is not waived, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than 4 days nor more than 30 days from the date of the order for trial, unless the person named in the petition waives time. The court shall submit to the jury, or, at a court trial, the court shall answer, the question: Is the person physically dangerous to the public because of a mental or physical condition, disorder, or other problem that causes the person to have serious difficulty controlling their dangerous behavior? The court's previous order entered pursuant to this section shall not be read to the jury, nor alluded to in the trial. The person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings. A unanimous jury verdict shall be required in any jury trial. As to either a court or a jury trial, the standard of proof shall be that of proof beyond a reasonable doubt.

(f) If an order for continued detention is made pursuant to this section, the control of the department over the person shall continue, subject to the provisions of this article, but, unless the person is previously discharged as provided in Section 875, the department shall, within two years after the date of that order in the case of persons committed by the juvenile court, or within two years after the date of that order in the case of persons committed after conviction in criminal proceedings, file a new application for continued detention in accordance with the provisions of this section if continued detention is deemed necessary. These applications may be repeated at intervals as often as in the opinion of the department may be necessary for the protection of the public, except that the court shall have the power, in order to protect other persons in the custody of probation to refer the person for evaluation for civil commitment or to transfer the custody of any person over 25 years of age to the county adult probation authorities for placement in an appropriate institution. Each person shall be discharged from the control of the probation department at the termination of the period stated in this section unless the

probation department has filed a new application and the court has made a new order for continued detention as provided above in this section.

(g) An order of the committing court made pursuant to this section is appealable by the person whose liberty is involved in the same manner as a judgment in a criminal case. The appellate court may affirm the order of the lower court, or modify it, or reverse it and order the appellant to be discharged. Pending appeal, the appellant shall remain under the control of the probation department