

# California Judges Concerned About Quick Pace of Governor's Plan to Close Youth Prisons

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By Jeremy Loudenback



Friday is the deadline for California Gov. Gavin Newsom and the state Legislature to reach a deal on how to close the state's youth prison system. Photo courtesy of Calamari Productions

**As a Friday deadline looms** to decide whether California should shut down its long-notorious youth prison system next year, some fear that without safeguards, hundreds of juvenile offenders will be sent to the adult criminal system, where they face longer sentences, more violence and poorer prospects.

Under a proposal by Democratic Gov. Gavin Newsom (D) now being hashed over by the state Legislature, imprisoned youth would move more quickly back to their counties of origin. But the pace of that reform has onlookers concerned.

Among the voices urging caution are juvenile court judges – those making the ultimate decision about where to send youthful offenders found to have committed the most serious and violent crimes.

“It’s so important to bring our young people home,” said Ana España, presiding judge of the San Diego County Juvenile Court. “But if we don’t do it right, it’s not fair to our youth, families or our communities.”

In May, Newsom made an abrupt announcement proposing closure of the state’s Division of Juvenile Justice and permanently closing its last three youth prisons as soon as next year. The move, he argued, would be more humane and save the state millions of dollars over the next few years alone. Newsom’s plan would direct more funds to counties who house their most serious offenders locally or in surrounding counties.

The state Legislature, in the meantime, has proposed keeping the state’s three youth prisons open until 2023. In the meantime, the lawmakers would charge counties an amount that could be hundreds of thousands of dollars for those sentenced as juveniles who end up in California’s state prison system. The Legislature’s plan also calls for a new state Office of Youth Justice that would provide greater oversight of county-run probation systems that would now receive a new influx of money from the state in its transition away from youth prisons.

Both plans would incentivize counties to invest in services and upgraded detention facilities to house youth convicted of offenses like murder and assault closer to home. They would also amend state law to allow young people to stay in local juvenile detention facilities until age 25 for some offenses.

But in the waning days of a harried legislative session reduced in scope by the coronavirus pandemic, the governor and the Legislature now aim to reach an agreement by the end of the week. Without an agreement, the governor’s plan – with a much faster timeline to shutter the three state youth prisons and less oversight of counties – could well prevail.

Some legal experts close to the ongoing negotiations say there is another, perhaps more troubling prospect if an agreement is not reached: Nothing changes, and California youth prisons, long known for high recidivism rates and inhumane conditions, will continue to operate with no closure plan. Similar plans were started and stopped in 2012 under former Gov. Jerry Brown.

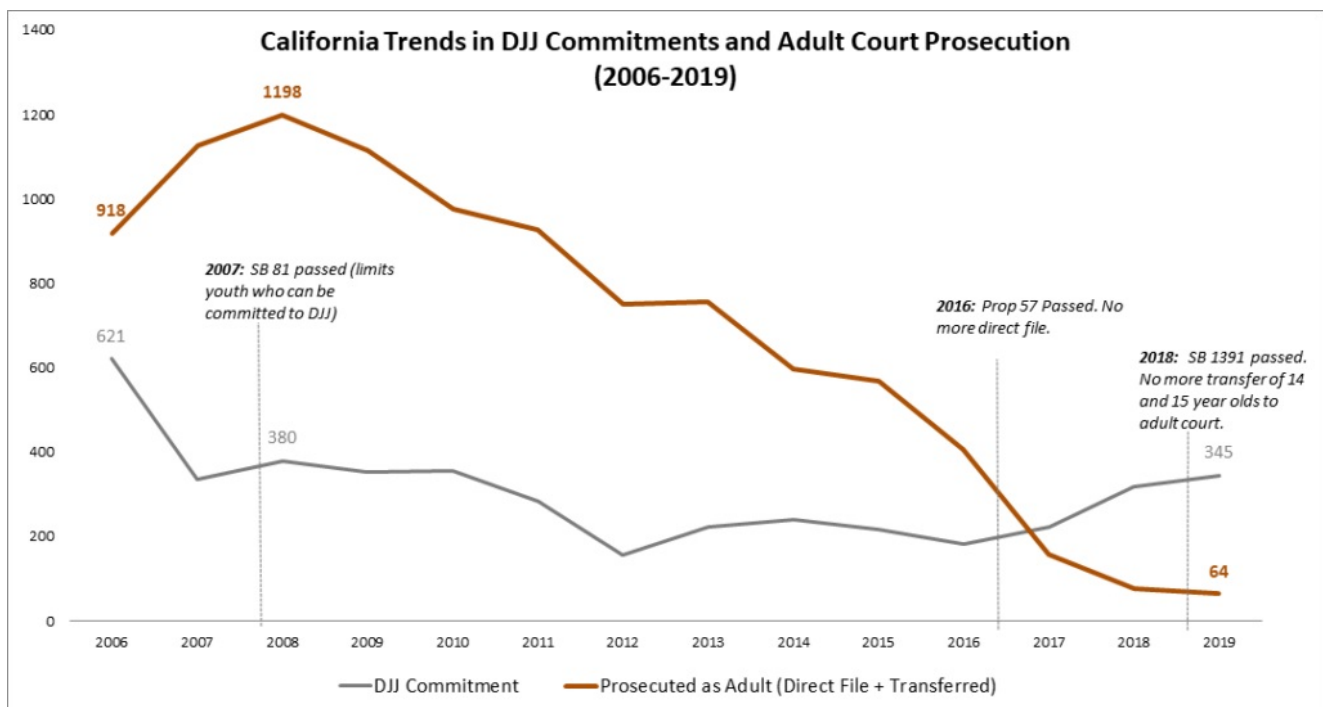
That raises the prospect of further spread of coronavirus cases inside the cramped, adult prison-like facilities. Already 68 youth out of 775 have been infected, along with 42 staff working at the three prisons.

In June, members of the Juvenile Court Judges of California sent the governor a letter, stating their concerns that “a piecemeal approach to reform has the potential to be harmful

to our state’s young people.” The judges said a hasty move to shift around funding and resources could have “unintended and harmful consequences.”

In the letter to the governor, they also questioned whether all counties would be equipped to serve the most serious and violent youth offenders, and said that if judges lack confidence that young people have enough time to rehabilitate in local juvenile facilities, they might be more inclined to send them to the adult system.

That would reverse a nose-diving trend of adult prosecutions in California’s juvenile justice system. In 2008, 1,198 youth were prosecuted in adult court, and by 2019, that number was just 64, according to data from the California Department of Justice.



Number of California youth sent to Division of Juvenile Justice (DJJ) and prosecuted in the adult justice system from 2006-2019. Courtesy of the W. Haywood Burns Institute.

Attorneys who have long worked on reforming the state juvenile justice system said that progress could be already at risk as California leaders plot the end of the state’s youth prison system. Sue Burrell, director of policy and training director at the Pacific Juvenile Defender Center, said uncertainty around the future is creating an uptick in prosecutorial filings of youth as adults.

“We’re hearing all these stories from public defenders that prosecutors are saying if DJJ closes in 2021, there’s going to be no time for rehabilitation,” Burrell said.

San Diego Judge España said she supports the Legislature’s proposal to keep the state youth prisons open for three more years, giving counties more time to prepare to house youth locally and reduce reliance on the state. The best way to ease concerns and prevent a

surge in adult-court filings, España said, is to give the counties more time to create local programs for the most serious offenders, who often have the highest treatment and programming needs.

“The only way that we can meet that concern head on is to build programs that courts and prosecutors can be comfortable with,” she said, “and that’s not something that can happen overnight.”

Lawmakers have built a heavy financial penalty into their plan to discourage counties from sending youth offenders to adult prisons – a provision that is believed to be a first.

Under the terms, a county would have to pay the state a yearly fee of roughly \$12,600 for the duration of a juvenile offender’s often lengthy state prison sentences. That amount would be three times higher if a young person is sent to a privately run prison.

Under state law, judges are supposed to make decisions independent of factors like cost. But Eugene Hyman, a retired Santa Clara County judge who once served in a juvenile delinquency courtroom, said judges would “certainly be aware” of incurring expenses. However, he added, it might only sway judges in “borderline” situations where a judge was weighing two roughly equal alternatives, or in cases involving extreme violence or killing where public safety risk would trump other considerations.

George Gascón, a former district attorney for San Francisco who is now vying for the same position in Los Angeles County, said his office advocated for keeping youth his office prosecuted out of the state youth and adult prison systems. Instead, these youth were kept in local placements or provided diversion opportunities, he said.

But he complained that the state has not done enough to incentivize counties to develop alternatives to costly incarceration. Some counties, like Los Angeles, have been overly reliant on state facilities without doing enough to develop local options – and other counties end up having to subsidize them.

“This should be a wake-up call for us to begin to reimagine the system in a very different way when we’re dealing with children,” Gascón said. The closure of the Division of Juvenile Justice, he noted, “is going to force us as district attorneys to become creative around placement of young people in the community.”

Under the governor’s plan to end the state’s juvenile justice system, there could be even greater variation, depending on geography, in access and the quality of rehabilitative programs for youth. Among the groups most in need of specialized services are those with a history of gang involvement, some sex offenders and young people who suffer from mental illness.

Black and brown youth would be the most likely groups to face the harshest consequences for crimes committed as juveniles.

Currently, 93% of young people in state facilities are youth of color. In 2019, Black youth were 31 times more likely than their white peers to be held at one of California’s youth prisons, according to Laura Ridolfi of the W. Haywood Burns Institute.

Christopher Marshall, chair of the Juvenile Court Judges of California, wrote in an Aug. 12 letter that greater county oversight – included in the Legislature’s proposal but not the governor’s plan – would help avoid justice by geography across the state’s 58 counties.

“The unintended consequences of a hasty realignment plan are certain to fall heaviest on Black and Brown youth, increasing the prison pipeline and perpetuating existing social inequities,” the San Bernardino County judge wrote. “The stakes are too high to rush into a poorly prepared realignment.”

## About the Author

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