

## Possibilities for Decarceration: Juvenile Justice Reform in California

This paper considers the possibilities of decarceration and its consequences in the United States juvenile justice system today. It looks at this question through an in depth analysis of substantial declines in the use of state institutions for juveniles in the state of California. Today, California is blazing the trail of juvenile justice reform, shutting down some of the largest juvenile detention institutions in the world and dramatically reducing the populations of juveniles held in state institutions. In 1995, the eleven training schools in the state, designed for a total capacity of 6,722, reached a population of nearly 10,000 youth. The state system has steadily declined since this peak and as of 2013, the state had closed down all but three of its training schools and the population of juveniles in these institutions was down to about 1,000 (Macallair et al. 2011).

Representatives from key reform organizations and major national newspapers have praised the changes made in California. Sue Burrell (2014) from the Youth Law Center has congratulated the California State Legislature for “changing a broken juvenile justice system and setting it off in a better direction.” A composite report from the John Jay College of Criminal Justice identifies California’s juvenile justice realignment approach as the most promising in a wide field of reform efforts. The authors state, “California realignment was the most successful statewide reform effort to date” (Butts & Evans 2011). An editorial in the New York Times, titled “Some Good News from California’s Justice System,” (2012) asserts, “California did it [juvenile justice reform] the right way: providing generous financing to the counties for therapeutically based juvenile offender programs.”

While there has been an outpouring of enthusiasm for California as a model for the future of juvenile policy, this paper argues that the celebration of the juvenile reforms in the state is premature and misguided. The realignment reforms applauded in the quotes above have allowed an existing set of county-level institutions, that are committed to traditional punitive forms of detention, to expand without oversight or a clear vision of true alternatives to the problems that plagued the state institutions. The paper draws from an extensive newspaper analysis, the text of legislation, bill analyses, state research publications and literature from key juvenile advocacy groups to challenge the notion that the system has positively transformed and that the well being of juveniles has substantially improved.

The paper proposes that while there are opportunities for decarceration today, the terms on which these changes are being made are entrenching the very ideological underpinnings of the system that has reproduced inequalities and abuses of juveniles for over a century. Proponents for the reforms from both sides of the political spectrum concentrate on correcting the individual deficiencies of juveniles instead of targeting structural inequalities as a point of intervention. Alongside this commitment there has been a widespread devolution of power to non-profit and for profit organizations, furthering an emphasis on cost efficiency, diffusing political contention and redirecting demands on the state to demands for particularized services. Thus, while noteworthy alterations are being made, there is evidence that suggests these changes may be short lived and may not improve the lives of juveniles in the way some reformers intend.

The paper begins by situating the case of California juvenile justice into the larger study of mass incarceration in the United States. A background on the reform efforts in

California then sets the stage for a series of sections that draw out the problematic implications of the direction juvenile justice policy is headed in the Golden State. The last portion of the paper turns to a historical perspective to situate the recent policy choices into a larger scale view of the patterns and implications of the reform effort.

### *Larger Penal Field*

The large and growing literature on mass incarceration in the United States has focused on the emergence of the carceral state and how alternatives to the penal path in the United States have at certain key moments in time been passed over and have lost out to punitive forces. A number of authors have shown how alternatives and critiques to the system have been co-opted by punitive interests and how progressive reforms to the system have had implementation difficulties and have resulted in unintended consequences of capacity expansion (Gottschalk 2006; Schoenfeld 2009).

This project builds on the work of explaining the rise of the carceral state and its intransigence, but focuses on the failure of reforms on their own terms, particularly traditionally conceived non-punitive reforms such as treatment, the therapeutic model, diversion and community based alternatives. The empirical findings of this paper suggest that reforms typically viewed as “alternatives” to punitive, penal excess are not necessarily contradictory or oppositional to punitive reforms. By looking at recent examples of the success of reform alternatives to the “get tough” era of the 1990s, the data and information on the ground show that alternatives are not successfully pushing policy in a new direction. Because most alternatives being pursued today and in the past have remained committed to similar ideological commitments to the “get tough” paradigm, they are ill equipped to make fundamental changes to the carceral state.

Focusing on the terms of reforms and their ideological and material connections to the carceral state helps in understanding in a deeper way the politics needed to dismantle the carceral state. Without a more critical evaluation of reform, transformative cycles to the juvenile justice system are bound to keep making the same mistakes and continue to operate in a limited and hegemonic policy sphere. Directing the lens of analysis to reforms gives us a better understanding of fundamental attacks to the system rather than considering anything that looks remotely non-punitive as a true alternative.

### *Reforms of 2007*

In the late 1990s and early 2000s the state empowered the Office of Inspector General to investigate conditions in California Youth Authority (CYA) institutions. The investigations along with media exposés of abuses in the institutions spurred legislative hearings about the conditions of confinement for youth in California. The complaints and documentations of abuse came to a head in the extensive lawsuit brought against the CYA in the *Farrell v. Cate*<sup>1</sup> case in 2004 (Krisberg 2011).

The *Farrell v. Cate* lawsuit was put forth by the Youth Law Center and came out of a culminating list of accusations, abuses and lawsuits filed against the CYA. Beginning in 1999, the Youth Law Center investigated allegations of CYA wards being denied food as punishment. In the same year reports were released that Stanford University was using CYA wards in psychotropic drug experiments (“Teen Inmates”), and Inspector General Steve White released a report on “Friday Night Fights” (where juveniles were forced by guards to fight one another) (Gladstone 1999). Reports were

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<sup>1</sup> Matthew Cate was appointed the inspector general for the California Department of Corrections and Rehabilitation in 2004. He has no relationship to the author.

filed that youth at Paso Robles Youth Correctional Facility were being handcuffed at all times of the day and for several days at a time (Gladstone & Rainey 1999).

The following year, the CYA faced more accusations relating to incidents of sexual abuse and improper use of prescription drugs on detained youth. A comprehensive report on the juvenile justice system's solitary confinement program was released, and Inspector General Steve White testified in a fact finding hearing that CYA was in utter chaos and that it was "impossible to overstate the problem" (Center on Juvenile and Criminal Justice 2013). Additionally, from 1996 to 2003, thirteen detained youth had committed suicide. The mounting evidence led to the 2004 *Farrell v. Cate* case and in the same year Governor Schwarzenegger agreed to a settlement in the lawsuit, which created the mandated implementation of the "Safety and Welfare Remedial Plan" (Krisberg 2011).

The core requirement of the consent decree was that the CYA would reform its system into a rehabilitative model. The state promised to institute structural changes by implementing modern correctional practices (Macallair 2007). The effort to make structural changes led in 2005 to consolidating management by dissolving the CYA as an independent agency and creating the Department of Juvenile Justice (DJJ) within the adult agency, California Department of Corrections and Rehabilitation (CDCR). After the administrative restructuring the state hired outside experts to help redesign a new institutional system. The legislature added \$100 million to the DJJ budget to go towards improving education and mental health services, and to increase staffing ratios (Macallair 2007).

Yet, four years after the consent decree there had been very little compliance with the requirements of the lawsuit (Macallair, Males & McCracken 2009, 17). For example, in the four years following the lawsuit, DJJ had modified its solitary confinement practices from a 23-and-1 standard (23 hours inside a concrete cell with no window to one hour outside the cell) to a 21-and-3 standard (Books Not Bars 2008). Independent investigations by the Inspector General's office reported that the state failed to meet its requirements under the consent decree and to do so it would need to spend \$250,000 per inmate. In 2008, the state allocated \$488 million to be spent on the system despite continuing to fall well short of making adequate reforms to comply with the lawsuit.

In this context, many reform organizations, politicians, and the Governor sought realignment as a viable option to circumvent the Farrell Case requirements and reform the juvenile justice system. The Center on Juvenile and Criminal Justice, Books Not Bars, and the Little Hoover Commission all recommended the state abolish DJJ and invest its resources in "evidence based, regionalized care" (Books Not Bars 2008). The state seemed incapable of reforming the CYA institutions and the reform effort was costing the state a lot of money. Devolving control to counties was framed as the more cost effective choice that would also benefit the treatment of juveniles.

In 2007, the influential Senate Bill 81, California's Youthful Offender Block Grant, was passed and signed into law. The block grants provided capacity building funding to probation departments statewide and continued the movement of youth from state facilities to county control. The grant program provided federal incentive grants to counties to expand their juvenile halls and ranches. More than \$100 million was allocated in the bill to go to counties every year to help them build new facilities or set up new

rehabilitation programs (Sterngold 2007). Counties were given greater than \$100,000 per youth for managing youth in community based programs (National Juvenile Justice Network 2013, 24). The explosive growth of county institutional capacity under the block grant program resulted in the completion of more than 73 new or renovated facilities, ranging from high security juvenile halls to medium security ranches and camps by 2009 (Macallair et al 2011). In this new model of the juvenile justice system, nonpublic sector organizations assumed a dominant role in the actual delivery of services, while the public sector assumed the responsibility of oversight in the delivery of these services (Macallair et al 2011).

Senate Bill 81 shifted the emphasis from a casework model to a brokerage-based model. The older casework model was dependent on probation officers supervising youth in the community. Under the new arrangement, probation departments were directed to expand their ability to contract with nongovernmental organizations (NGOs) (Macallair 2007, 3). Instead of delivering direct services, the brokerage system uses contractual agreements with nonprofit agencies that deliver a variety of services (Macallair 2007, 3).

The realignment legislation of 2007 contributed to reducing California's reliance on state institutions and to instead house and monitor juvenile delinquents at the county level. The following sections look closely and more comprehensively at the consequences of this model of reform and explore explanations for why it has been broadly supported and pursued by key actors in the state.

### *Critiques of Community Based Placement and Realignment*

The political atmosphere was ripe for change in the late 1990s and early 2000s when California was the quintessential example of all the ugly consequences of a “get

tough” boom: overcrowded facilities, widespread documentation of abuses, and a financial crisis. This was not the first time California has found itself as the leader of punishment and corruption in juvenile facilities and in desperate need of change. The political context, political actors and discursive field of the era suggest that the shape of these transformations was limited to a narrow conception of reform. Just like the conservative “get tough” reforms of the 1990s, the “community-based” reform agenda takes the existing social order as a given. This path of reform continues to support a narrow vision of the treatment and handling of juvenile offending.

### *I. Counties are Superior to the State for Providing Juvenile Services*

The project of realignment is predicated on the idea that placing juveniles closer to home is superior for their treatment and well-being, will lower recidivism and will end the subjection of youth to the abuses of large state institutions. The text of SB 81 (2007) states,

The legislature finds and declares that local youth offender justice programs, including both custodial and non-custodial corrective services, are better suited to provide rehabilitative services for certain youthful offenders than state-operated facilities. Local communities are better able than the state to provide these offenders with the programs they require. (30)

Yet, there is little evidence thus far that counties are better at administering services.

Additionally, community based placement has not been found to be better at reducing recidivism in other contexts (Curran 1988). In a panel discussion with two leading actors in the implementation and oversight of juvenile realignment in California, both David Steinhart and Jennifer Rodriguez acknowledged there is no proof that local entities are any better at carrying out services than state institutions (National Center for Youth in Custody 2011). There is evidence that there are huge discrepancies between counties in



terms of which have resources or institutions to care for the mentally ill and other needed services for the juvenile population being shifted to the county level (National Center for Youth in Custody 2011).

Prior research on the experimentation with community-based placement in the mental health deinstitutionalization movement in the late 1970s and juvenile realignment projects have similarly put into question the assumption that counties are superior to the state or uniquely different than the state in providing care. Research suggests that custodial philosophy tends to follow patients or juveniles into the community based system and the community-based programs reproduce rather than replace prison regimes (Klein 1979; Scull 1984; Armstrong 2002).

The Massachusetts experiment of juvenile decarceration in the early 1970s (often the ideal model for realignment efforts today) and its aftermath showed that contrary to conventional wisdom, community programs cloned the punitive style of discipline of large institutions and contradicted the logic that the community itself was part of the treatment process (Armstrong 2002, 357). Geographic proximity as treatment is meaningless when juveniles are still barred from accessing their family and friends and from meaningful entry into the labor market and education system. On the Massachusetts experiment, legal scholar Sarah Armstrong (2002) writes,

The perception that nonprofit services tend to be rehabilitative rather than punitive derives from the logic of understanding the community *as* treatment. Conceptualizing community in this way seems to reject the possibility that what happens in a community program might also be understood as punishment in a formal social control sense. (357)

Indeed “community” has become synonymous with benevolence, treatment and rehabilitation and is held in stark contrast to the brutal depiction of state institutions.

While the county systems in California are not under the consent decree from the Farrell litigation, they are not devoid of some of the exact same troubling problems of abuse. Just one year after the passage of SB 81, Los Angeles County entered an agreement with the Department of Justice to remedy conditions in their probation camps that had been investigated and found to be unconstitutional. The United States Justice Department investigation had found that the camps failed to protect youth from harm and did not provide adequate suicide prevention and mental health services. Additionally, staff were systematically physically abusing youth, probation officers were using pepper spray excessively, there was a high incidence of youth-on-youth assaults, inadequate staffing levels, and inadequate investigations of abuse allegations (Department of Justice 2008). The Los Angeles County Probation Department operates 19 detention camps housing approximately 2,200 post-adjudicated youth. To contextualize, just the camps (not detention halls or other institutions) run by Los Angeles County were about the same size as the entire state institution system at the time the latest realignment reform legislation was passed in 2007.

In February of 2014, the Department of Justice affirmed that plaintiffs suing Contra Costa County for denying special education and related services to disabled youth offenders held in solitary confinement had provided adequate evidence of violations of the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). The lawsuit addressed conditions in the Contra Costa Juvenile Hall, a 290-bed institution, where the county runs a restrictive security program in which juveniles are confined to their cells for most hours of the day and are not given general education or special education services (*G.F., et al. v. Contra Costa County, et al.* 2014).

The legal trouble and abuse scandals in these two counties expose the problematic assumption that moving juveniles to be held in county institutions will improve their care. As a whole, county detention programs are much larger than the constellation of state institutions and they face similar accusations of abuse. The state has chosen the path of least legal resistance, since the Farrell case had become too expensive to comply with, not the path that is necessarily best for the treatment of juveniles.

Since realignment, counties have tended to rely heavily on long-term secure confinement. There have been increases in the use of out-of-state facilities for the youth that previously may have been sent to DJJ and there has been a strain on existing residential treatment options for juveniles with mental health disorders (Dawood 2009). These measured outcomes so far, as well as the active DOJ cases of county level systems, challenge the notion that there is something inherently superior about care or confinement at the county level.

The perception that housing juveniles in the community is naturally better for juveniles has helped to garner support for those with a wide range of interest in juvenile reforms. Upon releasing funding for the block grant, Governor Schwarzenegger (2007) asserted: “These new reforms will shift away from uprooting less-serious youthful offenders from their families and support networks, by investing in programs and services in their local communities.” There were no influential California political actors that disagreed with Schwarzenegger’s statement. Investing in “community services” has been broadly accepted as an improvement for juveniles without much consideration of the type of investment.

The motivation to save money and better the treatment of juveniles in the justice system have been framed as compatible and best achieved through realignment. The chief probation officers in Los Angeles, Sacramento, San Diego and Tuba counties have all agreed that the goals of realignment are “a reduction in juvenile crime, improved services, and reduced costs” (California State Auditor 2012). It has been very successful for the passage and support of realignment to position cost-savings and the welfare of juveniles as synonymous; however, this belies the reality on the ground where these two commitments are not naturally connected. Further, the two may in fact be contradictory. As the Farrell case showed, treating institutionalized juveniles with dignity and a basic level of care costs a great deal of money.

## *II. Institutionalization in Deinstitutionalization*

An ironic and overlooked phenomenon in correctional policy is that significant levels of incarceration may persist in “deinstitutionalized systems” (Melton & Pagliocca 1992, 122). This paper finds that California exemplifies this phenomenon largely through the process of near universal approval of community corrections as a substitute for state correctional institutions. While overall institutional commitments at both the state and county level have declined, institutional capacity at the county level has continued to grow largely because of the types of reform being pursued. A large allocation of funds has gone to counties in the state with little oversight and little time for planning how to reshape local institutions to absorb the youth who would have previously been sent to state institutions. Bolstering the budget of local corrections departments is not effectively shrinking the justice system presence in the lives of youths in the state.

The core of the realignment initiative is the establishment of the Youthful Offender Block Grant (YOBG), which provides funds to counties to deliver custody and care to youth offenders who previously would have been committed to the DJJ and to “enhance the capacity of local communities to implement an effective continuum of response to juvenile crime” (Senate Bill 81, 2007). The block grant gives a \$117,000 per capita subsidy based on each county’s share of all annual state felony juvenile adjudications and their share of the statewide at-risk youth population (Senate Bill 81, 2007). In addition to the YOBG, at least \$100 million in lease revenue bonds from the Public Works Board has been made available to counties for costs related to construction or enhancement of “local youthful offender rehabilitative facilities” (Dawood 2009, 4).

A general breakdown of the allocations of the YOBG for the counties exemplifies how punitive institutionalization is supported and funded in the reform effort as well as other traditional law enforcement tools. As part of the YOBG guidelines, each county submits a Development Plan to the Corrections Standards Authority (now the Board of State and Community Corrections) to detail their plan for spending the grant funds.

The overall greatest proportion of the 2007-8 YOBG was allocated to secure confinement programs for “high end” local youth (Dawood 2009, 17). In the first year of YOBG, 15 counties (including nine of the 14 largest counties in the state) used the grant money to enhance or establish new long-term commitment units within juvenile halls (Dawood 2009, 17). Related to the expansion of secure and punitive institutional options, 28% of counties also used funds to contract out with juvenile halls, camps and ranches, regional facilities, group homes, and out of state and other residential facilities (Dawood 2009, 17). In the same year, 40% of counties used YOBG money to purchase a risk and

needs assessment tool, most all contracting with Assessments.com for the purchase (Dawood 2009, 16). The grant money has also gone towards increasing probation staffing; 55% of all counties (including all of the largest counties in the state) used YOBG in 2007-8 for hiring more probation officers.

The following table shows the core areas of funding requests made in the 58 county development plans in the first year of the YOBG’s implementation. The summary highlights how realignment has resulted in the bolstering and expansion of preexisting county institutions and programs, not a particularly new direction of policy.

Table 1.

<b>YOBG Funds Used for Programs and Services</b>	<b>Number of Counties (out of 58) using funds for service/program</b>
Risk and Needs Assessment tools and evaluations	34
Placements in secure and semi-secure facilities and in private residential care programs	37
Nonresidential dispositions (such as day or evening treatment programs, community service, restitution, and drug-alcohol and other counseling programs)	35
House arrest, electronic monitoring, and intensive probation supervision programs	38
Reentry and aftercare programs	31
Capacity building strategies to upgrade the training and qualifications of juvenile justice and probation personnel	30
Regional program and placement networks, including direct brokering and placement locating networks to facilitate out-of-county dispositions for counties lacking programs or facilities	9
Other programs, placements, services	27

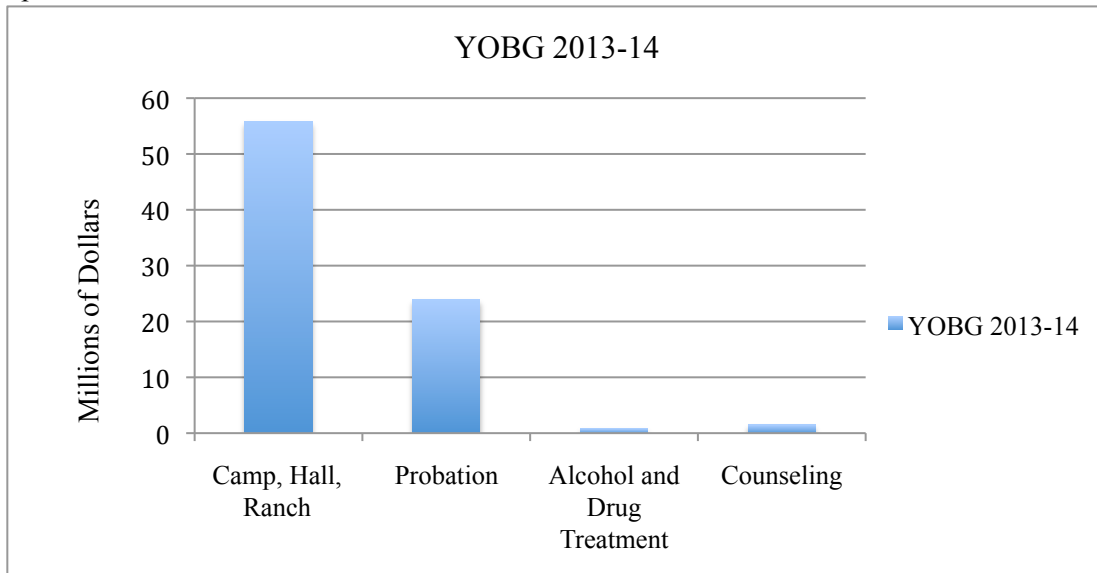
(Dawood 2009)

The majority of counties have invested in institutional capacity expansion or detention alternatives that are strict, controlling and punitive. Additionally, most counties have invested in the newest popular technology for assessing the individual risk of

juvenile offenders in risk-assessment programs. The money has gone to bolstering and expanding preexisting fixtures of the juvenile justice system.

These priorities have not changed since this initial investment of the block grant money. In 2013-14 counties in California made similar funding choices. The following graph shows a side-by-side comparison of detention options (camps, juvenile halls, ranches), probation options (electronic monitoring, house arrest, intensive probation supervision and day/evening treatment centers) and alcohol and drug treatment and counseling. Detention and probation costs amounted to 79 percent of the total grant funding while drug treatment and counseling totaled 2 percent of the total grant funding.

Graph 1.

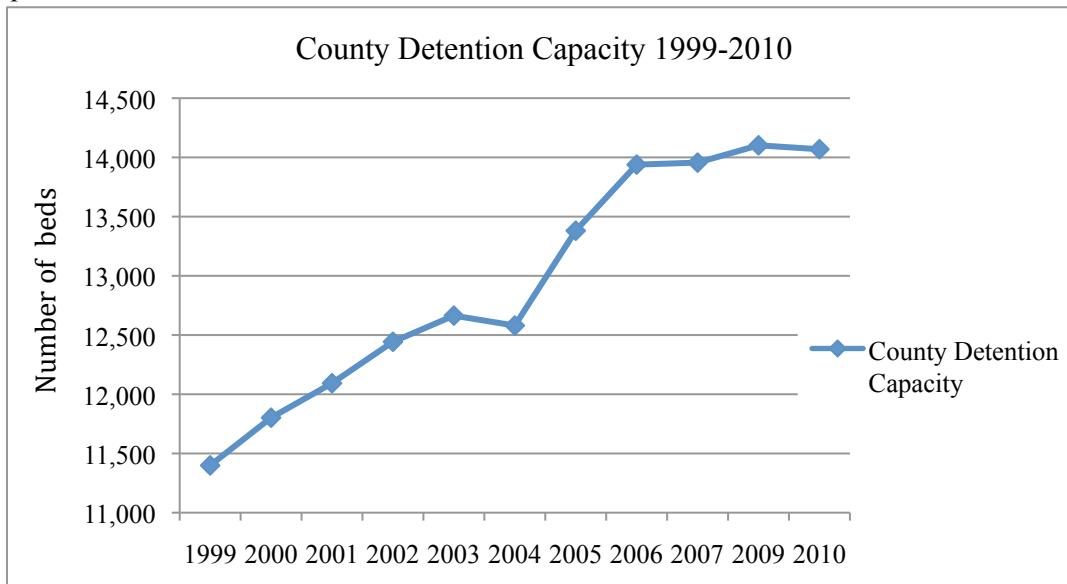


Data compiled from Board of State and Community Corrections, Youthful Offender Block Grant 2013-14: Planned Programs and Expenditures. [http://www.bscc.ca.gov/downloads/YOBG\\_Program\\_Descriptions\\_for\\_Posting\\_on\\_the\\_Web\\_7\\_18\\_2013.pdf](http://www.bscc.ca.gov/downloads/YOBG_Program_Descriptions_for_Posting_on_the_Web_7_18_2013.pdf).

In 1999 the Board of Corrections (BOC) began collecting data from county juvenile probation departments to gauge trends in juvenile detention facilities' design and operation. The following graph shows that the Board Rates capacity (number of beds that

met the standards of the BOC) has continued to grow over time for juvenile halls and camps.

Graph 2.



Data compiled from California Board of State and Community Corrections Juvenile Detention Profile Series: [www.bscc.ca.gov/s\\_fsojuviledetentionprofile.php](http://www.bscc.ca.gov/s_fsojuviledetentionprofile.php) and California Corrections Standards Authority Juvenile Detention Survey: [www.bdcorr.ca.gov/fsod/juvenile\\_detention\\_survey/juvenile%20detention%survey.htm](http://www.bdcorr.ca.gov/fsod/juvenile_detention_survey/juvenile%20detention%survey.htm).

The data on traditional institutional placements suggest that at the county level, where the vast majority of juveniles are handled, the availability and investment in secure confinement has not significantly reduced and since 1996 has increased by about 2,000 beds. In addition to the YOBG, in 2005, Governor Schwarzenegger signed into law the Juvenile Probation and Camps Funding Program, which allocates around \$200 million per year in state funds to county probation departments.

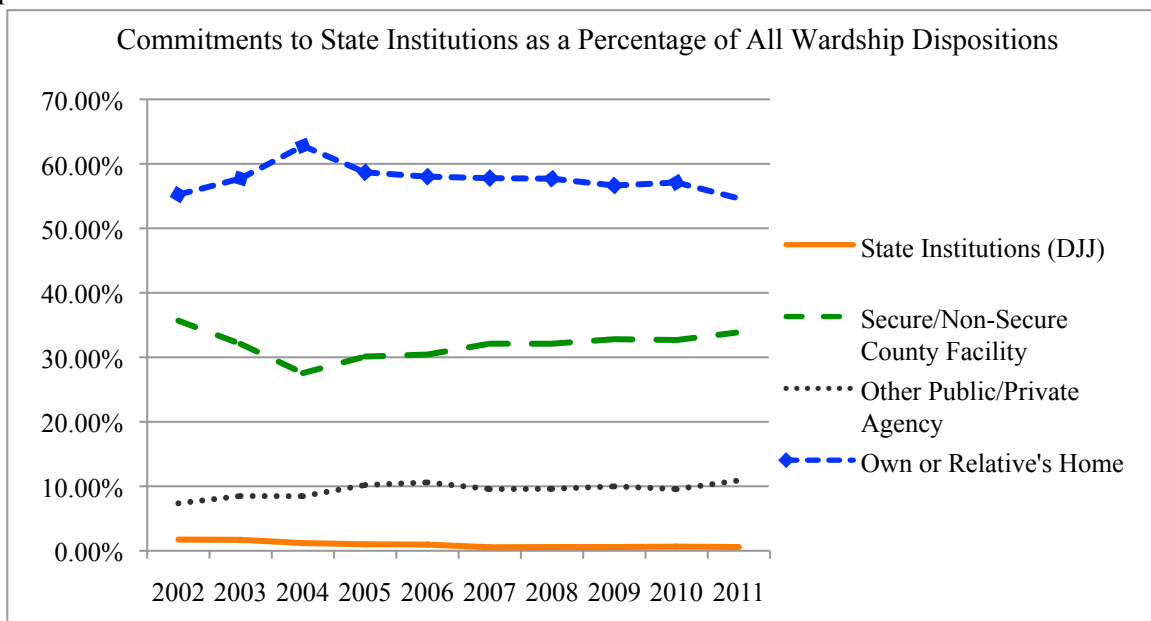
The rated capacity data does not take into account the wide variety of other types and levels of institutionalization and correctional control that counties have expanded such as semi-secure and private residential programs as well as house arrest, electronic monitoring and intensive probation supervision. There has not been a simple transference of the number of beds at the state level to the county level. However, the closer



examination of the diversity of correctional control programs being invested in and expanded as well as a persistent level of capacity of beds at the county level (where most juveniles are confined) contextualizes the decarceration developments at the state level. The reductions at the state level are significant, but in the more expansive picture of juvenile justice policy and institutions, the changes at the state level are somewhat dwarfed by the trends at the county level. California has the highest percentage of juvenile offenders in local custody in the nation and it is two times the national average (Clarke, Meyer & Warner 2009, 28).

As the following graph shows, the percentage of juveniles sent to state institutions was a very small percentage of all wardship<sup>2</sup> dispositions prior to the reforms of 2007. The decline of commitments to state institutions is important, but the large number of juveniles confined in county institutions has largely been overlooked in the reform effort.

Graph 3.



Data compiled from State of California Department of Justice Statistical Reports: [oag.ca.gov/cjsc/pubs#juvenileJustice](http://oag.ca.gov/cjsc/pubs#juvenileJustice)

<sup>2</sup> “Wardship” is when a minor is declared a “ward of the court” and placed under the court’s strict supervision.

### *III. Individualize the Problem*

The previous sections provided preliminary evidence of the material perpetuation and expansion of traditional punitive and abusive programs of juvenile containment. This section provides one example of the ideological continuity between the “get tough” era and the realignment era. A core belief undergirding impulses to punish and detain a large number of juveniles is that juvenile offenders are held solely responsible for the behaviors that are considered criminal; therefore, they are the sole object of intervention. The same belief exists in the justifications for realignment.

The idea of volitional criminology where crime is attributed to individual pathology has dominated the discourse of both political parties and those wishing to promote punishment and rehabilitation. By focusing only on the failings of individuals, attention and solutions are diverted away from structural reform (Scheingold 1991, 6). Without providing structural reform, even the very best efforts to relieve suffering in the criminal justice system may fall short of their more ambitious goals because of the persistence of material deprivations and social conflicts occurring outside of the system (Scheingold 1991, 192; Quinney 1973, 171). Even more concerning, is that when these reforms fail to fundamentally alter the patterns of abuse and injustice in the penal system, their failures are blamed on the “wickedness of human nature” rather than on the structure of the social system (Rusche and Kirchheimer 1968, 207). Placing the solution to delinquency solely on counseling and treatment affirms that “the problem” resides in the individual not in their environment (Klein 1979, 168). Deinstitutionalization and diversion may have the unintended consequence of prolonging the ills they seek to ameliorate by failing to attack underlying social problems (Klein 1979, 181).

A long-standing feature of the California juvenile justice system has been the emphasis on individual failing as both an explanation for delinquency and as a solution to “curing” delinquency. Implicit in the focus on individual failing is a minimization or complete refutation that structural conditions are a worthy explanation or cause of delinquency. Indeed, the first director and chair of the CYA in the early 1940s Karl Holton, once stated, as a justification for the focus on individual behavior modification, “we’ve got to teach the children that they must live in the world as it is” (Deutsch 1950, 118).

The continual emphasis in the debate over reforms for the CYA is on the best strategies for effectively rehabilitating, treating and curing juveniles of their immorality and delinquency. In 2009, the State Commission on Juvenile Justice issued a Juvenile Justice Operational Master Plan in which the authors asserted, “if the right programs are provided to the right youth, enough of them will change to make the effort worthwhile” (Clarke, Meyer & Warner, 5).

Most recently this idea of correcting the individual has manifested in a pilot program passed by the legislature in 2012 for the California Voluntary Tattoo Removal Program, to purchase two medical laser devices for the removal of tattoos for eligible youth that are 14 to 24 years of age. Eligibility requirements for the program include individuals who “may be considered unprofessional” and who are pursuing higher education, seeking employment or workforce training, or have an upcoming job interview (Assembly Bill 1122, 2011).

This is the manifestation of the idea that the challenges to youth getting jobs, being admitted to schools and staying out of trouble all derive from the individual

inadequacies (as precisely defined as the deficient physical appearance) of particular juveniles. What fades from view is a consideration of the social, political and economic obstacles faced by juveniles in the system. In a labor market context where jobs are scarce, correcting an employee's appearance is not an effective way to ensure that juveniles get jobs (Lafer 2004). In 2012, California had the highest rate of unemployment (34.6 percent) of any state in the nation of those aged 16-19 (Maciag 2013).

The underlying emphasis in the realignment policies and the general constellation of policies aimed at intervening in the lives of juveniles are on creating responsible agents rather than transforming structural barriers (Gray 2009, 451). The ascendance of risk discourse concentrates on individual personal deficiencies making economic, social and political structures seem less important as targets of intervention (Gray 2009, 450). One of the major block grant allocations has gone to purchasing risk assessment tools in the majority of counties in California. Six years into realignment and the allocation of YOBG, in 2013-14, more than \$2.3 million was allocated for risk assessment purchases by counties in the state (Board of State and Community Corrections 2014).

The investment and emphasis on risk assessment reflects a belief that the problems of the justice system, such as abuses and excessive use of confinement can be solved by more accurately sorting *who* gets different types of dispositions. The assessment tools systematically catalogue the individual characteristics of juveniles that put them at risk of offending. This method of measuring and listing individual characteristics ignores conditions external to juveniles and contributes to pathologizing juvenile offenders. In this way the reform answer still lies in the individual assessment of

the juvenile rather than looking to broader social and economic structures in the state which have enormous impacts on the quality of life of juveniles.

The lack of commitment to connecting the project of reforming the justice system to structural interventions has meant that some of the most basic social provisions left in the state have continued to be dismantled. Realignment of the adult system has also required a significant investment and expansion of county level probation and detention programs. The pressure on counties to handle a greater number of adults and juveniles through this reform plan is causing counties to further divest in public services. While counties secure money to expand existing jails and build new ones, they are simultaneously seeing dramatic cuts to CalWORKS, child support services, the health system, state and county parks, affordable housing and cash to families (Durand 2012a).

For example in San Mateo County in 2012 the budget included \$500 million for local jail construction and \$13.45 million for supervision and services to the realignment population and at the same time,

significant permanent cuts...including limits on CalWORKs recipients who do not meet federal work requirements to two years of benefits instead of four, eliminating Healthy Families and transferring enrolled children to Medi-Cal; more cuts to the court system; reduction in subsidized child care and suspension of cost-of-living adjustments and extending a 3.6 percent reduction in authorized hours for in-home support services. (Durand 2012b)

Realignment has left counties responsible for numerous social services and with strained budgets it has forced counties to make tough choices about what to fund (Nielsen 2011a).

Without a clear vision of deeper reforms to stem the tide of a bloated carceral system, many counties are predictably choosing the well-trod route of jail expansion, especially since the state is providing funding for these types of investments through specialized block grants. Realignment does not challenge, but instead exemplifies what Loïc

Wacquant describes as “the shift towards the penal management of social insecurity that is everywhere being generated by the social and economic disengagement of the state” (2006, 109).

#### *IV. Role of Non-Profits and Privatization of Public Services*

There is an intimate link between the leadership role of non-profits and individualizing the problem of delinquency. The ascendant role of large philanthropic non-profits in leading the juvenile reform effort contributes to sidelining demands on the state to make broad scale structural changes. Additionally, the treatment discourse of the realignment era also contributes to the growth of private non-profits and for profits that are often seen as best situated to carry out these services.

Non-profits have played a central role in the realignment process in California. The Annie E. Casey and John T. MacArthur foundations in particular, have been influential in promoting realignment reforms and many of the themes of the new transformations to juvenile justice: risk assessment, evidence-based practices, brain science justifications and public-private partnership in the delivery of services. California was one of five model sites for the Annie E. Casey Juvenile Detention Alternatives Initiative (JDAI), the most widespread reform effort in juvenile justice policy today. David Steinhart, the director of the Commonwealth Juvenile Justice Program is one of the most prominent and leading actors in juvenile reform in California. Steinhart played a key role in the design of SB 81, the realignment legislation of 2007 and is now the Senate’s appointee to the Board of State and Community Corrections, which oversees the implementation of realignment (such as voting to approve allocating block grant funding to jail construction for a particular county). Steinhart is also a lead trainer for the Annie

Casey Foundation's JDAI. His predominant leadership role in both Annie Casey and the California reform effort demonstrates one example of the fluidity in ideology and resources between non-profits and the state's chosen reform policies.

The reform vision of the Casey and MacArthur foundations has been thoroughly carried out in California. The goals of closing large state institutions, developing community-based sanctions (such as day and evening reporting centers and home confinement) and using risk-assessment instruments are the core objectives of the Casey Foundation JDAI platform (Annie E. Casey Foundation 2014). These are the predominant features of the realignment effort in the state of California. In addition to these central aspects of the reform effort, the leading large non-profits have also advocated for increased local control to innovate and implement "evidence-based programs."

Counties in California now have a great amount of leeway in choosing what types of investments to make using their block grant money. This has been another opportunity for counties to follow the path of reform led by large non-profits. Annie E. Casey and their model program, the "Missouri Model," has influenced Santa Clara County and Los Angeles County among others in molding the direction of reform chosen by county officials. Santa Clara County has modeled its programs after the Missouri Model, exhaustively promoted by the Casey Foundation, by establishing small youth facilities where "treatment occurs 24 hours a day" and where "therapy sessions and all other activities reinforce messages of individual responsibility and discipline" (Nieto 2008, 22).

Similarly, Camp Kilpatrick of Los Angeles County, one of the best-known juvenile detention facilities in California, was closed in March of 2014 but is scheduled

to be replaced by a new facility designed to follow the Missouri model. The new facility is scheduled to open in 2016 or 2017 and will cost around \$48 million to renovate (funded by realignment grant money). In the Missouri model design, youth will be housed in small group settings and “education, counseling and vocational training will be stressed” (Cohn 2014). Camp Kilpatrick is set to become the model for the entire Los Angeles County justice system (the largest in the nation) and is expected to become a nationwide model (Sagona 2014; Newell & Leap 2013).

There are many consequences of the role of non-profits and their ascendant position in juvenile reform in California. Non-profits, such as Annie Casey and MacArthur bring a lot of resources, research and expertise to a state to help support implementation of reform goals. The community alternatives movement of the 1970s and 1980s was made possible in large part by the private sector and continues to be influential (Lucken 1997, 244). The positive public face of non-profits contributes to public campaigns supporting a policy such as realignment and provides models and practical implementation strategies to policy makers. Non-profits are assumed to be benevolent, well-meaning institutions, particularly in opposition to state institutions that the public and politicians have lost faith in. Private facilities are perceived as a better option than public facilities because they are thought to have better staff ratios, picturesque settings, cost savings and smaller facilities (Shichor & Bartollas 1990, 286). It is politically powerful to devolve control to institutions with such high esteem and that fit well into a political context of anti-tax, anti-public services sentiment.

Yet, extensive research puts into question many of these assumptions (Shichor & Bartollas 1990, 289). On all of the above measures of superior care (small institutions,



high staff to juvenile ratios, cost savings, etc.) there is little evidence private non-profits score better and suggestions they may be *worse* (Shichor & Bartollas 1990, 289). The general assumption that non-profits are benevolent and only in the business of the “soft end” (non-residential treatment programs) of treatment is also inaccurate. Returning to the Massachusetts decarceration experiment of the early 1970s, a major goal and promise of the reforms was that non-profit control of juveniles would necessarily be more benevolent. However, in the aftermath of the reforms, while non-profits monopolized control of “soft end” punishments they also were involved at the “hard end” of punishment in managing closed, secure facilities (Armstrong 2002, 357). The Kilpatrick renovation has been described as following the model of the reforms in Massachusetts decarceration experiment (Cohn 2014). A chief strategy of the Massachusetts experiment was to privatize services for juveniles to get around public service unions. The winners of the reforms were large non-profit and for profit organizations. While institutions closed in Massachusetts, the number of youth in lockups increased and almost 20 years after the decarceration project was implemented were continuing to increase (Bakal 1998, 114, 116).

Non-governmental organizations in the business of even just the “soft end” of juvenile placement options have interests that are discordant with goals for deinstitutionalization. The role of private sector involvement in punishment has been entrepreneurial; private sector efforts have repeatedly responded to the needs of state crises as a way of establishing a hold on the criminal justice system (Lucken 1997). One danger of inviting non-profit and for profit organizations into the juvenile justice system is, “the for profit sector may pressure to institutionalize youths for the sake of profit

alone” (Bakal 1998, 113). The private sector has a vested interest in policies that “widen the net.” Block grants such as the ones established under juvenile realignment in California as well as federal restructuring of health insurance reimbursements contribute to commodifying systems of control (Lucken 1997). Once control becomes commodified, the behaviors and conditions defined as deviant inevitably become broader and more inclusive (Lucken 1997, 252). Per youth payments given to counties in the California realignment<sup>3</sup> contribute to juveniles becoming “a transactionable commodity and a source of income” (Segal & Aviram 1978). The commodification of goods and services contributes to growth in the non-profit and for profit sector and undermines the establishment of a welfare state (DiMaggio & Anheier 1990, 146).

The previous sections detailing the problems with assuming the superiority of county control, the persistence of institutionalization in realignment, the pitfalls of an individualized ideology of juvenile delinquency and the consequences of non-profit leadership all cast a cautionary and a more complicated light on the successes of decarcerating state run institutions in California. The following section will leverage the history of juvenile policy and reform over time in the state to contextualize the changes being made more recently in California. The historical cycles of system transformation suggest that reforms that situate the problem of juvenile delinquency as the individual failings and deficiencies of youth fail in the long run to improve the treatment of juveniles and fail to decrease levels of punitive institutionalization.

#### *Historical Perspective: Not the First Time for Realignment*

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<sup>3</sup> Under Senate Bill 81, counties are given \$117,000 per ward, multiplied by the average daily population for the year for wards who are not committed to the custody of the state (Senate Bill 81).

A goal of the progressive era reforms and the creation of the first juvenile court of law in California was to separate juveniles from adults. In pursuit of this goal, shortly after the 1903 legislation to establish the court in 1909, an amendment to the juvenile court was passed that required all counties to maintain homes for youth under juvenile jurisdiction. The purpose of the amendment and creating institutional capacity at the county level was to move juveniles out of adult facilities (Macallair 2007, 12). More than 300 inmates at San Quentin were under the age of 16 when the juvenile court law was passed (Macallair 2007).

Throughout the United States, the creation of juvenile courts was considered a progressive step forward and a much needed departure and “fix” to the previous system of detaining youth with adults and subjecting them to the same punitive response as adults. Yet, by the 1940s California had the highest juvenile detention rates in the country, where abused and neglected children were being held indiscriminately with “delinquents” (Macallair 2007). In 1942, the newly purposed state-run reform schools fell into the same pattern as the predecessor institutions with the suicides of two young men at Whittier and Preston (Whittier State School closed in 2005 and the Preston School of Industry remains open today). The scandal created the impetus to again reorganize the control of the schools. Governor Earl Warren created a new agency, the California Youth Authority (CYA) to control the three state run prisons, believing that a more modern, centralized style of management would finally be the key to ending decades of abuse and scandals (Macallair 2007, 14).

The trajectory from the county build up to the creation of the CYA offers a cautionary note in the promises of realignment. Changing the location of where juveniles

were held neither solved “delinquency” nor the abuses and excesses of a system of incapacitation. Also, when problems arise in a devolved system, a likely response, like the one of the 1940s, is to centralize control and build up the very institution which is again being attacked as the source of the problem in juvenile justice policy in California. Further, the continual turn to better and newer strategies for how to manage youth was not incompatible with the birth of the CYA. This suggests that reinvigorating principles of reformation, rehabilitation and treatment do not necessarily undermine the use of large state institutions. In fact, the same justification for *closing* state institutions in 2007 was used in 1941 for *creating* the CYA.

The main purpose of the CYA was “social protection” (Lemert 1970, 49). When Governor Earl Warren signed into law the Youth Authority Act of 1941 he declared it, “one of the greatest social experiments ever undertaken in this state” (Deutsch 1950, 115). The act gave CYA supervision over all delinquent children under 21 years of age, control over state reform schools and power to assist county and city authorities to set up local delinquency prevention and treatment programs (Deutsch 1950, 115). Karl Holton, the first CYA chairman and director, took direct aim at the large reform schools, declaring he would never build another Preston or Whittier (Deutsch 1950, 116). Instead Holton pioneered community coordinating councils and the proliferation of forestry camps based on a non-punitive philosophy for delinquent boys. Conceptualizing the problem of abuses as a product of size and institutional philosophy, these alternatives were supposed to be small, camp-like schools. Yet, already by 1950, all of the new camps exceeded the design of 50-60 youth facilities, institutionalization rates did not decline and abuse scandals continued (Deutsch 1950).

Holton promoted benevolent rhetoric and goals of the juvenile justice system, but he did not challenge structural forces and maintained that the problem with delinquency existed in the deficient behavior of boys. Therefore, much like the reforms today, the solution was to find better techniques to modify the behavior of juvenile delinquents. Thus, the reforms were still imbued with a racial, classist philosophy of the core problem of delinquency. The emphasis on rehabilitation and “non punitive philosophy” was undermined by this individualistic ideology. This type of reform ultimately expanded institutionalization, pathologized criminality, distracted from structural demands on the state and continued abuses and the marginalization of youth.

Holton’s reforms did not resolve the problems of abuse scandals. In 1947, California received nationwide publicity from exposés of the destructive conditions of detention in the state (Lemert 1970, 91). In response, California developed a commission to address the problem. In 1949, the California Special Crime Study Commission on Juvenile Justice published recommendations for expanding CYA powers in treatment and prevention aspects of juvenile and youth delinquency. Yet again, the solution was to improve upon techniques of behavior modification and reshape not eliminate state control over the lives of juveniles. Expansion of control was the solution despite the fact that in 1952 the Governor’s Advisory Committee on Children and Youth, funded by the Rosenberg Foundation, reported that 41% of juveniles in California were being unnecessarily detained (Lemert 1970, 91).

In the 1960s under the leadership of Allen Breed, “the CYA pioneered work on offender classification, expanded vocational and educational programs, virtually created the enterprise of reentry, prevention, and embarked on a major program to subsidize

communities to treat youthful offenders at the local level” (Krisberg 2011). California was the leader in these innovations and professionals from around the world came to the state to learn about them (Krisberg 2011). In 1961 the CYA piloted the Community Treatment Program, which pushed to place wards in community settings. But, the outcome was an increasing use of detention to “treat” those who failed in community programs (Klein 1979, 150). The program was promised to be cheaper and more effective and was lauded by President Johnson’s Commission on Law Enforcement and the Administration of Justice Commission in 1967. However, the program was punitive, overall more costly and did not reduce rates of institutionalization.

Despite the great promise of the reforms, population numbers continued to rise which perpetuated the bad conditions of the institutions (Macallair 2007). By the mid 1960s, it was clear that the CYA did little to improve the institutional life experienced by juveniles and the number of detained juveniles continued to grow. At this time counties could commit juveniles to the CYA without bearing any financial or managerial burden (Macallair 2007, 14). Almost identical to the realignment bill passed in 2007, in 1965 California pioneered an initiative to prevent the convenience of state transfers. In 1965 the state passed the Probation Subsidy Act, which financially incentivized counties to maintain youth at the local level. The legislation worked for shifting control and between 1965 and 1976 commitments to state institutions significantly declined allowing the state to close three state institutions (Macallair 2007, 14).

The Probation Subsidy Act came under attack from conservative critics and law enforcement interest groups. Both actors claimed the realignment was too lenient and referred to the subsidies as “blood money” (Warren 2010). In response, the probation

subsidy program was replaced with a system of direct county payments that did not mandate counties to reduce correctional commitments. Essentially the replacement wiped away the heart of the subsidy program making it ineffectual.

The Probation Subsidy Act did not challenge the punitive aspects of the justice system or in any way work to fundamentally alter the patterns of juvenile justice policy. Much like the reforms today, it was primarily a budget-centric reform that was intended to move youth housed at the state institutions to counties. Consequently, it did not institutionalize or even organize any sort of resistance to the punitive policies that flowed out of the legislature in the wake of the subsidy act's failure.<sup>4</sup> From 1988 to 2013 California initiated 200 new pieces of legislation that increased punishment (Ah Kwon 2013, 40).

With the erosion of the subsidy program and the 1980s conservative tide that took over juvenile justice policy, state controlled populations rose again. Huge disparities between counties in numbers of commitments developed again and by 1995 the population of the CYA reached an all-time high. The eleven training schools in the state, designed for a total capacity of 6,722 reached a population of over 10,000 youth (Macallair 2007).

The most recent efforts at realignment begun in 1996 are still ongoing, thus it is difficult to determine the extent to which they will repeat the failures of the past.

However, it is already evident that these reforms do not take direct aim at the punitive

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<sup>4</sup> Proposition 8, the Victims' Bill of Rights passed in 1981. The Bird court was dismantled through the decade. In 1987 a database of gang suspects, CALGANG was established and in 1988 California's Street Terrorism Enforcement and Prevention Act (STEP) passed. In 1990 the state passed Proposition 115 establishing life without the possibility of parole for juveniles. And, at this time the state launched the largest prison-building project in the history of the world.

policies of the 1980s and 1990s and in fact, realignment has been compatible with the passage of punitive policies that expand state control over the lives of juveniles.

In 1996, the legislature passed Chapter 6, Statutes of 1996 (SB 681, Hurtt), which established a sliding scale fee to counties committing wards to the state. Under this arrangement, counties were required to pay a share of the state's costs to house each ward sent to DJJ (then called the Department of the Youth Authority), with a higher share of costs paid for lower-level offenders than for higher-level offenders. Senate Bill 681 was designed to incentivize counties to manage less serious offenders locally and decrease state costs (Legislative Analyst's Office 2012).

The fiscal incentives of this policy have worked, much like they did in the passage of the 1965 Probation Subsidy Act, and there has been a steady decline of commitments to state institutions since 1996. Unfortunately, the reforms in 1996 did not curtail the trend of seeking harsher and more punitive policies for juveniles. In 2000 a ballot initiative, Proposition 21, titled the Gang Violence and Juvenile Crime Prevention Act (GVJCPA), passed and made significant changes to the juvenile justice system. The act increased adult transfers for juveniles, expanded the death penalty and life without parole sentences, expanded three-strikes law, prohibited sealing juvenile records in a variety of instances, rejected rehabilitation, promoted zero tolerance policies for gang crimes, instituted gang enhancement measures to increase sentences, lowered criminal responsibility for a number of charges to 14 years of age and increased detentions before hearings. The proposition was drafted by the California District Attorney Association (the new laws substantially increased prosecutorial power), corporate donors, and an army of petitioners (Raymond 2000, 311).



While the state has successfully closed state institutions, it also continues to expand and create policies that increase penalties and criminalization of juvenile behaviors. In 2001 Governor Gray Davis spent \$12 million to create and run Turning Point Academy, a six-month residential program offered through the California National Guard Camp at San Luis Obispo. The boot camp-type Academy was established to house 160 first time offenders, who have committed a firearms related offense at school or at a school event off school grounds (Children’s Advocacy Institute 2005).

In the 2011-12 school year, there were at least 19 school districts in California that spent more money on school security than on counselors, psychologists, and social workers (Community Rights Campaign 2014). The ratcheting up of a police presence in the school districts across the state resulted in 2009-10 to over 20,000 students being arrested or given a police ticket at school. Over 90% of these youth were students of color. Los Angeles Unified School District has its own police department with over 510 officers and the San Diego Unified School District’s police department has 75 police officers who are armed with AR-15 assault rifles (Community Rights Campaign 2014, 5).

Beyond the major 2000 GJVCPA law, there has been an additional constellation of policies that have increased sanctions and punishment for gang related offenses which juveniles typically are most effected by.<sup>5</sup> Gang injunctions and increased penalties for gang related offenses are among the harshest ways that California law handles juvenile offenders. Further, the fear of gangs and the history of legislation passed to solve the gang problem are closely tied into the passage of “get tough” laws. The persistent passage of punitive gang laws signals the perpetuation of the “get tough” ethic amidst an

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<sup>5</sup> The state has passed seven pieces of legislation targeted at gang members between 2009 and 2013.

emerging era of realignment and reform. Thus, while the population of juveniles is significantly shifting away from state institutions, the state's response to juvenile offending is largely going unchanged.

The major takeaway of the historical perspective on realignment as a reform strategy is that despite the way in which it has been positioned as an “alternative” to the consequences of punitive excess, there is really no ideological or institutional work done in realignment that effectively contradicts or challenges punitive policies. Therefore, it is ill positioned to correct for the abuses and problems inherent in the juvenile justice system. Realignment reorganizes the funding for and the geographic location of juveniles processed in the justice system. To effectively dismantle punitive state institutions for the long run and holistically improve the lives of juveniles, reforms should look beyond different forms of behavior modification techniques and types of institutionalization and consider changes to the broader social, political and economic context in California.

A more robust politics is needed to effectively combat the abuses and negative outcomes of the juvenile justice system, a vision that looks outside of the bureaucratic design of the system. The politics of the reforms in California are limited and as a reform agenda demonstrate the narrow political space that exists for reconfiguring the state so that the problems plaguing the justice system can be solved.

### *Conclusion*

The weak politics of realignment as a true reform force highlight the limitations of the political landscape and the beleaguered position of advocates for prison reform. Realignment has been effective in reducing the incarceration rate at the state level and has contributed to the decline of abuse riddled state institutions. Yet, only a very small

percentage of California's youth were sent to state level institutions before realignment since most all juveniles processed in the system were already handled at the county level. California follows a nationwide trend of arresting fewer juveniles and therefore has seen declines in all levels of institutionalization across the state. As an overall restructuring and reform of the system, the state has made little positive improvement. The state reacted to a court mandate by moving juveniles to a different level of jurisdiction (where the same abuses plague county institutions). The state has continued to invest in bed capacity, if only beds that are geographically closer to a youth's home. The predominance of an individual pathology ideology coupled with the leadership of large non-profits conforms to a politics that does not explore broader considerations of solutions to the problems with the juvenile justice system. These two central features of the reforms persist in focusing on individual rather than structural interventions and are compatible and supportive of punitive policies.

There is momentum and interest in the state for correcting the grossest problems of the California juvenile justice system. The well-intentioned goals of reducing abuses and improving the treatment of juveniles can only be achieved if policymakers and reformers break out of the paradigm of juvenile justice policy that has dominated the state since the system's inception. The historical view of the reforms suggests that as long as the state invests its resources in the newest technologies or programs of correcting the individual juvenile offender it will continue to fail in these greater goals. The greatest impact on reducing institutional rates in the state has been to reduce the number of juveniles that are arrested or referred to the juvenile justice system. The solution has not been and will not be to relocate and redesign institutional confinement, a strategy that has

failed many times over in the past. In order for juveniles to be safe, productive, responsible members of society, as most all of the reform rhetoric declares is the goal, the social structure they are part of must make this possible.

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