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## Turning Troubled Teens Into Career Criminals: Can California Reform the System to Rehabilitate Its Youth Offenders?

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## COMMENT

# TURNING TROUBLED TEENS INTO CAREER CRIMINALS: CAN CALIFORNIA REFORM THE SYSTEM TO REHABILITATE ITS YOUTH OFFENDERS?

### INTRODUCTION

In the 1970s, the California Youth Authority (“CYA”) was known as an international leader in the treatment of juvenile delinquents.<sup>1</sup> CYA director Allen Breed had spent his professional career working with children, and he led a system that was characterized by its efforts to understand and address the roots of juvenile delinquency.<sup>2</sup> But times have changed for the CYA.<sup>3</sup> Attempts to rehabilitate have all but disappeared, only to result in one of the highest recidivism rates in the country.<sup>4</sup> California’s juvenile justice system does not provide its wards

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<sup>1</sup> Karen de Sa’ & Brandon Bailey, *Where Hope is Locked Away*, SAN JOSE MERCURY NEWS, Oct. 17, 2004, at A1 [hereinafter de Sa’ & Bailey, *Where Hope is Locked Away*]. In 2005, as part of Governor Schwarzenegger’s reorganization plan, the CYA’s name was changed to the Division of Juvenile Justice. Although it has been so named for over two years, this Comment will refer to the agency as the “CYA” because that is how it is known in the field.

<sup>2</sup> *Id.*

<sup>3</sup> See Complaint for Injunctive and Declaratory Relief, *Farrell v. Harper*, 2003 WL 24034136 (Super. Ct. Alameda County, filed Jan. 16, 2003) (No. RG 03079344) [hereinafter *Farrell Complaint*].

<sup>4</sup> Cheri Panzer, Comment, *Reducing Juvenile Recidivism Through Pre-Trial Diversion Programs: A Community’s Involvement*, 18 J. JUV. L. 186, 191 (1997); Brandon Bailey & Griff Palmer, *High Rearrest Rate*, SAN JOSE MERCURY NEWS, Oct. 17, 2004 at A1 [hereinafter Bailey & Palmer, *High Rearrest Rate*].

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with the services they are entitled to by law.<sup>5</sup> The statutory mission of the CYA, codified in California Welfare and Institutions Code section 1700 ("section 1700"), requires the juvenile justice system to replace all retributive punishment with training and treatment, with the goal of rehabilitating youth who have committed public offenses.<sup>6</sup> Moreover, the recent consent decree in *Farrell v. Harper* mandates that the CYA provide a range of rehabilitative services to the ward population.<sup>7</sup>

Despite the statutory mandate and the judicial interpretation of the law requiring such services,<sup>8</sup> wards committed to the CYA are not being rehabilitated.<sup>9</sup> Over the last decade, the practices and conditions at the juvenile institutions throughout the state have been challenged in court,<sup>10</sup> youth advocates have called for change,<sup>11</sup> legislators have considered statutory alternatives,<sup>12</sup> and the media have given the situation considerable attention.<sup>13</sup> In the face of the current institutional and operational crisis in California's juvenile facilities, no one suggests that either section 1700 or the *Farrell* consent decree can be enforced without additional legislative action. Bringing the CYA into legal compliance with section 1700 and the *Farrell* consent decree will require new legislation that incorporates some of the elements of proposed California Senate Bill 609 ("S.B. 609") and also adopts new initiatives that have

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<sup>5</sup> *Farrell* Complaint, *supra* note 3 (alleging that conditions at CYA facilities are illegal, inhumane, discriminatory, and punitive, in violation of a statutory mandate to rehabilitate offenders).

<sup>6</sup> CAL. WELF. & INST. CODE § 1700 (West 2000).

<sup>7</sup> Consent Decree, *Farrell v. Harper*, (Super. Ct. Alameda County, filed Nov. 14, 2004) (No. RG 03079344) [hereinafter *Farrell* Consent Decree], available at <http://apps.alameda.courts.ca.gov/fortecgi/fortecgi.exe?ServiceName=DomainWebService&PageName=itree&Action=16207036>.

<sup>8</sup> *People v. Daniels*, 51 Cal. App. 520, 523 (Cal. Ct. App. 1996) (citing *People v. Pride*, 3 Cal. 4th 195 (Cal. 1992)).

<sup>9</sup> *Farrell* Complaint, *supra* note 3, at 2.

<sup>10</sup> *Farrell* Complaint, *supra* note 3.

<sup>11</sup> Sue Burrell & Jonathan Laba, Forum Column, *Violence-Prone Youth Authority Still Fails Its Children, Its Taxpayers*, SF DAILEY JOURNAL, Apr. 26, 2006, at 8.

<sup>12</sup> See, e.g., S.B. 1589, 99th Leg. (Cal. 2005); S.B. 1373, 99th Leg. (Cal. 2005); S.B. 795, 99th Leg. (Cal. 2005); S.B. 742, 99th Leg. (Cal. 2005); S.B. 609, 99th Leg. (Cal. 2005).

<sup>13</sup> de Sa' & Bailey, *Where Hope is Locked Away*, *supra* note 1; Bailey & Palmer, *High Rearrest Rate*, *supra* note 4; Karen de Sa' & Brandon Bailey, *Chief Vowing Major Change*, SAN JOSE MERCURY NEWS, Oct. 17, 2004, at A1; Brandon Bailey, *Learning is a Low Priority*, SAN JOSE MERCURY NEWS, Oct. 18, 2004, at A1 [hereinafter Bailey, *Learning is a Low Priority*]; Brandon Bailey, *How It's Done Elsewhere*, SAN JOSE MERCURY NEWS, Oct. 18, 2004, at A1; Karen de Sa', *A Failure to Deliver Treatment*, SAN JOSE MERCURY NEWS, Oct. 19, 2004, at A1 [hereinafter de Sa', *Failure to Deliver Treatment*]; Brandon Bailey, *Sentences in Limbo*, SAN JOSE MERCURY NEWS, Oct. 20, 2004, at A1; Karen de Sa', *Left Adrift on Parole*, SAN JOSE MERCURY NEWS, Oct. 21, 2004, at A1; Karen de Sa', *An Opportunity "To Be Human"*, SAN JOSE MERCURY NEWS, Oct. 22, 2004, at A1 [hereinafter de Sa', *Opportunity "To Be Human"*].

been successful in other jurisdictions.<sup>14</sup>

This Comment proposes a statute mandating institutional reform of California's juvenile system, a necessary legislative step toward enabling the CYA to fulfill its statutory mission and judicial mandate. Changes originally proposed in California S.B. 609 are the first steps on the way to making rehabilitation a reality in the CYA. The approaches found in that bill, along with those found in other legislation, will enable the CYA to comply with its legislative mandate and with the *Farrell* consent decree.

Part I of this Comment reviews the CYA's function, process, and procedure.<sup>15</sup> Part II discusses the CYA's statutory requirements, based on the legislative history and judicial interpretation of the pertinent statutes.<sup>16</sup> Part III addresses the CYA's failure to implement its own mission to rehabilitate.<sup>17</sup> Part IV summarizes the result of the most recent judicial challenge to the CYA's failure to rehabilitate, the *Farrell* consent decree.<sup>18</sup> Part V analyzes the methodology of two states that have been more successful than California in rehabilitating juvenile delinquents.<sup>19</sup> Part VI suggests a legislative solution to the CYA's failure to effectuate its statutory mission.<sup>20</sup>

## I. BACKGROUND

Welfare and Institutions Code section 1700 created the CYA in 1941.<sup>21</sup> The CYA supervises wards from ages twelve to twenty-five who are committed to it by the juvenile court system.<sup>22</sup> The CYA oversees one of the largest youthful offender populations in the country.<sup>23</sup> There are currently over 4,000 males and 200 females housed in its institutions and camps and approximately 4,000 wards living in the community under parole.<sup>24</sup> California's juvenile correction system also incarcerates

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<sup>14</sup> S.B. 609, 99th Leg. (Cal. 2005).

<sup>15</sup> See *infra* notes 21-43 and accompanying text.

<sup>16</sup> See *infra* notes 44-64 and accompanying text.

<sup>17</sup> See *infra* notes 65-155 and accompanying text.

<sup>18</sup> See *infra* notes 156-168 and accompanying text.

<sup>19</sup> See *infra* notes 169-216 and accompanying text.

<sup>20</sup> See *infra* notes 217-309 and accompanying text.

<sup>21</sup> CAL. WELF. & INST. CODE § 1700 (West 2000).

<sup>22</sup> California Legislative Analyst's Office (LAO), *A Review of the California Youth Authority Infrastructure* (May 2004) [hereinafter LAO, *Review of CYA Infrastructure*], [http://www.lao.ca.gov/2004/cya/052504\\_cya.htm](http://www.lao.ca.gov/2004/cya/052504_cya.htm).

<sup>23</sup> *Id.*

<sup>24</sup> California Department of Corrections and Rehabilitation, FAQs About the DJJ <http://www.corr.ca.gov/DivisionsBoards/DJJ/about/faqs.html> (last visited Oct. 1, 2006).

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about 100 to 500 offenders in large institutional facilities, an approach often referred to as the “training school” model.<sup>25</sup>

The juvenile court system refers wards to the CYA as provided by Welfare and Institutions Code section 1735.1.<sup>26</sup> The juvenile court does not, however, issue sentences in the same manner as for adults.<sup>27</sup> As early as 1975, the Supreme Court of California interpreted the statutory scheme for juvenile court as containing a sentencing hierarchy that attempts to avoid commitment to the CYA.<sup>28</sup> As a result, the vast majority of juveniles cited by the police are not committed.<sup>29</sup>

Wards sent to the CYA are released based on a recommendation by the Youth Offender Parole Board (“YOPB”), rather than being sent for a predetermined period.<sup>30</sup> When a ward first arrives at a CYA institution, he attends an initial hearing at which the YOPB determines the appropriate type of program and sets a tentative release date.<sup>31</sup> Based on behavior and completion of the program goals set by the Board, the ward may have his initial release date extended.<sup>32</sup> Eventually, the ward is either paroled upon YOPB recommendation or – if he is too old to complete his sentence in the CYA’s custody – transferred to the California Department of Corrections.<sup>33</sup>

<sup>25</sup> Richard Mendel, *Less Hype, More Help: Reducing Juvenile Crime, What Works—and What Doesn’t* at 49, American Youth Policy Forum (2000).

<sup>26</sup> CAL. WELF. & INST. CODE § 1731.5 (West 1996). When a juvenile is arrested, the officer decides to either release him or take him to juvenile hall. The county probation department can then either charge or release him. The probation department or district attorney either files a petition with the juvenile court or requests that the case be sent to adult court. If the court hears the petition, it can be sustained (similar to a conviction in adult court) or denied (similar to an acquittal). The Center on Juvenile and Criminal Justice, *Intro to California’s Juvenile Justice System*, <http://www.cjcj.org/jjic/intro.php> (last visited April 20, 2007).

<sup>27</sup> LAO, *Review of CYA Infrastructure*, *supra* note 22.

<sup>28</sup> *In re Aline D.*, 14 Cal. 3d 557, 564 (1975). If a juvenile court sustains a petition, the judge has the following placement choices: at home under supervision (probation), at a foster care or group home, at a treatment facility, or committing the child to the CYA as a ward of the state. Commitment is reserved for the most serious cases. *People v. Carrie W.*, 89 Cal. App. 3d 642, 646-647 (Ct. App. 1979).

<sup>29</sup> The Center on Juvenile and Criminal Justice, *Intro to California’s Juvenile Justice System*, <http://www.cjcj.org/jjic/intro.php> (last visited April 20, 2007). Of every 1,000 youths detained by the police, only one is actually referred to the CYA for commitment.

<sup>30</sup> California Department of Corrections and Rehabilitation, Mission and Justice Philosophy, [http://www.cdcr.ca.gov/Divisions\\_Boards/DJJ/About\\_DJJ/FAQs.html#q7](http://www.cdcr.ca.gov/Divisions_Boards/DJJ/About_DJJ/FAQs.html#q7) (last visited Sept. 12, 2007).

<sup>31</sup> California Department of Corrections and Rehabilitation, FAQ’s About the DJJ, <http://www.corr.ca.gov/DivisionsBoards/DJJ/about/faqs.html#q7> (last visited April 20, 2007). The recommendations in this Comment refer to both female and male wards in the CYA’s care, but for ease of understanding, the masculine pronoun will be employed for the remainder of the Comment.

<sup>32</sup> *Id.*

<sup>33</sup> California Department of Corrections and Rehabilitation, Mission and Justice Philosophy,

The general purpose of juvenile court law is set out in California Welfare and Institutions Code section 202.<sup>34</sup> It defines the court's role with respect to its relationship with the juveniles under its jurisdiction.<sup>35</sup> Section 202 is broad enough to encompass all juveniles within the court's jurisdiction, not only those so situated as a result of delinquent conduct.<sup>36</sup> Thus, this statute provides the framework for and the context within which section 1700 should be evaluated.

Both the plain language of the statute and the judicial interpretation of section 202 indicate that juvenile law is designed to rehabilitate and treat rather than punish.<sup>37</sup> Section 202(b) applies to both juvenile delinquents and minors in need of protective services and varies only slightly in its treatment of these two groups.<sup>38</sup> Under section 202(b) the legislature requires California to hold juvenile delinquents accountable for their behavior and prevent them from harming the public, but it does not require the same for minors in need of protective custody.<sup>39</sup>

Section 202(b) further notes that the guidance provided by the juvenile court may include "punishment that is consistent with the rehabilitative purposes of this chapter."<sup>40</sup> Section 202(e) explicitly provides, however, that the word "punishment" means imposing sanctions such as fines, probation, community service, or commitment to the CYA, not retribution.<sup>41</sup>

The plain language of section 202(b) indicates what the Legislature was trying to achieve: "when the minor is no longer a ward of the juvenile court, the guidance he or she received should enable him or her to be a law-abiding and productive member of his or her family and the community."<sup>42</sup> California legislators deliberately framed the treatment of

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[http://www.cdcr.ca.gov/Divisions\\_Boards/DJJ/About\\_DJJ/FAQs.html#q7](http://www.cdcr.ca.gov/Divisions_Boards/DJJ/About_DJJ/FAQs.html#q7) (last visited Sept. 12, 2007).

<sup>34</sup> *People v. Carrie W.*, 89 Cal. App. 3d 642, 646 (Ct. App. 1979).

<sup>35</sup> *In re Carmen M.*, 141 Cal. App. 4th 478, 487 (Ct. App. 2006).

<sup>36</sup> *In re Holly H.*, 104 Cal. App. 4th 1324, 1334 (Ct. App. 2002).

<sup>37</sup> *Carrie W.*, 89 Cal. App. 3d at 646; *In re Michael R.*, 73 Cal. App. 3d 327, 333-334 (Ct. App. 1977); *West v. Owen E.*, 140 Cal. Rptr. 305, 308 (Ct. App. 1977).

<sup>38</sup> CAL. WELF. & INST. CODE § 202(b) (West 2002). Delinquent minors shall "receive care, treatment and guidance that is consistent with their best interest, that holds them accountable for their behavior and that is appropriate under their circumstances, in conformity with the interests of public safety and protection." Under § 202(b), minors in need of protective services shall similarly receive "care, treatment, and guidance consistent with their best interest and the best interest of the public."

<sup>39</sup> CAL. WELF. & INST. CODE § 202(b) (West 2002).

<sup>40</sup> *Id.*

<sup>41</sup> CAL. WELF. & INST. CODE § 202(e) (West 2002).

<sup>42</sup> CAL. WELF. & INST. CODE § 202(b) (West 2002). This language applies to both minors in need of protective custody and juvenile delinquents.

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juveniles under the supervision of the state as a rehabilitative model.<sup>43</sup> It is with that goal in mind that section 1700 should be evaluated.

## II. STATUTORY REQUIREMENT TO REHABILITATE

The mission of the CYA is defined in Welfare and Institutions Code section 1700 and requires that the state rehabilitate all juvenile offenders.<sup>44</sup> The California judiciary has affirmed that “rehabilitation” is not a form of punishment and specifically includes programmatic elements such as education and vocational training.<sup>45</sup>

### A. LEGISLATIVE HISTORY TO DEFINE PURPOSE OF SECTION 1700

Section 1700 provides as follows:

The purpose of this chapter is to protect society from the consequences of criminal activity and to that purpose community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses.<sup>46</sup>

Although the original laws relating to juvenile justice in California were enacted in 1872, the Youth Authority Act has been amended several times since then.<sup>47</sup> In 2000 section 1700 was changed to incorporate the suggestions of the federal Office of Juvenile Justice and Delinquency Prevention (“OJJDP”).<sup>48</sup> These recommendations became the three priorities of the rehabilitative model that now appear in section 1700: (1) protecting the community, (2) restoring the victim and community, and (3) developing the juvenile’s basic literacy and living skills so he leaves the court’s jurisdiction as a reformed and responsible

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<sup>43</sup> *In re S. S.*, 37 Cal. App. 4th 543, 550 (Ct. App. 1995).

<sup>44</sup> CAL. WELF. & INST. CODE § 1700 (West 2000).

<sup>45</sup> See *infra* notes 57-64 and accompanying text.

<sup>46</sup> CAL. WELF. & INST. CODE § 1700 (West 2000).

<sup>47</sup> The Youth Authority Act encompasses many laws related to juvenile delinquents. The majority of laws applicable to juvenile justice in California are contained in the Welfare and Institutions Code, Division 2.5. The Youth Authority Act is chapter 1, under division 2.5. Punishment, however, has never been a goal of the Youth Authority Act. *People v. Mack*, 2 Cal. App. 3d 724, 729 (Ct. App. 1969).

<sup>48</sup> A.B. 637, 1999-2000 Reg. Sess., (June 30, 1999). The OJJDP is a federal agency that promotes the development of model juvenile systems that take a balanced approach to juvenile justice.

law-abiding citizen.<sup>49</sup>

The OJJDP believed that meeting these goals required systems that monitor youths in their home neighborhoods to ensure involvement in positive activities outside of school.<sup>50</sup> It also felt the youths must also participate in community service that makes amends to victims and the community, as well as victim-offender mediation that addresses the consequences of their actions.<sup>51</sup> Finally, youths must have the opportunity to gain work experience and pursue an education so that they can learn to interact with adults, demonstrate their earning potential, and reintegrate into society as contributing members.<sup>52</sup> The purpose of this approach is to allow agencies to improve their ability to protect the community by enabling juveniles to become competent, productive citizens.<sup>53</sup>

After considering the OJJDP's recommendations, the California Legislature amended section 1700 to clarify the purpose of the CYA.<sup>54</sup> As indicated in the explicit language of the statute, the CYA must rehabilitate wards.<sup>55</sup> The Legislature passed section 1700 intending that the CYA educate wards and provide them with vocational training to prepare them for life after commitment and prevent recidivism.<sup>56</sup>

#### B. JUDICIAL INTERPRETATION OF SECTION 1700

The legislative history of section 1700 is relatively clear, and as a result there has been little need for the courts to interpret its purpose or meaning.<sup>57</sup> However, over the last thirty-five years, the courts have clarified several questions that have arisen regarding the CYA's statutory mandate.<sup>58</sup>

In 1969 a juvenile appealed his case to the court of appeal, arguing that his commitment to the CYA for two convictions constituted double punishment.<sup>59</sup> The court analyzed section 1700 and found that

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> A.B. 637, 1999-2000 Reg. Sess., (June 30, 1999).

<sup>54</sup> *Id.*

<sup>55</sup> CAL. WELF. & INST. CODE § 1700 (West 2000).

<sup>56</sup> A.B. 637, 1999-2000 Reg. Sess., (June 30, 1999).

<sup>57</sup> See *People v. Daniels*, 51 Cal. App. 4th 520, 523 (Ct. App. 1996); *Beckley v. Aaron N.*, 70 Cal. App. 3d 931 (Ct. App. 1977); *People v. Mack*, 2 Cal. App. 3d 724, 728 (Ct. App. 1969).

<sup>58</sup> See *Daniels*, 51 Cal. App. 4th at 523; *Beckley*, 70 Cal. App. 3d at 931; *Mack*, 2 Cal. App. 3d at 728.

<sup>59</sup> *Mack*, 2 Cal. App. 3d at 728.

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commitment to the CYA was purely for rehabilitation and was never intended to be retributive.<sup>60</sup> As a result, it concluded that commitment to the CYA does not constitute any punishment at all, let alone “double punishment.”<sup>61</sup>

Almost a decade later, the California Court of Appeal affirmed the rehabilitative purpose of the Youth Authority Act in *Beckley v. Aaron N.*<sup>62</sup> The court additionally noted and approved the broad discretionary power the Youth Authority Act grants to the CYA to determine the nature and length of each individual ward’s rehabilitative steps.<sup>63</sup> Most recently, in 1997, the California Court of Appeal further clarified the specific types of rehabilitation a ward should receive, concluding that the CYA should provide education, vocational training, work furloughs, and supervised parole.<sup>64</sup>

The CYA’s judicial mandate to rehabilitate its wards is as clear as the legislative one. Yet, despite this clear order, the CYA is not providing legally required services.

### III. CYA’S FAILURE TO IMPLEMENT THE LAW

The Youth Authority Act requires the CYA to rehabilitate wards by providing them with educational, therapeutic, and parole services.<sup>65</sup> This plain mandate aside, youths committed to the CYA are not receiving sufficient educational or mental-health services, as is evidenced by the recidivism rate for juvenile offenders.<sup>66</sup>

#### A. RECIDIVISM RATE

The main purpose of rehabilitation is clear: provide juveniles the educational and vocational skills they need to become productive members of society such that they cease to commit offenses.<sup>67</sup> One of the best indicators of whether rehabilitation is working is the recidivism rate of the population.<sup>68</sup> It follows that more effective rehabilitation

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<sup>60</sup> *Id.* at 729-30.

<sup>61</sup> *Id.* at 730.

<sup>62</sup> *Beckley*, 70 Cal. App. 3d at 938-39.

<sup>63</sup> *Id.* at 939.

<sup>64</sup> *People v. Daniels*, 51 Cal. App. 4th 520, 523 (Ct. App. 1996).

<sup>65</sup> See *supra* notes 46-64 and accompanying text.

<sup>66</sup> See *infra* notes 67-168 and accompanying text.

<sup>67</sup> Office of Juvenile Justice and Delinquency Prevention’s Online Statistical Briefing Book, *Juvenile Offenders and Victims: 2006 A National Report* 94 (2006) [hereinafter OJJDP Online Statistical Briefing Book], <http://ojjdp.ncjrs.org/ojstatbb/nr2006/downloads/chapter4.pdf>.

<sup>68</sup> Recidivism, in simple terms, is additional criminal behavior by a previous offender.

programs will result in fewer wards committing offenses after release.<sup>69</sup>

A variety of factors can be measured to calculate the recidivism rate of a given population.<sup>70</sup> These most often include whether a person is rearrested, reconvicted, recommitted to a correctional facility, violates parole, or is referred to court again.<sup>71</sup> The recidivism statistics vary because agencies use different methods for determining what constitutes a recidivist.<sup>72</sup> As a result, comparing one state's recidivism rate to another can be problematic.<sup>73</sup>

Nonetheless, by any measure the rate of recidivism for youths committed to the CYA is remarkably high. In 2004, CYA officials analyzed the records of the more than 28,000 wards released between 1988 and 2000 and estimated the recidivism rate (the rate of wards arrested on new criminal charges within three years of their release) to be at least 74%.<sup>74</sup> A separate 1996 study examined wards over a ten-year period and indicates that the recidivism rate may be as high as 90%.<sup>75</sup> The California Center for Juvenile Justice has cited a 1999 report that found a 91% recidivism rate among CYA parolees.<sup>76</sup> By the lowest possible estimate, the one generated by the CYA itself, a minimum of three fourths of juvenile wards are recidivists.<sup>77</sup>

OJJDP Online Statistical Briefing Book, *supra* note 67, at 234.

<sup>69</sup> For example, recidivism rates have dropped in Missouri based on an effective rehabilitation program. See Mississippi Coalition for the Prevention of Schoolhouse to Jailhouse, MISSISSIPPI JUVENILE JUSTICE REFORM BRIEFING BOOK 28-29 (2004) [hereinafter Miss. Juvenile Justice Reform Briefing Book], available at <http://www.splcenter.org/pdf/static/MissJJBriefingBook.pdf>.

<sup>70</sup> OJJDP Online Statistical Briefing Book, *supra* note 67, at 94.

<sup>71</sup> *Id.* The three primary definitions are re-arrest, reconviction, and re-incarceration. Re-arrest measures when a former juvenile offender is rearrested for *allegedly* committing another crime, as either a juvenile or an adult. This is problematic because it does not necessarily indicate whether the person actually committed a crime. Reconviction measures only crimes for which a juvenile has a new sustained petition or is convicted as an adult in a criminal court. This measure is more effective because it is a more accurate account of whether a crime was actually committed. Re-incarceration calculates only when a person is sent back to jail a second time, making it one of the most narrow ways to measure recidivism, as it does not include guilty pleas that result in probation or any other result of a criminal conviction or guilty plea. See Virginia Dep't of Juvenile Justice, *DJJ Research Quarterly*, Volume III, Apr. 2005, pp. 1-2.

<sup>72</sup> Bailey & Palmer, *High Rearrest Rate*, *supra* note 4, at A1. For example, some studies categorize technical violations as recidivism, and others only categorize those who are re-arrested as recidivists.

<sup>73</sup> See Virginia Dep't of Juvenile Justice, *DJJ Research Quarterly*, *supra* note 71 at 8.

<sup>74</sup> Bailey & Palmer, *High Rearrest Rate*, *supra* note 4 at A1.

<sup>75</sup> *Id.*

<sup>76</sup> Michele Byrnes, Daniel Macallair, & Andrea Shorter, *Aftercare as Afterthought: Reentry and the CYA*, Center on Juvenile and Criminal Justice (Aug. 2002), available at <http://www.cjcj.org/pdf/aftercare.pdf>.

<sup>77</sup> Bailey & Palmer, *High Rearrest Rate*, *supra* note 4, at A1.

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There are varying explanations for the recidivism rate, but experts concur that it is a reflection of the individual characteristics of the wards, their experiences during commitment, and the assistance they receive upon release and during parole.<sup>78</sup> While the CYA is unable to control ward characteristics (e.g., demographics, experiences before commitment, etc.), it has considerable influence over the wards' experiences while they are committed and over how much assistance is offered to parolees. It is in these arenas that the CYA is legally mandated to provide rehabilitative services, yet the CYA is failing in these areas.

Wards committed to the CYA are entitled by law to receive a variety of rehabilitative services.<sup>79</sup> All wards are entitled to receive a basic education.<sup>80</sup> The mentally ill wards – who may be as many as 75% of those committed – are entitled to medical care and treatment.<sup>81</sup> The wards committed for sexual offenses are entitled to specific sex offender treatment programs.<sup>82</sup> Finally, all wards should receive services to assist them as parolees once they are released from CYA's care.

## B. EDUCATIONAL SERVICES

Welfare and Institutions Code section 1120 requires that CYA wards be educated by improving upon “the academic, vocational, and life survival skills of each ward.”<sup>83</sup> Under California law, the academic program must, at a minimum, include instruction in verbal communication skills, reading, writing, and arithmetic.<sup>84</sup> The vocational program requirement mandates that wards be offered job counseling, skill training, and assistance in job placement.<sup>85</sup> The life survival skills

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<sup>78</sup> *Id.*

<sup>79</sup> CAL. WELF. & INST. CODE § 1004 (West 2005) (stating that the CYA must provide wards with care, supervision, education, training and employment and provide for the promotion of their welfare).

<sup>80</sup> CAL. WELF. & INST. CODE § 1120 (West 2005); *Serrano v. Priest*, 557 P.2d 929, 951 (Cal. 1977) (declaring that juveniles have a fundamental right to education under the California Constitution); CAL. EDUC. CODE § 46141 (West 1977) (requiring a minimum of four hours of daily instruction).

<sup>81</sup> CAL. WELF. & INST. CODE § 1078 (West 2001); CAL. CODE REGS. tit. 15, § 4730 (2002) (providing a right to medical and dental care); CAL. CODE REGS. tit. 15, § 4733 (2002) (requiring informed consent before administering psychotropic medications); CAL. CODE REGS. tit. 15, § 4746 (2002) (requiring proper administration of psychotropic medications).

<sup>82</sup> CAL. WELF. & INST. CODE § 727.6 (West 2001) (requiring that wards committed for sexually violent offenses receive sex-offender treatment).

<sup>83</sup> CAL. WELF. & INST. CODE § 1120 (West 2005).

<sup>84</sup> CAL. WELF. & INST. CODE § 1120(c)(1) (West 2005).

<sup>85</sup> CAL. WELF. & INST. CODE § 1120(c)(2) (West 2005).

program must include a minimum of training in consumer economics, family life, and personal and social adjustment.<sup>86</sup> The law requires the CYA to function like a public school district, so that each youth facility has a principal, teachers, and courses that effectuate the legislative intent in educational programming.<sup>87</sup> Students are specifically entitled to four educational hours each day.<sup>88</sup>

The educational system faces a battery of problems.<sup>89</sup> There are not enough appropriately qualified teachers for either general or special education programs in CYA facilities.<sup>90</sup> The CYA does not adequately staff substitute teachers,<sup>91</sup> and the unavailability of those teachers means that both short-term vacancies (in which a substitute would report for only a few days) and long-term vacancies (in which a teacher would need to be replaced or at least covered for a significant period) result in classes not being held at all.<sup>92</sup> Some facilities have to cancel classes from twenty-five to fifty percent of the time because of failure to provide teachers.<sup>93</sup> According to a 2002 audit at the Ventura Youth Facility, wards received only a little more than half of the education to which they were legally entitled, and as many as 644 classes were cancelled every month.<sup>94</sup> Another study observed that there were not adequate supplies for instruction, libraries, and technology.<sup>95</sup>

Students with special needs receive even less of the services to which they are legally entitled.<sup>96</sup> There are not many tools available for assessing wards with learning disabilities, for developing and implementing Individualized Education Programs or for monitoring their educational goals.<sup>97</sup> According to the California Department of Education, about one third of the high-school students in CYA facilities require special education services.<sup>98</sup> At six CYA facilities, special education students are not receiving the programming they need,

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<sup>86</sup> CAL. WELF. & INST. CODE § 1120 (c)(3) (West 2005).

<sup>87</sup> Bailey, *Learning is a Low Priority*, *supra* note 13, at A1.

<sup>88</sup> CAL. EDUC. CODE § 46141 (West 1977).

<sup>89</sup> See generally Farrell Complaint, *supra* note 3.

<sup>90</sup> See, e.g., Farrell Consent Decree *supra* note 7, at 8; Farrell Complaint, *supra* note 3, at 25-26.

<sup>91</sup> See, e.g., Farrell Consent Decree *supra* note 7, at 8; Farrell Complaint, *supra* note 3, at 25-26.

<sup>92</sup> Bailey, *Learning is a Low Priority*, *supra* note 13, at A1.

<sup>93</sup> *Id.*

<sup>94</sup> Farrell Complaint, *supra* note 3, at 25.

<sup>95</sup> Farrell Consent Decree, *supra* note 7, at 8.

<sup>96</sup> Farrell Complaint, *supra* note 3, at 26.

<sup>97</sup> Farrell Consent Decree, *supra* note 7 at 8.

<sup>98</sup> Farrell Complaint, *supra* note 3, at 10.

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partially due to the lack of qualified instructors on staff.<sup>99</sup>

The CYA is similarly not complying with the legislative requirement that each student receive job counseling.<sup>100</sup> There is only one vocational specialist statewide, to whom the responsibility falls for providing the entire population (about 8,000 youths) with access to vocational and career counseling and employment resources upon parole.<sup>101</sup>

Students are regularly kept from attending classes due to disciplinary procedures or violence that erupts on facility grounds.<sup>102</sup> There are two separate disciplinary situations that result in wards failing to attend class:<sup>103</sup> (1) instances of mass violence (in which the entire system is locked down and all classes are cancelled), and (2) individual students being unable to attend for disciplinary reasons.<sup>104</sup> The CYA claims to handle both situations by sending teachers to visit the wards, either in their rooms if the entire facility is locked down or in isolation cells if class is otherwise continuing.<sup>105</sup> Either way, a short visit from a teacher who talks to a ward through a cell door and then distributes a worksheet does not approach the four hours of instruction the law requires.<sup>106</sup> Moreover, given the shortage of teachers and substitutes, even the minimal attention described above is often not afforded to students on temporary detention, lockup, and in Special Management Units.<sup>107</sup> Additionally, some wards spend more of their time in isolation than in regular cells, and for them, the five instructional minutes provided through a cell door is the rule rather than the exception.<sup>108</sup>

Finally, there is little or no effective record-keeping of the needs and appropriate placements for wards, nor are there measures for testing them upon exit to determine their progress.<sup>109</sup> Although the CYA's

<sup>99</sup> *Farrell Complaint*, *supra* note 3, at 26-27. In June 2002, for example: at Dewitt Nelson 208 of 350 hours of special day class were provided, at Chaderjian 1,249 of 1,412 hours of special day class were provided, at Johanna Boss 3,556 of 1,249, at Marie Romero 1,472 of 2,439, at Mary Perry 968 of 1,148, and at Lyle Egan 1,937 of 2,235. *Id.*

<sup>100</sup> California Dep't of Corrections and Rehabilitation, Reforming California's Juvenile Corrections System, *Farrell v. Hickman*, Safety and Welfare Remedial Plan 59 (Nov. 30, 2005) available at [http://www.cya.ca.gov/DivisionsBoards/DJJ/about/dec1report/4\\_safety\\_welfare.pdf](http://www.cya.ca.gov/DivisionsBoards/DJJ/about/dec1report/4_safety_welfare.pdf).

<sup>101</sup> *Id.*

<sup>102</sup> *Farrell Consent Decree*, *supra* note 7, at 8.

<sup>103</sup> *Id.*

<sup>104</sup> *Farrell Complaint*, *supra* note 3, at 26.

<sup>105</sup> Bailey, *Learning is a Low Priority*, *supra* note 13, at A1.

<sup>106</sup> CAL. EDUC. CODE § 46141 (West 1977) (requiring four hours of educational time per day).

<sup>107</sup> *Farrell Complaint*, *supra* note 3, at 26.

<sup>108</sup> Bailey, *Learning is a Low Priority*, *supra* note 13 at A1.

<sup>109</sup> *Farrell Consent Decree*, *supra* note 7, at 8.

official policy is that a ward will not be paroled unless he receives a high-school diploma,<sup>110</sup> the agency has historically failed to keep adequate records of how many wards accomplish this goal before release.<sup>111</sup> In response to this complaint, the CYA recently began developing individual plans for entering wards to monitor their progress toward graduation, but state consultants determined that the ineffective educational infrastructure meant that only about twenty-five percent of wards were completing courses on schedule.<sup>112</sup> A 2000 study found similar results, noting that only half of the wards ordered to earn their diplomas achieved this goal before parole.<sup>113</sup> Moreover, when wards are unable to earn diplomas because of the failure of educational programming, they are forced to exceed the maximum allowed time in the CYA, which often results in dishonorable discharge.<sup>114</sup>

### C. SERVICES FOR MENTALLY ILL WARDS

While providing mental-health services is not a clearly stated requirement in the CYA's statutory mission, it has been a focus of litigation against it and failure to provide such services has been identified as contributing to the recidivism rate.<sup>115</sup> Mental-health services are crucial to the rehabilitative process, and there are legal bases for requiring the CYA to offer them.<sup>116</sup>

On the federal level, the Americans with Disabilities Act (ADA) mandates that juvenile facilities provide disabled wards with full access to "services, programs, and activities of a public entity."<sup>117</sup> The Ninth

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<sup>110</sup> LAO, *Review of CYA Infrastructure*, *supra* note 22.

<sup>111</sup> Bailey, *Learning is a Low Priority*, *supra* note 13, at A1.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Farrell Complaint*, *supra* note 3, at 27. Each ward who has not received a high school diploma or its equivalent upon entry has to meet this requirement before being placed on parole. When the ward reaches the end of his sentence but has not met this goal, more time is added so he can graduate. Often this means that the CYA's failure to provide adequate educational services results in a ward serving the maximum possible time.

<sup>115</sup> *See Farrell Complaint*, *supra* note 3.

<sup>116</sup> C.A. CONST. art. I, § 7 (requiring due process); C.A. CONST. art. I, § 17 (prohibiting cruel and unusual punishment); CAL. PENAL CODE § 673 (West 1999) (banning the "inflict[ion of] any treatment or allow[ance of] any lack of care whatever which would injure or impair the health or the [ward]"); CAL. WELF. & INST. CODE § 1078 (West 2001) (requiring mental-health-care training); CAL. CODE REGS. tit. 15, § 4730 (2002) (providing a right to medical care).

<sup>117</sup> *See* 42 U.S.C.A. §§ 12101-12213 (West 2007); *see also* Lee v. City of Los Angeles, 250 F.3d 668, 691 (9th Cir. 2001); Shawna L. Parks, *Innocence Lost: Mental Health Care and the California Youth Authority*, HUMAN RIGHTS MAGAZINE, Spring 2003, available at <http://www.abanet.org/irr/hr/spring03/innocencelost.html>.

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Circuit, while evaluating the rights of incarcerated persons under the ADA, held that because the language of the statute is broad enough to include “anything that a public entity does,” it applies to any services provided by jails or prisons.<sup>118</sup> The Ninth Circuit then found that any mental-health services provided by law enforcement and afforded to incarcerated persons are “‘services, programs, or activities of a public entity’ within the meaning of the ADA.”<sup>119</sup> The ADA, which already provides for a private right of action against a public facility that fails to provide services to disabled individuals, also offers a basis for action against correctional facilities that fail to provide adequate services to their mentally ill populations.<sup>120</sup>

Additionally, there is a basis in California state law for providing mental-health services to youths.<sup>121</sup> The California Code of Regulations specifically provides that the CYA is required to provide medical care for all existing, emergent, and emergency medical conditions of wards.<sup>122</sup> Large numbers of wards committed to the CYA enter with mental-health issues.<sup>123</sup> According to a 2001 study by Stanford University, 97% of wards have one or more mental-health problems, 93% have conduct disorders, 85% have substance-abuse dependencies, 31% have anxiety disorders, 71% of males have three to five diagnosable disorders and 82% of females have three to nine diagnosable disorders.<sup>124</sup> These disorders range from depression to mood and anxiety disorders to severe psychiatric disorders to conduct and behavior disorders.<sup>125</sup> The CYA itself estimated that over 3,000 wards needed mental-health treatment as of 2002-2003.<sup>126</sup> These youths are entitled to care under the California Administrative Code,<sup>127</sup> which requires treatment for the existing mental conditions of wards.<sup>128</sup>

<sup>118</sup> *Lee*, 250 F. 3d at 691.

<sup>119</sup> *Id.* (quoting *Armstrong v. Wilson*, 124 F.3d 1019, 1023 (9th Cir.1997)).

<sup>120</sup> *See Lee*, 250 F. 3d at 691.

<sup>121</sup> *Parks*, *supra* note 117.

<sup>122</sup> CAL. CODE REGS. tit. 15, § 4730 (a), (b), (c) (2002).

<sup>123</sup> *See Farrell Complaint*, *supra* note 3, at 21.

<sup>124</sup> Legislative Analyst's Office, Analysis of the 2003-04 Budget Bill (2003) (citing Stanford University, *The Assessment of the Mental Health System of the California Youth Authority* (Dec. 2001), available at [http://www.lao.ca.gov/analysis\\_2003/cap\\_outlay/co\\_14\\_5460\\_anl03.htm](http://www.lao.ca.gov/analysis_2003/cap_outlay/co_14_5460_anl03.htm).

<sup>125</sup> Hans Steiner & Keith Humphreys, *The Assessment of the Mental Health System of the California Youth Authority*, Report to Governor Gray Davis (Dec. 31, 2001), available at <http://www.cya.ca.gov/Reports> Research/docs/Stanford%20Mental%20Health%20Report%20Jan02.pdf.

<sup>126</sup> *Farrell Complaint*, *supra* note 3, at 21.

<sup>127</sup> CAL. CODE REGS. tit. 15, §§ 4730 (a)(b)(c) (2002).

<sup>128</sup> *See Parks*, *supra* note 117.

Mental-health care in the CYA, however, faces a series of major problems.<sup>129</sup> In December 2003, two mental-health experts conducted a study and reported on the CYA's programs and services.<sup>130</sup> The news was not good. The report stated: "Mental health care provided by the CYA is not adequate and does not conform to community standards or to the professional standards identified . . . . [T]he vast majority of youths who have mental health needs are made worse instead of improved by the CYA correctional environment."<sup>131</sup> In 2003, the CYA itself admitted that its present mental-health programs do not meet the needs of the population, and that as a result the agency is unable to provide wards with the mental-health care they require to minimize the danger they pose to the community.<sup>132</sup>

Among the problems is an acute shortage of counselors and other staff who are both experienced and skilled in providing mental-health care.<sup>133</sup> The CYA has a ratio of 1 psychologist for every 288 wards; national standards recommend a ratio of 1 for every 60.<sup>134</sup> Institutions are controlled by prison guards whose formal titles are "Youth Correctional Counselors," despite the fact that they receive little to no training in adolescent development or social work.<sup>135</sup> This approach is particularly problematic for wards who are suicide risks, because guards have inadequate training on how to rescue wards who attempt to take their own lives.<sup>136</sup>

Treatment units do not have room for every ward in need, and there are not mental-health units at every facility.<sup>137</sup> Many wards who should

<sup>129</sup> See Farrell Complaint, *supra* note 3, at 18-24.

<sup>130</sup> See Eric Trubin & Raymond Patterson, *Report of Findings of Mental Health and Substance Abuse Treatment Services to Youth in California Youth Authority Facilities* (Dec. 2003), available at <http://web.archive.org/web/20040212022049/http://www.prisonlaw.com/CYA1.pdf>.

<sup>131</sup> California Performance Review, Corrections Independent Review Panel, Risk Management and Health Care 111 (June 2004), available at <http://cpr.ca.gov/report/indrpt/corr/pdf/introto6.pdf>.

<sup>132</sup> See Farrell Consent Decree *supra* note 7, at 18-19. This admission came in the wake of a number of highly publicized incidents in the CYA, including two incidents caught on video. One tape depicted a CYA guard ordering his dog to attack a prone ward who was not resisting; another showed two guards beating a ward in the head while he was lying on the ground, and then kicking and punching another ward twenty-eight times in the head, while a third guard sprayed the two boys with a chemical and a fourth fired a pepper-spray gun. See Douglas Abrams, *Reforming Juvenile Delinquency Treatment to Enhance Rehabilitation, Personal Accountability, and Public Safety*, 84 OR. L. REV. 1001, 1016-1020 (2005).

<sup>133</sup> See Farrell Complaint, *supra* note 3, at 19.

<sup>134</sup> Parks, *supra* note 117; see also Farrell Complaint, *supra* note 3, at 19.

<sup>135</sup> de Sa', *Failure to Deliver Treatment*, *supra* note 13, at A1.

<sup>136</sup> See Farrell Complaint, *supra* note 3, at 18-24.

<sup>137</sup> Parks, *supra* note 117 (noting that the units contain only 523 beds for treatment, though over 3,000 wards need treatment); see also Farrell Complaint, *supra* note 3, at 18-24.

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be in a mental-health program are receiving little or no treatment.<sup>138</sup> Evidence reveals that even when regular group therapy sessions are scheduled, disciplinary disruptions often interrupt them.<sup>139</sup>

The CYA should have appropriate procedures to evaluate wards' psychological needs upon commitment and to track their progress.<sup>140</sup> Both the initial assessments and continued tracking of medical records are inadequate to serve the wards' mental-health needs.<sup>141</sup> Even when juveniles are assessed immediately, the initial evaluation is often the extent of the process, because treatment plans are not typically formulated.<sup>142</sup> Worse, the CYA does not evaluate the effectiveness of the programs that it does administer.<sup>143</sup>

Wards also spend vast amounts of time alone in their cells, a practice that extends not just to those being punished in lockup, but also to those on suicide watch.<sup>144</sup> Isolating individuals with mental-health issues can exacerbate their problems.<sup>145</sup> When wards do attempt suicide,<sup>146</sup> their punishment is often isolation and restriction to cells for days at a time.<sup>147</sup> Once isolated, these wards are monitored via camera while sequestered in rooms that are often dirty and sometimes contain fixtures that can be used to commit suicide.<sup>148</sup> In four facilities, the minimal medical attention provided occurs while such wards are locked in cages.<sup>149</sup> In one particularly unsettling account at the Chaderjian facility, a ward on suicide watch who had been diagnosed with severe depression, schizophrenia, and a personality disorder only received a

<sup>138</sup> Parks, *supra* note 117 (noting that the units contain only 523 beds for treatment, though over 3,000 wards need treatment); *see also* Farrell Complaint, *supra* note 3, at 18-24.

<sup>139</sup> de Sa', *Failure to Deliver Treatment*, *supra* note 13, at A1.

<sup>140</sup> Farrell Complaint, *supra* note 3, at 21.

<sup>141</sup> *Id.* at 18-24.

<sup>142</sup> Trubin & Patterson, *supra* note 130, at 4-5.

<sup>143</sup> de Sa', *Failure to Deliver Treatment*, *supra* note 13, at A1; *see also* Parks, *supra* note 117.

<sup>144</sup> de Sa', *Failure to Deliver Treatment*, *supra* note 13, at A1; *see also* Parks, *supra* note 117.

<sup>145</sup> de Sa', *Failure to Deliver Treatment*, *supra* note 13, at A1; *see also* Parks, *supra* note 117.

<sup>146</sup> Suicide attempts are, unfortunately, not rare. Between 2000 and 2004 there were 165 suicide attempts. Abrams, *supra* note 132 at 1018.

<sup>147</sup> Farrell Complaint, *supra* note 3, at 22.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 22-23. Wards in "lock-up" receive services in cages called Secure Program Areas ("SPAs"). The cages are used at four youth authority facilities and were introduced in response to a suit alleging that the CYA was not providing mandated education. The cages provide enough room for a desk and chair, but the ward can reach all four walls from the center; *see also* Barry Krisberg, *General Corrections Review of the California Youth Authority* 63-65 (Dec. 23, 2003), [http://www.nccd-crc.org/nccd/pubs/cya\\_report\\_2003.pdf](http://www.nccd-crc.org/nccd/pubs/cya_report_2003.pdf); Jill Leovy & Jia-Rui Chong, *Youth Authority to Review the Use of Cages*, LA TIMES, Feb. 6, 2004, at A1.

five-minute visit with a psychiatrist each day.<sup>150</sup>

Finally, psychiatric medication is not administered to wards in accordance with established modern practice.<sup>151</sup> Wards often do not receive their court-ordered medications or are forced to take psychotropic medications under threat without the consent of a parent or guardian and with no court hearing.<sup>152</sup>

Specialized treatment for sex offenders falters for similar reasons. California Welfare and Institutions Code section 727.6 requires that wards committed for violent sexual offenses be administered sex-offender treatment.<sup>153</sup> There are not, however, enough trained experts to provide the programs and counseling these youths need, and even if there were, there are not enough places to treat even half of the wards committed as sex offenders.<sup>154</sup> Females as a group are not being evaluated or offered treatment.<sup>155</sup> In order to comply with the statutory mandate to rehabilitate youths, the failures of the counseling and services for wards with both mental-health issues and in need of treatment as sex offenders must be addressed and corrected.

#### IV. JUDICIAL RESPONSE TO CYA'S FAILURES: THE FARRELL CONSENT DECREE

In 2002, the Prison Law Office, Disability Rights Advocates, Latham & Watkins LLP, and Jones Day LLP jointly filed suit in federal district court challenging the conditions in the CYA on behalf of Margaret Farrell, a relative of a CYA ward.<sup>156</sup> In 2003 the case was re-filed in California state court as a taxpayer action alleging that CYA's procedures and practices and the resulting use of taxpayer funds to pay for such improper operations were unlawful.<sup>157</sup> Rather than attempting

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<sup>150</sup> *Farrell Complaint*, *supra* note 3, at 22.

<sup>151</sup> Legislative Analyst's Office, *supra* note 124.

<sup>152</sup> *Farrell Complaint*, *supra* note 3, at 22-23. In one finding, a minor ward was forced to take psychotropic medication without his parents' consent and under the threat of a longer period of solitary confinement.

<sup>153</sup> CAL. WELF. & INST. CODE § 727.6 (West 2001).

<sup>154</sup> Jerry Thomas, Consulting and Training, *Evaluation of Sex Offender Programs for the California Youth Authority*, 11-20 (Sept. 29, 2003); *see also Farrell Complaint*, *supra* note 3, at 29. Since the late 1990s there has been a chronic shortage of treatment space for the number of sexual offenders who require treatment. In 1999 there were only 259 wards being treated, but 1,052 in need. In 2001 there were only 312 wards receiving treatment, but 1,012 in need. And in 2002 there were only 169 wards being treated, but 783 in need. *Id.*

<sup>155</sup> Thomas, *supra* note 154, at 12-13.

<sup>156</sup> Officer of the Governor, Press Release, *Governor Schwarzenegger Announces Settlement in CYA Case* Nov. 16, 2004, <http://gov.ca.gov/index.php?/press-release/2677/>.

<sup>157</sup> *Farrell Complaint*, *supra* note 3, at 1.

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to defend state spending, the defendants settled the case in what became known as the *Farrell* consent decree.<sup>158</sup>

Before signing the consent decree,<sup>159</sup> both sides agreed to hire national experts to review the CYA's policies and procedures and report on both the scope of the problems and their specific nature.<sup>160</sup> After the expert reports were complete, the parties stipulated that the facts and opinions contained in the expert reports were substantially correct and agreed that the CYA would develop a remedial plan by January 31, 2005.<sup>161</sup>

The decree identified the areas that needed to be reformed in order to directly remedy the violations (both statutory and constitutional) enumerated in the filed suit.<sup>162</sup> It also established remedial steps and devoted considerable attention defining the standards for measuring and monitoring compliance.<sup>163</sup> In a section entitled "Remedial Plans," the parties listed requirements that needed to be met in order to address the current CYA violations and included general and specific recommendations related to education, medical care, sexual offenders, and wards with mental-health needs.<sup>164</sup> The decree did not, however, address the need for institutional reform within the CYA.<sup>165</sup>

In January 2005, when the CYA was supposed to submit the remedial plan required by the consent decree, it instead acknowledged the main contention of this Comment: the changes required to reform the CYA to comply with the decree (and thus its statutory mission contained in section 1700) are "dependent on the new system" and will therefore not be accomplished according to the agreed timeline.<sup>166</sup> While the

<sup>158</sup> *Farrell* Consent Decree, *supra* note 7 at 1.

<sup>159</sup> A consent decree is "a judgment entered by consent of the parties whereby the defendant agrees to stop alleged illegal activity without admitting guilt or wrongdoing." BLACK'S LAW DICTIONARY 410 (6th ed. 1990). Consent decrees have characteristics of both contracts and judicial orders in that the parties agree to the decree's terms, but the court that supervises the process ordinarily retains the power to both enforce and modify the document. See Shima Baradaran-Robison, Comment, *Kaleidoscopic Consent Decrees: School Desegregation And Prison Reform Consent Decrees After The Prison Litigation Reform Act And Freeman-Dowell*, 2003 B.Y.U. L. REV. 1333, 1337 (2003).

<sup>160</sup> *Farrell* Consent Decree, *supra* note 7, at 2.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 5-10.

<sup>163</sup> *Id.* at 10-18.

<sup>164</sup> *Id.* at 5-10.

<sup>165</sup> See *Farrell* Consent Decree, *supra* note 7.

<sup>166</sup> Consent Decree Stipulation, *Farrell v. Harper*, (No. RG 03079344) (Super. Ct. Alameda County, filed Jan. 31, 2005); see also Sue Burrell, Attorney for Youth Law Center, Speech at CPDA Juvenile Seminar, Monterey, CA *California Juvenile Justice Reform in the 21<sup>st</sup> Century (So Far)*, (Jan. 2006) [hereinafter Burrell, CPDA Speech] (interpreting this portion of the stipulation to mean

stipulation failed to specify how or when the change would occur, the parties agreed to move toward an “open programming model” in some of the CYA’s institutions, beginning with the N.A. Chaderjian and Herman G. Stark Youth Facilities and continuing at all other facilities by May 2, 2005.<sup>167</sup> Despite the acknowledgement of the need for institutional reform, only very minor moves have been made in that direction.<sup>168</sup> Given that the multiple attempts to force the CYA to rehabilitate wards have up to this point failed in the judicial system, the best solution is to attempt legislative reform.

## V. OTHER STATES’ ATTEMPTS TO REHABILITATE JUVENILE OFFENDERS

Many other states have achieved considerably lower recidivism rates than California and have spent less money to achieve those results. Missouri, known as a national leader for effective juvenile offender rehabilitation, has reduced its recidivism rate considerably over the last thirty years by abandoning the training school model.<sup>169</sup> Texas, while still following the training school model, has made some important strides in juvenile corrections.<sup>170</sup>

### A. MISSOURI

Missouri’s Department of Youth Services (DYS) is responsible for administering rehabilitative services for juvenile delinquents.<sup>171</sup> The mission of DYS is similar to that of the CYA in that it seeks to protect communities from juvenile offenders and also to provide rehabilitative services to youth offenders and their families.<sup>172</sup> The similar mission, however, are where the similarities between the two states’ treatment of juvenile offenders end. Missouri has had great success in rehabilitating

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that the CYA is acknowledging that the consent decree cannot be implemented without institutional change). “Institutional change” refers to modifying the system from the training school model to housing wards in smaller residential units. *Id.*

<sup>167</sup> *Id.* Open programming models provide wards educational and vocational programming out of their cells.

<sup>168</sup> Burrell, CPDA Speech *supra* note 166. The parties to the consent decree agreed to a second stipulation and more expert reviews, but there has been no progress toward implementing the institutional reform.

<sup>169</sup> See *infra* notes 171-203 and accompanying text.

<sup>170</sup> See *infra* notes 204-216 and accompanying text.

<sup>171</sup> Missouri Dep’t of Social Services, *DYS Frequently Asked Question’s*, <http://www.dss.mo.gov/dys/faq/genopt.htm> (last visited Apr. 20, 2007).

<sup>172</sup> *Id.*

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its juvenile delinquents, and its system is nationally recognized as a model in juvenile corrections.<sup>173</sup>

Missouri's juvenile offender recidivism rate is substantially lower than the national averages, although estimates vary due to different methods of measuring recidivism.<sup>174</sup> The Center on Juvenile and Criminal Justice cites Missouri's average recidivism rate as 11%.<sup>175</sup> The most recent statistics compiled by the DYS itself indicate that 30% of wards are recommitted to a correctional program within three years of release from a youth program.<sup>176</sup> Even based on the high estimate, Missouri's rehabilitative model is much more successful than the average recidivism rate for the training school model.<sup>177</sup> Moreover, Missouri manages to achieve these results while spending far less per ward than states that employ the training school model.<sup>178</sup> In 2005, Missouri spent between \$47,000 and \$57,100 per ward, depending on the level of risk they posed.<sup>179</sup> In the same year, California spent an average of \$71,700 per ward.<sup>180</sup>

In 1970, Missouri, in response to criticism from the federal government about the unlawful conditions at its Booneville Training School,<sup>181</sup> opened a pilot program for seventy-five to a hundred of the state's most serious offenders.<sup>182</sup> The program housed small groups of

<sup>173</sup> *Id.* Missouri became a national model in juvenile corrections after closing Booneville. See Dick Mendel, *Small Is Beautiful: The Missouri Division of Youth Services*, 5 ADVOCASEY 29 (Spring 2003).

<sup>174</sup> Center on Juvenile and Criminal Justice, *Reforming the Juvenile Justice System: Model States – Missouri*, <http://www.cjcj.org/jjic/reforming.php> (last visited Apr. 20, 2007.)

<sup>175</sup> *Id.* Compare Missouri's average recidivism rate of 11% to California's lowest possible estimate of 74%.

<sup>176</sup> Missouri Dep't of Social Services, *supra* note 171. California's recidivism rate includes the number of prior offenders who are re-arrested, whereas Missouri's figure counts the youths *recommitted* to a correctional system.

<sup>177</sup> Miss. Juvenile Justice Reform Briefing Book, *supra* note 69 at 29. Training Schools typically have an average recidivism rate from 50 to 70 percent. See Mendel, *Less Hype, More Help*, *supra* note 25 at 49.

<sup>178</sup> Missouri Dep't of Social Services, *supra* note 171.

<sup>179</sup> *Id.* Wards in secure care, the highest level of security, cost \$57,169.95. *Id.* Wards housed in "community based" residential facilities (homes for the wards requiring the least secure facilities) only cost \$47,106.30 per year in 2005. *Id.*

<sup>180</sup> California Dep't of Corrections and Rehabilitation, *Facts, Stats, and Trends, Ward Per Capita Cost Fiscal Year 2004-05* (2004-05), [http://www.cya.ca.gov/ReportsResearch/wardcost\\_0405.htm](http://www.cya.ca.gov/ReportsResearch/wardcost_0405.htm). These figures do not include the added expense that California incurs when these juveniles re-offend and are then incarcerated in the adult corrections system.

<sup>181</sup> Booneville was Missouri's largest facility, housing about 650 boys. It was notorious for its brutal treatment of wards, poor conditions, and solitary confinement procedures. Mendel, *supra* note 173, at 29.

<sup>182</sup> de Sa', *Opportunity "To Be Human," supra* note 13, at A1; see also CYC Net Features,

juvenile wards in cottages and provided intensive group therapy.<sup>183</sup> Evaluations over the next decade convinced the DYS that the pilot program was more successful than the training school model, and by 1983 Missouri had closed Booneville and begun to reform its entire juvenile system.<sup>184</sup>

Missouri began by making broad institutional changes.<sup>185</sup> Based on the success of the pilot program, the DYS switched to smaller facilities statewide, taking over deserted schools and buying residences, the largest of which housed thirty-six juveniles.<sup>186</sup> The DYS then closed Booneville to juveniles and donated it to the adult correctional system.<sup>187</sup> In order to determine placements for the wards previously at that facility, the DYS divided Missouri into five regions and placed each youth within his home region, so that youths could remain relatively close to their communities and families during their commitment.<sup>188</sup> Part of that institutional change also required staffing the small facilities with youth specialists capable of providing counseling and personal development, a sharp break from the punishment regime administered by the correctional officers at Booneville.<sup>189</sup>

Both DYS staff and national experts acknowledged that the switch to smaller facilities was crucial to rehabilitation, but that change was only the beginning of the process.<sup>190</sup> The state and its evaluators identified the decision to commit to therapy and treatment as an essential factor in Missouri's success.<sup>191</sup> The DYS organizes wards into teams of nine to eleven boys supervised by two trained youth specialists, and the team does everything together, from sleeping to studying to therapy.<sup>192</sup> The teams meet for group therapy sessions every afternoon, during which they participate in activities that build trust and communication

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*Juvenile Justice in Missouri Serves as a Model for Nation 2* (Oct. 6, 2003), <http://www.cyc-net.org/features/ft-Juvjusticemodel.html>.

<sup>183</sup> CYC Net Features, *supra* note 182, at 2.

<sup>184</sup> de Sa', *Opportunity "To Be Human," supra* note 13, at A1.

<sup>185</sup> Douglas W. Nelson, *Moving Youth from Risk to Opportunity* (2004), [detnews.com/specialreports/2004/infantmortality/kc2004\\_e.pdf](http://detnews.com/specialreports/2004/infantmortality/kc2004_e.pdf).

<sup>186</sup> *Id.*

<sup>187</sup> Mendel, *supra* note 173, at 29-30.

<sup>188</sup> *Id.*

<sup>189</sup> Nelson, *supra* note 185.

<sup>190</sup> Mendel, *supra* note 173, at 30. Note: Kentucky has for a long time housed its juvenile offenders in small housing. *Id.* A federal report on Kentucky's small facilities in 1995 indicated that the education and mental health programs were substandard, the isolation cells were being used too frequently, and the staff was ignoring abuse complaints. *Id.*

<sup>191</sup> Mendel, *supra* note 173, at 31.

<sup>192</sup> Missouri Dep't of Social Services, *supra* note 171.

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and share their life experiences, including their own stories of abuse, neglect, and the crimes they committed.<sup>193</sup>

Another significant change for the DYS was the institution of a system that does not feature violence or harsh punishment.<sup>194</sup> There are no isolation cells, handcuffs, four-point restraints, or correctional officers.<sup>195</sup> The team members themselves are trained to be responsible for restraining any group member who threatens to harm another member of the group.<sup>196</sup> The emphasis is on making sure wards feel safe, a crucial component in providing effective counseling, according to the DYS director in charge of treatment.<sup>197</sup>

The final component in the success of Missouri's rehabilitative program is "Aftercare," the supervision of parolees.<sup>198</sup> The DYS provides each ward with a service coordinator who supervises him from the beginning of his commitment to the time he is paroled.<sup>199</sup> This supervisor decides when the ward will be released and assists the youth with his reintegration into the community by meeting frequently with him and helping him to monitor his successes and secure employment.<sup>200</sup> Additionally, many parolees are assigned "trackers" (often a college student or community volunteer) who meet with them regularly to check progress and provide support.<sup>201</sup> The DYS also operates eleven daytime outpatient centers that serve as an intermediate step in the treatment process, so that youths remain supported after leaving a residential treatment facility.<sup>202</sup>

By providing educational, therapeutic, and parole services to juvenile offenders, the DYS has successfully rehabilitated almost two thirds of the youths in its charge.<sup>203</sup>

## B. TEXAS

The Texas Youth Commission ("TYC") is responsible for

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<sup>193</sup> *Id.*

<sup>194</sup> Mendel, *supra* note 173, at 32.

<sup>195</sup> *Id.* at 33.

<sup>196</sup> *Id.* Some experts have criticized the process of allowing kids to discipline one another, but DYS's Director notes that there has never been a serious injury, lawsuit or formal complaint. *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> Mendel, *supra* note 173 at 34.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> See *supra* notes 174-202 and accompanying text.

rehabilitating juvenile offenders in that state.<sup>204</sup> The TYC's purpose is similar to that of both Missouri's and California's youth agencies: it is charged with rehabilitating juvenile offenders, reintegrating them back into society, and providing active parole supervision.<sup>205</sup> While not a nationally recognized leader in juvenile justice, Texas has had greater success than many other states and achieves a notably lower recidivism rate than California.<sup>206</sup>

Texas uses multiple standards to evaluate its recidivism rate, including measuring how many youths are reincarcerated for any offense within a three-year period following release from the TYC.<sup>207</sup> Under this definition, Texas has a recidivism rate of forty-seven percent; the rate is significantly lower if the count excludes those who were sent back based on non-felony offenses (i.e., misdemeanors or technical violations).<sup>208</sup>

While Texas still experiences many of the problems that California faces – wards harming themselves, guards using excessive force, and use of the training school model – there are aspects of the Texas system that have been successful.<sup>209</sup> The TYC completes a comprehensive evaluation of each ward upon initial commitment.<sup>210</sup> Wards with special needs are sent to a residential treatment facility for focused rehabilitation in that area.<sup>211</sup>

The TYC currently operates four successful residential treatment facilities for wards who are chemically dependent, mentally impaired, or sexual, capital, or serious violent offenders.<sup>212</sup> These programs have five general characteristics that distinguish them from the standard rehabilitation program: they provide more hours of counseling per week, they are serviced by professionals who have specialized training in the area of need, the counselors have a smaller caseload than average, the

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<sup>204</sup> TEX. HUM. RES. CODE ANN. § 61.002 (Vernon 1987).

<sup>205</sup> Compare TEX. HUM. RES. CODE ANN. § 61.002 (Vernon 1987) with CAL. WELF. & INST. CODE § 1700 (West 2000) and MO. REV. STAT. § 219.016 (2004).

<sup>206</sup> Compare Texas' percent of rehabilitated youth offenders (47%) to California's percent of rehabilitated youth offenders (75%), according to each state's own estimates. Texas Youth Commission, *TYC 2006 Agency Review of Treatment Effectiveness Conclusion and Discussions*, [http://www.tyc.state.tx.us/research/TxmtEffect/14\\_conclusion.html](http://www.tyc.state.tx.us/research/TxmtEffect/14_conclusion.html) (last visited May 18, 2007).

<sup>207</sup> *Texas Youth Commission*, *supra* note 206.

<sup>208</sup> *Id.*

<sup>209</sup> Texas Coalition Advocating Justice for Juveniles (criticizing the TYC), *available at* [http://www.njjn.org/media/resources/public/resource\\_336.pdf](http://www.njjn.org/media/resources/public/resource_336.pdf) (last visited Apr. 20, 2007).

<sup>210</sup> Texas Youth Commission, *Programs and Facilities –Specialized Correctional Treatment* [hereinafter Texas Youth Commission, *Programs and Facilities*], [http://www.tyc.state.tx.us/programs/special\\_treat.html](http://www.tyc.state.tx.us/programs/special_treat.html), (last visited Apr. 20, 2007).

<sup>211</sup> *Id.*

<sup>212</sup> *Id.* The TYC also provides specialized parole for those wards who require it. *Id.*

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programs are more frequently assessed for effectiveness, and youths are housed together with others who struggle with similar issues as determined in the initial assessment.<sup>213</sup>

A 2005 study to determine the effectiveness of the Texas rehabilitative model after a decade of operations found that the youths released from three of these focused facilities (capital and violent offenders, sex offenders, and recipients of specialized parole) were less likely to be recidivists than youth who did not receive such treatment.<sup>214</sup> The experts who conducted the study interpreted the results to indicate that intensive specialized treatment is more effective than generalized rehabilitation, at least for those wards with special needs.<sup>215</sup> The TYC acknowledges that its program would be more effective if it followed Missouri's lead with smaller facilities and better educated and trained staff.<sup>216</sup>

## VI. PROPOSED LEGISLATIVE SOLUTION

In the wake of the CYA's own admissions that it was failing to rehabilitate wards, a bill was introduced to provide a statutory basis for the requirements in the *Farrell* consent decree. That bill did not pass in the 2005-2006 legislative session. In order to achieve the desired results, it should be modified and re-introduced.

## A. THE BEST THING WE HAVE SEEN SO FAR: CALIFORNIA S.B. 609

In recognition of the CYA's failure to rehabilitate according to its own statutory mission, state Senator Gloria Romero (Democrat-Los Angeles) introduced Senate Bill 609 ("S.B. 609") on February 22, 2005.<sup>217</sup> S.B. 609's premise was that the agency was not carrying out its statutory purpose to increase public safety and rehabilitate youthful offenders,<sup>218</sup> and it proposed broad specific changes to swiftly alter the entire system and structure of the CYA.<sup>219</sup> In its original form, the bill

<sup>213</sup> *Texas Youth Commission*, *supra* note 206.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.* A relatively high number of these youths have special needs. According to TYC data, 81% have an IQ below 100, 39% have a high need for drug treatment, and 36% have a serious mental health problem. *Id.*

<sup>216</sup> *Id.* The TYC also recognizes significant legislative support is necessary to achieve smaller facilities. *Id.*

<sup>217</sup> S.B. 609, 99th Leg. (Cal. 2005).

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

was divided into four sections.<sup>220</sup>

*1. Section 1 of Senate Bill 609*

The first section of S.B. 609 focused on the CYA's physical environment and facilities.<sup>221</sup> The bill posited that the CYA's inability to carry out its statutory purpose was directly related to the physical plant of the youth correctional facilities, which do not comply with the National Standards for youth detention.<sup>222</sup> S.B. 609 therefore required the CYA to limit the living unit size to thirty wards, with a ratio of one staff member for every ten youths.<sup>223</sup>

*2. Section 2 of Senate Bill 609*

Section 2 required that N.A. Chaderjian no longer be used for juveniles, due to what the bill deemed a "public safety emergency at the facility," a characterization based on that institution's numerous reports of excessive force or inhumane treatment.<sup>224</sup> Section 2 also ordered the closure of Ventura, the only CYA facility for women, and the transfer of the 200 female wards there into state-funded county treatment facilities.<sup>225</sup>

Additionally, Section 2 mandated a number of changes to the basic system and operation of CYA facilities.<sup>226</sup> It required that wards be allowed to wear their own clothes and prohibited the use of prison uniforms and jumpsuits.<sup>227</sup> The bill further directed that wards be grouped in facilities according to the risk they pose.<sup>228</sup> The CYA was also required to create a classification system to determine the needs and

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* Section 1 also noted that the CYA had failed to provide parolees with the services and supervision necessary to prevent recidivism and transferred such responsibility to local government.

<sup>222</sup> S.B. 609, 99th Leg. (Cal. 2005). Current national standards call for living units to house a maximum of twenty youths, with a ratio of one staff member for every eight juveniles housed in each facility. *Id.*

<sup>223</sup> *Id.* California instituted a pilot program in the 1960s-1970s that lowered living unit size with positive results. The effect was improved correctional management and a reduction in disciplinary problems, post-release parole violations, and the amount of force needed by staff to address the remaining disciplinary problems. A 2002 pilot program showed similar positive results. *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> S.B. 609, 99th Leg. (Cal. 2005).

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risk factors of wards immediately upon commitment.<sup>229</sup> Wards were to be housed within fifty miles of their homes, to facilitate integrating their families into their treatment plans.<sup>230</sup> The use of solitary confinement as a punishment was banned along with the practice of twenty-three-and-one ("23/1") confinement (the practice of keeping a ward in his cell for twenty-three hours a day and releasing him for only one hour of exercise).<sup>231</sup>

S.B. 609 mandated that all facilities provide adequate classrooms to enable the CYA to offer educational services.<sup>232</sup> Aspiring to have the CYA staffed with employees trained in rehabilitative techniques and not to displace active staff, existing guards were either to be retrained or transferred to the Adult Department of Corrections.<sup>233</sup> Finally, S.B. 609 required that all California youth corrections agencies work with other juvenile justice stakeholders and successful jurisdictions to create plans to redesign the system.<sup>234</sup>

### 3. *Section 3 of Senate Bill 609*

Section 3 addressed remedies for the problems that wards face upon reentry and required that every released ward have an individual plan to address the specific parolee's needs in relation to supervision, public safety, housing, education, employment, and health care.<sup>235</sup> The bill ordered that each ward be paroled before reaching the age of twenty-five, so that the parole plan could be implemented under the CYA's jurisdiction.<sup>236</sup>

### 4. *Section 4 of Senate Bill 609*

Section 4 addressed the potential costs of implementation and

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*; see Steve White, Office of the Inspector General, *23-and-1 Program Review* (Dec. 2000), available at <http://www.oig.ca.gov/reports/pdf/yacTD1200.pdf> (last visited Apr. 20, 2007).

<sup>232</sup> S.B. 609, 99th Leg. (Cal. 2005).

<sup>233</sup> *Id.* This suggestion is crucial to resolving one of the bill's major challenges. The California Correctional Peace Officers Association (CCPOA) is politically influential and was the only organization to openly oppose S.B. 609, a position they maintained despite attempts to ensure no union jobs were lost. See California Correctional Peace Officers Association, *Hot Topic* (July 2005) <http://www.igs.berkeley.edu/library/htCaliforniaPrisonUnion.htm>. Their continued opposition to additional legislation along these lines is probable and must be addressed.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

provided that local agencies and school districts that incur costs would be reimbursed.<sup>237</sup>

### 5. *Senate Bill 609's Legislative Journey*

S.B. 609 was introduced in the Senate in February 2005 and encountered substantial opposition in the Appropriations Committee.<sup>238</sup> The Committee deleted sections 2, 3 and 4 and the last line of section 1 and sent the bill to the Assembly.<sup>239</sup> The Assembly removed what was left of the original bill by deleting section 1 and substituting two new sections.<sup>240</sup>

The amended bill required that the Division of Juvenile Justice ("DJJ" – the CYA's new name) hire staff to develop new curricula and training materials and train existing employees to provide rehabilitative services.<sup>241</sup> It also mandated that the DJJ stop using 23/1 confinement procedures, except in emergencies.<sup>242</sup>

The 2005-2006 California legislative session adjourned on November 30, 2006 and S.B. 609 (as amended) died on that date.<sup>243</sup> The reforms contemplated in that bill will have to await consideration in a future legislative session.

### B. LEGISLATIVE PROPOSAL TO BRING CYA INTO STATUTORY COMPLIANCE

Given that the CYA has failed to produce the rehabilitated youths required by Welfare and Institutions Code section 1700, there is a clear need for a new piece of legislation that will effectively force the CYA into compliance with its mandated purposes. S.B. 609 in its original form was a step in the right direction, but it did not have the political support it needed. Recognizing that the California legislature is currently unwilling to pass a law that makes sweeping changes in a condensed period of time, this Comment suggests that the 2007-2008 California Legislators should enact a new bill that maintains many, but not all, of the characteristics of S.B. 609.

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<sup>237</sup> S.B. 609, 99th Leg. (Cal. 2005).

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> S.B. 609, 99th Leg. (Cal. 2005).

<sup>243</sup> California Senate, Tentative Legislative Calendar (Sept. 28, 2005), available at [http://www.sen.ca.gov/~newsen/schedules/\\_CALENDAR/SENATE\\_CALENDAR\\_2006.PDF](http://www.sen.ca.gov/~newsen/schedules/_CALENDAR/SENATE_CALENDAR_2006.PDF).

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1. *Institutional Change*

Physically changing the CYA's institutions is a necessary first step in creating an environment in which effective rehabilitation can occur.<sup>244</sup> Experts agree that smaller facilities were the crucial step in Missouri's effective rehabilitation program.<sup>245</sup> Abandoning the training school model, however, will require significant legislative support, which did not exist in the most recent legislative session.<sup>246</sup>

In order to move the CYA toward institutional reform at a pace that is more likely to succeed in light of the Legislature's recent inclinations, the new bill should create a pilot program with four small residential facilities that replicate Missouri's rehabilitation program with a segment of the CYA's population.<sup>247</sup> Over time and after a series of evaluations, the pilot program may demonstrate that the juvenile recidivism rate can be reduced and public safety can be increased for far less money than California currently spends.<sup>248</sup> Small-scale success may provide the basis for large-scale change. This program could be the beginning of California's return to its status as a leader.

California's pilot program should incorporate the four major components of Missouri's successful program: (1) small residential facilities, (2) a high ratio of well-trained and educated staff to wards, (3) education and therapeutic programming, and (4) effective aftercare.<sup>249</sup>

The CYA could begin by identifying four locations for the pilot program. The facilities do not have to be newly built; the state's unused buildings can be utilized.<sup>250</sup> The CYA should move 120 to 160 of the

<sup>244</sup> A number of challenges stand in the way of creating such massive change. Replacing large institutional structures with hundreds of smaller facilities will take a considerable amount of time and money. As noted, the CCPOA opposes changes that threaten its members' jobs. Can the state provide enough training to the current employees to integrate them into the new Youth Authority? Will such training result in personnel capable of promoting rehabilitation? Can some of the guards be reintegrated into adult prisons? These are unanswered questions that make it difficult for the state legislature to support and implement such massive change.

<sup>245</sup> Mendel, *supra* note 173 at 33. Such facilities allow wards to develop effective personal relationships with the staff members. In this system, wards are less likely to get lost in the shuffle of a large institution, and the institution is less likely to suffer from many of the issues that the CYA faces, such as a high staff turnover and inability to fully staff the facilities.

<sup>246</sup> See Texas Youth Commission, *supra* note 206; see also S.B. 609, 99th Leg. (Cal. 2005).

<sup>247</sup> See CYC Net Features, *supra* note 182 (describing Missouri's pilot program).

<sup>248</sup> Compare Missouri's average spending per ward in 2005 (about \$52,000) to California's average spending per ward in 2005 (about \$71,000). Missouri Dep't of Social Services, *supra* note 171; California Dep't of Corrections and Rehabilitation, *Facts, Stats, and Trends, Ward Per Capita Cost Fiscal Year 2004-05* (2004-05), [http://www.cya.ca.gov/ReportsResearch/wardcost\\_0405.htm](http://www.cya.ca.gov/ReportsResearch/wardcost_0405.htm).

<sup>249</sup> See *supra* notes 171-203 and accompanying text.

<sup>250</sup> CYC Net Features, *supra* note 182 at 2. The facility could be similar to the one Missouri first used for its pilot program, which was an abandoned Job Corps site.

state's most violent and serious juvenile offenders from Chaderjian – which currently houses approximately 257 wards thusly classified<sup>251</sup> – into the new facilities.<sup>252</sup> The resulting average of thirty to forty youths in each location would be in keeping with national recommendations and Missouri's current programs.<sup>253</sup> This approach would achieve two goals at once: the state would be taking a step toward testing the efficacy of large-scale change, and Chaderjian's population would become smaller and easier to manage.<sup>254</sup>

Smaller facilities alone are not enough to create a successful rehabilitative program;<sup>255</sup> another vital component is an adequate number of trained and experienced staff.<sup>256</sup> The CYA should use Missouri's staffing procedures as a model.<sup>257</sup> California should organize each group of thirty to forty wards into smaller groups of ten to twelve wards and assign them a group leader, a teacher, and a youth specialist.<sup>258</sup> Each ward should be assigned a service coordinator to work with the family and other team members to complete an assessment of the youth's needs, create a treatment plan, and oversee the plan's implementation to ensure that the youth's needs are being met.<sup>259</sup> Serving 160 wards in the pilot program would therefore require sixteen group leaders and teachers, and eight youth specialists, to match the Missouri ratios.<sup>260</sup>

Staffing the pilot program with well-trained and educated personnel is also critical. The CYA should hire some experienced staff who have not previously worked for the institution, but the experimental program

<sup>251</sup> California Dep't of Corrections and Rehabilitation, Division of Juvenile Justice, *Population Movement Summary* at 5 (Sept. 2006), available at <http://www.cya.ca.gov/ReportsResearch/docs/research/0906PMS.pdf>.

<sup>252</sup> The advantage of selecting the state's most serious offenders is that the potential success of the program would not be based on padding the program with lesser offenders.

<sup>253</sup> de Sa', *Opportunity "To Be Human,"* *supra* note 13 at A1; CYC Net Features, *supra* note 182 at 2.

<sup>254</sup> See Mendel, *supra* note 173 at 30.

<sup>255</sup> *Id.* A regional administrator in Missouri who worked for the DYS in the beginning of its transformation recalls that the DYS did not see immediate change and experienced frequent and serious discipline problems. *Id.* Similarly, Kentucky's juvenile system housed wards in small facilities and still displayed many of California's shortcomings, including complaints of abuse, excessive use of isolation cells, and failure to provide educational and mental health programs. *Id.*

<sup>256</sup> Mendel, *supra* note 173 at 30.

<sup>257</sup> See Missouri Dep't of Social Services, *supra* note 171.

<sup>258</sup> *Id.* Youth specialists are assigned depending on the site's security level. The most secure sites have ten youth specialists per group, moderately secure sites have eight, and community programs have seven.

<sup>259</sup> *Id.* In recent years, the DYS has had around 90 service coordinators with an average caseload of 17 youth.

<sup>260</sup> *Id.*

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is also an opportunity for the state to evaluate the effectiveness of providing additional training to current employees. Before bringing the wards to the new facility, the CYA should offer interested guards the opportunity to train to become youth specialists, service coordinators, or group leaders.<sup>261</sup> The program should analyze how successful providing training and education to current CYA guards is compared to hiring new employees.

The staff would implement the key aspects of Missouri's program: therapy and education.<sup>262</sup> As a ward begins the program, the state should perform an initial evaluation, determine the appropriate course of therapy, and create an individualized plan.<sup>263</sup> Missouri focuses on group and individual therapy in the areas of victim empathy, social skills, anger management, healthy thinking patterns, peer influences, substance abuse, and self-esteem; California's pilot program should focus on similar issues.<sup>264</sup>

The California pilot program should also follow Missouri's approach to instructional services: full-time, year-round schooling in the core areas required by public education standards, such as math, science, social studies and reading.<sup>265</sup> As possible, the program should provide instruction in elective subjects such as physical education, health, fine arts, and career/vocational education.<sup>266</sup>

As participants in the pilot program approach release, parole services should be provided to assist wards with reentry.<sup>267</sup> The service coordinators would be responsible for overseeing youth from the time of commitment until the time of release and for deciding when each juvenile is ready for release.<sup>268</sup> Assigning an employee to a ward immediately upon commitment will facilitate the development of a long-term relationship that is essential to the ward's reintegration into the community.<sup>269</sup>

<sup>261</sup> By making training an option, California can begin to answer a pressing question: Can current *guards* be reformed into *counselors* or will the transformation require hiring an entire new staff? A substantial amount of additional training may be needed to help existing staff make the transition. If a new staff is required, the state will have to negotiate with the formidable CCPOA.

<sup>262</sup> Mendel, *supra* note 173 at 30.

<sup>263</sup> See Mendel, *supra* note 173 at 31-33; see also Texas Youth Commission, *Programs and Facilities*, *supra* note 210.

<sup>264</sup> Missouri Dep't of Social Services, *supra* note 171.

<sup>265</sup> *Id.* Missouri's educational program is based on the state's education standards for non-offender youth.

<sup>266</sup> See *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> See Mendel, *supra* note 173, at 34.

California should also implement other key policies and procedures that were successful in Missouri. In the pilot program facilities, the wards should wear street clothes rather than prison jumpsuits, live in dormitory-style homes with bedrooms and communal living areas rather than cells, and be disciplined through revocation of privileges rather than confinement in isolation.<sup>270</sup>

The pilot program should operate long enough to accurately determine the rate of recidivism and be subject to multiple objective evaluations to determine its success. Participating wards should be closely monitored after release so California can accurately determine whether they become recidivists.

## 2. *Policies and Procedures*

While the pilot program would be a start to the reform process in California and may demonstrate that such an approach is cheaper and more effective than the current program, it does not address the reality that the CYA is not operating its facilities in accordance with current law. Thus, there is a need for the new legislation to provide for some small-scale changes that will move the CYA toward legal compliance while it awaits the results of the pilot program. The original version of S.B. 609 included useful suggestions.<sup>271</sup>

The majority of section 2 of proposed S.B. 609 should be reintroduced in the next legislative session, excluding the provision that would close Chaderjian.<sup>272</sup> The new legislation should promote the “culture of caring” that is the hallmark of the Missouri system.<sup>273</sup> The relatively minor changes suggested in the proposed bill may have an important impact because they are steps toward a system that treats juveniles with dignity.<sup>274</sup> As is the practice in Missouri, wards throughout the system should not be clothed in prison uniforms or

<sup>270</sup> See Mendel, *supra* note 173, at 31-34.

<sup>271</sup> See *supra* notes 221-237 and accompanying text. Some of the solutions this Comment recommends are from Senator Romero’s S.B. 609; other solutions are based on practices utilized in Missouri and Texas.

<sup>272</sup> Closing N.A. Chaderjian is not feasible at this point because it would face considerable opposition from the CCPOA (a union widely considered one of the most powerful political players in California state politics). See California Correctional Peace Officers Association, Hot Topic (July 2005) [http://www.igs.berkeley.edu/library/ht\\_CaliforniaPrisonUnion.htm](http://www.igs.berkeley.edu/library/ht_CaliforniaPrisonUnion.htm). Additionally, there is not enough space to move the wards there to other places.

<sup>273</sup> Aylish McGarvey, *A Culture of Caring* (Sept. 12, 2005), available at <http://www.connectforkids.org/node/3381/print>.

<sup>274</sup> *Id.*

jumpsuits.<sup>275</sup> Also, to promote a dignified system, California should abandon the use of solitary confinement cells and 23/1 confinement.<sup>276</sup>

The original section 2 included a requirement that wards be housed based on their status as low-risk or high-risk, in stand-alone facilities of no more than forty wards.<sup>277</sup> Though reform of the institutional structures is not feasible at this point, the central portion of this proposal should be retained, without the forty-ward, stand-alone requirement. As in Missouri, facilities should be classified as “secure,” “moderate-care” or “day treatment.”<sup>278</sup> Each of the CYA’s seven juvenile facilities should be reclassified into the designation it will eventually occupy as wards are classified and segregated by facility. Properly assigning (or reassigning) wards in such a fashion means that the CYA must create a classification system that determines needs and risk factors that result in youths being placed in the correct unit, as suggested in section 2 of the original version of S.B. 609.<sup>279</sup> Such a classification system can be implemented for all newly committed wards, with a goal to assess those previously committed on a specific schedule over time. The end result will be facilities that are segregated based on the needs and status of wards.

Another component of section 2 of the original S.B. 609 required that youth be housed within fifty miles of their home to facilitate the integration of families into treatment plans.<sup>280</sup> This proposal was taken from the Missouri model, which houses wards no more than seventy-five miles from their families.<sup>281</sup> California is a much larger state than Missouri, but the new bill should include a provision requiring that the CYA *attempt* to house all incoming wards in facilities that are as close as possible to their homes as long as such a placement does not interfere with the risk-classification system. While this provision would not be mandatory, it could promote familial participation in many cases.

The new bill should make two other crucial changes to the CYA’s policies and procedures. First, the CYA should be required to adopt a new disciplinary system that will reduce the use of time add-ons as punishments and substitute a system that rewards wards demonstrating positive behavior with time reductions.<sup>282</sup> The new piece of legislation

<sup>275</sup> *Id.*

<sup>276</sup> S.B. 609, 99th Leg. (Cal. 2005).

<sup>277</sup> *Id.*

<sup>278</sup> McGarvey, *supra* note 273.

<sup>279</sup> S.B. 609, 99th Leg. (Cal. 2005).

<sup>280</sup> *Id.*

<sup>281</sup> McGarvey, *supra* note 273.

<sup>282</sup> On February 21, 2006, Senator Romero introduced a bill to address the excessive use of time add-ons in CYA facilities. S.B. 1373, 2005-2006 Leg., 99th Sess. (Ca. 2006). The bill

should adopt some of the recommendations of the Safety and Welfare Remedial Plan that was proposed on March 31, 2006, as a result of the *Farrell* litigation.<sup>283</sup> The plan suggested that each potential time add-on should be accompanied by an opportunity to complete certain requirements to avoid the sentence extension.<sup>284</sup> Such conditions would be put in writing and agreed to by the ward and his program managers and the disciplinary hearing committee.<sup>285</sup> If the ward meets the conditions in the specified time, his sentence would not be increased; failure to meet the conditions would result in an extended sentence.<sup>286</sup>

In this vein, the CYA should also implement a policy that allows wards to earn time reductions for good behavior, cooperation with staff and teachers, and achievement of educational or therapeutic goals.<sup>287</sup> S.B. 1373 and the Safety and Welfare Remedial Plan proposed a limit on the amount of time that a sentence could be extended in order to avoid wards' routinely serving maximum sentences.<sup>288</sup> No more than one month of extensions per year of the initial sentence is a logical limit, given that the California Juvenile Board of Parole successfully implemented that standard in the 1980s.<sup>289</sup>

Second, California should create statewide policies that require counties to create alternatives to detention, with an eye to reducing the number of wards in CYA facilities.<sup>290</sup> A smaller population of committed youths makes it easier to serve the wards that most need rehabilitation in an in-patient environment.<sup>291</sup> There are a number of

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proposed to limit time add-ons to one month per year of actual sentence and to implement a time credit system by December 1, 2007, among other related changes. By the time the bill reached the Governor, it had been amended and only required that the agency make a good faith effort to achieve a performance objective related to reducing time add-ons and to submit reports of all ward sentences and lengths of stay biannually. The Governor vetoed the bill.

<sup>283</sup> California Dep't of Corrections and Rehabilitation ("CDCR"), Division of Juvenile Justice, *Safety and Welfare Plan – Implementing Reform in California* at 74-76 (Mar. 31, 2006), available at <http://www.cya.ca.gov/Communications/DJJReformPlan.html>.

<sup>284</sup> *Id.* at 75.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.* at 76.

<sup>288</sup> California Dep't of Corrections and Rehabilitation, *supra* note 283, at 76.

<sup>289</sup> *Id.*

<sup>290</sup> Annie E. Casey Foundation, *Juvenile Detention Alternatives Initiative*, <http://www.aecf.org/Home/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx> (last visited May 18, 2007). There are a number of advantages to decreasing the population of detained wards. First, the overall population of any given institution is easier to manage if there are fewer wards. Second, juveniles who are committed to the CYA have their fragile relationships to school and family disrupted and are less likely to meet educational goals and be steadily employed. Third, it is cheaper to administer services to youths without committing them to secure detention facilities.

<sup>291</sup> *Id.*

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potential methods, but the Annie E. Casey Juvenile Detention Initiative provides a framework for formulating alternatives to confinement.

Santa Cruz County adopted the Initiative in 1997, and the population of youths committed to the CYA subsequently decreased by forty to fifty percent.<sup>292</sup> Santa Cruz employs three alternatives to commitment: home supervision, electronic monitoring, and its Youth Community Restoration Program.<sup>293</sup> Youths in the home supervision program are not allowed to leave home except for approved activities such as school and work; probation officers make unannounced home and school visits and calls.<sup>294</sup> Electronic monitoring requires that a transmitter be attached to the youth's ankle that notifies the probation officer when the youth leaves home.<sup>295</sup> The Youth Community Restoration Program engages youths in weekend community projects, along with home supervision and electronic monitoring.<sup>296</sup> These approaches have almost a hundred-percent success rate in preventing youths from re-offending while under court supervision and in ensuring they attend court hearings.<sup>297</sup>

The new legislation should require every county to use Santa Cruz's risk-assessment tool to determine the level of risk that each potential ward poses to the community and to commit only the youths that are high risk.<sup>298</sup> For other youth, the counties should implement home supervision, electronic monitoring, and weekend community restoration programs, as Santa Cruz County did.<sup>299</sup>

### 3. Staff

Some changes in the composition of CYA staff can occur while waiting for the pilot program's results. CYA guards should be required

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<sup>292</sup> The Center on Juvenile and Criminal Justice ("CJCJ"), *Reforming the Juvenile Justice System - Model Counties: Santa Cruz, California*, available at <http://www.cjcj.org/jjic/reforming.php> (last visited May 18, 2007). Santa Cruz County has saved millions of dollars by avoiding having to build and staff a new detention facility. See Annie E. Casey Foundation, *Juvenile Detention Alternatives Initiative*, *supra* note 290.

<sup>293</sup> The Center on Juvenile and Criminal Justice ("CJCJ"), *Reforming the Juvenile Justice System - Model Counties: Santa Cruz, California*, available at <http://www.cjcj.org/jjic/reforming.php> (last visited May 18, 2007).

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> Center of Juvenile and Criminal Justice, *supra* note 293. There has not yet been an evaluation of whether these youths re-offend after they have left the court's supervision.

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

to obtain more training and education. Also, more staff should be hired to provide further education and therapy.

Section 2 of S.B. 609 required that the current CYA staff be either retrained or transferred to the Adult Department of Corrections to ensure that the Youth Authority was staffed with employees capable of providing rehabilitation and that active employees not be displaced.<sup>300</sup> The Missouri model indicates that appropriately trained staff is – apart from small facilities – the most important aspect of a youth rehabilitation system.<sup>301</sup> Although California will not be abandoning the training school model immediately, the staff that continues to work at the CYA youth facilities should be required to obtain additional education and training so they are more capable of providing rehabilitative services in the future.<sup>302</sup> The basic premise of S.B. 609 should be retained, but the new legislation should provide for specific classes and requirements to assist guards who are interested in becoming youth specialists. In any case, all guards should be required to obtain a minimum of a high-school education or its equivalent and should be specially trained to assume the roles of mentors and teachers, rather than disciplinarians.<sup>303</sup> Any guards who are unable or unwilling to participate should be offered employment in the adult correctional system to prevent loss of jobs.<sup>304</sup> Additionally, experienced staff should be hired to provide a model current staff.

#### 4. *Parole Services*

This comment suggests that the new legislation reject the proposals in Senator Romero's S.B. 609 and 795 regarding parolees and make two modifications.<sup>305</sup> The CYA should hire additional staff and begin to assign each ward to particular employee who will work closely with him

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<sup>300</sup> S.B. 609, 99th Leg. (Cal. 2005).

<sup>301</sup> See Mendel, *supra* note 173, at 30.

<sup>302</sup> See *supra* notes 169-216 and accompanying text.

<sup>303</sup> See *supra* notes 169-216 and accompanying text.

<sup>304</sup> S.B. 609, 99th Leg. (Cal. 2005).

<sup>305</sup> S.B. 609, 99th Leg. (Cal. 2005); S. B. 795, 99th Leg. (Cal. 2005). S.B. 609 required that the CYA develop a reentry plan for each ward to be implemented by local courts and probation departments. It further addressed a major problem in the CYA today: most wards are not released before they have reached twenty-five and are therefore out of the CYA's jurisdiction when they are released, with no opportunity to receive support from a parole department. S.B. 609 suggests that all wards be paroled with sufficient time for the ward's parole plan to be actually implemented in his community. Senator Romero also introduced S.B. 795 to address similar concerns. S.B. 795 contained the same provisions as S.B. 609, § 3, and also required that the responsibility for such parole services be turned over to local government. The Governor vetoed the bill because it required that the change occur by July 2007, which he believed was too soon. S.B. 793, 99th Leg. (Cal. 2005).

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from the beginning to end, and decide when he is ready for reentry.<sup>306</sup> This solution would address the issue that wards are often not released until they are out of the CYA's jurisdiction and would be a vast improvement on the current system, in which that decision is made by a parole board that does not personally know the ward. The CYA should also recruit community members and college students to mentor wards as they are released, so that they have additional support upon reentry.<sup>307</sup>

Additionally, the CYA should fund the creation of a number of day centers similar to those in Missouri.<sup>308</sup> These nonresidential centers could provide a place for youth to receive support after they leave a CYA facility.<sup>309</sup>

## VII. CONCLUSION

Returning California's juvenile justice system to the status it once held as an international leader will not be an easy task; many barriers stand in the way. The advantages of such a transformation, however, far outweigh the difficulties. By using approaches that have enjoyed great success in other states, California can save money, rehabilitate youth, and increase the safety of its residents.

California has much of what it needs to rehabilitate juveniles and return them to their communities as productive, contributing members of society. Other states have successfully prevented juvenile offenders from becoming the next adult criminals.<sup>310</sup> It is possible to rehabilitate youth, and it can be done with less money than it costs to incarcerate children and prepare them to commit crimes as adults.<sup>311</sup> Such a change, however, requires significant support and dedication from all areas of government. The real question is not whether we *can* rehabilitate juvenile offenders, but whether we are *willing* to spend the time, money, and energy necessary to do so.<sup>312</sup>

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<sup>306</sup> Mendel, *supra* note 173, at 34.

<sup>307</sup> *Id.* Critics note that parole services are too focused on minor technical infractions and don't provide services to prevent recidivism (help with housing, jobs, and education). de Sa', *Left Adrift on Parole*, *supra* note 13, at A1.

<sup>308</sup> See *supra* notes 198-202 and accompanying text.

<sup>309</sup> See *supra* notes 198-202 and accompanying text. Such centers could help youth who are over eighteen, do not have the structure of school to rely upon and who easily return to gang culture or illegal activities.

<sup>310</sup> See *supra* notes 169-216 and accompanying text.

<sup>311</sup> See *supra* notes 169-216 and accompanying text.

<sup>312</sup> This question is particularly important in light of unsubstantiated, sensationalized media reports that juvenile crime rates are increasing and that juveniles are more violent than ever before. Given that recent evidence indicates that crime rates among youths are falling, legislators should be

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cautioned against passing laws that increase sentences for kids, try them as adults, and give them fewer chances to rehabilitate after making mistakes. *See* Mike Males, *A Kiddie Crime Epidemic? Hardly*, LA TIMES, Sept. 17, 2006, at A1.

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