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# The California Youth Authority: Planning for a Better Tomorrow

PEARL S. WEST\*

Just as America has its Declaration of Independence and Great Britain its Magna Carta, the California Youth Authority's basic philosophy has, from its beginning, been the Youth Authority Act.<sup>1</sup> The 1941 Act, still in effect today, was the instrument which established the Youth Authority as a separate department, and set in motion a series of developments through which the new department formulated its responsibility for the State of California's youth and juvenile corrections programs. The Youth Authority Act,<sup>2</sup> through its statement of purpose, also set forth the basic principle which has been the legal and philosophical guiding light of the department for almost four decades.

"The purpose of this chapter," the legislation states, "is to protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the

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1. CAL. WELF. & INST. CODE § 1700 (West 1972).
2. *Id.*

correction and rehabilitation of young persons found guilty of public offenses. . . .”<sup>3</sup> The durability and soundness of this statement of purpose is difficult to fault. It placed into law the concept that young offenders need and must be given help, and that such help should be provided by a new agency designed specifically for that purpose. Moreover, it eschewed punishment for punishment’s sake as the instrument for dealing with these young offenders. Instead, they were to be “trained and treated” while incarcerated or otherwise under the Youth Authority’s jurisdiction so they could be rehabilitated and thus have the opportunity to become useful, productive and law-abiding members of society.

As the years passed, the clientele served by the Department, and the needs of society as a whole, underwent subtle and continuing changes. While the Youth Authority Act’s statement of purpose has remained a meritorious objective, there has been growing reason to believe that the Act’s original language has become outmoded by the passage of time. It has become clear that the changing needs and expectations of society and its elected representatives must be paramount considerations in the planning and implementation of departmental programs. The public’s concern with the increase in crime and violence, much of it revolving around young offenders, has been both justifiable and vehement. From this standpoint, the relevance of providing protection to society through rehabilitation as a pure and unadulterated goal in youth corrections has been brought into question. Moreover, a renewed focus on the relationship of rehabilitation to punishment, the latter being an inevitable by-product of any correctional program in which offenders are deprived of their liberty, has complicated the original conception of rehabilitation as the basic aim of Youth Authority correctional programs. In addition, recent legislation<sup>4</sup> and court decisions<sup>5</sup> have introduced new factors which have further eroded the Youth Authority’s original commitment to rehabilitation.

It was for these general reasons that on October 31, 1978, I authorized, with the concurrence of the Department’s top management team, the establishment of a committee to review the Youth Authority Act. The fourteen member committee represented all of the Department’s areas of responsibility, including institutions, parole, community services, planning and research. The importance of the committee’s assignment is not to be underestimated; it has been charged with studying and recommending changes to

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3. *Id.*

4. *See* note 9, 47, 48, 49 *infra*.

5. *See* notes 16-20 *infra*.

a law which can indeed be described as "the Magna Carta of the Youth Authority." On this basis, the year 1978, when the work of this committee began, may well become as significant to future correctional historians as the year 1941, when the Youth Authority Act was first passed and the Department of the Youth Authority came into being.

#### EARLY HISTORY OF THE YOUTH AUTHORITY

Before entering into a further description of this vital committee and what it may accomplish in the months ahead, it would be beneficial to review important events of the past four decades which led to its formation.

Prior to 1941 there was no Youth Authority. In the late 1930's and the early 1940's, two developments combined to give rise to the Youth Authority. First, there was serious criticism of what was then California's juvenile corrections non-system. Second, in 1941, the American Bar Association developed a new plan which promised to be more effective in working with juvenile corrections in California. The new plan was greeted with immediate and widespread political and public support.

At that time, there were three state schools for young offenders, all of them administered by the Department of Institutions, an agency which also had responsibility for mental hospitals. The schools, it was charged, were old and inadequately staffed, and it had been over forty years since a boys' institution of any kind had been built by the state. The state's delinquency problem was growing, and there was a widespread feeling that nothing was being done about it.

The second trend, exploring the juvenile offender problem and how it might be more effectively met, was manifested in the American Law Institute's Model Youth Correction Authority Act. The Model Act was prepared after a national study which indicated that justice was being denied to youthful offenders in their late teens and early twenties. The institute stated a strong case for rehabilitation: young offenders could best be helped through diagnosis, and a subsequent treatment program including education. In the long run, the institute believed society would best be protected through rehabilitation rather than by punishment alone.

California's interest in the Model Act was dramatically height-

ened when two wards of the Whittier State School for Boys, one of the state's three youth institutions, committed suicide within a short time of one another. The deaths sent shock waves throughout the entire system, triggering broad investigations and accelerating the state's commitment to reform. These concerns quickly resulted in passage of the Youth Authority Act, although it took another two years for the newly-established department to take over administration of the three institutions, parole services and the beginnings of a program of community services. When these responsibilities were assumed, the Youth Authority became a full-fledged state department with primary responsibility for juvenile offenders.

Establishment of the Youth Authority represented a giant step in the direction of progressive management of an effective youthful offender system in California. Under the leadership of the Youth Authority, the state had, for the first time, an agency which could make every facility, both public and private, available to every county, to every court and to every young man and woman in need of these services. For the first time the state had an agency which could, and did, consistently promote effective standards of casework, personnel qualifications and institutional agency programs.

Carrying out its underlying philosophy of providing treatment for young offenders, the Youth Authority was able to mount programs to serve its wards on an individual basis and in a more scientific manner. The Youth Authority, for the first time, was also able to organize and provide leadership for worthwhile delinquency and crime prevention programs on a statewide basis. All of this comprised the essence of a youthful offender program which California sorely needed.

#### GROWTH OF THE DEPARTMENT

In the first years of the Youth Authority, new law affected the scope of the department's operations. In 1944, the upper age limit for criminal court commitments was reduced from twenty-three to twenty-one.<sup>6</sup> In 1945, the law was changed so that commitment of persons under twenty-one by the criminal court was made permissive rather than mandatory.<sup>7</sup> In effect, this meant that the

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6. CAL. WELF. & INST. CODE § 1731.5 (West 1972); "A court may commit to the authority any person convicted of a public offense who . . .

(a) Is found to be less than 21 years of age at the time of apprehension."  
[This 1944 amendment to section (a) substituted 21 years for 23 years.]

7. CAL. WELF. & INST. CODE § 1731.5 (West 1972). The 1945 amendment, in the introductory portions of the first paragraph, deleted the former provisions governing mandatory reference and substituted a provision that a court "may commit

criminal court would determine which young criminals, between eighteen and twenty-one years of age, were to be handled as youthful offenders, and which were to be treated as adults. In this way, the Youth Authority, which started out as a department to handle the older, youthful offender, quickly became an agency with broadened responsibilities for both juvenile and youthful offenders.

What rapidly developed was a state-of-the-art rehabilitation program. The system included diagnostic centers, training schools, forestry camps and parole. During the early 1950's, diagnostic reception centers were established where offenders committed by the courts could first be sent for study and determination of program assignment. These assignments would be made to the school and/or program most appropriate to the age, education, training and social needs of the offenders. Programs, which were continually expanded and refined, included academic and vocational training, a variety of work training programs, group and individualized counseling, and psychiatric treatment.

Institutional confinement was followed by a period of parole and the continuation of the rehabilitation process in the community. Each ward on parole was assigned to a parole agent whose primary responsibilities were to help the ward achieve a satisfactory adjustment to the community, to take control measures to prevent the commitment of further public offenses, and to arrange for the offender's return to an institution if substantive violations of the conditions of parole or new violations of the law occurred.

#### THE MEDICAL MODEL

The system for controlling delinquents was originally patterned on the traditional medical treatment model. The young person developed a "social illness," the symptoms of which were indicated by delinquent acts. The offender was placed in a reception-diagnostic center where the symptoms were studied, a diagnosis made, and a treatment plan developed. The "patient" was then transferred to the counterpart of a hospital, the training school, where he or she underwent the prescribed treatment. The length of the stay was typically indeterminate, depending in part on the seriousness of the offending behavior and the "patient's" re-

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to the Authority any person convicted of a public offense" who meets the certification requirements. *Id.*

sponse to the institutional program. When rehabilitation was considered complete, the ward enjoyed a period of "convalescence" on parole under the supervision of a parole agent who typically had 50 to 100 other parolees in his caseload. Under these circumstances, it was not surprising that many of the so-called patients may have suffered from a lack of "medical attention."

Nevertheless, the Youth Authority program, as prescribed and developed from the Youth Authority Act, was considered highly innovative and drew considerable attention all over the world. Correctional people from various parts of the U.S. and abroad visited California frequently to observe the program with the objective of seeking to emulate it in their own home territories. The years through the early 1960's, when the Youth Authority program came into full development and was highly admired for its innovation and progressiveness, have often been considered the "Golden Age" of youth corrections in California.

As we know and fully appreciate, problems were emerging at this time. One was the effect of a burgeoning state correctional program for young and juvenile offenders on local enforcement agencies. The Department's reputation for mounting comprehensive institutional programs, along with the availability of bed space, proved a tremendous attraction to local jurisdictions, which committed increasing numbers of offenders to the Youth Authority. This practice produced a spiral of the construction of new institutions, which, in turn, encouraged further commitments by countries anxious to get troublesome delinquents off their streets. The Youth Authority's population increased from about 1,000 in 1943 to about 6,500 by 1965. New place-names became a part of the Youth Authority lexicon as new institutions were built or purchased—Los Guilucos, Fricot, Paso Robles and the Youth Training School, to name but a few. By the early 1960's, it appeared as though there was no end in sight to the building boom. The Department purchased a huge tract near Stockton on which it planned to construct a complex of twelve institutions by the turn of the century.

In the meantime, the medical model itself began to come under growing criticism. It was felt that the approach was idealistic rather than realistic. Institutions, it was offered, by their very artificiality might hinder rather than support an offender's rehabilitation. The ward would eventually have to return to the community where he would find that his experience while under the discipline of incarceration would not be wholly transferrable. At worst, it was feared, with some justification, that institutional-

ization might provide a setting in which delinquent attitudes are reinforced and strengthened.

Studies of what actually was being accomplished substantiated these views. Despite the admirability of the Youth Authority's goals, delinquency and crime were on the increase. Ward populations continued to grow commensurate with the Department's building boom. Moreover, the counties themselves were ill-prepared to provide for young offenders in the community. Their juvenile halls were overcrowded and inadequately staffed. On probation, county probation officers frequently had to preside over hopeless caseloads, exceeding 200 cases for each officer.

#### THE COMMUNITY TREATMENT PROJECT

In 1961, the Youth Authority launched an experiment that was designed to correct some of the shortcomings of the medical model and provide for rehabilitation of offenders in a more normal setting than provided in the institutions. The experiment was called the Community Treatment Project. In the CTP were certain "non-dangerous" offenders from two counties. Instead of being assigned to an institution, after careful screening the CTP participants were referred immediately to parole and were placed under intensive supervision. The program continued for thirteen years, during which it was periodically monitored and revised. It was found that certain classifications of offenders did, indeed, do better under Community Treatment than a control group of similar offenders who went through the traditional institution-parole cycle. But other classifications did not do as well. The project, terminated in 1974, attracted considerable attention from correctional administrators throughout the world and provided insights which contributed substantially to the body of knowledge about offenders and their treatment. The program, however, did not produce the hoped-for breakthrough which could reverse the tide of crime and delinquency.

While Community Treatment was in full flower, however, it gave strong impetus to other agencies for the development of community programs for young offenders. This idea was further enhanced by the economic facts of life in state institutions. By the early 1960's, it was already costing some \$5,000 to keep an offender in an institution for a full year and construction of new institutions involved capital outlay costs per facility of upwards of



\$10 million. As the 1960's began, it appeared as though it might be necessary to build one institution every year into the foreseeable future. The potential tax burden, along with questions concerning the effectiveness of incarceration, became matters of increasing public and political concern.

#### PROBATION SUBSIDY

The result, in 1965, was the passage of the Probation Subsidy Act<sup>8</sup> by the state legislature. The Act aimed at the protection of citizens and the rehabilitation of offenders through state subsidy of county-level programs of intensive supervision and treatment. The probation subsidy program operated by providing participating counties with assistance in proportion to the amount by which they reduced commitments below a standard level based on past performance. The more that counties reduced their commitments, the more they were reimbursed. This afforded a built-in incentive for counties to keep a high number of offenders in the community rather than send them to state institutions or prisons. The law required that earnings be used in their entirety for probation supervision programs. Agencies other than probation were essentially excluded.<sup>9</sup>

Probation subsidy did, indeed, achieve its objective of reducing commitments, and in sensational fashion. Over a twelve year period, the expected number of adult and juvenile commitments to the Youth Authority was reduced by 29,000.<sup>10</sup> In fact, the juvenile court commitment rate to the Youth Authority declined from 168.6 commitments per 100,000 youths in the ten to seventeen age bracket in 1965 to 46.7 in 1973. Overall, first commitments to the Department dropped from 4,648 in 1965 to 1,464 in 1973.<sup>11</sup>

No appreciable effect was found, however, in the other major objectives of probation subsidy—increased protection of citizens and rehabilitation of offenders. Offenders treated in the community performed neither better nor worse than their counterparts who were incarcerated, and continuing publicity about offenses committed by individual probationers along with a barrage of crit-

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8. CAL. WELF. & INST. CODE § 1825 (West 1972).

9. Probation subsidy continued until 1978, when it was replaced by the County Justice System Subvention Program (1978 Cal. Stats. L. 461), which provides a more balanced and thorough program of state support for community corrections. This development, which aims at the creation of a new and effective partnership between the state and counties to improve local criminal justice systems will be treated later at greater length. It was designed to overcome deficiencies of the probation subsidy program, which had come under increasing criticism from law enforcement and various political groups. *See also* notes 47-49 *infra*.

10. 1978 C.Y.A. ANN. REP. Table 2.

11. 1975 C.Y.A. ANN. REP. 14.

icism that the program was fostering a "revolving door" style of justice turned public opinion against the program.

During the years that probation subsidy was in existence, it brought profound changes in the number and nature of the Youth Authority's clientele. From a high of 6,500 in 1965, the Department's institutionalized ward population dropped to 4,000 by 1972.<sup>12</sup> Three institutions were closed during the early 1970's and a fourth built by the Department, but unused, was turned over to the Department of Corrections. During the past dozen years, as the number of wards declined, the average age and the criminal sophistication of those committed showed a substantial increase. Some forty-two percent of those now in the Youth Authority have been committed for crimes of violence, a proportion that is three times greater than it was in the mid-1960's. The average age is now above eighteen and the number of females in the total ward population has dropped well below 200. All of these factors are considered to be effects of probation subsidy, which encouraged counties to keep the less dangerous and less serious offenders at home and therefore tended to keep the younger, the less sophisticated and the female out of state institutions.

The greatest proportion of these reductions involved the status offender, the youngster whose offense would not be considered either a misdemeanor or a felony if he were an adult. During much of its early history the Youth Authority had a substantial percentage of such truants, runaways and out-of-control youngsters in its institutions, but not any more. By Departmental policy, such commitments were excluded in 1975, and the policy has since been mandated by the enactment of Section 207 of the California Welfare and Institutions Code.<sup>13</sup> This law prohibits secure detention of all status offenders as defined by Section 601. In 1978, Assembly Bill 958<sup>14</sup> modified this provision by permitting brief

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12. 1975 C.Y.A. ANN. REP. Table 27.

13. CAL. WELF. & INST. CODE § 207 (West Supp. 1978):

(b) . . . [N]o minor shall be detained in any jail, lock-up, juvenile hall, or other secure facility who is taken into custody solely upon the ground that he is a person described by section 601 . . . or made a ward of the juvenile court solely upon that ground. If any such minor is detained, he shall be detained in a sheltered care facility or crises-resolution home . . . or in a non-secure facility.

14. 1978 Cal. Stats. ch. 1061, amending CAL. WELF. & INST. CODE § 207:

(c) A minor taken into custody upon the grounds that he is a person described in Section 601 . . . may be held in a secure facility . . . in any of the following circumstances:

detention of status offenders under certain circumstances.

During the early 1970's three developments in particular affected the Youth Authority and the way it carried out its programs. First, as already indicated, there was growing disillusionment with the effectiveness of rehabilitation methods. Second, in part because of this disillusionment and also because of considerable new case law on the subject, there began a greater emphasis on due process, stressing the equal protection of juvenile and adult offenders. Third, there developed a public concern over juvenile crime and a growing demand that the minor take more responsibility for his or her own acts. Developments in the treatment and control of the youthful offender in California during the last few years have reflected these three concerns.

#### CASE LAW AND LEGISLATION

Let us look first at significant recent developments in case law and legislation in the areas of due process and fairness, which have impacted measurably on the Department and the way it carries out its business. At this point, a brief description should be made of the Youth Authority Board, an eight-member paroling body appointed by the Governor, which has statutory responsibility for granting parole, setting conditions of parole, returning wards to the court of commitment for redispotion by the court, and discharging wards from Youth Authority jurisdiction. The Board was first established by the Youth Authority Act and it has since grown from its original complement of three members to eight. In addition, because of continuing workload increases, there are now eight Hearing Representatives who work with the Board in making case decisions, plus thirteen coordinators who carry out various functions in connection with formalized parole violation hearings now required by law.<sup>15</sup> These functions include advising wards of their rights at these hearings, explaining to them what will happen and determining if the ward needs an at-

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- (1) For up to 12 hours after having been taken into custody to determine if there are any outstanding wants, warrants or holds against the minor where the arresting or probation officer has cause to believe that such wants, warrants or holds exist.
  - (2) For up to 24 hours after having been taken into custody, in order to locate the minor's parent or guardian and arrange the return of the minor to his parent or guardian.

The section also provides for the detention of a minor for up to 72 hours in order to arrange the return of the minor to his parent or guardian, where that return cannot be accomplished within 24 hours due to the distance of the parent or guardian from the county of custody. *Id.*

15. See notes 16-20 *infra*.

torney. Some 2,400 such parole violation hearings are now scheduled by the Youth Authority each year.

A number of recent judicial decisions have extended due process requirements to the parole revocation process. In 1972, the U.S. Supreme Court, in *Morrissey v. Brewer*,<sup>16</sup> held that before parole could be revoked, parolee must be afforded a hearing reviewing the allegations and evidence to be presented against him. At the hearing, the parolee may call voluntary witnesses to testify in his behalf, and may confront and cross-examine adverse witnesses. The decision also gave the parolee the right to a written summary of the revocation hearing and the evidence used in determining revocation. In 1973, the U.S. Supreme Court augmented the hearing protection afforded parolees, holding that, under certain circumstances, a parolee must be granted the assistance of legal counsel at the hearing.<sup>17</sup> If the parolee is indigent, the attorney must be provided at state expense. One year later, the California Supreme Court ruled in *In re Valrie*<sup>18</sup> and *In re LaCroix*,<sup>19</sup> that parolees who are detained pending a revocation hearing are

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16. 408 U.S. 471 (1972). The case involved the revocation of the petitioner's parole without a hearing. The petitioner, after having been paroled for less than one year, was arrested at his parole officer's discretion for a violation of his parole. On the basis of a written report by the parole officer, he was recommitted to the state penitentiary to complete service of his sentence. The Court held that parole revocation, while not requiring all the rights due a defendant in a criminal proceeding, does require an informed hearing to give the assurance that the finding of a parole violation is based upon verified facts to support the revocation.

17. *Gagnen v. Scarpelli*, 411 U.S. 778 (1973). The respondent, a felony probationer, was arrested after committing a burglary. He admitted involvement in the crime but later claimed the admission was made under duress. The respondent's probation was revoked without a hearing. The Court held that, though the state is not constitutionally obliged to provide counsel in all cases, it should do so where the indigent probationer may have difficulty in presenting his version of disputed facts.

18. 12 Cal. 3d 139, 524 P.2d 812, 115 Cal. Rptr. 340 (1974). The parolee had been arrested on suspicion of violation of parole after his release on bail on federal narcotic charges. Counsel for the parolee had requested a pre-revocation hearing. The federal charges were dropped after 10 months, during which time petitioner's status as parolee remained unresolved. The court held that due process requires an inquiry as to whether grounds for revocation exist, and whether there is probable cause to believe there was a violation of a condition of parole.

19. 12 Cal. 3d 146, 524 P.2d 816, 115 Cal. Rptr. 344 (1974). The case involved a prisoner who was found guilty of all charges of parole violation, resulting in the revocation of parole. The petitioner made a written request for a pre-revocation hearing, but was transferred to prison without the benefit of a hearing. The court held that a hearing was required for determination of whether the substantive issues were undisputed, although the denial in this case was harmless and not prejudicial.

entitled to a preliminary hearing to determine if there is probable cause to believe that there was a violation of a condition of parole. Parole violation proceedings must be completed within a reasonable time thereafter, regardless of pending court action. Subsequent court decisions<sup>20</sup> have extended these due process requirements to possible rescission of parole after dates for parole have been granted.

These new legal requirements greatly increased the Youth Authority Board's workload and were the cause of the addition of thirteen coordinators to the Board's staff. Most hearings are now scheduled at local jails and juvenile halls, instead of exclusively at Youth Authority institutions and regional parole offices. Convening, as they do, in the community where the alleged violation occurred, the hearings have a greater degree of access to witnesses and other evidence to a responsible determination.

#### THE DISCIPLINARY DECISION-MAKING SYSTEM

Other court decisions, along with the Department's emphasis on fairness in dealing with wards, resulted in a substantial revision of institutional disciplinary procedures. In 1973, the Department developed and instituted the Disciplinary Decision-Making System. This is a formalized procedure which is brought into play when wards are accused of violating institution rules which were made known to them upon entry. The procedure affords them the right to be told in a formal manner of the rules they are alleged to have broken and of the evidence against them. Wards may present their own evidence with the aid of a staff or ward representative of their own choosing, with the right to appeal any findings to the institution superintendent. The procedure speeds the process of informing the Youth Authority Board of serious incidents as soon as possible after the alleged offense occurs, rather than months later at the time of regular progress reporting.

#### THE GRIEVANCE PROCEDURE

During the early 1970's, correctional institutions, of which Attica was the extreme and notorious example, were increasingly beset with unrest and violence. In response to the need for a formalized procedure for wards to voice and obtain a hearing for their grievances, and in anticipation that court decisions would soon require such a process, the Department in 1973 established an experimental grievance procedure at the Karl Holton School in

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20. *In re Winn*, 13 Cal. 3d 694, 532 P.2d 144, 119 Cal. Rptr. 496 (1975); *People v. Coleman*, 13 Cal. 3d 867, 533 P.2d 1024, 120 Cal. Rptr. 384 (1975); *In re Shapiro* 14 Cal. 3d 711, 537 P.2d 888, 122 Cal. Rptr. 768 (1975).

Stockton. The system was designed as a preventive measure to avoid the use of violence to alter institution rules. Set up on a model planned by the Center for Correctional Justice of Washington, D.C., it gives wards an opportunity to file grievances for corrective action if they believe that any institutional policy, procedure or staff action is unjust. The procedure provides for several levels of review, including that of the Director and advisory action by an outside arbitrator.

After the initial experiment at the Karl Holton School, the procedure was extended throughout the Youth Authority, to all institutions and to parole. A study showed that most grievances were settled in a mutually satisfactory fashion, rarely requiring the final level of review by an outside arbitrator. In 1975, the Ward Grievance Procedure was designated as an "exemplary project" by the Law Enforcement Assistance Administration, a status given to criminal justice programs which are deemed to be outstanding and worthy of emulation by correctional departments elsewhere in the nation. In 1976, the procedure was codified into California state law in section 1766.5 of the Welfare & Institutions Code<sup>21</sup> and is currently under consideration by the U.S. Congress for inclusion in all correctional institutions.

The Youth Authority's Ward Grievance Procedure, at this writing, is the oldest such system in existence in a youth correctional agency in the U.S. As such, it continues to offer invaluable data and experience to agencies which plan to establish such a program.

#### DETERMINATE SENTENCING

During the past few years there has been a substantial amount

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21. CAL. WELF. & INST. CODE § 1766.5 (West Supp. 1978):

The director shall . . . maintain a fair, simple and expeditious system for resolution of grievances. The system shall:

- (d) Provide for priority processing of grievances which are of an emergency nature . . . ;
- (e) Provide for the right of the grievants to be represented by counsel;
- (f) Provide for safeguards against reprisals against any grievant or participant in the resolution of grievance;
- (g) Provide, at one or more decision levels of the process, for a full hearing of the grievance at which all the parties to the controversy and their representatives shall have the opportunity to be present and present evidence . . . regarding the grievance;
- (h) Provide a method of appeal of grievance decisions available to all parties to the grievance . . . .

of new legislation and case law concerned with equal protection of wards and inmates, some of it replacing past concepts of indeterminate sentencing with specified sentencing limits for specific crimes. Indeterminate sentencing had been a major issue in California for many years and was frequently blamed for much of the unrest in prisons and institutions. It was also the subject for considerable litigation filed on behalf of wards and inmates.

Under indeterminate sentencing, the date of a prisoner's release was left to the Youth Authority Board or the Adult Authority, leaving the offender with a feeling of bitterness whenever his hoped-for parole date was postponed. A major court and legislative assault on indeterminate sentencing began in 1976. In the case of *People v. Olivas*<sup>22</sup> the California Supreme Court dealt with the appeal of a young adult committed for a misdemeanor who argued that he should not be in the Youth Authority for longer than the maximum jail sentence for the same offense. The court, while noting that rehabilitation continues to be a worthwhile and ideal objective, rejected that argument as justification for potentially disparate periods of control.<sup>23</sup> Meanwhile, the Legislature was accomplishing substantially the same result with respect to juveniles by limiting the juvenile's potential period of physical confinement by the Youth Authority to the maximum term to which an adult could be held for the same offense. This legislative policy was established in Welfare & Institutions Code Sections 726<sup>24</sup> and 731.<sup>25</sup> These measures also prohibited the se-

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22. 17 Cal. 3d 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976). The case involved a juvenile, convicted of misdemeanor assault, who was committed to the Youth Authority for a term potentially longer than the maximum jail term which might have been imposed for the same offense if committed by a person over the age of 21. The court held that the State failed to show a compelling state interest and that California Welfare and Institutions Code § 1731.5, providing for such commitment, denied juveniles the equal protection of the law.

23. In *People v. Sandoval* the principle of the *Olivas* decision was extended to felony offense adult commitments. 70 Cal. App. 3d 73, 138 Cal. Rptr. 609 (1977). The case involved a defendant under 21 who had violated the terms of his probation, resulting in a prison term longer than that served by adult felons. The court held the discharge provisions of CAL. WELF & INST. CODE § 1771 were unconstitutional insofar as they authorize control over such felons beyond the maximum prison sentence authorized for adults.

24. CAL. WELF. & INST. CODE § 726 (West Supp. 1978):

. . . as used in this Section and in Section 731, "maximum term of imprisonment" means the longest of the three periods set forth in . . . Section 1170 of the Penal Code. . . .

If the court elects to aggregate the period of physical confinement on multiple counts, or multiple petitions . . . the "maximum term of imprisonment" shall be specified in accordance with . . . Section 1170.1 of the Penal Code.

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

cure detention, on any level, of status offenders, except for a relatively brief period to permit authorities to contact a runaway's parents to check into whether he or she is wanted by police.

The Youth Authority had to move swiftly to implement these judicial and legislative mandates, and the Department's consequent difficulties were further exacerbated by the passage of the Uniform Determinate Sentencing Act of 1976,<sup>26</sup> which established determinate sentences for all adult felony offenses, and an urgency statute passed the following year, amending the 1976 Act to increase the categories of offenses for which the Youth Authority Board could retroactively impose additional time.<sup>27</sup> These enhancements could be added under certain conditions, such as if the offender was armed with a firearm or inflicted great bodily harm in the course of his commitment offense.

Two other important legislative requirements also went into effect in the beginning of 1977. California Welfare and Institutions Code Section 607 enabled the Department to retain jurisdiction over some wards committed by the juvenile courts until their twenty-third birthday, rather than their twenty-first, if the commitment was for certain designated serious offenses.<sup>28</sup> Another new rule, California Welfare and Institutions Code Section 707, required sixteen and seventeen year-olds charged with certain designated serious offenses to prove that they should not be remanded to adult court, shifting a burden that had, to that date,

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25. CAL. WELF. & INST. CODE § 731 (West Supp. 1978):

A minor committed to the Youth Authority may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment which could be imposed upon an adult convicted of an offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

26. 1976 Cal. Stats. ch. 1139. See CAL. PENAL CODE § 1170 (West Supp. 1978) which provides:

(a)(1) . . . The legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

27. 1977 Cal. Stats. ch. 165.

28. CAL. WELF. & INST. CODE § 607 (West Supp. 1978) which provides:

(b) The court may retain jurisdiction over any person who if found to be a person described in Section 602 of this code by reason of the violation, when he was 16 years of age or older, of any of the offenses listed in subdivision (b) of Section 707 until such person attains the age of 23 years if the person was committed to the Youth Authority.



rested on the district attorney.<sup>29</sup>

The new legislation, much of it undoubtedly resulting from the public's perception of its need for protection from serious and violent offenders, has greatly complicated the Youth Authority Board's procedures in establishing lengths of stay for its wards. The same also has been true of the new case law which has come down on the subject. The number of adult misdemeanants committed to the Department, for example, has been greatly reduced, since the relatively brief commitment times permitted by *Olivas*<sup>30</sup> are often not sufficient for a realistic or effective program of treatment or rehabilitation. In computing maximum commitment times for any offense, the Department must now take into consideration not only the maximum age limit for which jurisdiction is allowable (twenty-five in the case of young adults who commit felonies), but also the maximum period for the specific offense which is allowed by the Uniform Determinate Sentencing Act of 1976,<sup>31</sup> *Olivas*,<sup>32</sup> and California Welfare Institutions Code Sections 726 and 731.<sup>33</sup> An intensive staff study effort of all case files was necessitated during much of 1976 and 1977 to make certain the new limits were being observed. A number of wards had to be released from the Department's jurisdiction because their allowable time had been reached or exceeded.

#### PAROLE CONSIDERATION DATES

The Youth Authority Board establishes parole consideration dates at the time of the ward's initial appearance before a two or three-member Board panel. During 1977, the Department came under considerable criticism from the press and public-at-large for reductions in the average length of stay, a decline which reversed the trend of previous years. Between 1976 and 1977, the average length of stay declined from about 12.5 months to slightly less than 11 months and the resulting public concern was centered primarily on the amount of time that serious offenders were spending in Youth Authority Institutions.<sup>34</sup>

After a lengthy study of Section 30,<sup>35</sup> which establishes parole consideration dates for specific offenses, the Youth Authority

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29. CAL. WELF. & INST. CODE § 707 (West Supp. 1978).

30. *People v. Olivas*, 17 Cal. 3d 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976). See note 22 and corresponding text, *supra*.

31. 1976 Cal. Stats. ch. 1139. See also CAL. PENAL CODE § 1170, note 26.

32. See note 22 and corresponding text *supra*.

33. CAL. WELF. & INST. CODE § 726 (West Supp. 1978); CAL. WELF. & INST. CODE § 731 (West Supp. 1978).

34. 1977 C.Y.A. ANN REP. Table 17.

35. C.Y.A. POLICY MANUAL.

Board voted in 1978 to increase the base incarceration periods for the most serious offenses. As an example, the basic parole consideration for juveniles committed for first degree murder was lengthened from three to five years. The new rules, which went into effect on June 1, 1978, also specify that a substantial deviation from the initially-established parole consideration date can be made only by a majority of all eight members sitting en banc.

Collectively, the various changes mandated by the new case law and legislation, as well as those which the Board itself has brought into being, has obvious implications for the concept of rehabilitation. Certainly the original concept of the Youth Authority Act—that is, that retributive punishment is to be replaced by methods of training and treatment directed toward the correction and rehabilitation of young offenders—needs to be reviewed. In providing for its ward populations, the Department obviously must be controlled by considerations which transcend the rehabilitation concept currently expressed in the Youth Authority Act, while taking other law into account. California Penal Code § 3000,<sup>36</sup> for example, requires the release of an offender when he has served the maximum time for his offense, whether rehabilitation has taken place or not. Current Board policy, along with the public's current apparent expectations, require that the seriousness of an offense be used in computing commitment time; thus, a substantial possibility exists that an offender may remain incarcerated far beyond the point at which he is deemed to be rehabilitated. It is because of considerations such as these that all of the original precepts of the Youth Authority Act require the review that is now underway.

#### A VIEW OF REHABILITATION

For eight and one half years before I became Director in October, 1976, the Youth Authority was headed by Allen F. Breed, who achieved a well-deserved national reputation as an innovator, administrator and correctional theoretician.<sup>37</sup> His own words dramatize the change in thinking toward rehabilitation within the Youth Authority. On the subject of rehabilitation, he wrote the

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36. CAL. PENAL CODE § 3000 (West. Supp. 1978).

37. Breed & Voss, *Procedural Due Process in the Discipline of Incarcerated Juveniles*, 5 PEPPERDINE L. REV. 641 (1978).

following in the Summer, 1968, issue of the Youth Authority Quarterly, shortly after he took over as head of the Department:

The prevention of delinquency, the strengthening of county probation programs, and the rehabilitation of committed youths are the major goals to which the Youth Authority is committed. Experience of many years has shown very clearly there is little to be gained from a simple program of institutionalizing and finally paroling a juvenile offender. Institutionalization is expensive, and by itself accomplishes little toward what we see as our major objective—the restoration of a youthful offender as a productive member of society.<sup>38</sup>

This was a simple plea for rehabilitation, expressed in terms about which few can disagree. Eight years later, shortly before he retired as Director, Mr. Breed discussed rehabilitation again in another article, in the Fall issue of the 1976 Quarterly. He wrote:

My years with the Department have taught me a number of things, not the least of which is the difference in the public's perception of the Youth Authority and the reality of what actually takes place in an institution or on the streets. The public's view is a simple one—that the Youth Authority is primarily an agency which punishes, or at least should punish, youthful offenders for their misdeeds. . . . The public rarely stops to think, too, that the Youth Authority's real goal is NOT to punish offenders—the concept of retributive punishment is ruled out by the original Youth Authority Act. That Act requires us to provide programs of treatment and rehabilitation, an objection which may be as unrealistic as the public's view about punishment. . . .<sup>39</sup>

Mr. Breed went on to ask: "If, then, we should not punish, and we have not been able to demonstrate that we rehabilitate, what do we do? And what should we do?"<sup>40</sup> These are good questions, the kind that have been frustrating and bedeviling people in the correctional field for many years. They are the kinds of questions to which the committee to study the Youth Authority Act will address itself. And they are the kinds of questions that everyone in the correctional field will have to ponder seriously if we are ever to move beyond being part of a criminal justice system which is viewed by the public as a mechanism through which all-too-many offenders serve time, only to return to the community and repeat their pattern of criminal misbehavior. It is not that we haven't tried to change this pattern; oh, how we have tried! The Youth Authority Act itself was a noble effort, establishing the concept of rehabilitation as an essential and hopefully not impossible dream.

Today's challenge is to convert that dream of thirty-seven years ago into reality. In opting for rehabilitation over punishment, the planners of 1941 regarded the two concepts as alternatives. It had to be either rehabilitation or punishment. We now realize that the two concepts are not mutually exclusive. Rehabilitation can remain the Youth Authority's goal, for the basic aim must always

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38. Vol. 21, No. 2 YOUTH AUTHORITY QUARTERLY 2 (1968).

39. Vol. 29, No. 3 YOUTH AUTHORITY QUARTERLY 6 (1976).

40. *Id.*

be the conversion of youthful offenders into youthful non-offenders who lead constructive lives. That is the essence of rehabilitation. Punishment in dealing with offenders is an inevitable part of what we do. Incarceration, deprivation of liberty, itself constitutes punishment *per se*. Protection of society is bound to involve the punishment of those from whom society must be protected.

#### YOUTH AUTHORITY WARDS

Even as punishment is imposed in the form of incarceration, the Youth Authority's responsibility is to prepare its ward population for its inevitable return to the community. A quick look at the characteristics of the average young offender committed to the state shows that a major proportion are greatly disadvantaged and need many kinds of help. More than seventy percent come from areas where crime and delinquency are common. Almost half come from poverty-ridden areas. Seventy-two percent are from single parent homes. Sixty-nine percent of those who want to be in the labor force are unemployed. Sixty percent are either Black or Mexican-American. Tests show that the average Youth Authority ward is three to four grades behind in school level.<sup>41</sup> On the basis of these statistics, these are young people who need help. They need to be taught to read, to write, to learn something about America and its culture, to fill out a job application, to work side-by-side with others. These needs are what the Youth Authority program seeks to fulfill, both in its institution and parole services.

How successful is the Youth Authority? Success is difficult for the public to appreciate when press attention is invariably riveted on the failures—those who commit new and sometimes serious crimes when they are paroled. Although there is a success to match every failure, the successes rarely come to the attention of the public since productive, law-abiding behavior is considered the norm and unworthy of space in the news columns. Most of our successful former wards would just as soon have it that way. Their careers as offenders behind them, they may justifiably want to concentrate on looking ahead to their own futures.

Yet, I am informed constantly of stories of individual successes. There is the ward from Preston who became a well-known disc jockey in San Francisco. Another, who was incarcerated at a con-

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41. 1977 C.Y.A. ANN. REP. 12.

servation camp, has become a medical doctor. Several years ago, a former ward plunged into a burning car and saved the lives of a woman and her small children. There is a cameraman on a certain TV station, the owner of a car wash and an ophthalmologist. There is an element of goodness in most, if not all, of our wards and it is this positive element that we must nurture and tap both for the ward's benefit and that of society as a whole. If that is rehabilitation, so be it.

A more quantitative measure of the Department's success rate lies in a recent study which showed that more than half of those paroled during 1975 remained free of violations during their next two years on parole.<sup>42</sup> While a fifty percent success rate is not cause for celebration, it does show what can be accomplished with a group of young people who were considered 100 percent failures when they were first committed to the Youth Authority. In 1977, for example, sixty-three percent of those who came to the Department had five or more delinquent contacts before their commitments, but there is every reason to expect them to do so as well as their 1975 counterparts.<sup>43</sup> In terms of economic savings, a substantial sum is involved: an average per capita cost of close to \$20,000 per year for confinement multiplied by the approximately 2,000 cases per year which do not return to state jurisdiction. In human terms, no calculation is possible.

#### DELINQUENCY PREVENTION

Having dwelt at some length on the Youth Authority's responsibility in providing for young offenders who are committed to the Department, it would be well at this point to stress the overriding importance of another area to which we are strongly committed, delinquency prevention. The Youth Authority's responsibility to coordinate delinquency prevention programs was mandated by the Senate in 1975.<sup>44</sup> Effective programs to prevent delinquency and divert would-be offenders from the criminal justice system

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42. *Id.* at Table 23.

43. 1978 A COMPARISON OF ADMISSION CHARACTERISTICS OF YOUTH AUTHORITY WARDS 1970-77 C.Y.A. Table 11.

44. 1974 Cal. Stats. ch. 1401, added article 5.5 commencing with § 1790 of the WELFARE & INSTITUTIONS CODE. See CAL. WELF. & INST. CODE § 1791 (West Supp. 1978) which provides:

The Department of the Youth Authority shall exercise leadership on behalf of the state in order to accomplish the purpose of this article. All state agencies shall cooperate with the Department of the Youth Authority in order to bring about a statewide program for the reduction and prevention of crime and delinquency.

1974 Cal. Stats. ch. 1448 added CAL. WELF. & INST. CODE § 1902 (West Supp. 1978) which provides:

(a) The Department of the Youth Authority shall develop, adopt, pre-

can do more to reduce crime in the long run, and at far less cost, than any number of institutions that can be built. Delinquency prevention programs are generally mounted by local agencies, and the Youth Authority's role is to provide technical assistance, training, consultation and, in some cases, access to funding support. These activities are in the hands of the Department's Prevention and Community Corrections Branch.

A particularly successful type of prevention and diversion approach has been the youth service bureau. Several dozen of them are in operation throughout the state, eight funded by the Youth Authority, and they have diverted literally thousands of young people from the criminal justice system. They receive young people who appear to have the potential for trouble as referrals from the policy, probation departments, schools or parents. Sometimes the young people themselves show up on their own and ask for help. These referrals usually need help and counseling to keep them in school, on their jobs or on good terms with their families, and it is the responsibility of the youth service bureaus to arrange for needed services, be they individual, family or group counseling, job development, tutoring, recreation or any of the other kinds of programs that will keep a young person from getting into further trouble.

Youth service bureaus were first recommended in the 1967 President's crime commission report<sup>45</sup> as the most desirable type of delinquency prevention approach; there are others. All have one need in common, that of public support: not just money, but the help and participation of citizens, both as volunteers and as advocates.

Public understanding, participation and support constitute the bottom line for all correctional and prevention programs, both in the institution and in the community. The Youth Authority has mounted programs to place volunteers in community programs and to work with wards, both in institutions and on parole. For the past ten years, the Foster Grandparent Program has recruited, trained and assigned senior citizens to work with wards

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scribe, monitor and enforce minimum standards for youth service bureaus funded under the provisions of this article.

- (b) The Department of the Youth Authority shall seek advice from knowledgeable individuals, groups, and agencies in development of such standards.

45. THE PRESIDENTS COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE (1967).

in several institutions on a one-to-one basis, extending the kind of personal warmth and caring that has helped turn around the thinking of many a ward before he has returned to the community. The Department also has enlisted the support of trade unions and industrial firms to carry out training programs to prepare young offenders for future jobs, as well as volunteer church groups and musical and educational tutors.

#### SYSTEM OR NON-SYSTEM?

Another important factor in implementing programs to reverse the tide of crime and delinquency is the coordination, or lack of it, among the various elements of the criminal justice system. The total system is composed of many different agencies representing corrections, law enforcement and the courts, on the city, county, state and federal levels. The so-called criminal justice system actually can be more accurately described as a non-contiguous series of services. It is an apparatus upon which any single agency finds it almost impossible to make any substantial impact, except through legislation. The role of the Youth Authority as part of the total system is relatively small, and the number of offenders which the Department receives is such a small percentage of the whole that it is unrealistic to expect us, by ourselves, to end or even significantly reduce the incidence of crime. To accomplish this, the Department must work closely with other elements of the criminal justice system, which must, in turn, elicit the participation of an understanding public.

Coordination is the aim of the Department's community services consultants, who work with law enforcement, probation, local agencies and citizen groups throughout the state. Coordination also is provided through a state interdepartmental council composed of departments which are concerned with the welfare and needs of young people. By working together, this group is developing cooperation and a mutual knowledge base for programs that will serve all young people—those who need a job, those who must complete their education, those who have a problem with drug abuse and those who need special help because of physical or psychiatric problems.

#### THE COUNTY JUSTICE SUBVENTION PROGRAM (ASSEMBLY BILL 90)

A truly exciting prospect for cooperation between local youth-serving agencies and the Youth Authority lies in the County Justice Subvention Program,<sup>46</sup> which was signed into law by Gover-

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46. See 1978 Cal. Stats. ch. 461 which adds § 885, 888, 1825 and repeals § 887,

nor Brown on July 18, 1978. The legislation provides fifty-five million dollars in state support during the current fiscal year for local programs which are designed to expand and improve the program resources available to the courts in sentencing adult and youthful offenders. The subvention program replaces three existing subsidy programs—state support for juvenile camps, ranches and schools, camp construction and probation subsidy—all of which had been in existence for many years.<sup>47</sup> In their place, the new County Justice System Subvention Program establishes a locally unified program in which many community agencies, public and private, can participate. Selection of programs for funding is in the hands of the county boards of supervisors which have the initial responsibility to appoint an advisory group to assess program needs and make recommendations to them. Each county's program selections are transmitted to the Youth Authority, which has statewide responsibility for administering the program.

To qualify for state subvention funds, counties may not increase their levels of commitment to state adult prisons and Youth Authority institutions over a rate based on a four-year average ending in 1976-77. Unlike the probation subsidy program, which provided counties with funds based on earnings for reducing commitment levels with no maximum ceiling, the subvention program merely requires that the specified levels be maintained without reduction, with no additional subsidy to decrease those levels. Moreover, it exempts a large number of serious offender categories from the commitment calculations. Thus, counties will not be charged for committing those charged with murder, attempted murder, arson, certain categories of robbery, rape, attempted rape, kidnapping, assault with a deadly weapon, assault with chemicals, train wrecking and any other offense for which probation or suspension of sentence is prohibited by law.

Through these provisions, the new county subvention program aims to assure that the public remains protected from dangerous and violent offenders while providing support for programs that will help the community treat and rehabilitate lesser offenders.

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888.5 and 1891, while adding Article 7 commencing with § 1805 to 1818 and repealing Article 7 commencing with § 1820 of chapter 1 of Division 2.5 of the *Welfare and Institutions Code*.

47. See 1978 Cal. Stats. ch. 461 which adds § 1811 to the WELFARE AND INSTITUTIONS CODE.



Coordination between the various parts of the criminal justice system is assured by the legislative requirement for the public-private make up of the advisory group which will submit the program recommendations for funding to the boards of supervisors. By law, the group in each county is to consist of the chief probation officer, sheriff, presiding judge of the superior court, chairperson of the juvenile justice or delinquency prevention commission, district attorney, public defender, county superintendent of schools, county administrative officer, two chiefs of police (one representing a city above the median population and another from a city below the median level), two private agency representatives (one serving juvenile offenders and the other serving adult offenders), a public member who has never been employed by a law enforcement agency, and three representatives of private community-based adult or juvenile assistance agencies involved in the prevention or treatment of delinquency or criminal activity.

The intent of the County Justice System Subvention Program is spelled out in the legislation itself:

[T]o protect society from crime and delinquency by assisting counties in maintaining and improving local criminal justice systems, by encouraging greater selectivity in the kinds of juvenile and adult offenders retained in the community, and by assisting the counties in reducing the number of offenders reentering the local criminal justice systems; and to protect and care for children and youth who are in need of services as a result of truancy, running away, and beyond the control of their parents by assisting the counties in providing appropriate services and facilities for such children and youth.<sup>48</sup>

In the few months since this law has been on the books, virtually every major county in the state has opted to participate, and they have submitted a variety of community-based programs for funding. I see the County Justice System Subvention Program as a beacon for a county-state partnership that can create a truly effective system of needed programs on the community level, a system that is adequately funded and designed by county and community people themselves to meet their own specific needs. As administrator of the program under the legislation, the Youth Authority looks forward to working with all of the counties to develop the best statewide system possible.

#### THE CPPCA STUDY

The responsibilities, objectives and future of a statewide organization as large and complex as the Youth Authority rarely have the opportunity to become subjects for an impartial and comprehensive outside study. In 1978, however, such a study was com-

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48. See 1978 Cal. Stats. ch. 461 which adds § 1805 to the WELFARE AND INSTITUTIONS CODE.

pleted by the California Probation, Parole and Correctional Association, a state professional organization which represents corrections on all levels. This was the first outside, impartial study of the Department since its creation. Entitled "The Role and Future of the California Youth Authority,"<sup>49</sup> the CPPCA's report represented a tremendous mass of research and amounted to an extremely thoughtful outline of the major issues facing the Department, along with recommendations for dealing with them. I am in accord with most of the recommendations and feel that others need additional study, or may, in a few cases, be unwise.

The quality of the study may be underscored by mentioning the names of those who served on the special CPPCA committee. Without exception they are state leaders with a long and abiding interest in the problems of juvenile justice who were able to provide a broad base of expertise. The committee members were Judge Kenneth Andreen presiding judge of the Fresno County Superior Court and Chairman of the committee; Chris Adams, former member and long-time chairperson of the Contra Costa County Juvenile Justice and Delinquency Prevention Commission and for many years a citizen leader in delinquency prevention planning; W. J. Anthony, assistant sheriff of Los Angeles County; Craig Brown, administrative analyst of the Office of Legislative Analyst; Assemblyman Julian Dixon of Los Angeles, author of AB 90; Estella Dooley, San Francisco deputy public defender; Margaret C. Grier, director of the Human Services Agency of Orange County, who represented the Chief Probation Officers Association; Patti Jo McKay, deputy legal affairs secretary of the Governor's Office; Henry Mercado, Santa Clara County Juvenile Probation Department; Marcella Oka, representing the student parole program of CSU-Los Angeles; James Rowland, chief probation officer of Fresno County, who represented the CPPCA; Betty Sayler, representing the California State PTA; and District Attorney John Van de Kamp of Los Angeles.

The report itself is comprehensive and voluminous and includes a year-by-year history of the Department, which I would recommend to all students of corrections. I will confine myself in this article to reviewing and briefly discussing the major recommendations, all of which face long-term study by Departmental staff and

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49. CAL. PROBATION PAROLE AND CORRECTIONAL ASSOCIATION, *THE ROLE AND FUTURE OF THE CALIFORNIA YOUTH AUTHORITY* (1978).

administrators. Some of the report's recommendations are already being implemented or are taking shape because of developments since the study was started. Among them are:

1. That the Youth Authority's work in delinquency prevention be coordinated with and developed in conjunction with local juvenile, criminal justice and other government agencies. The Department's prior work with local Juvenile Justice and Delinquency Prevention Commissions reflects the Youth Authority's commitment to this principle. The County Justice Subvention Program now enables the state and the counties to work even more closely together.

2. That the Youth Authority, Department of Corrections and several other agencies and boards concerned with corrections be placed in a new cabinet-level agency.

3. That the Youth Authority Director and Chairperson of the Youth Authority Board continue as the same person. This has been achieved through withdrawal of Assembly Bill 2671,<sup>50</sup> a measure which would have required separation of the two responsibilities and removal of the Director from the Board.

A number of other recommendations have my complete support and are either current policy or are being actively sought by the Department. Among them:

1. That the Youth Authority continue to strengthen and expand programs for those committed to the Department who are emotionally disturbed. Legislative support was received this year for 115 medical-psychiatric beds in Youth Authority Institutions. This is still far short of meeting the Department's needs, but represents an important step forward in providing essential services.

2. That the Board publicize the process and criteria used in release decisions.

3. That the Youth Authority continue to perform the standard-setting functions for local probation and institutional services, and work toward conformance with its own standards.

4. That the Youth Authority and Department of Corrections continue to operate as separate departments and programs under separate philosophical premises.

5. That the Youth Authority act as a clearinghouse for technology transfer on youth corrections and delinquency prevention and diversion programs.

6. That indeterminate sentencing be continued by the Youth Authority. Departmental policy in this regard, however, is subject

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50. Cal. A.B. 2671 (1976), vetoed by Gov. Brown.

to legislation and case law dealing with determinate sentencing, discussed earlier in the article.

A number of other recommendations in the CPPCA report involve financial or policy considerations which will require further study by the Department in concert with the state administration and the large number of county-level agencies in the criminal justice system. These include the following:

1. That the Youth Authority Board solicit and consider written information on community factors relevant to release of wards to parole from such sources as the judiciary, law enforcement, probation, the district attorney and defense counsel prior to Board hearings.

2. That a limited role at parole hearings be offered to the district attorney, attorney general and/or defense counsel.

3. That legislation be passed requiring the Governor to give consideration, when appointing Board members, to a subcommittee of the Board of Corrections composed of the probation officer, the sheriff, public members, an ex-offender and a judge.

There are two other recommendations of particular significance which, together with those listed earlier, bear very strongly on the future of the Department and the way it will carry out its responsibilities. One of those recommendations, and possibly the most significant one in the entire CPPCA report, calls for a change in the wording of the Youth Authority Act to recognize that protection of society is a paramount need and that punishment is not ruled out when a young offender is committed to the Department. I certainly agree that protection of society is, indeed, an overriding necessity, and that this particular concept has always been a basic, if sometimes unspoken, objective of the Youth Authority. It would not be enough, however, to simply write these words into the Youth Authority Act. Protection of society, if these words are to be given more than mere lip service, must be supported by programs and philosophies not only by the Youth Authority, but in coordination and cooperation with all other elements of the criminal justice system and with the public-at-large. I have already discussed my views concerning punishment versus rehabilitation and agree with the premise that punishment, *per se*, should not be ruled out. I reiterate the two concepts are not mutually exclusive. However, it would be of little use to place the concept of punishment into the framework of law without simultaneously considering other related issues pertaining to the future of the

Youth Authority and youth corrections in general in close consultation with the CPPCA and with the other elements of the criminal justice system in California.

A second highly important issue raised by the CPPCA concerns the separation of offenders committed to the Youth Authority on the basis of age. The recommendation, in four parts, calls for the following:

1. That a "second tier" be established in the Youth Authority for those committed to the Department from criminal court (i.e., those sixteen to eighteen year-olds who have been found unfit for juvenile court, and those eighteen to twenty-one year-olds who are committed to the Youth Authority).

2. That those who fall into this second tier be placed in institutions separate from those committed from the juvenile courts.

3. That the court have the power in such cases to impose a minimum parole eligibility date which must be served up to, but not exceeding, one-half of the maximum term which could be served by an adult under the Penal Code for such offenses.

4. That the court shall have the option to commit to the second tier up to age twenty-three. Section 1771<sup>51</sup> of the Welfare and Institutions Code currently limits commitment to the Youth Authority only until the twenty-first birthday, although adult felony commitments may remain under the Department's jurisdiction until the twenty-fifth birthday.

These are recommendations which would substantially change the way in which the Youth Authority carries out its programs, and, again, should not be considered apart from numerous other issues facing the Department. The issue of separating commitments from juvenile and criminal courts, for example, is one in which the Department has been involved for some time in negotiation with the Law Enforcement Assistance Administration. The U.S. Juvenile Justice and Delinquency Prevention Act of 1974<sup>52</sup> requires that those committed from adult and juvenile court be placed in separate institutions and this would change Departmental policy which is based on the premise that court of commitment not be the sole criterion for separating offenders. At this writing, the issue is still under discussion with the LEAA, which has been adamant in its position that separation of adult and juvenile court cases must be accomplished. The change, if imple-

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51. CAL. WELF. & INST. CODE § 1771 (West 1972) which provides:

Every person convicted of a felony and committed to the authority shall be discharged when such person reaches his 25th birthday, unless an order for further detention has been made by the committing court . . .

52. JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, P.L. 93-415, 88 Stat. 1109.

mented, will require substantial modification to current facilities and programs, an abandonment of the youthful offender concept, which takes such factors as age, competence, duration and quality of anti-social and criminal behavior into account when making institutional assignments. Moreover, the change would cost millions of dollars with the prospect of no perceptible gain either to wards or taxpayers.

The third and fourth sections of the CPPCA recommendations, those concerning judges' orders for minimum confinement times and raising the age for commitment to the Youth Authority, would have profound implications on the concepts of rehabilitation and punishment which are at the heart of the Youth Authority Act and which must be carefully considered as the Act is studied for possible revision. The issue of who is a youthful offender and if anyone beyond the age of twenty-one should go to the Youth Authority also must be closely and extensively studied.

#### OTHER ISSUES

Although the CPPCA raised and made extremely thoughtful recommendations on many substantial issues, there are still others which were not raised, but with which the Department must come to grips if it is to consider the entire future of the Youth Authority and its role in youth corrections in California. I have already mentioned some of these, the need for increased medical/psychiatric services, the deinstitutionalization and need for specialized services for status offenders, programs to ensure ward's rights, the long-term effects of recent court decisions on due process and the future effects of the County Justice System Subvention Program under AB 90.

There are many other issues facing the Department, some concerned directly with Youth Authority internal operations, others originate on a higher level and affect the field of corrections as a whole or the entire criminal justice system. One such issue in the latter category involves the future of parole services. The effectiveness of parole has frequently been questioned, although I feel very strongly that strong supervision, particularly during the first months when an offender returns from the institution to the community, is essential. The Youth Authority's parole arm recently reorganized its services to provide a wider span of supervision and control during the period immediately after the offender's re-

turn to the community. Another important issue which affects the entire field of corrections is the guaranteed right to treatment for young offenders, as specified by *Morales v. Turman*.<sup>53</sup> This is an issue that is being carefully studied by the Department.

Other issues which directly affect the Department are also receiving close current attention, and include:

1. The presence of gang-related activities in Youth Authority institutions. Strategies must be developed to ensure the safety of wards and staff. In the community there must be increased efforts to divert street gangs from delinquency toward more constructive activities.

2. Program planning to provide success potential to minority youth, who are constituting an ever-increasing proportion of the Department's total ward population. By 1981-82, it is estimated, approximately two-thirds of those committed to the Department will be minorities.

3. Reduction of the ratio of wards to staff. As populations increase during coming years, such a reduction would greatly ease institutional tensions and make outbreaks of violence easier to control. As a result, programs of rehabilitation could be carried out more effectively.

4. Strengthening institutional security beyond what already has been accomplished.

5. Determining program activities for female offenders, whose numbers under Youth Authority jurisdiction have dropped sharply during recent years.

#### THE YOUTH AUTHORITY ACT STUDY

All of these issues, those just mentioned, those raised by the CPPCA and those which I have discussed earlier in this article, are closely related and cannot be considered by themselves. They are bound up with the future of the Youth Authority and the future of youth corrections in general. At the hub of whatever course of action is finally determined will be the results of the study of the Youth Authority Act, which began in October, 1978. The Youth Authority Act is, after all, the ideal and the philosophical fountainhead from which all Departmental policies must flow.

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53. 383 F. Supp. 53 (1974) *remand. for further proceedings* 562 F.2d 993 (1977) where a class action was brought raising a wide range of issues regarding the nature and adequacy of procedures and programs adopted by the Texas Youth Council which has responsibility under Texas law for minors adjudicated delinquent and involuntarily committed to its custody. The court held that juveniles have a right to treatment in their confinement.

When the Act is finally revised, the final product should reflect what we should do and must do in concert with other agencies in the criminal justice system to reverse the tide of crime and delinquency and, indeed, to achieve the universally sought objective of protecting society.

When the 14-member committee convened for the first time in October, 1978, I made this statement to the members as background for the need for the study:

The Youth Authority Act, since its inception in 1941, has remained virtually unchanged for 37 years. The authors of the Act did an exceptionally fine job in developing both the intent of the Act and incorporating the youthful offender concept into the overall legislation. The passage of time has proven the strength of the original Act. For the past several years, however, the issue of crime and delinquency has become a national concern debated on increasingly broader fronts. California is no exception. Since 1974 there have been many legislative and/or court decisions that have had a decided impact on the functioning of the Youth Authority under the Youth Authority Act. It is appropriate and fitting at this time that the Department of the Youth Authority undertake a thorough review of the many aspects of the Youth Authority Act to determine if there is a need for change, amendment or revision of the Act.

I then asked the committee to thoroughly review and examine the Youth Authority Act, giving them this three-part charge:

1. To thoroughly review and examine the Youth Authority Act and other related sections of the law to determine if there is a need for change, amendment, or revision of the Act, as the Act and other related sections of the law affect the objectives, functions, operations and responsibilities of the California Youth Authority.

2. To develop in written format the findings of the review committee for submission to me as Director, and to the Deputy Directors who together constitute the Youth Authority's top management.

3. To develop recommendations and/or alternatives that proceed out of the findings of the committee for submission to the Director and the Deputy Directors regarding changes, amendments or revisions of the Act and other related sections of the law.

The task group's work schedule calls for the final written report to be completed by February, 1979. This report will include all major issues that may call for legal revision as a result of current youth correctional philosophies, case law and administrative needs. It is my expectation that the task group's final report will become the basis for legislative action that will lock new philoso-



phies and new approaches into the law of California in 1979 and 1980. The new Youth Authority Act would then, once again, serve realistically as the foundation for youth correctional programs in the state, meeting the needs of the criminal justice system on behalf of society and our ward clientele.

#### CONCLUSION

California's Youth Authority Act has served us well since 1941, but times and the needs of society have undergone profound changes during the past thirty-eight years. After I was appointed Director of the Youth Authority in October, 1976, I learned very quickly that change was an essential part of the business of administering a huge department at the center of youth corrections in California. The problems and needs of 1979 are far different from those of 1941 when the Youth Authority Act first came into being amid the fond and far-sighted hopes of the correctional planners of that era. They did not, and could not, envision what has happened in the years since—the continuing spiral in youth crime and violence, the corrosive effect of war, the alienation of the young, the proliferation of gangs, the fear of all too many people of venturing out into the street after dark. These changes, these stark and frightening developments, have been all too real. It is our responsibility to look at the world as it is today and to make our plans carefully and cooperatively so that the quality of life in California will be better tomorrow.