

California Youth and Criminal Law: 2007 Juvenile Justice Reform and Gang Prevention Initiatives†

INTRODUCTION‡

Debate shaping criminal law and policy inevitably involves the intersection, and sometimes conflict, of “tough on crime” policies, victims’ rights, rehabilitation, incarceration, and of course, the securing of funding. Nowhere was this more apparent than in 2007 reforms surrounding the treatment of California’s youth. While legislators and policy groups pushed through Senate Bill 81¹—the State Senate bill which ushered in a host of juvenile justice realignment provisions and shifted the focus of juvenile programs from the state to localities—they also provided increased funding for gang-related investigations, convictions, and for tracking programs through several bills and the Governor’s California Gang Reduction and Prevention Program (CalGRIP).² Both Senate Bill 81 and gang prevention initiatives will have a significant impact on the numbers and types of youth offenders incarcerated in our state system; in the short term, the former will arguably decrease that number, while the latter will likely increase it. Both legislative

† Both Senate Bill 81 and gang violence prevention initiatives affect all aspects of criminal law and policy in California, and most certainly those discussed in this inaugural issue of the California Annual Review. Providing a separate section as we have here is our attempt to give this prevalent theme its due coverage. We hope to do the same each year for corresponding yearly trends in policy and legislation.

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1. S.B. 81 2007-2008 Leg., Reg. Sess. (Cal. 2007) (enacted Aug. 24, 2007), *available at* http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0051-0100/sb_81_bill_20070824_chaptered.pdf.

2. Press Release, Office of the Governor, Governor Schwarzenegger Announces Initiative to Combat Gang Violence (May 25, 2007), *available at* <http://gov.ca.gov/index.php?/press-release/6395/>.

measures were responses to public debates on youth imprisonment and youth crime. Both have the same shared long term goal of decreasing the number of youth offenders in our state through rehabilitation and other programs. Their means, however, of achieving those goals differ greatly: while Senate Bill 81 attempts to decentralize the juvenile justice system and direct youth offenders towards localities, CalGRIP emphasizes centralization.

This article examines youth and criminal law, one of the most talked-about issues of 2007 among criminal law academics and policy makers in California. The article begins with a discussion of Senate Bill 81: first, the system that preceded it; second, the provisions of the bill; and third, its predicted impact on California's juvenile justice system. The latter portion of the article discusses trends in gang prevention and reforms made in this area in 2007, including a discussion of bills and other reforms passed in 2007. The two sections are unified not only by the segment of the population impacted—California's youth—but also by the impending ballot proposition known as the "Safe Neighborhoods Initiative," or the Runner Initiative,³ which will likely appear on California's ballot in the 2008 elections. If passed, the Runner Initiative could impact the handling of juvenile offenders and gang-related offenses in this state.

I. SENATE BILL 81

A. The Old Regime: an Environment Ripe for Reform

The history of California's juvenile justice system prior to 2007 created a ripe climate for reform and for the passage of Senate Bill 81.

1. Increased State Costs and Shifted Focus to Localities

The California Youth Authority (now known as the Division of Juvenile Justice)⁴ dealt with a wave of increased juvenile crime in the 1980s.⁵ In response, the California legislature in 1996 sought to reduce juvenile crime by establishing the Juvenile Crime Enforcement and Accountability Challenge Grant Program, providing \$49.5 million to California counties for "unique county-based efforts. . . to reduce juvenile crime through prevention, intervention, diversion, suppression and incapacitation."⁶ Another much larger

3. Safe Neighborhoods Act, proposed October 22, 2007, available at http://ag.ca.gov/cms_attachments/initiatives/pdfs/i745_07-0076_a1s.pdf.

4. See *infra* notes 19-26 and accompanying text.

5. See generally FRANK ZIMRING, *AMERICAN YOUTH VIOLENCE* (Oxford University Press 1998).

6. John L. Worrall, *Funding Collaborative Juvenile Crime Prevention Programs: Does it Make a Difference?*, EVAL. REV., December 2004, at 471, available at <http://erx.sagepub.com/cgi/content/abstract/28/6/471>; Corrections and Rehabilitation, Juvenile Crime Enforcement and Accountability Challenge Grant Program, http://www.cdcr.ca.gov/divisions_boards/csa/FSO/FSO_archive/LegislativeReport1998BOC/chapter_3a.pdf (last visited Feb. 9, 2008); Corrections and

and more durable juvenile justice program funding stream came from the Schiff Cardenas Juvenile Justice Crime Prevention Act (Assembly Bill 1913), which provided approximately \$120 million per year for county youth crime prevention programs.⁷ Assembly Bill 1913 funds outlasted the challenge grants due to the grants' high match requirements for counties, and the rather quick expiration of the challenge grants.⁸

Between 1996 and 2003, juvenile offenders in custody declined by half—from over 10,000 to about 4300 with a further projected decrease to 3700 by 2010.⁹ This decline was not only explained by a drop in the juvenile arrest rate for violent offenses, but also resulted in large part from a sliding-scale fee structure which was intended to discourage counties from sending low-level offenders to the Youth Authority.¹⁰ In addition, the lawsuit of *Farrell v. Allen* (now *Farrell v. Tilton*)¹¹ was brought by the Prison Law Office against the California Youth Authority (CYA). The lawsuit and its costly settlement agreement resulted in adverse publicity for CYA, and increased the costs of housing a juvenile in CYA to up to \$200,000 per year¹² from a previous cost per ward of about \$49,200 in the 2002/2003 fiscal year.¹³

2. *The Farrell Consent Decree*

In the *Farrell* lawsuit against CYA, the plaintiffs claimed that CYA failed to provide adequate care and effective treatment programs to youthful offenders incarcerated in state facilities.¹⁴ Summarizing its position in the suit, the Prison Law Office argued, "Rehabilitation cannot succeed when the classroom is a cage and wards live in constant fear of physical and sexual violence from CYA staff and other wards."¹⁵ In what became known as the Farrell Consent

Rehabilitation, Juvenile Crime Enforcement and Accountability Challenge Grant 1 Program Findings, http://www.cdcr.ca.gov/Divisions_Boards/CSA/PPP/Docs/CHI%20Executive%20Summary.pdf (last visited Feb. 9, 2008).

7. Email from David Steinhart, Director, Commonwealth Juvenile Justice Program, member of S.B. 81 Comm'n (Apr. 8, 2008, 09:52 PST) (on file with author) [hereinafter Steinhart Email]. See also Assem. B. 1913, 2000 Leg., Reg. Sess. (Cal. 2000).

8. Steinhart Email, *supra* note 7.

9. CHRIS GUYER, LEGISLATIVE ANALYST'S OFFICE, A REVIEW OF THE CALIFORNIA YOUTH AUTHORITY'S INFRASTRUCTURE (2004), http://www.lao.ca.gov/2004/cya/052504_cya.htm.

10. *Id.*

11. *Farrell v. Allen* (now *Tilton*), No. RG03079344 (Cal. Sup. Ct. Alameda County Nov. 16, 2004) (consent decree), available at http://www.dralegal.org/downloads/cases/farrell/consent_decree.pdf.

12. *Id.*

13. Cal. Dep't of Corr. & Rehab., Ward Per Capita Cost, Fiscal Year 2002/03, http://www.cdcr.ca.gov/Reports_Research/wardcost.html (last visited Mar. 23, 2008).

14. BRIAN BROWN, EDGAR CABRAL, & PAUL STEENHAUSEN, LEGISLATIVE ANALYST'S OFFICE, CALIFORNIA'S CRIMINAL JUSTICE SYSTEM: A PRIMER ch. 5 (2007), http://www.lao.ca.gov/2007/cj_primer/cj_primer_013107.aspx#chapter5.

15. Maura Dolan, *Lawyers Go Behind Bars as Guardians of Prisoner Rights*, L.A. TIMES, Oct. 11, 2005, at A1. HeinOnline -- 13 Berkeley J. Crim. L. 147 2008

Decree, CYA, in November 2004, agreed to plaintiffs' demand that the state develop and implement remedial plans that addressed operational and programmatic deficiencies identified by court experts in six areas: education, sex behavior treatment, disabilities, health care, mental health, and ward safety and welfare. The goal of these reforms was to transform the state's youth correctional system into a "rehabilitative model" of care and treatment for youthful offenders.¹⁶ An unintended consequence of the Consent Decree was the increased cost of keeping CYA operational: the State was annually spending about \$218,000 per child as late as January 2007,¹⁷ up from a cost per ward of about \$49,200 in the 2002/2003 fiscal year.¹⁸ However, while the Consent Decree imposed additional costs on CYA, it was far from clear that the Decree had created substantial improvements in the Youth Authority, especially in light of several violent incidents made public by the media.

3. From CYA to DJJ

In 2005, a string of articles proclaimed the inadequate and violent nature of the California Youth Authority.¹⁹ Events like the suicide of Joseph Daniel Maldonado, a CYA ward in Stockton's N.A. Chaderjian Youth Correctional Facility, increased the public outcry for reform.²⁰ These incidents, along with reports released from the *Farrell* lawsuit cataloging the problems of CYA,²¹ led Governor Schwarzenegger, during the 2005 reorganization of California Corrections, to change the Authority's name to emphasize its new focus on rehabilitation to the California Division for Juvenile Justice or DJJ.²²

DJJ is charged with the "care, supervision, education, training, employment, discipline, and government" of its wards or juvenile offenders.²³ Its mission includes working for "the correction of [the juvenile offenders']

16. *Farrell*, No. RG03079344 (consent decree).

17. Telephone Interview with David Steinhart, Director, Commonwealth Juvenile Justice Program, member of S.B. 81 Comm'n (Nov. 29, 2007).

18. Cal. Dep't of Corr. & Rehab., *supra* note 13.

19. See Mark Martin, *Video Shows Beatings of Young Men*, S.F. CHRON., April 2, 2004, at B3; Wyatt Buchanan, *Mentally Ill Youths are Jailed*, S.F. CHRON., Jan. 25, 2005, at B2; Christian Berthelsen, *State Audit Critical of Juvenile Prisons*, S.F. CHRON., Jan. 4, 2005, at B8.

20. See Mark Martin, *Prison Blamed in Teen Death*, S.F. CHRON., Dec. 30, 2005, at A1.

21. BARRY KRISBERG, GENERAL CORRECTIONS REVIEW OF THE CALIFORNIA YOUTH AUTHORITY (2003), http://digitalarchive.oclc.org/digitalarchive/access/objid-0000061778/cya4.pdf_access.pdf. Dr. Krisberg was assigned by the *Farrell* Consent Decree to report on the progress of CYA.

22. California Department of Corrections and Rehabilitation, Division of Juvenile Justice, http://www.cdcr.ca.gov/Divisions_Boards/DJJ/About_DJJ/index.html (last visited Feb. 5, 2008). Officially by statute, DJJ is named the Division of Juvenile Facilities. Steinhart Email, *supra* note 7. But informally, CDCR has used Division of Juvenile Justice in most references. *Id.* This has led to much confusion—even lawmakers writing bills alternate between the names. *Id.* The official name it is the Division of Juvenile Facilities. *Id.* This article refers to this entity by its common name, DJJ.

23. CAL. WELF. & INST. CODE § T004 (2008). HeinOnline, 13 Berkeley J. Crim. L. 148 2008

faults, the development of their characters, and the promotion of their welfare.”

²⁴ Welfare and Institutions (W&I) Code section 1712 gives DJJ and the California Department of Corrections and Rehabilitation the power to enforce and create all rules necessary for the proper accomplishment of the goals of DJJ.²⁵

Nonetheless, after the change in name, problems continued in DJJ, and four facilities were shut down, the last one in 2007.²⁶ Prior to Senate Bill 81, the State was moving towards limiting state incarceration of youth and focusing youth detention on localities for the sake of funding and efficiency, and a lack of adequate care for youth in the system. This led to a climate ready for the type of reform proposed by Senate Bill 81.

B. The Process: A Summary of the Structure of California's Juvenile Justice System

The pre-Senate Bill 81 environment in California's juvenile justice system is a large reason why Senate Bill 81 came about, and largely shaped its goals for change. But fully understanding the reforms made by Senate Bill 81 also requires a basic description of the process by which juveniles are arrested and adjudicated. This process remains essentially the same after as it stood before the passage of Senate Bill 81, with the exception that more youth offenders will be directed to counties and localities rather than to DJJ.

1. Who is in the system?

A juvenile offender is a person under eighteen years of age who has either violated a criminal statute or committed a “status offense”—an act such as incorrigibility, truancy, running away, or curfew violations that constitutes an offense only when committed by a juvenile.²⁷ In 2005, over one-quarter of juveniles arrested were arrested for the commission of felonies, while more than half were arrested for the commission of misdemeanors.²⁸

2. Step One: Arrest

Upon arrest, a juvenile offender will be treated in one of several ways: he

24. *Id.*

25. CAL. WELF. & INST. CODE § 1712 (2008).

26. See Andy Furillo, *Youth Prisons Targeted: Stockton Facility Tops Growing Closure List*, SACRAMENTO BEE, May 15, 2007, at A4 (describing the shut down of the Dewitt Nelson Youth Correctional Facility in Stockton. “The closure would be the fourth in the system since 2003. The others are the Karl Holton Drug and Alcohol Abuse Treatment Center in Stockton, the Northern California Youth Correctional Reception Center and Clinic in Sacramento and the Fred C. Nelles Youth Correctional Facility in Whittier.”).

27. LOUISE ANDERSON, CRIMINAL JUSTICE STATISTICS CENTER, JUVENILE JUSTICE IN CALIFORNIA 5 (2005), <http://ag.ca.gov/cjsc/publications/misc/jj05/>.

28. *Id.* at 18. In 2005, of the 222,512 juvenile arrests reported: 26.5% (59,027) were for felonies; 60.0% (133,606) were for misdemeanors; and 13.4% (29,879) were for status offenses.

or she may be reprimanded and released at the scene with no further consequences; reprimanded and released after being taken to a station house or probation office; given a police citation to appear in court; or placed in custody in juvenile hall.²⁹ In the latter two options, the juvenile is referred to the probation department. Typically, these referrals are made to the probation department in the county where the juvenile resides.³⁰ For example, in 2005, approximately eight in ten juveniles arrested in California were referred to their county probation department.³¹

3. *Step Two: Intake Screening and Hearing*

Once referred to the probation department, juveniles are assessed via an intake screening where the probation department decides how to process the case: the case will either be closed or transferred; the offender may be placed on informal probation or in a diversion program; or a petition may be sought for a court hearing.³² At intake, the probation department closes many of the juvenile cases referred to it (thirty percent in 2005)—meaning the department closes these cases following an investigation of the circumstances and nature of the alleged offense, and does not take any further action.³³ Many more juvenile cases result in petitions filed in juvenile court (over fifty percent in 2005).³⁴ After a petition is filed, the offender receives a hearing, where the juvenile can be made a ward of the court, or the case can even be dismissed outright.³⁵ In many proceedings, the juvenile court names the offender a “ward of the court,” meaning that the court may take responsibility for the legal protection of the juvenile offender. In 2005, six in ten hearings resulted in a juvenile being made a ward of the court.³⁶

4. *Step Three: Sending the Offender Home or Elsewhere*

Most wards of the court are permitted to return home but remain subject

29. For a visual depiction of the juvenile justice system in California, see *infra* app. tbl. 1-2.

30. ANDERSON, *supra* note 27, at 7.

31. *Id.* at 12. In 2005, 80.3% of California arrestees were referred to the probation department; 17.5% were counseled and released; and 2.1% were turned over to another law enforcement district. *Id.*

32. *Id.* at 7.

33. *Id.* at 130.

34. *Id.* at 6. 2.8% of cases resulted in informal probation, 4.7% resulted in diversion or deferred entry (a treatment program for first-time felony offenders aged fourteen to seventeen pursuant to section 790 of the Welfare and Institutions Code), 6.4% were transferred to other counties or states, and 50.8% resulted in petitions filed in juvenile court. *Id.*

35. In 2005, 5.5% of these hearings resulted in informal probation, which under section 654.2 of the Welfare and Institutions Code is defined as the supervision of a minor for a period not to exceed six months (this period may be extended, however) based on a contractual agreement between a court and a minor's parents or guardian. Additionally, 19.2% of hearings resulted in dismissal, 4.4% non-ward probation, and 7.1% deferral or transfer. *Id.* at 18.

36. *Id.* at 5, 18.

to either regular supervision or intense supervision under the probation department.³⁷ Regular supervision is supervision of “regular intensity, ordered by the court with or without wardship, that usually involves supervision by county probation officers.” By contrast, intensive supervision involves close community supervision including special care for groups such as violent, gang, or sex offenders.³⁸ If community supervision fails or is not appropriate for the individual, a youth may be placed outside of the home, either in foster care, licensed group homes, or community treatment facilities.³⁹ This is known as community placement.⁴⁰

All juveniles made wards of the court in an adjudication hearing are subject to disposition hearing procedures. At the disposition hearing, the court chooses a “sentence” which may be home on probation with various conditions, or may be placement in a public or private facility. Facilities include county-based facilities (county-operated ranches or camps, county juvenile detention facilities also known as juvenile halls), or state-based facilities (state youth correctional facilities).⁴¹ Instead of confinement, wards might be subject to parole under DJJ’s jurisdiction.⁴² Senate Bill 81 addresses this last set of outcomes. It attempts to lower state confinement and probation of juveniles, and to delegate authority over juveniles to California’s counties instead of DJJ.

Prior to the implementation of Senate Bill 81, youth offenders in DJJ tended to come mostly from the Central and North regions of California.⁴³ This was due in part to higher juvenile felony arrest rates and higher poverty rates (lower county level median household income) in those areas of the state.⁴⁴ Also, before Senate Bill 81’s passage, inland counties and central California counties tended to send a greater proportion of youth to DJJ custody as opposed to coastal counties, which referred only the most serious crimes to DJJ.⁴⁵

37. In 2005, 58.7% of wards (36,859) were placed in their own home or a relative’s home. *Id.* at 108.

38. KAREN HENNIGAN & KATHY KOLNICK, JUVENILE JUSTICE DATA PROJECT, SUMMARY REPORT PHASE I: SURVEY OF INTERVENTIONS AND PROGRAMS 4 (2007), http://www.cdcr.gov/Reports_Research/docs/JJDP_summary_rpt.pdf.

39. *Id.*

40. *Id.*

41. *Id.* In 2005, as a result of these hearings, 3.8% of wards (2,383) were confined in non-secure county facilities, 26.3% (16,538) in secure county facilities, 8.7% (5465) in an “other private facility,” and 1% (636) in the California Youth Authority. ANDERSON, *supra* note 27, at 103.

42. *Id.*

43. HENNIGAN, *supra* note 38, at 6-7.

44. *Id.*

45. Interview with Frank Zimring, William G. Simon Professor of Law and Wolfen Distinguished Scholar at University of California Berkeley School of Law, Feb. 6, 2008. Professor Zimring explained that under the previous CYA regime in the 1980s, when the incarcerated youth population was at its highest, it was CYA who determined the sentences (length and time) given to youth. This limited the power of judges while giving enormous power to CYA. Coastal county judges were reluctant to hand over discretionary power to CYA and

5. *Alternative Outcome: Direct Filing as an Adult*

Not all juveniles remain within the juvenile justice system: some arrests result in the offender's case being filed directly with the adult court.⁴⁶ Senate Bill 81, while it does not focus specifically on those offenders who are transferred to the adult system, could still possibly affect the number of juveniles tried as adults.⁴⁷

Pursuant to Welfare and Institutions Code section 602(b), a direct file is the transfer of a juvenile offender to a court of criminal jurisdiction who is alleged to have committed one of the following acts: murder, rape, spousal rape, forcible sex offense, lewd and lascivious acts on a child under the age of fourteen, forcible sexual penetration, sodomy, or oral copulation.⁴⁸ While the number of direct filings is small (in 2005, they comprised only 0.2% of all juvenile arrests or 343 individuals),⁴⁹ the consequences are dire. Adult court, unlike juvenile court, can sentence a minor to jail or to state prison, subject to confinement law which precludes mixing juveniles and adults in adult facilities until age eighteen.⁵⁰

Juveniles can also be transferred to the adult criminal justice system due to their failing a fitness hearing, a hearing required under Welfare and Institutions Code section 707(b) to determine whether the juvenile is a fit and proper subject to be dealt with under the juvenile court law.⁵¹ If the juvenile is found fit, adjudication remains in the juvenile court.⁵² If the juvenile is found unfit, adjudication is transferred to the adult court.⁵³

In addition to the possibility of harsher penalties if convicted as an adult rather than a juvenile, juveniles in adult court face a very high conviction rate.⁵⁴ Therefore, consequences of increased direct filings resulting from

devised their own custodial program of county camps; they only sent the hardest cases to CYA. Central counties, however, continued sending many youth, not just the hardest cases, to CYA. This, in effect, lowered the population in CYA from its 1980 levels of 9000 wards to its current level of 3100 wards. The effect of Senate Bill 81, therefore, will undoubtedly, according to Zimring, be two-tiered, affecting the coastal counties differently than the central counties.

46. ANDERSON, *supra* note 27, at 6.

47. *See infra* Part II.E.

48. CAL. WELF. & INST. CODE § 602(b) (West 2008).

49. ANDERSON, *supra* note 27, at 6.

50. Steinhart Email, *supra* note 7.

51. CAL. WELF. & INST. CODE § 707(a)(2)(B), (c) (West 2008).

52. *Id.*

53. *Id.* Of 98,919 juvenile dispositions in 2005 (after petitions were filed in juvenile court), 318 of these dispositions resulted in the juvenile's case being remanded to adult court. ANDERSON, *supra* note 27, at 7. 94.5% of the adult dispositions were for felony offenses, and 5.5% were for misdemeanor offenses. *Id.* at 58.

54. Of the juvenile cases in adult court, including the juveniles whose cases were direct filed to adult court after arrest, 83.6% resulted in conviction. ANDERSON, *supra* note 27, at 7. Including the 343 juveniles whose cases were direct filed to adult court after arrest, probation departments reported that 661 juveniles were transferred into the adult system in 2005. *Id.* However, adult disposition information was only received for 422 dispositions from various counties. *Id.* The 83.6%, therefore, reflects the percentage of those 422 dispositions that resulted

Senate Bill 81 would likely be serious.⁵⁵

C. The Politics: How Senate Bill 81 Became Law

Senate Bill 81 was the product of a massive effort over the course of many years to deinstitutionalize the youthful offender population. It was the result not only of the lobbying of groups such as Commonweal and its leader David Steinhart, but also of the publicity surrounding the juvenile justice system in California prior to the passage of Senate Bill 81.⁵⁶ Keely Bolser of the California Senate Budget Office, who was instrumental in drafting the text of Senate Bill 81, contends that by far the largest reason why Senate Bill 81 was passed this year and not any other year was the additional costs imposed by the *Farrell* lawsuit settlement.⁵⁷ The Senate was eager to bring savings to the state, and found that the ultimate outcome of paying about \$100,000 per juvenile to counties was significantly less than the \$200,000 needed to confine a youth in CYA. But fiscal concerns were likely not the only motivation for the bill. The language of Senate Bill 81 refers to its appreciation of local care of juvenile offenders: "Local communities are better able than the state to provide these offenders with the programs they require, in closer proximity to their families and communities."⁵⁸

Passage of Senate Bill 81 in the Legislature was not very difficult because there was little, if any, opposition to the bill.⁵⁹ Historically, the Chief Probation Officers of California (CPOC) had been opposed to sending more youth offenders back to the counties, as they felt CPOC already lacked the necessary resources to provide for the youth currently serviced on the county level, let alone new youth from CYA, and especially those "high-needs" youth.⁶⁰ However, past bills did not provide funding for localities, while Senate Bill 81 did, thus garnering CPOC support for the bill.⁶¹

in conviction. ANDERSON, *supra* note 27, at 7.

55. In terms of sending youth to adult prisons, counties on the higher end of the spectrum include Del Norte County (35 youth per 100,000) in the northwest corner of California, Inyo County (28 youth per 100,000)—an inland western California county, and Merced County (26 youth per 100,000)—an inland central California county. KAREN HENNIGAN & KATHY KOLNICK, JUVENILE JUSTICE DATA PROJECT, PHASE I: SURVEY OF INTERVENTIONS AND PROGRAMS, County by County Appendix 4-9 (2007), http://www.cdcr.ca.gov/Reports_Research/docs/JJDPSurveyFinalReportCountybyCountyAppendix.pdf. Those counties at the low end of the spectrum include San Francisco (2 per 100,000), Marin County (0 per 100,000), and Santa Cruz County (2 per 100,000), all coastal counties. *Id.* at 8-15.

56. See Commonweal, http://www.commonweal.org/programs/jjp-reports/jj_082707.html (last visited Feb. 8, 2008).

57. Telephone Interview with Keely Martin Bosler, Consultant, Cal. Senate Budget & Fiscal Review Comm. (Nov. 9, 2007).

58. S.B. 81, § 30.

59. Interview with Keely Martin Bosler, *supra* note 57.

60. *Id.*

61. *Id.*

D. The Bill Itself: Senate Bill 81's Provisions and How the Bill Attempts to Change the Old Regime

Senate Bill 81, in its own words, is a "state-mandated local program."⁶² Senate Bill 81's major goal is to restrict the state juvenile system to only the most violent offenders, and reduce the population of the Department of Juvenile Justice (formerly the California Youth Authority). It purports to do so by charging counties with the care of these youth, and by providing funding via block grants to offset county costs from this change. The bill was signed by the governor on August 24, 2007.⁶³

1. Who Can Be Committed to the State DJJ Under S.B. 81

Prior to Senate Bill 81, a minor found to be a ward of the court in a juvenile court hearing could be committed to DJJ if not granted probation or any lesser term. The bill restricts the individuals who can be committed to the state DJJ to those who have committed specified offenses—the serious or violent offenses listed in section 707(b) of the Welfare and Institutions Code, such as murder, robbery, and rape.⁶⁴ Non-707(b) offenders can be committed

62. S.B. 81, Legislative Counsel's Digest.

63. See Commonweal, *supra* note 56.

64. "Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses: (1) Murder. (2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code. (3) Robbery. (4) Rape with force or violence or threat of great bodily harm. (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm. (6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code. (7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm. (8) Any offense specified in subdivision (a) of Section 289 of the Penal Code. (9) Kidnapping for ransom. (10) Kidnapping for purpose of robbery. (11) Kidnapping with bodily harm. (12) Attempted murder. (13) Assault with a firearm or destructive device. (14) Assault by any means of force likely to produce great bodily injury. (15) Discharge of a firearm into an inhabited or occupied building. (16) Any offense described in Section 1203.09 of the Penal Code. (17) Any offense described in Section 12022.5 or 12022.53 of the Penal Code. (18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code. (19) Any felony offense described in Section 136.1 or 137 of the Penal Code. (20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code. (21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code. (22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape. (23) Torture as described in Sections 206 and 206.1 of the Penal Code. (24) Aggravated mayhem, as described in Section 205 of the Penal Code. (25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon. (26) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code. (27) Kidnapping, as punishable in Section 209.5 of the Penal Code. (28) The offense described in subdivision (c) of Section 12034 of the Penal Code. (29) The offense described in Section 12308 of the Penal Code. (30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code."

See Online: 13 Berkeley J. Crim. L. 154 2008
CAL WEL & INST CODE § 707(b) (West 2008).

to DJJ if they have committed a “registerable” sex offense; as drafted, the only non-707(b) offense that would qualify for state commitment is child molestation.⁶⁵

2. *Effect on Currently Institutionalized Offenders and Parolees*

Five percent of California’s juvenile wards of the court are under state care, with about half of this group in DJJ youth correctional facilities and the other half under the jurisdiction of DJJ on parole in the community.⁶⁶ Youth offenders currently in the DJJ population with non-707(b) commitment offenses may be recalled by counties on an individual basis after September 1, 2007.⁶⁷ As of February 2008, this would affect approximately 500 wards.⁶⁸ Any recalled wards come under the county’s responsibility and are not eligible to be returned to DJJ for any non-707(b) offense in the future.⁶⁹ All wards currently on parole with DJJ who are non-707(b) offenders become full county responsibility if their parole is suspended or revoked by DJJ, or if they are recalled by the county.⁷⁰ All wards who are non-707(b) offenders and who are not recalled will be released from DJJ and come under county probation responsibility after September 1, 2007.⁷¹ In addition, nineteen- and twenty-year-olds whose judges select local confinement as their sentence (i.e. confinement in juvenile halls, camps, and ranches) will not be separated from those under eighteen years old, subject to pre-approval of the Correction Standards Authority (CSA) for mixing older and younger wards in these particular facilities.⁷² In effect, those over eighteen will have the option of local custody and will no longer be sent back into DJJ institutions.⁷³

65. S.B. 81 § 20.

66. HENNIGAN, *supra* note 38, at 5.

67. S.B. 81. § 20.

68. Steinhart Email, *supra* note 7.

69. S.B. 81. § 20.

70. *Id.*

71. *Id.*

72. *Id.* § 18. For a description of Correction Standards Authority, see CSA—Major Duties and Responsibilities, http://www.cdcr.ca.gov/Divisions_Boards/CSA/Admin/About_us/CSA_Major_Duties_And_Responsibilities.html (last visited Feb. 8, 2008) (“The Corrections Standards Authority (CSA) (formerly the Board of Corrections) works in partnership with city and county officials to develop and maintain standards for the construction of local jails and juvenile detention facilities and operation of state and local jails and juvenile detention facilities, and for the selection and training of state and local corrections personnel. The CSA also inspects local adult and juvenile detention facilities, administers grant programs that respond to facility construction needs, juvenile crime and delinquency; and conducts special studies relative to the public safety of California’s communities.”).

73. David Steinhart, California Legislative Bulletin: Juvenile Justice Bills in the 2007 Session of the California Legislature Updated To 11-1-07 (Final Session Results), http://www.commonweal.org/programs/jjp-reports/jj_082707.html (last visited Mar. 23, 2008) [hereinafter Steinhart Bulletin].
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3. Provisions for Funding for Localities and Disbursement of Funds

The system prior to Senate Bill 81 required each county to make payments to the state for juveniles committed to DJJ for lesser offenses (known as level V-VII offenses); the county charges were assessed as a percentage of the per capita institutional cost.⁷⁴ Senate Bill 81 creates the Youth Offender Block Grant Program. The money from the State is given to each county in a block grant and is designed to fund rehabilitation, treatment, and parole supervision of non-707(b) juvenile offenders on a county level.⁷⁵ The Block Grant fund is distributed by the State to counties based on the following: the county's share of all annual state felony juvenile adjudications (fifty percent), and the county's share of the statewide at-risk youth population (ages ten to seventeen, fifty percent).⁷⁶ The Department of Finance estimates that the total statewide block grant for the 2007-08 fiscal year will be \$24 million, and that it will rise to \$92 million within two years when the caseload has fully shifted from state to county government.⁷⁷ Counties are required to submit a Juvenile Justice Development Plan to CSA by January 1, 2008 in order to qualify for block grants.⁷⁸ The original bill provided \$14.9 million in planning grants for the counties, but this provision was vetoed by the Governor.⁷⁹

74. Interview with David Steinhart, *supra* note 17.

75. Under Senate Bill 81, funding is recommended to be used in the following areas by the counties: (a) implementing risk and needs assessment tools and evaluations to assist in the identification of appropriate youthful offender dispositions and reentry plans; (b) placements in secure and semi-secure youthful offender rehabilitative facilities and in private residential care programs, with or without foster care waivers, supporting specialized programs for youthful offenders; (c) nonresidential dispositions such as day or evening treatment programs, community service, restitution, and drug-alcohol and other counseling programs based on an offender's assessed risks and needs; (d) house arrest, electronic monitoring, and intensive probation supervision programs; (e) reentry and aftercare programs based on individual aftercare plans for each offender who is released from a public or private placement or confinement facility; (f) capacity building strategies to upgrade the training and qualifications of juvenile justice and probation personnel serving the juvenile justice caseload; (g) Regional program and placement networks, including direct brokering and placement locating networks to facilitate out-of-county dispositions for counties lacking programs or facilities. S.B. 81 § 30.

76. *Id.*; Interview with David Steinhart, *supra* note 17. To calculate the total block grant fund statewide, the Department of Finance calculates the total non 707(b) caseload based on past 707(b) commitments and multiplies it by a per capita amount of \$117,000 per youth per year. Steinhart Email, *supra* note 7. Then, a distribution formula is applied to determine each county's share of the total statewide fund. *Id.* The distribution formula allocates block grant funds to counties based fifty percent on the count's share of the state population age ten to seventeen, and fifty percent on the county's juvenile felony adjudication rate (as a percent of the statewide total of juvenile felony adjudications). *Id.*

77. Governor's Budget 2007-2008: Enacted Budget Summary, Corrections and Rehabilitation: Juvenile Offender Population and Rehabilitation Management, on file with Department of Finance, Administrative Officer, 915 L Street, Suite 1260, Sacramento, CA 95814.

78. Steinhart Bulletin, *supra* note 73.

79. *Id.*; Matthew Yi, *Gov. Schwarzenegger signs off on \$145 billion California budget*, S.F. Chron., Aug. 25, 2007, at A7.
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4. Facility Funding

Senate Bill 81 also authorized up to \$100 million statewide in construction bond funds through CSA for the design and construction of new or renovated county facilities for youth offenders.⁸⁰ The bill does not specify the types of facilities and the populations to be served by the facilities.⁸¹ This determination is left to CSA, which also determines the selection criteria and grant awards. Counties are required to match these funds by twenty-five percent.⁸²

5. Juvenile Justice Commission

Senate Bill 81 calls for the creation of a California Juvenile Justice Commission.⁸³ A Juvenile Justice Commission had previously existed, but remained dormant since being reconstituted under “Corrections Reorganization” in 2005.⁸⁴ The only similar active commissions in existence at the time of Senate Bill 81’s passage were local juvenile justice commissions mandated by sections 225 through 231 of the California Welfare and Institutions Code.⁸⁵ These local commissions are composed of between seven to fifteen citizens, two or more of whom are required to be between the ages of fourteen and twenty-one.⁸⁶ The duty of these commissions is to “inquire into the administration of the juvenile court law in the county or region in which the commission serves,” including conducting investigations of facilities where juveniles are held in the county.⁸⁷

The Commission is composed of twelve members and is considered the oversight body for realignment.⁸⁸ It is chaired by the head of DJJ, representatives of County Supervisors Association of California (CSAC) and CPOC.⁸⁹ The Commission is required to produce a Juvenile Operations Master Plan by January 1, 2009 which will include standardized risk/needs assessment, data collection elements, and recommended evidence-based programs with cost breakdowns for youth offenders.⁹⁰ The Commission will self-repeal in 2009.⁹¹ This provision was added by Senator Michael Machado with the goal of helping counties adopt national best-practice juvenile justice programs for the

80. S.B. 81 § 30.

81. *Id.*

82. *Id.* § 5.

83. *Id.* § 29.

84. Steinhart Bulletin, *supra* note 73; Interview with David Steinhart, *supra* note 17 (The former state juvenile justice division was created in 2005 by Senate Bill 737).

85. CAL. WELF. & INST. CODE §§ 225-231 (West 2007).

86. CAL. WELF. & INST. CODE § 225.

87. CAL. WELF. & INST. CODE § 229.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

Senate Bill 81 shifted caseload.⁹² Machado was worried about county performance and accountability for SB 81 fund expenditures, but realizing that he could not mandate “cookie-cutter programs” for every county, he wanted the commission reconstituted to identify effective programs for the counties to consider adopting.⁹³ The Commission, therefore, is a basic attempt at standardization of the juvenile reform process. Senator Machado was skeptical of the counties’ capacity to handle their caseload; he resisted realignment until the oversight commission was added to the package. The Commission formats the county response by encouraging them to produce one of the endorsed approaches listed in Senate Bill 81.

E. Predicted Effects: Will It Create Change?

Senate Bill 81 is the first time California has created a statutory provision that eliminates and condemns the practice of sending low-risk offenders to DJJ.⁹⁴ In addition, the bill offers a reliable source of funding for localities with little or no requirements attached as to how a county must spend a block grant.⁹⁵ A common assessment among the juvenile justice community seems to be that Senate Bill 81 is a good first step towards reform, but much more remains to be done.⁹⁶

In considering the possible effects of this bill, it is important to note that Senate Bill 81 was passed as a budget trailer bill (called trailer bills because they follow or trail the main budget bill), which is an unusual means of addressing these issues.⁹⁷ As such, the language crafted is more reflective of budgetary provisions than criminal policy, and as such, the bill arguably overlooked some of the key policy concerns and consequences of its passage. In addition, the budget process involves fewer opportunities than the bill review process, with its policy committee hearings, for stakeholder and public comment.⁹⁸ Moreover, the bill’s brief window of passage and enactment left little time for communities to ready themselves for the realignment in the juvenile justice system.

1. County-to-County Variations

Senate Bill 81 is likely to have widely differing results in each of

92. Steinhart Email, *supra* note 7.

93. *Id.*

94. Telephone Interview with Judy Cox, Chief Probation Officer, Santa Cruz County (Nov. 9, 2007).

95. S.B. 81 § 30.

96. Interview with Judy Cox, *supra* note 94; Interview with David Steinhart, *supra* note 17; Telephone Interview with Barry Krisberg, Director of the National Center for Crime and Delinquency (Nov. 27, 2007).

97. Interview with Keely Martin Bosler, *supra* note 57; Interview with David Steinhart, *supra* note 17.

98. Steinhart Email, *supra* note 7. HeinOnline 13 Berkeley J. Crim. L. 158 2008

California's fifty-eight counties. Funding distribution is based on a Department of Finance estimate of how many youths a county will not be sending to DJJ that they otherwise would have sent, and how much it would have cost to keep these youth for a period of years.⁹⁹ By basing the calculation on the current youth population in the county ages ten to seventeen and the felony adjudication rate, rather than on past commitment rates, Senate Bill 81 hopes to encourage counties who have been using creative methods of keeping youth offenders out of the state system to keep using such methods.¹⁰⁰ The lack of a centralized planning grant system or committee will likely make this task less uniform.¹⁰¹

Several factors will define the varied impact of Senate Bill 81 from county-to-county, including the lack of existing community alternatives to state incarceration or probation. It is unclear how counties without strong current local programs will function when DJJ individuals are transferred to their care. While county-by-county programs will spark creativity on the part of probation officers and other local officials, the difference in resources and programs from county-to-county will also likely create a lack of uniform alternatives to incarceration for non-707(b) juvenile offenders, as Senate Bill 81 does not specify how youth should be treated on a local level.¹⁰² Another factor that will influence county-to-county consequences of Senate Bill 81 will be the nature of the District Attorney's office in a given county. Will the inability to put non-707(b) offenders with a violent history (those who have committed a 707(b) offense in the past) back in state custody lead to more direct filing of juveniles as adults under Proposition 21?¹⁰³ Santa Cruz is currently tracking the change in direct filing after the passage of Senate Bill 81.¹⁰⁴ Solano County, however, has maintained a fairly constant low rate of direct filing over the past several years, and its Chief Probation Officer attributes this to the care taken by the local District Attorney to make appropriate filing decisions.¹⁰⁵

99. *Id.* Steinhart was instrumental in designing the funding methodology.

100. *Id.*

101. *Id.*

102. *Id.*

103. Proposition 21 was passed by California voters in 2000. It provides a District Attorney with the discretion to file a case directly in criminal court if the offender is a juvenile who has committed any offense described in section 707(b) of the California Welfare & Institutions Code, with the exception of murder and certain sex offenses described in section 602(b), which mandate that a case be direct filed. CAL. WELF. & INST. CODE § 602(b) (West 2008); CAL. WELF. & INST. CODE § 707(b) (West 2008). Text of Proposition 21: <http://primary2000.sos.ca.gov/VoterGuide/Propositions/21text.htm>. In February, 2001, the state Court of Appeal in San Diego invalidated provisions of the law requiring fourteen to seventeen-year-olds to be tried in the adult courts. Bob Egelko, *Court Curbs New Youth Crime Law*, S.F. CHRON., Feb. 8, 2001, at A1.

104. Interview with Judy Cox, *supra* note 94.

105. Telephone Interview with Isabelle Voit, Chief Probation Officer, Solano County (Nov. 8, 2007). HeinOnline -- 13 Berkeley J. Crim. L. 159 2008

2. *Offenders with a Prior 707(b) Offense*

Senate Bill 81, in an attempt to restrict the population of DJJ through a narrower definition of qualification for confinement, keeps individuals who re-offend and commit a non-707(b) offense from DJJ confinement, even if they have a violent past (past 707(b) offense).¹⁰⁶ This would likely be of significant concern to counties who believe DJJ might provide better treatment for such offenders, and to local law enforcement in terms of public protection.

On the other hand, communities might perceive a different downside to this provision. Counties that would prefer to work locally with 707(b) offenders might, under Senate Bill 81, be reluctant to do so. For example, if a juvenile has committed a 707(b) offense (violent offense), and the county prefers to work with that youth locally, under Senate Bill 81, the county might be encouraged to bypass community alternatives and recommend sending the youth directly to state care rather than risk creating a situation where a youth would be ineligible for later commitment due to Senate Bill 81 prohibiting a youth from state commitment when “the most recent offense alleged in any petition” is not described in 707(b).¹⁰⁷ If the county does not send a 707(b) offender to state care as soon as he has a violent offense on his most recent petition, they might not have the chance to send him to state care later if the attempted intervention fails.¹⁰⁸

3. *Data Tracking*

The passage of Senate Bill 81 and the increasing localization of juvenile treatment might limit California’s ability to track data on a statewide basis. The system that currently coordinates county data is “poorly staffed and maintained” according to some, and with many youth being sent to county facilities, county response rates will likely be low without the structure of DJJ’s statewide reporting system.¹⁰⁹

4. *Other Indicators of Impact*

Juvenile justice policy makers, law enforcement, and other stakeholders have a variety of views of what ought to be accomplished by the new system under Senate Bill 81. Some believe that the fewer youth incarcerated in state care, the better off the system is as a whole;¹¹⁰ others want to ensure that the state system still exists, but that only the most dangerous offenders are sent to it.¹¹¹ These different stakeholders all agree on the importance of measuring the

106. S.B. 81 § 24.

107. Interview with Isabelle Voit, *supra* note 105.

108. *Id.*

109. *Id.*

110. Interview with Barry Krisberg, *supra* note 96.

111. Telephone Interview with Bob Ochs, Chief Probation Officer of Sonoma County (Nov. 27, 2007).
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impact of Senate Bill 81, both in the short and long term. Below are some suggested measures of data, though by no means all inclusive, which would be helpful to serve as a baseline for future research to measure the impact of the bill.¹¹²

- Category 1: Effect of deinstitutionalization
 - Effect of Senate Bill 81 on youth authority commitments from Central Valley counties¹¹³
 - Effect of Senate Bill 81 on youth authority commitments from coastal counties¹¹⁴
- Category 2: Manifest and latent impacts of Senate Bill 81
 - Direct filings
 - Tracking the number of direct filings before and after Senate Bill 81:
 - By county
 - By type of non-homicide offense¹¹⁵
 - Amassing anecdotal evidence from public defenders and district attorneys to determine the impact of Senate Bill 81 on court filing;
 - Infrastructure
 - Tracking the counties' use of funding (for therapy, building more facilities, etc.);
 - Tracking the number of youth put into secure county facilities or community care programs after Senate Bill 81;
 - Tracking locations where the youth are placed within each county and within the state as a whole;
 - Tracking the number of new secure county juvenile facilities that have been built after the passage of Senate Bill 81;
 - Cost
 - Tracking the cost per youth before and after Senate Bill 81 (to determine if the bill is saving the state money);
 - Creativity
 - Determining the various models employed by the counties and analyzing their creativity;
 - Use of funding
 - Tracking the number of probation officers currently devoted to juveniles (ratio of juveniles to probation officers) and the number after Senate Bill 81;
 - Observing whether counties pool their block grants with other counties to create shared rehabilitation centers;

112. It should be noted that the Senate Bill 81 commission is currently working on finding the best indicators of Senate Bill 81's impact. See Interview with David Steinhart, *supra* note 17.

¹¹³ See Interview with Zimring, *supra* note 45.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

- Observing whether counties use the funds for juvenile justice purposes or for other purposes (because the funds are placed in the general county pool of funds).

The utility of such measures will be even more urgent in the fall of 2008 if Senator George Runner's "Safe Neighborhoods Act" appears on the ballot, as it promises to change the structure and effects of Senate Bill 81.

II. THE "SAFE NEIGHBORHOODS ACT," ALSO KNOWN AS THE RUNNER INITIATIVE

On October 22, 2007, State Senator George Runner introduced the Safe Neighborhoods Act, an initiative he hopes will be on the November 2008 ballot.¹¹⁶ The Senator proposed the initiative as an "anti-gang measure," but in reality it covers a variety of areas of criminal law and policy. The initiative would increase prison penalties for certain offenses, notably doubling prison time for gang-related crimes and increasing home-invasion robbery to a life sentence.¹¹⁷ It would also increase anti-crime funding, specifically delegating \$92.5 million a year for housing juvenile offenders in counties (including increases for changes in the consumer price index), and \$50 million a year for juvenile facility repair and juvenile programs.¹¹⁸ Some of its provisions include sentencing accomplices to gun-related felony crimes to year-long prison terms, increasing penalties for methamphetamine crimes to the same level as cocaine offenses, allowing prosecutors to use sworn statements from gang crime witnesses who later died or are afraid to testify in court, and prohibiting bail for undocumented immigrants charged with violent or gang-related crimes.¹¹⁹

The Runner initiative earmarks more than \$500 million in perpetuity for new law enforcement and victim programs.¹²⁰ This earmarking reduces the total amount of discretionary dollars available to lawmakers to spend on all

116. See Safe Neighborhoods Act Homepage, <http://www.safeneighborhoodsact.com/Default.aspx> (last visited Mar. 23, 2008). Supporters must collect 433,971 valid signatures by April 21, 2008 to qualify the initiative for the Nov. 4 ballot at an expected cost of \$1.5 million. "Runner said about one-third of the money has been pledged, though he declined to name the major donors." E.J. Shultz, *Ballot Push Targets Gangs*, FRESNO BEE, Oct. 23, 2007, available at <http://www.fresnobee.com/local/crime/story/171534.html>. As of March 18, 2008, Senator Runner claims to have gathered more than 250,000 signatures. Parimal Rohit, *Lawmakers Seek Anti-Gang Initiative*, SANTA CLARITA VALLEY SIGNAL, Mar. 19, 2008, available at <http://www.the-signal.com/news/article/895/>.

117. Safe Neighborhoods Act, proposed Oct. 22, 2007, available at http://www.safeneighborhodsact.com/Portals/0/assets/SafeNeighborhoodAct12-17_FiledVersion3.pdf.

118. *Id.* at § 4.

119. See Shultz, *supra* note 116.

120. Steinhart Email, *supra* note 7. 13 Berkeley J. Crim. L. 162 2008

budgetary needs, including criminal and juvenile justice programs that have not been earmarked by the initiative.¹²¹ While the Runner Initiative does fund Senate Bill 81 indefinitely, critics argue that the initiative threatens other state-local revenue streams by reducing discretionary funds now directed to them.¹²² Moreover, another point of contention for critics is the Initiative's direct amending of Senate Bill 81; the Runner Initiative prohibits allocations of block grant funds to mental health, drug/alcohol rehabilitation, or "any other local agency other than the probation department."¹²³

Opponents of the Initiative in the juvenile justice field criticize it for limiting the involvement and inclusion of community organizations in the process of juvenile offender treatment and reentry.¹²⁴ Others oppose the significant increases in penalties for gang-related crimes, and the Initiative's ban on reductions in state funding to local law enforcement.¹²⁵ Some probation officers, however, favor the Initiative because it guarantees funding to probation departments without those departments having to annually renew their requests for funding, or worrying about funding cuts.¹²⁶

The Runner Initiative, according to critics, is taking the focus in juvenile justice away from rehabilitation and towards incarceration, higher penalties, and "tough on crime" rhetoric.¹²⁷ It arguably counters the effects of Senate Bill 81. With increased funding for housing for offenders, counties might be less likely, in light of the Initiative, to focus on rehabilitation and instead might focus on incarceration. In addition, it might face legal challenges, as allowing testimony from dead gang witnesses appears to be in direct violation of the Sixth Amendment of the U.S. Constitution.¹²⁸ The focus of the Runner Initiative is on the superficial: it attempts to incarcerate more youth to make the population feel safer, and deliberately chooses retribution over rehabilitation. It does, however, seem to be moving in a similar direction as the recent gang initiatives in California. These gang initiatives create increased penalties for gang-related offenses—offenses which directly affect California's youth¹²⁹—and might increase the population of California's youth in state or local custody.

121. *Id.*

122. *Id.*

123. *Id.*

124. Interview with Keely Martin Bosler, *supra* note 57.

125. *Id.*

126. *Id.*

127. Interview with David Steinhart, *supra* note 17.

128. *See* U.S. CONST. amend. VI; *see also* Crawford v. Washington, 541 U.S. 36 (2004) (holding that playing the wife's tape-recorded statement at the accused's trial violated the accused's Sixth Amendment right to be confronted by the witnesses against him).

129. *See, generally*, J.D. Hawkins, et. al., *A Review of Predictors of Youth Violence, in* SERIOUS AND VIOLENT JUVENILE OFFENDERS: RISK FACTORS AND SUCCESSFUL INTERVENTIONS, 106–146 (R. Loeber and D.P. Farrington eds., 1998) (claiming that gang membership is one of the strongest independent predictors of youth violence).

III. 2007 TRENDS IN CALIFORNIA GANG INITIATIVES AND PREVENTION

Gang violence is a problem intimately tied to the future of California's youth and the California juvenile justice system, and is constantly debated in the public arena. 2007 saw the passage of several gang-related bills, all of which will likely affect gang control measures in California. These bills were not coordinated efforts at comprehensive legislation, but rather were proposed and advocated by individual legislators. An example of a more coordinated effort is Governor Schwarzenegger's California Gang Reduction, Intervention, and Prevention (CalGRIP) initiative, which appropriated funds to cities and community-based organizations for use in gang prevention.¹³⁰

A. Coordination and Central Organization

Increasing coordination of information and resources among law enforcement is a recurring theme in controlling gang violence in California. Sheriff Lee Baca of Los Angeles, for example, announced in October 2007 his plan to open the Southern California Gang Emergency Operations Center, which he hopes will serve as a clearinghouse for anti-gang initiatives, social programs and information databases.¹³¹ The Governor, together with California's Legislature, created the Office of Gang and Youth Violence Policy through Assembly Bill 1381.¹³² The Office's responsibilities include coordination of strategies to prevent violence and gang involvement, the evaluation of state, local, and federal gang intervention and programs, and the provision of funding for anti-gang efforts.¹³³ The bill requires that the Office submit a report of recommendations to the state legislature prior to March 1, 2009.¹³⁴ The director of the office reports directly to the Governor.¹³⁵ Governor Schwarzenegger appointed former U.S. Attorney Paul Seave as Director, and also named ten members to the advisory committee, which includes school superintendents, non-profit leaders, police chiefs, and faith leaders.¹³⁶ The Governor's 2008-09 proposed budget includes \$1.3 million General Fund to establish the Office of Gang and Youth Violence Policy.¹³⁷ The consequences of this bill are difficult to predict as of now: the Office has not yet officially begun its work and it remains to be seen what kind of action

130. Press Release, Office of the Governor, *supra* note 2.

131. Richard Winton, *Baca Plans Clearinghouse on Gangs*, L.A. TIMES, Oct. 11, 2007, at B3.

132. Assemb. B. 1381 2007-2008 Leg., Reg. Sess. (Cal. 2007) (enacted on October 11, 2007).

133. *Id.*

134. *Id.*

135. *Id.*

136. Governor Schwarzenegger's Gang Advisory Appointments, CAL. CITIES GANG PREVENTION NETWORK BULL. (Nat'l League of Cities, Washington, D.C.), Sep. 2007, at 1, available at http://www.nlc.org/ASSETS/0D159C2D4F654C0D9F1E0BB4781B63D6/1YEF_CA_Cities_Bulletin8.pdf.

137. Governor's Budget 2008-09, Proposed Budget Summary, available at <http://www.ebudget.ca.gov/BudgetSummary/LJE/31975617.html> (last viewed Mar. 23, 2008).

the Office will take to create the March 2009 report.

B. Civil Injunctions and Penalties

Just as increased coordination among government offices represents a trend in California's attempt to combat violence, civil sanctions have been increasingly visible as the state's means of fighting gang violence. Attempts to address gang violence with civil rather than criminal sanctions are not a recent innovation, however, but began in the 1980s in Los Angeles and sprouted in cities all across the United States in the 1990s in the form of anti-loitering and anti-nuisance laws.¹³⁸ In the 1997 case of *People ex rel Gallo v. Carlos Acuna*, the Supreme Court of California upheld the constitutionality of the use of gang injunctions, finding that gang activity fell under the definition of a public nuisance.¹³⁹ Similarly, *Chicago v. Morales* was a 1999 case against a 1992 anti-"Congregation Ordinance" in Chicago.¹⁴⁰ It resulted in the Supreme Court upholding the Illinois Supreme Court ruling that the ordinance violated due process and arbitrarily restricted personal liberties.¹⁴¹ It is this idea of "public nuisance" that drives gang injunctions today: gang members are prohibited by a court-issued order from participating in certain activities because non-gang members in their community cannot enjoy peace.¹⁴² Prohibited activities under an injunction can include association with one another, wearing certain clothes, making certain hand gestures, acting as lookouts, fighting, drinking, or using drugs.¹⁴³

In 2007, civil injunctions made headlines in counties across California and were the goal of two new bills, reflecting a possible increase in the prevalence of civil penalties for gangs and/or their increased media coverage generally.¹⁴⁴ The impact of these injunctions, as witnessed by these articles, is felt acutely by the public in cities such as Sacramento, Los Angeles, and San Francisco. For example, in October 2007, San Francisco Superior Court Judge Peter Busch issued an injunction against forty-two men suspected of being members of

138. See generally Dan M. Kahan and Tracey L. Meares, *The Coming Crisis of Criminal Procedure*, 86 GEO. L.J. 1153 (1998).

139. *People ex. rel. Gallo v. Acuna*, 14 Cal. 4th 1090 (1997).

140. *City of Chi. v. Morales*, 527 U.S. 41 (1999).

141. *Id.*

142. See Edward L. Allan, *CIVIL GANG ABATEMENT: THE EFFECTIVENESS AND IMPLICATIONS OF POLICING BY INJUNCTION* (LFB Scholarly Publishing 2004).

143. *Id.*

144. See Crystal Carreon, *Attorneys Take on West Sac Gang Case*, SACRAMENTO BEE, Oct. 13, 2007, at B2; Hudson Sangree, *Judge Says No to Using Public Funds to Fight Gang Injunction*, SACRAMENTO BEE, Oct. 16, 2007, at B3; Demian Bulwa, *Judge Gives Norteños Strict Restrictions*, S.F. CHRON., Oct. 16, 2007, at D1; Gregory W. Griggs, *Most of Gang Ban Is Upheld: State Appeals Panel Voids Overnight Curfew Imposed as Part of Oxnard Injunction*, L.A. TIMES, Oct. 17, 2007, at B4; Demian Bulwa, *Judge Grants Injunction Against Members of Three S.F. Gangs*, S.F. CHRON., Oct. 19, 2007, at B2; Times Staff Writer, *Injunction Is Sought Against Rolling 40s*, L.A. TIMES, Nov. 15, 2007, at B5; H.G. Reza, *Curbs on Two Gangs Okd*, L.A. TIMES, Nov. 15, 2007, at B6. HeinOnline -- 13 Berkeley J. Crim. L. 165 2008

three conflicting gangs in the Western Addition in San Francisco.¹⁴⁵ The injunction barred the men from associating with each other in public within two rectangular “safety zones” in the city.¹⁴⁶ In southern California, the California Second District Court of Appeal upheld the majority of a 2004 gang injunction against an Oxnard gang, with the exception of a provision that called for an overnight curfew, which was struck down as unconstitutionally vague.¹⁴⁷ The injunction created a “6.6-square-mile safety zone stretching roughly from the Ventura Freeway almost to the Pacific Ocean” where gang members were “banned from assembling, flashing gang signs, fighting, possessing weapons, wearing gang colors, or having an open container of alcohol.”¹⁴⁸

In the midst of the media coverage of California gang injunctions, the Legislature passed three bills, which were signed by the Governor in November 2007, and which all created civil sanctions for “nuisance-related” behavior. Assembly Bill 1013 increases a landlord’s ability to evict a tenant who commits an offense involving illegal weapons or ammunition.¹⁴⁹ Under the bill, possession of unlawful weapons or ammunition can constitute grounds for an eviction.¹⁵⁰ The bill creates pilot programs in specified cities in Los Angeles, San Diego, Sacramento, and Alameda Counties. The programs require the city attorney and city prosecutor of each participating jurisdiction to annually provide specified information to the Judicial Council regarding the number of evictions requests—also known as unlawful detainer requests—filed for possession of unlawful weapons or ammunition.¹⁵¹ It requires the Judicial Council to submit a report on pilot programs to the Legislature by April 15, 2009.¹⁵² The programs are effective until January 1, 2010.¹⁵³ Assembly Bill 1013 was signed into law on October 11, 2007.

Senate Bill 271 and Assembly Bill 104, signed by the Governor in July 2007, increase the prevalence of civil injunctions and civil damages for violations of injunctions. Senate Bill 271 permits any District Attorney or city attorney to file a civil suit for monetary damages against a gang or gang members for the nuisance caused by their gang activity.¹⁵⁴ The assets collected by such suits will be kept by the community in a separate fund for the benefit of the neighborhood that suffered the nuisance.¹⁵⁵ Assembly Bill 104 requires

145. *People v. Norteño*, No. 07-464492 (Cal. Super. Ct., S.F. County, Oct. 12, 2007) (order granting preliminary injunction).

146. *Id.*

147. *People ex rel. Totten v. Colonia Chiques*, 156 Cal. App. 4th 31 (Oct. 15, 2007) (holding curfew provision of gang injunction violated due process of law and was unenforceable).

148. *Id.*

149. Assem. B. 1013, 2007 Leg., Reg. Sess. (Cal. 2007).

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. S.B. 271, 2007 Leg., Reg. Sess. (Cal. 2007).

155. *Id.* HeinOnline -- 13 Berkeley J. Crim. L. 166 2008

“the Attorney General to provide criminal history information to city attorneys pursuing civil gang injunctions, or drug abatement actions.”¹⁵⁶ These bills seem to facilitate the growing trend in the use of civil injunctions and penalties, and the cooperation between the criminal and civil spheres in California.

C. Promotion of Family and Community Involvement

While the trends in cooperation and civil penalties have tended to focus on the retributive aspects of gang prevention, the following bills focus on the rehabilitative effort in this field and attempt to open greater lines of communication and stronger links between the offender and his or her community. Assembly Bill 1300 expands the purpose of the Division of Juvenile Programs within the Department of Corrections and Rehabilitation to include the provision of education to juvenile offenders, and “services . . . designed to promote family ties, . . . community restoration and accountability to victims.”¹⁵⁷ It requires the facility to create a toll-free telephone number of information related to visitation, allows a ward a minimum number of calls to her family per month, and further requires “proximity to family” to be considered in the transfer of wards from one facility to another.¹⁵⁸ Assembly Bill 1291 also attempts to keep families more invested in their children’s activities in hopes of decreasing youth gang-related violence; it creates mandatory anti-gang violence parenting classes for the parents of first-time offenders found guilty of a gang-related offense.¹⁵⁹ The Department of Justice would be responsible for the course’s curriculum, and the parent would be responsible for the cost of the classes, unless the court finds the parent unable to pay.¹⁶⁰

D. The Governor’s Proposal: California Gang Reduction, Intervention and Prevention Program

In addition to community involvement, coordination, and new and creative sanctions, funding is a key element in gang violence prevention, as evidenced in the Governor’s May 2007 proposal—CalGRIP—which directs state and federal funding towards local anti-gang initiatives, and creates a new category of parolees called “High Risk Gang Offenders.”¹⁶¹

On March 3, 2008, Governor Schwarzenegger announced the award of \$9.2 million in competitive grants to cities and community-based organizations (CBOs) for gang prevention, intervention, and enforcement.¹⁶² Los Angeles

156. Assem. B. 104, 2007 Leg., Reg. Sess. (Cal. 2007).

157. Assem. B. 1300, 2007 Leg., Reg. Sess. (Cal. 2007).

158. *Id.*

159. Assem. B. 1291, 2007 Leg., Reg. Sess. (Cal. 2007).

160. *Id.*

161. Press Release, Office of the Governor, *supra* note 2.

162. Press Release, Office of the Governor, Gov. Schwarzenegger Announces \$16.5 Million

received \$962,000 through a non-competitive grant in conformity with state budget language.¹⁶³ Approximately \$6.3 million was made available to all California cities (not including Los Angeles); a total of eighteen cities were selected to receive funding.¹⁶⁴ Additionally, \$2 million was made available to CBOs throughout California to test different approaches designed to reduce gang activities in communities and neighborhoods.¹⁶⁵ The California Labor and Workforce Development Agency's Employment Development Department (EDD) was also awarded grants to nineteen agencies for programs targeting youth aged fourteen to twenty-four for the receipt of mental health services, gang counseling, educational skills for high school graduation or GED, occupational training in business services, biotech areas, and green industry apprenticeships.¹⁶⁶

In addition, CalGRIP, via the Department of Corrections and Rehabilitation (CDCR) and an advisory committee of gang experts, creates the "High Risk Gang Offender" (HRGO) category of parolee. Gang-related offenders will be evaluated for HRGO status prior to release, and local law enforcement will be notified before HRGOs are released into their neighborhood.¹⁶⁷ In addition, CalGRIP will expand a CDCR pilot program to place GPS devices on gang leaders.¹⁶⁸ The current pilot program is in San Bernardino (nineteen units) and the expansion will be in Sacramento, Fresno, and Los Angeles counties to twenty GPS units each.¹⁶⁹ HRGOs will also be required to register with law enforcement upon release, and be tracked in a statewide database used by law enforcement.¹⁷⁰

CONCLUSION

The purpose of this article was to provide useful context to the problem of juvenile reform in California, and possible variables to track and determine the impact of these recent initiatives. The consequences of Senate Bill 81 will likely come into sharper focus over time, and 2008 and 2009 will be crucial in determining the immediate impact of Senate Bill 81. It is also unclear what effect the newly-signed and proposed gang initiatives will have on the youth prison population at both the state and county levels, especially when coupled with the effects of the realignment provisions of Senate Bill 81. These effects, too, will likely be revealed with time.

in Grants to Combat Gang Violence and Provide Job Training for Troubled, At-Risk Youths (Mar. 3, 2008), *available at* <http://gov.ca.gov/index.php?/press-release/8918/>.

163. *Id.*

164. *Id.* For a list of the grants awarded through CalGRIP, see *infra* app. tbl. 3.

165. *Id.*

166. *Id.*

167. Press Release, Office of the Governor, *supra* note 2.

168. *Id.*

169. *Id.*

170. *Id.*

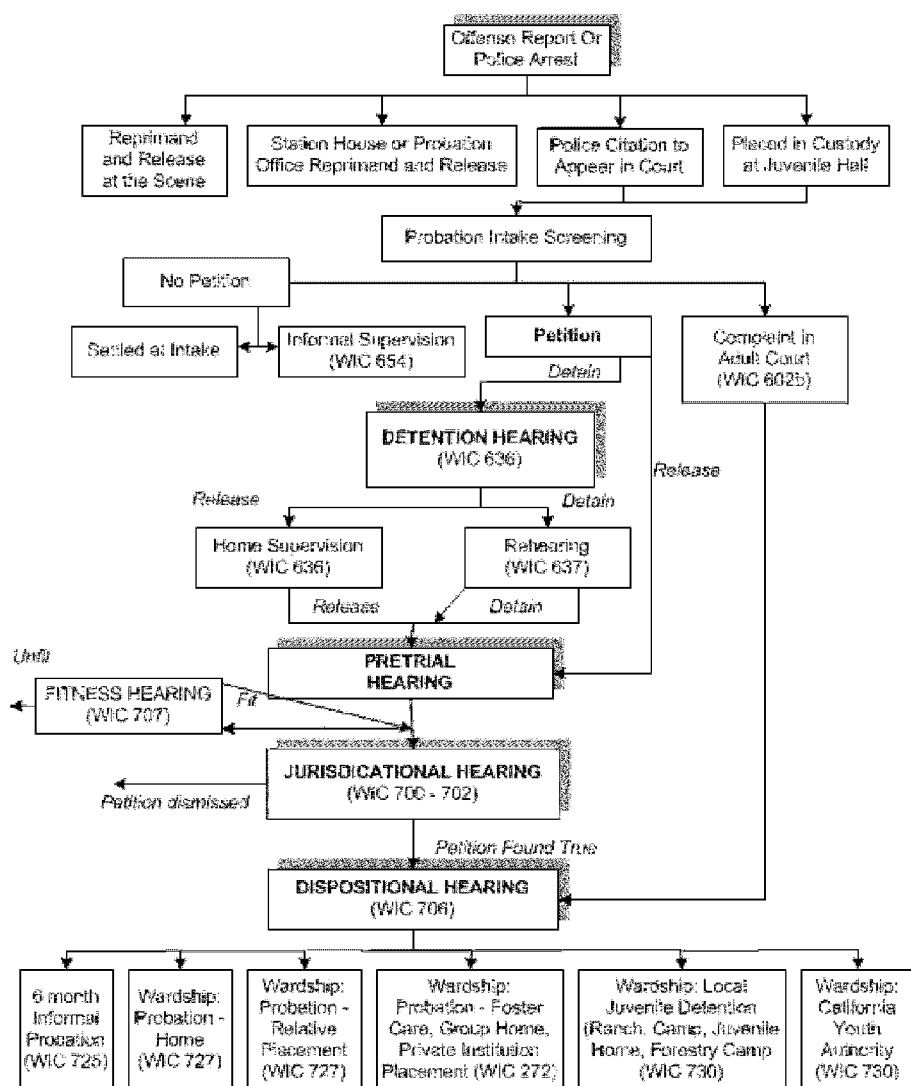
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Both Senate Bill 81 and the gang-related initiatives, however, point to a gradual change in the philosophy surrounding youth and punishment. The emphasis on the increased involvement of localities and families, and the centralizing of systems to ensure equity, could signal a move towards a more rehabilitative focus on juvenile justice, and a shift away from traditional methods of crime enforcement and prevention (arrests, incarcerations, confinement in state institutions) to more atypical methods (civil injunctions, local rehabilitative programs).

APPENDIX

Table 1: Juvenile Justice System, Fallout Chart¹⁷¹

171. Cal. Super. Ct. County of Santa Clara Juvenile Center, All About the Juvenile

Table 2: Operational Definitions of Graduated Responses in the Juvenile Justice System¹⁷²

PREVENTION		Efforts that target juveniles at risk (prior to any referral to probation)
COMMUNITY SUPERVISION LEVELS	• EARLY INTERVENTION	Order of informal probation that is not court-ordered
	• REGULAR SUPERVISION	Community supervision at regular intervals ordered by the court, either without wardship
	• INTENSIVE SUPERVISION	Intensive community supervision including special
PLACEMENT	• COUNTY AFTERCARE	Assistance beyond usual community supervision for juveniles returning from
	• PLACEMENT	Placement in foster home, group home or other residential treatment facility
COUNTY CONFINEMENT	• COURT-ORDERED COMMITMENT	Confinement in county-run camp or ranch programs or other custodial confinement including court-ordered confinement in juvenile hall
STATE LEVEL	• STATE CONFINEMENT AND PAROLE	Confinement in State-run DJJ youth correctional facility or camp - formerly CYA - YCF followed by parole

Table 3: CalGRIP Grants Awarded by the Office of the Governor in March 2008¹⁷³

<p>CENTRAL VALLEY \$4,321,928</p> <p><u>Fresno County \$1,510,880</u></p> <ul style="list-style-type: none"> City of Fresno - \$400,000 City of Sanger - \$400,000 CBO - Fresno Cty Economic Opportunities Project - \$160,000 CBO - Huron Enterprise Community - \$150,880 EDD - Fresno Cty. Economic Opportunities Comm'n - \$400,000 <p><u>Kern County</u></p> <p>City of Bakersfield - \$154,052</p> <p><u>Madera County</u></p> <ul style="list-style-type: none"> City of Madera - \$400,000 <p><u>Merced County \$494,996</u></p> <ul style="list-style-type: none"> CBO - Merced Boys and Girls Club - \$94,996 EDD - Merced Cty. - \$400,000 <p><u>Sacramento County \$681,583</u></p> <ul style="list-style-type: none"> City of Sacramento - \$281,583 EDD - Sacramento Local Conservation Corp -- \$400,000 <p><u>San Joaquin County</u></p> <ul style="list-style-type: none"> EDD - San Joaquin (Stockton) - \$400,000 <p><u>Tulare County - \$680,417</u></p> <ul style="list-style-type: none"> City of Visalia - \$280,417 EDD - Community Services and Employment Training - \$400,000 <p>BAY AREA \$2,663,637</p> <p><u>Alameda County \$800,000</u></p> <ul style="list-style-type: none"> City of Oakland - \$400,000 EDD - Associated Community Action Program of Alameda Cty. - \$400,000 <p><u>Contra Costa County \$960,000</u></p> <ul style="list-style-type: none"> City of Richmond - \$400,000 CBO - Neighborhood House of North Richmond - \$160,000 EDD - Richmond City - \$400,000 <p><u>San Francisco</u></p> <ul style="list-style-type: none"> City of San Francisco - \$400,000 <p><u>Santa Clara County</u></p> <ul style="list-style-type: none"> City of Mountain View - \$162,000 <p><u>Sonoma County</u></p> <ul style="list-style-type: none"> EDD - Santa Rosa Community Action Partnership of Sonoma Cty. - \$341,637 	<p>LOS ANGELES COUNTY \$4,699,668</p> <ul style="list-style-type: none"> City of Los Angeles - \$962,000 City of Long Beach - \$400,000 City of Hawthorne - \$400,000 CBO - Para Los Ninos - \$160,000 CBO - Regional Violence Prevention Coalition - \$160,000 CBO- Stop the Violence, Increase the Peace Foundation -- \$160,000 CBO - Youth Alive - \$160,000 EDD - Centro Community Hispanic Association (Long Beach) - \$398,146 EDD - Homeboy Industries -- \$400,000 EDD - Jewish Vocational Services (City of Los Angeles) - \$300,000 EDD - Los Angeles Works - \$399,522 EDD - South Bay Center for Counseling - \$400,000 EDD - South Bay Workforce Investment Board (Hawthorne) - \$400,000 <p>SOUTHERN COUNTIES</p> <p><u>Imperial County \$555,294</u></p> <ul style="list-style-type: none"> CBO - WomanHaven (El Centro) - \$155,294 EDD - Imperial Valley Regional Occupation - \$400,000 <p><u>Orange County \$640,000</u></p> <ul style="list-style-type: none"> City of Anaheim - \$400,000 City of Garden Grove - \$240,000 <p><u>San Bernardino County \$699,878</u></p> <ul style="list-style-type: none"> City of Victorville - \$399,878 EDD - San Bernardino City- \$300,000 <p><u>San Diego County \$1,609,788</u></p> <ul style="list-style-type: none"> City of Chula Vista - \$335,070 City of San Diego - \$400,000 CBO - Horn of Africa Community - \$160,000 CBO - North County Lifeline (City of Vista) - \$159,030 CBO - Turning the Hearts Center - \$160,000 EDD - Metro United Methodist Urban Ministry (City of San Diego) - \$395,688
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173. Press Release, Office of the Governor, *supra* note 162, 13 Berkeley J. Crim. L. 172 (2008).

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	<p>NORTHERN COUNTIES</p> <p><u>Monterey County \$400,000</u></p> <ul style="list-style-type: none">• City of Salinas - \$400,000 <p><u>Santa Cruz County \$530,029</u></p> <ul style="list-style-type: none">• CBO - Pajaro Valley Prevention and Student Assistance (Watsonville) - \$159,800• EDD - Santa Cruz County - \$370,229 <p><u>Sutter County</u></p> <ul style="list-style-type: none">• EDD - North Central Counties Consortium (5 rural counties) - \$400,000
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