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**Testing Incapacitation Theory:
Youth Crime and Incarceration in California**



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Testing Incapacitation Theory: Youth Crime and Incarceration in California

- ❖ Between 1980 and 2004, the rate of juvenile incarceration in California fell by nearly 50 percent.
- ❖ Despite the presence of fewer youth behind bars, the juvenile felony rates dropped in the same period by 58 percent between 1980 and 2004.
- ❖ California's per-capita adult imprisonment rate has increased five-fold since 1980, from 137 per 100,000 residents to 689 per 100,000 residents in 2006.
- ❖ From 1980 through 2004, despite a 500 percent increase in adult imprisonment rates, the adult felony rate actually *increased* by 11 percent.
- ❖ California's current juvenile crime rates, including youth arrested for homicide, violent crime, and property crime, are among the lowest recorded since 1960.
- ❖ In 2004, a California teenager was less likely to be arrested for a felony (including murder, other violent, and property offenses) than a teenager in the 1960s.
- ❖ On a per capita basis, the 1959 population of incarcerated youth was nearly three times greater than the same population in 2006.
- ❖ As of 2006, the commitment rate to California youth correctional institutions was 65 per 100,000. This represents the lowest recorded commitment rate in California history.
- ❖ From 2002 through 2004, Monterey County posted the highest Division of Juvenile Justice commitment rates, sending its youth to the DJJ at seven times the rate of Orange County, which posted the lowest committing rates.
- ❖ The simultaneous drop in youth crime and youth incarceration in California discredits incapacitation theory and suggests that the crime reduction must be rooted in other societal circumstances.
- ❖ Youths from primarily rural counties are subject to greater risk of incarceration for less severe offenses than peers from more urban environments.

The Center on Juvenile and Criminal Justice (CJ CJ) was established to promote balanced criminal justice policies. CJ CJ's mission is pursued through the development of model programs, technical assistance, research/policy analysis, and public education.

CJ CJ's policy efforts are currently centered on sentencing and reentry policy and juvenile justice reform. By working in partnership with major criminal justice stakeholders including legislators, correctional administrators, district attorney offices, defender advocates, community-based organizations, and civil rights groups, CJ CJ plays an important role in building a broad consensus on policy options.

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Abstract

With serious problems plaguing California's juvenile justice system, the efficacy of incapacitating juveniles in the Division of Juvenile Justice (DJJ) correctional facilities must be reexamined. California's youth incarceration patterns offer an opportunity to analyze the validity of incapacitation theory as it applies to young people. Under incapacitation theory, counties with higher youth incarceration rates are expected to experience accelerated reductions in juvenile crime. Failure to demonstrate reduced crime rates through higher levels of juvenile incarceration calls incapacitation theory into serious question as an effective youth crime reduction strategy. This study will examine California's juvenile incarceration and crime trends over the past 47 years. In addition to statewide trends, county-by-county youth incarceration practices and crime patterns are examined to determine differential outcomes between high incarceration and low incarceration counties.

Introduction

For much of the past three decades, policies emphasizing incapacitation have dominated California criminal and juvenile justice policy. In 1977, the passage of the determinate sentencing act eliminated rehabilitation as a sentencing goal in the adult context.¹ The State government adopted determinate sentencing with the approbation of both political parties who found the previous system either unfair or unreliable and lenient. With determinate sentencing, the public could be assured that offenders would be placed behind bars for a definite period of time, regardless of any treatment or education undertaken during incarceration. Rehabilitation, thus, became an issue of little import in the adult context.

The stated purpose of the California juvenile justice system has long been the protection of the public through the rehabilitation and correction of young offenders.² Despite this intention, the prevailing policy trend initiated by the 1977 act resulted in increased incarceration among juveniles and transfers to adult court. The increased reliance on institutionalization after 1977, coupled with the abominable conditions and lack of treatment opportunities in the DJJ institutions, has created a system that seems more interested in retribution than rehabilitation.³ Juveniles are now more likely to be subjected to the punitive goals as expressed in the adult context, rather than afforded the benefits of rehabilitative programs. Since 1977, juvenile offenders have been exposed to greater potential for institutionalization in response to California's adherence to incapacitation theory.

The California State Government and the California Division of Juvenile Justice are struggling to improve the myriad deficiencies of the Division of Juvenile Justice institutions (formerly California Youth Authority). In 2003, the Prison Law Office filed *Farrell v. Harper* (now referred to as *Farrell v. Hickman*), a taxpayer suit against the director of the DJJ, complaining that taxpayer funds should not be used to "further the illegal conditions that exist in the CYA."⁴ The complaint alleged the inhumane and illegal conditions present in California's juvenile justice system contravened the system's goals of rehabilitation, training and treatment as mandated by Welfare and Institutions Code section 1700.⁵ By November 19, 2004, the parties agreed to a consent decree to guide remedial action responding to the problems of the juvenile justice institutions. The court-monitored consent decree and subsequent stipulations pursuant to the settlement of the *Farrell* case requires improvements to be made to DJJ facilities in the provision of educational, medical care, disabilities accommodation, and sexual behavior treatment.⁶ In addition, institutions must reduce institutional violence, the use of force against wards, and the use of lock-ups.

Since the settlement was reached in November 2004, however, little progress has been made to improve conditions in the institutions. The cost of incarceration per ward, however, has been estimated to be as high \$115,129 per juvenile per year of confinement.⁷ The continued reliance on institutionalization is not in the best interests of juvenile offenders, and indeed, as this report indicates, incapacitation of these offenders may not serve the purpose of keeping crime rates down.

Incapacitation Theory and Practice in California

Incapacitation theory argues that reductions in crime rates are achieved through higher imprisonment rates since the offender cannot commit new crimes while incarcerated.⁸ The theory is premised on the existence of a small but identifiable number of offenders who can be imprisoned and isolated from the rest of society.⁹ The success of incapacitation theory remains a question for consideration. While advocates of the theory note decreased crime rates generally follow increased imprisonment rates, the reasons behind fluctuations in crime rates are unknown.

California's youth incarceration trends for the past two decades offer a rare opportunity to examine the impact of incapacitation theory. Like most of the nation in recent years, California has passed a number of statutes designed to promote higher rates of youth imprisonment. In response to youth offending, California has adopted a strategy akin to

throwing a net over more juvenile offenders for prolonged periods of time. Juvenile justice policy relies on incapacitation theory to justify this strategy. By adopting laws that lower the minimum age for juvenile transfer to criminal courts, increase the range of offenses that warrant placement in the adult system and allow prosecutors greater power and discretion to charge juveniles in adult courts, more juveniles become exposed to the risk of incarceration.¹⁰

Table 1. California youth and adult rates of arrest for violent crime and imprisonment rates, per 100,000 population by age, 1970-2004/06

	Youth (ages 10-17)		Adult (ages 18-69)	
	<u>Violent crime</u> <u>arrest rate</u>	<u>Imprisonment</u> <u>rate</u>	<u>Violent crime</u> <u>arrest rate</u>	<u>Imprisonment</u> <u>rate</u>
1970	310.6	194.5	324.4	161.1
	356.1	163.5	345.4	129.4
	429.2	132.3	357.9	124.1
	475.6	131.2	349.0	143.2
1975	528.4	140.8	382.7	151.8
	551.0	142.9	396.5	116.1
	514.2	139.0	378.9	116.9
	511.6	127.1	383.5	110.2
1980	500.4	142.1	387.0	121.2
	551.4	161.2	421.6	128.8
	555.6	169.9	435.8	137.3
	525.1	182.4	433.7	173.8
1985	453.6	186.8	409.6	204.5
	390.1	188.7	372.9	226.8
	377.1	196.4	377.5	244.5
	394.8	213.7	379.9	275.9
1990	396.7	246.4	493.9	321.6
	391.5	271.2	519.6	352.0
	448.7	284.7	552.8	390.0
	561.6	272.1	597.1	432.9
1995	641.9	251.6	651.6	473.8
	635.4	243.2	624.5	491.8
	624.5	240.8	638.8	521.1
	610.1	240.2	632.0	569.0
2000	626.1	245.7	645.8	594.5
	596.2	263.5	645.1	642.6
	590.3	261.2	629.2	691.5
	548.6	226.1	632.1	727.9
2005	504.1	205.2	577.4	739.4
	476.2	190.7	532.6	729.3
	408.6	179.7	513.3	713.4
	420.9	160.6	516.4	684.7
2006	370.8	138.5	496.3	683.4
	361.5	114.3	490.8	680.5
	348.6	91.4	466.6	679.1
		71.2		674.6
		64.6		689.3

Sources: Compiled by authors from Division of Juvenile Justice, Criminal Justice Statistics Center, and Demographic Research Unit. Numbers for 2006 represent rate to June 2006.

These efforts began in 1994 when the age of eligible adult court transfer was lowered from age 16 to age 14.¹¹ With the change in the law, juveniles as young as 14 could be remanded to adult court if, after a fitness hearing, a juvenile court finds them unfit for juvenile court.¹²

Also in 1994, California voters passed Proposition 184, widely known as the Three Strikes and You're Out law.¹³ Further diminishing judicial discretion in criminal sentencing, the law requires enhanced sentences for second and

third offenses following any serious or violent felony conviction. The Three Strikes statute also qualified certain juvenile offenses as strikes, if the offense was committed by a juvenile age 16 or older.¹⁴ Thus, longer prison sentences and greater punishment would be meted out by the state in response to a popular demand for increased incarceration.

In 2000, the move towards harsher juvenile imprisonment culminated with the passage of Proposition 21.¹⁵ Proposition 21 was designed to facilitate and expedite the transfer of increased numbers of juveniles to the adult court by reducing judicial discretion, giving prosecutors more authority, and increasing the number of offenders eligible for remand. With these new laws, California appeared poised for unprecedented increases in youth incarceration levels. This emphasis on expansive incarceration, combined with continuing reductions in statewide crime rates following its passage, seemed to confirm the assertions of incapacitation proponents.

Increased imprisonment is often heralded by incarceration proponents as the reason for the state's declining crime rates.¹⁶ California's per-capita adult imprisonment rate has increased five-fold since 1980, from 137 per 100,000 residents to 675 per 100,000 residents in 2004.¹⁷ The state's total felony arrest rates, including both juveniles and adults, fell from 1,844 arrests per 100,000 in 1980 to 1,673 per 100,000 in 2004.¹⁸ This decline in reported crime during a period of increased incarceration would appear to validate the incapacitation argument.

However, this overall reduction in crime masks contradictory trends when considered by age. From 1980 through 2004, despite a 500 percent increase in adult imprisonment rates, the adult felony rate actually *increased* by 11 percent, from 1,742 arrests per 100,000 adults to 1,936 arrests per 100,000 adults.¹⁹ Surprisingly, the age group from 40 through 59 experienced the greatest increase in imprisonment rates, at 1,200 percent since 1980. Concurrently, the same population also posted the greatest increase in felony rates, up 250 percent from the 1980 levels. In 1980, adults from age 40 through 59 experienced a felony arrest rate of 454 per 100,000 adults, while the individuals in that age range in 2004 were arrested for felonies at a rate of 1,132 per 100,000 adults.²⁰ Contrary to incapacitation theory, taking vastly larger numbers of adult felons off the streets and putting them behind bars did not reduce serious crime rates among adults. In fact, the opposite has occurred.

Meanwhile, California youth incarceration trends and felony arrest rates during this same period show an opposite pattern that also directly counters incapacitation theory. While the adult imprisonment rate was expanding, youth incarceration rates in California plunged to record lows. (See Table 1.) Between 1980 and 2004, the rate of juvenile incarceration in California fell by nearly 50 percent. In 1980, juveniles were imprisoned at a rate of 170 per 100,000 youths. By 2004, that number had decreased to 91 imprisonments per 100,000 youths. Despite the presence of fewer youth behind bars, the juvenile felony rates dropped in the same period by 58 percent, from 3,195 arrests per 100,000 youths in 1980 to 1,345 arrests per 100,000 youths in 2004. This reduction included a sharp decline in arrests for violent crime.

Prior to 1982, juveniles ages 10 through 17 were 20 to 25 percent *more* likely to be imprisoned than adults were. In 1983, the imprisonment rate of adults suddenly surpassed that of juveniles, and that trend has continued. Today, youth are *one-tenth* as likely to be admitted to a facility as compared to adults.

According to incapacitation theory, California's enormous decline in youth imprisonment should have resulted in more criminal youth on the streets, and more juvenile offending and violence. Similarly, the rapid increase in adult incarceration following 1983 should have removed criminal adults from the public domain, resulting in lower rates of adult offending and violence.

In reality, the opposite has transpired. Compared to their respective levels 30 years ago, violent felony arrest rates for California's youth ages 10-17 are 37 percent lower as of the latest report released by the Criminal Justice Statistics Center in 2004.²¹ Over the same period, violent felony arrests for adults increased 18 percent.²² (Table 1.) Teen violence rates, higher than adult violence rates in 1975, are considerably lower than adult rates as of 2004. Overall, youth felony arrests have dropped 60 percent over the last three decades and now stand at their lowest level since 1955. Youth imprisonment rates, after moderate variation since 1970, have also reached an unprecedented low.²³ Adult felony rates, on the other hand, have increased 24 percent during the period even while imprisonment rates reached consistent highs.²⁴

California's youth incarceration patterns offer an opportunity to analyze the validity of incapacitation theory as it applies to young people. This study examines California's juvenile incarceration and crime trends over the past 47 years. In addition to statewide trends, county-by-county youth incarceration practices and crime patterns are examined to determine differential outcomes between high incarceration and low incarceration counties. Under incapacitation theory, counties with higher youth incarceration rates are expected to experience accelerated reductions in juvenile

crime. Failure to demonstrate reduced crime rates through higher levels of juvenile incarceration calls incapacitation theory into serious question as an effective youth crime reduction strategy.

Methodology

This study examines crime trends from 1960 to the present, with a special emphasis on the last 25 years. Comparable youth and adult felony trends dating back to the late 1950s are available, as are imprisonment trends by age. However, age detail for adult arrests was not reported until 1975, and the numbers are not comparable due to a law change in 1976 making low-level possession of marijuana a misdemeanor rather than a felony. Thus, felony arrest trends reported here begin in 1980. These data for imprisonments are compared to statewide crime trends over the last 46 years for youth, and over the last 25 years for adults. In addition, county-by-county DJJ commitment rates, both per 100,000 youth and per 1,000 felony arrests, are compared with youth crime trends and levels over the last 12 years.

Data on state and county youth crime arrests were obtained from the California Department of Justice’s Criminal Justice Statistics Center (CJSC). Statistics on youths committed to the Division of Juvenile Justice (formerly California Youth Authority) by age, offense, and county were obtained from the California Department of Corrections and Rehabilitation’s (CDCR), Division of Juvenile Justice (DJJ). Population information was obtained through the Demographic Research Unit Data Files of the Department of Finance.

Trends detailed in the DJJ’s latest “A Comparison of First Admission Characteristics, 1993-2005,” “Court of Commitment by Admission Year, 1988-2005” and 2006 DJJ population reports are examined and compared to total juvenile felonies and the California population as a whole over the last 12 years.

Statewide Juvenile Crime Trends

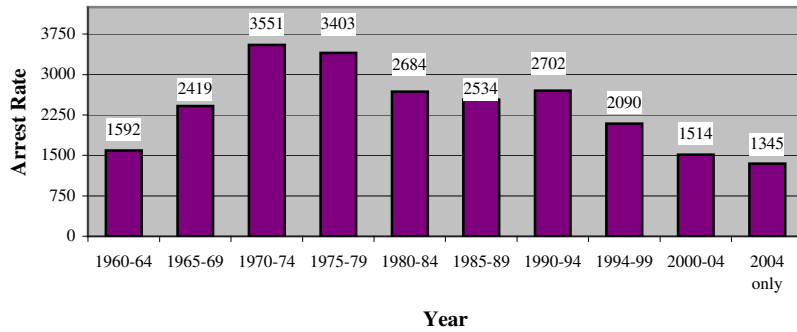
California’s current juvenile crime rates, including youth arrested for homicide, violent crime, and property crime, are among the lowest recorded since 1960.²⁵ Beginning in the early 1960s, juvenile felony arrests rates began a 15-year increase that continued into the mid-1970s.²⁶ This consistent increase was followed by a cyclical pattern that lasted into the early 1990s. (See Table 2.) After 1994, juvenile felony arrests began a steady and inexorable decline, reaching a 40-year low by 2003. In 2004, the number of juvenile felony arrests fell below the average number of juvenile arrests between 1960 and 1964. Only 1,345 juvenile felony arrests per 100,000 people aged 10 through 17 were recorded in 2004. The average rate between 1960-1964 was 1,592 per 100,000 people aged 10 through 17. Thus, in 2004, a California teenager was less likely to be arrested for a felony (including murder, other violent, and property offenses) than a teenager in the 1960s. Over the last decade, the violent felony arrest rate for juveniles has decreased by 44 percent, and total felony arrest rates have fallen by 50 percent.

Table 2. Arrests per 100,000 population, ages 10-17, 1960-2004

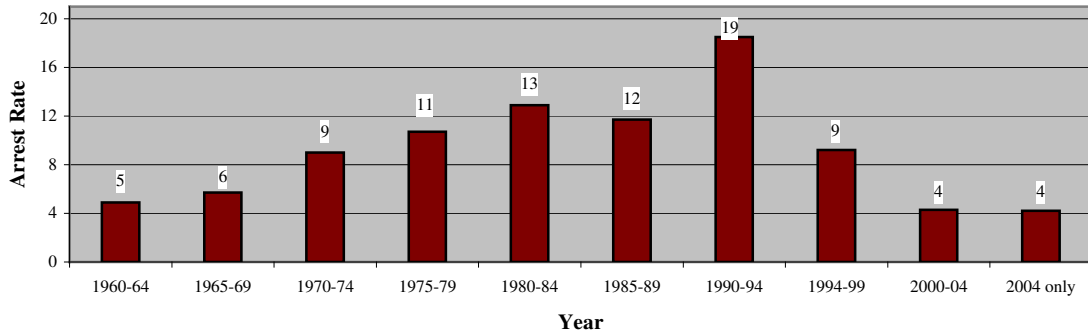
Years	Homicide	Violent	Property	Felony Arrest Rate
1960-64	4.9	178.3	1,342.8	1,591.7
1965-69	5.7	224.7	1,618.1	2,418.6
1970-74	9.0	420.0	1,925.6	3,550.7
1975-79	10.7	525.7	2,263.2	3,403.4
1980-84	12.9	460.3	1,758.3	2,683.7
1985-89	11.7	438.6	1,538.0	2,533.8
1990-94	18.5	627.6	1,534.3	2,701.7
1994-99	9.2	543.1	1,059.7	2,089.9
2000-04	4.3	382.1	659.5	1,514.4
2004 only	4.2	348.6	570.9	1,345.2

Sources: Compiled by authors from Division of Juvenile Justice, Criminal Justice Statistics Center, and Demographic Research Unit.

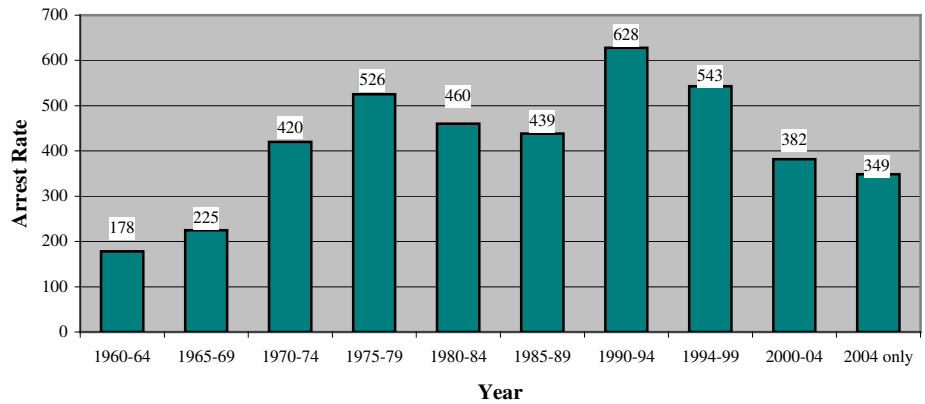
Felony Arrest Rate, ages 10-17



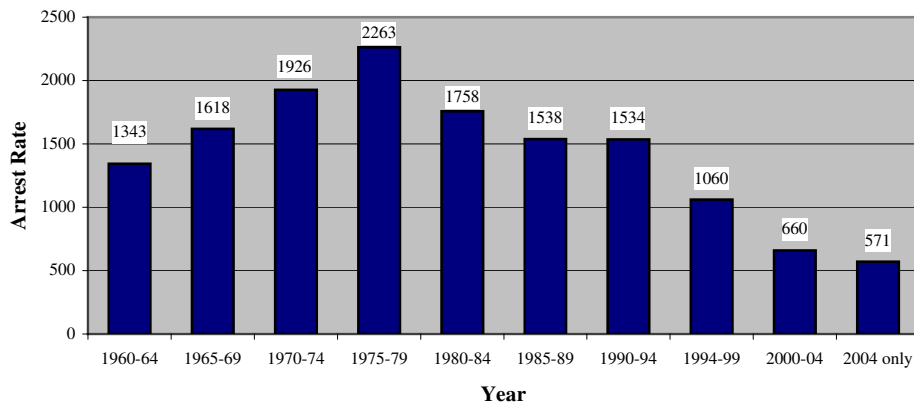
Homicide Arrest Rate, ages 10-17



Violent Crime Arrest Rate, ages 10-17



Property Crime Arrest Rate, ages 10-17



Statewide DJJ Commitment Trend Analysis

Commitments to California state youth correctional facilities are at their lowest levels in 47 years even though the state’s youth population more than doubled during this period.²⁷ As of June 2006, the average daily population in DJJ facilities was 2,910.²⁸ In 1959, the average daily population was 4,279.²⁹ On a per capita basis, the 1959 population of incarcerated youth was more than three times greater than the same population in 2006. Over the last 11 years, DJJ’s new admissions and population dropped by 75%, the fastest decline in its six-decade history. (See Tables 2 and 3.) DJJ commitments over the last 12 years decreased in every category, including gender, race, and offense.

The unprecedented population decline in the state’s correctional institutions as of 2006 is further reflected in commitments per 100,000 youth. In 1959, juvenile courts across the state committed youths to correctional institutions at a rate of 213 per 100,000.³⁰ This rate fell to 131 youths per 100,000 by 1973, then rose to 272 youths per 100,000 in 1988. Following this peak, the rate began a decline that accelerated after 1995. As June 2006, the commitment rate to California youth correctional institutions was 65 per 100,000. This represents the lowest recorded commitment rate in California history. Table 3 details the number and rate of youth incarcerated by DJJ institutions from 1959 through June 2006.

The commitment rates over the past 10 years represent a drastic departure from historical patterns that show relatively stable commitment rates with only minor fluctuations. The previous lowest recorded commitment rate occurred during the period of probation subsidy in the 1970’s.³¹ During the period of this subsidy, California provided monetary incentives to county probation departments in an effort to reduce commitments to DJJ institutions.³² The state policy remained in effect until 1978, and the commitment rates subsequently rose upon its termination. No similar subsidy currently exists to explain the low commitment rate among the juvenile population. Although the California budget now includes a 203 million dollar subsidy for county probation departments, this funding replaced federal Temporary Assistance for Needy Families (TANF) funds that became unreliable.³³ These monies enabled probation departments to continue operations, but do not flow as incentives to counties to use alternative placements, as the Probation Subsidy Act did.

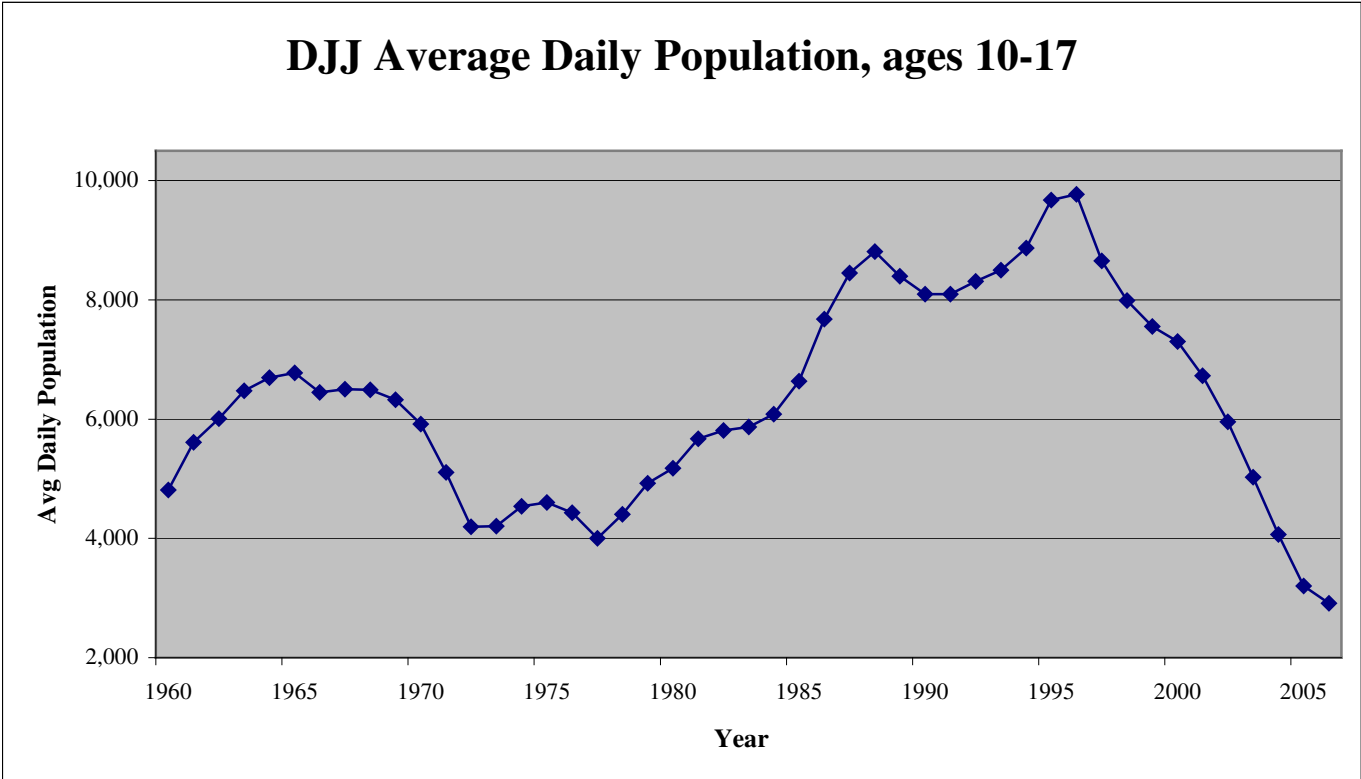


Table 3. DJJ commitment rate per 100,000 population by sex & age 10-17, 1959-2006

Incarceration Rates

	<u>Total Rate</u>	<u>Female Rate</u>	<u>Male Rate</u>	<u>Average Daily Population</u>
1960	213.0	60.0	358.0	4,279
	227.5	67.8	380.9	4,811
	251.7	68.2	428.5	5,609
	254.7	76.3	426.6	6,010
	257.4	77.1	430.9	6,478
1965	250.8	78.3	416.7	6,698
	245.9	79.3	406.0	6,778
	228.3	75.5	375.0	6,447
	223.7	72.1	366.0	6,502
	218.1	69.2	356.8	6,490
1970	208.0	60.8	345.4	6,323
	194.5	44.9	340.8	5,915
	163.5	34.7	289.2	5,105
	132.3	24.6	237.5	4,196
	131.2	21.5	238.2	4,208
1975	140.8	20.3	258.1	4,537
	142.9	15.4	266.9	4,602
	139.0	14.4	259.8	4,432
	127.1	12.1	238.4	4,003
	142.1	12.4	267.4	4,405
1980	161.2	13.8	303.2	4,924
	169.9	13.5	319.9	5,179
	182.4	15.3	341.1	5,669
	186.8	18.5	344.9	5,810
	188.7	20.4	345.0	5,869
1985	196.4	17.6	361.4	6,081
	213.7	22.8	389.0	6,638
	246.4	23.7	450.7	7,680
	271.2	25.5	497.5	8,448
	284.7	26.0	524.5	8,812
1990	272.1	22.6	504.9	8,394
	251.6	19.2	469.1	8,096
	243.2	17.1	455.3	8,098
	240.8	15.9	451.7	8,310
	240.2	18.4	447.5	8,499
1995	245.7	17.3	458.4	8,868
	263.5	22.4	487.7	9,674
	261.2	24.4	481.5	9,772
	226.1	23.4	415.1	8,655
	205.2	18.2	380.2	7,991
2000	190.7	24.1	341.4	7,556
	179.7	18.1	332.5	7,303
	160.6	18.8	295.2	6,727
	138.5	13.4	257.4	5,954
	114.3	11.3	212.3	5,024
2005	91.4	9.4	169.3	4,067
	71.2	6.9	132.3	3,200
2006	64.6	5.9	120.3	2,910

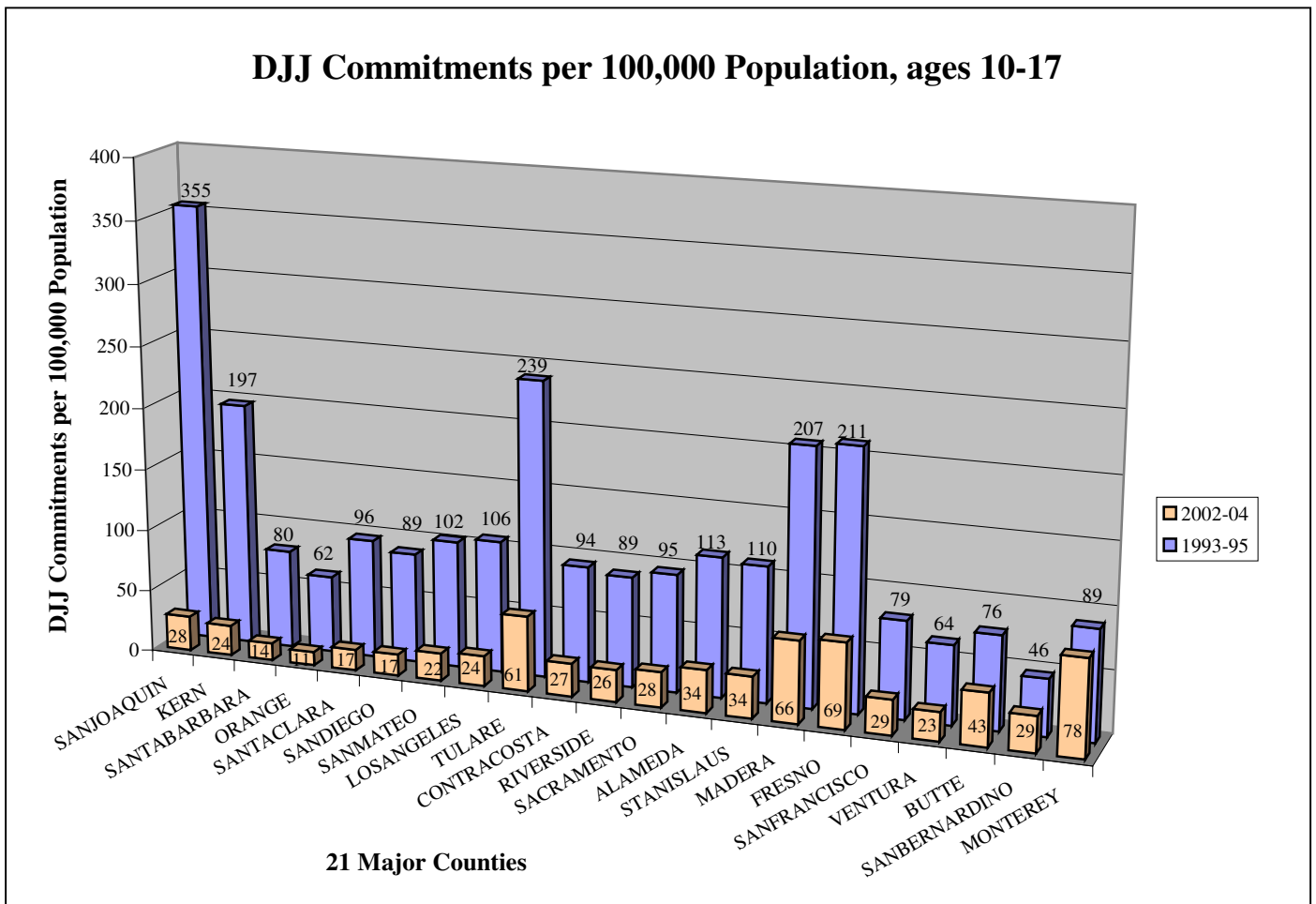
Sources: Compiled by authors from Division of Juvenile Justice, and Demographic Research Unit, California Department of Corrections and Rehabilitation, Division of Juvenile Justice, 2005. Numbers for 2006 represent population to June 2006.

County DJJ Commitment Trends and Crime Rates

A county-by-county analysis of DJJ commitment patterns shows a decline in virtually all the major counties. For the past 10 years, 18 of the 21 largest counties, accounting for 75 percent of the total youth population, have reduced their state juvenile commitment rates by over 60 percent. On average, these counties have reduced their juvenile commitment rates by 69 percent per 100,000 juveniles and by 44 percent per 1,000 juvenile felony arrests over the last decade. Table 4 details the number of commitments to DJJ institutions and the percentage change by county.

California counties exercise wide discretion in establishing commitment policies to state correctional institutions.³⁴ These discretionary policies often reflect practices particular to individual counties. In the juvenile justice context, a county may access a wider variety of options for placement. Certain counties, for instance, prioritize the use of county-funded ranch placements or residential facilities.³⁵ Although the trend in nearly all counties evidences a sharp decline in DJJ commitment rates, large differences remain with respect to commitment rates based on youth population and arrests. From 2002 through 2004, Monterey County posted the highest DJJ commitment rates, sending its youth to the DJJ at seven times the rate of Orange County, which posted the lowest committing rates. Rates of DJJ commitments per 1,000 juvenile felony arrests ranged from 11 in Orange County to 66 in Madera County.

No identifiable pattern will predict which counties maintain the lowest DJJ commitment rates. Counties as politically divergent as San Francisco and Orange consistently recorded the lowest commitment rates in terms of youth population and felony arrests. Policies supporting the low commitment rates are beyond the scope of this study, however they may not be dissimilar. The majority of the high committing counties, such as Tulare, Madera, and Fresno, are located in the Central Valley.



**Table 4. DJJ COMMITMENTS PER 100,000 POPULATION ages 10-17
(ranked by change, 1993-2004)**

21 MAJOR COUNTIES	1993-95	1996-98	1999-01	2002-04	Change
SANJOAQUIN	355.0	77.9	65.4	28.0	-92%
KERN	196.5	72.7	39.6	24.4	-88%
SANTABARBARA	79.5	33.3	24.5	13.8	-83%
ORANGE	62.1	64.9	28.6	10.8	-83%
SANTA CLARA	95.9	71.0	34.5	16.8	-82%
SAN DIEGO	88.5	61.3	28.0	17.2	-81%
SAN MATEO	102.3	38.7	44.2	22.3	-78%
LOS ANGELES	106.3	69.6	45.2	24.3	-77%
TULARE	238.8	127.6	89.1	60.5	-75%
CONTRACOSTA	93.5	51.8	40.9	26.6	-72%
RIVERSIDE	89.1	91.2	45.2	25.9	-71%
SACRAMENTO	95.1	57.0	40.6	28.4	-70%
ALAMEDA	112.9	64.3	59.0	34.4	-70%
STANISLAUS	109.6	63.5	34.7	33.6	-69%
MADERA	207.4	151.8	95.7	66.3	-68%
FRESNO	210.6	119.4	84.4	68.9	-67%
SAN FRANCISCO	78.7	34.3	34.8	28.5	-64%
VENTURA	63.8	38.6	38.1	23.2	-64%
BUTTE	75.7	60.8	25.2	42.8	-43%
SAN BERNARDINO	45.9	53.5	91.8	29.3	-36%
MONTEREY	88.9	132.9	59.9	78.1	-12%

Sources: Compiled by authors from Division of Juvenile Justice, and Demographic Research Unit.

**Table 5: DJJ COMMITMENTS PER 1,000 FELONY ARRESTS
(ranked by change, 1993-2004)**

21 MAJOR COUNTIES	1993-95	1996-98	1999-01	2002-04	Change
SANJOAQUIN	98.6	24.4	26.1	12.9	-87%
KERN	64.0	23.8	16.6	12.9	-80%
SAN DIEGO	43.0	32.5	17.8	11.5	-73%
SANTA CLARA	40.1	31.0	21.1	12.7	-68%
ORANGE	35.2	40.8	24.6	11.2	-68%
SANTABARBARA	38.1	18.5	16.0	12.2	-68%
TULARE	109.3	69.7	63.6	38.2	-65%
RIVERSIDE	48.4	67.2	32.1	19.6	-59%
SAN MATEO	43.9	19.8	31.1	19.1	-56%
LOS ANGELES	40.8	33.3	30.4	18.5	-55%
STANISLAUS	33.8	19.6	15.6	17.2	-49%
SACRAMENTO	37.4	28.8	24.2	20.0	-47%
CONTRACOSTA	40.6	24.9	28.1	22.0	-46%
ALAMEDA	34.5	24.7	29.1	20.2	-42%
SAN FRANCISCO	18.4	8.2	11.4	11.7	-36%
BUTTE	45.9	33.1	13.9	29.9	-35%
FRESNO	54.6	42.7	39.6	40.3	-26%
VENTURA	37.2	25.1	35.3	27.9	-25%
MADERA	86.0	69.2	63.3	71.0	-17%
SAN BERNARDINO	15.8	23.1	60.1	22.1	40%
MONTEREY	36.7	61.4	36.8	53.7	46%

Sources: Compiled by authors from Division of Juvenile Justice, Criminal Justice Statistics Center, and Demographic Research Unit.

County Juvenile Crime Rates and DJJ Commitments

DJJ county commitment rates are unrelated to juvenile crime patterns. For example, juvenile felony arrest rates declined by 40 percent in both Monterey and San Joaquin counties, but DJJ commitment rates fell by only 12 percent in Monterey County compared to 92 percent in San Joaquin County. Between 2002 and 2004, Monterey County, with a youth population of 51,500, had 764 felony arrests and sent 120 youths to DJJ institutions.³⁶ By contrast, Orange County has a youth population of 369,000 and recorded 3,293 felony arrests during the same period.³⁷ Over these two years, Orange County sent 114 youths to DJJ institutions. These numbers translate to a striking disparity between these two counties in the per capita rate of commitment to DJJ institutions. Between 2002 and 2004, Orange County committed 10.8 youth per 100,000 to DJJ institutions while Monterey County committed 78.1 youth per 100,000. (See Tables 4 and 5.)

Crime rates fell in all counties regardless of DJJ commitment rates. As Table 6 indicates, the five counties with the highest commitment rates imprisoned youth at five times the rate of the five least-committing counties. Further, the lowest imprisoning counties showed much larger declines in youth commitments, averaging a 79 percent reduction; the counties with higher incarceration rates averaged a 53 percent reduction. Yet, there was little difference between counties with regard to youth crime rates. The counties with higher rates of DJJ commitments experienced a 40 percent decrease in their crime rates. Those counties with lower rates of DJJ commitment experienced a similar, but slightly more successful decrease in crime rates, at 42 percent. In fact, the pattern appears random—even large differences in rates of and changes in youth imprisonment by county did not affect rates of or changes in youth felony offending.

	Average Commitments per 100,000 pop age 10-17 (2002-2004)	Change in commitment rates (2002-2004 v. 1993-1995)	Change in felony rates (2002-2004 v. 1993-1995)
Most Youth Commitments			
MADERA	66.3	-68%	-61%
MONTEREY	78.1	-12%	-40%
FRESNO	68.9	-67%	-56%
TULARE	60.5	-75%	-28%
BUTTE	42.8	-43%	-13%
Average, highest	63.3	-53%	-40%
Least Youth Commitments			
SANTA CLARA	12.7	-82%	-45%
SANTA BARBARA	12.2	-83%	-46%
SAN FRANCISCO	11.7	-64%	-43%
SAN DIEGO	11.5	-81%	-28%
ORANGE	11.2	-83%	-46%
Average, lowest	11.9	-79%	-42%

Sources: Compiled by authors from Division of Juvenile Justice and Demographic Research Unit.

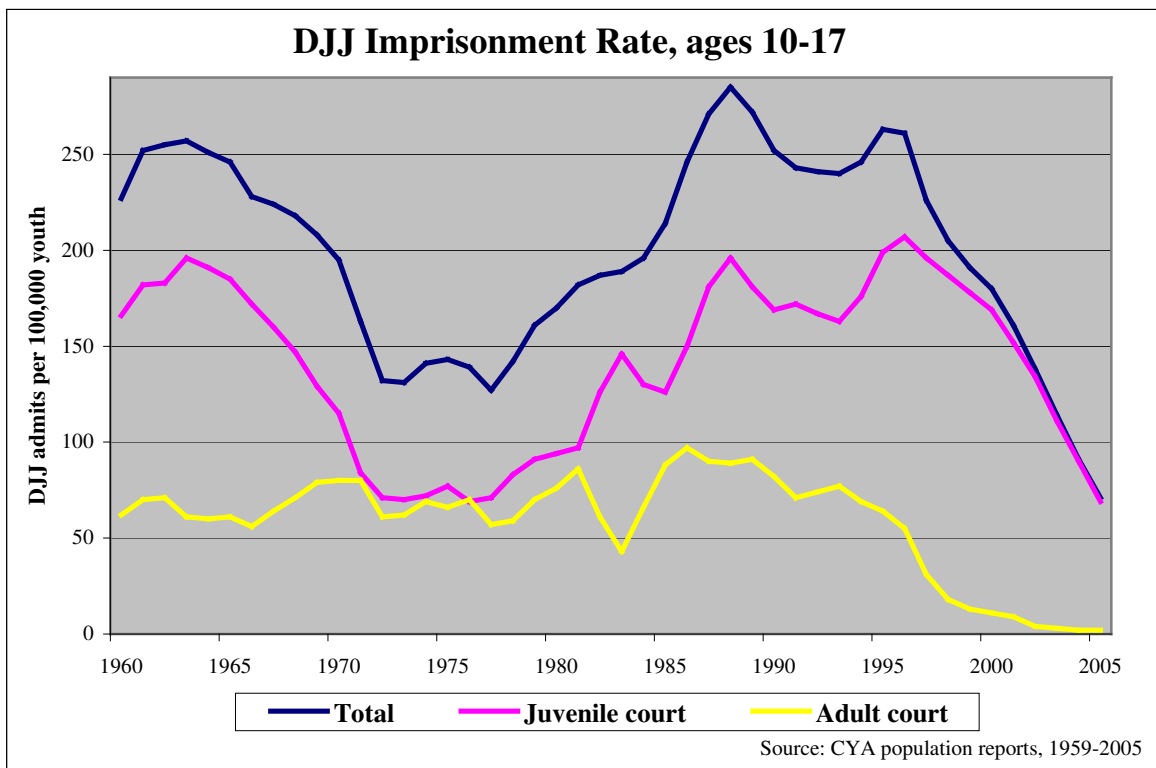
As table 6 indicates, the counties with the *highest* commitment rates averaged a 53 percent decrease in juvenile incarceration commitments. This decline in commitment rate accompanies a 40 percent reduction in the felony arrest rate. Those counties that have the lowest commitment rates averaged a 79 percent decrease in juvenile incarceration. Among these counties, the felony arrest rate also decreased by 42 percent. These numbers demonstrate that approximately two-thirds of California’s overall decline in youth imprisonment was the result of the large overall decline in juvenile felony arrest rates over the last 12 years. (See Tables 1, 2, and 5.) The remaining third may be related to the declining rate of imprisonment per felony over the same period. A comparison of the DJJ commitments per 1,000 juvenile felony arrests in California’s 21 major counties demonstrates that all populous counties, except Monterey and San Bernardino, reduced their rates of commitment. Most major counties, like the state as a whole, reported reductions in youth commitments per felony arrests exceeding 50 percent.

Adult Court Transfer Analysis

The declining rates of commitment to DJJ institutions are not the result of greater numbers of youth transfers to adult court. To the contrary, declines in adult court transfers mirror the declines in juvenile court commitments to state institutions.³⁸ Juveniles transferred to adult courts are typically confined in DJJ facilities until their 18th birthday. Upon reaching the age of majority, they are transferred to the adult corrections system to serve the duration of their sentences.

In the past 15 years, the number of criminal court commitments to DJJ institutions has declined by over 90%. In 2004, 80 juveniles, or 2 percent of the 4,067 youth who passed through DJJ facilities in that year, were sentenced by adult criminal courts compared to 31 percent of those in 1990.³⁹

The number of DJJ commitments arising from the imposition of sentences delivered in adult court has declined despite the passage of Proposition 21 in March 2000. This initiative, according to the voter handbook, explicitly requires “more juvenile offenders to be tried in adult court.”⁴⁰ Contrary to original predictions, the law has not increased the number of youths transferred and prosecuted in adult court. The current data on criminal court commitments to DJJ suggests that the initiative had little to no impact on adult court transfers.



Conclusion

California correctional policy over the past 25 years has been dominated by incapacitation theory. Thus, correctional policy has been created in the belief that the increase in incarceration rates will produce a decline in crime rates. This argument is often cited as the basis for the decline in crime among adults in California, since overall crime rates fell during the 1990s as adult incarceration levels continue to reach all time highs. While it remains possible for an interest group to cite short-term trends or selected populations to affirm any particular anti-crime theory or strategy, the long-term analysis of major crimes committed by all age groups over the past 25 years shows crime rates rose among those adult age groups whose imprisonment rates rose the fastest, principally ages 40 to 59.⁴¹

As the above data indicate, the dramatic decline in California’s youth imprisonment rate directly contradicts incapacitation theory. As the California youth commitment rate fell to its lowest point in history, youth crime rates also declined to thirty year lows. Indeed, an analysis of juvenile arrests for serious crimes shows that the present generation of youths between the ages of 10 and 17 has the lowest delinquency rates of any recent generation. This

unprecedented decline in delinquency rates has occurred at a time when the state was incarcerating the smallest percentage of youth in its history.

A county-by-county comparison demonstrates a concurrent pattern of declining crimes rates and falling incarceration rates. Los Angeles County reduced DJJ commitments by 77 percent since 1993 and crime declined by 49 percent. San Diego County decreased commitment rates by 81 percent and juvenile felony arrest rates declined 28 percent. With only 2,910 inmates in 2006, and just 816 new admissions to the state's youth correctional facilities in 2005, DJJ appears to be a least-favored option for juvenile courts around the state. In addition, reductions in statewide commitment have not been offset by increased commitments to local facilities or adult court transfers. The number of youth sentenced to adult prisons fell from 811 in 1995 to just 168 in 2005.⁴² California Board of Corrections surveys show the numbers of youths in local juvenile halls and other temporary detention have declined over the last decade as well.⁴³

The simultaneous drop in youth crime and youth incarceration in California discredits incapacitation theory and suggests that the crime reduction must be rooted in other societal circumstances. An analysis of long and short-term trends and county-by-county comparisons does not support the premise that reliance on imprisonment as a response to a broad array of offenses beyond serious, violent crimes is an effective public safety strategy.

The study also suggests that youths from primarily rural counties are subject to greater risk of incarceration for less severe offenses than peers from more urban environments. This differential treatment raises serious questions about fairness, given that the different application of sanctions is based solely on the youth's county of origin. The comparison of imprisonment and crime rates between Monterey and Orange County provide a stark example of this disparity.

The findings of this study discredit incapacitation theory and demonstrate the urgent need for California policymakers and legislators to consider alternative theories in response to crime and sentencing. As the Prison Law Office litigation made clear, placing juveniles in DJJ institutions subjects them to potentially inhumane and illegal treatment that has not yet been remedied as ordered in the Consent Decree. Further, the sharp reduction in DJJ commitments illustrates a distinct movement toward new interventions to carry out appropriate treatment and rehabilitation of juvenile offenders. As most major counties are now relying less on state correctional institutions, state policy makers must examine the shifting of state resources to local jurisdictions to improve the capacity of counties to provide a broader range of interventions that will achieve the stated goals of the juvenile justice system.

¹ In 1977, California adopted the Uniform Determinate Sentencing Act at California Penal Code section 1170. It was hailed as a solution to rampant disparities in sentencing and also removed much discretion from judges by requiring uniform sentences for the same offenses committed under similar circumstances.

² Welfare & Institutions Code sec. 1700 describes the purpose of juvenile justice as follows: "to protect society from the consequences of criminal activity and to that purpose community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses."

³ See *Farrell v. Hickman*, Sup. Ct. of Cal., County of Alameda, Case No. RG03079344, Consent Decree (Nov. 19, 2004).

⁴ *Farrell v. Hickman*, Amended Complaint for Injunctive and Declaratory Relief (Sept. 23, 2003)

⁵ *Id.*

⁶ *Farrell v. Hickman*, Consent Decree (Nov. 19, 2004).

⁷ Christopher Murray, Chris Baird, Ned Loughran, Fred Mills, John Platt, "Safety and Welfare Plan: Implementing Reform in California," California Department of Corrections and Rehabilitation, Division of Juvenile Justice (Mar. 31, 2006). The cost per ward reported by DJJ for 2004-05 is \$71,700 per year. See Ward Per Capita Cost 2004/05 available at http://www.cdcr.ca.gov/ReportsResearch/wardcost_0405.htm.

⁸ Todd Clear and George Cole, *American Corrections* (Wadsworth Publishing Company 2000) (hereinafter Clear and Cole). See also Edwin Zedlewski, "Making Confinement Decisions," National Institute of Justice, Washington, D.C. (1987) arguing that incarceration is a cost-effective means of controlling crime.

⁹ Peter W. Greenwood, *Selective Incapacitation* (RAND 1982) (hereinafter Greenwood).

¹⁰ Robert E. Sheperd, Jr., "Juvenile Justice," *Journal of Criminal Justice* (Summer 1995).

¹¹ In 1994, the California legislature passed AB 560 amended Welfare and Institutions Code 707 to allow the transfer of offenders age 16 and over to adult court.

¹² Welfare & Institutions Code section 707.

¹³ On March 7, 1994, the Three Strikes law became effective in California via legislative enactment of AB 971, codified as California Penal Code 667. It was also adopted by the people of California through the initiative process as Proposition 184 in November 1994. As such, it cannot be reformed without the approval of a supermajority of the California legislature.

¹⁴ Cal. Penal Code section 667(d)(3)(A) requires that the offender is age 16 or over. Cal. Penal Code 667(d)(3)(B) describes offenses that may count as strikes when committed by a juvenile, including the offenses listed in Welfare and Institutions Code 707(b).

¹⁵ Proposition 21 passed on March 7, 2000 with 62% of the vote. It increased punishment for gang-related felonies, required that more juvenile offenders are tried in adult court and expanded the list of offenses for which longer prison sentences would be imposed.

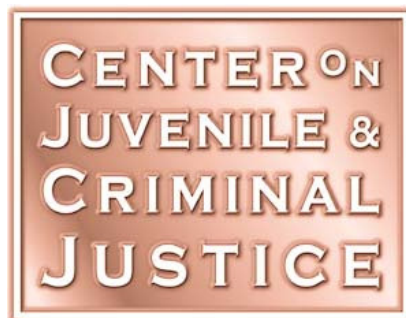
- ¹⁶ Clear and Cole. *See also*, Greenwood.
- ¹⁷ Cal. Dept of Corrections and Rehabilitation, Population Reports and Statistics (1960-2005), available at http://www.corr.ca.gov/CDC/rep_stats.asp (*hereinafter* Cal. Dept. Corrections Population Reports). *See also*, California Dept. of Justice, *Crime & Delinquency in California*, Table 16 (2004).
- ¹⁸ Cal. Dept. of Corrections and Rehabilitation Population Reports. This rate includes all felony arrests for ages 10-69.
- ¹⁹ Cal. Dept. of Justice, *Crime & Delinquency in California*, Table 16 (2004). This rate includes felony arrests for ages 18-69.
- ²⁰ Cal. Dept of Corrections and Rehabilitation, *California Prisoners & Parolees*, Table 15 (2004). *See also* Cal. Dept. of Justice, Criminal Justice Statistics Center, *Crime and Delinquency in California*, 1980-2004 and supplement.
- ²¹ Demographic Research Unit, Data Files (1970-1990, 1990-1999, 2000-2004), California Department of Finance, available at http://www.dof.ca.gov/HTML/DEMOGRAP/DRU_datafiles/DRU_DataFiles.htm. Information obtained in files was used in Tables 1-6. *See also* Cal. Dept. of Justice, Criminal Justice Statistics Center, *Crime & Delinquency 1970-2004*, and supplement (2004) available at <http://ag.ca.gov/cjsc/index.htm>.
- ²² *Id.*
- ²³ *Id.* *See also*, First Commitments 1990-2001, data compiled by CYA Research Division, Ward Information and Research Bureau, available at <http://www.cdcr.ca.gov/ReportsResearch/commitments.html>. Between 1986 and 2001, first commitments to California Division of Juvenile Justice institutions decreased by 58 percent.
- ²⁴ *Id.*
- ²⁵ Data compiled from Division of Juvenile Justice, California Department of Corrections and Rehabilitation, “Characteristics of First Admissions: 1959-2001,” “A Comparison of First Commitment Characteristics: 1993-2004,” “Population Movement Summary: September 2005.”
- ²⁶ California crime reports were less reliable prior to 1960. Therefore, data recorded prior to 1960 are not considered.
- ²⁷ Between 1959 and 2005, California’s youth population ages 10-17 increased from 2.1 million to 4.5 million. *See supra* fn 25, “Characteristics of First Admissions: 1959-2001.”
- ²⁸ Cal. Dept. of Corrections and Rehabilitation, Division of Juvenile Justice 2005, 2006. Information gathered by phone call to DJJ on June 16, 2006.
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ *See* Marcus Nieto, “Community Correction Punishments: An Alternative to Incarceration for Non-Violent Offenders,” California Research Bureau, Cal. State Library (May 1996). In 1965, California enacted the Probation Subsidy Act to provide counties up to \$4000 per juvenile or adult not committed to a state-run institution. The subsidy was responsible for the diversion of 45,000 offenders to community-run programs.
- ³² Probation Subsidy Act of 1965.
- ³³ Prevent Violence.org California Budget Bulletin, “Final FY 2004/05 Preserves Most Funding for Youth Crime & Violence Prevention Programs” (Aug. 23, 2004).
- ³⁴ Several California counties have established moratoria preventing commitment to DJJ institutions for a variety of reasons. *See* Sue Burrell and Jonathon Laba, “Violence Prone Youth Authority Still Fails its Children, its Taxpayers,” S.F. Daily Journal, Apr. 26, 2006, Forum Column.
- ³⁵ In San Francisco, the Board of Supervisors urged judges to refrain from committing youth to DJJ facilities in February 2004, citing the use of cages to “house unruly youth” and failures in mental health, education, health care and discipline. Suzanne Herel, “Supes urge judges not to use CYA,” S.F. Chronicle, Feb. 25, 2004 at A-16.
- ³⁶ Of the 764 felony arrests in Monterey County, 200 were for violent crimes and two were for homicide.
- ³⁷ Of the 3,293 felony arrests in Orange County, 636 were for violent crimes and 10 were for homicide.
- ³⁸ Division of Juvenile Justice, California Department of Corrections and Rehabilitation, “Characteristics of First Admissions: 1959-2001,” “A Comparison of First Commitment Characteristics: 1993-2004,”
- ³⁹ Prior to 1996 and passage of an administration-sponsored bill, it was common practice for adult courts to sentence offenders over the age of 18, but under 21, to California Youth Authority facilities. After this practice was stopped, only adult court commitments who were under the age 18 could be housed in these facilities. *See* Governor Pete Wilson’s 1996-97 State Proposed Budget, estimating an offset in CYA population due to transfer of inmates over 18 and sentenced in criminal court to California Department of Corrections.
- ⁴⁰ Meaning of Voting Yes, Proposition 21 Juvenile Crime, Initiative Constitutional Amendment and Statute, March 7, 2000 available at <http://www.smartvoter.org/2000/03/07/ca/state/prop/21/>.
- ⁴¹ *See above*, fn 20, CJSC 1975-2004.
- ⁴² Juvenile Research Branch, Office of Research (2006). Cal. Dept of Corrections and Rehabilitation, Court of Commitment by Admission Year, 1988-2005.
- ⁴³ Cal. Bd. Of Corrections, Juvenile Detention Profile Surveys (2004, 2005).

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