SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

KENNETH G. PETERSON
PRESIDING JUDGE OF THE
JUVENILE COURT

9605 KIEFER BOULEVARD
DEPARTMENT 90
SACRAMENTO, CALIFORNIA 95827
(916) 875-5256

February 5, 2008

Daniel W. Hancock
Chairman, Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

Re: Written Testimony for Hearing on Juvenile Justice Realignment

Dear Mr. Hancock and Fellow Commissioners,

I have been the Presiding Judge of the Juvenile Court in Sacramento for the past ten (10) years and a Superior Court judge for eighteen (18) years. You have invited me to address you as to my perspective on the Department of Corrections and Rehabilitation's policies concerning the partial shift in responsibility for juvenile commitments and supervision from the state to the counties and the proper role and responsibility of that state Department. Though I cannot presume to speak for other judges throughout California, my experience and limited comments herein may well be in common with many, if not most, of them.

I do not intend in my testimony before the Commission to advocate for any repeal of the provisions of law that were created by Senate Bill 81, Assembly Bill 191 or any of the administrative decisions that have been made to implement the realignment into what is now the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities. It is, instead, my intent to outline some of the experiences and difficult issues we face in the Juvenile Court insofar as state commitments are concerned. In that respect, I will divide my comments into two basic components: (1) limitations on commitments to the state institution, and (2) supervision of youth released from the state institution.

I would like to address the following items that affect Juvenile Court judges:

A. Issues concerning cases that are no longer eligible for commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities. Among the concerns are:
    1. The lack of local or regional resources to deal with the new limitations.
    2. The possible reaction of prosecutors to increase "direct filing" of charges against under-age-18 "defendants" in the adult Criminal Court.
    3. The possible reaction of prosecutors to increase the filing of "fitness motions" in Juvenile Court to remand minors to the adult Criminal Court.

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4. Motivation of wards to comply with conditions of probation when they are no longer eligible for commitment to the Division of Juvenile Facilities.

B. Issues concerning the supervision of wards who are released from the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities over the next one to three years. Among the concerns are:
   1. The exhaustion of confinement time while in state custody, as that affects the ability of local Probation Departments to supervise wards.
   2. The lack of local resources, including housing for over-age-18 wards who are released from state custody.

A. Commitments to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities[1]

1. Lack of Local/Regional Resources:

Welfare and Institutions Code section 734 was enacted in 1961, and has never been amended.[2] That section provides, "No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical conditions and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority." In addition, case law requires that the court must believe less restrictive alternatives would be ineffective or inappropriate. (See *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.)

Juvenile Court judges make the determination that a commitment would "benefit" the minor and that there are no "less restrictive" options based, not so much on the nature of the charge, as on the individual circumstances of that young person's background, including such issues as school

[1] Though it does not specifically matter for purposes of this Commission's inquiry, the confusion as to what to even call the Department or Division to which the Juvenile Court commits a minor is perhaps a symptom of the haste and inconsistency which marks the realignment. Popularly, including on the Department of Corrections and Rehabilitation's website and on the Judicial Council's commitment form JV-732, the reference is to the Division of Juvenile "Justice." However, the statutes that abolished the California Youth Authority in 2005, Government Code section 12838, 12838.3 and 12838.5, indicate that there is a Chief Deputy Secretary for Juvenile Justice who oversees three "divisions" of the Department: the Division of Juvenile "Facilities," the Division of Juvenile Programs and the Division of Juvenile Parole Operations. Though there is a Chief Deputy Secretary for "Juvenile Justice," the statute does not refer to any "division" by that name. Similarly, section 1000 provides that all references to the "California Youth Authority" in the dozens of code sections that have not been amended now refer to the California Department of Corrections and Rehabilitation, Division of Juvenile "Facilities." Section 1703 says the term "Youth Authority" now means the Division of Juvenile "Facilities." Section 1710 says any statutory references to the "California Youth Authority" now refer to the Division of Juvenile "Facilities." Penal Code section 6001 provides that the duties, responsibilities and functions provided in the Youth Authority Act (sec. 1700 *et seq.*) prior to June 30, 2005 are continued in the Division of Juvenile "Facilities." Since 2005, there were 66 statutes amended or added in 2007 or 2008 which refer to the Division of Juvenile "Facilities," and 27 statutes amended or added which, for the first time, refer to a "Division" of Juvenile "Justice," but none of those 27 statutes amend the basic provisions above redefining the California Youth Authority as the Division of Juvenile Facilities. Significantly, the original sections cited above that defined the three divisions (Facilities, Programs and Parole) and provide for commitments to the Division of Juvenile Facilities (Government Code section 12838.3, Penal Code section 6001, and sections 1703, and 1710) were each amended in 2007 and neither of them added a "Division of Juvenile Justice."

[2] Further references to statutes are to the Welfare and Institutions Code, unless otherwise indicated.

attendance and success, family support or dysfunction, drug usage, gang involvement, prior success with, or resistance to, probation supervision and the exhaustion of local sanctions and resources. Frequently, the least important factor in any commitment order, including those to a state facility, is the nature of the crime committed.

As you know, Senate Bill 81 amended section 733(c) to restrict Juvenile Court judges from committing wards of the court to the Division of Juvenile Facilities, unless the "most recent offense" was a serious/violent crime listed in section 707(b) or was a sex offense listed in former Penal Code section 290(d)(3).[3] (See section 733(c) and Attachment A to this letter.) Unfortunately, evaluations by judges of wards in need of the greatest interventions do not neatly fit into the list of offenses in section 707(b) or former Penal Code section 290(d)(3). To the contrary, the majority of commitments from Sacramento County over the past ten years (51.6%) were for offenses other than those which are now eligible for commitment. (See Attachment B.)

The findings of "benefit" in committing the minor to the state and that there are no "less restrictive" local options are not easily or lightly made and will certainly vary among counties, depending on the availability of sophisticated treatment resources and secure custody facilities. Whether it happens in Sacramento, or a smaller county with fewer local alternatives, the decision to commit a ward to the state facility is essentially based on the reality that no suitable alternatives exist at the local treatment level. Juvenile Court judges only arrive at those findings as a matter of absolute last resort. That does not occur often.

As an example, during the ten years I have been the Presiding Judge of the Juvenile Court in Sacramento, there have been an 60,237 delinquency petitions and violations of probation filed (an average of 6023.7 each year). During that same period, Sacramento County Juvenile Court judicial officers ordered a total of 405 minors committed to the former California Youth Authority (an average of 40.5 per year). (See Attachment B). That is a commitment rate of only 0.67% of the total cases filed, including for those crimes which are still eligible for commitment.

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[3] There is a legal question whether the sex offense category continues to exist, or ever did. Senate Bill 81, with its reference to Pen. Code § 290(d)(3) in section 773(c), became effective August 24, 2007. (Assembly Bill 191 modified and clarified several aspects of Senate Bill 81 and became effective September 29, 2007, but did not amend section 733(c).) After that, the legislature passed an entirely unrelated bill, Senate Bill 172, an urgency bill effective October 13, 2007, which deleted Pen. Code § 290(d)(3), thus leaving section 733(c) with a non-existent cross-reference. The offenses that were previously listed in Pen. Code § 290(d)(3) are now listed in a new section, Pen. Code § 290.008(c), but, apparently out of the Legislature's forgetfulness concerning the Division of Juvenile Facilities bills passed just two weeks before, there is no statutory link to that new sex offense section to create eligibility for commitment to the Division of Juvenile Facilities. Similarly, under rare circumstances, it is possible to commit an under-age 18 "defendant" from the adult "criminal court" to the Division of Juvenile Facilities pursuant to section 1731.5, but it also cites Pen. Code § 290(d)(3) for sex-offense eligibility, not Pen. Code § 290.008(c). Finally, the Welfare and Institutions Code, itself, is not entirely clear and consistent in describing crimes eligible for commitment. Section 733(c) is worded in the negative. It says, "A ward of the juvenile court who meets any condition described below shall <u>not</u> be committed … (c) … the most recent offense … is not described in subdivision (b) of Section 707, unless the offense is a sex offense" listed in Pen. Code § 290(d)(3). (Emphasis added.) On the other hand, the commitment authority worded in the affirmative is Welf. & Inst. Code § 731(a)(4): At disposition "the court <u>may</u> order any … of the following: … (4) Commit the ward to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, if the ward has committed an offense described in subdivision (b) of Section 707." (Emphasis added.) No mention is made in that affirmative authority of any sex offense list, whether in Pen. Code § 290(d)(3) or any other section. Sections 731(a)(4) and 733(c) are inconsistent.

There were 209 minors committed during that ten year period for offenses that will no longer be eligible for the Division of Juvenile Facilities. That represents 0.35% of the intake. (The number is even smaller if only the results of the last four years are considered.[4] With case filings of 24,663 over the period between 2004 and 2007, only 0.36% of all new cases resulted in a commitment. The 36 cases that were committed for offenses that are no longer eligible represent 0.10% of intake.)

In Sacramento County we have several excellent treatment facilities. The Sacramento County Boys Ranch (a fenced facility; maximum capacity 125 serving boys only) and the Warren E. Thornton Youth Center (an unfenced facility; maximum capacity 110 serving boys and girls) are residential commitment facilities. The Day Reporting Center (maximum capacity 130 serving boys and girls) is a non-residential school and counseling facility.[5] But even with those sophisticated facilities, we have to occasionally admit that we cannot help the minor or protect society at the community level.

Other counties, especially smaller ones, may not have that range of facilities and may exhaust their local options even earlier than Sacramento. However, I am confident the commitment rates from other counties are also infinitesimal compared to the overall caseload in those counties.

From now on, judges will find significant situations where wards who were not adjudicated to have committed offenses in either eligibility list, nevertheless present a significant danger to themselves and others if they are not immediately removed from the general population, perhaps for a significant period of time. The inability to commit such wards to a state institution leaves the county, at least temporarily, at a complete loss for a solution.

I have great concern as to how local Probation Departments will safely and effectively supervise and treat wards of the court who hereafter display the very same characteristics that previously caused Juvenile Court judges to reluctantly admit cannot safely be treated within our community. A typical example of that kind of case is a now-17 year-old who has been adjudicated responsible for a residential burglary after a local history since age 13-14 for four or five crimes

[4] At the end of 2003, several reports were published by evaluators of the California Youth Authority's effectiveness and safety. Though no specific policy decision to do so was made, one could conclude the Juvenile Court's awareness of those reports had an effect on the commitment rate, as reflected in Attachment B. The reports included *General Corrections Review of the California Youth Authority* (Dec. 2003) Barry Krisberg; *Education Program Review of California Youth Authority* (Dec. 2003) Thomas O'Rourke and Robert Gordon; *Review of Health Care Services in the California Youth Authority* (Aug. 2003) Michael Puisis and Madie LaMarre; *Evaluations of Sex Offender Programs, The California Youth Authority* (Sept. 2003) Jerry Thomas Consulting and Training; and *Report of Findings of Mental Health and Substance Abuse Treatment Services to Youth in California Youth Authority Facilities* (Dec. 2003) Eric Trupin and Raymond Patterson.

[5] I do not consider the Sacramento County Juvenile Hall, rated capacity 276, to be a post-disposition commitment facility. It is designed to be a pre-trial detention facility and provides very little in the way of treatment. We customarily do not "commit" minors to the Juvenile Hall for more than 30 to 60 days (frequently referred to as *Ricardo M.* time; see *In re Ricardo M.* (1975) 52 Cal.App.3d 744). I do not foresee Sacramento County, or many other counties with overcrowding issues, being able to expand the use of the Juvenile Hall as an alternative location for minors who formerly would have been committed to the Division of Juvenile Facilities. The Sacramento County Juvenile Hall is under a suitability watch by the Corrections Standard Authority requiring daily reporting of the Juvenile Hall population to correct prior overcrowding. The Probation Department is also a defendant in a lawsuit by the Prison Law Office, based in part on the prior overcrowding of the Juvenile Hall.

B.T. Collins Juvenile Center ● 9605 Kiefer Boulevard ● Department 90 ● Sacramento, California 95827
Telephone: (916) 875-5256 ● Fax: (916) 875-6497 ● E-mail Rhonda.Dunnewin@SacCourt.ca.gov

involving drugs and theft which resulted in graduated sanctions beginning with community service or work project, followed by one or two commitments to our Youth Center, and then by two or more commitments to our Boys Ranch. What has been tried before has not worked. It wasn't really Einstein who said it, but it is true, "The definition of insanity is doing the same thing over and over again and expecting different results." It is extremely unlikely that another commitment to our Boys Ranch for such a minor will be effective.

The Juvenile Court has a dual responsibility: to serve the best interests of the minor and to provide for the protection and safety of the public. (See § 202.) Unless there is a timely, significant – and I fear, unlikely – increase in sophisticated and secure treatment facilities at the local level, the judges will make the same finding that there is no effective or appropriate facility or program for the young person, but will have no answer to solve the problem. There are not likely to be enough of such cases in any one county – even those considered relatively large, such as Sacramento – to financially justify building and staffing the kind of facility that will be necessary to safely and effectively house such difficult minors.

I don't believe many, if any, counties have sufficient case numbers in a single year to support building new facilities on a local level. This is, of course, especially true for small counties. As part of Assembly Bill 191, section 1952 created the Youthful Offender Block Grant Fund to offset costs the counties will incur for wards no longer eligible to be committed to the Division of Juvenile Facilities, but that section provides only $117,000 per ward. That may well assist the Probation Department in developing further intense, sophisticated, multi-disciplinary programming to meet most of these minors' needs, but I don't see how it will provide for a safe and secure environment while the treatment is being provided. Such minors are dangerous to the public's physical or property safety. Any new treatment program first has to be developed. Then it cannot produce instant results with a particular minor. Where will that minor reside while the treatment program is administered? It can't be in the same home that has not been effective in assisting the Probation Department in rehabilitating the minor in the likely numerous prior attempts. Though I am no architect or contractor, it doesn't seem to me Block Grant funds will be nearly sufficient to pay for the construction of secure facilities and the required multidisciplinary staffing for custody and treatment.

I believe regional efforts are the only feasible way to answer this problem. But, that will take a great deal of time and political will from agencies and governments in different counties that do not have a current working relationship. Meanwhile, the state has prematurely left the local community high and nearly dry by not first providing an adequate safety net to replace the admittedly flawed state-run institutional system. Planning and funding for local facilities and treatment programs needed to be built <u>before</u> commitments were restricted, rather than creating a lengthy construction time gap that may never be filled.

2. Effect on Direct-Filing in Criminal Court

I have heard it speculated that the restriction on eligible offenses for commitment to the Division of Juvenile Facilities will cause District Attorneys Offices to "direct file" more cases in the Criminal Court. This seems unlikely to me.

A charge can be filed directly in the Criminal Court, rather than the Juvenile Court, only if the offense is listed in section 602(b) or section 707(d).

Section 602(b) requires the District Attorney to file certain charges in the Criminal Court against persons age 14 and older. The District Attorney does not have discretion to file the following two classes of cases in Juvenile Court: (1) murder with special circumstances that would make an adult eligible for the death penalty, and therefore carries a mandatory sentences for a minor of life without possibility of parole; and (2) violent sex offenses that are committed under specified aggravating circumstances that convert the charge to what is referred to as a "one-strike" life in prison punishment pursuant to Penal Code section 667.61(d)/(e). Because those charges have been, and must continue to be, direct-filed in the Criminal Court, the change in the law for eligibility for Division of Juvenile Facilities will not affect the District Attorney's charging practices.

Section 707(d) give the District Attorney the discretion to file certain charges in the Criminal Court, most of which apply to persons age 16 and older. District Attorneys in different counties have varied policies on whether to retain such cases in Juvenile Court or to direct-file them in Criminal Court. But there is almost no reason for them to change those policies. The only situations for which direct-filing in Criminal Court is expanded by section 707(d) beyond the list eligible for Division of Juvenile Facilities commitment are described are for minors who are now age 16 or older, have a prior felony juvenile record of some sort when they were 14 years of age or older, and the current offense is a crime that is not otherwise listed in section 707(b), but was committed either upon a victim who is elderly or disabled [§ 707(d)(3)(A)], was a hate crime [§ 707(d)(3)(B)],[6] or for the benefit of a street gang [§ 707(d)(3)(C)]. As a practical matter, those types of aggravating circumstances usually occur when the offender is already committing an offense listed in section 707(b) or former Penal Code section 290(d)(3) and thus remains eligible for commitment to the Division of Juvenile Facilities, anyway. Therefore, as a practical matter there is almost no situation where the District Attorney will need to, or be able to, file a case directly in Criminal Court because of a concern that such minor will now be ineligible for commitment to the Division of Juvenile Facilities. The lists of eligibility for each sufficiently coincide to make that a moot point.

3. Effect on Fitness Motions

Ever since the passage of Proposition 21 on March 8, 2000, the provisions for direct-filing in the Criminal court have given District Attorneys little reason to file motions in the Juvenile Court to remand cases from Juvenile Court to Criminal Court. In many counties before the passage of Proposition 21, the District Attorney's concerns about cases not having an adequate remedy in Juvenile Court were met by the use of section 707(c). A motion made pursuant to that section applied to the crimes listed in section 707(b) – the same section that now applies to direct-filing, as well as eligibility for Division of Juvenile Facilities – and provided a presumption of unfitness to remain in Juvenile Court. In counties like Sacramento, that type of fitness motion has almost

[6] For these purposes, I have summarized the following listed circumstances as being "hate crimes:" crimes committed to interfere with a person's rights because of perceived race, color, religion, ancestry, national origin, disability, gender, or sexual orientation.

completely dried up because the District Attorney can file the case directly in Criminal Court if that office feels a commitment to the Division of Juvenile Facilities is inadequate.

The potential impact of the restriction in eligibility for commitment to the Division of Juvenile Facilities is for the crimes that are not listed in the section 707(b)/(c) presumption of unfitness and direct-file eligibility statutes. As indicated above, the majority of commitments to the California Youth Authority from Sacramento County over the past ten years have been for those crimes not listed in section 707(b) (See Attachment B.) Other than for sex offenses which remain eligible for commitment, the only types of cases for which the District Attorney has previously sought commitment to the Division of Juvenile Facilities, but are no longer eligible, are those that cannot be filed directly in Criminal Court either. An example would be a minor who repeatedly burglarizes house or steals cars and the Juvenile Court and Probation Department have tried several local interventions, none of which have been successful to change the minor's behavior. Such a minor is no longer eligible for commitment to the Division of Juvenile Facilities, is not eligible for a direct-filing in Criminal Court, and is not presumed unfit for juvenile court.

Therefore, I would anticipate that District Attorneys will increase, to some extent, their previously little used practice of seeking to find minors unfit for juvenile court, to be remanded to the Criminal Court pursuant to section 707(a), rather than section 707(b). The former section can be applied to any minor who is at least 16 years old, regardless of the crime, but it requires a motion in the Juvenile Court wherein the minor is presumed fit to stay in the juvenile system and the District Attorney needs to provide sufficient evidence in five specific areas to tip the balance in favor of remanding the minor to Criminal Court.[7] In such cases, the judicial branch will continue to serve as an appropriate check and balance on the executive authority to determine whether the Juvenile Court or the Criminal Court serves the best interests of the minor and public safety.

While this will mean some additional workload for the Juvenile Court, I would expect it to be modest. For instance, Attachment B reflects in the "Other Crimes" column the number of cases where the minor is no longer eligible for commitment to the Division of Juvenile Facilities. Over the past ten years, Juvenile Court bench officers felt there were insufficient local options to treat and supervise the minor in 20.9 cases per year, but that has been reduced to 9.0 cases per year over the past four years. I would expect, therefore, an increase of section 707(a) fitness motions in numbers roughly equivalent to that. Fitness hearing is 10 to 20 cases per year, drawn from the 6,000 petition filed per year, will not have a significant impact on the court. And it is work that we used to do before Proposition 21 without significant problems.

[7] The five factors to be balanced by the Juvenile Court are: (1) the degree of criminal sophistication exhibited by the minor; (2) whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction of age 21; (3) the minor's previous delinquent history; (4) the success, or lack thereof, of previous attempts by the juvenile court to rehabilitate the minor; and (5) the circumstances and gravity of the offense alleged in the petition to have been committed by the minor. (See § 707(a)(1)(A)-(E).)

4. Motivation of Juvenile Court Wards to Comply with Terms of Probation

Certainly, young people are motivated, or not, for a variety of reasons to succeed on probation. Though there are many positive reasons to comply with probation conditions, resulting in most wards being terminated from probation long before the maximum eligibility of age 21, it is likely there are some that respond only because of the potential for further negative sanctions. I certainly cannot quantify how many wards would not have succeeded on probation in the past if there weren't a potential commitment to the California Youth Authority staring them down. Assuming there were some who were deterred by that potential, it is now gone. Now, the type of minor who repeatedly fails to respond to local supervision and services, and would have caused the Juvenile Court, in the past, to commit the minor to the state institution, no longer faces that greater sanction. That removes a significant tool and motivator for Courts, Probation Officers and parents in attempting to turn a minor around.

One county has already reported to me that some minors have intentionally "sabotaged" their commitment to the county's last-resort ranch/camp option under the belief that there is nothing else the Juvenile Court can do them. The ranch program returned those minors to court as ranch failures, leaving the court with no effective follow-up option. Young people, even reasonably well adjusted ones, are famous for testing limits. It is likely that there will some effect of this sort in other cases now that the prohibition on commitment to a state facility for most offense has been established. Probation Officers will see some there-is-nothing-you-can-do-to-me attitudes among their most recalcitrant wards. Then what?

B. Supervision of Wards Released from the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities

1. Remaining Confinement Time after Release from Division of Juvenile Facilities

As you know, section 1766(b) provides that any ward "paroled" from the Division of Juvenile Facilities who was committed there for an offense that is not listed in section 707(b) or former Penal Code section 290(d)(3) will only be supervised by the state's Division of Parole Operations for fifteen days. Within that period, the case must be calendared in the Juvenile Court for a Reentry Disposition Hearing. The purpose of the hearing shall be for the Juvenile Court to accept the transfer of the ward back into local supervision and identify those conditions of "probation" that are appropriate under all the circumstances of the case.

At the time of the implementation of the realignment, there were twenty-six (26) Sacramento County wards in the Division of Juvenile Facilities for such offenses, all of whom will be coming up for parole release in the next year or two. So far, in Sacramento County we have had no significant problems in communicating with the Division of Juvenile Facilities to learn sufficiently in advance which wards are coming up for parole hearings and possible release, as well as which ones are actually released at the parole hearing and are thus due back in our Juvenile Court for a Reentry Disposition Hearing. Our Probation Department has been provided sufficient information from the Division of Juvenile Facilities and enough time prior to the

hearing to prepare a progress report for the Juvenile Court with recommended conditions of probation.

The only significant problem we have encountered is that some of the wards are being released under less than honorable circumstances, not because they have performed and progressed well enough to deserve release, but instead only because their maximum confinement time has been totally exhausted. At the time each ward is originally committed to the Division of Juvenile Facilities, the Juvenile Court must set an appropriate maximum confinement time applicable to that person "based on the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the juvenile court." (See section 731(c).) Most wards are paroled substantially before they reach that maximum. For instance, the term applicable to the crime of rape (Penal Code section 261) is 3, 6 or 8 years. Under some circumstances, a judge might commit the ward to the Division of Juvenile Facilities for six (6) years for that crime, but his parole consideration date would be within three (3) years because Title 15 of the Administrative Code, section 4951-4957, fixes rape as one of the crimes listed as a Category 3 offense, each of which presumes parole consideration will be in three years. (See Attachment C.)

When a ward is paroled prior to the expiration of the maximum confinement time, he/she could be returned to custody for a violation of parole up to the amount of time remaining on the original commitment term set by the Juvenile Court. The possibility of a return to custody serves not only public safety, but motivates parolees to perform satisfactorily on parole to avoid re-incarceration. However, if a ward has not rehabilitated or behaved well in the Division of Juvenile Facilities, that ward may not be released at the time of the first parole consideration date, or even a second or third parole hearing date. But, no matter how poorly the ward performs and progresses, by law the Division of Juvenile Facilities cannot keep him/her longer than the maximum set by the Juvenile Court.

In Sacramento, so far, we have received four (4) reentry cases of the twenty-six (26) that will eventually be released to local supervision. Two (2) of them, who must be placed on local probation, have completely exhausted their maximum confinement time. They were released, not because they deserved to return to society, but because the Division of Juvenile Facilities was forced to let them out before rehabilitation had been demonstrated. Because there is no more confinement time available, counties then face a mutually undesirable choices: 1) put the ward on local probation (but supervision will be hampered because there is no confinement time remaining, so even if the ward violates local probation he/she cannot be re-incarcerated); or 2) immediately terminate probation because of its perceived ineffectiveness (but leave a previously underperforming, undeserving ward totally unsupervised in the community).

Some counties have chosen the latter alternative, seeing no effective supervision possible because the ward will not be motivated to cooperate with the probation officer. In Sacramento, we have chosen a different route and we do keep the ward on probation until either all conditions of probation have been satisfied, or the ward turns twenty-one (21) and the Juvenile Court loses jurisdiction. We have done so primarily to have a search and seizure condition attached to each ward's probation conditions. Such a condition not only serves to protect the public, but it is also intended to motivate the ward to not violate the law out of awareness that the monitoring and

B.T. Collins Juvenile Center ● 9605 Kiefer Boulevard ● Department 90 ● Sacramento, California 95827
Telephone: (916) 875-5256 ● Fax: (916) 875-6497 ● E-mail Rhonda.Dunnewin@SacCourt.ca.gov

searches by the probation officer would potentially detect a crime, such as drug or illegal weapons possession, resulting in new charges being filed, either in the Juvenile Court or Criminal Court, depending on whether the ward is now over the age of eighteen (18).

This is, however, a temporary problem. The only cases for which the Juvenile Court will face hearings for reentry to local probation are those in which the court previously committed the ward to the Division of Juvenile Facilities for offenses not listed in section 707(b) or former Penal Code section 290(b)(3). But ever since September 1, 2007, when the realignment went into effect, there can be no more wards committed to the Division of Juvenile Facilities in that category. So, the pool of wards eligible to be released back to local custody will eventually disappear entirely. Within a year or so, there will be no more Reentry Disposition Hearings. By then, everyone released from the Division of Juvenile Facilities will have been committed there for an offense listed in section 707(b) or former Penal Code section 290(b)(3) and will be on state parole, not local probation.

2. Lack of Local Resources to Supervise Wards, Including Housing

As discussed above, a ward is only committed to the Division of Juvenile Facilities if the Juvenile Court makes a finding that there are no effective local options available to treat and serve the minor's interests. Though many wards committed to the state institution may benefit sufficiently such that their needs are reduced to the level that local services are now sufficient, not all returnees will have made such progress. The minor who was deemed beyond local help may well return with the same or greater needs. It will take time to develop and utilize the section 1952 Youthful Offender Block Grant Funds effectively to fill that gap. Though there are relatively few of such cases (as indicated above, Sacramento County will have 26 cases spread over the next year or two), it is unfortunate and unfair that there was no transition planning and implementation time for such programming to be developed before the state started "dumping" these cases back on the counties.

As a practical matter, many wards released from the Division of Juvenile Facilities back to local probation will at least eighteen (18) years old. Given that the original commitment was made only after local resources were exhausted, almost all wards committed would have been in their later teen years at the time of commitment. It is likely, especially in Sacramento, that even if the ward committed crimes at a young age, substantial time passed while a variety of attempts were made locally to rehabilitate the ward before the ward's situation deteriorated to the level that the Juvenile Court felt it had no further option than to commit the minor to the state institution. Therefore even a parole date within one year (e.g. a Category 6 offense such as a business or automobile burglary, Penal code section 459, 2nd degree) or two years (e.g. a Category 4 offense such as drug sales, Health and Safety Code section 11359, 11379, 11352) would result in release after the ward is eighteen (18) years old.

We have already seen cases returned to Sacramento County where wards who are now technically "adults" are being released, but they are not welcome back in their family's home. Where are such "adults" to live? Many will not be prepared to live on their own and earn a living. Unlike for a younger ward, state licensed youth group homes will not accept a minor into their facilities once they have reached age eighteen (18). State parole agents have contracts with

residential facilities for parolees from the former California Youth Authority if they have no other residential options. Sacramento County does not have similar contracts. Whether the resources provided by the section 1952 Youthful Offender Block Grant Fund will be applied to fill the gap remains to be seen.

Again, however, this is a temporary problem that will dissipate within a year or two when all of those wards currently in the Division of Juvenile Facilities for offenses not listed in section 707(b) or former Penal Code section 290(b)(3) have been released.

Sincerely,

Kenneth G. Peterson
Presiding Judge of the Juvenile Court

cc: Sacramento County Juvenile Justice Commission

B.T. Collins Juvenile Center ● 9605 Kiefer Boulevard ● Department 90 ● Sacramento, California 95827
Telephone: (916) 875-5256 ● Fax: (916) 875-6497 ● E-mail Rhonda.Dunnewin@SacCourt.ca.gov

Eligibility for Commitment
California Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF)

Welfare and Institutions Code § 1731.5(a)(1)
Offenses listed in W&I § 707(b) and PC § 290(d)(3)[1]
By Senate Bill 81 and Assembly Bill 191

LISTED NUMERICALLY BY CODE SECTION

Qualifying §	Crime	Crime Code §
707(b)(19)	Witness intimidation	136.1, 137 PC
707(b)(21)	Violent gang felony	186.22(b) PC + 667.5 PC
707(b)(1)	Murder	187 PC
707(b)(30)	Manslaughter, voluntary	192(a)
707(b)(24)	Mayhem, aggravated	205 PC
707(b)(23)	Torture	206, 206.1 PC
290(d)(3)(C)	Kidnap with intent to commit rape, sodomy, child molest, oral copulation or penetration with a foreign object	207(a) PC + sexual purpose
707(b)(11)	Kidnap with bodily harm	207(a) PC + bodily harm
290(d)(3)(C)	Kidnap by enticement to molest	207(b) PC
707(b)(26)	[No such section]	208(d) PC
707(b)(9)	Kidnap for ransom	209(a) PC
707(b)(10)	Kidnap for robbery	209(b)(1) PC
290(d)(3)(C)	Kidnap with intent to commit rape, sodomy, child molest, oral copulation or penetration with a foreign object	209(b)(1) PC
707(b)(27)	Kidnapping for carjacking	209.5 PC
707(b)(3)	Robbery	211 PC
707(b)(25)	Carjacking while armed with weapon	215 PC + "armed" with weapon
290(d)(3)(A)	Assault with intent to commit specified sexual offenses	220 PC

[1] Note: Penal Code section 290(d)(3) was deleted by Senate Bill 172, chaptered October 13, 2007. The crimes listed in the former Penal Code section 290(d)(3) are now listed in Penal Code section 290.008(c). However, the sections that provide for commitment to the Division of Juvenile Facilities (Welfare and Institutions Code sections 731(a)(4), 733(c) and 1731.5(a)(1)) were not amended and still refer to the now deleted Penal Code section 290(d)(3).

ATTACHMENT A

Qualifying §	Crime	Crime Code §
707(b)(14)	Assault by means of force likely to produce great bodily injury	245(a)(1) PC
707(b)(13)	Assault with firearm	245(a)(2) PC
707(b)(15)	Shooting into inhabited building	246 PC
290(d)(3)(B)	Rape of victim incapable of consent	261(a)(1) PC
707(b)(4) 290(d)(3)(B)	Rape by force or violence or threat of great bodily harm	261(a)(2) PC
290(d)(3)(B)	Rape of intoxicated victim	261(a)(3) PC
290(d)(3)(B)	Rape of unconscious victim	261(a)(4) PC
290(d)(3)(B)	Rape by threat of future retaliation	261(a)(6) PC
290(d)(3)(B)	Sexual offense in concert	264.1 PC
290(d)(3)(B)	Sexual assault by false pretenses	266c PC
290(d)(3)(B)	Abduction of minor for prostitution	267 PC
290(d)(3)(B)	Sodomy with minor	286(b)(1) PC
290(d)(3)(B)	Sodomy of child under 14, 10 years younger	286(c)(1) PC
707(b)(5) 290(d)(3)(B)	Sodomy by force, violence, duress, menace or threat of great bodily harm	286(c)(2) PC
290(d)(3)(B)	Sodomy in concert	286(d) PC
290(d)(3)(B)	Child molest of child under 14	288(a) PC
707(b)(6) 290(d)(3)(B)	Child molest by force, violence, duress, menace or fear of great bodily harm	288(b) PC
290(d)(3)(B)	Child molest of 14-15 year old child	288(c)(1) PC
290(d)(3)(B)	Continuous child molest	288.5 PC
290(d)(3)(B)	Oral copulation with child under 18	288a(b)(1) PC
290(d)(3)(B)	Oral copulation of child under 14, 10 years younger	288a(c)(1) PC
707(b)(7) 290(d)(3)(B)	Oral copulation by force, violence, duress, menace or threat of great bodily harm	288a(c)(2) PC
290(d)(3)(B)	Oral copulation in concert	288a(d) PC
707(b)(8) 290(d)(3)(B)	Penetration with a foreign object	289(a) PC
707(b)(2)	Arson	451(a) or (b) PC
290(d)(3)(B)	Annoy/molest child under 18	647.6 PC
707(b)(12)	Attempted murder	664/187 PC
707(b)(22)	Escape from juvenile hall/ranch by force with great bodily injury on employee	871(b) PC + 12022.7 PC
707(b)(16)	Robbery with great bodily injury on elderly or disabled victim; or attempt; or attempt	1203.09(a)(2), 211 PC

ATTACHMENT A

Qualifying §	Crime	Crime Code §
707(b)(16)	Burglary with great bodily injury on elderly or disabled victim; or attempt	1203.09(a)(5), 459 PC
707(b)(16)	Rape by force, violence, duress, menace or fear of bodily injury of spouse with great bodily injury on elderly or disabled victim; or attempt	1203.09(a)(6), 261(a)(2), 262(a)(1) PC
707(b)(16)	Rape or rape of spouse by threat of retaliation with great bodily injury on elderly or disabled victim; or attempt	1203.09(a)(6), 261(a)(6), 262(a)(4) PC
707(b)(16)	Assault with intent to commit robbery or sodomy with great bodily injury on elderly or disabled victim; or attempt	1203.09(a)(7), 220 PC
707(b)(16)	Carjacking with great bodily injury on elderly or disabled victim; or attempt	1203.09(a)(8), 215 PC
707(b)(28)	Shoot from a vehicle at another who is not in a vehicle	12034(c) PC
707(b)(13)	Assault with destructive device	12303.3, 12308, 12309, 12310 PC
707(b)(29)	Explode a device with intent to murder	12308 PC
707(b)(20)	Manufacturing or selling 1/2 ounce or more of Schedule II drug (opiates, cocaine, methamphetamine, PCP)	11352, 11379, 11379.6 H&S (11055 H&S)
	SPECIAL SITUATIONS:	
707(b)(18)	Use of prohibited weapon in any felony, personal	12020(a) PC
707(b)(17)	Use of a firearm	12022.5, 12022.53 PC

ATTACHMENT A

MOST RECENT OFFENSE FOR COMMITMENTS FROM SACRAMENTO COUNTY TO DEPARTMENT OF CORRECTIONS AND REHABILITATION DIVISION OF JUVENILE FACILITIES

(FORMERLY CALIFORNIA YOUTH AUTHORITY)

YEAR	W&I 707(b) Serious/Violent	PC 290(d)(3) Sex Offense	OTHER	TOTAL
1998	18	2	12	**32**
1999	16	8	37	**61**
2000	25	7	32	**64**
2001	16	4	26	**46**
2002	16	14	41	**71**
2003	10	8	25	**43**
2004	12	5	12	**29**
2005	5	2	10	**17**
2006	8	1	11	**20**
2007	11	8	3	**22**
Total	**137**	**59**	**209**	**405**
% of Total	**33.8%**	**14.6%**	**51.6%**	
10 year avg.	**13.7**	**5.9**	**20.9**	**40.5**
4 year avg.	**9.0**	**4.0**	**9.0**	**22.0**

ATTACHMENT B

DIVISION OF JUVENILE FACILITIES BASELINE PAROLE AND ANNUAL COUNTY COST

(Sorted by Code Section of Last Crime Committed)

CATEGORY	PAROLE	ANNUAL COST	ADMINISTRATIVE CODE
1	7 years	$1,800	Title 15, § 4951
2	4 years	$1,800	Title 15, § 4952
3	3 years	$1,800	Title 15, § 4953
4	2 years	$1,800	Title 15, § 4954
5	18 months	$16,752	Title 15, § 4955
6	1 year	$25,128	Title 15, § 4956
7	1 year or less	$33,504	Title 15, § 4957

CRIME	CODE	CATEGORY	PAROLE	ANNUAL COST
Witness intimidation by force/fear, conspiracy or financial gain or by repeat offender	136.1(c) PC	5	18 months	$16,752
Conspiracy to commit Category 1 offenses	182 PC	1	7 years	$1,800
Conspiracy to commit Category 2 offenses	182 PC	2	4 years	$1,800
Conspiracy to commit Category 3 offenses	182 PC	3	3 years	$1,800
Conspiracy to commit Category 4 offense	182 PC	4	2 years	$1,800
Conspiracy to commit Category 5 offense	182 PC	5	18 months	$16,752
Conspiracy to commit Category 6 offense	182 PC	6	1 year	$25,128
Murder, 1st or 2nd	187 PC	1	7 years	$1,800
Manslaughter, gross vehicular while intoxicated	191.5, 193 PC	3	3 years	$1,800
Manslaughter, involuntary	192(b), 193 PC	4	2 years	$1,800
Manslaughter, vehicular	192(c), 193 PC	4	2 years	$1,800
Manslaughter, vehicular with gross negligence	192(c), 193 PC	3	3 years	$1,800
Manslaughter, voluntary	192, 193 PC	2	4 years	$1,800
Mayhem	203, 204 PC	3	3 years	$1,800
Torture	206, 206.1 PC	1	7 years	$1,800
Kidnap	207, 208 PC	3	3 years	$1,800
Kidnap with substantial injury	207, 208, 290 PC	1	7 years	$1,800
Kidnap with death	207, 209 PC	1	7 years	$1,800
Kidnap to commit sexual assault	208(d) PC	3	3 years	$1,800
Kidnap for ransom, extortion, robbery, or sexual assault	209 PC	2	4 years	$1,800
Kidnap during carjacking	209.5 PC	2	4 years	$1,800
Robbery	211, 212.5, 213 PC	5	18 months	$16,752
Robbery, armed with deadly weapon AND substantial injury	211, 212.5, 213 PC	3	3 years	$1,800

ATTACHMENT C

CRIME	CODE	CATEGORY	PAROLE	ANNUAL COST
Robbery, armed with deadly weapon OR substantial injury	211, 212.5, 213 PC	4	2 years	$1,800
Robbery, first degree (inhabited dwelling, ATM user, transportation employee)	212.5 PC	3	3 years	$1,800
Carjacking	215 PC	3	3 years	$1,800
Assault with intent to commit sexual assault	220 PC	4	2 years	$1,800
Battery on peace officer, fireman or custodial officer	242, 243, 243.1 PC	5	18 months	$16,752
Battery with substantial bodily injury	243, 243.2, 243.3, 243.6 PC	5	18 months	$16,752
Sexual battery	243.4 PC	5	18 months	$16,752
Assault with caustic chemicals	244 PC	4	2 years	$1,800
Assault with firearm, deadly weapon or force likely to produce great bodily injury WITH substantial injury	245 PC	4	2 years	$1,800
Assault with firearm, deadly weapon or force likely to produce great bodily injury	245 PC	5	18 months	$16,752
Assault with a deadly weapon or with force likely to produce great bodily injury on peace officer, fireman, custodial officer, transportation employee, or school personnel	245(c), 245.2, 245.3, 245.5 PC	3	3 years	$1,800
Assault with a firearm on a peace officer	245(d), 245.1 PC	3	3 years	$1,800
Shooting at inhabited dwelling	246 PC	4	2 years	$1,800
Shooting at inhabited dwelling with substantial injury	246 PC	3	3 years	$1,800
Rape	261 PC	3	3 years	$1,800
Rape, in concert or with substantial injury	261, 262, 263, 264 PC	2	4 years	$1,800
Child abuse	273(a) PC	4	2 years	$1,800
Sodomy	286 PC	3	3 years	$1,800
Sodomy, in concert or with substantial injury	286 PC	2	4 years	$1,800
Child Molest	288 PC	2	4 years	$1,800
Oral Copulation	288a PC	3	3 years	$1,800
Oral copulation, in concert or with substantial injury	288a PC	2	4 years	$1,800
Penetration with a foreign object	289 PC	3	3 years	$1,800
Penetration with a foreign object, in concert or with substantial injury	289, 264.1 PC	2	4 years	$1,800
Accessory to murder	32, 33 PC	5	18 months	$16,752
Arson causing great bodily injury or during emergency	450, 451, 454 PC	3	3 years	$1,800
Arson	451 PC	4	2 years	$1,800
Causing a fire to structure, forest or property with substantial injury	452 PC	4	2 years	$1,800

ATTACHMENT C

CRIME	CODE	CATEGORY	PAROLE	ANNUAL COST
Explosives, flammable matter possession	452(a) PC	6	1 year	$25,128
Causing fire to inhabited structure or property	452(b) PC	5	18 months	$16,752
Causing fire recklessly to uninhabited structure or forest	452(c)	6	1 year	$25,128
Burglary, 1st degree	459, 460, 461 PC	5	18 months	$16,752
Burglary, 2nd degree	459, 460, 461 PC	6	1 year	$25,128
Burglary, armed with deadly weapon AND substantial injury	459, 460, 461 PC	3	3 years	$1,800
Burglary, armed with deadly weapon OR substantial injury	459, 460, 461 PC	4	2 years	$1,800
Grand theft person	487(c) PC	5	18 months	$16,752
Grand theft person, armed with deadly weapon AND substantial injury	487(c), 489 PC	3	3 years	$1,800
Grand theft person, armed with deadly weapon OR substantial injury	487(c), 489 PC	4	2 years	$1,800
Extortion	518, 520 PC	4	2 years	$1,800
Attempt to commit Category 1 offenses	664 PC	2	4 years	$1,800
Attempt to commit Category 2 or 3 offense	664 PC	4	2 years	$1,800
Attempt to commit Category 4 offense	664 PC	5	18 months	$16,752
Attempt to commit Category 5 offense	664 PC	6	1 year	$25,128
Drugs, sale, possession for sale, transportation	11359, 11360, 11351, 11352, 11378, 11379 H&S	4	2 years	$1,800
Drugs, maintaining a place for selling or using	11366, 11366.5, 11366.6 H&S	4	2 years	$1,800
Firearm possession	12021, 12021.1, 12025 PC	6	1 year	$25,128
Shooting from a motor vehicle	12034(c) PC	4	2 years	$1,800
Shooting from a motor vehicle with substantial injury	12034(c) PC	3	3 years	$1,800
Destructive device, attempt to explode with intent to murder	12308 PC	2	4 years	$1,800
SPECIAL SITUATIONS:				
Category 5 or 6 offense with prior Category 1-6 offense		4	2 years	$1,800
Felonies not listed		6	1 year	$25,128
Misdemeanors not listed		7	1 year or less	$33,504
Substantial injury during any felony		4	2 years	$1,800

ATTACHMENT C