The Politics of Prison Reform: Juvenile Justice Policy in Texas, California and Pennsylvania

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The Politics of Prison Reform: Juvenile Justice Policy in Texas, California and Pennsylvania

Abstract
At a moment when there is a great deal of enthusiasm for reforming the prison system in the United States, a number of states across the country have enacted legislation that aims to reduce the number of juveniles sent to state-run prisons. These new policies have focused on expanding community-based alternatives. The three state-level cases on Texas, California and Pennsylvania show that this strategy for reform entrenches punishment at the local level. As counties are given more responsibility to handle juvenile offenders they have contracted out services to the private-sector and invested in expanding jails and punitive conditions of probation. Overall, the reforms have done little to improve the treatment of juveniles caught up in the system. In these states hailed as juvenile justice “models for the nation,” youth continue to be incarcerated for minor offenses, subjected to abusive conditions of confinement, and stigmatized. The remarkable convergence of diverse states on this reform strategy can be traced back to past transformative eras of juvenile justice policy. Early developments in the juvenile justice system created the foundation for devolution, privatization, and the persistent belief that juvenile delinquency can be solved through individualized interventions. The development of the juvenile justice system connects to broader trends in social policy. This latest reconfiguration of the juvenile justice system reifies post-New Deal policy development where the state has shifted from providing basic public services to subsidizing the private-sector.

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THE POLITICS OF PRISON REFORM:

JUVENILE JUSTICE POLICY IN TEXAS, CALIFORNIA AND PENNSYLVANIA

Sarah Diane Cate

A DISSERTATION

in

Political Science

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THE POLITICS OF PRISON REFORM: JUVENILE JUSTICE POLICY IN TEXAS, CALIFORNIA AND PENNSYLVANIA

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ABSTRACT

THE POLITICS OF PRISON REFORM: JUVENILE JUSTICE POLICY IN TEXAS, CALIFORNIA AND PENNSYLVANIA

Sarah Diane Cate
Marie Gottschalk

At a moment when there is a great deal of enthusiasm for reforming the prison system in the United States, a number of states across the country have enacted legislation that aims to reduce the number of juveniles sent to state-run prisons. These new policies have focused on expanding community-based alternatives. The three state-level cases on Texas, California and Pennsylvania show that this strategy for reform entrenches punishment at the local level. As counties are given more responsibility to handle juvenile offenders they have contracted out services to the private-sector and invested in expanding jails and punitive conditions of probation. Overall, the reforms have done little to improve the treatment of juveniles caught up in the system. In these states hailed as juvenile justice “models for the nation,” youth continue to be incarcerated for minor offenses, subjected to abusive conditions of confinement, and stigmatized. The remarkable convergence of diverse states on this reform strategy can be traced back to past transformative eras of juvenile justice policy. Early developments in the juvenile justice system created the foundation for devolution, privatization, and the persistent belief that juvenile delinquency can be solved through individualized interventions. The development of the juvenile justice system connects to broader trends in social policy. This latest reconfiguration of the juvenile justice system reifies post-New Deal policy
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CHAPTER 1

Introduction: Devolution, Privatization and Community-Based Alternatives in the Juvenile Justice System

In 2011, the state of Texas shuttered a state-run juvenile detention center, Ron Jackson Unit II, which had been in operation for over 30 years. Located in small, rural Brown County in west-central Texas, the facility housed hundreds of juveniles from across the state. These youths, far away from their homes, were frequently subjected to solitary confinement, routine strip searches and brutal physical force. Closing the detention center exemplified a commitment in Texas to put an end to the abusive conditions of state-run juvenile facilities, to limit the number of juveniles sent to these prisons and improve the care they receive. Shutting down the facility was a way to literally close the doors on a physical embodiment of all that was wrong with the juvenile justice system in Texas: a youth prison located far away from any major city and the site of indescribable horrors of youth victimization.

Yet, less than a year later these same doors were re-opened.

In 2012, as part of the legislation responsible for closing the facility, the center was transferred from the state to Brown County and re-opened as the Ray West Juvenile Center. The county now controls the facility and uses it as a regional short-term center that holds juveniles transferred from other counties.¹ The number of juveniles housed in

¹ Brown County only has about 1 to 8 juveniles housed at the county level at any given time, so the vast majority of juveniles come from other counties in the state.
Brownwood has increased since the facility transfer. Since the county has taken over the facility, it has subsequently leased out a part of the facility, now named The Oaks Brownwood, to a large private company, G4S (Nash, 2014).

Originally named the Brownwood State School, the detention facility was constructed in the mid-1970s and served as an intake center for girls and boys in the state for several decades. The facility was later renamed after Ron Jackson, the director of the Texas Youth Commission in the early 1970s who worked to create a centralized juvenile justice system. Jackson advocated for extending due process rights to juveniles, reducing the use of isolation, and decreasing the number of juveniles sent to state-run institutions (Reddington, 1992). Brownwood State School became a “model institution” in part due to Jackson’s progressive reforms (Reddington, 1992, p. 89).

About 35 years later this “model institution” was shuttered for the exact same reasons that it was built—as an attempt to end the practice of subjecting young boys and girls in Texas to imprisonment in abusive conditions. The facility has had four different

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2 In 2010, the average daily population of juveniles housed in Brownwood juvenile facilities was 185 youth. After the closure and the facility transfer the average daily population grew to 252 youth in 2015 (J. Martin, personal communication, June 10, 2015). Jennifer Martin is the Records Management Specialist at the Texas Juvenile Justice Department.

3 The Oaks Brownwood is a 115-bed residential unit in the facility. In 2014, employees used physical restraints on the youth in the facility 76 times, youth were put in “disciplinary seclusion assignments” on 68 occasions and a total of 73 grievances were filed against the facility (J. Martin, personal communication, April 7, 2014; Texas Juvenile Justice Department, 2015). G4S (Group 4 Securicor) is the world’s largest security company providing a wide range of services such as trained security officers, facility security systems, electronic monitoring, and juvenile and adult custody facilities. The company is one of the world’s largest private-sector employers (G4S USA, 2015a; Plimmer, 2015). As of 2015, the Scotland Yard is investigating accusations that the company has profited from human-rights abuses through its contract at Guantanamo Bay (Green, 2015a). Ofsted Inspectors found that staff at a youth detention center run by G4S in Northamptonshire subjected youth to degrading treatment and racist comments (Green, 2015b).

4 Some of the reforms were instituting family therapy, training guards about adolescent behavior, training guards on how to work with Mexican American youth and implementing protocols on the proper discipline techniques guards should use (Reddington, 1992).
names: Brownwood State School, Ron Jackson State School, Ray West Juvenile Center, and The Oaks Brownwood. Control has moved from the hands of the state to the county to a private company. Despite all these changes, it still stands as a fixture of Texas’s juvenile justice system where youth from across the state are confined. Building the facility, closing the facility, transferring the facility, and privately contracting out the services of the facility were all done with intentions of “reform.” The episodic reconfiguration of this one facility raises many questions at the heart of this project.

What are the consequences of devolution – when policy and institutions shift from the state to county level? What leads to the continual reconfiguration of the juvenile justice system over time? How do these changes affect juveniles in the justice system – particularly racial minority and poor youth? How do changes in the juvenile justice system relate to patterns of social, economic and political development in the United States?

This three-state comparison of Texas, California and Pennsylvania analyzes the development of the juvenile justice system and its connection to broader trends in social policy. The state-level case studies contribute to analyses of American political development, particularly the consequences of devolution, the nature of policymaking in the United States, and the changes in criminal justice policies over time. This analysis suggests that the process of devolution, where control over juveniles is moved from the state to county level, does not often prevent punitive and harsh policies from persisting in the juvenile justice system. Shifting the site of governance without changing the purpose of an institution does not solve problems such as abusive conditions or the expansive
reach of punitive institutions. Instead, a devolved system and punishment entrenched at the local level do set up particular incentives for privatization and growth in policies that tend to replicate punitive conditions on the inside even as they extend beyond the prison walls. Ultimately, the institutional changes being pursued in these three states are ineffectual at substantially improving the juvenile justice system whenever they are devoid of change in the purposes of the system.

There are several key findings from the state-level case studies. First, the three cases show that there is a remarkable amount of convergence in juvenile justice policy across the United States. The three states represent geographic, partisan, institutional, demographic and cultural diversity. We would expect these states to have different policy outcomes due to their unique political cultures and histories of juvenile justice system development. However, all three states have implemented legislation to reduce the number of juveniles sent to state-run prisons and to bolster “community-based alternatives.” Because of these changes, since the early 2000s all three states have been repeatedly held up as “models for the nation” (Texas Way, 2015; Burrell, 2014; Some Good, 2012; Texas’s Progress, 2011; Butts & Evans, 2011; Griffin, 2008). These states have converged around this popular policy platform, even in an era of political polarization, due to the bipartisan support for a reform model disseminated by large foundations.

Second, this primary research on devolution in the juvenile justice system contributes to the rich literature on social policy development. Local state case studies provide on the ground evidence of the process and consequences of policy devolution. Shifts in institutional control of social policy that occur in devolution are significant
political developments, reflecting “durable shifts in governing authority” (Orren & Skowronek, 2004, p. 123). This primary state-level research on the juvenile justice system shows that, much like scholarship on other types of social policy, devolution often obscures the control and responsibility of governance and leads to the unequal distribution of policies (Soss, Fording & Schram, 2008; O’Connor, 2009; Kettl, 2000; Hacker, 2004; Nathan & Gais, 1999; Lowi, 1998; Lieberman, 1998; Mettler, 1998; Pierson, 1994). Shifting the location of governance has not effectively solved the major problems in the juvenile justice system: abusive conditions of confinement, high rates of incarceration, the overrepresentation of poor and racial minority youth in the justice system and the stigmatization and marginalization of juvenile offenders.

Third, the popularity of “community-based” reforms is rooted in a long history of post-New Deal policy development that has increased interventions targeted at personal behavioral inadequacies – reflecting the sort of focus on individual limitations as the root of all social ills that scholars often label “neoliberal” (Soss, Fording & Schram, 2011; Lafer, 2004; Brown, 2003; Larner, 2000). This evolution of social policy has had particularly negative consequences for racial minorities and the poor. Strategies to solve inequality through fine-tuning the behavior of individuals is related to a history of racialized notions of who is “deserving” of social benefits and who is a “deviant” in need of control and punishment (Schnieder & Ingram, 1993).

Additionally, contrary to the expectations of those promoting these programs, the move towards “community-based” alternatives has not effectively increased community control. Those most affected by justice system policies continue to have the least input in their design and implementation. The three state case studies suggest that the
implementation of “community-based” programs does not significantly improve citizen input into the policy process of the justice system. Therefore, this governance shift fails to correct the failed policymaking structure that contributed to the rise of mass incarceration (Miller, 2008). The danger now is that the policies are diffused and, though they appear to be “community-based,” there are in fact no clear institutional channels to express grievances or challenge abuses. Further, because the symbolic power of “community” is so strong on both the right and the left, there are little to no critiques of this type of policy.

Fourth, the consensus around “community” solutions to the juvenile justice system has contributed to the increased role of the private-sector in juvenile policy governance. In each state, increased privatization has compounded the problems of devolution and, by commodifying social control, further entrenched punitive institutions at the county level. Non-profit and for-profit organizations contribute to this convergence of interests in building up community control because they have long been depicted as synonymous with “grassroots” and local control. There are three main types of privatization occurring in the juvenile justice system today. The first is the increased leadership role of large foundations in guiding policy, providing research and subsidizing different types of programs and services. The second is the increased number of small non-profits that often work with large foundations to carry out the services of the juvenile justice system at the local level. The third is the growth of the for-profit sector that provides services, technologies and facilities purchased or contracted for by counties. The overall growth of privatization in the juvenile justice system reflects the ascendance of
neoliberal governance and further contributes to the problems with devolution by diminishing oversight and entrenching punishment at the local level.

Finally, all of these developments suggest that the reforms to the juvenile justice system are doing little to improve the treatment of juveniles caught up in the system. Large numbers of juveniles continue to be processed in the juvenile justice system for minor offenses and are often held in abusive conditions of confinement. Punitive policies in the juvenile justice system continue to be levied at poor and racial minority youth.

I. Why Juveniles?

Juvenile justice policy is a valuable area for studying the politics of criminal justice reform and American policymaking. The juvenile justice system has a particularly large number of political advocates and organizations working towards system reform. The public has become open and receptive to changes in the treatment of juveniles, and juvenile arrests have dropped for almost three decades now. The juvenile justice system has more innovation and more changes because of the smaller size of the system and a more cohesive elite consensus driving reforms. The juvenile justice system is going through a significant moment of reform where legislative changes are being pursued across nearly every state in the nation.

The realm of juvenile justice, though a small fraction of the overall carceral system (only 6.5% of prisoners are under the age of 18), is critical for understanding penal policy and American politics generally (Cavadino & Dignan, 2006, p. 301). While the percentage may seem small, it is not compared to other national approaches to juvenile justice. For example, in Sweden and Japan the number of juveniles incarcerated
is negligible. Both countries imprison fewer than 20 juveniles while the United States incarcerates over 55,000 juveniles (Cavadino & Dignan, 2006, p. 301; Office of Juvenile Justice and Delinquency Prevention, 2013). Further the punitive policies applied to juveniles such as life sentences, sex-offender registries, and solitary confinement are exceptional to the United States (Gibson & Vandiver, 2008; Deitch et. al., 2009). The treatment of juveniles reflects and fits into the larger penal philosophy and approach different countries pursue in criminal justice systems (Cavadino & Dignan, 2006; Bateman, 2011).

II. Comparative Case Studies: Texas, California and Pennsylvania

Scholars of mass incarceration have sought to explain the trend of the increasing use of incarceration in the United States since the 1970s. This work has helped explain why the United States has become the world leader in punishment, imprisoning more citizens than any other nation. However, there are significant differences regionally and culturally in the development of criminal justice policies and the use of imprisonment that these national level studies are unable to capture (Gottschalk, 2011; Page, 2011; Lynch, 2010; Barker, 2009; Zimring & Hawkins, 1991; Neill et. al, 2014). The constellation of policies that comprise “penal transformations” are “deeply tied to locale and to history” (Lynch, 2010, p. 216). State and local authorities have been the most significant actors in criminal justice policy (Scheingold, 1991; Lowi, 1998).

The general trends described in the national-level literature hide or obscure the lack of uniformity and coherence of punishment policy across the United States (Barker,
This project joins an important shift in the research of prisons from the grand narratives of the American punitive turn, focusing on national trends, to specific geographically located descriptions of how particular punitive policies develop across the United States (Page, 2011). These analyses turn from answering questions about why punitive policies have been adopted to how these policies have developed, specific to local contexts (Page, 2011).

Local state case studies are useful for analyzing the process of devolution. Texas, California and Pennsylvania are key states to study in order to understand carceral policy development since they are responsible for incarcerating a large portion of the entire nation’s prison population. All three states are also well known for particularly harsh and punitive policies towards youthful offenders. Texas led the nation in the number of youth executed under the death penalty before it was ruled an unconstitutional practice in 2005. California has some of the most punitive youth anti-gang legislation on its books of any state in the nation. And Pennsylvania has the most juveniles serving life without the possibility of parole sentences in the nation and in the world (Decarcerate PA, 2016).

Yet, because they are leading the reform movement they are considered model juvenile justice systems.

The three states differ in geography, partisanship, institutions, demographics and political culture. Texas and California represent the south and west while Pennsylvania represents the northeast. Texas is at the center of the conservative justice reform

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5 As of 2011, Texas, California and Pennsylvania combined, incarcerate almost one quarter of the entire number of people in prison and jail in the United States and nearly one third of the number of juveniles in custody (Sentencing Project, 2013).
movement, and California has some of the most progressive prison rights groups in the country. The states vary in the degree of professionalization of their legislatures, their use of ballot initiatives and the strength of their governorships. Further, Texas and California have had large, centralized juvenile justice systems while Pennsylvania has had the most decentralized system in the nation. Despite these institutional, political and cultural differences all three states have converged around reforms producing similar limitations in the most recent wave of reforms that dates from the mid-2000s.

III. Social Policy Trends in the U.S. 1960s-2000s

The literature on trends in national social policy development highlights the ways in which both political parties since the 1960s have contributed to the devolution and privatization of the welfare system that has substantially shifted the governance structure in the United States. The juvenile justice system is another policy area that has followed these trends and provides a specific analysis of its consequences. The literature on welfare state development presents a useful comparative as well as contextualizing case for understanding the politics behind localizing and privatizing the juvenile justice system.

Policies implemented in the 1960s as part of the War on Poverty set the groundwork for a substantial shift in welfare policy in two ways: first, by establishing a robust private-public partnership and, second, by explaining economic inequality as the result of individual attributes and psychology (Bertram, 2007; Morris, 2004; O’Connor, 2009; Weir, 1992). The support for “community-based” policies has been a longstanding preoccupation of American policymaking. In the 1960s liberals began to turn away from
the New Deal style of top down federalism and began promoting community
development projects to address poverty, joblessness and racial inequality. The federal
grants to local government were intended to support communities’ partnerships with
neighborhood groups who were seen as being more responsive to the poor (Kettl, 2000,
p. 493). Large centralized programs, critics claimed, neglected the sensitivities of local
needs and ways of life (Chowkwanyun, 2015; Morris, 2004). Liberals of this era had
hoped this would democratize the provision of services, but the “community-based”
model has not lived up to these expectations (Chowkwanyun, 2015; Morris, 2004). This
model of governance failed to democratize and improve poverty assistance. Furthermore,
federal funding of nongovernmental programs institutionalized the private-sector’s role in
social policy and strengthened this form of service partnership (Kettl, 2000, p. 493).

Lowi (1998) argues that devolution, such that began in the 1960s, was the first
rightward move against the social democratic policies of the New Deal coalition. Intensifying in the 1980s, the Reagan coalition consolidated a conservative attack on the
welfare state that led to its privatization, retrenchment and reorientation (Hacker, 2004;
Pierson, 1994). Welfare reform in the 1990s contributed to the decentralization and
devolution of the social safety net, by moving the authority to administer welfare from
the federal to state and local governments (Soss, Fording & Schram, 2008, Katz, 2002;
Mettler, 1998; Lieberman, 1998). Welfare reform in these years also consolidated a new

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6 For example, the federal government established Community Action Programs as part of the War on
Poverty in the 1960s. These programs frequently channeled grassroots activism into apolitical, status quo
affirming directions. When CAP’s were more confrontational, political and radical the federal government
retracted its support (Chowkwanyun, 2015).

7 Nixon’s Revenue Sharing gave state and local governments more discretion in how they spent federal
grant money. This strategy of devolution was taken up by Reagan and culminated in Clinton’s 1996
Personal Responsibility and Work Opportunity Act giving states and cities near total control of discretion
over eligibility requirements.
consensus around a work-based approach to welfare reform that led to the widespread imposition of strict and extensive employment obligations to welfare recipients (Nathan & Gais, 1999).

The production of a robust non-profit sector followed a similar development timeline as the devolution of social services. Policy shifts in the mid 1960s, particularly the Economic Opportunity Act of 1965 and amendments to the Social Security Act in 1967, channeled a significant amount of money to nongovernmental organizations (Morris, 2004, p. 275). These key policies from the Great Society fundamentally reordered the social service sector by eroding the distinction between public and private social provision (Morris, 2004, p. 299-300). The increased role and number of non-profits operating in the United States is a major feature of evolving conditions of American governance. The number of non-profits in the United States has grown exponentially in the past three decades. Over this time, these organizations have increased their assets by 1,000 percent (Faber & McCarthy, 2005). Just between 1998 and 2008 the number of non-profits registered with the IRS increased by 30 percent (Arena, 2012, p. xxvii). Part of the growth can be explained by a shift in governance where governments or foundations contract with non-profits to provide services that were previously delivered by the state (Arena, 2012). This development has blurred the line between private and public entities since more than 50 percent of non-profits rely on government funding (Smith & Lipsky, 1993).

IV. Juvenile Justice System Development
In the juvenile justice system, a similar development occurred. The “community-based” movement promoted in federal legislation in the mid-1970s, such as the Juvenile Justice and Delinquency Prevention Act of 1974, contributed to a large increase of heavily subsidized privately administered alternatives (Lerman, 1984). Federal grants to community alternatives went to expanding the number of private long-term facilities used to house less serious offenders (Lerman, 1984). The community-based movement developed programs that widened the net of juveniles caught up in the justice system, and it established a strong relationship between private juvenile justice operators and the federal government. In 1974, 92 percent of private facilities received public funds, and 74 percent used public funds as their primary means of support (Lerman, 1984, p. 9). The role of private providers in the juvenile justice system has steadily accrued over decades and tracks with the general trend of non-profit prominence in American governance.

Privatization

The privatization of the juvenile justice system flows from a longstanding history of private control in juvenile justice policy. Throughout its development, the juvenile justice system has always had a much higher level of privatization than the adult criminal justice system. The longstanding relationship of charitable organizations and the juvenile justice system has helped to carve out an easy partnership between nongovernmental entities and the state. Originally, advocates for developing the juvenile court at the turn of the twentieth century predominantly came from charitable organizations. The creation of the juvenile court was a way to institutionalize and legitimize the work of charitable organizations that were carrying out services for juvenile delinquents (often a category
blurred with indigent juveniles) (Block & Hale, 1991; Cullen & Gilbert, 1982; Platt, 1977; Sutton, 1988). This partnership helped fulfill the twin goals in the juvenile justice system of both punishing and caring for youths. Non-profit and for-profit organizations are seen as best able to carry out rehabilitative, community-based treatment programs for youth while state and national agencies are seen as best able to run prisons. While private and non-profit organizations often are in the business of running prisons, their legitimacy and identity within the system is associated with alternative, community-based juvenile placement options.

In addition to being a longstanding partner in the implementation of juvenile justice policy, the private-sector has also been an important leader in designing juvenile justice policies. The community-based movement of the 1970s and 1980s was “made possible in large part by the private-sector” (Lucken, 1997, p. 244). Today, most of the major research, advocacy and voice for juvenile reform comes from nongovernmental organizations.

Scholars have identified a number of negative consequences with privatizing the juvenile justice system. Privatization in the juvenile justice system corresponds with higher rates of custody and expanded social control (Feeley, 2002). The private-sector has a vested interest in policies that “widen the net” and organizations with profit motives can undermine oversight and adequate care (Bakal, 1998; Lucken, 1997; Segal & Aviram, 1978). Despite promises to the contrary, private facilities have not been found to be more effective, cheaper, or to have lower staff-to-youth ratios (Lundahl et al., 2009; McDonald, 1994; Shichor & Bartollas, 1990). The role of much private-sector
involvement in punishment has been entrepreneurial; private-sector efforts have repeatedly responded to the needs of state crises as a way of establishing a hold on the criminal justice system (Lucken, 1997). One consequence of inviting for-profit organizations into the juvenile justice system is that “the for-profit sector may pressure to institutionalize youths for the sake of profit alone” (Bakal, 1998, p. 113). Block grants based on calculations of the number of juveniles in a county such as the ones established under juvenile devolution contribute to commodifying systems of control (Lucken, 1997). Once control becomes commodified, the behaviors and conditions defined as deviant inevitably become broader and more inclusive (Lucken, 1997, p. 252; Segal & Aviram, 1978). The commodification of goods and services contributes to growth in the non-profit and for-profit sector and undermines the establishment of a welfare state (DiMaggio & Anheier, 1990, p. 146).

“Community-Based” Movement

Juvenile justice system devolution and privatization is similar to welfare retrenchment in its reliance on the powerful symbol of “community.” The literature on welfare policy shows that community-based programs bolster the role of the private-sector in social policy governance and generally fail in their promises of increased democracy and equality. My three state-level case studies on juvenile justice system reforms likewise show the ways in which the promises of community-based programs fall short of their goals and encourage privatization. These programs continue to punish, control and stigmatize juveniles. Additionally, the turn to community-based alternatives
has reified the role of the state to oversee policies of social control rather than distribute social provisions and protections.

A crucial linchpin holding the left and right together in the juvenile reform movement is the great deal of promise and enthusiasm placed in “community” control. Political actors from the right continue to hold up the value of the “community” as a general anti-statist point of view supporting the retreat of the state in providing public goods for citizens. Smith & Lipsky (1993) find that, “in fiscal crisis, conservatives have been able to use their command of the symbol of community as a weapon to curtail the welfare state, with disastrous results for vulnerable groups” (p. 215). Meanwhile, those on the left position the “community” as a ready and able democratic body that should be empowered so that it can best provide for its members rather than being policed and punished by state authorities. For example, liberals in the War on Poverty put forth this position as a strategy to democratize anti-poverty programs.

Policy actors from both the left and the right who advocate for “community-based” policies make problematic assumptions about the resources of local communities. For those once in prison or those being diverted from prison, the communities where they are supposed to find support are devastated by inadequate housing and health care, joblessness and crime, in part due to the retrenchment of the welfare state and the substantial economic inequality that exists in the United States. Lisa Miller (2014) categorizes the United States as a failed state on a number of variables related to high rates of violence, poverty and the extreme marginalization of the poor. Further, decentralized, community-based programs often reinforce the status quo of existing inequalities. They only give community members symbolic advisory roles and are
vulnerable to elite capture (Chowkwanyun, 2015). The ability to participate in a local community is not meaningful if this community lacks resources and is mired by durable, inegalitarian structures (Immerwahr, 2015). Further, because the symbolic power of “community” is so strong on both the right and the left, there are little to no counter-arguments or critiques of this type of policy.

Social service devolution upholds a pattern of governance that has detrimental consequences for those targeted by the punitive and paternalistic policies of both welfare and criminal justice policies. For example, local welfare control has often reproduced and perpetuated racial disparities where the most punitive policies are levied at people of color (Soss, Fording & Schram, 2008; Lieberman, 1998). The three case studies in this project demonstrate that the toughest juvenile justice policies continue to be levied at economically disadvantaged and racial minority youth in devolved juvenile justice systems. Further, in the realm of criminal justice policy, many of these community-based programs have been found to replicate the punitive regulation of prisons and to expand social control (Petersilia, 2014; Miller, 2014; Werth, 2013; Lynch, 2000; Melton & Pagliocca, 1992; Scheingold, 1991; Austin & Krisberg, 1981; Klein, 1979). The local network of punitive institutions that reformers are investing in to replace state-run prisons are a key part of mass incarceration, not an alternative.

Community-based alternatives or “evidence-based programs” are billed as the most cost-effective way to serve youth “safely in the community” (Juvenile Justice

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8 For example, local welfare control has often reproduced and perpetuated racial disparities where the most punitive policies are levied at people of color (Soss, Fording & Schram 2008; Lieberman 1998). The case studies in this project demonstrate that the toughest juvenile justice policies continue to be levied at economically disadvantaged and racial minority youth in devolving juvenile justice systems.
Leading juvenile reformers argue that community-based programs keep juveniles closer to home, which reduces recidivism and improves their treatment. Many critiques of mass incarceration in the United States have focused on the lack of political power and control exerted by those most affected by crime policy (Stuntz, 2011; Miller, 2008; Scheingold, 1991). These authors have argued for increasing community control over crime policy in order to more fully democratize the policymaking process that has long been dominated by powerful, conservative, nationally based interest groups (Miller, 2008). However, this close examination of the on-the-ground consequences of investing in “community-based programs” suggests the location of policy governance at the community level is distinct from meaningful community control over crime policy.

Context for Devolution and Privatization of the Juvenile Justice System

The literature on trends in welfare reform provides a useful comparative study to juvenile justice reforms. Analyses of the erosion of the welfare state also provide the background context for policy developments in the criminal justice system. The political development of the welfare state has differed from the development of the criminal justice system in the United States in important ways. In the 1980s and 1990s when key federal legislation was rolling back the welfare state, most states were ratcheting up the construction of prisons and pouring state funds into the criminal justice system. Between 1980 and 1996, the number of adults in state and federal prisons tripled (Carson, 2014). Many scholars have pointed out the political connection between these two institutional developments. The build up of mass incarceration has worked to control and segregate
those dislocated and marginalized by a changing economy (Wacquant, 2009; Soss, Fording & Schram, 2008; Gilmore, 2007; Lowi, 1998).

Since the late 1990s and early 2000s, as many states move to devolving their juvenile justice systems, they are doing so in a very different context from welfare state retrenchment and devolution. In fact, the ordering of these two political developments has significant effects. Juvenile justice system devolution is occurring in the wake of policies enacted to roll back and devolve the welfare state. In this context, counties and local governments are particularly ill equipped to handle the responsibilities of devolution given that they have had to take on more and more control for policies and services once shouldered by state or national agencies. Counties vary greatly in the degree to which they are committed to providing social services and regulation, contributing to the unequal distribution of resources. Furthermore, many counties are strapped for cash and are overwhelmed with the task to carry out a number of public provisions without the adequate resources and institutional infrastructure to do so. Counties are pushed to privatize and forced to stretch their funds thinly in this context. Given these conditions of juvenile justice system devolution, counties are hard pressed to provide adequate governmental regulation and oversight. Additionally, counties tend to fall back on the traditional forms of justice system provisions that are already well established in their jurisdictions, including juvenile lockups and punitive probation.

Given these constraints, counties contract with an organization or company that can provide the finished product or has the expertise to implement the needed services. In this current context, non-profit and for-profit entities are determining what qualifies as “evidence-based programs” and are pushing for their implementation. An irony of the
devolution process is that by fracturing and localizing control, counties are pushed to contract with large, well-funded nongovernmental organizations. While responsibility and oversight are localized, the actual policies and models being implemented are ever more centralized in the hands of private actors.  

V. Conclusion

An analysis of juvenile justice system development adds another case to a number of social policy areas that have experienced substantial shifts in governance since the New Deal. Both political parties have converged around a policymaking and social policy model whereby public services are increasingly devolved and privatized. The context for juvenile reform is particularly promising given the sustained drop in juvenile crime and the repudiation of the “super-predator” rhetoric. However, the most popular juvenile justice reforms pursued in the United States are bolstering key aspects of the carceral state rather than truly scaling back the high rates of incarceration and punitive treatment disproportionately levied at poor and racial minority youth.

This project provides a detailed historical analysis of the development of the juvenile justice system. Each of the three state-level case studies provides an on-the-ground account of the consequences of devolution, privatization and the “community-based” movement in juvenile corrections. State-level case studies are best able to assess these particular policy trends since they provide insight into the lived experience of these reform trends instead of only relying on nationally aggregated statistics about youth in

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9 For example, the Office of Juvenile Justice and Delinquency Prevention (OJJDP), part of the U.S. Department of Justice responsible for strengthening the juvenile justice system, has established a “Model Programs Guide” that provides information about evidence-based programs. OJJDP has determined 52 “effective” evidence-based programs. Every program listed except for three was developed and is disseminated by a nonprofit or a for-profit company (coded from list available at: http://www.ojjdp.gov/mpg/Program).
the justice system. The development of juvenile justice policy over time in Texas, California and Pennsylvania suggests that there is a remarkable convergence across diverse states in juvenile reform today. The devolved, increasingly privatized and community-based model of juvenile justice is not significantly improving the treatment of juveniles but is further entrenching the punitiveness of the criminal justice system at the local level.

VI. Chapter Summaries

Chapter Two: Still Texas Tough\textsuperscript{10}

Texas is the first of the three case-study chapters analyzing the development of the juvenile justice system and the implementation of major juvenile reforms. Despite closing down several state-run prisons, Texas has not seen an overall decline in the number of secure facility beds available in the state. In fact, the number has increased since the reforms were implemented. Since passing major juvenile reforms in 2007, Texas has expanded secure facility capacity, county probation and detention and the use of punitive policies such as solitary confinement. Chapter Two provides a qualitative assessment of what these alternatives look like on the ground. The discursive justification and support for the reforms adheres to similar commitments of the “get tough” era of policy making. Many of the most punitive practices in the juvenile justice system have been perpetuated and even expanded. The chapter shows that the state is still Texas Tough.

Chapter Three: California Realignment

\textsuperscript{10} The concept “Texas Tough” was conceptualized by Robert Perkinson in \textit{Texas Tough: The Rise of America’s Prison Empire} (2010).
California moved towards community-based alternatives well before Texas, implementing reforms in the mid-to-late 1990s, while Texas did not pass these types of policies until the mid-2000s. Yet, much like Texas, California’s investment in community-based alternatives did not reduce the number of juveniles incarcerated in the state. California has substantially expanded county-level institutional capacity and increased the role of the private-sector in the juvenile justice system.

In the mid-2000s, California propelled the process of devolution largely to circumvent an extensive federal lawsuit filed against the state over inadequate care and conditions of confinement in state-run prisons. The reforms in Texas were also spurred by a crisis of legitimacy when news broke of a widespread sexual abuse in state-run facilities in the state. The similarity between the two states suggests that the reforms are a reactionary way to rebrand and repackaged the juvenile justice system in a moment of crisis rather than a forward planning strategy to improve the treatment of juveniles. A key difference between the states is that Texas is at the center of the conservative justice reform movement and California has some of the most progressive prison rights groups in the country. However, both states have passed similar types of devolution policies, which demonstrates a remarkable ideological and partisan convergence in support for the community-based movement.

Chapter Four: Pennsylvania as Testing Ground

Pennsylvania diverges significantly from Texas and California in the historical development of its juvenile justice system. The state has long been the most decentralized and privatized system in the nation. Pennsylvania’s juvenile justice system remained more locally controlled compared to the large centralizing and modernizing efforts Texas
and California went through in the 1950s. However, Pennsylvania highlights that this configuration did not prevent punitive policies from passing or prevent large numbers of juveniles from being incarcerated. The state has more juveniles serving life without parole sentences than any other state or country in the world. Further, the decentralized and privatized model in Pennsylvania has been just as susceptible to abuse scandals, most notably the “Kids for Cash” scandal of the late 2000s, where a judge received cash kickbacks for sending youth to a private juvenile facility.

While the state has always had a more decentralized and privatized juvenile justice system, Pennsylvania also enhanced its community-based reforms in the mid-to-late 1990s and 2000s. In 2004, Pennsylvania was the first state chosen for the MacArthur Foundation’s Models for Change program; the foundation has since extended into Texas and California as well as 13 other states. Pennsylvania looks very different on changes to state incarceration rates, Texas and California had very large drops and Pennsylvania did not. Because the state is the model of the community-based movement and has pursued similar policies to Texas and California it has also experienced the same limitations of this reform strategy. Pennsylvania’s overall incarceration rate, including local and private-run prisons has not reduced over the past several decades. Between 1997 and 2010 the number of youth incarcerated in the state increased by 7 percent (Annie E. Casey Foundation, 2013). Similar to Texas and California, the recent reforms have also not repealed the use of some of the harshest policies for handling juvenile offenders. The state is a useful comparison because it demonstrates some of the longer-term consequences of devolution and privatization, particularly the problems with fractured oversight and profit incentives in incarceration.
Chapter Five: Conclusion

The final chapter highlights the conclusions drawn from the comparison of three state-level case studies and draws out the larger contribution the findings have for understanding policymaking, political development and criminal justice reforms. First, the state-level case studies demonstrate that policy decisions are highly contingent on local interests. At the same time, the similarities between the cases also reflect the national convergence around a particular reform platform that increases investments in local institutions of punishment and control over juveniles. Second, the process of devolution devoid of substantial ideological, political, and institutional change does not in and of itself correct the problems in the juvenile justice system. Third, much like the literature on the welfare state and the rise of neoliberalism, the case of juvenile justice development reflects a broad trend in American governance whereby control over public services is increasingly devolved to local authorities and contracted out to private companies and organizations. Devolution and privatization have negative consequences for ensuring equal access and application of public goods, for scaling back the number of youth incarcerated and for quality of care and oversight. Fourth, much like other social policy areas such as education, health care and welfare, the ideological justification and basis for the juvenile justice system has remained stubbornly focused on correcting the individual failings of juveniles. Structural interventions continue to be sidelined and ignored in discussions over how to handle juvenile offenders.

The reform movement is finding success on particular measures; however, the closer state level analyses show a much more complicated and fraught picture of the state of juvenile justice policy. Improvements in some areas have not led to a substantial
critique or elimination of the most punitive policies in juvenile justice systems, nor have they changed the experience of most juveniles being processed through the justice system.
CHAPTER 2

Still Texas Tough

If this helps this child go back to his dormitory and behave a little better, we think it is therapeutic.

-Dwaine Place, 1973, Superintendent of Gatesville, defending forcing juveniles to work in sewage and garbage ditches for hours (Kemerer, 2008).

Without order and security and safety, you can’t have rehabilitation and education.

-Jay Kimbrough, 2012, Executive Director of the Texas Juvenile Justice Department, defending the use of solitary confinement for juveniles (Grissom, 2012).

In Texas, the number of youth incarcerated in state-run institutions has fallen from about 4,700 in 2007 to about 1,500 in 2012 (Rangel, 2012). The changes to the Texas juvenile justice system prompted the New York Times to praise the state for making “impressive strides” and called it a “juvenile justice model for the nation” (New York Times, 2011, 2015).11 A closer look at the Texas case reveals a much more complicated picture of the state of juvenile justice policy. Improvements in some areas, such as reducing the incarceration rate of youths in state institutions, have not led to a substantial contraction of the state juvenile justice system nor to dramatic changes in the experience of most juveniles being processed through the justice system. For all the talk about juvenile justice reform in the Lone Star state, the “Texas Tough” model of “Sunbelt justice” premised on maximum control at minimum cost with little independent oversight

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11 Additional support for the Texas model has come from The Washington Post (2014), The Wall Street Journal (Zuckerman, 2014) and a comprehensive report by The Council of State Governments (Fabelo et. al, 2015), to name a few.
still prevails (Gottschalk, 2014; Lynch, 2010; Perkinson, 2010). As the two quotes opening this chapter nearly forty years apart demonstrate, Texas remains firmly committed to the punitive treatment of juveniles and continues to defend its policies on principles of care and rehabilitation. An analysis of the development of the juvenile justice system helps to explain how these two seemingly contrary goals of the justice system became unquestionably linked. This relationship is at the core of understanding the consequences of the most recent efforts to reconfigure the juvenile justice system in Texas.

The most significant change in juvenile justice reform in Texas is the devolution of the “Texas Tough” model to the local and county level. In 2007, Texas enacted what was billed as a major juvenile justice reform program. The legislation has not challenged but instead has entrenched some of the most expansive and punitive aspects of the juvenile justice system: county probation and county detention. The state has engaged in a politics of dispersal, where the control of juveniles has been shifted to local and private entities. Devolution and increased funding for a “self-help” style of treatment have catalyzed the growth of privatization in the juvenile justice system. The changes have worked to expand the juvenile justice system at the county level. In the remaining state-run juvenile institutions, levels of violence remain high and many juveniles are subjected to solitary confinement.

Findings from the case of juvenile justice reform in Texas support a number of studies that have pointed out the problems and shortcomings of recent criminal justice reform efforts. The growing enthusiasm for decarceration is a major reversal from the
law-and-order era that ruled for much of the three decades leading up to the 2000s. However, the emergent polices that are poised to scale back mass incarceration are imbued with their own set of problems. A new wave of studies on decarceration and alternatives to incarceration such as routine drug testing, intensive probation supervision, electronic monitoring, parole, justice reinvestment, and reentry programs have found that many of these policies expand rather than contract the use of punitive supervision and control (Bosworth, 2007; Garland et. al, 2014; Gottschalk, 2014; Lynch, 2000; Miller, 2014; Petersilia, 2014; Phelps, 2011; Werth, 2013). Texas is one of the states at the forefront of a movement to pursue similar strategies of devolution and alternative sanctions in the juvenile justice system. The Texas case highlights how these policies, rather than replace prisons, are “widening the net” and replicating on the outside the control and punitive accountability of policies and life inside of prison (Lynch, 2000; Austin & Krisberg, 1981; Klein, 1979; Scheingold, 1992).

The first section of this chapter provides the historical development of the juvenile justice system in Texas. The state made early forays into “community-based” alternatives that were largely ineffectual but had lasting institutional and ideological consequences. Detailing the historical and political development of this particular era of Texas criminal justice policy helps to explain how the state ended up having the second highest number of juveniles in prison in the nation by the early 2000s. Lessons from this period provide a comparative case for examining the recent attempts to solve these problems through a similar wave of reform measures. The chapter then turns to an in-depth analysis of recent reforms to the Texas juvenile justice system. The evidence comes
from analyses of newspaper coverage, key legislation, state and county research publications¹² and literature from key juvenile advocacy groups.

I. Juvenile Justice System Development in Texas: 1950s to 2000s

The historical background on the development of the juvenile justice system in Texas contributes to several key findings in this case study. First, many of the reforms that Texas is pursuing today and that are closely analyzed in this case have been tried before in the state. Over sixty years ago Texas invested in “community-based” alternatives, small regional facilities to replace large state-run prisons and “life skills” programs aimed at curing juveniles of their psychological shortcomings. The failures of these particular strategies of reform provide a comparative case to understand the shortcomings of reforms today.

Second, the federal government’s piloted anti-delinquency interventions in Texas in the 1960s were a “critical juncture” that set juvenile justice policy on a trajectory of heavily emphasizing individual, psychological and behavioral explanations and solutions to delinquency at the expense of considerations of structural explanations and solutions (Pierson & Skocpol, 2002; Pierson, 2000; Collier & Collier, 1991). This framework for the juvenile justice system has largely gone unchallenged ever since.

Third, the history of juvenile justice system development in Texas presents an exception to the literature that has highlighted the ways in which southern states, unlike

¹² I aggregated data from several different series of state annual reports regarding institutional capacity, state funding for the juvenile justice system, probation programs and services, rate of referrals and dispositions by race, youth commitments to adult facilities and a number of other measures. I also compiled information from different county probation departments that keep track of funding and the programs and services they offer.
the northeast, did not accept or implement the rehabilitative ideal (Lynch, 2010; Perkinson, 2010). In keeping with this literature, it is accurate that in the juvenile justice system the large buildup of the 1990s in Texas was not a stark reversal of prior policies, but rather a continuation of the “cheap and mean” punishment that Texas had always been committed to (Campbell, 2011, p. 634). Yet, the following section details the ways that a commitment to “toughness” prior to the 1990s was also accompanied by investments in rehabilitative services and programs. Texas in many ways was at the forefront of the rehabilitative movement in juvenile justice policy of the 1960s as a key location of federal grant money and the site of an influential and spotlighted federal court case. The state did not choose between punishment or rehabilitation, but instead combined them in order to legitimize and expand the Texas juvenile justice system.


In 1949, Texas Governor Beauford H. Hester, members of the Texas Training School Code Commission and key legislative leaders all supported a bill to develop a new state agency, the Texas State Youth Development Council (TSYDC) (Bush, 2010, p. 94). The legislation came at a time when state institutions were in disfavor due to a number of sensationalized accounts of abuse against juveniles. The agency was commissioned to reduce the training school populations and also help local governments institute community-based prevention and rehabilitation programs (Bush, 2010, p. 93).

The Texas Training School Code Commission announced the new agency would be “the

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13 For an extended account of the passage of TSYDC legislation see Bush 2010. While large state institutions were growing in disfavor, the legislation also came at a time when there was a great deal of concern about juvenile crime, a concern second only to “Communist subversion” for what Americans listed as the most pressing public concerns in the 1950s.
most extensive youth program ever developed” (Bush, 2010, p. 93). In 1950, the newly minted agency’s leadership was sent to the White House Conference on Children and Youth where it was hailed as “a model worthy of emulation by other states” (Bush, 2010, p. 93). The goals of TSYDC converged with the national trend at the time of a growing disenchantment with institutionalizing dependent populations (Bush, 2010, p. 93). The council advocated for replacing the abuse-riddled state training institutions with small facilities located in metropolitan areas rather than the “backwater” rural locations of the training schools (Bush, 2010, p. 96). The primary goal of restructuring the institutions in Texas was to promote individualized treatment, which was positioned as the major failure of the state institutions. This central goal followed a national trend of promoting a particular ideal of rehabilitation that emphasized individual psychological deficiencies as the cause of delinquency.

The Greater Houston Action for Youth (GHAY), launched in 1962 and funded by the federal government, was just the type of program that was positioned to replace the training schools.\(^{14}\) The project spent a great portion of its money on a media campaign that broadcasted the urgency of fighting juvenile delinquency and promoted a narrative that psychological disorders in individuals and families were the main causes of juvenile delinquency (Bush, 2010, p. 140-7). GHAY’s reports promoted the prevailing thought at the time that the urban poor’s imprisonment was their own doing (Bush, 2004, p. 146).

Consequently, the programs promoted the development of “life skills” and therapeutic

\(^{14}\) Houston was one of ten cities to receive federal funds appropriated under the Juvenile Delinquency and Youth Offenses Control Act of 1961 administered by a committee appointed by President Kennedy (Bush 2010, p. 138). Lloyd Ohlin was the assistant director of the committee and the allocations were to help state and local communities prevent and control delinquency (Binder & Polan 1991, p. 250).
services to help cure juveniles of their psychological shortcomings. This narrative was central to the federal delinquency program during this era (Bush, 2004, p. 125). The programs in Houston reflected the prevailing beliefs in the “power of laws to change individual behavior, the power of behavioral science to uplift individuals and communities, and the possibility that social problems could be ameliorated without major changes to the political economy” (Austin & Krisberg, 1981, p. 187).

The guiding principle behind the President’s Committee on Juvenile Delinquency, which funded GHAY, was Cloward and Ohlin’s (1960) “opportunity theory.” Their work drew on a study of Puerto Rican and black teenagers in New York City in a Ford Foundation funded youth program. Based on their observation of these youth, they concluded the frustration youth felt of not being able to fulfill the American Dream was the primary cause of delinquency. The researchers argued that these young boys wanted the material wealth of their suburban middle-class peers, but since they lacked the opportunity to acquire it, they turned to crime and violence (Cloward & Ohlin, 1960). The theory gestured at socioeconomic causes for delinquency, but the psychological causes of delinquency that the theory also established became the predominant motivation and justification for anti-delinquency programs. Rather than focus on the larger social and economic forces that contributed to the conditions of “slums,” the theory highlighted the emergent delinquent subcultures at the community level (Schmitt, 2010, p. 69). Robert Sutherland, the director of the University of Texas Hogg Foundation for Mental Health promoted the psychological premises of opportunity theory and
antipoverty thought and was the main champion of GHAY’s application for federal support (Bush, 2010, p. 139).

In Texas, a stark boundary still persisted in public discussions between redeemable youth, who were considered candidates for rehabilitation, and the dangerous youthful offenders who needed to be sent to secure institutions. The influence and promotion of “opportunity theory” marked Texas’s foray into a commitment to the “rehabilitative ideal.” Texas did not reject the rehabilitative rationale behind the programs espousing the tenets of opportunity theory, but aspects of the theory that concentrated on the psychological rather than socioeconomic causes of delinquency ultimately legitimized the expansion of punitive institutionalization in the juvenile justice system. By pathologizing delinquency, the reforms during this time promoted the individual personal responsibility ethic that was foundational to justifying incarcerating large numbers of juveniles. In the 1950s the incarcerated juvenile population rose. Budgetary concerns and social pressures to address a growing anxiety about the threat of juvenile offenders led to the collapse of TSYDC, which in about a decade became an updated version of the regime it had sought to replace (Bush, 2010, p. 96). Rather than push Texas in a direction of more community-based alternatives, TSYDC instead was tasked with overseeing an expanding number of large institutions (Bush, 2010, p. 96).

The tension between support for punitive and rehabilitative responses to juvenile delinquency continued to animate the Texas juvenile justice system through the 1970s when it became enmeshed in a thirteen year long federal court battle over the
unconstitutional conditions of state run youth facilities. The *Morales v. Turman*¹⁵ case, launched in 1971, resulted in reforms to the Texas juvenile justice system and the treatment of institutionalized youth nationwide. The case was one of the most comprehensive investigations by the federal courts, the U.S. Justice Department and the F.B.I. of a state’s juvenile justice system (Reddington, 1992, p. 18-9).

The *Morales v. Turman* case was a long, drawn out court battle that resulted in the state increasing community-based programs and improving procedural fairness. In 1974, TYC used federal funds to establish a planning committee to move toward community-based correctional programs, and in 1975 the legislature appropriated $9 million for community-based programs (Kemerer, 2008, p. 170). The planning committee appealed to many state legislators’ commitment to fiscal conservatism by selling the investment in community-based correctional programs as a cheaper option.

The *Morales* settlement agreement that eventually was signed in 1984 prohibited corporal punishment, extended periods of isolation and inhumane treatment on juveniles. The agreement established oversight apparatuses, staff training, applicant personality screening, IQ tests for an offender classification system, a risk needs scale, more group therapy, individualized community-based treatment programs and more halfway houses. During the four years the agency was monitored under the new agreement (1984-88), TYC increased its community-based programs, but also kept its state institutions open.

¹⁵ Alicia Morales was the lead plaintiff in a class action lawsuit filed in 1971 against Dr. James Turman, Executive Director of TYC over the routine denial of court hearings for juveniles and once incarcerated, abusive conditions of confinement for youth.
The state complied with many of the court interventions (though reluctantly) by formally improving expectations of standards of care and by increasing the number of community-based programs in the state. However, through all of these changes, the state remained steadfastly committed to principles of fiscal conservatism (community-based alternatives were billed as the “cheaper” option) as well as a strong commitment to punishment and individual responsibility. The reforms, though tirelessly fought for, did not challenge these pillars of the justice system and in fact used these as a basis of support for the reforms. Consequently, the state continued to increase the number of juveniles it incarcerated. Arguments for procedural fairness, community-based programs and more humane conditions of confinement did not necessitate a reduction in the number of juveniles punished in the state (Murakawa, 2014).

The ideas of the 1960s reforms helped perfect and legitimize the punitive practices of the Texas juvenile justice system. Programs like GHAY and the TSYDC agency discredited considerations of structural causes of delinquency and articulated a narrative that individual deficiencies cause delinquency. The related funding and enthusiasm for treatment and individualized responses to delinquency became a pillar of the juvenile justice system in the state. The articulation of the psychological causes of delinquency also helped fuel the justification for punitive institutionalization, which relies on a commitment to individual responsibility. The extensive federal court intervention into TYC forced the agency to professionalize and adopt the rehabilitative ideals of therapy and community-based programs. These two developments worked to legitimize the agency that continued to grow in this time period and really take off in the
following decade. The development of juvenile justice policy from the 1950s to the 1990s shows the limitations of policy reform that reconfigures an institution without addressing the core purpose of an institution (Smith, 2014; Weaver, 2012).

Texas very much exemplifies the juvenile justice reform arc where the 1960s was a period of advocating for community-based programs over state institutions. The state was able to adopt many of these reforms while also maintaining the old training school institutions, revamped and repackaged, which were resistant to complete roll back. The reforms of the 1960s required the state agency to adapt and shift its practices, but they did not effectively repudiate the punitive policies the state already had and was working to further expand. Since procedural fairness and the establishment of treatment programs were two major goals in this reform era, the commitment to punitive institutionalization, for the most part, was never substantially challenged.16

“Get Tough” Movement, 1990s

In the 1990s Texas launched a historic prison-building boom.17 The total number of youth in TYC prisons went from around 2,000 in 1991 to over 5,500 by 2001 due to a number of “get tough” pieces of legislation targeted at youth offenders (Texas Youth Commission, 2009).18 The Texas Youth Commission described this period of transformation as a “back to basics” philosophy where public safety and punishment for

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16 For an extended analysis of the connection between procedural fairness and the build-up of the carceral state see Murakawa (2014) who argues that civil rights liberalism from the 1940s to 1960s laid the groundwork for the massive expansion of the federal carceral system.

17 For extended analysis of why the prison boom was belated in Texas relative to California see Perkinson (2010) and Campbell (2011).

18 In the adult system, between 1988 and 1999 the number of inmates in Texas prisons went from around 40,000 to more than 160,000 (Campbell, 2011, p. 631).
criminal acts would be balanced with the need for rehabilitation (Mears, 2000). The state coupled the focus on individual uplift and personal responsibility with increasingly punitive policies. The emergent push for formality, restrictiveness and punishment pushed out principles of care, treatment and rehabilitation even though these were not unequivocally repudiated (Fritsch & Hemmens, 1996, p. 564). The TYC mission stayed the same during this period, focusing on “rehabilitation, education, treatment, and reintegration of delinquent youth” (Sanborn et. al., 2013, p. 14). However, the juvenile state incarceration rate increased and the state passed several influential “tough” sentencing measures.

The gubernatorial campaign of 1995 heavily focused on waging criminal justice toughness. Governor George W. Bush campaigned on lowering the judicial waiver age for juveniles (Fritsch & Hemmens, 1995, p. 576). Bush’s arguments for increasing the severity of punishments for juvenile offenders contributed to the passage of significant sentencing changes. The governorship is considered “weak” in Texas, as compared to other states, but plays an important role in drawing attention to issues of the criminal justice system (Campbell, 2011, p. 635). In 1995, the state established seven levels of sanctions that are incrementally more severe (based on the severity of the offense and a juvenile’s prior history) as a guideline for juvenile probation departments and added eleven offenses eligible for a determinate sentence (Fabelo, 1999).19

In 1996, the legislature continued to make the Texas juvenile justice system tougher and more punitive. The legislature eroded protections for confidentiality of

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19 For a breakdown of “Progressive Sanctions Guidelines” see Appendix I.
juveniles, allowed the creation of a gang database for juveniles, instituted measures of parental accountability (parents fined for not appearing in court), expanded intermediate sanction facilities (boot camps and contracts with private operators) and lowered the minimum age of waiver to adult court to 14 (Johnson, 1998, p. 2-13). The state also passed legislation that required juveniles expelled from school to be referred to the juvenile justice system. The new legislation required probation departments in counties with greater than 125,000 to establish Juvenile Justice Alternative Education Programs for youth expelled from school. These counties could choose to either run their own programs or contract with private providers to establish traditional, military (boot camp or drill components) or therapeutic schools (Sunset Advisory Commission, 2009, p. 140). Progressively tougher sanctions and the number of punitive policies passed in this time period resulted in nearly a 300% increase in the number of youth incarcerated throughout the state.

The number of juveniles sent to state institutions grew significantly in this time period. So did the funding and capacity of juvenile probation departments. Between 1995 and 1999, state juvenile probation funding increased by 96% and the number of probation officers increased by 33% (Fabelo, 2001, p. 10). In the same years, of all juveniles referred to the juvenile justice system, dispositions became more severe and the percentage of formal dispositions increased by 56% (Fabelo, 2001, p. 14). Additionally, over this time period, a higher proportion of juveniles were given regular probation, Intensive Supervision Probation, and some form of out-of-home placement (Fabelo, 2001, p. 13).
Crisis and Reform, 2000s

In the early 2000s, the Texas juvenile justice system held the second largest number of juveniles of any state after the California juvenile justice system (Sentencing Project, 2011). The Texas Youth Commission (TYC), responsible for housing and overseeing juveniles sent to state institutions, handled about 3% of youth in the juvenile justice system at this time.\(^{20}\) The remaining 97% of juveniles were handled by the 168 local juvenile probation departments located throughout the state (Penn & Tanner, 2007).\(^{21}\)

Prior to the 2007 legislative changes, youth who had committed a violation of probation were the largest group (45%) sent to state-run secure institutions. Youth who committed a misdemeanor accounted for 14.7% of juveniles sent to TYC facilities and 40% were sent for felony convictions (Texas Juvenile Justice Department, 2014b).\(^{22}\) This meant that each year about 400 juveniles were sent to state-run institutions for misdemeanor crimes while between 2,000 and 2,300 juveniles were sent for felonies or parole violations. The vast majority of youth sent to state run-institutions were Hispanic

\(^{20}\) A “juvenile” in Texas is an offender between the ages of 10 and 16 years old. This upper limit age of jurisdiction is the same as 9 other states (for most states it is 17, in two states it is 15). The lower age limit is the same as 11 other states (most states have no age specified and 6 states have an age limit younger than 11 years old) (Juvenile Justice Geography, Policy, Practice & Statistics, 2015).

\(^{21}\) In 1981, the state created the Texas Juvenile Probation Commission (TJPC) to bring uniformity to local probation departments. In 2011, TJPC was abolished as part of the merger legislation (to be detailed in following sections). TJPC was understaffed (just 55 administrators in 2007) for its task of overseeing a large number and widely dispersed set of institutions. It was responsible for planning and policy development, promulgating and enforcing statewide standards, education and training, certifying officers, legal and technical assistance, advocacy and research (Penn & Tanner, 2007).

\(^{22}\) The most common types of misdemeanors were for drug or theft charges (36%). 25% of the felonies were for burglary, theft or drug offenses.
and African-American youth (77%). In 2000, whites committed twice as many felonies (9,264) as African-Americans (4,760), but more African-Americans (826) were sent to TYC than whites (688) (Texas Juvenile Justice Department, 2014b).

As the state faced severe overcrowding in adult facilities and a potential prison-building spree, Texas became the locus for a new conservative strategy for corrections. Political will began fomenting for justice reforms, much of which came to fruition in the 2007 special legislative session. The Texas Public Policy Foundation (TPPF), a conservative think tank, began to advocate for adult criminal justice reforms and juvenile justice reforms around this time. In 2005 and 2006 the organization released several reports and testified at congressional hearings advocating for “tough but smart” sanctions for low-level juvenile offenders. A sensational sex abuse case in the juvenile justice system propelled the political and popular will needed to enact the types of reforms TPPF had been advocating for.

In February 2007, The Texas Observer broke the story that staff members had molested young male inmates at the West Texas State School near Pyote, Texas (Swanson, 2007). A retired inspector general for the Texas Youth Commission stated in The Dallas Morning News, “staff are being paid your tax money to rape your children” and “the TYC has established a dynasty of corruption that condones the mistreatment of

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23 Texas has a long legacy of punitive and racially targeted policies (Perkinson, 2010). In 2005, Hispanic youth made up the majority of referrals to the juvenile justice system (45%) while African-American youth were 31% and white youth were 24%. In the state of Texas in 2005, Hispanics made up 42%, African-Americans 13% and whites 41% of the population aged 10-16 (Texas Juvenile Justice Department, 2014b).

24 In 2005 at a House Subcommittee hearing, TPPF cited at length the “broken windows” theory in defense of the provisions in the bill to require juvenile graffiti offenders to restore damaged property and pay restitution fines (Levin, 2005).
youth in its care” (Swanson, 2007). As public attention increased, so did the number of complaints and revelations of abuse scandals. In the following months, more allegations surfaced of sex abuse at juvenile facilities throughout the state, suggesting the situation in Pyote was not an isolated incident. The scandals attracted considerable media attention and took direct aim at the legitimacy of the juvenile justice institutions in Texas. The allegations came out just before the 2007 legislative session, prompting Republican governor Rick Perry to designate reforming TYC among his emergency items for urgent legislative action (Levin, 2011).

The legislature responded to the sex abuse scandal and problems with state youth facilities by passing Senate Bill 103. The legislation prevented a juvenile court from committing a youth to TYC for a misdemeanor crime. The bill also modified the management structure of TYC. It replaced the governing board with an executive commission, established the office of inspector general in TYC, instituted an independent special prosecution unit, and set out training and assignment standards for juvenile correctional officers (Texas State Legislature, 2007). The legislature set up a grant program for counties to bolster county probation and invest in community-based programs to be carried out by the juvenile board in each county. Counties were given wide discretion to decide how to spend the money. The qualifications for what constitutes a “community-based program” were quite broad. Anything from in-home family services, counseling and mentoring to boot camps, electronic monitoring and intensive probation

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25 For a detailed breakdown of the stipulations of Senate Bill 103 see Appendix II.
supervision was considered “community-based” if it was carried out or contracted for by the county.

The unanimous support for Senate Bill 103 was largely a product of the main actors involved in drafting the policy changes. The advocates of the Texas legislation were a conservative public policy think tank-- The Texas Public Policy Foundation-- and progressive interest groups, including Texas Appleseed and Texans Care for Children. Likewise, a bipartisan coalition in the Texas legislature led the legislative effort. Democratic senator Juan “Chuy” Hinojosa and Republican representative Jerry Madden partnered to sponsor the legislation. It was key to the success of the bill that organizations and leaders on both ends of the political spectrum jointly endorsed these policies.

While advocates from the left have long pushed for reforms to the juvenile justice system, it was surprising to see conservative Republicans taking up the issue. The Texas Public Policy Foundation (TPPF) was one of the most influential actors in passing Senate Bill 103 and was directly called upon by lawmakers to help draft the legislation (Levin, 2011). Mark Levin, the director of the Center for Effective Justice at TPPF and a co-founder of Right on Crime, has been instrumental in changing the way conservatives think about criminal justice policy. Levin was active in shaping the debate leading up to the legislative session. He wrote numerous studies, led public forum gatherings promoting juvenile justice reform and testified at the hearing for SB 103.
The Texas Public Policy Foundation is a conservative, free-market think tank whose guiding principles are “individual liberty, personal responsibility, private property rights, free markets and limited government” (Texas Public Policy Foundation, 2011). The organization’s interest in reforming juvenile justice policy is based in a critique that the current system is a waste of taxpayer money and is ineffectual at promoting public safety (Levin, 2014). The motivation to save taxpayers dollars fits with the other initiatives the foundation has signed onto as a member of the State Policy Network, such as reducing state health and welfare programs and expanding access to charter schools and school vouchers. The State Policy Network is “dedicated to advancing market-oriented public policy solutions” and is related to a variety of prominent conservative think tanks, including the Cato Institute (State Policy Network, 2011).

The convergence of a think tank such as TPPF and a progressive organization like Texas Appleseed helped garner overwhelming support for the SB 103. Founded in 1996, Texas Appleseed is a non-profit public interest law center that is part of a national network of justice centers. The organization partners with over 30 law firms in Texas and uses volunteer lawyers to address a number of social problems\(^\text{26}\) (Texas Appleseed, 2014). Texas Appleseed has welcomed support for juvenile justice reforms from the conservative TPPF and publicly acknowledges that this has been a key to forwarding causes that the organization has tried to implement (Schill, 2011). The organization’s mission is to contribute to “significant justice gains for the most vulnerable” and to

\(^{26}\) Texas Appleseed’s other projects are: criminal discovery reform, disaster recovery and fair housing, diversity legal scholars program, foster care and courts, immigration court and detention reform, mental health code update, payday and financial services reform, amicus briefs (Texas Appleseed, 2014).
promote “social and economic justice for all Texans” (Texas Appleseed, 2011). In 2001, the organization worked to pass the Fair Defense Act to improve juvenile defendants’ access to adequate legal representation (Texas Appleseed, 2011). In 2007, the organization sued TYC to block a dramatic increase in the use of pepper spray in youth facilities.

Support for SB 103 came from both parties and a wide representation of political organizations, but TPPF’s pro-private-sector and anti-government commitments dominated the ideological focus of the legislation. Consequently, the debate about the possibilities and justifications for the juvenile justice system reforms has been fairly narrow and limited. As elaborated below, the reforms have entrenched punitive institutions and policies such as county probation, county detention, electronic monitoring and intensive probation supervision. The expansion of county control and a proliferation of programs within county probation departments has contributed to the increased privatization of juvenile justice services. Finally, while the number of juveniles in state-run institutions has declined, the conditions in these facilities have worsened with greater levels of violence and greater use of administrative segregation.

II. Consequences of Community-Based Reforms

*Devolution and County Expansion*

The juvenile justice system addresses a wide variety of delinquent acts committed by juveniles, from truancy to assault, in a range of ways, from a ticket to incarceration (Fagan & Zimring, 2000). This expansive role of the juvenile justice system in the lives
of youth in Texas has not been challenged; it has continued to grow. State-run secure institutions, the object of the reforms, are a small part of the broad spectrum of programs, facilities and supervision that make up the juvenile system. The legislation enacted in Texas in 2007 focused on shrinking a small part of the juvenile justice system--state secure facilities--and has worked to expand, entrench and institutionalize other aspects of the system such as county probation, county detention and community-based programs.

Since the 2007 legislation promoted the widespread commitment to community-based programs as an alternative to state institutions, the state has funneled money to counties to expand local jails and a myriad of treatment programs and facilities. In 2007, the state allocated about $35 million to the Texas Juvenile Probation Commission (TJPC) to open 600 more community-based beds (Ward, 2007a). The state provided an additional $12 million on top of this to local juvenile probation departments to place “low-risk, nonviolent offenders” in locally operated facilities (Copelin, 2007b). In 2011, Ray West, chairman of TJPC, described the reorganization in plain terms, “I think the direction we will see the state go in the foreseeable future is to minimize the kids who go to TYC and maximize the (use of) alternate placement facilities” (Emison, 2011).

The state has closed down several state-run institutions, but the overall capacity of pre- and post-adjudication secure facilities across the state has grown between 1999 and 2014. The reductions at the state level have been counterbalanced by growth at the county level. Each year the state agency overseeing the juvenile justice system keeps a
registry of secure facilities\textsuperscript{27} in the state. The following graph shows the changes in the rated capacity (number of beds available) throughout the state of all secure facilities for juvenile offenders. Capacity was actually declining in the years leading up to the 2007 legislation, but since then it has grown to the highest level in the past 15 years.

Graph 1. Secure Facilities Registry


Another way the state has devolved control of juveniles from the state to the county level has been to transfer facilities funded and operated by the state to counties. In 2011, the legislature passed Senate Bill 653 to reorganize the juvenile justice system. The measure merged the Texas Juvenile Probation Commission, which oversees county

\textsuperscript{27} This includes public and privately operated facilities from halfway houses to detention centers and includes low, medium and high security facilities.
probation departments, with the Texas Youth Commission, which oversees state-run institutions, to create the Texas Juvenile Justice Department. An important provision in the merger legislation authored by Rep. Byron Cook (R-Corsicana) was that any of the shuttered TYC facilities could be transferred to counties of less than 100,000 people.

For example, the TYC turned the Ron Jackson Unit II facility over to Brown County, a small rural county located in west-central Texas,\textsuperscript{28} in January 2012 under the provision in the merger legislation described above. The portion of the unit transferred to the county had capacity for 120 juveniles, yet Brown County only has typically 1 to 8 juveniles housed at the county level. Therefore, Brown County is planning to use part of the unit, renamed the Ray West Juvenile Justice Center,\textsuperscript{29} to expand its current short-term facility to house juveniles transferred from other counties at a charge to those counties (Kirk, 2012; Nash, 2011, 2012).

In 2013, the Brown County commissioners voted to approve leasing another portion of the facility to G4S to open The Oaks Brownwood, a 115-bed residential treatment unit. G4S is the world’s largest security company providing a wide range of services such as trained security officers, facility security systems, electronic monitoring, and juvenile and adult custody facilities. The company is one of the world’s largest private-sector employers (G4S USA, 2015b). Youth are referred to the G4S run portion of the facility through the Texas Juvenile Justice Department or from other counties.

\textsuperscript{28} Texas has 254 counties, more than any other state in the United States. Brown County has a population of 38,106 (as of the 2010 census). It is about 175 miles southwest of Dallas, TX and about 140 miles northeast of Austin, TX.

\textsuperscript{29} Named after the current Brown County Judge Ray West who was one of three members of the county commission board that voted to approve the takeover of the unit and the subsequent lease agreement with G4S (Leija, 2013).
Brown County Chief Juvenile Probation officer James R. Williams celebrated the facility acquisition, stating, “it will allow the county to increase the number of programs for juvenile offenders” (Nash, 2011). The facility transfer provision is a very literal way that the state has devolved control of juvenile institutions to the county level. Some of the state facilities that closed have been repurposed as county-run secure residential facilities.

The 2007 juvenile justice legislation has contributed to the continued growth of county probation department capacity. The size of the total number of staff employed by probation departments across the state of Texas doubled between 1997 and 2012, going from about 4,000 employees to 8,000. The largest area of growth has been in certified juvenile detention officers (728 in 1997 to 2,239 in 2012). The graph below shows the growth in juvenile probation officers from 1997 to 2012.

Graph 2: Juvenile Probation Officers (Certified and Uncertified) 1997-2012
The expansion of programs and services in local probation departments is another illustration of the growth of county capacity in the devolution process. In 2012, the TJJD Program and Services Registry reported there were 1,562 community-based programs in probation departments across the state (Arrigona & Gonzales, 2013). This compares to 628 programs recorded in Texas Juvenile Probation Commission’s annual report in 1999. The following chart shows the growth between the two time periods on select types of programs in 1999 and 2012.30

Table 1. Probations Program and Services 1999 and 2012

<table>
<thead>
<tr>
<th>Program Type</th>
<th>1999</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anger Management</td>
<td>29</td>
<td>69</td>
</tr>
<tr>
<td>Border Justice</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Drug Court</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>Educational</td>
<td>12</td>
<td>84</td>
</tr>
<tr>
<td>Electronic Monitoring</td>
<td>103</td>
<td>93</td>
</tr>
<tr>
<td>Experiential Education</td>
<td>10</td>
<td>24</td>
</tr>
<tr>
<td>Family Preservation</td>
<td>25</td>
<td>61</td>
</tr>
<tr>
<td>Female Offender</td>
<td>1</td>
<td>24</td>
</tr>
<tr>
<td>Home Detention</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>Intensive Supervision/Intensive Case Management</td>
<td>134</td>
<td>130</td>
</tr>
<tr>
<td>Life Skills</td>
<td>22</td>
<td>94</td>
</tr>
<tr>
<td>Programs for Parents</td>
<td>0</td>
<td>48</td>
</tr>
<tr>
<td>Sex Offender</td>
<td>18</td>
<td>110</td>
</tr>
</tbody>
</table>

30 In 1999 there were 20 different types of programs, in 2012 there were 33. The same categories have not been used over time and the counting has shifted from number of departments offering a particular type of program to the number of programs of different types of purposes.

31 The 2012 data enumerates components within a program not just the overall purpose of the program. In 2012 there were 171 programs with an electronic monitoring component, (for example, part of a home detention program could be that juveniles under supervision wear electronic monitors). There were 93 explicit electronic monitoring programs.
Of the 1,562 programs registered in 2012, only about 30% were started before 2007 (Arrigona & Gonzales, 2013). This trend shows a substantial expansion of county probation departments and the growth of programs offered at the community level. While many of these new programs appear to be therapeutic and non-punitive, the majority of the programs are part of secure detention or conditions of probation that come with punishments if juveniles miss a check-in with a probation officer, a drug test or a curfew violation. In a later section on “individualized interventions,” I will detail in full the punitive aspects of these “alternative” policies.

Thanks to the growth of bed capacity, probation staff, and county probation programs, the corrections budgets for counties have grown. Since the 2007 legislation was enacted, county spending has been increasing for county juvenile probation and community corrections. Funding for county probation departments comes from a mixture of federal, state, county and private funding. The county pays for the majority of services. On average across the state of Texas, 65% of funding for juvenile departments comes from county general funds (Texas Association of Counties, 2012). Both the amount the county and state contribute to county probation departments has steadily increased since
the 2007 reforms.\textsuperscript{32} In 2000 the state allocated $98 million to county probation departments; in 2014 it allocated $153.8 million (Texas Juvenile Justice Department, 2014a). Adjusting for inflation, this was an increase of 15%. In 2007, 11% of the money allocated from the state went explicitly towards residential services (about $15.6 million). In 2014, the portion of the state funds going to residential services increased to 26% (about $34.7 million) (Texas Juvenile Justice Department, 2014a). The following graph shows the growth of money allocated from the state to counties to bolster residential services from 2000 to 2014.

Graph 3: State Funding to Counties for Residential Services 2000-2014


The 2007 juvenile justice legislation set up specific grants for counties to use to handle offenders who previously would have been sent to state-run institutions. The majority of this money has gone towards secure and non-secure institutions, bolstering pre-existing probation programs and alternative services that contain punitive conditions of community supervision. To carry out of the goals of the 2007 legislation, the legislature established the diversionary fund (Grant H) in 2008 for local juvenile boards to develop community-based probation programs and services for juveniles at risk of commitment to TYC. Between 2009 and 2011 the state awarded counties around $48.6 million through this grant. Over these years about 93% of the funds went to residential services.

The legislature also established the Intensive Community-Based Program (Grant X) as part of the 2007 legislation to fund community-based programs for offenders under the supervision of the juvenile court. Between 2008 and 2011, the state awarded $19.8 million through this grant. In 2011, 37% of the Grant X money went to probation departments that used in full or in part their allocated funds for intensive supervision programs and/or electronic monitoring (Texas Juvenile Probation Commission, 2010).

In 2009, building on the legislation from 2007, the legislature established the Community Corrections Diversion Program (Grant C). This grant also provides funding to divert youth from state-run institutions. Between 2010 and 2014, the state gave counties more than $89.6 million through this grant. Over these years, about 63% of the funds went to secure and non-secure residential facilities. The rest of the money went to
additional funding for probation and to a wide range of programs and services from electronic monitoring to family counseling. The state has used grant money and annual allocations to shift the responsibility of residential services and punitive probation programs to county probation departments.

Intensive supervision probation and electronic monitoring tend to be coupled or blended into “rehabilitative alternatives” at the county level, but both historically and functionally they support a “get tough” model of corrections. Juvenile intensive supervision probation (ISP) programs started becoming fixtures of probation departments in the 1980s. ISP was marketed as a central component of a new “get tough,” surveillance-oriented probation system (Beatty, 2002, p. 8). Likewise, electronic monitoring (EM) was a key part of a burgeoning movement in the 1990s towards intensive probation and parole. The use of EM fit into a “new generation” of community penalties where different kinds of interventions, increasingly privatized, were mixed for more controlling and individualized sentences (Nellis, Beyens, & Kaminski, 2013). At this time there was also a “growing importance placed upon economic rationalities of crime control” (Paterson, 2013, p. 213). Both ISP and EM fit the new model of crime control based on efforts to target risks amongst groups of offenders and offenders.

33 Electronic monitoring, drug testing, psychological evaluations, medication management, individual and family counseling, skills training, wrap-around services, and drug and alcohol counseling are listed under “programs and services” but disaggregated allocations of these different programs is unavailable (Texas Juvenile Probation Commission, 2010).

34 In 1985 there were about 17 offenders per day on EM. Just two years later, this number increased by 900% with 826 per day and by 1998 10,827 per day. Estimates are that over 100,000 people are on EM per day in the United States today (Lilly & Nellis 2013, 28). While still a small percentage of those on parole in the US, the use of EM has significantly grown in a relatively short amount of time.
then apply the most cost-effective measures of handling these offenders (Paterson, 2013, p. 216).

Despite the intentions of some proponents of EM that it could reduce the use of prisons and help rehabilitate offenders, after over thirty years of its implementation, EM is mainly about punishment on the cheap (Renzema, 2013, p. 266). The existing literature finds that offenders view intermediate sanctions as punitive (not rehabilitative) and at times find them more punitive than incarceration (Payne & Gainey, 1998, p. 151). In 2012, TJJD found that youth who were placed on electronic monitoring had the highest rates of rearrest (57.3%) and reincarceration (16%) compared to other types of probation programs (Texas Juvenile Justice Department, 2012a).

Interventions such as ISP and EM are features of the growth of the commercial crime control market since the end of the Cold War when defense contractors turned to private security products to maintain profit margins once a clearly defined threat against the Western world had dissipated (Paterson, 2013, p. 213). This reassertion of the role of the market within the criminal justice system is part of a broader trend where many western societies have moved away from welfarism towards “strategies of social management associated with the neoliberal ethos of combining market competition, privatized institutions and sub-contracted, at-a-distance forms of social control” (Paterson, 2013, p. 213). In this context, service delivery is contracted to the private-

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35 EM is unlikely to displace prisons because its purpose is ideologically congruent with the use of prisons (Nellis, 2013, p. 207). Additionally, the technology has been used inside of prisons (particularly supermax prisons in the US) (Shalev, 2013). In these instances, EM has contributed to the automation of prisons rather than a replacement of these institutions.

36 EM was developed and is disseminated by private entrepreneurs and has been marketed as a solution to prison and jail overcrowding (Lilly & Nellis, 2013, p. 27).
sector in order to “reduce costs” while also meeting demands for increased security
measures (Paterson, 2013, p. 224). This process of privatization and devolution has
created new problems for transparency and identifying accountability (Paterson, 2013, p.
224).

The intermediate sanction movement, of which ISP and EM is a part of, created a
custom that gave commercial organizations an incentive to enter the criminal justice
system (Lilly & Nellis, 2013, p. 27). EM and ISP blur the line between institutionalized
and non-institutionalized control. They also shift penal control from the state to civil
society and the private-sector (Nellis, Beyens & Kaminski, 2013). For example, the
slogan of a UK private security company is “prison without bars” (Paterson, 2013, p.
217). For juveniles in Texas, these alternatives are invasive forms of social control that
come with the threat of recommitment to a state or county facility if a youth violates
probation.

In short, counties’ budgets, probation staff size, probation program offerings, and
secure confinement capacity have continued to grow since the passage of the 2007
legislation. This budget growth has contributed to the expansion of alternatives that are
punitive and increase privatization.

Privatization

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37 Today, the EM market is dominated by a small handful of large multi-national corporations. In Europe
and Australasia G4S and Serco control the EM market, while in the U.S. G4S competes with a variety of
domestic manufacturers and service providers (Paterson, 2013, p. 213).
The devolution of the control of juveniles to the county level and the infusion of grant money to set up a wide range of “community-based programs” has created an opportunity for private companies and non-profits to contract with counties to carry out services.\(^3^8\) The increasing privatization of juvenile justice services flows from a longstanding relationship between the private-sector and the juvenile justice system. The juvenile justice system has always had a much higher level of privatization than the adult criminal justice system.\(^3^9\) The very creation of the juvenile court was a way to institutionalize and legitimize the work of charitable organizations that were carrying out services for juvenile delinquents (often a category blurred with indigent juveniles) (Block & Hale, 1991; Cullen & Gilbert, 1982; Platt, 1977; Sutton, 1988). Despite promises to the contrary, private facilities have not been found to be more effective, cheaper, or to have lower staff-to-youth ratios (Lundahl et al., 2009; McDonald, 1994; Shichor & Bartollas, 1990). Privatization in the juvenile justice system corresponds with higher rates of custody and expanded social control (Feeley, 2002). The private-sector has a vested interest in policies that “widen the net” and its profit motives can undermine oversight and adequate care (Bakal, 1998; Lucken, 1997; Segal & Aviram, 1978). This scholarship suggests that privatization is incongruent with decarceration. However, many of the reforms in Texas targeted at reducing the size of the justice system, have explicitly or inadvertently contributed to the increased role of the private-sector in the juvenile justice system.

\(^3^8\) Private companies looking for business in the criminal justice system have increasingly gone after programs and facilities targeted at the “low risk offender” (Feeley, 2002, p. 338).

\(^3^9\) In 2012, 7.8% of the adult state prison population was held in private facilities (Galik, Gilroy & Volokh, 2014), while 31% of juvenile offenders were held in private facilities (Hockenberry, Sickmund & Sladky, 2015).
As mentioned earlier, TPPF was integral to the construction and passage of juvenile reforms in the state in 2007. Since then, the organization has pushed even more aggressively for private-public partnerships in the juvenile justice system. In 2014, the organization published an article arguing that the juvenile justice system is primed for private-sector partnership. TPPF outlined a vision for the system that it called an “outcome-based model” in which rehabilitation programs are funded by private capital, administered by a private non-profit and contracted for by the government (Cohen, 2014).

The 2007 legislative session laid the groundwork for devolving control to non-governmental entities. In the same legislative session in which SB 103 passed, Jerry Madden (R-Richardson) also introduced legislation (House Bill 198) to raise the cap on private prison beds allowed in the state. The authors of the bill, which passed unanimously, argued that it is cheaper to contract with private companies than with counties and that private facilities can offer better education and programs than counties that currently have limited programming. In the hearing for HB 198, a representative from Corrections Corporation of America, Laurie Shanblum, argued private prisons were a “better bang for your buck” and advocated for expanding state jail contracts (Texas House of Representatives, 2007). Marc Levin, the director of the Center for Effective Justice at the TPPF, who helped draft and pass SB 103, also testified at the hearing and supported the bill and privatization more generally. He advocated for “unlocking competition in corrections” because the state is the consumer in the realm of criminal justice policy and “competition can work in corrections” (Texas House of Representatives, 2007). The political action committees of Geo Group Inc., and
Corrections Corporation of America, the two largest private prison operators in the United States, ranked in the top ten donors of Rep. Madden’s 2006 election cycle (Reinlie, 2008). Sen. Whitmire, who co-sponsored SB 103 and voted for HB 198 was the recipient of the most private prison industry money in the Senate from 2002 to 2004 (Institute on Money in State Politics 2006, 31).

The legislation expanded the number of private beds in the state as well as asserted that private contractors are superior to counties in cost and services. The timing of this claim is important given that it came in the same legislative session where the major initiatives in both the adult and juvenile justice system were appropriating more money for county institutional expansion and arguing counties are superior to the state in delivering services. The goals of cost savings and shifting populations of offenders out of state-run institutions drove both funding county-level expansion and increasing private contracts. The state shifted resources to the county level at the same time that it advocated for increasing private contracts.

The 2011 agency merger legislation (SB 653) pushed the juvenile justice system ever more clearly in this direction. SB 653 expanded existing law and authorized the Texas Juvenile Justice Department to cooperate and contract with foundations in addition to other entities for the delivery of services. The legislation set forth that funding for prevention and intervention services should come from “a competitive process” between “private service providers, local juvenile boards, municipal and justice courts, schools, and non-profit organizations” (Texas State Legislature, 2011). The bill also authorized the State Board of Education to grant charter schools to detention, correctional or
residential facilities for juveniles on probation (Daly, 2011; Texas State Legislature, 2011).  

As discussed earlier, the legislature stipulated in SB 653 that closed state facilities could be transferred to counties. This provision opened up the opportunity for private contracting in the case previously mentioned of Brown County as well as at Crockett State School. Previously run by the state, Crockett State School was one of three detention centers closed down in 2011 as part of the agency merger. Three years after being closed, the facility was transferred to the City of Crockett and was reopened. The Texas facility has been renovated and renamed as the Davy Crockett Regional Juvenile Facility (Washington, 2014). A private company called Cornerstone Programs operates the institution.  

The Cornerstone takeover of a state detention center exemplifies a great deal about the 2007 legislation and the subsequent actions taken by the legislature to carry out the changes initiated in that special session. The devolution process has meant that rather than chart a new direction of juvenile justice policy, Texas is shifting its tough model to the local level. The once state-run detention facility is still open for business, but now is run by a private company through a contract with the county. Meanwhile, the state has not scaled back or reformed some of its most punitive policies.  

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40 The bill also stipulated that charters in these juvenile justice institutions would not count against the statutory cap on charter schools in the state.  
41 The company places a strong emphasis on cognitive behavior therapy and can provide isolated confinement conditions for juveniles (Cornerstone, 2014). The Cornerstone Program closed one of its facilities in Montana after state officials found the company had failed to report child abuse and had neglected the juveniles housed there (Plainview, 2007).
Economic Efficiency

The primacy of the taxpayer has been at the heart of arguments for reform in Texas’s juvenile justice system. Key political actors from both ends of the political spectrum emphasize the value a juvenile reform policy has to a taxpayer. The most agreed upon and stressed goal of the reforms in 2007 was that they would save taxpayers money. The preoccupation with economic efficiency and cost savings has undermined goals of the reforms particularly those that require long term investment.

Contracting the services of the juvenile justice system to private entities conforms to a long-standing commitment in the state of Texas to fiscal conservatism.42 A central and important clash driving the direction of the reforms is that groups like TPPF and Republican legislators have an interest in shrinking the government. But, influential juvenile justice system bureaucrats and legislators presiding over counties that run detention centers have an interest in keeping juvenile facilities open. The outcome seems to be to pursue a politics of dispersal as a way to shift state funding and turn more control over to local and private entities. A large number of juveniles are still processed in the juvenile justice system, but counties are taking on even more responsibility to pay for and carry out these services.

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42 For one example of the nature of Texas fiscal conservatism, the state is currently waging a battle over providing a needle-exchange program to prevent disease. Due to a Tea Party faction’s opposition to government funded public health programs like the needle exchange, the bill has been amended to eliminate all taxpayer funding. The program would be carried out solely by charitable organizations (Henson, 2015).
For an extended discussion of the privatization of Texas’s foster care system (90% of foster children are housed in private agency homes) and the consequences and problems of abuse in the system see Joseph (2015).
TPPF and other conservative as well as liberal organizations and actors that have buttressed their support for the reforms with the goal of “cost-savings” have not seemed concerned by county budget growth. The actors that are most concerned with it are county administrators. The fact that “cost-savings” dominates discussions of juvenile justice system reforms, even when spending on corrections by counties continues to grow, reflects that a neoliberal logic undergirds the reforms. Neoliberal governance is a system that introduces free-market incentives supported by the state. Therefore, the goal is not necessarily the all out destruction of the state but rather a reorientation of the state to facilitate free market competition (Weaver, 2014; Kettl, 2000; Lowi, 1998). The following examples from Texas suggest that “economic efficiency” creates friction between different levels of government, sidelines concerns about the wellbeing of juveniles and introduces incentives contrary to fundamentally improving the justice system.

The goal of closing several state facilities has been celebrated as the most substantial change to the juvenile justice system. Even this major achievement has been undercut by the prevailing commitment to economic goals. The tension between wanting to shrink the state institutional system and interests in keeping facilities open for local jobs has led to a contradictory and variable commitment to closing institutions. The primacy of economic arguments has meant that facility closures have been minimal and some have been repurposed, not shut down.

Few in the debate over reforms between 2007 and 2011 challenged the supremacy of local economic wellbeing over that of getting juveniles out of state lock-ups. An
exception to this trend came from State Senator Juan “Chuy” Hinojosa (Democrat) who critiqued the prison as a source of economic development, arguing, “by and large, our goal is to regionalize treatment. There are going to be some chambers of commerce complaining, but incarcerating youth should not be used as a tool for economic development” (Hernandez, 2007a). And yet, in the same breath he assured his constituents that in his district, the Evins Regional Juvenile Center would not be susceptible to closing because it was an urban facility (Hernandez, 2007a). Hinojosa asserted, “we’re not Pyote,” referring to the rural prison where the abuse scandal centered. His statement conveyed that Evins was not part of the problem because of its geographic location and therefore not liable to be closed (Hernandez, 2007a).

The Evins facility was not part of the sex abuse scandal, but in 2004 there was a riot at the facility that raised concerns about TYC practices and possible abuse. In 2006 the Department of Justice began investigating Evins and in 2007 issued a finding that the facility was failing. The facility is now entered into an Agreed Order to ensure recommended changes are implemented (Sunset Advisory Commission, 2009, p. 112). Hinojosa also made the above statement in the context of supporting bills that proposed transferring the closed youth prisons to adult prisons.

The commitment to promoting community-based programs, at the center of the reforms, is also challenged by the dominance of economic efficiency goals. The most commonly repeated justification for the reforms is “cost savings” and this is closely

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43 As for Pyote, West Texans protested the loss of 228 jobs ultimately preventing the facility from closing until the end of 2010 (Ward, 2007b).
linked to the similarly repetitive justification that community based programs are cheaper than TYC commitments. Though the reform of granting control of juveniles to counties instead of state facilities has been sold as a “cheaper” (and therefore, better) option, a missing link has been that these programs still cost money.

Therefore, arguments against the reforms have centered on the economic consequences. Harris County Commissioner Steve Radack, argued against increasing county control over juveniles that would have previously been sent to TYC. He claimed the policies would worsen crowding in Harris County lockups, and were “another unfunded mandate to the counties,” and “will just put the problem on the taxpayers of Harris County” (Murphy, 2007). Alan Mayfield, McLennan County juvenile court judge similarly framed his resistance to moving juveniles to the county level in economic terms, stating if services were transferred to counties it would, “shift the burden to local taxpayers who have quite enough burdens already” (Doerr, 2008). Taylor County Judge Downing Bolls noted in response to the idea in the merger to shift services to the county, “remember, the state is not doing away with these programs, but (possibly) shifting the cost back on the shoulders of local taxpayers” (Emison, 2011). Counties are rightfully wary of the long-term plan of how they might pay for the services. In 2012, 75% of counties in Texas reported that their funding was insufficient or very insufficient to implement community programs (Texas Criminal Justice Coalition, 2012, p. 3).

The predominant economic focus of the reforms has made the argument about money: who will pay, how much will be paid. What recedes from the discussion is the welfare of the juveniles involved in these decisions who will bear the overwhelming
brunt of the consequences of these policies. What is best for juveniles to improve their treatment and their lives generally will likely require the state to invest money. As long as economic efficiency and cost savings are prioritized, a broad range of policy choices and efforts to fundamentally repurpose the state are excluded from the debate. For example, adequately funding public mental health programs, providing jobs, education and adequate housing all require the state to invest money in bettering the lives of juveniles. If an economic burden is the central problem with the juvenile justice system, moving it to a new level of government does not fundamentally address the problem. These reforms do not work well if they are based on the goal of eliminating burdens from taxpayers.

Another pitfall of the economic centrality for justifying the reforms is that it can be and has been used for the exact opposite policy goals. As Rep. Jim Dunnam (D) has pointed out, “consolidating services at some TYC institutions saves money” (Doerr, 2008). Contrary to the predominant pitch about localization, Dunnam suggests that consolidation rather than dispersion of institutions is a cheaper route. Thus, if the central goal is cost savings, it is not obvious that localization even makes sense. As counties have already started consolidating services into regional facilities, it has become apparent that the notion of juveniles being held close to home is not being fulfilled in the numerous instances where this would cost a lot of money. Further, saving money and protecting the taxpayer have been motivations for grueling conditions in prisons (Lynch, 2010). And, the sanctity of the taxpayer was also the central claim made for implementing “get tough” policies because crime has been framed as having a much
higher “cost” than locking away offenders (Cate, 2010). Finally, the subject position of “the taxpayer” continues to be poised antagonistically against “the juvenile offender.”

**Individualized Interventions**

Another core feature of the juvenile justice system that the reforms have not repudiated and have actually perpetuated is the stigmatization of juvenile delinquents. The reform measures continue to describe juvenile offenders as broken, immoral, unproductive and threats to public safety. The stipulations of the policies and their related funding sources institutionalize behavior modification programs and use rehabilitation to legitimate punishment. The discourse and policy decisions in Texas concerning the treatment of youth offenders entrench a belief that juvenile delinquency is the result of psychological and moral deficiencies. This view of juvenile delinquents has animated juvenile justice policy in the state since the early 1960s. The historical background provided at the beginning of this chapter highlights the origins and consequences of this approach.

It is more comfortable, simple and cheaper to attribute the difficulties and flaws of youth offenders to their deficient character rather than to the larger world (Lynch, 2000, p. 56-7). The unequivocal avoidance of any sort of social structural changes is further cemented by the repeated theme of the individual deficiencies of juveniles. No matter the direction of the policy (treatment or punishment) there is an agreed definition of the juvenile as the source of the problem. As Rep. Jim Dunnam (D) put it regarding the merger, “I guess it sounds strong and bold to say we are going to abolish the agency. But
we aren’t going to abolish the kids, so the problem is not going to be abolished” (Doerr, 2008). Though Dunnam may be quite sympathetic to the plight of juveniles and may not really mean they are a “problem,” his comment reflects how the rhetoric in the reforms is unequivocally directed at what to do with the juveniles rather than what to do about the political, institutional and social context juveniles live in.

The emphasis on the personal deficiencies of juveniles structures reforms that value individual interventions versus systematic interventions (Lynch, 2000, p. 53). This focus applies to even the ideas of “prevention” and “diversion” which may seem as though they are trying to tackle the problem more systematically. However, since these too are anchored in a belief in the central problem as individual deficiency, even if it is excused or pitied, they similarly necessitate individual behavior modification strategies of reform.

Counties have coupled programs aimed at modifying the individual behavior of juveniles with the punitive elements of probation and secure confinement in the recent reforms. Folding goals and programs of helping juveniles into punitive practices has helped to legitimize institutions such as county probation (Werth, 2013, p. 238; Bosworth, 2007, p. 74). As shown previously in Table 1 the number of programs provided within probation departments has substantially grown over the past ten years in Texas. One example in the table is the more than fourfold increase in “Life Skills” programs offered in probation departments, going from 22 in 1999 to 94 in 2012. As of 2012, there were 659 programs with a “Life Skills” component (Arrigona & Gonzales,
The program serves male youths referred by TJJD. The program is nested in the

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44 Lafer’s work also points out that “job training” under TANF came in the form of “self-esteem” training (Lafer, 2004).
45 In 2012, The GEO Group Foundation (the second largest private prison operator in the U.S.) donated $10,000 to P.A.C.E. Youth Programs, Inc. (Hall, 2012).
probation department, for that reason the participant juveniles are still subject to the terms of their probation and are closely monitored. Juveniles in P.A.C.E. do not get an exemption from the strict controls and consequences of probation. Probation violations can be for minor infractions such as not attending school or breaking curfew. The therapeutic program does not replace the punitive conditions of probation, but is instead an intensive 12-week program that requires juveniles to comply with strict regulations of conduct. This is an example of how rehabilitative resources can be used as mechanisms of supervision and control (Werth, 2013, p. 238; Lynch, 2000, p. 58).

In addition to county residential placements, electronic monitoring and intense supervision probation, the grant money to divert youth out of TYC has also gone into programs that focus on correcting the psychological and behavioral deficiencies of juveniles. The predominant types of programs funded in the community-based grants are individual intervention services. About 66% of Grant X and Grant U allocations (described in the previous section) went to departments solely funding or in part funding the following programs: anger management, behavior modification therapy, cognitive behavioral programs, life skills, parenting classes, WhyTry©, family preservation, mentoring, youth empowerment and youth advocate programs. Many of these programs are contracted for with private companies and focus almost exclusively on individualized behavior modification.

The increased funding and enthusiasm for these types of programs further institutionalizes aspects of the juvenile justice system that pathologize juvenile delinquency. These programs blame delinquent behaviors of all kinds on psychological shortcomings of youth involved in the system. The commitment to funding programs focused on behavioral modification continues to legitimize the punitive aspects of the system (juveniles are given a chance to improve their behavior, so if they do not, they truly deserve punishment) and it entrenches the size and funding of probation departments since they are seen as best able to administer these services. Therefore, “community-based alternatives” are not really alternatives, but rather different formulations of the juvenile correctional system that have been long standing features of the institution dating back to the 1960s reform moment in Texas.

Thirteen counties contract with WhyTry©, a private company that sells products for “resilience education” (WhyTry, 2014). Vicki Spriggs, who was the executive director of the Texas Juvenile Probation Commission from 1995-2011, is quoted on the WhyTry© website giving a testimonial in support of the program. The program is in over 10,000 schools worldwide. According to the website, “WhyTry motivates youth to overcome challenges in school and life. WhyTry is proven to reduce truancy, change behavior, and improve academics.” The program teaches youth life skills and claims that the mastery of these skills “empowers students to take control of their future” (WhyTry, 2014). The “challenges of life” for juveniles are met with attitudinal and behavioral solutions. The message of WhyTry is that juveniles are solely responsible for their success, but also their failure.
Twenty-four counties used the grant money for anger management and 30 counties used it for life skills. Denton County, one of the ten counties that received the greatest portion of Grant X & U funding, provides one example of what an anger management program looks like for juveniles. The juvenile anger management class provided by Denton County is a once a week two hour class that meets for four weeks. Full payment of $445 for the class is required at the time of registration. The related parenting class is $305 and is a “psycho-educational approach” that helps improve the parental relationship (Denton County, 2014a). Denton County’s website states, “Kids between the age of twelve and sixteen sometimes react in unpredictable ways, surprising those around them and even themselves and requiring the intervention of adolescent anger management strategies” (Denton County, 2014a).

In Denton County, there is also a life skills program in the secure residential facility, Denton County Courage to Change Program. The facility is a long-term (six to twelve months) program for adjudicated juveniles. The program lists teaching life skills, “such as kitchen duty and housekeeping” (Denton County, 2014b). These self-improvement programs are integrated into sites of institutionalization and can come with a heavy burden of fees for parents.

At the state level, treatment programs have also been combined with secure institutionalization. In order to reform the state run institutions, the state has integrated treatment programs into the secure facilities of TJJD. In 2007, the Texas juvenile justice

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47 The class is available for juveniles and parents who are court ordered to complete the program as well as those in the community that want to take the classes voluntarily. The fee and requirements for payment are the same for those court ordered to take the class and all other participants (Denton County, 2014a).
system implemented CoNEXTions®, a general treatment program based on admission assessments for youth committed to state-run facilities.⁴⁸ CoNEXTions® uses the Positive Achievement Change Tool (PACT) to assess juveniles when they enter the system. PACT is an automated assessment tool provided by the private company assessments.com. The goal of CoNEXTions® is to reduce recidivism through the implementation of thinking skills training and interventions specific to risk and protective factors (Texas Juvenile Justice Department, 2013). The programs offered to achieve this goal are evidence-based approaches and programs such as Cognitive Life Skills®, Thinking for a Change®, Aggression Replacement Training®, Why Try®, Seeking Safety, Functional Family Therapy® and Parenting with Love and Limits®. These programs are developed by private companies that contract with the state. The logic of fixing juveniles’ psychological and moral failings has become an important part of the secure state facilities. The CoNEXTions program shows the compatibility of the self-improvement treatment goals with punitive institutionalization and demonstrates the opening it has given to private companies specializing in these types of programs.

Juvenile offenders continue to be stigmatization in the discourse of the reform debates and little attempt has been made to challenge the negative subject position of the “juvenile offender” or to rethink and redefine the object of juvenile laws. If the juvenile remains, fundamentally, an “othered” subject position, loaded with conceptions of risk

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⁴⁸ SB 103 stipulated that the juvenile system develop a comprehensive assessment process when juveniles are admitted to TYC (now TJJD).
and danger, it is difficult to really escape the 1990s “get tough” policies that are founded on these perceptions.

Juvenile justice policy reforms, such as the 1990s “get tough” era, have repeatedly been based on a notion that the system needs to adapt to the changing nature of juveniles. In the 1990s a widespread rhetoric of “juvenile super-predators” fomented support for punitive policies (Fagan & Zimring, 2000; Mendel, 2000; Feld, 1999). In the recent recommitment to treatment and rehabilitation, policy makers and juvenile practitioners have cited increasing rates of mental health disorders as a cause of the crisis in juvenile corrections. This is a different articulation of the problem with youth delinquency than the “super-predator” panic; however, both articulations pinpoint the trouble with youth themselves and depict a new generation of youth as being significantly different than the previous generation.

Montgomery County Judge Mary Ann Turner claims she “has seen a growing number of young people in trouble with the law because of behavior related to a mental health disorder” (Lee, 2009). Similarly, Brown County Judge Ray West described that, “over the past few years it has become very evident that a large percentage of juvenile offenders suffer from various mental illnesses” (Nash, 2012). And, Randall County Chief juvenile probation officer Jane Anderson King stated, “now, kids are more broken than ever” (Cervantes, 2012). As newly minted executive director of TJJD, Cherie Townsend reported inter-agency findings that 52% of youth in the system have mental health problems and she stated, “the numbers are increasing and the percentages are increasing” (Weissert, 2012). The inclusion of more psychological and psychiatric testing in SB 103
was both a response to and perhaps also a driving factor in this identified problem of the increased prevalence of mental health disorders (Copelin, 2007a).

Identifying the connection between mental illness and criminal charges is not inappropriate nor is an acknowledgement of the value of addressing mental health concerns amongst youth populations. The point of highlighting the repeated reference to increasing problems of juvenile mental health is to suggest that it contributes to a widely conceived perception that the struggle in corrections is the increasingly difficult population of juveniles the system must handle. Many times in the past, a prevailing belief that “juveniles are worse than ever before” has fuelled expansions to the juvenile justice system and the implementation of harsh and punitive policies (Bernard, 1992).

Defining the problem of delinquency as a product of mental illness may lead to less punitive responses. However, as the quotes and TJJD statistics above show, many of these juveniles continue to be processed through the justice system rather than the public health system. Mostly the goal has been to solve the juvenile justice mental health problem by infusing more treatment and behavior modification programs into the justice system. The debate has focused more on services inside the justice system than directing attention to the public health system. Texas is dead last in the nation in per capita mental health expenditures (National Alliance on Mental Illness, 2011). A state budget crunch in 2003 resulted in more than $100 million being cut from the community mental health system (Romer, 2008). As social services have been eviscerated, prisons have become the site “of last resort” for providing services such as mental health treatment (Phelps, 2011, p. 35). When probation departments ask for increased funding for mental health screening
and care (Grissom, 2012b) they are able to appear rehabilitative while also securing more spending on corrections (Phelps, 2011, p. 61).

The repeated description of “juvenile delinquents” as non-productive, troubled and broken also contributes to the continued stigmatization of these youth. The juvenile justice system is continually positioned as the method of turning juveniles around and of creating responsible, productive citizens. The implication of this rhetorical trope is that the personal deficiencies of juveniles are the problem that needs to be fixed.

The function of TYC is described as taking “juvenile lawbreakers and send[ing] back as many functioning, productive citizens as possible” (Fix Closer, 2007). Rep. Jim McReynolds (D-Lufkin) confidently asserts that “there are ways to turn them [juveniles] around” and by changing them, keep them out of trouble (Graham, 2010). Judge West describes juvenile delinquents as, “kids that have fallen by the wayside that we’re trying to turn into productive citizens” (Kirk, 2012). Jeanette Moll of the Texas Public Policy Foundation argues that “delinquent youth that learn a marketable skill are far less likely to re-offend and much more likely to be productive citizens who contribute to, rather than drain, Texas’s budget” (Moll, 2011). Recidivism statistics since the 2007 reforms belie Moll’s assertion.49 Juveniles wrapped up in the justice system for a wide range of reasons, from truancy to murder, are positioned as broken, in need of skills and change

49 Probation recidivism rates have remained steady even though juveniles with higher levels of risk and needs are staying in the community (Texas Juvenile Justice Department, 2012b). Based on three-year re-arrest rates for juveniles starting a program in 2007, electronic monitoring and boot camps have the highest rates of recidivism (71% and 66% respectively). Juveniles in “life skills” have a lower recidivism rate than these programs, but still very high, about 58%. The following are the recidivism re-arrest rates for different types of programs: anger management (57%), counseling (63%), educational (64%), family preservation (65%), mental health (65%), substance abuse prevention/intervention (63%). The one year re-offense rate for “low risk” juveniles who entered a program in 2011 was the exact same than juveniles that did not enter a program (Legislative Budget Board, 2013).
that will turn them from unproductive citizens to contributing members of society. Thus, in Moll’s articulation, which is fundamental to the juvenile justice system reforms, it is the absence of “marketable skills” that explains the perceived failure of these juveniles, not the market itself.

The optimism expressed about the malleability of youth and their particular propensity for change further justifies individual interventions. A repeated emphasis on the ability of juveniles to “turn around” (Cohen, 2007; Norman, 2013), based on a common sense wisdom about youthfulness, implicitly suggests that the juvenile needs to and can change, not the social structure around them (Scheingold, 1991; Klein, 1979; Quinney, 1973; Rusche & Kirchheimer, 1968). Depicting youth as increasingly in need of treatment versus increasingly in need of punishment might be heralded as a significant improvement. Whether or not this is true, the point is that it directs attention to increasing criminal justice interventions as well as locates the problem in the youth instead of in the social and political context of where juveniles find themselves.

*Texas is Still “Texas Tough”*

The continued commitment to traditional law-and-order solutions in Texas is closely related to the perpetuation of the primacy of the taxpayer and the stigmatized juvenile offender. The ideas of community-based programs, treatment, rehabilitation, prevention and diversion are all being described as uniquely new trajectories for juvenile policy. Yet, all of these have been features of the juvenile justice system in the past and they have never been and continue to not be mutually exclusive to punishment and “get
tough” policies. The constellation of policies and responses to the 2007 crisis demonstrate this compatibility and illustrate the many ways in which Texas has not escaped the law-and-order principles that contributed to the build up of a massive state prison system in the first place. In a variety of ways Texas is trying to climb out of the juvenile corrections crisis using the very policies that created the crisis. The following examples will suggest that while Texas celebrates its historic reforms it is also maintaining its “Texas Tough” identity (Perkinson, 2010).

The new model of juvenile justice that Texas put forth in the 2007 legislation narrowly focused on a small segment of misdemeanor offenders. As the previous sections have demonstrated, these changes have largely entrenched punishment at the local level and have promoted privatization. As for the juvenile offenders who continue to be sent to state-run institutions, the conditions of their confinement have gotten worse. A commitment to fiscal conservatism, a major goal of the leaders in the reform package such as TPPF and Republican representatives, has undercut the effectiveness of oversight mechanisms that were supposed to prevent abuses. Incidences of violence in lock-ups (both state and local) have increased since the 2007 legislation. In response to the uptick of violence, the state has doubled down on its use of solitary confinement.

SB 103 and SB 653 did not amend any policies for juvenile “violent offenders.” The tough laws Texas has for handling serious juvenile offenders, such as blended sentencing, have gone untouched and have not been criticized in the reform debate. A “blended sentence” is a determinate sentence where juveniles serve time in the juvenile justice system (TYC, now TJJD) and then are transferred to the adult system. Scott
Fisher, chairman of the TJJD board, stated when first announcing the merger that, “the institutionalization of juveniles is a necessary thing for violent, habitual perpetrators” (Hunt, 2011). The reforms were solely targeted at those convicted of misdemeanors and drew distinctions between the “type of youths” in TYC and those that could be in programs in local communities (Murphy, 2007). The 2007 reforms focused attention on getting right who goes to the institutions and where the institutions are located, rather than questioning the need for such an expansive use of institutionalization generally.

Yet, the 2007 legislation did very little to change the make-up of which juveniles get sent to state-run institutions. Most of the youth in state-run institutions continue to be sent there for non-violent offenses. In 2012, the majority of youth committed to state facilities were sent for a violation of probation (51%) and this has been a growing proportion since the 2007 legislation. The remaining juveniles are sent for felony charges (49%); however, the majority of these charges (64%) are for non-violent crimes (Texas Juvenile Justice Department, 2014b). Further, the 2007 legislation and its proponents did little to nothing to address the problem with the overrepresentation of African-American and Hispanic youth in state-run institutions. African-American and Hispanic youth continue to be sent to these institutions at a disproportionate rate. In 2012, white youth committed more felonies (3,777) than African-American youth (3,245), yet more African-American youth (264) were sent to state-run institutions than whites (164) (Texas Juvenile Justice Department, 2014b).

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50 In 2007, violation of probation charges constituted 41% of the youth sent to state-run facilities.
51 In 2012, Hispanic or African-American youth made up 58% of youth aged 10-16 in Texas and 79% of the youth sent to state-run facilities. This is the same disparity as before the reforms. In 2005, Hispanic or African-American made up 55% of youth aged 10-16, but 75% of the youth sent to state-run facilities.
Fewer youth are sent to state-run institutions in Texas largely because of declining arrest rates. However, overall, the state has not substantially changed what youth are targeted and how the state responds to juvenile crime. Under a stipulation in SB 103, juvenile courts were restricted from sending youth to the Texas Youth Commission for committing a misdemeanor crime. This attempt to scale back institutional intervention was tenuously pursued and ultimately did not challenge the idea of punishing youth for misdemeanors (Hernandez, 2007a, 2007b). Legislators supporting the reforms assured the public that misdemeanant youth would not be sent to TYC facilities, but they would still be punished or treated in local probation departments (House Research Organization, 2007). The supporters of SB 103 included a caveat that, “the legislature will be able to revise the ban on misdemeanants in 2 years if it feels the agency has the resources to handle them” (House Research Organization, 2007).

Compromise in implementation is a normal expectation of legislation, but the debate over the misdemeanor exception showed that there was never a strong commitment to reducing the punishment for juveniles charged with minor offenses. The proponents of the 2007 legislation affirmed the need for punishment and merely shifted the location of this punishment. While some scale back is typical, the reform platform was not strong enough to significantly shift the terms of the debate in a new direction of policy.

A persistent commitment to fiscal conservatism in Texas was a centerpiece to the 2007 legislation. The chief goals of protecting “the taxpayer” and cutting costs have prevented Texas from making significant changes to improve oversight and conditions of
confinement for juveniles. One of the main reform goals was increased oversight as a way to solve the widespread incidents of abuse in the system. SB 103 created two administrative oversight positions, the Office of the Independent Ombudsman and the Office of the Inspector General. Additionally, the legislation created a crisis hotline and allocated money to put surveillance cameras in the state run facilities. However, almost immediately, the goal of cost savings undercut this set of plans for reducing abuse. Less than one month after SB 103 was signed into law by the governor, legislators Hinojosa (D) and Madden (R) publicly criticized the ineffectual role of the ombudsman, Will Harrell. The legislators accused Harrell of not conducting enough face-to-face interviews and for not going on enough visits to juvenile facilities (Hernandez, 2007c). Yet, Harrell reported he did not have enough money to set up regional offices, let alone the employees to staff them, and was using his personal cell phone to conduct his job due to a lack of resources (Hernandez, 2007c).

The state invested $18 million to ensure that surveillance cameras captured nearly every corner of the state facilities. However, as of 2012, TJJD interim executive director Jay Kimbrough acknowledged, the videos were never monitored around the clock as intended (Ward, 2012b). Further, even if the oversight mechanisms were well funded and operated, they are only responsible for the five large state prison facilities in operation. This means that the thousands of youth held in about 93 local facilities are left without a strong oversight mechanism (Davis, Irvine & Ziedenberg, 2014).

When legislators were debating amendments to the house version of SB 103, the issue came up of how low the guard-to-youth ratios should be to help reduce instances of
guard-on-inmate violence. Interim Texas Youth Commission director Jay Kimbrough, with the support of the Texas State Employees Union, suggested reducing the 12:1 ratio to a 6:1 ratio. Rep. Madden, a key supporter of the legislation, retorted to the suggestion that he had “75 to 100 million reasons,” as in additional dollars, “not to shoot for a 6:1 ratio” (Copelin, 2007b). The final version of SB 103 that became law stuck to the 12:1 ratio. The primacy of keeping costs down, not any argument for what was better for the safety of juveniles and guards in the system, ultimately shaped the 2007 legislation.

The persistent inadequacy of oversight of juvenile facilities is exacerbated by the fact that since the legislation passed in 2007 juveniles in Texas are even more likely to experience violence in state secure facilities (Grissom & Aaronson, 2012). In 2012, five years after the reforms were approved by the legislature, reports showed persistent and in some areas growing rates of violence in juvenile state secure facilities. In the five-year span of time, youth-on-youth assaults had more than tripled at secure facilities and attacks on staff members had also increased (Grissom & Aaronson, 2012). From 2010 to 2013, the use of pepper spray in state-run facilities significantly increased (Deitch et al., 2013).

The number of sexual assault incidents in state-run facilities has dropped, but the rate of youth on youth assaults has doubled. Even at the peak of the highest incidences of staff-on-youth sexual assaults in 2005, the rate was 0.3 assaults per 100 ADP (Average Daily Population) (about 13 total confirmed cases). As of 2010, the rate had dropped to 0.17 per 100 ADP (about 3 total confirmed cases). This is compared to rates of youth-on-
youth assaults that occurred at a rate of 25 per 100 ADP (about 580 cases) in 2005 and grew to 50 per 100 ADP (about 695 cases) in 2010 (Grissom & Aaronson, 2012).

Graph 4. Rates of Violence in TYC and TJJD Facilities, 2001-2011

Data for “Staff on Youth Sexual Assaults” only available for 2005-2010.

The graph above is not intended to minimize the gravity of the problem with incidents of staff on youth sexual assaults in Texas state institutions (which hardly register on the graph). However, it does highlight the rates of other types of violence (youth on youth assaults, youth on staff assaults) that have not been addressed in the reforms and have always made up a much larger percentage of the incidents of violence in state-run institutions. Further, these types of violence are viewed as the consequence of misbehaving, problematic juveniles and are therefore handled punitively.
Since the passage of SB 103 in 2007, the Texas Juvenile Justice Department has continued to use solitary confinement for disciplinary purposes. One year after the bill passed, the newly appointed TYC ombudsman, Will Harrell, reported that the state was using isolation as a form of punishment and had increased its use of solitary since the reforms (Sandberg, 2008). The 2007 stipulations did not change the rules on solitary, but there was some hope that with more oversight, the state institutions would adhere to regulations already on the books, such as providing intensive services to youth placed in solitary. In 2008, Harrell reported that TYC had turned two prisons into “de facto segregation camps where hard to manage youth languish in individual cells up to 23 hours a day” (Sandberg, 2008). Harrell indicted TYC for taking policies from the adult prison system and applying them to the juvenile justice system and declared, “It is straight-up isolation for the sake of punishment” (Sandberg, 2008).

Two incidents of “uprisings” at the remaining state-run facilities in 2012 have caused policymakers to double down on the use of solitary confinement (Grissom & Aaronson, 2012). In October of 2012, juveniles at Gainesville threw rocks through windows and tried to get on the roof of the facility. In July of 2012, 14 youth at the Giddings State School refused to go to bed and tore up their dorm rooms. In both cases, the juveniles were pepper sprayed and taken to detention areas. Policymakers blamed the incidences on the lenience of the changes coming out of the 2007 legislation and advocated for more consequences for “unruly” youths.

In response to the two “uprisings,” the TJJD board voted in 2012 to implement a new solitary confinement program, called the “Phoenix program,” and lifted the 42-day
maximum stay cap on the amount of time juveniles could be sent to the existing solitary confinement programs in every state-run institution. The persistent and expanding use of solitary confinement suggests the juvenile justice system in Texas has not truly abandoned one of its harshest and most punitive practices (Burke & Simpson, 2015).

Solitary confinement has been found to increase violence in prisons and cause serious emotional and psychological damage (Haney, 2003; King, 1999; Reiter, 2012; Rhodes, 2004; Shalev, 2013; Travis, Western & Redburn, 2014; Ward & Werlich, 2004). Studies on the effect of prison isolation find that the conditions of solitary have serious psychological consequences such as insomnia, depression, self-mutilation, suicidal ideation and behavior, and hallucinations (Haney, 2003). Experts assert that young people are psychologically unable to handle solitary (Human Rights Watch, 2012a). Further, because juveniles are still developing, the experience of solitary confinement can be traumatic and profoundly negative to their future growth and welfare (American Civil Liberties Union, 2014; Gately, 2014; Human Rights Watch, 2012a). A 2009 study by the United States Department of Justice found that juveniles held in solitary confinement committed half of the 110 suicides over a four-year period in the late 1990s. More than 2/3 of these youth were being held in juvenile facilities for nonviolent offenses (Office of Juvenile Justice and Delinquency Prevention, 2009).

The Phoenix program is located in a section of one of the remaining state-run facilities, the McLennan County Juvenile Correctional Facility in the small, rural town

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52 There is no public record of a connection between the solitary program in Texas and the Phoenix program in Vietnam, the CIA’s systematic torture and assassination program aimed at the National Liberation Front.
Mart. The program consists of single-cell rooms with a higher level of security to segregate the “troublemakers” from the rest of the juvenile population (Grissom, 2012a). Youth in the Phoenix program are kept in a locked security unit at all times and must wear mechanical restraints (shackles) when moving around the wing (Deitch et al., 2013, p. 51-2). If the youth leave the Phoenix area, their ankles are shackled too. In 2012, youth referred to the Phoenix program were held there for an average of 66 days (Grissom, 2012a). Two thick security doors separate the security unit in McLennan from the rest of the facility. As you enter the wing there is a painting of a red phoenix rising from flames on the wall with “I will rise” painted above it (Grissom, 2012).

In defense of the disciplinary programs, the executive director of the Texas Juvenile Justice Department, Jay Kimbrough, asserted, “Without order and security and safety, you can’t have rehabilitation and education” (Grissom, 2012). He also characterized the juveniles in the remaining state-run institutions as “a different crowd now. Now we’ve got the worst of the worst” (Bell, 2012). A report in 2013 by TJJD Independent Ombudsman (IO) Debbie Unruh detailed video evidence turned in to the IO by a case manager of on three separate occasions guards fighting with juveniles in the Phoenix Program at McLennan. For example, one video showed the staff “slamming [the youth] to the floor where the staff pins the youth and makes repeated punches in the youth’s ribs” (Independent Ombudsman, 2013; Michels, 2013). The IO conducted youth

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53 Despite the misnomer, McLennan County Juvenile Correctional Facility is a state-run facility.  
54 Mart is a city in central Texas, 20 miles west of Waco, TX. According to the 2010 census the state had a population of 2,426.
and staff interviews that indicated that the practice of staff fighting with youth was common on the second shift (Independent Ombudsman, 2013).

Between 2009 and 2012, youth committed to the TJJD state-run institutions were, on average, referred to a security unit 48 times during their commitment (Deitch et al., 2013). Each secure facility has a security unit where juveniles can be placed in isolation either because they are engaged in “certain dangerous or disruptive behaviors” or if they self-refer to the unit because they fear being assaulted by another youth (Deitch et al., 2013). There were 93 youth with more than 300 referrals to security during their stays in TJJD, suggesting they spent a large portion of their time in the security unit setting. Youth who did not commit any major rule violations were referred to security on average 23 times, suggesting security units are used routinely for even minor infractions (Deitch et al., 2013). Another study published in 2014 cited a “stunningly high number” of placements in security units (Clarke, 2014).

In response to the recent reports on the heavy reliance of referrals to security units in Texas juvenile facilities, Jim Hurley, the Texas Juvenile Justice Department spokesperson defended the necessity of solitary confinement, stating, “When a youth is being disruptive or is assaulting somebody or has created a situation that is not safe, it’s important to have a place to put the youth while they calm down” (Bernier, 2013).

Despite widespread assurances by legislators and child advocates that county facilities are superior to state-run institutions, the patterns of abuse and the routine use of solitary confinement also occur in county level facilities. Injuries in county juvenile facilities have increased by over a third between 2008 and 2011 (Texas Criminal Justice
Coalition, 2012, p. 15). In county juvenile facilities youth were physically restrained (sometimes referred to as “use of force”) 5,333 times and were sent to solitary confinement 37,071 times in 2011. There is not precise data on how many of these were short versus long-term solitary confinement, but data collected by the Texas Criminal Justice Coalition shows that thousands of assignments to solitary confinement in this year lasted longer than 24 hours (Texas Criminal Justice Coalition, 2012). The rules governing commitment to solitary confinement vary greatly from county to county. A comparison of 13 counties in Texas found that the list of “major rule violations,” that can qualify a youth to be given a 24-hour seclusion, range from “disrespectful behavior towards staff” to “assault” (Texas Criminal Justice Coalition, 2012).

The previous examples address the treatment of youth at the state and county level jurisdictions of the juvenile justice system, but about 200 youth per year are sent to the adult criminal justice system. The majority of youth who have been certified as adults and who are housed in adult county jails are held in isolation for long periods of time55 (Deitch, Galbraith & Pollock, 2012). A survey of 41 jails in Texas found that 25 institutions reported giving youth less than one hour of out-of-cell time per day. The average length of stay in county jails for certified youth is 6 months to longer than one year (Deitch, Galbraith & Pollock, 2012, p. xi). SB 103 and subsequent changes to the justice system have not challenged the widespread use of solitary confinement in state, county or adult facilities.

55 Youth who are certified as adults are exempt from the Juvenile Justice and Delinquency Prevention Act of 1974’s requirement that youth be “sight and sound separated” from adults. However, the majority of adult jails in Texas treat certified juveniles as youth and house them in single cells based on this status. In a survey, 11 jails reported they commingle certified juveniles with adults. Even in the jails that separated juveniles from adults, many were not making efforts to prevent any contact with adults in non-housing contexts (Deitch, Galbraith & Pollock, 2012).
Additionally, SB 103 did not address the issue of processing juvenile offenders in the adult criminal court. Texas files an exceptionally high number of truancy cases in adult court. A report published in 2015 found that almost 100,000 criminal truancy charges are brought against Texas school children each year. The state prosecutes truancy at double the rate of all 49 other states combined (Texas Appleseed, 2015).\textsuperscript{56} Further, the number of youth tried as adults grew by about 20% between 2001 and 2011 (Texas Criminal Justice Coalition, 2012, p. 23). The number of juveniles certified to the adult court peaked in the mid-1990s (596 certifications in 1994), fell in the early 2000s, and rose between 2005 and 2008 (270 certifications in 2008) (Johnson, 2010). Youth certified to the adult court are predominantly African-American and Hispanic (about 80% of the annual commitments), despite making up about 65% of the Texas youth population. The legislative changes in 2007 have not made any significant change to the practice of certifying juveniles as adults.

Graph 5. Juveniles Certified to Adult Court 1993-2012

\textsuperscript{56} Truancy charges can be filed in juvenile court as a “Conduct in Need of Supervision” (CINS) offense or in adult criminal courts as “Failure to Attend School” (FTAS) a Class C misdemeanor offense. In 2013, 1,000 truancy cases were filed in juvenile courts as a CINS offense and 115,000 cases were filed in the adult criminal court as a FTAS offense. Parents can also be charged with a Class C misdemeanor offense, Parent Contributing to Nonattendance (PCN) in addition or in lieu of a student’s truancy charge.

Texas ranks fifth as the state that holds the greatest number of youth in adult prisons in the United States (Human Rights Watch, 2012a). Texas also has a “once an adult, always an adult” transfer law which requires any juvenile who was criminally prosecuted in the past to be prosecuted in the adult court again, regardless of whether or not the criminal offense is serious (Johnson, 2010). Juveniles sent to adult facilities have higher rates of suicide, are more likely to be victims of violence and have less access to education and programming (Human Rights Watch, 2012a).

Significant national developments in juvenile justice policy coming out of the Supreme Court over the past ten years have been adapted by Texas in contradictory ways. Texas has had a mixed record in addressing the most punitive policies levied at juveniles. The state has complied with the judicially ruled bans on the death penalty and life
without the possibility of parole sentences. However, Texas has replaced these now unconstitutional practices with some of the harshest alternatives in the nation.

In 2005, in *Roper v. Simmons* the Supreme Court prohibited states from giving the death penalty to offenders under the age of eighteen. *Graham v. Florida* (2010) extended *Roper* and prohibited states from giving youth under eighteen life without parole (LWOP) for a non-homicide offense. Most recently, the court ruled in *Miller v. Alabama* (2012) that states could not have mandatory life without parole sentencing for youth convicted of murder (Feld, 2013).\(^{57}\) Texas was the state most affected by the *Roper* decision. As of 2005, Texas had by far the largest death row for juvenile offenders, holding 29 (40\%) of the national total of 72 juvenile offenders (Death Penalty Information Center, 2015). Since 1973, the state of Texas has been responsible for executing 13 of the 22 people who were executed for crimes they committed as a juvenile (Death Penalty Information Center, 2015). In 2005, after the *Roper* decision, Governor Rick Perry commuted the sentences for 28 seventeen-year-old juveniles on death row in the state and gave them life sentences with the possibility of parole in 40 years (Ferguson, 2012).

Because Texas used the death penalty as opposed to LWOP sentences for serious juvenile offenders (compared to states like Pennsylvania, Louisiana and Michigan, which have large populations of juveniles serving LWOP sentences) it was much easier for the state to come into compliance with the *Miller* and *Graham* decisions. Prior to the *Miller*

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\(^{57}\) States can still choose to sentence a juvenile to a LWOP sentence, but the state is prohibited from making this mandatory for all homicides.
case Texas policymakers had already determined juveniles should be treated differently than adults. In 2009, the state established that the toughest sentence in Texas for juveniles was life with the possibility of parole after 40 years (Children at Risk, 2015). After

Miller, the state enacted legislation in 2013 that extended this minimum sentence to 17-year-olds who are not considered juveniles in the state and therefore were still eligible for LWOP sentences. The state did not make the 2013 changes retroactive, so 27 individuals did not benefit from the new law (Henneke, 2015).58

Texas has made moderate improvements to its most severe punishments. Abolishing the death penalty and mandatory LWOP for juveniles is a major victory for juvenile justice advocates. However, many have pointed out that the alternative sentence in Texas continues to be one of the harshest in the nation (Hudson, 2013; Grissom & Serrano, 2013). Since the Miller decision 13 of the 28 states that previously required or allowed LWOP for juveniles convicted of homicide have changed their sentencing structures. Texas is one of two states that set the minimum sentence at 40 years (Rovner, 2014). Most of the other states that have made sentencing changes have similarly replaced LWOP with very long sentences.59 The state level implementation of court decisions reflects how place specific dynamics can impact how national level trends are carried out on the ground. As this case study suggests, the trend of devolution has been

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58 A couple of Democratic representatives came out against the new law arguing 40 years was too long for a juvenile and was essentially a life without parole sentence. However, the final vote on SB 2 (2013) passed with just one dissenting vote in the Senate and 113-23 in the House (Hudson, 2013; Grissom & Serrano, 2013).

59 Texas and Nebraska set the minimum sentence at 40 years. Pennsylvania, Louisiana, and Florida (who account for 40% of the total population of juveniles serving LWOP in the U.S.) set the minimum at 35 years. Six other states set the minimum at 25 years.
adapted to a “Texas Tough” context where the improvements in state incarceration rate reductions have been offset by local punitive entrenchment.

Another broad trend in juvenile justice policy is the effort to get outlier states to set the age of criminal responsibility at 18 so that youth under this age will be handled in the juvenile court not the adult criminal court. In 2015, the Texas legislature waged a battle over whether or not to raise the age of criminal responsibility in the state from 17 to 18 years of age.\footnote{The change would put Texas in line with federal law and 41 other states that set the age of criminal responsibility at 18 years old (Michels, 2015a). In 2007, Connecticut raised the age of criminal responsibility from 16 to 18. In 2013, Illinois raised the age from 17 to 18. There is an ongoing, well-organized campaign in New York to raise the age from 16 to 18.} The debate pitted actors who had previously been allied in juvenile reforms against each other.\footnote{Those in support are major advocacy groups (such as Texans Care for Children, TCJC, and TPPF), the editorial board of three major Texas newspapers, legislators in the Texas House of Representatives and the Texas Association of Business (Wallace, 2015). Those opposed are Senator Whitmire, a key leader in juvenile justice policy in the state and the Chair of the Senate Criminal Justice, the Texas Probation Association and a number of county juvenile probation officials.} Those in favor of raising the age argue that 17-year-olds should be considered juveniles and given a chance to rehabilitate. These advocates argue that juveniles are less likely to reoffend if they are sent to the juvenile justice system instead of the adult system and will be safer if they are removed from having contact with older offenders (Michels, 2015a; Michels, 2015b; Waco-Tribune, 2015; Wallace, 2015). Those opposed to the legislation counter that the major influx of youth into the juvenile justice system would overburden counties that are still trying to implement the changes from the 2007 legislation and that it could result in increased commitments to state institutions. They argue that mixing 17-year-olds with younger juvenile offenders would make juvenile facilities less safe (Michels, 2015b).
Ultimately, the amendment to “raise the age” was dropped from a bill to further expand the “community-based,” regionalization changes to the juvenile justice system. The vote on the amendment passed in the House (89-52), but the Senate, led by Sen. Whitmore did not concur with the amendment and removed it from the final version of the legislation (Texas State Legislature, 2015a). The bill that passed, SB 1630, promotes the establishment of regional facilities to house juveniles instead of being sent to state-run facilities. Officials have identified 35 regional facilities where juveniles at the state-level would be placed (Langford, 2015).

The debate captures how a seemingly simple policy to treat 17-year-olds as juveniles can pit reformers against each other and come with unintended consequences. Ironically, the 2007 legislative changes in the state have made a “raise the age” effort more difficult. The changes in 2007 and subsequent legislative efforts have framed their goals and successes as reducing the number of juveniles at state-run institutions. Absorbing 17-year-old youth into the juvenile system would threaten this outcome; therefore, despite arguments that “raise the age” might benefit the treatment and wellbeing of juveniles, the policy is facing opposition. Because the “raise the age” effort is narrowly focused it also shifts the debates away from arguments against the benefits of the juvenile justice system. Some of the very same political actors who were outspoken about the negative effects of juvenile justice institutions in their support for the 2007

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62 Support for the amendment to “raise the age” was bipartisan. Ten house representatives sponsored the amendment, four democrats and 6 republicans. Of the 89 yea votes, 33 were from the Republican Party. All of the nay votes were Republican house representatives (Texas State Legislature, 2015b).
63 The legislative criminal justice impact statement projects that the decreased demand on TJJD state residential capacity would be offset one-for-one with an increased demand on juvenile felony probation supervision (Legislative Budget Board, 2015).
legislation are now holding up this system as a paragon of rehabilitation and benevolent care (Michels, 2015a; Michels, 2015b; Waco-Tribune, 2015).

The declining rate of state institutionalization and a renewed fervor for community-based programs has not equated to a refutation of punitive policies in Texas. The 2007 legislation reorganized the juvenile justice system by expanding county probation and county detention. The devolution of control of juveniles from state facilities to counties and the investment in community-based programs have provided the opportunity for private non-profit and for-profit organizations to become more involved in the juvenile justice system. The ascendant commitment to fiscal conservatism in the state has undermined the reform efforts and created incentives for privatization. For all the enthusiasm that Texas is a model of juvenile justice reform, the picture on the ground suggests the state has done very little to tackle the most punitive practices in its institutions. The new Texas model is one of devolution, privatization and harsh penalties for juveniles deemed the “worst of the worst.”

III. Conclusion

The Texas case illustrates some of the consequences of justice system devolution that a number of states are making in their juvenile justice and adult criminal justice systems. Nationwide, the number of juveniles sent to state institutions is declining (Hockenberry, Sickmund & Sladky, 2015). While there are unique features of Texas that constrain possibilities for reform, the lesson of the consequences of these legislative changes is more universal. Strategies of decarceration that chip away at a small segment
of the offenders caught up in the system (misdemeanor offenders) and relocate rather than change their punishment do little to substantially curb the negative effects of mass incarceration. Additionally, when these legislative changes are accompanied by increasing investment in county-led “community-based programs,” they “widen the net” and entrench punitive practices at the local level. The following two chapters on California and Pennsylvania further highlight the ways in which local context shapes reforms, but also how the core reform strategy of devolution and privatization has significant limitations and negative consequences.

The effort to put Texas in line with the majority of other states and the constitutional requirements of the Supreme Court reflects a willingness in the state to make changes. However, this case study on Texas casts doubt as to whether these cross state comparisons on particular and narrow measures best capture the reality on the ground for Texas juveniles. The common sense wisdom is that a juvenile facility is better than an adult facility, but this frame glosses over the real and lasting problems of abuse, violence and punitiveness in juvenile facilities (both at the state and county level). This frame of reference also attempts to carve out one more exceptional population from the adverse effects of adult prisons rather than tackle head on why the experience of time inside those facilities is so damaging.

Policies to eliminate LWOP sentences, to “raise the age” and to remove juveniles from state facilities are well intended, but if they are not part of a bigger vision of reform they do very little to tackle the core problems of mass incarceration. As scholars turn to analyzing the effects of reforms and efforts at decarceration it is important to keep in
mind these questions about relative versus absolute improvements. Attention to the discrepancies between intent and outcomes is best achieved through on the ground studies that take seriously how punitive policies are often fragmented, multi-dimensional and contradictory (Barker, 2009).

The following chapter turns to a much different context. The state of California has some of the most progressive prison rights groups in the country, a stark contrast to the conservative criminal justice reform movement in Texas. The different timeline for reforms and the unique historical and political development of California’s juvenile justice system provides important comparisons of the role of institutional and ideological changes over time. The Golden State took a different path to building up its enormous juvenile justice system, but faces some of the same challenges and limitations as Texas in restructuring and reforming the system through similar tactics of the “community-based” movement.

Appendix I.

Table 2. Progressive Sanctions Guidelines

<table>
<thead>
<tr>
<th>Offense Classification</th>
<th>Recommended Sanction</th>
<th>Level</th>
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<tbody>
<tr>
<td>Class C Misdemeanor and CINS offenses</td>
<td>Supervisory Caution</td>
<td>Level 1</td>
</tr>
<tr>
<td>Class A or B Misdemeanor (no weapon involvement) Delinquent Conduct violations of court order/contempt of court</td>
<td>Deferred Prosecution</td>
<td>Level 2</td>
</tr>
<tr>
<td>Any Misdemeanor involving weapon use State Jail Felony Third Degree Felony</td>
<td>Court Ordered Probation</td>
<td>Level 3</td>
</tr>
<tr>
<td>Second Degree Felony</td>
<td>Intensive Supervision plus Probation</td>
<td>Level 4</td>
</tr>
<tr>
<td>First Degree Felony, not involving a deadly weapon or serious bodily injury</td>
<td>Residential Placement plus Probation</td>
<td>Level 5</td>
</tr>
<tr>
<td>First Degree Felony involving the use of a</td>
<td>Commitment to TYC</td>
<td>Level 6</td>
</tr>
</tbody>
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deadly weapon or serious bodily injury; Aggravated Controlled Substance Felony

| Capital Offense, First Degree Felony involving the use of a deadly weapon or serious bodily injury; Aggravated Controlled Substance Felony | Determinate Sentence to TYC | Level 7 |


Appendix II.

Table 3. Stipulations of Senate Bill 103

<table>
<thead>
<tr>
<th>Changes to TYC Admissions</th>
<th>Restricts committing a youth to TYC for misdemeanor or violation of misdemeanor probation.</th>
<th>Prohibits TYC from housing, a youth younger than 15 years of age in the same dormitory as a person who is 17 years of age or older.</th>
<th>TYC is required to consider the proximity of the residence of a youth's family in determining in which TYC facility to place the youth.</th>
<th>Lowers the age at which a youth must be either released or transferred for confinement in the Texas Department of Criminal Justice from 21 years of age to 19 years of age.</th>
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<tbody>
<tr>
<td>Changes to TYC Operations</td>
<td>Establish a minimum length of stay for each youth who is committed without a determinate sentence.</td>
<td>Perform certain medical, treatment history, psychological, and psychiatric examinations on youths as soon as possible after commitment.</td>
<td>Develop a reentry and reintegration plan for each youth in custody to ensure continuity of care from entry to final discharge.</td>
<td>Establish a panel to determine whether a youth who has served the minimum length of stay should be discharged, released under supervision, or have the stay in TYC custody extended.</td>
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<tr>
<td>Changes to Counties</td>
<td>Requires a juvenile board in certain populous counties to implement a community-based program in which a youth with multiple offenses may be required to participate by the juvenile court.</td>
<td>The Texas Juvenile Probation Commission must establish guidelines and provide grants for the community-based programs and must report to the governor and legislature on the implementation, effectiveness, and cost of the programs.</td>
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<tr>
<td>Changes to Management of TYC and Oversight</td>
<td>Replace the governing board with an executive commissioner, who is appointed by the governor subject to senate confirmation and advised by a newly formed nine-member advisory board.</td>
<td>Creates the Office of Independent Ombudsman of TYC as a state agency to investigate, evaluate, and secure the rights of youths committed to TYC.</td>
<td>Establishes the office of inspector general in TYC to investigate crimes committed by TYC employees.</td>
<td>Expands the audit authority of the state auditor to include the entire commission.</td>
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<tr>
<td>Changes to Guards</td>
<td>Set out training and assignment standards for juvenile correctional officers.</td>
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<td></td>
<td>Maintain a ratio of not less than one officer performing direct supervisory duties for every 12 youths.</td>
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<tr>
<td>Changes to Punishment of Incidents of Abuse</td>
<td>Adopt a zero-tolerance policy concerning the detection, prevention, and punishment of sexual abuse.</td>
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<td></td>
<td>Enhances the punishment for the offense of improper sexual activity with a person in custody to a second degree felony if the offense is committed against a juvenile offender.</td>
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<tr>
<td>Other</td>
<td>Sets out a parent's bill of rights</td>
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CHAPTER 3

Possibilities for Decarceration in California

We’ve got to teach the children that they must live in the world as it is.

-Karl Holton, early 1940’s, the first Director of the California Youth Authority, describing his philosophy for modernizing and humanizing juvenile corrections (Deutsch, 1950).

Lasting changes can only result from internal choices made by the young people themselves.

-Annie E. Casey Foundation, 2010, values and philosophy of the reform model pursued in counties across California (Mendel, 2010).

For more than two decades, California has been blazing the trail of juvenile justice reform, shutting down some of the largest juvenile prisons in the world and dramatically reducing the number of juveniles held in state facilities. In 1995, the eleven training schools in the state, designed for a total capacity of 6,700, reached a population of nearly 10,000 youth. The state system has steadily declined since this peak. California has closed down all but four of its state-run correctional facilities. The population of juveniles in these institutions is down to about 1,000 (Macallair et al., 2011).

Representatives from key reform organizations and major national newspapers have praised the changes made in California. Sue Burrell (2014) from the Youth Law Center has congratulated the California State Legislature for “changing a broken juvenile justice system and setting it off in a better direction.” A composite report from the John Jay College of Criminal Justice identifies California’s juvenile justice realignment approach as the most promising in a wide field of reform efforts. The authors state,
“California realignment was the most successful statewide reform effort to date” (Butts & Evans, 2011). A 2012 editorial in The New York Times asserts, “California did it [juvenile justice reform] the right way: providing generous financing to the counties for therapeutically based juvenile offender programs.” The state has been called a “national leader,” and a “pioneer,” in juvenile justice policy (Thompson, 2013). Marc Levin, a prominent leader of criminal justice reforms in Texas, holds California up as the model in a major sea change. He characterizes developments in California as “a shift away from saying ‘Let’s just lock up these youths and throw away the key’” (Thompson, 2013).

The chapter draws from an extensive newspaper analysis, the text of legislation, bill analyses, state research publications and literature from key juvenile advocacy groups. As in the Texas case, despite the differing context and timing of the reforms, the community-based reforms in California have contributed to the expansion of county-run punitive forms of detention and probation. Expansion at the county level has occurred without adequate oversight and has not offered fundamental alternatives to the problems in state-run institutions. The community-based reforms devolve control to the county level and expand the role of the private-sector in carrying out the functions of the juvenile justice system. In California devolution has occurred alongside, rather than replaced, major “get tough” initiatives.

The first section of the chapter begins with a brief account of the historical development of the juvenile justice system in California. This background suggests that there has been a cyclical pattern of reorganizing the juvenile justice system and fashioning new methods of behavior modification that do not effectively prevent institutional
expansion and abuse scandals in the long run. As the quotes opening this chapter exemplify, spanning over 70 years apart, juvenile justice policy in California is premised on “fixing” delinquent youth. Reforms continue to be channeled into changing the juvenile offenders themselves, not the environment they live in. After delineating the historical context, Part II analyzes the landmark 2007 legislation to reform the juvenile justice system in California. It details the major political actors and non-profit organizations that pushed through the reform platform. The subsequent sections analyze the consequences of this chosen reform model with respect to: devolution and county expansion, conditions in juvenile facilities at the county level, privatization, ideological continuity, and an analysis of the reform landscape in California.

The political contexts in California and Texas significantly differ in the relative power of the two political parties and in the political leanings of advocacy organizations. The Republican Party has dominated Texas’s state government since the mid-1990s and is at the center of the conservative justice reform movement. California has some of the most progressive prisoner rights groups in the country and has had a Democrat controlled legislature since 1975. However, both states have passed similar types of devolution policies, which demonstrates a remarkable ideological and partisan convergence in support for the community-based movement and market-based solutions to the problems of the juvenile justice system.

By the 1980s, despite very different historic paths, both Texas and California passed punitive laws and saw dramatic increases in state incarceration rates. In the adult system, the state of Texas was delayed compared to California in having a major prison
In the juvenile system both Texas and California ratcheted up punitive responses to youth crime in the 1980s and 1990s. While the Democratic control of California’s state congress meant certain reform measures were more easily passed in California, by the 1990s Democrats were just as invested in flexing their tough on crime credentials as Republican candidates. From 1988 to 2013 California initiated 200 new pieces of legislation that increased punishment for criminal offenders (Ah Kwon 2013, 40).

The historical perspective of both states demonstrates that over time efforts at realignment and devolution have coexisted with “get tough” measures. Bolstering county-level institutions and increasing county control over juveniles have been complementary policies to “get tough” policies, not an alternative or fundamental shift away from punitiveness. In California, the two strategies have been folded together for decades of periods of episodic reform. There are stronger forces for correctional reform in California: prominent prison reform activist organizations and a Democrat-controlled state legislature. Therefore, the state has even more frequently than Texas over time...

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64 For an extended account of the different timing of the prison boom in California and Texas, see Michael C. Campbell’s dissertation, “Agents of Change: Law Enforcement, Prisons and Politics in Texas and California” in which he explores the role of socioeconomic changes and the role of law enforcement groups in carceral expansion. He argues the prison boom occurred in these states during periods of economic volatility in which voters responded to politicians’ calls to punish criminal wrongdoers.
65 In the 1990 gubernatorial campaign, Democratic candidate Dianne Feinstein ran a tough on crime campaign, as did her Republican counterpart Pete Wilson (who went on to win the election). Both candidates supported Proposition 115, the Crime Victims Reform Act which established juvenile life without parole sentences for 1st degree murder (Hicks, 1990).
66 Proposition 8, the Victims’ Bill of Rights passed in 1981. In 1987 a database of gang suspects, CALGANG was established and in 1988 California’s Street Terrorism Enforcement and Prevention Act (STEP) passed. In 1990 the state passed Proposition 115 establishing life without the possibility of parole for juveniles. And, at this time the state launched the largest prison-building project in the history of the world.
67 The Democratic Party has controlled both the state senate and state assembly every year from 1975 to present (except in 1995-6 when Republicans controlled the state assembly).
invested in “community-based” reform efforts. Bolstering county-level institutions has not curtailed overall incarceration rates, but has actually been an important contribution to expanding the carceral state. In 2007, when both California and Texas passed legislation to pursue devolution, California, which had already been steadily devolving its juvenile justice system since 1996, had a higher rate of incarceration for juveniles than Texas.68

I. Juvenile Justice Development 1900s-2000s

A brief overview of the major episodic reconfigurations of the juvenile justice system in California suggest that reforms that situate the problem of juvenile delinquency as the individual deficiencies of youth fail in the long run to improve the treatment of juveniles and fail to decrease levels of punitive institutionalization. The early development of the juvenile justice system in California included devolving control to the local level by bolstering county level institutions and then creating the centralized state-run California Youth Authority both as efforts to reform the treatment of youth in the justice system. Changing the location of where juveniles were held in both instances of devolution and centralization neither solved “delinquency” nor the abuses of a system of incapacitation. The continual turn to better and newer strategies for how to manage youth was not incompatible with the birth of the state-run prison system. This suggests that reinvigorating principles of reformation, rehabilitation and treatment is not necessarily a

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68 In 2007, the rate of juveniles in residential placement in Texas was 29 per 100,000. In California the rate was 38 per 100,000 (Calculated using Sickmund et al., 2015 and Puzzanchera, Sladky & Kang 2015).
counterpoint to the use of large state-run institutions. In fact, the same justification for closing state institutions in 2007 was used in 1941 for creating the CYA.

The very origination of the juvenile court in California was a form of devolution as an attempt to remove juveniles from state-run adult prisons. A goal of progressive era reforms and the creation of the first juvenile court of law in California was to separate juveniles from adults. In pursuit of this goal, the state required all counties to maintain homes for youth under juvenile jurisdiction. In order to move juveniles out of adult facilities, the state expanded institutional capacity at the county level (Macallair, 2003, p. 12). With the creation of California’s juvenile court, the state developed state reform schools for youth, which would become the predecessors of state-run juvenile prisons; however, counties assumed the primary burden for providing juvenile court services (Macallair et al., 2011). The idea behind the creation of the juvenile court and expanding county control was that youth would receive individualized treatment, which was unavailable in the adult court. This goal gave rise to the probation profession. Probation officers were previously volunteers or employed by non-profits and assigned to the court, but through the development of county juvenile institutions, officers became a professionalized staff (Macallair et al., 2011).

Throughout the United States, the creation of juvenile courts was considered a progressive step forward and a much needed departure and “fix” to the previous system of detaining youth with adults and subjecting them to the same punitive response as

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69 More than 300 inmates at San Quentin were under the age of 16 when the juvenile court law was passed (Macallair, 2003).
adults (Platt, 1977; Polsky, 1993). Yet, by the 1940s California had the highest juvenile detention rate in the country, where abused and neglected children were held indiscriminately with “delinquents” in a wide constellation of county-run institutions and state-run reform schools (Macallair, 2003). Widespread incidents of abuse in the state-run juvenile prisons culminated into a special grand jury report, which detailed the brutal treatment of youth (Macallair, 1996).70 In 1942, two young men at the Whittier and Preston state-run reform schools committed suicide.71 The scandal of so many cases of abuse created the impetus to reorganize the control of the schools. Republican governor Earl Warren created a new agency, the California Youth Authority (CYA), to control the three state-run juvenile reform schools, believing that a more modern, centralized style of management would finally be the key to ending decades of abuse and scandals (Macallair et al., 2011).

The main purpose of the CYA was “social protection” (Lemert, 1970, p. 49). When Governor Warren signed into law the Youth Authority Act of 1941 he declared it, “one of the greatest social experiments ever undertaken in this state” (Deutsch, 1950, p. 115). The act gave CYA supervision over all delinquent children under 21 years of age, control over state reform schools, and power to assist county and city authorities to set up local delinquency prevention and treatment programs (Deutsch, 1950, p. 115). Karl Holton, the first CYA chairman and director, took direct aim at the large reform schools, declaring he would never build another Preston or Whittier (Deutsch, 1950, p. 116).

70 Examples in the report included boys having their ribs broken, being kicked and beaten. One boy, Benjamin Maphtali was whipped until his shirt stuck to the wounds on his back (Macallair, 1996).
71 Whittier State School closed in 2005 and the Preston School of Industry remains open today
Instead Holton pioneered community coordinating councils and the proliferation of forestry camps based on a non-punitive philosophy for delinquent boys. Conceptualizing the problem of abuses as a product of size and institutional philosophy, these alternatives were supposed to be small, camp-like schools. Yet, already by 1950, all of the new camps exceeded the design of 50-60 youth facilities, institutionalization rates did not decline, and abuse scandals continued (Deutsch, 1950).

Holton promoted benevolent goals for the juvenile justice system, but he did not challenge structural forces and maintained that the problem with delinquency existed in the deficient behavior of boys. Therefore, much like the reforms today, the solution was to find better techniques to modify the behavior of juvenile delinquents. A strong belief in the power of science to identify causes of delinquency and to cure delinquency animated the policy reforms and had particularly harmful repercussions for Mexican and African American youth (Chávez-García, 2012). The reforms ultimately expanded institutionalization, pathologized criminality, curtailed structural demands on the state and continued abuses and the marginalization of youth.

Abuse scandals persisted after Holton’s reforms. In 1947, California received nationwide publicity from exposés of the destructive conditions of detention in the state (Lemert, 1970, p. 91). In response, California developed a commission to address the problem. In 1949, the California Special Crime Study Commission on Juvenile Justice published recommendations for expanding CYA powers in treatment and prevention.

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72 One particularly notable case was the Sleepy Lagoon trial in 1942 where seventeen boys were convicted of murder for the unsolved murder case of Jose Diaz. These boys were convicted of a crime they did not commit and they were identified as biologically criminal. Expert witnesses at the trial testified that boys’ Indian or Aztec heritage predisposed them to violence (Chávez-García, 2012, p. 2).
aspects of juvenile and youth delinquency. Yet again, the solution was to improve upon techniques of behavior modification and reshape not eliminate punitive control over the lives of juveniles. Expansion of control was the solution despite the fact that in 1952 the Governor’s Advisory Committee on Children and Youth, funded by the Rosenberg Foundation, reported that 41% of juveniles in California were being unnecessarily detained (Lemert, 1970, p. 91).

In the 1960s under the leadership of Allen Breed, “the CYA pioneered work on offender classification, expanded vocational and educational programs, virtually created the enterprise of reentry, prevention, and embarked on a major program to subsidize communities to treat youthful offenders at the local level” (Krisberg 2011). California was the leader in these innovations and professionals from around the world came to the state to learn about them (Krisberg 2011). In 1961 the CYA piloted the Community Treatment Program, which pushed to place wards in community settings. In 1967, there were four times as many delinquents sent to community programs compared to those sent to state reformatories (Scull, 1984). The ultimate outcome of the program was an increasing use of detention to “treat” those who failed in community programs (Klein, 1979, p. 150). The Community Treatment Program was promised to be cheaper and more effective and was lauded by President Johnson’s Commission on Law Enforcement and the Administration of Justice Commission in 1967 (Greenwood et al., 1983, p. 72; Smith, 1972, p. iii). However, according to an extensive report submitted to the state legislature in 1983, the program was punitive, overall more costly and did not reduce rates of
Despite the great promise of the 1960s reforms, population numbers continued to rise, which perpetuated the bad conditions of juvenile institutions (Macallair et al., 2011). By the mid-1960s, it was clear that the CYA did little to improve the institutional life experienced by juveniles and the number of detained juveniles continued to grow. At this time, counties could commit juveniles to the CYA without bearing any financial or managerial burden (Macallair et al., 2011). Almost identical to the realignment bill passed in 2007, in 1965 California pioneered an initiative to prevent the ease of such county-to-state transfers. In 1965 the state passed the Probation Subsidy Act, which financially incentivized counties to maintain youth at the local level. The legislation worked for shifting control, and between 1965 and 1976 commitments to state institutions significantly declined, allowing California to close three state institutions (Macallair et al., 2011).

The Probation Subsidy Act came under attack from conservative critics and law enforcement interest groups. Both actors claimed the community-corrective services were too lenient and referred to the subsidies as “blood money” (Warren, 2010). In response, the probation subsidy program was replaced with a system of direct county payments that did not mandate counties to reduce correctional commitments. Essentially the replacement wiped away the heart of the subsidy program making it ineffectual.

The career cost of CTP wards was about 50 percent greater than that of institutionalized wards (Greenwood et al., 1983, p. 76). Despite goals of reducing detention, CTP, in practice, frequently used detention as an “important intervention strategy.” By 1968, 89 percent of CTP wards were detained temporarily. CTP parole agents arrested and detained youth for noncriminal offenses more often than regular parole agents (Greenwood et al., 1983, p. 75).
The Probation Subsidy Act initially did reduce the number of youth sent to state run prisons. This resulted in an increase in the length of time juveniles were held in CYA institutions. Many thought this was because the reforms had ensured the “most dangerous” were now being sent to state institutions, but in reality, youth in state run institutions were no more serious offenders than previous to the subsidy act (Austin & Krisberg, 1981). Meanwhile counties used subsidy funds to construct local detention and correctional facilities. The probation subsidy program ultimately “evolved from a decarceration reform movement into a revenue-sharing program for local juvenile justice agencies” (Austin & Krisberg, 1981, p. 172).

The Probation Subsidy Act from 1965 did not challenge the punitive aspects of the justice system or in any way work to alter fundamentally the patterns of juvenile justice policy. Much like the reforms today, it was primarily a budget-centric reform rather than a shift in philosophy, where moving juveniles from the state to county level was intended to cut costs for the state (Scull, 1984). The reforms did not challenge the use of punitive policies and subsequently the legislature ratcheted up the punitive response to juvenile delinquency in the wake of the subsidy act’s failure.

Like Texas, California was a spotlighted location for federally backed 1960s juvenile justice reforms. The state was repeatedly held up as the model for reforms to the juvenile justice system. In 1974, the passage of the Juvenile Justice Delinquency Prevention Act at the federal level led to a drop in arrests for status offenses, such as truancy, running away or violating curfew in California. However, during the same period of time, arrests of juveniles for minor crimes climbed (Krisberg et. al, 1986, p. 108).

California also had a period of progressivism in its state Supreme Court that Texas never had. In 1983 California’s Supreme Court outlawed life without parole sentences for juveniles, claiming that this constituted a cruel and unusual punishment. Yet, between 1986 and 1995 the rate of arrests for juveniles committing violent offenses went up 54% and punishments for these offenses dramatically increased (Raymond, 2000, p. 253). Subsequently the California Supreme Court shifted to the right, as a backlash against the Bird Court led to the appointment of several conservative, business friendly and pro-law enforcement justices (Culver, 1997).

A major local jail construction program in the 1980s was a key contributor to expanding the juvenile justice system in California. Over the decade, the legislature and voters approved five state bond measures to generate more than $2.1 billion in state bond revenue and local matching funds to expand county juvenile and adult jails (California State Sheriffs’ Association, 2006, p. 33). In 1988 alone, voters approved the County Correctional Facility Capital Expenditure and Youth Facility Bond Act, which provided $500 million to fund county correctional facilities. At the time the state-run juvenile

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74 Rose Bird was a California Supreme Court justice from 1977 to 1987 and was an outspoken critic of the death penalty.

75 The ballot initiative passed 54.75% yes to 45.25% no. Paying back the $500 million in bonds at an interest rate of 7.5% would at the end of 20 years cost the state $900 million. Further, people who buy the bonds are not required to pay state income tax on the interest they earn. If California taxpayers bought these bonds instead of making taxable investments the state lost tax revenue. For an extended account of the role of bond funding in expanding prisons in California, see Gilmore (2007).
prisons were at 160% capacity (Lerner, 1986, p. 11). The proposition received bipartisan support in the legislature and was supported by local law enforcement, county officials and community groups. The only opponents of the initiative were members of the Libertarian Party of California, who argued the initiative was too burdensome on taxpayers and an overreach of government authority (State of California Secretary of State, 1988). As California moved to invest public funds into prison and jail construction and retrench social services, the only opposition to the carceral buildup was libertarian anti-statist forces. These advocates opposed all public spending so they did not draw a connection between the erosion of public services and the expansion of the carceral state (Gilmore, 2007). The jail bonds measures from the 1980s illustrate that both political parties and major advocacy organizations have long supported county level institutional expansion as a strategy for making corrections more “efficient” and to protect taxpayers.

By 1991 California had the nation’s highest pre-trial detention rate for juveniles in the country and was responsible for incarcerating 30% of the nation’s youth in detention centers (Schwartz & Barton, 1994, p. 47). By the 1990s, 45 of the 58 counties in the state had a detention facility, many of which were old and had deteriorating structures (Schwartz & Barton, 1994). Bolstering county institutional capacity continued through the 1990s as the state juvenile justice population continued to rise and reach its peak high level. With the erosion of the subsidy program and the 1980s conservative tide that took over juvenile justice policy, state-controlled populations rose again. Counties committed youth to state detention centers at widely varying rates and by 1995 the population of the CYA reached an all-time high (Macallair, 2007).
In 1996, the state returned yet again to a realignment strategy. That year, the legislature passed Chapter 6, Statutes of 1996 (SB 681), which established a sliding scale fee to counties committing wards to the state. Senate minority leader, Republican Rob Hurtt authored the legislation. Under this sliding scale legislation, counties were required to pay a share of the state’s costs to house each ward sent to DJJ (then called the California Youth Authority), with a higher share of costs paid for lower–level offenders than for higher–level offenders. Senate Bill 681 was designed to incentivize counties to manage less serious offenders locally and decrease state costs (Legislative Analyst’s Office, 2012).

The fiscal incentives of SB 681 were effective in reducing placements in state-run prisons. Much like after the passage of the 1965 Probation Subsidy Act, there was a steady decline of commitments to state institutions after 1996. However, the reforms in 1996 did not curtail the trend of seeking harsher and more punitive policies for juveniles. A 2000 ballot initiative, Proposition 21, titled the Gang Violence and Juvenile Crime Prevention Act (GVJCPA), passed and made significant changes to the juvenile justice system. The act expanded the circumstances in which juveniles could be charged as adults and sentenced to adult prisons, expanded the death penalty and life without parole sentences and expanded three-strikes law. The act also prohibited sealing juvenile records in a variety of instances, rejected rehabilitation, promoted zero tolerance policies for gang crimes, instituted gang enhancement measures to increase sentences, lowered criminal responsibility for a number of charges to 14 years of age, and increased detentions before hearings. The California District Attorney Association as well as corporate donors and an
army of petitioners drafted the proposition and supported its passage (Raymond, 2000, p. 311).\textsuperscript{76}

Proposition 21 not only increased the punitiveness of the state’s response to juvenile crime, but it also changed the way state institutions operated and contributed to abusive conditions of confinement that spurred the mid-2000s lawsuits directed at the CYA. After Proposition 21 passed, correctional officers in juvenile facilities shifted from wearing civilian clothing to being uniformed and armed with pepper spray and tear gas. The legislation pushed the focus of the facilities towards custody and use of force to control youth, and further moved away from education and rehabilitative programs (Hancock, 2008). Conditions inside state-run prisons also deteriorated after 2000, with unprecedented levels of violence and long facility lockdowns where youth were confined to their cells 23-hours a day for months at a time (Hancock, 2008). The 2000 policies layered on top of the 1996 reforms resulting over this time period in both expanding capacity at the local level and ratcheting up the most punitive policies at the state level.

California successfully closed state-run institutions, but it also continued to expand and create policies that increased penalties and the criminalization of juvenile behaviors. In 2001, Democratic governor Gray Davis spent $12 million to create and run a boot camp-type academy.\textsuperscript{77} The state also continued to expand county level expansion. Between 1997 and 2007 the state added 5,389 juvenile facility beds and replaced 2,221

\textsuperscript{76} The new laws substantially increased prosecutorial power.
\textsuperscript{77} Turning Point Academy is a six-month residential program offered through the California National Guard Camp at San Luis Obispo. The Academy was established to house 160 first time offenders who have committed a firearms related offense at school or at a school event off school grounds (Children’s Advocacy Institute, 2005).
outmoded juvenile beds at the county level (California State Sheriffs’ Association, 2006, p. 30).  

Beyond the major 2000 GJVCPA law, additional policies have increased sanctions and punishment for gang-related offenses that juveniles typically are most affected by.  

Gang injunctions and increased penalties for gang-related offenses are among the harshest ways that California law handles juvenile offenders. Further, the fear of gangs and the history of legislation passed to solve the gang problem are closely tied into the passage of “get tough” laws. The persistent passage of punitive gang laws signals the perpetuation of the “get tough” ethic amidst an era of realignment and reform. Thus, while the population of juveniles is significantly shifting away from state institutions, the state’s response to juvenile offending is largely going unchanged.

The political atmosphere was ripe for change in the mid-2000s when California was again the quintessential example of all the ugly consequences of a “get tough” boom: overcrowded facilities, widespread documentation of abuses, and a financial crisis. This was not the first time California had found itself as the leader of punishment and corruption in juvenile facilities and in desperate need of change. The political context, political actors and discursive field of the era suggest that the shape of these transformations was limited to a narrow conception of reform. Just like the conservative “get tough” reforms of the 1990s and early 2000s, the “community-based” reform agenda

79 The state has passed seven pieces of legislation targeted at gang members between 2009 and 2013. See Appendix II for a table of the laws passed during this time period.
spurred again in 2007 took the existing social order as a given. This path of reform continues to support a narrow vision of the treatment and handling of juvenile offending.

The following graph shows that the state has steadily devolved control from the state to county level; each year the number of youth held in state-run institutions has dropped. However, California has simultaneously passed “get tough” legislation, most notably Proposition 21 during this same time period of a downward trend in state incarceration. In 2007 when the state had already significantly reduced the population of youth held in state-run facilities, California still had overall (combining county and state commitments) the highest number of youths in residential placement in the entire country, twice as many as the second highest state, Texas (Sickmund et al., 2015)

Graph 6. State-Run Prison Population

Data compiled from (Commonweal, 2015).
Context for 2007 Reforms

The outcome of the combination of devolution initiatives as well as punitive ballot measures and laws passed by the legislature through the 1990s and early 2000s resulted in California continuing to have a high rate of youth incarceration. Yet, despite having a high juvenile incarceration rate, the vast majority of youth processed in the juvenile justice system are not committed to a state-run secure facility. In 2005, 0.3% of juvenile arrests resulted in a juvenile being committed to a state-run prison (Jannetta & Lin, 2007). California’s juvenile justice system is decentralized and relies heavily, compared to other states, on local custody for committed juveniles.\(^{80}\) In 2005, 108,560 juveniles were booked into juvenile halls, an average of 9,046 youth per month (California State Sheriffs’ Association, 2006).

Of the youth held at the county level in secure facilities, the vast majority (73.5%) are charged with a non-violent offense. Of youth committed to state-run prisons, 42% are charged with non-violent offenses (Jannetta & Lin, 2007). Counties detain a greater number of lower-level offenders in secure confinement than state-run prisons.\(^{81}\) In 2005, the number of youth held in county level detention centers, camps, ranches and other residential placements was about 4.5 times greater than the number of youth sent to state

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\(^{80}\) The local juvenile detention system consists of 125 juvenile halls (the equivalent of a county jail for minors) and camps. In 2005, there were 13,575 beds in local juvenile facilities (8,182 in juvenile halls, 5,393 in local camps) (California State Sheriffs’ Association, 2006).

\(^{81}\) See Appendix III for a table of the breakdown of offense types for juveniles committed to the DJJ and to secure county facilities.
run prisons. Yet, this larger population is also much less likely to be institutionalized for a violent crime. A rough estimate putting these two sources of data together suggests that as of 2005, of all youth incarcerated in California for a non-violent offense, about 90% of them were held in county-run institutions. This indicates that efforts to reduce the number of youth incarcerated for minor offenses would best be targeted at reducing incarceration rates and the number of secure facilities at the county level. However, the 2007 reforms were targeted at ameliorating the problems at state-level institutions and resulted in expanding and continuing institutionalization at the county level.

The political impetus for the 2007 reforms and why they were narrowly targeted at the state level began in the late 1990s and early 2000s when the state empowered the Office of Inspector General to investigate conditions in California Youth Authority (CYA) institutions (state-run prisons). The investigations along with media exposés of abuses in the institutions spurred legislative hearings about the conditions of confinement for youth in California. The complaints and documentations of abuse came to a head in the extensive lawsuit brought against the CYA in the Farrell v. Cate case in 2004 (Krisberg, 2011).

The Youth Law Center, a public interest law firm founded in 1978 in San Francisco, California put forth the Farrell v. Cate (2004) lawsuit. The lawsuit was the culmination of a long list of accusations and lawsuits filed against the CYA. Starting in 1999, the Youth Law Center investigated allegations of CYA wards being denied food as

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82 10,366 youth at the county level, 2,390 at the state level.
83 Matthew Cate was appointed the inspector general for the California Department of Corrections and Rehabilitation in 2004. He has no relationship to the author.
punishment. In the same year reports that Stanford University was using CYA wards in psychotropic drug experiments were released and Inspector General Steve White released a report on “Friday Night Fights” (where juveniles were forced by guards to fight one another) (“Teen Inmates,” 1999; Gladstone, 1999). Reports were filed that youth at Paso Robles Youth Correctional Facility were being handcuffed at all times of the day and for several days at a time (Gladstone & Rainey, 1999).

The following year, the CYA faced more accusations relating to incidents of sexual abuse and improper use of prescription drugs on detained youth. A comprehensive report on the juvenile justice system’s solitary confinement program was released, and Inspector General Steve White testified in a fact finding hearing that CYA was in utter chaos and that it was “impossible to overstate the problem” (Center on Juvenile and Criminal Justice, 2013). Additionally, from 1996 to 2003, thirteen detained youth committed suicide. The mounting evidence led to the 2004 *Farrell v. Cate* case and in the same year Republican governor Arnold Schwarzenegger agreed to a settlement in the lawsuit, which created the mandated implementation of the “Safety and Welfare Remedial Plan” (Krisberg, 2011).

The core requirement of the consent decree in 2004 was that the CYA would reform its system into a rehabilitative model. The state promised to institute structural changes by implementing modern correctional practices (Macallair, 2007). The effort to make structural changes led in 2005 to consolidating management by dissolving the CYA as an independent agency and creating the Department of Juvenile Justice (DJJ) within the adult agency, California Department of Corrections and Rehabilitation (CDCR). After
the administrative restructuring the state hired outside experts to help redesign a new institutional system. The legislature added $100 million to the DJJ budget to go towards improving education and mental health services, and to increase staffing ratios (Macallair, 2007).

Yet, four years after the consent decree the state had not adequately complied with the requirements of the lawsuit (Macallair, Males & McCracken, 2009, p. 17). For example, in the four years following the lawsuit, DJJ modified its solitary confinement practices from a 23-and-1 standard (23 hours inside a concrete cell with no window to one hour outside the cell) to a 21-and-3 standard (Books Not Bars, 2008). Independent investigations by the Inspector General’s office reported that the state failed to meet its requirements under the consent decree and to do so it would need to spend $250,000 per inmate. In 2008, the state allocated $488 million to be spent on reforming the system despite continuing to fall well short of making adequate changes to comply with the lawsuit.

In this context, many reform organizations, politicians, and the governor sought realignment as a viable option to circumvent the Farrell case requirements and reform the juvenile justice system. The Center on Juvenile and Criminal Justice, Books Not Bars, and the Little Hoover Commission all recommended the state abolish DJJ and invest its resources in “evidence based, regionalized care” (Books Not Bars, 2008). The state seemed incapable of reforming the CYA institutions and the reform effort was costing the state a lot of money. Devolving control to counties was framed as the more cost effective choice that would also benefit the treatment of juveniles.
In 2007, the influential Senate Bill 81, California’s Youthful Offender Block Grant, was passed and signed into law. The block grants provided funding to probation departments statewide to expand the capacity of their juvenile halls and ranches and continued the movement of youth from state facilities to county control. More than $100 million was allocated in the bill to go to counties every year to help them build new facilities or set up new rehabilitation programs (Sterngold, 2007). Counties were given greater than $100,000 per youth for managing youth in community-based programs (National Juvenile Justice Network, 2013, p. 24). The growth of county institutional capacity under the block grant program resulted in the completion of more than 73 new or renovated facilities, ranging from high-security juvenile halls to medium-security ranches and camps by 2009 (Macallair et al., 2011). In this new model of the juvenile justice system, nonpublic sector organizations assumed a dominant role in the actual delivery of services, while the public sector assumed the responsibility of oversight in the delivery of these services (Macallair et al., 2011).

Senate Bill 81 shifted the emphasis from a casework model to a brokerage-based model. The older casework model was dependent on probation officers supervising youth in the community. Under the new arrangement, probation departments were directed to expand their ability to contract with nongovernmental organizations (NGOs) (Macallair, 2007, p. 3). Instead of delivering direct services, the brokerage system uses contractual agreements with non-profit agencies that deliver a variety of services (Macallair, 2007, p. 3). The realignment legislation of 2007 contributed to reducing California’s reliance on
state institutions and to instead house and monitor juvenile delinquents at the county level.

**Key Political Actors and Interests**

Amongst the diverse actors supporting Senate Bill 81 and realignment more broadly, there was a prevailing commitment to the goal of “cost savings” in the California state government. From conservative actors, the desire to save money and improve efficiency was part of broad ideological goals and commitments. Those on the left and the Democratic Party have been just as committed to this line of reasoning and also doubled down on the goal of cost-savings through arguments based on critiques of the justice system more broadly. As one assembly member described the 2007 legislative session, “the budget crisis hung like a cloud over everything” (Larson, 2007). Further, the large non-profits active in California (to be examined in greater detail later in this chapter), who have been significant leaders of the reforms, have been deeply committed to principles of cost-savings and economic efficiency, particularly achieved through public/private partnerships.

The perception that housing juveniles in the community is better for juveniles and cheaper helped to garner support for those with a wide range of interests in juvenile reforms. Upon releasing funding for the block grant, Governor Schwarzenegger (2007) asserted: “These new reforms will shift away from uprooting less-serious youthful offenders from their families and support networks, by investing in programs and services in their local communities.” Investing in “community services” has been broadly
accepted as an improvement for juveniles without much consideration of the type of investment.

During the 2007 legislative session, politicians from both sides of the aisle were willing to pass the juvenile justice reforms (which were nearly unanimously approved), but overall, the legislature and the governor did not pass significant progressive legislation or invest in “communities” through the expansion of public services. The governor vetoed the California Dream Act, a number of worker protections and health care reform. The legislature was unable to garner support for Medi-Cal expansion, redistricting reforms or a major library bond (League of Women Voters, 2016; Thompson, 2007). Overall, in part due to both parties’ acquiescence to the looming concerns about the budget crisis – the legislature did very little to address underfunded social provisions and progressive policies. The juvenile justice reforms were not hitched onto a political agenda that called for increased public investment or protections of workers and immigrants and therefore was politically palatable in the political context of 2007.

The twin motivations to save money and improve the treatment of juveniles in the justice system were framed as compatible and best achieved through realignment. The chief probation officers in Los Angeles, Sacramento, San Diego and Tuba counties all agreed that the goals of realignment were “a reduction in juvenile crime, improved

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84 Among some of the legislation vetoed by the governor were bills to expand paid family leave, increase protections from workplace discrimination, pro-union legislation that would help agriculture workers in collective bargaining, mental health parity, condoms in prison. The governor vetoed a single-payer health care bill, subsequently, in 2011-12 the latest attempt to pass single-payer legislation failed by two votes on the Senate floor (Health Care for All, 2016).
services, and reduced costs” (California State Auditor, 2012). It was very successful for the passage and support of realignment to position cost-savings and the welfare of juveniles as synonymous; however, this belies the reality on the ground where these two commitments are not naturally connected. Further, the two may in fact be contradictory. As the Farrell case showed, treating institutionalized juveniles with dignity and a basic level of care costs a great deal of money.

Even organizations more committed to prison reform couch their advocacy in arguments about cost savings and economic efficiency. For example, Brian Elderbroom and Ryan King from the Urban Institute’s Justice Policy Center, write, “the current sentencing and correctional system in California is costly and inefficient and voters would prefer their tax dollars to be spent on education and health care rather than incarceration” (McCauley, 2014). While this perspective points out spending priorities and advocates for investment in education and health care, the critique of the criminal justice system is made on terms of efficiency and the protection of “the taxpayer.” This replicates the very ideological basis that drove punitive policies all through the 1990s and 2000s (HoSang & Cate, 2016).

Another major overarching interest in the juvenile justice reform landscape comes from practitioners on the ground, particularly county law enforcement and juvenile justice professionals, who advocate for greater funding from the state to carry out services and maintain juvenile institutions. For example, a major player in the California justice system, the State Sheriffs’ Association, has repeatedly advocated for the
expansion of facilities at the local level. The association called for a repeat of the major bond grant construction programs from the 1980s. The Sheriffs’ Association has advocated for a proactive “continuous growth” model rather than the “periodic crisis” model that they argue often leads to the cyclical crisis of local institutions getting dangerously overcrowded. In regards to the move towards evidence-based programming, the association stated in a 2006 publication, “correctional facilities, however, are quite literally cast in concrete. They do not – because they cannot—change easily, quickly or cheaply” (25). The State Sheriffs’ Association is one of the entrenched interests at the local level that pushes for expanding institutions. The association has long supported funding local expansion and provided key research and political support for the reform model of realignment.

The continued model of a devolved system of juvenile corrections is the product of this variety of interests in saving money, improving the treatment of juveniles and bolstering county institutions and programs. All three goals have been effectively framed by Californian politicians, reform groups in the state and large non-profits disseminating models for juvenile reforms as compatible and in many ways the “common sense” solution for problems in the juvenile justice system. This model of reform disseminated through the 2007 legislation has had a number of consequences for the development of the juvenile justice system by entrenching punishment at the local level and legitimizing the continued use of punitive policies.

85 In 2006 the association stated, “we will be encouraging our local public safety partners, our corporate partners and our over 42,000 Associate Members to work with us to convince state Legislators that improving and expanding local detention facilities is a top priority” (California State Sheriffs’ Association, 2006, p. 33).
II. Devolution and County-Level Expansion

An ironic and overlooked occurrence in correctional policy is that significant levels of incarceration may persist in “deinstitutionalized systems” (Melton & Pagliocca, 1992, p. 122). California exemplifies this phenomenon largely through the process of near universal approval of community corrections as a substitute for state correctional institutions. While overall institutional commitments at both the state and county level have declined, institutional capacity at the county level has continued to grow largely because of the types of reform being pursued. A large allocation of funds has gone to counties in the state with little oversight and little time for planning how to reshape local institutions to absorb the youth who would have previously been sent to state institutions. Bolstering the budget of local corrections departments is not effectively shrinking the justice system presence in the lives of youths in the state.

The core of the realignment initiative is the establishment of the Youthful Offender Block Grant (YOBG), which provides funds to counties to deliver custody and care to youth offenders who previously would have been committed to the DJJ and to “enhance the capacity of local communities to implement an effective continuum of response to juvenile crime” (California State Legislature, 2007). The block grant gives a $117,000 per capita subsidy based on each county’s share of all annual state felony juvenile adjudications and their share of the statewide at-risk youth population (Senate Bill 81, 2007). In addition to the YOBG, at least $100 million in lease revenue bonds (LRB’s) from the Public Works Board has been made available to counties for costs related to construction or enhancement of “local youthful offender rehabilitative
facilities” (Dawood, 2009, p. 4). The use of LRBs in California has been a way to funnel public money towards carceral expansion without the direct involvement of Californian voters and has effectively obscured the visibility of the state investing in these institutions (Gilmore, 2007).

A general breakdown of the allocations of the YOBG for counties exemplifies how punitive institutionalization is supported and funded in the reform effort as well as other traditional law enforcement tools. As part of the YOBG guidelines, each county submits a Development Plan to the Corrections Standards Authority (now the Board of State and Community Corrections) to detail its plan for spending the grant funds. The Board of State and Community Corrections (BSCC) was developed as part of the realignment reform effort in the state. It is an independent statutory agency that provides leadership to the adult and juvenile justice systems on realignment issues and sets standards as well as administers grant funding. The board is comprised of 13 members appointed by the governor and the legislature. The board of directors reports directly to the governor and as of 2015 the board chair is also the director of the California Department of Corrections and Rehabilitation’s Department of Parole. The other members are county sheriffs, probations officers, a county supervisor, a judge, two community-based service providers and one position open to community members (Savage 2015). The BSCC has readily approved jail renovation and construction plans, likely a result of the predominant law enforcement interests represented on the board.

In the first year of the grant fund (2007-8), the largest proportion of the funds was allocated to secure confinement programs for “high end” local youth (Dawood, 2009, p. 4).
17). That year, 15 counties (including nine of the 14 largest counties in the state) used the
grant money to enhance or establish new long-term commitment units within juvenile
halls (Dawood, 2009, p. 17). Related to the expansion of secure and punitive institutional
options, 28% of counties also used funds to contract out with juvenile halls, camps and
ranches, regional facilities, group homes, and out of state and other residential facilities
(Dawood, 2009, p. 17). In the same year, 40% of counties used YOBG money to
purchase a risk and needs assessment tool, most all contracting with Assessments.com for
the purchase (Dawood, 2009, p. 16). The grant money has also gone towards increasing
probation staffing; 55% of all counties (including all of the largest counties in the state)
used YOBG in 2007-8 to hire more probation officers.

The following table shows the core areas of funding requests made in the 58
county development plans in the first year of the YOBG’s implementation. The summary
highlights how realignment has resulted in bolstering and expanding preexisting county
institutions and programs, not a particularly new direction of policy.

Table 4. Youthful Offender Block Grant: Funds Uses for Programs and Services, 2008

<table>
<thead>
<tr>
<th>Programs and Services</th>
<th>Number of Counties (out of 58) using funds for service/program</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk and Needs Assessment tools and evaluations</td>
<td>34</td>
</tr>
<tr>
<td>Placements in secure and semi-secure facilities and in private residential care programs</td>
<td>37</td>
</tr>
<tr>
<td>Nonresidential dispositions (such as day or evening treatment programs, community service, restitution, and drug-alcohol and other counseling programs)</td>
<td>35</td>
</tr>
<tr>
<td>House arrest, electronic monitoring, and intensive probation supervision programs</td>
<td>38</td>
</tr>
<tr>
<td>Reentry and aftercare programs</td>
<td>31</td>
</tr>
</tbody>
</table>
Capacity building strategies to upgrade the training and qualifications of juvenile justice and probation personnel 30

Regional program and placement networks, including direct brokering and placement locating networks to facilitate out-of-county dispositions for counties lacking programs or facilities 9

Other programs, placements, services (Dawood, 2009) 27

The majority of counties have invested in institutional capacity expansion or detention alternatives such as electronic monitoring, house arrest and intensive probation supervision that are strict, controlling, and punitive (Beatty, 2002; Nellis, Beyens, & Kaminski, 2013; Paterson, 2013; Payne & Gainey, 1998; Petersilia, 2016; Renzema, 2013). Additionally, most counties have invested in the newest popular technology for assessing the individual risk of juvenile offenders in risk-assessment programs. The money has gone to bolstering and expanding preexisting fixtures of the juvenile justice system.\(^8\)

These priorities have not changed since this initial investment of the block grant money. The major investments in detention and probation capacity in the first year of the grant program were not just an initial investment to be able to handle youth who previously would have been sent to DJJ and now were being kept at the county level. In 2013-14 and in 2015-16 counties in California made similar funding choices. Since 2007, approximately $1 billion in funds has gone from the state to county level through the YOBG. Counties continue to use the vast majority of the money for traditional punitive services: detention halls, camps, ranches and probation. The minimal amount of money

\(^8\) Los Angeles, by far the recipient of the most grant money, $5.5 million, used the funding to enhance camps, ranches and detention, expand ISP, and use risk assessments and ISP for DJJ returnees (Nieto, 2008).
going towards treatment and alternative programs is largely in the form of contracts with the private-sector. The following graph shows a side-by-side comparison of residential institutions (juvenile halls, camps, ranches, secure/semi secure and day/evening treatment centers) and probation (electronic monitoring, house arrest, intensive probation supervision) compared to investments in alcohol and drug treatment and counseling (individual, group and family) in 2015-2016. Detention and probation costs amounted to 80.6 percent of the total grant funding while drug treatment and counseling totaled 2 percent of the total grant funding.

Graph 7. Youthful Offender Block Grant 2015-2016 Planned Programs and Expenditures

Data compiled from Board of State and Community Corrections, Youthful Offender Block Grant 2015-16: Planned Programs and Expenditures available http://www.bsec.ca.gov/downloads/201516%20YOBG%20Program%20Descriptions.pdf.\textsuperscript{87}

\textsuperscript{87} See Appendix IV for table of all categories of expenditures.
In addition to the YOBG, there are two other major grant sources that funnel money from the state to local level for juvenile justice services. The Juvenile Justice Crime Prevention Act (JJCPA), enacted in 2000, allocates General Funds to local governments to support an array of services in county probation departments and community-based service providers. Since 2000, about $1.5 billion has been distributed to local service programs from state funds through this grant program. Lastly, in 2005 Governor Schwarzenegger signed into law the Juvenile Probation and Camps Funding Program, which allocates around $200 million per year in state funds to county probation camps and ranches (Commonweal, 2015). As outlined in this section, a large portion of YOBG funds go to camps and ranches in addition to the separate money that goes to these institutions through the JPCF. In 2015-2016, 30.5% of YOBG funds went to support county-run camps and ranches.

In 1999 the Board of Corrections (BOC) began collecting data from county juvenile probation departments to gauge trends in juvenile detention facilities’ design and operation. The following graph shows that the Board Rates capacity (number of beds that met the standards of the BOC) has continued to grow over time for juvenile halls and camps. Despite dramatic reductions in arrest rates in California, capacity continued to grow steeply until 2006 before leveling off. The following graphs show the growth in county detention capacity from 1999-2010 and also the decline in arrests from 2002-2013.

Graph 8. County Detention Capacity 1999-2010
Graph 9. Number of Juvenile Arrests 2002-2013

The data on traditional institutional placements suggest that at the county level, where the vast majority of juveniles are handled, the availability and investment in secure confinement has not significantly reduced and since 1999 has increased by about 3,000 beds, despite a reduction in arrest rates. The rated capacity data does not take into account the wide variety of other types and levels of institutionalization and correctional control that counties have expanded such as semi-secure and private residential programs as well as house arrest, electronic monitoring and intensive probation supervision. The reductions at the state level are significant, but in the more expansive picture of juvenile justice policy and institutions, the changes at the state level are somewhat dwarfed by the trends at the county level. California has the highest percentage of juvenile offenders in local custody in the nation and it is two times the national average (Clarke, Meyer & Warner, 2009, p. 28).

As the following graph shows, the percentage of juveniles sent to state institutions was a very small percentage of all wardship dispositions prior to the reforms of 2007. The majority of youth are given a disposition in their home or relative’s home. The decline of commitments to state institutions is important, but the issues with a large number of juveniles confined in county institutions has largely been overlooked in the reform effort.

Graph 10. Dispositions as a Percentage of All Wardship Dispositions

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88 “Wardship” is when a minor is declared a “ward of the court” and placed under the court’s strict supervision.

89 A disposition in home can come with a variety of additional stipulations. Juveniles placed in their home may still be on electronic monitoring, house arrest of given intensive probation supervision.
The total number of juveniles processed in the juvenile justice system in California has gone down because overall arrest rates are down. However, this is a trend that all states are experiencing in the nation and is not due to any of the prominent realignment reform measures in California. As the graph illustrates, very little has changed in how the state processes juveniles who come into the system. A greater percentage of juveniles were sent to secure county facilities and miscellaneous other public and private facilities in the years following the reforms. When the changes in state incarceration rates are contextualized as a percentage of the overall number of juveniles processed in the system, the decline barely registers.

*Juveniles in the Adult System*

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It is important to note that the population of youth sent to state-run institutions has reduced by changes at both ends of the spectrum of severity (Jannetta & Lin, 2007). Several statutory changes regarding youth sent to adult prisons occurred alongside the realignment and devolution initiatives in the state. Legislation from 1996 (the same year the state passed a major juvenile realignment initiative) stipulated that juveniles over the age of 18 who were given an adult sentence could no longer be housed in the juvenile state-run system. In some states and in California before the legislative change, juveniles who are over 18 may still be held in juvenile facilities because youth fare better when held in juvenile facilities compared to adult facilities. In 1998, the legislature enacted measures to exclude all youth over 18 from being held in the juvenile justice system. This removed the remaining stipulation that youth could be housed in the juvenile system if their period of incarceration would be complete before their 21st birthday.

In 2000, the legislature passed a law to ban juveniles 16 years of age or older who are convicted in an adult court from being housed in the juvenile justice system. These youth must be housed in adult prisons. Further, Proposition 21 from 2000 mandates the automatic transfer of youth as young as 14 years old to adult court for certain crimes. This has reduced the number of youth with an adult sentence who are sent to serve their time in juvenile facilities. From 1995 to 1997, due to the 1996 legal change, the number of youth convicted of an adult sentence sent to state-run juvenile prisons fell from 811 to 198 (Jannetta & Lin, 2007). The statutory changes in 1996, 1998 and 2000 made it so juveniles who previously would have been held in juvenile state-run facilities now go

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91 In 1990, 992 youth were committed to DJJ with an adult sentence, in 2003 54 youth and in 2005 176 youth.
directly to adult facilities.\textsuperscript{92} Since 1996, more juveniles are held in county-run juvenile facilities and adult facilities, both trends contribute to the decline of youth sent to state-run juvenile prisons.

In raw numbers the total number of juvenile offenders directly filed to adult court has been declining, though still higher than the number of youth given this disposition in the early 2000s. The graph below shows the number of youth directly filed to adult court from 2002 to 2014.

Graph 11. Number of Juveniles Direct Filed to Adult Court

Data compiled from State of California Department of Justice Statistical Reports: oag.ca.gov/cjsc/pubs#juvenileJustice

However, this is in the context of historically low juvenile arrest rates. While a very small percentage of juveniles who are arrested get directly remanded to adult court,

\textsuperscript{92} Youth have higher rates of suicide, recidivism and poorer outcomes when they are held in adult systems compared to juvenile facilities. They are more likely to be sexually assaulted and violently victimized (Lahey, 2016; Austin, Johnson & Gregoriou, 2000).
this number has continued to increase over time in California.\textsuperscript{93} Though fewer juveniles are being arrested, juveniles who come in contact with the juvenile justice system have a greater likelihood today than in the early 2000s to be direct filed to adult court. There is little evidence this is because juveniles are being arrested for more serious offenses.\textsuperscript{94} The following graph shows the percentage of juveniles arrested that get direct filed to adult court from 2002 to 2014.

Graph 12. Direct File to Adult Court as Percentage of Arrests

![Graph showing the percentage of juveniles arrested that get direct filed to adult court from 2002 to 2014.]

Data compiled from State of California Department of Justice Statistical Reports: oag.ca.gov/cjsc/pubs#juvenileJustice.

The data on juveniles sent to the adult system calls attention to important measures, beyond state incarceration rates, in evaluating progress in juvenile reforms. While the

\textsuperscript{93} While in 2013 only 0.65\% of all arrested juveniles were sent to adult courts, this was three times greater than the percentage (0.20\%) sent to adult prisons in 2002.  
\textsuperscript{94} The breakdown of arrest offenses over the past decade is consistently at about 30\% for a felony charges, 55\% for misdemeanors and 15\% for status offenses. Calculated from State of California Department of Justice Statistical Reports: oag.ca.gov/cjsc/pubs#juvenileJustice
number of youth arrested and processed in the juvenile justice system is shrinking, the state is also increasing its punitiveness. Without making fundamental changes to the system, if the arrest rate were to go up, the state would experience growth in the number of youth incarcerated and youth sent to adult prisons.

Devolution has been fueled by the argument that counties are superior to the state in carrying out services and caring for juveniles. The attack on state-run prison facilities was heightened by the major Farrell litigation and the greater visibility of the state-run system that reformers directed attention to in 2007. It was and continues to be easier for prison reformers to organize across the state to address the centralized state-run system compared to the fractured fight required to address county-by-county issues. Conditions on the ground in counties across California show the consequences of devolving the juvenile justice system and belie the assumption that counties are superior to the state in handling delinquent youth.

III. Conditions at the County Level

The project of realignment is predicated on the idea that placing juveniles closer to home is superior for their treatment and well-being. Advocates assert locating juveniles in the community will lower recidivism and will end abusive treatment of youth held in large state institutions. Matthew Cate, the Secretary of the California Department of Corrections and Rehabilitation from 2008 to 2012 claims, “research shows that most juvenile offenders are more successful in their rehabilitation when they remain in their
local communities” (CDCR Today, 2011). The text of SB 81 (2007), the major juvenile realignment reform bill similarly states,

The legislature finds and declares that local youth offender justice programs, including both custodial and non-custodial corrective services, are better suited to provide rehabilitative services for certain youthful offenders than state-operated facilities. Local communities are better able than the state to provide these offenders with the programs they require. (p. 30)

Yet, there is little evidence thus far that counties are better at administering services. Additionally, community-based placement has not been found to be better at reducing recidivism in other contexts (Curran, 1988). In a panel discussion with two leading actors in the implementation and oversight of juvenile realignment in California, both David Steinhart, the director of the Commonweal Juvenile Justice Program, and Jennifer Rodriguez, executive director of the Youth Law Center, acknowledged there is no proof that local entities are any better at carrying out services than state institutions (National Center for Youth in Custody, 2011). There is evidence that there are huge discrepancies between counties in terms of which have resources or institutions to care for the mentally ill and other needed services for the juvenile population being shifted to the county level (National Center for Youth in Custody, 2011).

In the case of California, county juvenile justice systems do not appear to live up to the high expectations of the “community-based” reform promises. Counties face similar problems as the state with litigation over conditions of confinement. Counties in California use solitary confinement, pepper spray and they are overcrowded. Alternatives to the juvenile justice system, such as county-run group homes have paralleled problems
to state-run prisons of abuse and inadequate oversight. Lastly, there are major inequalities between counties, which raise concerns about the equitable treatment of juvenile offenders in a devolved system.

*Litigation at the County Level*

Counties have had a similar history to the state in facing litigation over abusive conditions of confinement. While the county systems in California are not under the consent decree from the *Farrell* litigation, they are not devoid of some of the same troubling problems of abuse. Just one year after the passage of SB 81 in 2007, Los Angeles County entered an agreement with the United States Department of Justice to remedy conditions in its probation camps that had been investigated and found to be unconstitutional. The Justice Department investigation found that the camps failed to protect youth from harm and did not provide adequate suicide prevention and mental health services. Additionally, staff systematically physically abused youth, probation officers used pepper spray excessively, there was a high incidence of youth-on-youth assaults, inadequate staffing levels, and inadequate investigations of abuse allegations (Department of Justice, 2008). The Los Angeles County Probation Department operates 19 detention camps housing approximately 2,200 post-adjudicated youth. To contextualize, just the camps (not detention halls or other institutions) run by Los Angeles County alone were about the same size as the *entire* state institution system at the time the latest realignment reform legislation was passed in 2007.
Additionally, in February of 2014, the Department of Justice affirmed that plaintiffs suing Contra Costa County for denying special education and related services to disabled youth offenders held in solitary confinement had provided adequate evidence of violations of the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). The lawsuit addressed conditions in the Contra Costa Juvenile Hall, a 290-bed institution, where the county runs a restrictive security program in which juveniles are confined to their cells for most hours of the day and are not given general education or special education services (G.F., et al. v. Contra Costa County, et al., 2014).

The legal trouble and abuse scandals in these two counties expose the problematic assumption that moving juveniles to county institutions will improve their care. As a whole, county detention programs are much larger than the constellation of state institutions and they face similar accusations of abuse. The state has chosen the path of least legal resistance, since the Farrell case became too expensive to comply with, not the path that is necessarily best for the treatment of juveniles. Since realignment, counties have tended to rely heavily on long-term secure confinement. The use of out-of-state facilities has increased for youth that previously may have been sent to DJJ. Also, existing residential treatment options for juveniles with mental health disorders have been strained by increased demand at the county level (Dawood, 2009). These measured outcomes so far, as well as the active DOJ cases of county level systems challenge the notion that there is something inherently superior about care or confinement at the county level.
Solitary Confinement

Another assumption justifying the reforms in California is that county facilities are superior to state-run prisons in individualized treatment and that they are less punitive. The extensive litigation and abuse scandals at the state level have framed the problem of abusive conditions of confinement as a condition particular to state-run prisons. However, the problems at stake in the Farrell litigation and concern with state-run prisons are persistent at the county level as well. County-run facilities, which house far more juveniles than state-level facilities, also use solitary confinement.

While there is limited systematic and consistent accounting and oversight of county facilities, a number of reports suggest that the use of solitary confinement at the local level is widespread, as discussed in chapter two on the Texas case. The state system operates under a court order that prohibits all forms of isolation, but county juvenile halls do not operate under this same stipulation (Bundy, 2014). In California, state regulators only inspect juvenile facilities once every two years. In these inspections, the state checks whether or not juveniles are receiving the state-mandated one hour a day outside of their cells for exercise, but they do not track or count the number of days juveniles are in solitary confinement (Bundy, 2014). Sue Burrell, an attorney working for the Youth Law Center in San Francisco who has been instrumental in suing a number of counties in California over abusive conditions of confinement, says “law regulations have allowed

juvenile solitary to be used in most county facilities that hold minors in California” (Bundy, 2014). In 2011, court documents suggested solitary confinement is frequently used for punishment in county-run facilities. The documents revealed 249 incidents of solitary confinement in just over a one-year period at only five facilities in the state (Levin, 2015). One report of youth held at Camp Scudder in Santa Clarita found that 43% of youth spent more than 24 hours in solitary confinement (Therolf, 2015). Another report found that Camp Scott operated by Los Angeles County relies on solitary confinement for girls housed there in order to maintain order and authority (Nieto, 2008).

**Pepper Spray**

Reports also suggest that county facilities have similar problems with the use of pepper spray, another abusive condition of confinement juveniles experience in state-run facilities. California is just one of 14 states that allow the use of pepper spray in juvenile facilities, and it is one of only five states that allow staff to carry pepper spray (Maass 2012). Most states and localities outlaw the use of pepper spray because it is physically harmful to youth and has a negative impact on staff-youth relations (Council of Juvenile Correctional Administrators, 2011). Pepper spray, also referred to as OC (oleoresin capsicum), is a “chemical restraint that incapacitates individuals by inducing an almost immediate burning sensation of the skin and burning, tearing and swelling of the eyes” (Council of Juvenile Correctional Administrators, 2011). Pepper spray can be particularly threatening to youth who suffer from asthma or who are taking psychotropic medications. Reform advocates claim pepper spray use is often unmonitored and widely used in

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96 Texas is also one of the 14 states that allow pepper spray in juvenile facilities.
juvenile detention facilities (California Rural Legal Assistance, 2011). County-by-county use of pepper spray varies greatly.

San Diego County has some of the highest levels of pepper-spray usage in the country (Maass, 2012).97 One detention center, the East Mesa facility,98 averaged over 5 pepper sprayings per week. While the county detention system is supposed to be holding “less serious” offenders and the state facilities are supposed to be concentrated with only the most serious offenders, the use of pepper spray at the state and county level is comparable (Maass, 2012).99 Further, San Diego County had nearly four times as many incidents of pepper sprays in 2012 compared to Los Angeles County, while maintaining a juvenile hall population about half the size of L.A.’s (Maass, 2012). A number of juvenile reform organizations are currently suing San Diego County over its use of pepper spray in juvenile detention facilities (Youth Law Center, 2014).100 Despite the widespread criticism of OC and the continued legal battles it produces over abusive conditions of confinement, in 2014, Santa Clara County approved a pilot program to introduce the use of pepper spray into its county facilities (Kurhi, 2014).

Overcrowding

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97 In 2011, the county recorded 461 incidents involving pepper spray.
98 The East Mesa Juvenile Detention Facility (EMJDF), opened in 2004, is a 380-bed maximum security facility located in a rural area of the county. Youth who can no longer be sent to DJJ or who have failed at the county probation camps are sent to EMJDF. At any stage if youth are noncompliant with the programming at the facility they can have four months time added to their term (San Diego County District Attorney, 2015).
99 In 2012, the state level juvenile justice system housed about 1,000 youths per day and had about 45 pepper spray incident reports per month. San Diego, in comparison, housed about 824 youths per day in 2012 and averaged 38 incidents per month.
100 Noted in the suit is the fact that 81% of youth detained in San Diego County juvenile facilities are Latino and African American, despite making up 53% of the county’s total high school enrollment.
Another major issue with conditions of confinement for incarcerated juveniles is overcrowding, which has particularly negative consequences for incarcerated youth (Burrell, 1998). The litigation that the state has faced concerning juvenile and adult confinement at the state level has largely stemmed from severe overcrowding. But counties also have major issues with overcrowding. In 2006, 20 counties were involved in lawsuits that led to court-ordered population caps and 12 have imposed population caps to avoid inevitable costly litigation (California State Sheriffs’ Association, 2006). Additionally, 10 counties that make up 60% of the entire local juvenile detained population reported that their facilities had overcrowded conditions in 2004 (California State Sheriffs’ Association 2006).

**Group Homes**

Beyond county-run juvenile detention halls and camps, group homes, a popular alternative to these detention centers (an example of a non-secure county institution), also have had incidents of abuse. Both youth in foster care and in the juvenile justice system, often the same youth, are sent to group homes. Many of the youth who are in foster care end up in the juvenile justice system, and youth involved in both systems are sent to a wide range of types and sizes of group homes. These homes have at times been held up in the reforms as alternatives to secure prison facilities. The “Missouri Model,” (espoused by the Annie E. Casey Foundation) of small, home-like facilities has many similarities to the group home model. However, in California these institutions also face similar problems of abuse and lack of adequate oversight. Changes to group homes in California have paralleled the reform effort for the juvenile justice system. Following widespread
scathing reports of abuse in group homes, these Institutions have similarly been deemed a failed model much like state-run detention centers (Sapien, 2015). In 2015, the legislature passed a major reform bill, AB 403, to reform group homes. The bill establishes short-term residential treatment centers (STRTCs) to replace existing group homes and directs counties to allocate resources towards treatment in foster homes. Juvenile probationers in group homes are targeted to go to the STRTCs (Loudenback, 2015).

Looking at the parallel problems in group homes highlights an issue at the core of the debate and strategies over juvenile justice reforms. The trend in California and other states is to close down the facilities that are a major source of abusive practices. Yet, this strategy is not coupled with sufficient programs or a plan to care for the youth who are concentrated in these institutions once they leave, because the major motivation is to save money. This leaves youth who were already disproportionately poor and coming from areas of the state that lack resources and stability back in these unequal communities. When these youth need to be removed from their homes, or lack a home to return to or get in trouble with the law they are then sent to re-purposed, re-named, and re-tooled institutions, like an STRTC or a county juvenile camp. These alternative institutional placements have similar problems with abuse and inadequate oversight because of an unwillingness to properly fund the “alternatives” that are billed as a cheaper option.

Mental Health Care

See ProPublica investigation titled “Troubled California Group Home to Close” for an extensive report on the abusive history of a group home in Davis, California (2015).
A common problem of inadequate care for institutionalized youth is a lack of mental health services. Similar to Texas, practitioners in California often cite mental health needs as one of the greatest challenges in the juvenile justice system. It is estimated that as many as 42% of juvenile detainees have serious mental health issues in California (California State Sheriffs’ Association, 2006, p. 4). In 2005, 3,400 youth in juvenile facilities had open mental health cases and 1,219 were receiving psychotropic medications (California State Sheriffs’ Association, 2006, p. 5). A survey of 51 county probation departments and 35 mental health departments in the state in 2003 found that their most uncommon significant gap was mental health service capacity related to juvenile offenders (Hartney et al., 2003). The state has a grant fund, the Mentally Ill Crime Reduction Grant Program, that provides funding to counties to support mentally ill juvenile and adult offenders, but has been inconsistently funded over the years (Board of State and Community Corrections, 2014b). In 2008-2009, the grant program was eliminated as a cost savings measure (Nieto, 2008).

County-Level Inequality

The state is devolving control to the county level in a context where there are major inequalities amongst counties. The economic position of counties has been greatly hindered ever since the anti-tax revolt initiative from 1978 as well as the economic recession from the early 1990s. Counties have not had stable funding sources to pay for the maintenance and the construction of jail space. In 2004, the state overwhelming

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102 Notably, the anti-tax movement supported the ascendant popularity of “law and order” policies. For an extended discussion of the relationship between the two in California, see Campbell (2016).
passed (83.7% support) Proposition 1A which strengthened and stabilized local revenue. The measure prohibited unfunded state mandates and led to higher and more stable local government revenues, but also lowered resources for state programs. Under the proposition, revenues collected by local governments are protected from being transferred to the California state government for statewide use. The change to the constitution requires that local sales tax revenue be spent by local government (Legislative Analyst’s Office, 2004).

While the measure improved the position of counties to pay for an increasing number of services, it has also taken funding away from statewide programs. Counties in California continue to struggle to pay for local programs and services and there are major inequities between counties in the state in terms of revenue and public services. Devolution of the juvenile justice system is a part of this trend of increasingly localizing the provision of goods and services as well as the taxation structure. The effect of this shift has been to undermine statewide programs and services and contributes to the unequal provision of goods (Lagos, 2012).

It is rare to find data on economic variables for juveniles in the justice system, but from 2004-2007 the state of California ran a juvenile justice data project as a partnership between the California Department of Corrections and the non-profit Juvenile Law Center (Hennigan et al., 2007). As part of this data collection project, there is limited but useful information on county-by-county variation in state and local institutional commitments and the connection to median household income. The working group collected data on the relationship between the median household income for each county
and levels of commitments to local and state institutions. Counties that had the lowest median household incomes (below $35,000) in 2005 had about a four times higher a rate of county placement and more than twice the rate of commitments to state level prisons than counties where the household income is above $47,000 (Hennigan et al., 2007).

The report also found great regional variation in commitment rates. Counties in the north and central regions as well as smaller counties have higher rates of confinement in county and state institutions. These results are complementary because 82% of the poorest counties are small and disproportionately located in the north and central regions of the state (Hennigan et al., 2007). The correlation found in the data suggests that youth in the poorest counties are more likely to be incarcerated at both the state and county level. Devolution does not address these inequalities and in fact can make them worse as the poorest counties continue to be left to their own devices and lack resources to fund social services.

The lack of commitment to connecting the project of reforming the justice system to structural interventions has meant that some of the most basic social provisions left in the state have continued to be dismantled. Realignment of the adult system has also required a significant investment and expansion of county-level probation and detention programs. The pressure on counties to handle a greater number of adults and juveniles through this reform strategy is causing counties to further divest in public services. While counties secure money to expand existing jails and build new ones, they are simultaneously seeing dramatic cuts to CalWORKS, child support services, the health system, state and county parks, affordable housing and cash to families (Durand, 2012a).
For example in San Mateo County in 2012 the budget included $500 million for local jail construction and $13.45 million for supervision and services to the realignment population. At the same time, the county made significant permanent cuts to CalWORKs, eliminated Healthy Families, made cuts to the court system, reduced subsidized child care, suspended cost-of-living adjustments and reduced in-home support services (Durand, 2012b). Devolution has left counties responsible for numerous social services and with strained budgets it has forced counties to make tough choices about what to fund (Nielsen, 2011a). Without a clear vision of deeper reforms to significantly shrink the carceral system, many counties are predictably choosing the well-trodden route of jail expansion, especially since the state is providing funding for these types of investments through specialized block grants. Realignment does not challenge, but instead exemplifies what Loïc Wacquant describes as “the shift towards the penal management of social insecurity that is everywhere being generated by the social and economic disengagement of the state” (2006, p. 109).

The criminal justice system has a great amount of variation county-by-county as a result of this broader process of devolution. For example, in Los Angeles the number of juveniles committed to adult court grew between 2003 and 2007, but in the Bay Area the percentage went down over the same time period. As of 2007, youth in Los Angeles County were four times more likely to get an adult commitment than in the Bay Area (Jannetta & Lin, 2007). Leading up to the major reforms of 2007, counties varied greatly in the number of juveniles they sent to state-run institutions for sex offense crimes. Small counties sent a far higher number of sex offenders than large counties (for example, Los
Angeles committed proportionally fewer juvenile sex offenders than any other county) most likely because these counties lack appropriate programs and facilities for these offenders (Jannetta & Lin, 2007).

As the state further supports the localization of policies and funding of public services, youth undergo a wide range of experiences regarding their treatment in public institutions. California has major issues with school discipline, which highlights the contradictions of equating “community-based” with therapeutic. County-level institutions can be punitive and highly unequal in dispensing punishment. In the 2011-12 school year, at least 19 school districts in California spent more money on school security than on counselors, psychologists, and social workers (Community Rights Campaign, 2014). The ratcheting up of a police presence in school districts across the state resulted in over 20,000 students being arrested or given a police ticket at school in the 2009-2010 school year. Over 90% of these youth were students of color. Los Angeles Unified School District has its own police department with over 510 officers. The San Diego Unified School District’s police department has 75 police officers who are armed with AR-15 assault rifles (Community Rights Campaign, 2014, p. 5).

In the 2010-2011 school year, Kern County, a small rural county with one of the lowest median household incomes in the state, had the highest rate of school expulsions in California. Kern County High School had 2.3 times the number of expulsions as the average in California and a staggering 36 times the national average for school expulsions. The high rate of expulsions in the county was particularly damaging to youth
of color.\textsuperscript{103} Devolution is occurring when other county-run institutions are becoming increasingly punitive and communities are ever more unequal. Those who are most disadvantaged, coming from the poorest areas of the state, continue to bear the brunt of punitive policies and suffer from the continued retrenchment of public services.

Turning more control over to counties does not necessarily mean every county will invest in non-punitive programs and services, in fact most measurements show that a majority of counties invest in traditional forms of punishment (Dawood, 2009; Nieto, 2008). Further, localizing the funding and implementation of public services exacerbates inequalities between counties. Juveniles receive a wide variation of services and responses from the state highly dependent on which county they live in. Poorer counties suffer the most due to the retrenchment of state-funded programs and services. When youth from these communities are “returned home,” they return to even more unequal and unstable communities as a consequence of devolution.

\textit{Exceptions to “Returning Home”}

The 2007 reforms were premised on the positive image of youth returning closer to home. However, even this core goal of the reforms has failed in particular locations. One major exception to this promise is the treatment of gang-affiliated juveniles. A 2008 report found that judges in as many as 16 counties send adjudicated juveniles who have gang affiliations out of their home county to the Fout Springs Camp in Solano County in order to place them as far away as possible from their home environments (Nieto, 2008).

\textsuperscript{103} At Kern County High School, white students were expelled at a rate 12.5 times the national average, Latino students 44 times the national average and African American students 73.5 times the national average (California Department of Education, 2013; Kearn, 2014).
Fout Springs probation camp is located in a remote part of the Mendocino National Forest. Youth are sent to the camp for a minimum term of six months to one year.\textsuperscript{104} According to California’s database CalGang (which tracks gang data in the state), about 86% of gang members are Hispanic or black.\textsuperscript{105} This suggests that there is a major exception to the “return to home” promise of the reforms where youth affiliated with gangs, who are disproportionately racial minorities are sent as \textit{far away} from home as possible.

Another major exception to this “closer to home” promise of the reform effort has been the simultaneous and contradictory push for regionalization. As more responsibility has fallen on county probation departments to provide services for a wider range of juveniles, counties have been pushed to pool their resources to provide regional care options. This has partially been due to the influence of the “Missouri Model” (promoted by the Annie E. Casey Foundation) in directing juvenile justice policy in California (Nieto, 2008). The state grant funds have gone to regionalization efforts where counties pool their resources and each specialize in particular programs and services. For example, one county has a sexual offender program that neighboring counties send juveniles to rather than each county having their own. These county consortiums exist across the state: the tri-county partnership between Ventura, Santa Barbara and San Luis Obispo counties; a 15 county cooperative in Northern California; and Humboldt County’s New Horizons program which meets the mental health needs of juveniles in neighboring

\textsuperscript{104} Juveniles at Fout Springs start the day at 5:30am with morning exercise and participate in programs where they “earn points.” Juveniles wear different colored shirts to identify how long they have been at the camp and how many points they have earned.

\textsuperscript{105} In 2010, of all 235,579 gang members (youth and adult) in the CalGang database, 66% were Hispanic, 19.6% black, 7.8% white, 2.6% Asian, 0.5% Pacific Islander, and 2.8% undesignated race (Harris, 2010).
counties (Nieto, 2008). As more control is pushed to the county level and more pressure is placed on local probation departments to care for a wider range of youth, this has necessitated county partnerships, which undermines goals of localization.

The prevailing justification of cost-savings and efficiency is driving regionalization and also undermines the promises of the “community-based” and “closer-to-home” goals of the reforms.\(^{106}\) For example, in 2015, Lake County, a small county in Northern California, decided to close its juvenile hall, cutting 20 staff positions, for cost savings reasons (Quirino, 2015). The county found that contracting out the services of neighboring Mendocino County was cheaper than keeping the Lake County facility open (the cost for a juvenile detainee at Mendocino is $150/day compared to $520/day at Lake County) (Quirino, 2015). The Lake County facility was significantly more expensive in part due to a high rate of staff turnover.\(^{107}\) As part of the contracting partnership Mendocino County will not handle any kind of visitation transportation for legal or family matters.\(^{108}\) The Mendocino facility is 40 miles away from Lake County and there is no public transportation between the two locations. Regionalization and cost efficiency undermine the effort to keep youth closer to home and in contact with their families. Just like state run facilities, these youth are isolated and housed away from any support they may have at home.

\(^{106}\) There is not accessible data on the frequency in which it is used, but the state can also contract with local jails to house state prisoners. Counties are able to then use unoccupied beds and are reimbursed by the “Daily Jail Rate” (DJR). As the California State Sheriffs’ Association put it, the DJR is a “win/win inter-system cooperation, both state and local benefit” (2006).

\(^{107}\) The county does not have a competitive salary and benefits package and so many employees start at the facility but eventually transfer, leaving Lake County responsible for the expense of training new staff. Mendocino County does not have the same staff retention problems.

\(^{108}\) The facility is equipped with “skyping” so family members can stay in touch through video conferencing.
IV. Role of Non-Profits and Privatization of Public Services

One of the major features of the juvenile justice system today is the increased leadership role of large foundations in guiding policy, providing research and subsidizing different types of programs and services. Large foundations, most notably the Annie E. Casey and John T. MacArthur foundations, are central to promulgating a model for the juvenile justice system that relies on risk assessments, evidence-based practices, and public-private partnership in the delivery of services. These large foundations, in a variety of ways, have contributed to the devolution and privatization of juvenile justice services and the expansion of privately provided behavioral based interventions. The leadership of foundations has helped forge a consensus around a technocratic, apolitical and common sense path to reform. Despite major political differences between California and Texas, these two states are pursuing similar policies in the juvenile justice system in part because of the top-down leadership from foundations that wield a great amount of power through a near monopolization of research on juvenile delinquency and a large amount of resources for grant funds.

The Annie E. Casey and John T. MacArthur foundations have been particularly influential in California. California was one of five model sites for the Annie E. Casey Juvenile Detention Alternatives Initiative (JDAI), the most widespread reform effort in juvenile justice policy today. David Steinhart, the director of the Commonweal Juvenile Justice Program is one of the most prominent and leading actors in juvenile reform in California and a lead trainer for Annie E. Casey’s JDAI. Steinhart played a key role in the design of SB 81, the realignment legislation of 2007, and is now one of the Senate’s
appointees to the Board of State and Community Corrections, which oversees the implementation of realignment (such as voting to approve allocating block grant funding to jail construction for a particular county). His predominant leadership role in both Annie Casey and the California state reform effort is one example of the blurred line between public and foundation leadership in juvenile justice policy. Steinhart shows the seamless relationship between foundations and state politics, as he has been able to import the JDAI model into legislation in California.

The reform vision of the Casey and MacArthur foundations has been thoroughly carried out in California. The goals of closing large state institutions, developing community-based sanctions (such as day and evening reporting centers and home confinement) and using risk-assessment instruments are the core objectives of the Casey Foundation JDAI platform (Annie E. Casey Foundation, 2014). These are predominant features of the realignment effort in the state of California. In addition to these central aspects of the reform effort, the leading large non-profits have also advocated for increased local control to innovate and implement “evidence-based programs.”

Counties in California now have enormous leeway in choosing what types of investments to make using their block grant money. This has provided another avenue for counties to follow the model for reform led by large non-profits. Counties in California have directly modeled Annie E. Casey’s most popular reform program, the “Missouri Model.” Exhaustively promoted by the Casey Foundation, the “Missouri Model” comes out of the foundation’s work in Missouri where they established small youth facilities providing 24-hour-a-day treatment heavily inflected with a message of individual uplift.
Santa Clara County and Los Angeles County among others have followed this model for reshaping their juvenile justice detention centers. Both counties have established small youth facilities where “treatment occurs 24 hours a day” and where “therapy sessions and all other activities reinforce messages of individual responsibility and discipline” (Nieto, 2008, p. 22).

Camp Kilpatrick of Los Angeles County, one of the best-known juvenile detention facilities in California, was closed in March of 2014 but is scheduled to be replaced by a new facility designed to follow the “Missouri Model.” The new facility is scheduled to open in 2016 or 2017 and will cost around $48 million to renovate (funded by realignment grant money). In the “Missouri Model” design, youth will be housed in small group settings and “education, counseling and vocational training will be stressed” (Cohn 2014). Camp Kilpatrick is set to become the model for the entire Los Angeles County justice system (the largest in the nation) and is expected to become a nationwide model (Sagona, 2014; Newell & Leap, 2013). The Kilpatrick renovation is following the model of the reforms in the Massachusetts decarceration experiment from the 1970s (Cohn, 2014). Notably, one of the chief strategies of the Massachusetts experiment was to privatize services for juveniles to get around public service unions. The winners of the reforms were large non-profit and for profit organizations, so it is not surprising that this model for reform is part of the foundation led movement. Massachusetts’ experiment did lead to many state-run juvenile prisons closing down; however, the total number of youth in lockups (including privately run facilities) increased, and almost 20 years after the
One of the consequences of the model of the juvenile justice system whereby nonpublic sector organizations carry out services and the public sector oversees the delivery of these services (Macallair, 2007) is that these service providers are not as stable or consistent as public providers. Community-based organizations (CBOs) have a great deal of turnover because they often cannot sustain their programs in the long term. These organizations receive start-up funds, but do not always flourish in the long run, either because they cannot secure additional years of public funding or they are unsuccessful (Nieto, 2008). This was cited in a report submitted to the Public Safety Committee in 2008 as one reason that juveniles leaving Camp Gonzales in Los Angeles county face problems related to reentry (Nieto, 2008).

Private-sector contracts for community-based programs and services are a longstanding feature of the juvenile justice system and in part are due to financial incentives in the juvenile justice system. For decades the financing formula in California has contributed to the expansion of private contracts in the juvenile justice system. In California, placement in county institutions is funded about 50% by state funds and 50% by the county general fund. In contrast, placement in private facilities is covered about 95% by AFDC funds (a mixture of state and federal money) and 5% from the county general fund (Shichor & Bartollas, 1990, p. 297). This is largely the consequence of major developments in the 1960s where the federal government used grant funds to encourage the proliferation of private community-based programs.
The leadership role of non-profits in California helps to explain why the state has pursued devolution and privatization in its juvenile justice system. Leading reformers in the state have close relationships in ideology to foundations and participation in the Annie E. Casey and MacArthur Foundation’s reform efforts. The promotion of community-based programs increases the market for private-sector service providers. The consequences of the role of non-profits have been to promote localization, regionalization and expand the public/private partnerships in the juvenile justice system. Additionally, there is an intimate link between the leadership role of non-profits and individualizing the problem of delinquency. The ascendant role of large philanthropic non-profits in leading the juvenile reform effort contributes to sidelining demands on the state to make broad scale structural changes. Moreover, the treatment discourse of the realignment era also contributes to the growth of private non-profits and for profits that are often seen as best situated to carry out these services.

V. Ideological Continuity: Individualize the Problem

The previous sections provided evidence of the material perpetuation and expansion of traditional punitive and abusive conditions of juvenile incarceration. This section details some of the ideological continuity between the “get tough” era and the realignment reforms. A core belief undergirding impulses to punish and detain a large number of juveniles is that juvenile offenders are held solely responsible for the behaviors that are considered criminal; therefore, they are the sole object of intervention. The same belief existed in the justifications for the 2007 realignment reforms.
A long-standing feature of the California juvenile justice system has been the emphasis on individual failing as both an explanation for delinquency and as a solution to “curing” delinquency. Implicit in the focus on individual failing is a minimization or complete refutation that structural conditions are a worthy explanation or cause of delinquency. Indeed, the first director and chair of the CYA in the early 1940s, Karl Holton justified the focus on individual behavior modification because youth had to fit into the existing social, political and economic context (Deutsch, 1950, p. 118). The continual emphasis in the debate over reforming the state-run prison system is on the best strategies for effectively rehabilitating, treating and curing juveniles of their immorality and delinquency. For example, in 2009 the State Commission on Juvenile Justice issued a Juvenile Justice Operational Master Plan in which the authors asserted, “if the right programs are provided to the right youth, enough of them will change to make the effort worthwhile” (Clarke, Meyer & Warner, 2009, p. 5).

The in-depth analysis of the allocation of the block grants distributed through the 2007 reforms demonstrated how counties are continuing to invest in punitive institutionalization and probation services. As for the minimal amount of money that is going towards efforts to establish rehabilitative and treatment programs, these services emphasize “curing” and “fixing” juvenile offenders. Even these areas of the juvenile justice system that are held up as alternatives to punishment carry forward a similar logic and symmetry with “get tough” policies. The central goal in this variety of approaches from a rurally located juvenile camp to a day treatment center or intensive supervision probation continues to be to correct the individual failings of a youthful offender.
For example, most recently the idea of correcting the individual has manifested in a program passed by the legislature in 2012 for the California Voluntary Tattoo Removal Program. The program provides funds to purchase two medical laser devices for the removal of tattoos for eligible youth that are 14 to 24 years of age. Eligibility requirements for the program include individuals who “may be considered unprofessional” and who are pursuing higher education, seeking employment or workforce training, or have an upcoming job interview (Assembly Bill 1122, 2011).

This legislation presumes the idea that the challenges to youth getting jobs, being admitted to schools and staying out of trouble all derive from the individual inadequacies (as precisely defined as the deficient physical appearance) of particular juveniles. What fades from view is a consideration of the social, political and economic obstacles faced by juveniles in the system. In a labor market context where jobs are scarce, correcting an employee’s appearance is not a sufficient way to ensure that juveniles get jobs (Lafer 2004). In 2012, California had the highest rate of unemployment of those aged 16-19 (34.6 percent) of any state in the nation (Maciag, 2013). This is compared to 1977 when 20% of California’s job growth was funded by state and federal programs guaranteeing employment for youth who wanted work (Gilmore, 2007, p. 48-9).

The tattoo removal program is not another measure of ratcheting up punishment for youth. On the individual level, the program likely has helped some youth “reform” and find employment. However, as a broader vision of what the most marginalized youth who are concentrated in the juvenile justice system need to have to live a decent life, the reform is narrow sighted. Furthermore, the measure furthers an ideological framework
that substantially limits the range of political possibilities for California to pursue in order to significantly improve the care and treatment of juveniles. The implicit assumption of this type of reform is that the labor market is fair and abundant and therefore it is up to individuals to make themselves more marketable.

Another recent example of this approach to reform is SB 504. The state legislature passed this bill in 2015 in order to waive the $150 fee to petition the court to seal records for juveniles. The legislation has received widespread and sweeping praise for removing “barriers” for low-income youth in California (Rivas, 2015). The change in law is a helpful step for youth who face great obstacles through being labeled former offenders. This one piece of reform legislation shows just how minimal a critique of structural barriers enters into the discourse and policy choices of the reform effort in the state. Senator Ricardo Lara who introduced the bill stated,

SB 504 will help reduce recidivism among juvenile youth by removing the fee to seal their records and thereby helping them get jobs. It’s a major victory for our youth. Ultimately, this bill gives youth an opportunity to become responsible, law-abiding citizens, which is the ultimate goal of our corrections and rehabilitation system—it gives them an opportunity for a fresh start. (Rivas, 2015)

The legislation targets the criminal justice system and a youth having a record as the obstacles to a job, education and a “fresh start.”109 This similarly feeds into a prevailing notion that there is an equitable labor market that every youth just needs the adequate opportunity to enter.

109 For an extended critique of the idea that access to education is the key barrier to employment and economic stability see Daniel Moak 2016.
This view sidelines the reality that with or without a criminal record many youth in California struggle to get jobs and access education due to vast economic, social and geographic inequalities. No matter how tattoo-free and record-free a youth is in California, 1 in 3 young people looking for work will not be able to find a job because of such a high unemployment rate in the state. The obstacles to youth becoming “responsible, law abiding citizens” are not attributed to fundamental flaws in the social and economic structure – it is instead the attributes of an individual juvenile (even extending to a criminal record) that make youth irresponsible and law-breaking offenders.

The underlying emphasis in the realignment policies and the general constellation of policies aimed at intervening in the lives of juveniles are on creating responsible agents rather than transforming structural barriers (Gray, 2009, p. 451). The ascendance of risk discourse concentrates on individual personal deficiencies, making economic, social and political structures seem less important as targets of intervention (Gray, 2009, p. 450). One of the major block grant allocations has gone to purchasing risk assessment tools in the majority of counties in California. Six years into realignment and the allocation of YOBG funds, in 2013-14, more than $2.3 million and in 2015-2016 more than $2 million was allocated for risk assessment purchases by counties in the state (Board of State and Community Corrections, 2014a, 2015). Risk-assessments are heavily pushed for in the reform models put forth by the Annie E. Casey and MacArthur Foundations. The counties that are purchasing risk assessments tools are most all
sourcing them from assessments.com\textsuperscript{110}, a private company that provides, “proprietary predictive tools and innovative technology to help corrections agencies assess, predict, sort, and manage their populations” (AngelList, 2015). The company has contracts with over 100 state and county agencies (AngelList, 2015).

The investment and emphasis on risk assessment reflects a belief that the problems of the justice system, such as abuses and excessive use of confinement, can be solved by more accurately sorting who gets different types of dispositions. The assessment tools systematically catalogue the individual characteristics of juveniles that put them at risk of offending. This method of measuring and listing individual characteristics ignores conditions external to juveniles and contributes to pathologizing juvenile offenders. The reforms continue to rely on the individual assessment of the juvenile rather than looking to broader social and economic structures in the state which have enormous impacts on the quality of life of juveniles.

VI. Reform Landscape

*Politics of Realignment: The Adult Criminal Justice System*

The strategies for reform in the juvenile justice system have been a template for adult realignment in California. The popularity of community-based solutions with all of its consequences of expanding punishment at the county level, increasing privatization, and perpetuating abusive conditions and punitive policies, has extended to the adult

\textsuperscript{110} The specific tool from the company that most counties are purchasing is PACT (Positive Achievement Change Tool).
system. Not surprisingly this has fostered similar problems in the adult criminal justice system.

Much like the trajectory of the juvenile justice system, realignment at the adult level was spurred by system crisis. In 2011, the Supreme Court ordered California to reduce its prison population due to the unconstitutional conditions of severe overcrowding. In the case, *Brown v. Plata* (2011), the court mandated the state of California reduce its prison population to 137.5% of design capacity within two years. In the midst of the crisis (the case was initially filed in 2001), the state began to respond to the crisis with realignment. In 2007, the legislature passed AB 900, the Public Safety and Offender Rehabilitation Services Act. The bill authorized $7.7 billion to pay for the addition of 53,000 state prison and local jail beds to relieve crowding.\(^{111}\)

Following the Supreme Court decision, the legislature further responded to the requirement to alleviate overcrowding by passing the Public Safety and Realignment Initiative in March 2011 (AB 109, AB 117), “the cornerstone of California’s solution for reducing the number of inmates” in the state’s prisons (California Department of Corrections, 2016). The initiative stipulates that non-violent, non-serious and non-sexual offenders will be moved to county facilities and shift parolees to county supervision (California Department of Corrections, 2016).\(^{112}\) In 2012, California voters approved

\(^{111}\) $7.3 billion in state bonds, $350 million from state’s general fund.

\(^{112}\) The legislation created advisory committees (local Community Corrections Partnership Boards and the Board of State and Community Corrections) to approve allocations of funds for realignment. These boards, responsible for both the adult and juvenile system, are nearly unanimously composed of public safety professionals who have proposed and supported jail construction. The head of the Board of State and Community Corrections, Susan Mauriello, was shifted directly over from the Corrections Standards Authority. Governor Brown’s other appointments to the board were all from the law enforcement
Proposition 30, titled Local Taxpayers, Public Safety and Local Services Protection Act, Governor Brown’s plan to ensure ongoing funding to counties for realignment by prohibiting the legislature from reducing funding to the counties (California Department of Corrections, 2016). The California State Association of Counties, the California State Sheriff’s Association and the Chief Probation Officers of California all backed the legislation.

Like the developments in the juvenile justice system, the particular strength of realignment as a reform strategy is that it brings together a wide variety of interests to form a powerful coalition of stakeholders. This coalition is buttressed by the powerful rhetoric that county-run facilities are inherently superior to state-run facilities and community-based solutions are rehabilitative. Proponents for realignment declare it a necessary policy change to “help close the revolving door” and argue that jails are more effective than prison for rehabilitation (Chico Enterprise-Record, 2011; Cohen, 2011). Supervisor Rose Jacobs Gibson who voted in favor of the San Mateo County jail project claimed, “We’re not just going to be warehousing people. We’re going to be changing their lives” (Melvin, 2012).

While politically popular, similar to the changes in the juvenile justice system, realignment at the adult level has shown on an even larger scale that devolution contributes to local jail expansion, entrenching punishment in communities. More than community: Los Angeles County Sheriff Lee Baca, Tuolumne County Chief Probation Officer Adele Arnold, Irvine Police Chief Dave Maggard, Lassen County Sheriff-Coroner Dean Growdon and Fresno County Chief Probation Officer Linda Penner (Hoppin, 2012).
half of California’s 58 counties are investing funding they received from the state through realignment to build or expand their local jails (Jimenez & Silard, 2012; Durand, 2012c). For example, San Jose County, San Mateo County, Santa Barbara, Stanislaus County, Sacramento County, and Sutter County all used millions of dollars in realignment funds to expand their local jails (Melvin, 2012; Durand, 2012b; Cooley, 2011; Furillo, 2011; Van der Meer, 2011). Tehama County used grant money to hire personnel for its local jail and expand inmate roadwork crews (Longoria, 2011). Humboldt County expanded its jail, built a day reporting center and funded a manual labor in lieu of jail sentences program to handle the influx of realignment inmates (Greenson, 2011).

Moving control over low-level offenders to the county level has not fixed problems related to overcrowding. Similar to the development in the juvenile justice system, the strategy has relocated the problem rather than fundamentally solved the issue of overcrowding. Soon after the implementation of realignment, county facilities, many of which were already overcrowded, received a higher than expected influx of inmates and have struggled with issues of overcrowding (Thompson & Risling, 2011). While officials were optimistic the initial surge would quiet down, the problem of overcrowding does not seem to be subsiding and continues to plague a number of counties. Additionally, the expectation has been that inmates serving long sentences up to

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113 In 2011 Stanislaus County decided to no longer negotiate a contract with the federal government for an immigration center and instead to funnel $131.7 million towards a jail expansion project. The county’s three detention centers have a total of 84 maximum-security beds. Because of a report by Crout and Sida Criminal Justice Consultants that calculated the county would need a total of 801 maximum-security beds by 2018, the county decided to approve the jail expansion project (Stapley, 2011).

114 This is not the first time the adult system has gone through a realignment process. Similar to the development of the juvenile justice system, the adult system has a long history of struggling to determine which level of government, state or local, should be responsible to incarceration (Ball, 2016).
10 or even 20-years in length are now being moved to the county level which drastically changes the composition of local jails and likely will exacerbate overcrowding.

One year after the realignment legislation passed, the county of Solano had seen a 50% decline in new prison commitments, but was already experiencing overcrowding at the local level, despite reopening an 80-bed section of the Claybank facility in the county (Chalk, 2012). Similarly, In San Joaquin County, one year and a half after realignment the county had received about 22 times the number of parole violators it was projected to receive and its facilities were overcrowded (Johnson, 2012). In Monterey County, a year after realignment, the county was forced to triple bunk inmates in their cells. Just months after the legislation passed both Tehama County and Santa Cruz County were at about 115% capacity and expected to get worse (Longoria, 2011; Johnson, 2011; Baxter, 2011).

Overcrowding in local jails was an obvious consequence of realignment as in many counties overcrowding was already a problem before realignment took effect. For example, Fresno County was already dealing with issues of overcrowding and then received two times the number of influx in inmates predicted by the state in the first eight months of realignment (Fresno Bee, 2011). In counties like San Diego where there was

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115 According to the jail chief Jeff Budd of the Monterey County Jail, the C-wing, which is approved for 50 beds was holding 114 people (Reynolds, 2012a). In total the jail was about 200 inmates over capacity (Reynolds, 2011). The county began to ship inmates to San Francisco County and Alameda County to relieve overcrowding (Reynolds, 2012b).

116 In the first two months of AB 109 going into effect, about 41% of the jail population in Tehama County was made up of realignment incarcerations (Wagner, 2011).
capacity to receive more inmates, the jails already filled up faster than expected in the first years of realignment (Littlefield, 2011).\textsuperscript{117}

Not only has realignment had adverse consequences at the local level in spurring jail construction and exacerbating overcrowding, but it also has not been an effective solution to the problems in state-run prisons. Estimates are that since realignment the state prison population has decreased by 12%; however, the state is still significantly short of complying with the court mandates from 2011 and inmates held in state institutions are still suffering the consequences of this overcrowding (Valenzuela, 2012a). For example, the state-run Chino prison was at double capacity in 2004 and in 2012 had dropped to 160% capacity. While this is a significant decline, the prison is still dangerously overcrowded and many of these conditions, believed to have spurred the 2009 Chino prison riot, persist even after the changes from realignment (Valenzuela, 2012a). Even if the state were in full compliance with the court mandate, this would still mean operating state-run prisons at 137.5% capacity.

Devolution in the adult system is also incentivizing privatization similar to the developments in the juvenile justice system. The increased role of the private-sector in adult corrections demonstrates the connection between localization and privatization. Counties are overwhelmed by the influx of inmates from realignment policies, so they are turning to a wide variety of community-based solutions to handle these offenders. Non-profits and for-profits are seizing the opportunity to receive reimbursements from

\textsuperscript{117} When realignment went into effect, the San Diego jails were at 88% capacity, but were expected to reach capacity within the year.
realignment funds and carve out a larger role in the criminal justice system. Many of the alternatives counties are using realignment funds for such as electronic monitoring, bail bonds, and community-based programs are provided by the private-sector all of which are billed as “cheaper” options for counties. Realignment has fostered a cooperative relationship between local law enforcement and private companies who share an interest in expanding resources and programs at the county level.

A number of counties are expanding or starting to use GPS monitoring (a growth industry for private companies) to tightly monitor offenders in the community. San Joaquin County, Sacramento County and Tehama County have all allocated millions of dollars to purchase GPS monitoring systems from private companies (Johnson, 2012; Furillo, 2011; Johnson, 2011). The public safety community has supported the growth of private industry partnerships. California State Sheriff Association President Mark Pazin has promoted the use of electronic monitoring systems as long as they are coupled with appropriate oversight by law enforcement (Usher, 2011).

The private prison industry has supported the expansion of post-conviction bail bonds as a particularly promising area for market growth. This interest fits with those promoting expanding bail as an accountability measure in realignment such as Executive Director for Californians United for Public Safety, Nina Salarno Ashford (Usher, 2011). The American Legislative Exchange Council, (ALEC) released a brief in 2007

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118 For example, Tehama County uses realignment funds to contract with Satellite Tracking of People (LLC, Texas) to lease equipment from the company at a $120,000 per year cost (Wagner, 2011).
recommending early release with bail bonds as a way to set up bonding companies as private parole agencies (Silver, 2013).

Realignment in the adult system has also increased contracts with the private-sector to carry out a broad array of “community-based services.” Similar to the juvenile justice system, practitioners have found a way to package traditional correctional policy (such as jail expansion) with programs that use the language of rehabilitation. The proliferation of these programs and services continues to focus attention on the personal failings of those in the system as the source of the problems of mass incarceration. San Joaquin County and Monterey County have both allocated large sums of money to purchase life skills programs. Counties are also investing in motivational interviewing, cognitive behavioral therapy and risk assessments (Kaplan, 2012; Valenzuela, 2012b; Warren, 2011). A Santa Clara County probation officer pointed out the limitations of pairing new rehabilitation strategies with old law and order policies stating: “it seems like a double message. I mean they’re asking some of us to carry guns and at the same time to try out motivational interviewing?” (Kaplan, 2012).

The developments in the adult system have provoked more push back then the changes to the juvenile justice system providing better insight into another weakness of realignment. The adult system is experiencing a punitive backlash from conservative politicians arguing that the reforms are too lenient. Scholars from the early 1980s noted that this often happens in the episodic effort to promote community-based reforms.

119 Monterey County has used AB 109 funds to contract with Criminon, a private company that provides life and thinking skills education. The program asserts, “the rehabilitative technology employed by Criminon will some day soon be utilized by prison systems worldwide, as such methods represent the only true workable means to handle the burdensome criminal populations” (Criminon International, 2013).
Austin & Krisberg wrote in 1981 that when, “the state is experiencing a fiscal crisis making very real the need to develop less costly community-based control devices” that “the negative reactions among the public to the new types of community-based control have produced calls for increased punishment of criminals” (p. 189).

Anti-realignment arguments rest on the notion that moving inmates to local jails is too lenient and a threat to public safety. Republican State Senator Jim Nielsen, the vice chairman of the Assembly Budget Committee, came out in opposition to the adult realignment bill referring to it as, “a travesty of justice and possibly the greatest threat ever made on public safety for California families, brought about by its elected representatives” as well as warning the policy could “result in hundreds of thousands of criminal acts and a mass victimization on the citizens of California” (2011a). Republican Assemblyman David Valadao has opposed realignment and promoted its repeal arguing, “by allowing hardened felons to serve alongside small time lawbreakers, we are creating a criminal mentoring program in our local jails” (Valadao, 2011).

The California GOP made a video featuring Nielsen as a prototype for campaign ads to launch against Governor Brown and Democrats in which the video plays ominous music and shows pictures of California inmates. Nielsen details the reasons why the realignment bill was a mistake. He states,

Every citizen should be preoccupied with their personal safety and the safety of their family members. That means securing your property, higher levels of security, locking your doors, surveying everything about the places that you are, your car, your garage, your house, your barn.\textsuperscript{120}

\textsuperscript{120} Video can be watched at http://vimeo.com/29792284.
He also laments the money that is being taken away from law enforcement and going towards treatment programs for “this unrehabilitable mass of human beings.”

Additionally, Assembly Republicans launched a website titled “California Crime Watch” to track news clips and reports of crime occurring post-realignment and a counter of the number of inmates that have been released from state institutions. The website also features a section titled “AB 109’s Most Wanted” (see illustration 1) that lists pictures and descriptions of people who have committed crimes while released on parole or after serving less than their full sentences (California Crime Watch, 2014).

Illustration 1: California Crime Watch

Some of Nielsen’s alternative ideas for relieving overcrowding instead of realignment are to build more state prisons or to send prisoners to out of state prisons to serve their sentences (Yamamura, 2011). Nielsen also calls for preventing prisoner inmate lawsuits. There is a stronger consensus between the two parties for juvenile justice reforms; however, the politics surrounding changes to the adult system suggest that the reform strategy can spark a punitive backlash in partisan fights. The arguments for realignment are not well matched with calls for “tough” policies since many times in the past
concerns about public safety have overridden technocratic arguments about how expensive a particular carceral policy is. A reform strategy that is premised on cost-savings and cost-efficiency is not well matched for sensational arguments about public safety.

Practitioners on the ground have punitively responded to the stipulations of realignment as well. In some instances the result of opposition to realignment has been to ratchet up punitive practices to undermine the realignment effort. For example, Los Angeles County District Attorney Steve Cooley came out adamantly opposed to realignment and vowed to push for the most serious charges to ensure that those he brought to court would go to state prison (Lagos, 2011). He argued that the jails were already overcrowded in the counties, so realignment would lead to forced early releases that would be, according to Cooley, a “public safety nightmare” (Lagos, 2011).

These reactions force prison reformers to defend realignment in order to stave off harsher “get tough” solutions to overcrowding and problems in the criminal justice system. Prison reformers either have to defend a policy they are not very supportive of or concede the more drastic critiques being made by oppositional forces to realignment. Californians United for a Responsible Budget (CURB), a progressive advocacy organization, has been outspoken in their critique of jail expansion projects. The group has launched local resistance campaigns and established a voice in the debate at the state level. CURB claims that realignment is a cover to push unnecessary and unneeded jail expansion projects (Johnson, 2011). They have pointed out the use of solitary confinement in local jails and bad medical care that plagues county jail systems much

172
like the state prison system (De Atley, 2011). Yet, they too support realignment, arguing it must be done without expanding jail systems (Zuniga, 2013). The project of realignment is a challenge to an organization like CURB who has to organize and launch fights all over the state in particular counties against local jail expansion projects rather than consolidate their forces at the state capital. Realignment puts political advocacy organizations on the defensive and highlights how strong the consensus for community-based solutions is. Between Texas and California, CURB is one of the most progressive prison reform groups and a rare voice of criticism of some aspects of realignment. Yet, even CURB has signed on to the idea of realignment, particularly the promotion of localization and community-based programs, despite these weaknesses.

*Latest Reforms to Solitary and Parole Hearings*

The developments in the adult criminal justice system give a sense of the politics surrounding criminal justice policy today in California and the way realignment as a political project creates obstacles to fundamentally reshaping public policy. Recent reform legislation addressing the use of solitary confinement and parole hearings for juveniles demonstrates the ways the reform landscape is conducive to regulatory changes in prison policy, yet, at the same time, due to prevailing commitments to cost-efficiency, limits the political possibilities for how to improve the treatment of youth. The state legislature has been able to pass reforms, but has carved out exceptions that heighten and perpetuate the unequal treatment of juveniles in the state. The changes to improve conditions of confinement and trim away at very long sentences, excludes youth deemed the “worst of the worst” (in California often those labeled “gang-members”), which
legitimizes the continued use of punitive policies targeted at poor and racial minority youth.

Curtailing the widespread use of solitary confinement in the United States is a major criminal justice reform issue. Efforts to reform solitary reflect a desire to ensure a basic level of dignity and care for prisoners. However, legislative fights over the use of solitary in California have been channeled into discourses about cost-efficiency and officer safety. Reforms to solitary confinement in California underscore the obstacles that exist in forming effective coalitions not just to change policy, but to also implement these changes on the ground.

There has been a promising amount of momentum amongst reformers and legislators to limit the use of solitary confinement, but the path to legislative changes in this policy area has been rocky. In 2013, Senator Leland Yee (D-San Francisco) introduced a bill to limit the use of solitary confinement for juveniles. County probation heads and prison guard union representatives opposed the legislation on grounds that it was too expensive, would necessitate more training, and could lead to more lawsuits (Meronek, 2013). The state Division of Juvenile Justice denied that the state prison system uses solitary confinement – taking the same tack as the adult run division, which has also denied the practice of solitary in the face of extensive hunger strikes by prisoners (Meronek, 2013). The bill was revised to exclude a requirement for mental health

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121 Soon after proposing this bill, Sen. Leland Yee was arrested on a number of corruption charges to which he has pled guilty, the most egregious of which was facilitating a multimillion dollar arms (ironic given he was a champion of gun-control legislation) (Koseff, 2015). He was indicted alongside a longtime associate of his Raymond “Shrimp Boy” Chow a leader of a well known San Francisco Chinatown gang (Vives & Willon, 2014).
caregivers to check in on youth in solitary because opponents in the legislature, such as Senator Ron Calderon (D-Los Angeles) deemed it was too expensive. The preeminent commitment to cost-efficiency in this reform debate, adhered to by both political parties, continues to significantly limit policy possibilities. The bill was watered down and eventually did not pass. There was a lack of will to further push the legislation given that solitary is technically outlawed in state-run prisons even though there exists evidence it is still used.

However, two years later the reform effort was renewed. In 2015, Senator Mark Leno introduced another bill to restrict the use of solitary confinement for juveniles. This bill has a better chance of passing since the supporters have been able to court the support of the state association for county probation department heads, particularly member L.A. County Probation Chief Jerry Powers who supports the legislation but also has acknowledged that alternatives for how to deal with juveniles that are sent to solitary confinement do not exist (Therolf, 2015). One example is that there are strict limitations on emergency hospitalizations and hospitals quickly discharge youth who are experiencing mental health crises that often spur their placement in solitary. In response to the lack of adequate alternatives available for corrections officials, Powers commented, “it’s like Sacramento gives us no option. In some ways they are going to force us to violate the law on the first day it is passed” (Therolf, 2015). The solitary reform bill shows the constraints that practitioners face in on-the-ground implementation.

The driving logic of cost efficiency and the prevailing acceptance of “limited resources” meant that from the first attempt at passing solitary reform legislation in 2013,
the stipulation to invest in mental health caregivers was cut. The state has regulated solitary confinement before, particularly in state-run prisons; however, outlawing the practice on paper is very different from ending its use in practice. The reform legislation is the product of a legislative environment where political leaders from both sides of the aisle are determined to do “more with less” and prove that reforms are “cheaper.” While this may be conducive to passing a reform that legally outlaws the use of solitary confinement, it is at the same time a significant obstacle to establishing adequate oversight and alternatives outside of the prison setting to ensure the practice stops.

Parole Hearings

In recent debates over increasing parole hearings for juveniles sentenced to long terms in prisons, the “most serious” offenders have been excluded from reforms. This trend reflects the persistent unwillingness to address the treatment of all youth in the justice system. Instead, policy changes are channeled into concerns about procedural fairness and getting “right” who receives harsh punishments. In 2013, the legislature passed Senate Bill 260 requiring the Board of Parole Hearings to review the cases of juvenile offenders who committed their crimes before they were 18 years old, once they had served 15 to 25 years and depending on their offense.\(^{122}\) Every major reform organization in California and many national groups, more than 80 organizations in total from both ends of the political spectrum, supported the legislation.\(^{123}\) Opposition to the bill came from about 20 different police associations and district attorney associations as

\(^{122}\) The bill excluded anyone sentenced under Jessica’s Law (first time child sex offenders), one-strike rape offenses, three strikes offenses and youth given a life without parole sentences.

\(^{123}\) Some notable supporters of the legislation were Human Rights Watch, ACLU, W. Haywood Burns Institute, Taxpayers for Improving Public Safety, Grover Norquist, Pat Nolan and Newt Gingrich.
well as crime victim groups. The legislation is typical of popular reform measures today that appeal to fiscal conservatism, personal responsibility and neuroscience research on youth brain maturity (California State Legislature, 2014). The continued commitment to punitive accountability in the legislation is reflected in the bill analysis, which states,

SB 260 holds young people responsible for the crimes they committed and creates a parole mechanism in which they must demonstrate remorse and rehabilitation to merit any possible release on parole as determined by BPH [Board of Parole Hearings]. (California State Legislature, 2014)

The parole hearing reform is directed at a very small number of juveniles as it excludes many youth given long sentences. Further even for the small number of youth granted a parole hearing due to the legislative changes, the hearing does not occur until a youth has served 15-25 years, which in most countries would be the longest sentence available to any offender.124

One population excluded from the parole reform effort is juveniles convicted of life without the possibility of parole sentences.125 These individuals are barred from getting a parole hearing, even after 15 to 25 years of time behind bars. In 2012, the legislature passed Senate Bill 9, which allows some juvenile lifers to apply for a new sentencing hearing.126 However, even if the juvenile gets a hearing, this does not mean

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124 In the first year of the bill being in effect, there were 490 parole hearings thanks to the legislation and 155 individuals were approved for release (Pitre 2015). In 2015 the legislature passed an extension of SB 260 to include those sentenced to life without parole when they were less than 23 years old.

125 As of 2012, there were 310 prisoners in California serving life prison sentences without the possibility of parole for a crime they committed when they were less than 18 years old (Gerber, 2015). Nationwide there are about 2,500 juvenile lifers. California’s juvenile lifer population is about 12.4% of all youth serving life sentences without parole in the United States.

126 The law does not apply to those who were older than 18 at the time of the crime, were sentenced to LWOP for a crime in which the defendant tortured his or her victim, or was sentenced to LWOP for a crime
they will receive a different sentence and even if they are given the possibility of parole, this does not mean they will be approved by a parole board for release. The Fair Sentencing For Youth described the legislative change succinctly: “SB 9 is a hard road – but it is a chance for a chance” (Fair Sentencing for Youth, 2016). Since SB 9 passed, it is unclear how many juvenile lifers have gotten a new sentencing hearing, have been resentenced and have been approved for release. The first and only widely reported case of a lifer being released was Edel Gonzalez, released in March, 2015 (Gerber, 2015).

_Gangs, Race and Continued Inequality_

It takes broad political support to pass any piece of legislation and because there are so many interests involved in criminal justice reforms, forging alliances requires concessions. However, it is important to note that the compromises and the exceptions carved into these reform measures have a particularly negative consequence on poor and racial minority youth, those who are disproportionately harmed by the juvenile justice system. The developments in juvenile justice policy in California pushing towards more local control and increasing privatization along with establishing ever more sophisticated tools for determining which youth are “high risk” versus “low risk” are exacerbating problems in the juvenile justice system.

The persistent evocation of the “worst of the worst” youth offender legitimizes the continued use of harsh punishments targeted at poor and racial minority youth. The broad attack on gang-affiliated youth who continue to be the symbol of the dangerous and
Irredeemable offender carries forward the same longstanding patterns of a juvenile justice system. Policies for handling youth offenders continue to be fueled by drawing on anxieties about social class and race. By propping up the gang offender as the threat to Californians, the role of the state continues to be to protect taxpayers from youth offenders rather than tasked with a wider set of expectations to provide for Californians (HoSang & Cate, 2016).

Though fewer juveniles are being committed to state-run institutions, this population is even more highly concentrated with verified gang members. In 2000, 67% of juvenile commitments to the state-run juvenile prison system were gang members. By 2005, the percentage rose to 77%. Of youth given the harsher response of an adult sentence, there has been an even more dramatic concentration of gang members. In 2000, 35% of adult court commitments were gang members. By 2005, the percentage rose to 76%. Juveniles labeled gang offenders at the county level are largely excluded from the therapeutic goals of local placement and in fact are actively distanced from their homes. Youth labeled gang members are predominantly poor and racial minorities from areas of the state that are the most disadvantaged.

Nationwide there is an increased concentration of black youth in prisons, despite the overall rate of incarceration going down. In 2003, black youth were 3.7 times more likely to be incarcerated than white youth. By 2013, the number grew to 4.3 (Hager, 2015). Part of this may be due to the greater availability of alternatives to detention for white youth compared to black youth. Many of the most popular strategies for reducing the incarceration of both juveniles and adults, exclude offenders who have extensive
criminal histories. Regarding this trend, Marc Mauer from the Sentencing Project notes, “that’s mostly black people” (Hager, 2015). If better data were kept on economic variables, likely this population of excluded offenders would largely be those who are the least economically advantaged. As the minimal data on median household income trends indicated low incomes are highly correlated with higher rates of confinement.

The decision to divert a youth from prison is often based on assessments of the stability of a youth’s family and community. This deciding factor disadvantages poor and racial minority youth who are more likely to be labeled as coming from a “dysfunctional family” (Hager, 2015). Popular risk assessment tools take measurements of existing inequalities (things like academic performance, previous involvement with the police or whether or not a youth’s parents have been incarcerated) and plug these into a scoring system that then outputs “high risk” labels for poor and racial minority youth. This assessment then pushes these youth to the most punitive end of the criminal justice system.

By relying on the goal of better determining which youth deserve harsh punishments and which deserve alternatives, the reforms do not shrink the overall reach of the criminal justice system and may in fact worsen the inequalities of the system where the most disadvantaged youth get the harshest punishments. James Bell, from the W. Haywood Burns Institute stated it succinctly: “the beneficiaries of a downsizing system are those with somewhere else to go” (Hager, 2015). The reform effort has not attempted to address the inequalities of which youth have “somewhere to go.” The reforms are
premised on the notion that individual uplift, not structural reforms, is the key to a youth’s success.

VII. Conclusion

The ascendency of realignment as the path to reforming the prison system demonstrates the limitations of the political landscape in California. Realignment has been effective in reducing the incarceration rate for juveniles at the state level and has contributed to the decline of abuse riddled state institutions. Yet, only a very small percentage of California’s youth were sent to state-level institutions before the 1996 and 2007 realignment initiatives, since most all juveniles processed in the system were already handled at the county level. California follows a nationwide trend of declining number of arrests of juveniles since 2008 and therefore has seen declines in all levels of institutionalization across the state. As an overall restructuring and reform of the system, the state has made little positive improvement. The state reacted to a court mandate by moving juveniles to a different level of jurisdiction (where the same abuses plague county institutions). The state has continued to invest in bed capacity, if only beds that are geographically closer to a youth’s home. The predominance of blaming delinquency on individual pathology coupled with the leadership of large non-profits conforms to a politics that does not explore broader considerations of solutions to the problems with the juvenile justice system. These two central features of the reforms persist in focusing on individual rather than structural interventions and are compatible and supportive of punitive policies.
Both Texas and California show that the foundation led model for the juvenile justice system has created a remarkable convergence in justice policy across the country. States with Democrat and Republican leadership and with progressive and conservative political organizations are signing on to reforms that privatize and devolve the juvenile justice system. These market-based solutions to the problems of the justice system are part of a wider trend in American politics where public services are increasingly decentralized and privatized. The promotion of cost-efficiency, public/private partnerships and evidence-based programs are top-down technocratic policy solutions promulgated by large foundations.

The following chapter on Pennsylvania details a much longer running model of this type of reform in a state that has the most privatized and decentralized juvenile justice system in the country. The next chapter provides a window into the consequences of Texas and California following this model for the juvenile justice system over time. The longstanding relationship between foundations, privatization and individual behavior modification is evident in the development of Pennsylvania’s juvenile justice system.

All three cases, spanning vastly different geographic and political contexts, suggest the leadership of large foundations in directing research on delinquency and pilot grant money for anti-delinquency programs has produced a policy consensus around market-based reforms to the juvenile justice system. As most evident in Pennsylvania, a state that has had the longest running experimentation with this strategy of reform, privatization and devolution in the juvenile justice system perpetuates abusive conditions
of confinement, high rates of youth involvement in the justice system and particularly harms poor and racial minority youth.

Appendix I.


<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ADP juvenile halls</td>
<td>7,108</td>
<td>6,826</td>
<td>6,384</td>
</tr>
<tr>
<td>Juvenile hall beds meeting CSA standards</td>
<td>6796</td>
<td>8182</td>
<td>8298</td>
</tr>
<tr>
<td>Highest one day pop</td>
<td>7805</td>
<td>7692</td>
<td>7091</td>
</tr>
<tr>
<td>ADP of camps</td>
<td>4467</td>
<td>4097</td>
<td>4026</td>
</tr>
<tr>
<td># of juv bookings for the year</td>
<td>10526</td>
<td>9353</td>
<td>9122</td>
</tr>
<tr>
<td># of youth on home supervision or alt. confinement</td>
<td>2927</td>
<td>2616</td>
<td>2415</td>
</tr>
<tr>
<td># of jus receiving psychotropic medication</td>
<td>1075</td>
<td>1219</td>
<td>1644</td>
</tr>
</tbody>
</table>


Appendix II.

Table 6. Major Legislation Addressing Gangs, 2009-2013

<table>
<thead>
<tr>
<th>Year</th>
<th>Bill Number</th>
<th>Title of Law</th>
<th>Description of Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>CA S 492</td>
<td>Loitering: Criminal Street Gangs</td>
<td>Provides enhanced penalties for this crime if the person has been previously convicted of, or had a petition sustained in juvenile court for, any of specified criminal street gang offenses. Requires the court to impose upon these defendants a condition prohibiting the defendant from entering the grounds of a school without the express permission of the chief administrative officer of the school.</td>
</tr>
<tr>
<td>2009</td>
<td>CA A 576</td>
<td>Vandalism: Graffiti: Recovery of Cost</td>
<td>Requires the court whom a petition is sustained for a specified acts of vandalism, to order the defendant or juvenile offender to pay all costs incurred by and law enforcement agency in identifying and apprehending the defendant, provided that the defendant or juvenile has the ability to pay.</td>
</tr>
<tr>
<td>2010</td>
<td>CA AJR 40</td>
<td>Gang Violence Prevention</td>
<td>Urges Congress and the President to establish effective mechanisms by which the federal government may encourage comprehensive local gang violence reduction plans that reflect best practices and combine gang prevention,</td>
</tr>
</tbody>
</table>
intervention and suppression, by providing flexible use of federal funds.

<table>
<thead>
<tr>
<th>Year</th>
<th>Bill Number</th>
<th>Bill Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>CA A 526</td>
<td>Delinquency and Gang Intervention Grants</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Requires the Board of State and Community Corrections to identify the delinquency and gang intervention and prevention grant funds and programs for the purpose of consolidating those grants and programs and moving toward a unified single grant application process in accordance with federal guidelines. Requires the development of grant incentives. Requires the board to develop a plan to ensure related funds are used in specified juvenile justice programs with evidence-based practices.</td>
</tr>
<tr>
<td>2012</td>
<td>CA A 1122</td>
<td>Juvenile Offenders: Tattoo Removal</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Requires the Board of State and Community Corrections to identify the delinquency and gang intervention and prevention grant funds and programs for the purpose of consolidating those grants and programs and moving toward a unified single grant application process in accordance with federal guidelines. Requires the development of grant incentives. Requires the board to develop a plan to ensure related funds are used in specified juvenile justice programs with evidence-based practices.</td>
</tr>
<tr>
<td>2012</td>
<td>CA A 1956</td>
<td>Juvenile Offenders: Tattoo Removal</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Expands a tattoo removal program under the Division of Juvenile Facilities to serve individuals who were tattooed for identification in trafficking or prostitution and are in the custody of the Department of Corrections and Rehabilitation or county probation departments, who are on parole or probation, or who are in a specified community-based organization.</td>
</tr>
<tr>
<td>2013</td>
<td>CA S 458</td>
<td>Gangs: Statewide Database</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Requires that, prior to local law enforcement designating, or submitting a document to the Attorney General's Office to designate, a person as a gang member or associate in a shared gang database, the agency shall provide a written notice to the person, parent or guardian if the person is under 18 years of age unless such notification would compromise an active investigation. Authorizes documentation contesting the designation and written verification. Relates to federal funding.</td>
</tr>
</tbody>
</table>

Appendix III.

Table 7. Offense Category for Youth Sent to State-Run Facilities (DJJ) and Secure County Facilities
<table>
<thead>
<tr>
<th></th>
<th>% of juvenile commitments to DJJ</th>
<th>% of placements to secure county facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent</td>
<td>58%</td>
<td>26.5%</td>
</tr>
<tr>
<td>Property</td>
<td>21.7%</td>
<td>42%</td>
</tr>
<tr>
<td>Drug</td>
<td>3.8%</td>
<td>11.9%</td>
</tr>
<tr>
<td>Sex</td>
<td>7.7%</td>
<td>1.6%</td>
</tr>
<tr>
<td>Weapons</td>
<td>4.9%</td>
<td>12.2%</td>
</tr>
<tr>
<td>Other</td>
<td>3.9%</td>
<td>5.8%</td>
</tr>
</tbody>
</table>

Appendix IV.

Table 8. Youthful Offender Block Grant 2015-2016: Planned Programs and Expenditures

<table>
<thead>
<tr>
<th>Program</th>
<th>Number of Counties</th>
<th>Total Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>County Residential</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juvenile Hall</td>
<td>21</td>
<td>9,114,968</td>
</tr>
<tr>
<td>Camps</td>
<td>12</td>
<td>32,985,792</td>
</tr>
<tr>
<td>Ranches</td>
<td>5</td>
<td>1,260,715</td>
</tr>
<tr>
<td>Secure/Semi Secure Rehabilitation Facility</td>
<td>8</td>
<td>19,364,915</td>
</tr>
<tr>
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<td>Capital Improvements to Juvenile Facilities</td>
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<tr>
<td><strong>Probation</strong></td>
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<td>Anger Management (ART)</td>
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185
Life/Independent Living Skills Training 3 60,500

**Staff Expenditures**
Staff salaries 11 1,000,187
Staff Training 7 77,684

**Assessments**
Risk and/or Needs Assessment 18 2,038,374

**Re-entry or Aftercare**
Re-entry or Aftercare Services 6 5,239,040

**Other**
Parenting Education 6 126,721
Tutoring 2 25,000
Recreational Activities 5 198,400
Restitution 2 31,000
Restorative Justice 2 78,544
Vocational 6 607,906
Gender Specific Programming for Girls/Boys 10 386,361
Mentoring 4 414,076
Contract Services 5 421,510


Appendix V.


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<td>Non-Secure County Facility</td>
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<td>Other: Public/Private Facilities</td>
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Compiled from data available at http://oag.ca.gov/cjsc/pubs#juvenileJustice.
Parents, whose extreme poverty, casual calamity or moral turpitude, induces a neglect of their offspring, expose them at once to be caught up by the profligate and knavish, to be made unsuspected agents in the commission of offenses, and to be trained into habits of idleness, cunning and predatory vagrancy.

-George M. Dallas, 1829, former Mayor of Philadelphia, attributing criminality to parental neglect (Glazier, 1985).

What I do know is that many children that become victims, criminals, or both, come from broken homes. Sometimes there are no parents at all, the parents are in jail or they’re addicted to drugs. Is it any surprise that children turn to violence and crime themselves?


Pennsylvania is exceptional for having a longstanding tradition of a decentralized juvenile system with substantial local control and the strongest level of private-sector participation in the nation. The earlier adoption of community-based, devolution reforms in Pennsylvania compared to Texas and California provides an important case to see the consequences of the politics and policies surrounding devolution. Decades of pursuing the community-based model in Pennsylvania offers a lens to evaluate the long-term effects of similar policies other states have pursued in more recent years.

The Pennsylvania case suggests that the consequences detailed in prior chapters are likely to worsen over time. The developments in Pennsylvania demonstrate that as devolution takes hold, localization and privatization create entrenched interests. These local and private-sector interests ensure that the juvenile justice system continues to
handle a large number of juveniles, predominantly for minor crimes. As the quotes opening this chapter illustrate, recent reforms carry forward the longstanding idea that delinquency stems from bad parenting and the immorality of young offenders. This longstanding belief, dating back to the early Houses of Refuge in the mid-19th century, has justified the proliferation of privately run individual behavior interventions in the community. The inability of community-based reforms to fundamentally retract the juvenile justice system and end the use of particularly tough policies provides a cautionary case for those currently advocating for similar reforms.

The leadership of large foundations in juvenile justice policy in the United States helps to explain the remarkable convergence around community-based reforms in Texas, California and Pennsylvania, three states that have differed in their timing of implementing reforms and have significantly different political contexts. Because Pennsylvania, unlike Texas and California, has always had a much more devolved and privatized juvenile justice system, it became the central location for large foundations advocating for a similar configuration of the juvenile justice system. As a pioneer in developing and implementing evidence-based programs (EBPs), disproportionate minority confinement (DMC) initiatives, risk assessment instruments, community-based alternatives and justice reinvestment, major foundations such as MacArthur and Annie E. Casey have repeatedly held Pennsylvania up as a model for the nation (Griffin, 2008; Griffin, 2003; Pennsylvania Juvenile Court Judges’ Commission, 2008; Pennsylvania Juvenile Court Judges’ Commission, 2003; Torbet & Thomas, 2005).
Consequently, these same foundations have funneled resources and leadership into the state to expand and accelerate its efforts to devolve and privatize juvenile justice services. The choice of Pennsylvania as the testing ground for these large foundations has meant that reforms in Pennsylvania have shaped the policy choices in Texas and California. The exportation of the community-based model from Pennsylvania, disseminated through large national foundations, has contributed over time to these different locales pursuing similar market-based reforms to the juvenile justice system. All three states have converged around reforms that emphasize cost-efficiency and public-private partnerships.

Texas and California both had periods in the 1970s of instituting devolution and probation subsidies; however, these states ultimately experienced push back that led them to end these subsidies and expand the state-run network of prisons. In Pennsylvania, the flagship devolution legislation that passed in 1976 remains on the books and was never reversed. The punitive turn in the late 1980s and 1990s in Pennsylvania was layered over this major devolution initiative, and the expansion of community-based programs was integrated into the “get tough” policies the state passed during this era. While the development of the juvenile justice system in Texas and California more clearly vacillated between centralization and devolution, ultimately the three cases show a common pattern – a “get tough” philosophy undergirds both configurations of the juvenile justice system. Shifting the site of governance without changing the purpose of an institution does not solve problems such as the expansive reach of punitive
institutions. Instead, a devolved system creates incentives for privatization and expands programs in the community that replicate the punitive conditions of state-run prisons.

The Pennsylvania case suggests that community-based reforms are not effective at addressing the problems plaguing the juvenile justice system. The state may not have ever reached as high of a rate incarceration in state-run prisons as the other two cases, Texas and California, but the rate persists at a high level and even grew during the 2000s. Furthermore, despite a dramatic decline in arrest rates from the late 1990s to the present, the number and percentage of youth sent to private institutions continued to grow in Pennsylvania. Despite claims that the private-sector will increase efficiencies in the juvenile justice system and reduce delinquency (thereby reducing the need for state-run prisons), in practice privatization entrenches the reach of the juvenile justice system.

The community-based configuration of Pennsylvania’s juvenile justice system has had major consequences. First, by defining delinquency as something rooted in the deficiencies of juveniles, solutions are localized and aimed at “fixing” individuals, as elaborated in this chapter. This perspective ignores broader economic and social forces contributing to problems in the juvenile justice system such as poor youth consistently experiencing the most punitive policies. Second, by pushing the services of the juvenile justice system to the local level, institutions in the community, such as local probation and the school system, became more punitive. Third, community-based reforms are rooted in a punitive philosophy and are part of a continuum of punishment, not a replacement for punishment. The juvenile justice system in Pennsylvania attempts to “cure” delinquency through individual behavior modification at the community level,
while reserving the harshest punishments for juveniles who commit serious crimes. This bifurcation entrenches punitive accountability in communities and legitimizes the exceptionally harsh treatment of youth caught up in the justice system.

This analysis of the development of juvenile justice policy in Pennsylvania draws from state and county research publications, literature from key juvenile advocacy organizations, legislative debates and data on juvenile placements. The chapter begins with a brief history of the early development and creation of the juvenile court in Pennsylvania, followed by an analysis of the major devolution act the state enacted in the mid-1970s. The next section covers the 1980s and 1990s “get tough” era and shows how these policies developed alongside a community-based approach. The section gives an in-depth analysis of the landmark “balanced and restorative justice” (BARJ) legislation the state passed in 1995. This measure included major punitive overhauls of juvenile sentencing and further invigorated the principles of community-based programs and services. As part of accounting for Pennsylvania’s commitment to BARJ and devolution, the chapter then profiles Pennsylvania’s leadership in the evidence-based movement and its close relationship to large foundations. For the remainder of the chapter, the focus shifts to the consequences of decades of devolved community-control and the implementation of BARJ. Looking at privatization, school discipline, probation officer power, and examples of alternative programs such as restitution and drug courts, the remaining sections show some of the effects of these policies for youth on the ground in

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127 An analysis of every newsletter published by the Juvenile Court Judges Commission from 1999 to present and reports by Pennsylvania’s Commission on Crime and Delinquency. Drawing from limited data available provided by PCCD, JCJC, FBI arrest statistics, the Pennsylvania Commission on Sentencing, Pennsylvania Safe Schools Office and the federal Civil Rights Data Collection (CRDC).
Pennsylvania. The chapter concludes with a discussion of recent legislation passed to reform the juvenile and adult systems demonstrating the intransigence of the community-based approach and its wider impact on criminal justice policy in Pennsylvania.

Pennsylvania is an example of what a sustained commitment to devolution and community-based approaches holds for states that may choose this approach. Similar to Texas and California, Pennsylvania has continued to pass and uphold “get tough” policies for handling youth offenders. The state’s persistent commitment to punitive policies for the “worst of the worst” is particularly pronounced in its juvenile life without the possibility of parole sentencing policy and its treatment of juvenile sex offenders. The case of the Kids for Cash scandal, a result of local autonomy and privatization provides insight to the most egregious consequences of Pennsylvania’s juvenile justice system.

I. Juvenile Justice System Development

Pennsylvania has a longstanding tradition, drawing all the way back to the origins of the juvenile court more than a century ago, of carving “serious” juveniles out of the juvenile justice system and handling them at the adult level. The Child Saving Movement in the early 1900s, particularly strong in the Northeast, was not effective in reducing the number of juveniles sent to adult institutions. This dynamic in Pennsylvania contributed to a reduced reliance on secure facilities for juveniles run by the state. Compared to Texas and California, Pennsylvania did not have as robust of a period of modernization and centralization of its state-run prison system. Because of the adult exceptions, many juveniles continued to be treated punitively in the adult system. Further “wayward youth’’
or, as they would be called today, “at risk” youth were seen as best handled through private organizations based in the community.

The origins of the juvenile justice system in Pennsylvania are similar to California and Texas. The state first operated reform schools where juveniles, predominantly charged with status offenses, were housed. Philadelphia was the location for one of the first “Houses of Refuge” in the country, chartered in 1826 (Glazier, 1985). Houses of Refuge were separate correctional institutions for children convicted of crimes such as vagrancy and “incorrigibility” (Pennsylvania Juvenile Court Judges’ Commission, 2003, 20). These were the precursor institutions to the juvenile court system. Juveniles convicted of serious offenses were sent to state prisons where adults were held (Wolcott & Schlossman, 2002, p. 44). When Pennsylvania formally established a juvenile court system in the early 1900s, the state expanded the Houses of Refuge types of institutions without reducing its reliance on the adult system for serious youth offenders (Pennsylvania Juvenile Court Judges’ Commission, 2003, p. 20).

Pennsylvania’s distinction as the state with the most robust private-sector network of service providers is due to a long history of private-sector involvement in delinquency cases. The Child Saving Movement, running from the 1910s to 1930s in Pennsylvania, like many other states, created a wide range of new private, municipal and state programs to handle wayward youth. Despite the goal of removing juveniles from state prisons, the number of youth sent to adult prisons did not decline with the creation of these new

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128 In these early years at the advent of the first juvenile court, African American boys were sent to state run prisons at a rate 10 times their representation in the population (Wolcott & Schlossman, 2002, p. 45).
129 The original juvenile court, founded in 1901, only heard cases for juveniles less than 15 years of age until 1939 when jurisdiction was extended to 16 and 17 year olds (Wolcott & Schlossman, 2002, p. 48).
alternatives (Wolcott & Schlossman, 2002, p. 53). The number of juveniles serving time in state-run prisons remained stable in the decades before and after the Child Saving movement in the early 20th century. However, the number of juveniles serving time in private reform schools soared. The idea of punishing serious juvenile offenders was never forcefully rejected in the Child Savers Movement and thus the policies of this reform era failed to decrease institutionalization (Wolcott & Schlossman, 2002, p. 64).

In the mid-1950s the state established youth forestry camps, located in remote areas of the state to house juveniles processed in youth courts. During the same period, the state also developed youth development centers (secure detention facilities), three of which are still in operation today and one of which is privately operated. Much like Texas and California and other states throughout the nation, the 1950s was a period in which many state juvenile justice systems centralized control and developed state-run institutions. In Pennsylvania, this centralization and modernization period was much less extensively implemented than a state like California, which was a pioneer in developing this type of juvenile justice system. In the 1970s, juvenile courts continued to become more professionalized and formalized through the implementation of the “rights revolution” whereby youth were extended criminal offender protections. Pennsylvania adopted these changes in its Juvenile Act of 1972, but at this same time also passed its

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130 Wolcott & Schlossman (2002) argue that the increase may have been because the juveniles appearing before judges were much more likely to have been previously detained in a reform school. Therefore, if reform school had not worked to correct their behavior, escalating the punishment to prison was seen as a proper response to continued delinquency (57).
major devolution legislation.\textsuperscript{131} The formalization of the juvenile justice system happened in conjunction with its major and lasting devolution initiative.

\textit{Act 148 of 1976: Devolution and Privatization}

The leadership of charitable and philanthropic organizations in the Child Savers Movement set the juvenile justice system in Pennsylvania on a course of private-sector involvement. The role of the private-sector was substantially expanded and institutionalized by Act 148, a key piece of legislation enacted in 1976. Prior to its passage, counties were responsible for paying for juveniles under their jurisdiction, and it often cost counties much less if they sent delinquent youth to institutions managed and paid for by the state. Act 148 reversed the financial incentive structure by making counties pay a greater portion of the cost of confining a juvenile in a state institution than housing them locally. Much like the probation subsidy act in 1965 in California, Act 148 was a major devolution initiative. Unlike California, the devolution of the juvenile justice system in Pennsylvania was never forcefully reversed and has been largely responsible for contributing to the highly decentralized and privatized juvenile justice system.

Both political parties’ commitment to reduce public spending and move the problem of delinquency closer to home fueled the enactment of Act 148. The legislation contributed to the professionalization of probation officers by increasing their role in the juvenile justice system. Similarly, devolution led to the private-sector developing a strong interest in maintaining its programs and services through public reimbursements. The

\textsuperscript{131} The act codified many of the same protections that would pass federally with the Juvenile Justice Delinquency and Prevention Act of 1974 (Pennsylvania Council of Chief Juvenile Probation Officers, 2016).
professionalization of probation officers and the privatization of juvenile justice services created entrenched interests in favor of community-based solutions. A powerful alliance formed between the interests of probation officers and state legislators’ motivation to reduce state spending on juvenile corrections to ensure local control and state subsidies carried forward for decades to come. Pennsylvania’s longstanding commitment to a devolved and privatized system was not the product of strong progressive interests in improving the care of juveniles but rather a commitment to cost-savings and a negative view of “failed” state-run programs.

Through Act 148, private services, such as community-based charitable programs or privately run institutions that were in operation before the legislation passed were formally incorporated as an extension of the juvenile justice system. The act reinforced aspects of the Pennsylvania juvenile justice system that had always made it distinctive – a wide network of private service providers contracted for at the county level (Pennsylvania Commission on Crime and Delinquency, 2008). The reimbursement program also contributed to the flourishing growth of new private-sector contracts. Under the new subsidy scheme, a large portion of county-run programs and facilities were paid for by the state. In-home services are reimbursed by the state at 80%, community residential care (group homes and other types of non-secure residential programs) at 80%, community-based alternative treatment programs at 80% and juvenile detention at 50%. This meant that every county dollar spent on, for example, a private-sector case management program went significantly further than a dollar spent on sending a youth to a state-run prison (Pennsylvania Juvenile Court Judges’ Commission, 1999). Act 148 is
responsible for building up the richest and most diverse set of local and community-based programs in the nation (Griffin, 2003).

This major community-based legislation passed with wide bipartisan support and was sponsored by both Democratic and Republican legislators. In 1976 Democrats held the majority of seats in the Senate. There was a consensus that the state-run juvenile prisons (the YDCs developed in the mid 1950s) were “broken” and that the juvenile justice system was in need of significant change. Much like the discussions over juvenile reform today, the prevailing motivation for restructuring the system was to try to minimize the number of juveniles sent to the “failed” state-run institutions.

The legislators measured the failure of state-run institutions by their high recidivism rates and cost to taxpayers. Senators quoted the recidivism rate for juveniles sent to state prisons as 80%, 85% and 90% and depicted state-run institutions as an incubator for hardened criminals. Democratic Senator O’Pake from Bucks County argued, “we would not continue throwing dollars into a system in any other area where there was an eighty-five per cent failure” (Pennsylvania State Legislature, 1976).

The senators lamented the failed “return” on tax investments in state-run prisons and put front and center the need to protect “the taxpayer” (Pennsylvania State Legislature, 1976). Senator Charles Dougherty, a Republican from Philadelphia and one of the sponsors of the bill stated: “it is cheaper in Pennsylvania to take the most hard core delinquent and send him to Harvard for four years than it is to keep him in an institution in Pennsylvania for one” (Pennsylvania State Legislature, 1976). Dougherty defended
community-based solutions on technocratic terms, “if we cannot convince people…of the need to move Pennsylvania’s juvenile services into the Twentieth Century, then maybe we can convince them that it is more economical this way” (Pennsylvania State Legislature, 1976). Not everyone was in support of the merit of community-based corrections, but Dougherty appealed to the broad consensus that everyone wanted to cut costs.

Community-based programs were celebrated as “the very best care, the most effective care and the most economical care” (Pennsylvania State Legislature, 1976). Both Republican and Democratic senators praised the legislation, referring to it as “the hallmark in the treatment of juveniles” and “one of the most enlightened measures we had before this Senate in quite some time” (Pennsylvania State Legislature, 1976). Legislators described community-based programs as distinctly superior to state-run prisons. As Dougherty stated, “the question is whether or not we are going to put emphasis on institutions that do not work or community facilities that do” (Pennsylvania State Legislature, 1976). Senator Edward Howard, a Republican from Bucks County articulated the community-based solution as,

the chances for its [juvenile justice system] improvement, in my judgment at least, lie mainly with the hope of getting the problem a little closer to home and getting it solved at a level of government that lies closer to home and discouraging commitments to the kinds of institutions which, like the Majority Leader, I strongly agree need urgent investigation. (Pennsylvania State Legislature, 1976)
Community-based solutions were unanimously held up as more benevolent, better at reducing recidivism and perhaps most importantly, cheaper alternatives to state-run facilities.

A number of major private service providers launched soon after Act 148 and remain large providers in the state today. Groups such as the Youth Services Agency, Community Commitment, Inc. and Today, Inc, grew substantially in the wake of the passage of Act 148. For example, the Youth Services Agency from Bucks County used to be a small county agency, but due to support from Act 148 funding, the agency spun off into a private non-profit that provides “in-home” and “community-based residential” services (Griffin, 2003). Today the company has over 400 employees and operates in Pennsylvania and Maryland.

The funding structure created through Act 148 continues to be a major influence on how juvenile justice services are carried out today. The Youth Services Agency highlights the flexibility in labeling private contracting services for reimbursement purposes. The company runs The Adventure Challenge Therapy (ACT) program as a sanction for truant probationers. The program is a wilderness weekend program, a 200-bed camp in the Poconos (Griffin, 2003). However, the county does not consider the program a “placement” or “residential” but rather as an alternative to discipline youths in order to avoid placements. In the early 2000s Bucks County recategorized ACT camp as a “counseling service” and therefore the county gets reimbursed anywhere between 80% and 100% from state and federal grant programs (Griffin, 2003). The recategorization came out of the work of a “fiscal unit” the county set up in 2001 to solely manage grant
application and federal reimbursements. Deputy Chief Probation Officer Bob Stanzione said of the model fiscal unit, “we can do all the tracking…all we want to know is when the body moves and where it’s going to move” (Griffin, 2003). The efforts in Bucks County are considered a nationwide model.\textsuperscript{132} The county has perfected grant writing. Since establishing the unit, the funding collections the county receives have doubled. The recategorization of the ACT camp creates the appearance of change without actually changing the fundamental treatment of juveniles, part of a major weakness in the community-based strategy.

Overall, the impact of Act 148 demonstrates how punishment at the local level gets entrenched through devolution in two major ways. First, with the proliferation of privately run “community-based” programs that often are punitive (as the following sections will detail). And, second, by strengthening a powerful alliance between the private-sector, county-level practitioners and politicians from both parties wishing to claim they are cutting costs and solving problems of delinquency.

1980s and 1990s - “Get Tough”

Following the major legislation that expanded private-sector contracts for community-based programs, Pennsylvania began to turn towards increasingly punitive policies. Pennsylvania was one of the states at the forefront of emphasizing public safety and accountability in the juvenile justice system. Pennsylvania already had a punitive system, where juveniles could be transferred to the adult system and given harsh sentences, but the perception at this time was that the juvenile justice system was not

\textsuperscript{132} Bucks County is a key locale for the MacArthur Foundations initiative in the state.
tough enough. Throughout the 1980s the legislature passed a number of bills diminishing confidentiality protections for juveniles and ratcheting punishments for the “dangerous juvenile offender,” a new category that was added to the Juvenile Act passed in 1972 (Pennsylvania Juvenile Court Judges’ Commission, 2003; Pennsylvania Council of Chief Juvenile Probation Officers, 2016).

Important to note, the punitive turn in the 1980s and 1990s was layered atop the devolution policies passed in Pennsylvania. Unlike California where the probation subsidy act was repealed and repudiated as not being “tough” enough, in Pennsylvania the “get tough” approach complemented decentralization and privatization. Pennsylvania has a well organized and powerful probation officers organization that continually advocated for local control. It also pushed for the policies that passed in the 1990s that emphasized a “balanced approach” where punishment and rehabilitation were explicitly and simultaneously advocated for. The community-based movement in Act 148 was in no way a counterpoint to the “get tough” movement in Pennsylvania. In fact, it helped streamline and legitimize the many punitive policies the state passed during this era by combining the two philosophies into one “balanced” approach for juvenile corrections.

During the 1990s Pennsylvania increased punishments for juvenile offenders with long lasting consequences for how juveniles are treated in the justice system. Candidates in key political races, including the gubernatorial election, tried to outbid one another on “get tough” credentials, particularly targeting juvenile offenders. There was a bipartisan consensus during this time period in Pennsylvania that juvenile offenders needed to be
punished with greater severity and that there should be more treatment and community-based options for dealing with juvenile offenders.

_Overcrowding and Intermediate Punishment_

In the late 1980s, Pennsylvania continued to face problems with its state-run juvenile prisons and also problems with overcrowding in local county-run prisons. The adult prison system was dangerously overcrowded, contributing to a large two-day riot in 1989 (DeCourcy-Hinds, 1989). In response to the issue of overcrowding at both the state and county level, the state chose to bolster its boot camp program and intermediate punishment programs. The solution was to fund programs and expand accountability measures for offenders without using secure custody.

In 1990, the state created county intermediate punishment (IP) as a sentencing alternative to try to offset the county prison population. The use of IP is still a major facet of the Pennsylvania justice system. The way an IP works, for example in Bucks County, is that an offender has to apply for the alternative punishment. In this particular location, the offender is interviewed by the non-profit Berks County Prison Society, Inc., and must pass a drug screening and pay all of their fees (County of Berks, 2016b). If the court determines the IP is appropriate as a punishment, then an intensive probation officer closely monitors the offender; they are subjected to twice a week urinalysis and must obey any other special conditions such as electronic monitoring or inpatient treatment (County of Berks, 2016b). Time in an IP program may also include a flat period of
incarceration in addition to being closely monitored in the community after a prison sentence (Chester County, 2016; Pennsylvania State Legislature, 2012c).

The Community Intensive Supervision Project in Pittsburgh, which was also launched in 1990, is an example of bolstering community-based intermediate punishments in order to deal with overcrowding in the juvenile justice system. The program became the model for the major juvenile justice legislation the state passed in 1995 and also the model for restorative justice that federal leadership at the Office of Juvenile Justice and Delinquency Prevention used in its efforts to push this new configuration for juvenile justice policy (Bilchik, 1998). The program is the founding example of the types of alternatives to secure detention the state began investing in during the 1990s “get tough” era. Juveniles in the CISP in Allegheny County were required to attend the community center from 4pm-9pm seven days a week. Youth in the program were on electronic monitoring at all times, and were given random drug tests. The CISP staff visited schools daily to make sure the students are attending. Youth who violated conditions of the program were sometimes sent to the Shuman Detention Center, the Allegheny Academy Sanction Unit or a 90-day Boot Camp Program privately run by VisionQuest (Kurlychek, 1997). Still in operation today, the CISP partners with Bloomfield-Garfield Corporation, a community development group and largely operates in the same way.

These “alternatives” to incarceration were designed as part of the “get tough” continuum as a way to hold offenders accountable and punish them outside of the prison to reduce overcrowding. In addition to this effort on the ground to bolster county
intermediate punishments, the major gubernatorial and senate races in the mid-1990s were animated by debates over crime policy. While the state continued to expand community-based programs to deal with continued problems of overcrowding in state and local lock-ups, the political climate was setting the stage for major “get tough” initiatives.

**BARJ and “Adult Time for Adult Crime”**

In the 1994 gubernatorial race, Republican candidate Tom Ridge squeaked by his Democratic opponent Mark Singel winning the governorship. Ridge replaced Democrat Bob Casey who had served the previous eight years as Pennsylvania’s Governor. Singel was the favorite in the race, having served as acting governor when Casey was battling a serious illness. However, the momentum in the race turned on the issue of crime. Singel fell out of favor when the story of his role as the Democratic chairman of the pardons board which approved the parole of Reginald McFadden came to light, a man who was later charged for a series of murders in New York City (Berger, 1995). Tom Ridge’s gubernatorial campaign also particularly emphasized toughening laws to address juvenile crime and repeatedly asserted the concept of “adult time for adult crime” (Wolcott & Schlossman, 2002). In one 30-second campaign ad, the scene opened with Jan Licence recounting being brutally raped in 1993 at knifepoint. She says in the ad,

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133 Ridge received 45.4% of the vote, Singel 39.9%.
134 Ridge exploited the story much like the famous George H.W. Bush Willie Horton attack ads against Michael Dukakis (Balz, 1994).
135 Jan Licence also spoke at the Republican National Convention in 1996 (Rape Victim, 1996).
Because of his age he’s in a detention center. It was an adult crime. I don’t understand why it’s different because he’s 16. If Tom Ridge was governor when I was raped, my rapist would have been tried in adult court. He would have been sentenced to an adult crime and would have been doing adult time. (Zausner, 1994)

Ridge gained momentum and largely won on his strongly emphasized “tough on crime” stance (Zausner, 1994). In 1994, Republican Rick Santorum also edged out a victory against incumbent Democrat Harris Wofford in the U.S. Senate election. The two major Republican victories exemplified the political power of the prevailingly popular “tough on crime” platform.

In 1995, in response to the urging of Ridge, the Pennsylvania legislature called a special session to address issues of crime. The legislative session generated major changes to the philosophy and policies of the juvenile justice system (Wolcott & Schlossman, 2002, p. 39). Ridge opened his special legislative session on crime by invoking the case of Dorian Lamore and Phillip Foxx, two young offenders convicted of the murder of a pizza deliveryman. The murder in Pittsburgh was a preeminent example of the ascendant “super-predator” theory of juvenile crime during the 1990s. Ridge stated:

It’s not just the magnitude of crime that has people upset. It’s crime’s changing nature. It is the criminal’s numb callousness, brazen and cold. Two teen-agers murder a pizza delivery man – and then calmly sit down and eat the pizza he delivered. (Stack, 2001)

136 Ridge would go on to be a “law and order” Governor. He signed more than 224 execution warrants, which was five times the number signed in the 25-year period preceding his governorship. Full list of executions from 1985 to present available at http://www.cor.pa.gov/General%20Information/Documents/Death%20Penalty/Warrants.pdf.
Newspaper coverage of the murder was sensationalized and evoked all of the imagery and language of the “super-predator” rhetoric. One article from 1994 quoted City Detective Barry Fox stating, “two 16-year-old kids got on both sides of the van and started shooting. These kids who did it, these jackals, these scavengers…after they did it they went in and ate the pizza” (Eshleman, 1994). Yet despite the narrative pushed in the news media and by Ridge, there was no evidence the boys had eaten pizza after shooting the men. The case was more complicated than the straightforward cold-blooded depiction in the newspapers and in Ridge’s speech (Leinter & Cotter, 2010).

The panic over juvenile offenders endured and during the special session the legislature passed 37 crime bills, 15 specifically affecting the juvenile justice system in some way. The combination of all the pieces of legislation marked the most dramatic changes to Pennsylvania’s juvenile justice system in the state’s history (Pennsylvania Juvenile Court Judges’ Commission, 1999). The following table briefly highlights the bills passed in the special session related to the juvenile justice system.

Table 10. Juvenile Justice Legislation in 1995

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Bill Name</th>
<th>Description of Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 98</td>
<td>Safe Schools Legislation</td>
<td>Increased penalties for truancy.</td>
</tr>
<tr>
<td>HB 93</td>
<td>“Three Strikes”</td>
<td>Increased penalty for repeat violent offenders in the adult system. Also included an amendment that allows for juvenile offenders to be held more than the previous 10-day maximum if hearing delays are caused by them or their attorneys.</td>
</tr>
<tr>
<td>SB 101</td>
<td>Cells for Juveniles</td>
<td>A measure to provide cell space for juveniles transferred to adult criminal courts.</td>
</tr>
</tbody>
</table>

137 During the session the legislature created the Pennsylvania Office of the Victim Advocate and the Office of Safe Schools within the Pennsylvania Department of Education.
<table>
<thead>
<tr>
<th>Bill</th>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 19</td>
<td>Ridge’s First Law</td>
<td>Authorizes judges to review juvenile records when setting bail for juvenile offenders.</td>
</tr>
<tr>
<td>SB 10</td>
<td>Juveniles to be Fingerprinted</td>
<td>Juveniles arrested for misdemeanors or felonies may be photographed and fingerprinted.</td>
</tr>
<tr>
<td>SB 20</td>
<td>Stricter Control of Juvenile Records</td>
<td>Places additional conditions on the expungement of juvenile records</td>
</tr>
<tr>
<td>HB 31</td>
<td>Combine Juvenile Offenses</td>
<td>Expands the jurisdiction of juvenile court to include any offense arising from the same episode as any misdemeanor or felony.</td>
</tr>
<tr>
<td>HB 10</td>
<td>Open Juvenile Courts</td>
<td>Court proceedings may be made public for juveniles charged with a crime that would be considered a felony if committed by an adult.</td>
</tr>
<tr>
<td>HB 19</td>
<td>Open Juvenile Records</td>
<td>Juvenile records less restricted.</td>
</tr>
<tr>
<td>HB 3</td>
<td>DNA Collection</td>
<td>Creates a statewide DNA databank. Adults and juveniles convicted of rape and other felony sex offenses will be required to give tissue samples to that DNA profiles can be stored.</td>
</tr>
<tr>
<td>SB 34</td>
<td>Parents’ Responsibility</td>
<td>Judges will be allowed to order parents or guardians to attend juvenile court. Failure to participate may lead to contempt of court charges.</td>
</tr>
<tr>
<td>SB 100</td>
<td>Try Juveniles as Adults</td>
<td>Juveniles committing serious crimes will be transferred to adult court.</td>
</tr>
<tr>
<td>SB 1323</td>
<td>Access to Criminal Records of Juveniles</td>
<td>County children and youth services agencies will have free access to unedited criminal records.</td>
</tr>
<tr>
<td>HB 2118</td>
<td>Graffiti Penalties Increased</td>
<td>Upgrades the penalty for defacing property with graffiti.</td>
</tr>
</tbody>
</table>

Compiled from Senate of Pennsylvania (1996).

Senate Bill 100 was the most influential bill passed in the session. The law changed Pennsylvania’s criminal justice system in a significant way that has made sentencing juveniles to life without parole easier. The bill changed the constitutional definition of “delinquent acts,” delineating that for about 12 different offenses (such as

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138 There is limited data on the impact of the ‘Adult time for adult crime’ legislation. One report in 1996 showed that the youth excluded from the juvenile justice system in 1996 were younger and had less serious juvenile court histories than youth waived in 1994 (Snyder, Sickmund & Poe-Yamagata, 2000).
murder, rape, and aggravated assault) juveniles would automatically be tried as adults. Prior to the new legislation Pennsylvania already had the option to try juveniles as adults, for example, the two defendants in the pizza deliveryman murder were sentenced to life in prison without parole plus an additional 25 to 50 years on top of the life sentences, the maximum sentence short of the death penalty (Stack, 2001). However, Senate Bill 100 made certain that many more juveniles would be tried as adults and thus face a higher probability of being given life sentences without any possibility of parole.

Changes in the law also increased the number of prison facilities that were solely designed to house juveniles (Wolcott & Schlossman, 2002, p. 40). For example, in 1996 when the state opened a new Correctional Institution at Houtzdale, the facility included a separate area for juveniles. And, the law provided $71 million for a new 500-bed facility in Pine Grove (40). The number of juveniles sent to state prisons doubled from the period between 1989 and 1994 to the period between 1996 and 1999. The “adult time” laws also accentuated and worsened racial disparities. The number of juvenile female admissions from 1997 to 2002 increased 33% (Zawacki & Torbet, 2004). Between 1993 and 2002 the number of licensed juvenile secure detention beds in the state increased by 36% (Zawacki & Torbet, 2004).

In addition to these punitive changes in the law, perhaps the most significant component of the bill was that it codified and established the principles of Balanced and

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139 The Pittsburgh Post-Gazette started tracking youth who would be charged as adults under the new law and five years into the law being in effect found that the result was that the adult time legislation disparately targeted black youth. Black youth were three fourths of those charged and kept in the adult system, even though there was an even number of white and black juvenile offenders in the county. Additionally, the median sentence imposed on black teens was twice as long as that given to whites. Further, those charged with adult crimes were among the most vulnerable youth in the county, more than half had suffered abuse or neglect as children (Stack, 2001).
Restorative Justice (BARJ). BARJ combined the principles of punitive accountability and “competency development” for juveniles. The philosophy of BARJ will be detailed in the next section.

Senate Bill 100 determined that serious juvenile offenders would be carved out of the juvenile justice system. The juvenile justice system thus became “balanced” by bolstering punitive responses to youth crime while maintaining the goal of treating youth and improving their “competencies” through community-based programs. The final legislation was a major compromise. The century-old model of a separate system for juveniles was preserved, but these jurisdictional boundaries were redrawn to exclude more serious offenders (Griffin, 2006).

_Senate Bill 100 Debate_

Senate Bill 100 received wide bipartisan support. The political composition of the 1995 legislature was fairly evenly split in the House; Republicans had a one-vote majority over Democrats and in the Senate Republicans held a majority.\(^{140}\) Amongst both political parties and between supporters and opponents of the bill there was a consensus that juvenile crime was an urgent crisis.\(^{141}\) Additionally, in the floor debate over the legislation in the Senate, both opponents and supporters of the bill adopted the rhetoric and logic of the super-predator theory, accepting that juvenile offenders were a major threat to the public and that these offenders needed to be harshly punished.\(^{142}\)

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\(^{140}\) The vote in the House was 176-17 in support of SB 100 and in the Senate 42-6.

\(^{141}\) Senators from both sides of the aisle referred to juvenile crime as something “people are fed up with,” “the saddest sickest statistic” and “the most serious issue” (Pennsylvania State Legislature, 1995)

\(^{142}\) Senators described juvenile offenders in the floor debate as “young thugs” and “gun-toting, knife-wielding hoodlums” (Pennsylvania State Legislature, 1995).
Support for the bill came from a strong alliance between the Juvenile Court Judges Association, district attorneys and legislators in the Senate and House who believed the solution to handling juvenile crime was implementing “adult time for adult crime.” Supporters projected the new law would transfer an additional 500 to 1,000 more juveniles per year to the adult court.

Senator Allyson Schwartz, a Democrat from Philadelphia, despite being an opponent of the proposed legislation, affirmed the “get tough” philosophy. She argued that the bill was not necessary because there were already channels built into the justice system to try juveniles as adults (referring to the previous policy that juvenile offenders could be bumped up to adult court as opposed to being automatically tried in adult court). Schwartz stated, “we have already committed in this State to build a number of secure juvenile facilities…I recognize that juveniles are committing much more serious crimes now than they once did, but we are responding to that” (Pennsylvania State Legislature, 1995). She agreed with the supporters of the legislation: “they need to be punished, Mr. President, I support that…referring juveniles to the adult system sounds good. I think the tag line is wonderful, ‘Do adult time for adult crime’” (Pennsylvania State Legislature, 1995). The only difference was she couched these statements with the argument that juvenile courts and prisons could achieve these ends of punishment for juveniles rather than needing to try juveniles as adults.

The legislative debate exemplified the major shift in juvenile policy that occurred in Pennsylvania during the 1990s. The juvenile court continued to be predicated on bolstering county institutions and probation services, a system that would provide
programs focused on the behavioral modification of youth offenders. At the same time, more juveniles were carved out of this system and deemed not “amenable” for treatment and therefore best suited to be punished in the adult court system.

Many scholars have focused on the “get tough” policies and philosophies of the 1990s where juveniles labeled “super-predators” were seen as irredeemable and in need of the harshest forms of punishment. However, these accounts have tended to overlook the complementary, not oppositional, process of bulking up community-based services to handle all other juveniles. The ideology behind the two policies was rooted in the same belief that individual deficiencies were the cause of juvenile delinquency. In Pennsylvania these two pillars of the justice system, community-based services and punitive adult sentences, were codified in the same piece of legislation.

Senator Clarence Bell, a Republican from Chester County, supported the bill and emphasized that the root of violent crime was in the failure of communities, repeating twice the adage, “it takes a village to raise a child” and arguing, “in my district where I have a community that is involved with their children, they do not have the juvenile crime” (Pennsylvania State Legislature, 1995). Bell’s articulation of the crime problem exemplified how support for community-based behavioral interventions and harsh punishments were woven together as one coherent policy. The result of the legislation earned Pennsylvania the status of a nationwide leader in the Balanced and Restorative Justice movement. It also resulted in Pennsylvania becoming the state with

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143 Chester County is the highest income county in Pennsylvania. Bell’s comments seemed to suggest that people in poorer communities did not adequately raise their children, which was why they had higher rates of violence.
the largest population of juveniles serving life without parole sentences in the nation and
in the world.

Balanced and Restorative Justice

Pennsylvania is unique in that its community-based reform bill and punitive “get
tough” bill were the same piece of legislation. The press and the public paid little
attention to the “balanced” portion of the legislation. Yet, this aspect of the legislation has
arguably had the most far-reaching consequences (Griffin, 2006). The BARJ legislation,
which was coupled with all of the punitive measures listed above, was and continues to
be a national model. As other states, such as Texas and California, more aggressively
pursue devolution and community-based juvenile corrections today, the philosophy of
BARJ is at the core of these transformations. As of 2004, one third of states in the U.S.
had statutory purpose clauses incorporating some or all of the BARJ language (Griffin,
2006).144

Pennsylvania as the leader in this formulation of juvenile justice policy highlights
the roots that this approach has in the philosophy of a “get tough” approach. Senate Bill
100 created the three pillars of the Pennsylvania juvenile justice system, which continue
to be the core construct of the system today. The balanced philosophy is written into the
legislation as the following: “provide balanced attention to protection of the community,
the imposition of accountability for offenses committed, and the development of
competencies to enable the child to become a responsible and productive member of the
community” (italics not in original, Pennsylvania State Legislature, 1995).

144 These states include: Alabama, Alaska, California, District of Columbia, Florida, Idaho, Illinois,
Indiana, Kansas, Maryland, Minnesota, Montana, New Jersey, Oregon, Pennsylvania, Washington,
Wisconsin.
The landmark study *Juvenile Probation: The Balanced Approach* published in 1988 detailing the principles of BARJ greatly influenced the 1995 legislation (Maloney, Romig & Armstrong, 1988). The BARJ model espoused by these scholars was supported by Office of Juvenile Justice and Delinquency Prevention (OJJDP) and piloted in Alleghany County and in Austin, Texas. The federal juvenile justice agency promoted BARJ during the early 1990s and celebrated its adoption in piloted locations, stating, “part of what is new is the enthusiasm about the possibilities of a new type of juvenile justice intervention and revitalized thinking that views increased victim and community involvement as a needed shot in the arm” (Bilchik, 1998). The goal of the BARJ model for juvenile corrections was to “reconcile the seemingly incompatible values of community protection, accountability and competency development” and to bring together “the community and probation… to become one… in purposes, one in practice, and one in success at reducing delinquency” (Maloney, Romig & Armstrong, 1988).

The authors of the BARJ model adopted the urgent sentiment surrounding juvenile crime and argued that the rising crime rate necessitated more youth being handled at the community level. Their approach advocated for expanding community-based programs such as house arrest and detention, mandatory substance abuse treatment, electronic monitoring, reparative sanctioning, restitution and intensive probation supervision (Maloney, Romig & Armstrong, 1988). The fundamentals of the Balanced Approach were: individualized assessment, and a continuum of supervision, from community-level programs all the way up to “remand to adult court” and “state custody” (Maloney, Romig & Armstrong, 1988, p. 28-9). The authors claimed this approach combined practitioners’ desire for community protection by holding youth accountable...
and their desire to “teach youth skills that allow them to achieve a part of the American dream” (Maloney, Romig & Armstrong, 1988, p. 21).

In 1994 OJJDP issued five key principles for preventing and reducing delinquency in its “Comprehensive Strategy.” They included: efforts to strengthen families, support core social institutions, promote prevention strategies, intervene immediately when delinquent behavior first occurs, and establish a broad range of graduated sanctions. The strategy heavily emphasized the increased involvement of communities in addressing juvenile crime and in particular called upon cities to lead and organize these efforts (Welsh et. al, 1996). The resurgence of community-based solutions was a bit different than its advent in the 1960s and 1970s. Rather than a backlash to punitive policies and punitive conditions in state-level juvenile prisons, this time community-based solutions were folded into these responses as a “holistic” response to delinquency.

The new resurgence of the community-based movement combined punitive accountability with community-based solutions. This was an effective response to fears about rising juvenile crime but also fit in the context of economic stagnation and concerns about the cost of maintaining the juvenile justice system (Welsh et. al, 1996). BARJ and the 1995 legislation in Pennsylvania expertly combined the principles of accountability and offender rehabilitation--largely achieved through community-based behavioral intervention approaches carried out by a network of private service providers. For example, to this day, the defense of the BARJ approach in Pennsylvania is that the only way to ensure public safety is for juvenile offenders to “internalize the message of accountability, address those factors directly related to their offending behavior, and
acquire skills and other positive assets” (Torbet, 2008). The legislation passed in 1995 was and continues to be the cornerstone of the juvenile justice system in Pennsylvania, a model in which the state considers the availability of the harshest sanctions as well as a robust network of behavioral interventions to be indispensable in both protecting society and “saving” juvenile offenders.

In 1996, the Juvenile Court Judges’ Commission held a statewide policy forum to reflect on the philosophy of BARJ. The authors of *Juvenile Probation: The Balanced Approach*, Dennis Maloney and Dr. Gordon Bazemore, led the session (Pennsylvania Juvenile Court Judges’ Commission, 2005b, p. 16). Dennis Maloney, one of the members of the federal government’s Balanced and Restorative Justice Project, stated in 2006:

> I’ve been to all fifty states, and there’s no doubt in my mind that Pennsylvania has gone the farthest in implementing balanced and restorative justice. Pennsylvania has not only done the work to change their system—they’ve helped other states do the same. When other states were doing serious damage to their juvenile justice systems, Pennsylvania served as a beacon. (Griffin, 2006)

Beyond the great impact the philosophy has had in Pennsylvania, this strategy has also been held up as a model for the nation, with Pennsylvania as a key exemplary site (Torbet & Thomas, 2005; Bilchik, 1998; Pennsylvania Juvenile Court Judges’ Commission, 1999). The fundamental commitment to BARJ in the state is a major reason Pennsylvania was chosen by the MacArthur Foundation as its first model site.

**II. Evidence-Based Movement Pioneer**

A major part of Pennsylvania’s position as a leader in the community-based movement has been the state’s longstanding commitment and relationship to the evidence-based movement. Pennsylvania’s investment in researching and promoting evidence-based practices is an outflow of the BARJ philosophy of community-based
organizations carrying out cost effective interventions. Evidence-based practices (EBP) are defined as “the progressive, organizational use of direct, current scientific evidence to guide and inform efficient and effective services” (Pennsylvania Commission on Crime and Delinquency, 2016a). The concept of EBP started in the medical profession in the late 1980s and asserted that public policy should be based on “the best available scientific evidence in order to effectively achieve stated goals and efficiently use taxpayers’ dollars” (Pennsylvania Commission on Crime and Delinquency 2012a). The movement towards EBP, closely aligned with the efforts of the MacArthur Foundation, is part of a shift towards technocratic solutions to policy problems and the role of scientific studies and cost-benefit analyses in shaping public policy.

In 1996, Pennsylvania partnered with OJJPD and CDC to contribute funding to the Blueprints Project at the Center for the Study and Prevention of Violence at the University of Colorado. The center was originally founded in 1992 with funding from the Carnegie Foundation and is currently funded by the Annie E. Casey Foundation. In 2008, Sharon Mihalic, the director of the Blueprints project in Colorado congratulated Pennsylvania for being “an exemplary model of how state and communities can work together to achieve a better future for all youth” (Pennsylvania Juvenile Court Judges’ Commission, 2008). The Pennsylvania Commission on Crime and Delinquency along with the Pennsylvania Juvenile Court Judges’ Commission have contributed millions of dollars to the Blueprints project and invested in over 140 evidence-based programs in more than 100 Pennsylvania communities (Pennsylvania Juvenile Court Judges’ Commission, 2008; Schneider, 2007). In 2008, Pennsylvania hosted the National
Blueprints Conference. Blueprints model programs are all a variety of behavioral intervention programs run by for-profit and non-profit organizations (eight of the 12 model programs are for profit companies). The following table lists the Blueprints programs and the type of service provider that runs them.\(^{145}\)

Table 11. Blueprints Model Programs

<table>
<thead>
<tr>
<th>Non-Profit Organizations</th>
<th>For-Profit Organizations</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Big Brothers Big Sisters of America</td>
<td>• Functional Family Therapy</td>
</tr>
<tr>
<td>• Nurse-Family Partnership</td>
<td>• LifeSkills</td>
</tr>
<tr>
<td>• Olweus Bullying Prevention</td>
<td>• Multisystemic Therapy</td>
</tr>
<tr>
<td>• Strong African American Families</td>
<td>• Multidimensional Treatment Foster Care</td>
</tr>
<tr>
<td></td>
<td>• Positive Action</td>
</tr>
<tr>
<td></td>
<td>• Promoting Alternative Thinking Strategies</td>
</tr>
<tr>
<td></td>
<td>• The Incredible Years</td>
</tr>
<tr>
<td></td>
<td>• Project Towards No Drug Abuse</td>
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</tbody>
</table>

*Outcome Measures of Blueprints Programs*

The evaluations of the Blueprints programs vary greatly. Many of the programs conduct their own evaluations of success\(^{146}\) and a few have studies reported through the Blueprints project.\(^{147}\) The evaluations mostly focus on measuring the effect of the programs on academic performance (grades and test scores), drug and alcohol use, attitudes, behavior, recidivism and parenting skills. On these measures, all of the

\(^{145}\) Determination of non-profit versus for-profit was made through personal e-mail correspondence with representatives from the programs.

\(^{146}\) Big Brothers/Big Sisters, Nurse-Family Partnership, Olweus Bullying Prevention, Positive Action, The Incredible Years, Project Towards No Drug Abuse.

\(^{147}\) LifeSkills, PATHS, Strong African American Families Program
programs report some level of success. However, the different studies use a wide variety of methods for evaluating the programs and the companies and organizations provide different levels of detail in explaining the findings in the studies. All of the programs report to succeed in reducing costs and are therefore proven “cheaper” alternatives.

Family Functional Therapy (FFT) and Multi-Systemic Therapy (MST) are the two blueprints programs that report recidivism rates. Both programs report dated research with widely ranging measurements and outcomes on recidivism (Sexton & Alexander, 2000; Multisystemic Therapy, 2015). LikeSkills, Project Towards No Drug Abuse and the Strong African American Families Program (SAAF) all report that their programs reduce drug use amongst youth, but widely range in effect sizes, and types of drug use behavior they measure (Blueprints for Healthy Youth Development, 2016a; Blueprints for Violence Prevention, 2016; Project Towards No Drug Abuse, 2016). Olweus Bullying Prevention, PATHS- Promoting Alternative Thinking Strategies, and The Incredible Years only provide outcome measurements on behavioral variables and report small to moderate effect sizes on these measures (Blueprints for Healthy Youth Development, 2016b; The Incredible Years, 2016; Hazeldon Foundation, 2007).

Youth in the Big Brothers/Big Sisters (BBBS) program are found to experience small increases in some but not all attitudinal and emotional variables and no

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148 Recidivism has become the central standard for evaluating the criminal justice system, distorting perceptions about what drives crime rates and problems in the carceral system. For an extended discussion of the difficulty of measuring recidivism and the effects of using the variable as the standard for evaluating reforms to the criminal justice system see Chapter 5 in Caught (Gottschalk, 2015).

149 All 31 of the studies cited on the Project Towards No Drug Abuse company’s website are co-authored by Dr. Steve Sussman, who directs the program.
improvement academic grades (Valentino & Wheeler, 2013). Positive Action claims it increases testing performance, but does not specify to what degree (Positive Action, 2016). The emphasis on testing and grades is rooted in studies that show a correlation between low academic achievement and delinquency. However, BBBS and Positive Action do not provide evidence that their programs significantly improve academic achievement and if they did whether or not this directly contributes to preventing delinquency.

A common theme amongst all of the outcome measures is that they do not specify comparison populations nor do they provide any data on the connection the improvements they report may have on problems related to the juvenile justice system. The chosen metrics of evaluation: academic performance, interpersonal skills and drug use, all suggest that delinquency stems from individual deficiencies. The programs affirm the idea that there is a rational connection between misbehaving youth and juveniles caught up in the justice system. Therefore, the solution to a large, punitive and wide reaching juvenile justice system is to “cure” delinquency, rather than to interrogate the criminalization of youth behavior (such as truancy, drug use, school discipline) and patterns of policing that disproportionately target poor and minority youth.

Pennsylvania’s Role in the Evidence-Based Movement

Pennsylvania’s involvement and funding of the Blueprints project is a major reason the state was and continues to be at the forefront of the EBP movement in the juvenile justice system. In 2008, the state created The Resource Center for Evidence-

150 For black youth, grades slightly declined between baseline and follow-up.
Based Prevention and Intervention Programs and Practices to support the proliferation of the EBP programs from the list above (Pennsylvania Commission on Crime and Delinquency, 2012b). The Resource Center has contributed to institutionalizing and expanding the use of these programs in the state. In the same year the state also developed the Evidence Based Treatment Subcommittee as part of PCCD, which has particularly focused on maximizing federal reimbursements for behavioral treatment services for youth.

Pennsylvania has many active EBP programs as a result of the state funding and promoting hundreds of different interventions under the EBP and BARJ model. The most common evidence-based program used in Pennsylvania is Multi-Systemic Therapy (MST) an intensive, family focused and community-based individualized intervention program for violent youth. MST addresses all environmental systems (as part of its ecological systems theory) that impact violent juvenile offenders: their homes, families, schools, teachers, neighborhoods and friends (Multisystemic Therapy, 2015). In 1996, a private, for-profit corporation, MST Services, Inc. was created to oversee the dissemination of MST (Multisystemic Therapy Services, 2007). In 2014 there were 40 MST teams serving 54 counties in Pennsylvania (EPISCenter, 2014).

Another common EBP initiative is motivational interviewing, defined as a “collaborative, person-centered form of guiding to elicit and strengthen motivation for change” (Pennsylvania Commission on Crime and Delinquency, 2012b). The practice of motivational interviewing has been credited for moving probation departments into the
“business of behavior change” (Pennsylvania Commission on Crime and Delinquency 2012b).

Risk assessments are another key feature of EBP and the BARJ model for juvenile corrections.\textsuperscript{151} The Youth Level of Service/Case Management Inventory (YSL/CMI) is a popular assessment tool used in Pennsylvania, which measures both a youth’s risks and needs and is used to determine the appropriate level of supervision for a youth.\textsuperscript{152} Youth are labeled from low moderate, high or very high risk based on the assessment. The assessment conjectures that youth who are high risk tend to lack prosocial skills and emotional regulation.

The focus on measuring and evaluating the individual attitudes and social skills of youth directly connects with another major category for EBP: Cognitive Behavioral Interventions. The state’s Juvenile Justice System Enhancement Strategy (JJSES), an organization tasked with increasing the use of EBPs claims the greatest challenge youth in the justice system have is “cognitions that lead to negative behavior” (Pennsylvania Commission on Crime and Delinquency, 2012b). JJSES refers to these “thinking errors” as:

\begin{quote}
the tendency to rationalize and justify antisocial or delinquent behavior, difficulty interpreting social cues, underdeveloped moral reasoning, a sense of entitlement, a failure to assess consequences of actions, a lack of empathy for others, and poor problem-solving and decision-making skills. (Pennsylvania Commission on Crime and Delinquency, 2012b)
\end{quote}

\textsuperscript{151} Pennsylvania is positioned to become the first state to use risk assessments to set prison sentences (Barry-Jester & Casselman, 2015).
\textsuperscript{152} YSL/CMI was developed for adult offenders in 1982. It measures 42 risk/needs factors over the categories of offense history, family circumstances, education, peer relations, substance abuse, recreation, personality and attitudes (Pennsylvania Commission on Crime and Delinquency, 2012b).
As a result of this emphasis on behavioral and moral traits as the core to delinquency, interventions are targeted at correcting “thinking errors.” The major programs in this field are Reasoning and Rehabilitation, Aggression Replacement Training® and Thinking for a Change.

In 2012 the state further codified EBP in its juvenile justice system through a legislative change to the purpose clause of the Juvenile Act, which was amended to require that whenever possible jurisdictions should employ “evidence-based practices” (Pennsylvania State Legislature, 2012a). The promotion of EBP is front and center to PCCD’s mission. PCCD continues to support the Blueprints project and claims that it is a leader in evidence-based programs, which are a great return on the states’ investment (Pennsylvania Commission on Crime and Delinquency, 2016b). Related to Pennsylvania’s longstanding commitment to EBP, the state has also been at the forefront of Disproportionate Minority Confinement (DMC) initiatives. Both EBP and DMC are hallmarks of the community-based, devolution model of juvenile corrections espoused by large foundations and supported at the federal level by OJJDP.

Disproportionate Minority Contact

In the late 1980s the federal government amended the Juvenile Justice and Delinquency Prevention Act (JJDPA) to include a Disproportionate Minority Contact (DMC) mandate. The legislative change required states to address the overrepresentation of racial minorities in juvenile detention facilities. The formula grant from JJDP required states to assess the problem of minority overrepresentation and to devise strategies to
remedy the problem. Since then, the federal government has broadened and further developed the DMC mandate. Essentially the federal government calls for states to study their own racial and ethnic disparities, determining the extent to which minority juveniles are disproportionately arrested, detained, referred to court, prosecuted, adjudicated, sent to probation and transferred to adult court. States are supposed to include in their research reasons why the disproportionate outcomes occur and intervene to reduce the outcomes. States must also evaluate and monitor the interventions they choose to address DMC (Griffin, 2008).

Pennsylvania began targeting funding at DMC in 1987 right at about the same time Congress passed its original DMC mandate. In 1990 the state formally established a DMC Subcommittee of the Pennsylvania Commission on Crime and Delinquency (PCCD) to oversee the state’s efforts and interventions. Pennsylvania has been a leader for the nation in research and programming for DMC efforts. Dan Elby, was the first chairman of the DMC Subcommittee and has been its leader in the state ever since. Elby directs Alternative Rehabilitation Communities, Inc., a private provider of services to court-involved youth based in Harrisburg. Elby’s work on DMC and the state’s continued investment in these efforts from the 1980s forward have consistently earned it the distinction as a national leader. This reputation was one of the main reasons that the MacArthur Foundation chose Pennsylvania as its first Models for Change state. In the early 2000s Pennsylvania was “at the forefront nationally for its ability to track these [DMC] indicators for youth at various stages of the juvenile justice system” (Griffin, 2008). Federal leadership in OJJDP both invested in Pennsylvania as a model site as well
as held up its efforts as an example for the nation in addressing DMC. In 1999, OJJDP congratulated Pennsylvania for its efforts as an example of a “systematic, data driven and targeted effort to comprehensively address DMC” (Pennsylvania Juvenile Court Judges’ Commission 1999).

In the early 1990s the Pennsylvania DMC Subcommittee commissioned a report titled, “The Role of Race in Juvenile Justice Processing in Pennsylvania” which became a pioneering study on DMC. The report proposed solutions to DMC, which continue to be the fundamental approaches that states and the federal government pursue. The solutions detailed in the report called for: additional research; expansion of diversion, informal adjustment, shelter care and foster homes programs; uniform qualifications for employment, including bilingual capabilities and minority hirings; and standardized criteria for use at intake and detention (Kempf, 1992).

The DMC effort fits into a trend in carceral policy where race liberals have pushed for greater standardization and procedural fairness as a solution to a wide range of problems in the justice system. Naomi Murakawa (2014) has extensively analyzed the impact this strategy has had on contributing to carceral expansion. DMC efforts in this pioneering study were explicitly defended on terms of legitimizing the juvenile justice system. The Pennsylvania report opens,

The results of this study should provide policy makers and administrators of juvenile justice with a better understanding of reasons for racial disparity. This information may aid them in efforts to reduce the existing situation. Public confidence in juvenile justice may improve as does knowledge that efforts to enhance equity in the process are underway. (Kempf, 1992, p. 2)
The goal of the proposed DMC interventions was to ensure that decision-making processes at every stage of the justice system were made in a racially neutral way. As Murakawa (2014) has pointed out, efforts to make the justice system more racially neutral can contribute to the expansion of state power in the form of the carceral state. Reforms to reduce racial disparities do not necessarily require reducing overall incarceration rates. For example, reforms by liberals beginning in the 1960s to reduce discretion in the criminal justice opened up space for instituting longer and harsher mandatory sentences (Murakawa, 2014).

Further, the pursuit of technocratic solutions focused narrowly on improving the system and making it fairer ignore and displace efforts for major social reform and deeper challenges to the actual scope and role of the criminal justice system (Murakawa, 2014; Konczal, 2015). These technocratic solutions do not challenge the role or purpose of the state (HoSang & Cate, 2016). Therefore reforms are targeted at tinkering with the existing criminal justice system rather than arguing more broadly for the state’s role to provide protection and care for all of its citizens (such as health care, housing and employment) rather than protecting “taxpayers” from criminals.

The core strategy of pursuing technocratic solutions to solve race disparity in the decades long DMC initiatives has ignored and even explicitly denied the role of class in explaining and solving problems related to the juvenile justice system. For example, in the 1992 study, researchers in Pennsylvania found that 75% of the youth in the study
were from families with an annual income of less than $24,000. Families who made less than $8,000 a year had the highest rates of detention of the entire sample. Yet, these findings are buried in the appendix and the overarching conclusion that the report makes is: “youth are treated differently in juvenile justice depending on race” (Kempf, 1992). DMC initiatives narrow in on locally based, interpersonal racism and ignore broader systemic conditions of the youth who are incarcerated in the state. Therefore solutions are targeting at trying to fix racism amongst practitioners through cultural sensitivity training and race dialogues rather than connecting the problems for youth in the justice system with the structural conditions in which they live.

Data collection has and continues to be the core strategy of DMC efforts. In describing the launch of the DMC effort in Pennsylvania, Elby looking back on the beginning of the effort stated in 2008, “it didn’t take a rocket scientist to see that there was a problem. You could go to any detention center and see the overrepresentation of youth of color” (Griffin, 2008). However, the Subcommittee did not want the state to proceed without a scientific understanding of the problem. As Elby describes it: “back then we thought it would be a good thing to have some formal research and practical interventions” (Griffin, 2008). Because of this strategy and subsequently the MacArthur Foundation’s investment in improved data collection in the state, Pennsylvania now has some of the best data collection on DMC in the country (Torbet, Hurst & Soler, 2006). Elby’s comments illustrate the limitations of data collection as anything beyond “fleshing out the contours of the disproportionate relations, which are predictable by common

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153 Data were collected on 2,016 juvenile delinquency cases from 14 Pennsylvania counties in 1989.
sense understanding” (Reed & Chowkwanyun, 2012, p. 150). The assumption in this type
of data collection that all members of a particular race share the same class position often
obscures understandings of the causes of inequality and what is needed to address
problems of inequality (Reed & Chowkwanyun, 2012). For example, that there are causes
beyond interpersonal racism amongst juvenile justice practitioners that explain why youth
are treated punitively.

In addition to efforts to collect and analyze racial data as completely as possible in
the state, some examples of DMC initiatives include forums for “race dialogues,”
diversity training and private non-profit community-based programs. The first “race
dialogue” forum that the DMC Subcommittee held in Philadelphia in 2003 was
contentious, with many youth expressing the hostile relationship they felt with the police.
Since then the subcommittee has made the events more structured with question and
answer panels with law enforcement, video-aided instruction and mock court cases
(Griffin, 2008). Berks County, a DMC demonstration site, has invested in diversity
training where law enforcement learn “a little Spanish” and participate in “cultural
competency training” (Griffin, 2008). Many community-based programs throughout the
state are considered part of the DMC effort, such as the Positive Choice program, which
provides minority youths with tutoring and special classes (Clouser, 1994).154

The community-based movement and DMC initiatives were closely related as part
of the same strategy. In the early-to-mid 1990s, the state funded nine community-based

154 In the program youth are taught how to “analyze the alternative choices in everyday situations, to make
the ‘positive choice’ for their future, and to accept responsibility for the consequences of the choices they
make” (Clouser, 1994, p. 3).
intervention programs that were intended to reduce racial disparities in state juvenile facilities. The Pennsylvania Commission on Crime and Delinquency (PCCD) supported the initiative and along with the OJJDP provided resources to study its impact. The research after the initial PCCD investment highlighted major issues the programs needed to resolve for them to be effective. The programs were able to continue after state support ended by securing funding in 1994 through city and county funds, but the programs were not beholden to the state at this time to carry out the suggestions from the study.

The strategy of promoting community-based programs as a solution to DMC was also closely tied to private non-profits carrying out these programs at the local level. Thus, the ideas of community-based corrections, DMC and privatization of juvenile justice services at the local level were all intimately linked in juvenile justice policies from the 1990s (Welsh et al., 1996).

Role of Foundations

Related to the high level of privatization of delinquency services in the state, Pennsylvania also has unique and longstanding partnerships and connections to large foundations that focus on juvenile reform. Pennsylvania’s relationship with these organizations has two main components. First, the state has been a pioneer in the types of reforms that the major foundations, such as the MacArthur Foundation and Annie E. Casey Foundation are advocating for, so they have consistently held Pennsylvania up as a model in their efforts. The previous sections on the EBM and DMC provide the background for why the state was selected by large foundations as a model for juvenile
reform. Second, because Pennsylvania has the qualities of the type of juvenile justice system that the foundations support they have targeted the state with their resources and leadership. Consequently, Pennsylvania’s reform model has expanded and accelerated as a result of being a key target of foundation money and expertise.

The Annie E. Casey Foundation chose Pennsylvania for its Juvenile Detention Alternatives Initiative (JDAI) in 2011 where four counties served as pilot sites (Allegheny, Lancaster, Lehigh, Philadelphia). Annie E. Casey’s reform model is very similar to MacArthur. Its eight core strategies are: collaboration, collection and utilization of data, objective admissions screening, alternatives to detention, case processing reforms, flexible policies for special detention cases, attention to racial disparities, conditions of confinement. Their reform platform emphasizes data collection, risk assessments, and DMC.

In 2011, Pennsylvania held JDAI’s kick-off national meeting. Participants drew the connection between JDAI and how it aligns with the state’s Evidence-Based approach, emphasizing the use of risk assessment instruments, evidence-based programs and data driven decision-making. In 2014, Annie E. Casey again hosted a JDAI Inter-Site conference in Philadelphia where more than 800 juvenile justice professionals representing 39 states participated. The 2014 event had a number of active and well-known actors in the reform movement speak such as Nell Bernstein and Van Jones (Pennsylvania Juvenile Court Judges’ Commission, 2014).

*Models for Change*
The MacArthur Foundation chose Pennsylvania to be the original model site for its Models for Change program in 2004. The MacArthur Foundation in the early 2000s decided to realign funding toward state-focused reform and chose to invest in Pennsylvania as its core model (Schwartz, 2013, p. 4). The Models for Change program was then extended to four core states: Pennsylvania, Washington, Illinois and Louisiana. Subsequently, the efforts have expanded to 35 states. The MacArthur model emphasizes leveraging public-private partnerships in the juvenile justice system. In order to launch the Models for Change program, MacArthur contributed $10 million and Pennsylvania through the Juvenile Justice and Delinquency Prevention Committee (JJDPC) of PCCD contributed $11 million (Schwartz, 2013). MacArthur provided technical assistance and JJDPC provided seed money for experimental efforts that then later could be folded into counties’ budget requests (Schwartz, 2013).

MacArthur chose Pennsylvania for its Models for Change initiative for a variety of reasons. The foundation has framed its involvement in Pennsylvania as “accelerating” the good work already being done in the state. Pennsylvania was chosen because it was seen as a state that was ahead of the curve on juvenile justice policy, a “bellwether” for reform and well poised to further implement key aspects of reform. The state was already seen as a leader in the nation for addressing minority overrepresentation in the juvenile justice system and initiating disproportionate minority contact (DMC) initiatives, studying and implementing evidence based programs (EBP) and perhaps most importantly had an already established data collection system (Griffin, 2008). In short, the state was a perfect fit for MacArthur because of the key elements of the BARJ
legislation passed in 1995 in the state: data-driven and outcome focused policy and the implementation of evidence-based programs. The successful implementation of BARJ in the state showed a commitment to reform and a reform platform that was attractive to the MacArthur Foundation (Schwartz, 2013, p. 3).

The state had well-established non-profits to enlist in MacArthur’s effort. For example, the National Center for Juvenile Justice (NCJJ) was tapped by the foundation to manage data on the initiative and developed the “vital signs” that are used by the foundation to measure the outcomes of the initiative.155 Because of the stipulations of the BARJ legislation that passed in 1995, the state had a well-developed statewide data collection process where every county had to report about education, jobs, victim outcomes, community restitution and a number of other variables.156 This made the state favorable to MacArthur, which wanted a focus on data and outcome measurements in its initiative. At the time that the MacArthur Foundation chose Pennsylvania to be its first model site, the state led the nation in its efforts to focus on outcomes that were aligned with the system goals of BARJ and to use measures to indicate progress on these goals (Pennsylvania Juvenile Court Judges’ Commission, 2005b, p. 14).

MacArthur’s involvement centered on eight major areas of reform: after care, community-based alternatives, dual status youth, evidence-based practices, juvenile

155 The five “vital signs” devised by NCJJ are: fairness (measures racial disparity), recognition of juvenile-adult differences (measures annual number of criminal sentences imposed on juveniles), diversion (measures proportion of juveniles in jurisdictions that are diverted), social engagement (measures the proportion of juveniles who are employed or engaged in an education or vocational activity at the time their cases are closed), and community safety (measures recidivism rates) (Griffin, 2005).

156 The data collection does not include data on numbers of youth in local community-based programs, intermediate punishment programs and only provides limited data about secure confinement.
indigent defense, mental health, DMC and status offense reform. In each of these initiative areas, MacArthur predominantly provided technical assistance and gave short-term grants to launch experimental programs with the idea that the state and counties would then fund programs that were evaluated and found to be successful.

Before the MacArthur Foundation officially launched its Models for Change program in Pennsylvania, the state had already begun to implement some of the foundation’s reform agenda. In 2000, Pennsylvania detention centers began using a mental health assessment tool, MAYSI-2 supported and disseminated by the MacArthur Foundation (Schwartz, 2013, p. 24).\(^{157}\) The MAYSI-2 is self-scoring; it generates individual scores for each youth while also compiling all scores into a separate file for data analysis that guides policy decisions (Pennsylvania Commission on Crime and Delinquency, 2012b).

In the mid 2000s JDCAP nationally promoted the successful implementation of MAYSI-2 in detention centers in Pennsylvania. In 2004 MacArthur referred to Pennsylvania as “a pioneer in the implementation of MAYSI-2” (Grisso & Williams, 2006). By 2006, 20 out of 22 of the state-run juvenile detention centers in Pennsylvania had implemented MAYSI-2. Pennsylvania had already been the launching place for the

\(^{157}\) MAYSI-2 is a computerized, self-report questionnaire that contains 52 items that are read to youth via a computerized voice program. Youth answer in a yes/no format and the test lasts about a total of 10-15 minutes. Scores are divided into the following seven subscales: alcohol/drug use, angry-irritable, depressed-anxious, somatic complaints, suicide ideation, thought disturbance, traumatic experiences. MAYSI was launched in 1998 in California, Massachusetts and Pennsylvania to first test out the tool with the support of the MacArthur Foundation (Grisso et al., 2012). Pennsylvania implemented MAYSI-2 in a 10 site pilot project supported by the Juvenile Detention Centers Association of Pennsylvania (founded in 1978, JDCAP is a nonprofit professional organization that promotes policies and standards in juvenile detention facilities in Pennsylvania) and JJDPC (then the Juvenile Advisory Committee).
MacArthur model of mental health screening prior to 2004, contributing to their choice of Pennsylvania as a model site.

In 2007 the Models for Change initiative spurred the further dissemination of MAYSI-2 in juvenile probation departments throughout the state. MAYSI-2 and similar mental health screening tools are central to the Pennsylvania and the MacArthur Foundation reform agenda on mental health intervention. The MAYSI-2 instrument is promoted as an inexpensive mental health intervention tool. The software only requires an initial start-up cost and then has no ongoing “per use” fee (Zawacki, Torbet & Griffin, 2008). The program is cheaper because it is a self-scoring assessment that does not require a mental health professional to administer the screen.

Reform Through Job Preparation and “Marketable Skills”

The Philadelphia Reintegration Initiative is another example of a major program that came out of the Models for Change partnership. The program was launched in 2005 thanks in part to funding from the MacArthur Foundation, which has provided $536,000 for the program between 2002-2014 (MacArthur Foundation, 2016a). The initiative also receives funds from the U.S. Department of Labor and state juvenile probation funds – part of the private-public partnership model. The initiative is targeted to solve what MacArthur has determined are the core problems for Philadelphia’s delinquent youth: “academic failure, disconnection from school, and lack of job preparation and marketable skills” (Griffin & Hunnin, 2008, p. 3).
The emphasis on education and job training is emblematic of the types of individualized interventions promoted in the community-based movement. In the community-based reform model, the cause and solution to delinquency are rooted in youths’ individual deficiencies. Solutions for delinquency are targeted at trying to ensure youth have a fair opportunity to fit in with the existing economic system (expressed in the name of the program itself). This tactic takes as a given the labor market and social conditions and targets the individual behavior of juveniles as the solution to delinquency. Candace Putter, the manager of the Reintegration Initiative describes that the program,

Forced us to turn our attention back to what we were doing to prepare kids…were Philadelphia youth in commitment facilities receiving education and career training that was adequate and appropriate? Did it line up with the expectations of Philadelphia schools? Did it prepare youth to succeed in Philadelphia’s economy? (Griffin & Hunninen, 2008, p. 3)

Particularly targeting the education system as the most essential institution in assuring youths’ success, Putter claims, “kids can no longer get jobs that are life-sustaining and family-sustaining without education. It’s not either/or: They’re not going to get a life-sustaining job if they don’t get more education” (Griffin & Hunninen, 2008, p. 3).

Candace Potter was a fellow of the Stoneleigh Foundation from 2008-2011 and the foundation also supported the Philadelphia Reintegration Initiative. As one of the foundation’s initiatives, Stoneleigh invested in the effort because they state that, “academic failure and lack of marketable job skills are known pathways to delinquency” (Stoneleigh Foundation, 2013a).
The Philadelphia Reintegration Initiative works with the best-known private residential facilities and partners with Lehigh Career and Technical Institute (LCTI) to bring more job training into detention centers across the state. LCTI is one of the nation’s largest secondary vocation schools. The goal of the program is to employ youth as supervised apprentices in the day-to-day clerical, grounds-keeping and food service operations of the facilities themselves.

The initiative has proposed that all detention centers should offer practical training in the building trades, auto body repair, culinary arts, clerical and custodial services and a handful of other areas that they have deemed have consistently high employer demand (Griffin & Hunnin, 2008, p. 6). The Pennsylvania Association of Career and Technical Administrators (PACTA) conducted the assessment of career and job skills training at the placement facilities participating in the Reintegration Initiative. PACTA strongly advocates for workforce training to be an integral part of the education system and states, “career and technical education must serve the needs of business and industry.” The association declares, “All citizens have the right to quality, affordable and accessible career and technical education” (Pennsylvania Association of Career & Technical Administrators, 2016). Thanks to the MacArthur Foundation, PACTA and state investments towards the effort of increasing job training in detention centers, by 2012, 26 facilities across the state offered 73 career technical education programs (Schwartz, 2013).

Stemming from the logic that juvenile delinquency is rooted in inadequate education and life skills, MacArthur has also funneled resources and technical support
into the Pennsylvania Department of Education (Griffin & Hunnininen, 2008). In 2007, MacArthur gave the department a $540,000 grant, particularly targeted at tracking educational outcomes for youth in detention placements (Griffin & Hunnininen, 2008).

The foundation model for reform contributes to a broader pattern in social policy where a heavy emphasis is placed on workforce training rather than public job creation. The discourse about juvenile offenders lacking marketable skills and education as the explanation for their delinquency feeds into the notion that the unemployed lack jobs because of their own personal deficiencies rather than problems with the labor market. Lafer (2004) and Moak (2016) provide extensive analyses on the inability of education alone to ensure youth get jobs. Lafer (2004) tracks the negative consequences for youth employment that has come from the shift from public job creation to job training.

The job-training programs have had few evaluations. The programs themselves produce the only available assessments of their success. Pennsylvania does not have a state agency monitoring and measuring the outcomes of these vocational training programs. The MacArthur Foundation published outcome data for the Philadelphia Reintegration Initiative from 2008 that showed 31% of youth in the program received a high school diploma or GED, 84% enrolled in school or career training upon discharge from the program and 37% of youth were employed at some point during the reintegration process (Juvenile Justice Information Exchange, 2016). The foundation does not provide data on employment upon release or long-term employment outcomes. The Stoneleigh Foundation has similarly limited data on the Pennsylvania Academic and Career Training Alliance (PACTA) program for 2009-2010. The foundation reports that
about 25% of students discharged from PACTA left with a ServSafe, OSHA-10 or Microsoft Certification and about 50% of discharged students had authentic, paid work experience from their time in the program (Stoneleigh Foundation, 2013b). The outcome data does not include employment statistics, nor does it compare the impact of the program compared to other youth involved in different programs.

In 2010, the National Research Center for Career and Technical Education received a $4.5 million grant from the U.S. Department of Education to study the outcomes of Pennsylvania’s secondary career and technical education graduates. This is the most comprehensive evaluation of the job training efforts in the state, but does not include detention center programs. However, the results give some suggestion about the efficacy of the programs writ large. Even though Pennsylvania is one of the most advanced states in administering technical assessments of career and technical education (CTE) graduates, evaluations are compromised by low response rates. The state only has self-reported employment outcomes from about 29% of graduates of CTE. The study found that youth that scored high on workplace readiness assessments and occupation-specific assessments were more likely to enroll in postsecondary education than those scoring low (Staklis & Klein, 2010). However, this data fails to suggest how much career education itself contributes to a greater likelihood of postsecondary enrollment. No statistically significant relationship was found between youth who earned an industry recognized certificate and enrolled in higher education. And, due to the inadequate data,

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158 A nonprofit, non-partisan organization, part of the Southern Regional Education Board which works with 16 states to improve public education.
the report does not have any information about employment outcomes (Staklis & Klein, 2010).

Overall, unemployment for youth in Pennsylvania, like all other states is consistently high. In 2016, Pennsylvania tied Rhode Island with the worst unemployment rate in the Northeast and ranked 33rd nationally. The following graph shows Pennsylvania’s unemployment rate between 2003 and 2014 for 16-19 year olds. While the rate has fluctuated, the rate has trended upwards during this time period. On average about one in five youth looking for a job in Pennsylvania is unable to find employment.

Graph 13. Unemployment Rate for 16-19 year olds


While these various job-training programs do not have good outcome data, the overall unemployment rate in the eleven-year period from 2003 to 2014 has fluctuated between 14% and 23%.
MacArthur’s Lasting Impact

The MacArthur Foundation recommendations on DMC, which are a preeminent, leading model today, continue to frame the DMC problem narrowly and explicitly call for localized solutions. This model rules out the effectiveness of macro solutions to the problems of inequality in the justice system. The Models for Change DMC initiative states, “DMC solutions need to be local. Because of the way history, conditions and needs vary from one place to the next, and because of the sensitivity of the issues involved, addressing DMC is impossible without local knowledge and determined local will” (Griffin, 2008). This perspective ignores the broader and universalistic trends in the juvenile justice system of poor youth consistently experiencing the most punitive and intrusive forms of juvenile justice interventions. Instead, the perspective treats inequality as something nebulous, highly contingent on place and therefore solutions are particularized, local and explicitly non-universal. Consequently, the strategies for DMC continue to be things like diversity training for probation officers and “race dialogues.”

Beyond these particular examples, MacArthur’s role in Pennsylvania has been substantial, institutionalizing many of its initiatives and funneling resources and attention towards DMC, indigent defense,\footnote{In 2004, MacArthur gave the Juvenile Law Center a $500,000 grant to lead the indigent representation reform effort (Ecenbarger 2012).} and community-based alternatives like evening reporting centers. In 2008, MacArthur launched the Juvenile Indigent Defense Action Network, in 2007 it launched a DMC Action Network, and in 2008 it funded the first Evening Reporting Center in the state in Berks County. The reporting center, as a part of
the DMC initiative, uses electronic monitoring and urine analysis and its participants are 91% youth of color (MacArthur Foundation, 2010).

In 2010 the state launched The Juvenile Justice System Enhancement Strategy (JJSES) as the MacArthur Foundation’s five-year commitment to the state drew to a close as a way to continue to support the implementation of evidence-based practices in the state and to further the BARJ mission. The MacArthur Foundation is a major supporter of EBP and as part of its role in Pennsylvania greatly pushed for the implementation and support of these programs. The Pennsylvania Council of Chief Juvenile Probation Officers partnered with the Pennsylvania Juvenile Court Judges’ Commission to launch the Juvenile Justice System Enhancement Strategy (JJSES). The two organizations hired The Carey Group, Inc. (a national consulting company on EBP) to develop an implementation strategy. JJSES’s statement of purpose is to “enhance the capacity of Pennsylvania’s juvenile justice system to achieve its balanced and restorative justice mission.” The core commitments of JJSES are to establish and maintain strong partnerships with service providers, use minimal interventions with low-risk juveniles, and maximize accountability with high-risk juveniles (Pennsylvania Commission on Crime and Delinquency, 2012b). JJSES has institutionalized and integrated MacArthur’s model for corrections into Pennsylvania’s juvenile justice system.

Additionally, the foundation has helped create policy committees and resource centers in the Pennsylvania juvenile justice system, such as the Diversion Subcommittee in PCCD. MacArthur has accelerated the pillars of BARJ and of the community-based approach to the juvenile justice system. Models for Change also helped further
institutionalize and entrench the idea that the cause of delinquency is rooted in the insufficient education, emotional damage and lack of life skills that most youth offenders experience and these traits can best be corrected through individualized behavioral interventions at the community level.

_Ideology of BARJ and Community-Based Corrections_

The connection between community-based programs and punitive accountability has become deeply entrenched in the rhetoric and philosophy espoused by policymakers and juvenile justice practitioners. A common sense belief undergirding the Pennsylvania juvenile justice system is that violent crime is caused by the breakdown of communities. This is often articulated as seen in the deficient maturation and development of juvenile offenders. Addressing the “roots” of violent crime contributes to bolstering community-based behavioral intervention solutions and it also fuels a continued version of the super-predator rhetoric where juvenile offenders are pathologized and seen as being fundamentally “broken.” Importantly, practitioners and policymakers frequently use “community” to mean the individual members of the community. Other than perhaps blaming a “failed” school system, in the articulations of an inadequate community being the cause of juvenile crime the blame is placed on the shoulders of the members of the community. The localization of the problem erases considerations of larger policies and conditions that effect juveniles and locates the problem in the interpersonal relations and skills of individual community members. Consequently, the solution is to promote individualized behavioral programs: mentoring, counseling, parenting classes and life skills. The policy solutions are therefore always local so they do not and definitionally
cannot include universalistic programs or wider changes in the economic, social or political system.

Changing the purpose clause in 1995 did not automatically create these longstanding changes to the juvenile justice system. The legislation enacted in the mid-1990s was part of a long-term strategy and effort in the state to shift the way practitioners acted and defined their roles in the juvenile justice system. In the following years, key leadership forums, regional trainings, workshops and demonstrations all furthered the ideas of BARJ (Griffin, 2006). Reflecting on ten years of BARJ in Pennsylvania, Rick Steele, former Chief of Northumberland County Juvenile Court Services and a leading architect of BARJ stated regarding the approach, “It’s been institutionalized. People are thinking along those lines” (Griffin, 2006). Valerie Bender, a member of JJDPC and a restorative justice consultant described the approach:

While the [Juvenile] Act still offers the treatment and supervision many youth need, the accountability goal recognizes the potential of youth as human being. They aren’t just kids the system needs to fix. They are people capable of facing their mistakes and taking action to repair whatever harm they’ve caused. Accountability is an expression of how much hope and faith we have in the youth entrusted to us. (Griffin, 2006)

BARJ effectively defined punitive accountability as behavioral reform by conflating and combining the two approaches.

The following section details a joint hearing for the U.S. Senate Judiciary Committee held in Philadelphia in 2007 addressing the topic of “Mentoring and Community-Based Solutions to Delinquency and Youth Violence.” This hearing showcased Pennsylvania’s national leadership in the community-based movement and also exemplified the ideological commitments of the BARJ philosophy. While only one
hearing, the event brought together major stakeholders and leaders from Pennsylvania who argued in defense of Pennsylvania’s community-based approach to juvenile delinquency. The statements by these leaders exemplify the ways in which the community-based approach is rooted in a neoliberal, individual uplift approach to addressing delinquency.

More than ten years after the super-predator hysteria had subsided, the image of a growing juvenile crime problem continued to animate discussions about juvenile justice policy. In Senator Arlen Specter’s (R-PA) opening statement he referred to the community-based efforts as part of an ongoing “war” on juvenile delinquency and referred to the increasing problem of juvenile violent crime. Pedros Ramos, the Managing Director for the City of Philadelphia, opened his comments stating, “violence is shattering the dreams and futures of too many children and youth in our city” (Mentoring and Community-Based, 2007). Additionally, Wendy McClanahan the Vice President for research at Public/Private Ventures testified, “in Philadelphia, homicide was up by 15% in 2005. Unfortunately, this increase looks like it might be the start of a trend” (Mentoring and Community-Based, 2007).

Patrick Meehan, a U.S. Attorney from the Eastern District of Pennsylvania, presented on three model programs, which he described, “include both a mentoring component and a strong law enforcement message to at-risk youth who find themselves at a crossroads” (Mentoring and Community-Based, 2007). Meehan blamed crime on

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160 Meehan detailed the Youth Violence Reduction Project, the Don’t Fall Down in the Hood program and Glen Mills Community Management Services Program as models for successful community-based
broken families stating, “unmarried teenage mothers and their children are often the
greatest risk of becoming entrenched in the lifestyle of poverty and family dysfunction”
(Mentoring and Community-Based, 2007). He advocated for the community-based
programs that can address these problems of familial dysfunction in order to “steer young
people away from bad choices before it’s too late” (Mentoring and Community-Based,
2007). Meehan’s articulation of the crime problem and its solutions exemplify the
prevailing philosophy in Pennsylvania and at the core of BARJ, which is that community-
level dysfunction, most often occurring in the family unit, can be improved by behavioral
interventions (such as in the several non-profit programs Meehan detailed). But also
Meehan describes a “too late” scenario requiring strong law enforcement to hold
wayward youth accountable.

Sylvester Johnson, the Police Commissioner for Philadelphia, similarly advocated
for this continuum of responses, which begins with an understanding of the root of crime
problems being the dysfunction of “broken homes.” Paradigmatic of the community-
based approach, Johnson argued, “law enforcement should be the last step in protecting
our children” because the problem should be addressed at its root, in the community. But
in describing the community, Johnson only gave examples of bad parenting that he
admonished because it causes children to become violent and “turn to crime.”

John Delaney, the deputy district attorney for Philadelphia, presenting on his
model program described the way in which practitioners combined community uplift and

programs. He also mentioned the Amachi Program and the Nurse/Family Partnership in his concluding
comments.
punitive accountability in practice through the city’s Youth Violence Reduction Project (YVRP). Delaney portrayed the program as combining the stereotypical nurturing mother and the stereotypical disciplinary father. The police and probation are the father, providing discipline and supervision in the program while the paraprofessionals are the mother, providing mentoring (Mentoring and Community-Based, 2007).

The belief that delinquency is the result of inadequate parenting and is rooted in the “dysfunctional family” pervaded the philosophy behind school probation programs as well. Paul Vallas the Chief Executive Officer for the School District of Philadelphia testified in support for school-based community policing, drawing a direct link between education failure and crime. Vallas argued in plain terms that parents were the source of the problem:

The biggest problem we have is inexperienced parents, parents who just do not know how to raise their children. It’s as simple as that. And we’ve got to train the next generation of parents. I mean, there’s, you know, a—how do parents—how do we learn to be parents? We learn from our parents. And somewhere along the line, that chain in that—that link in that long chain was broke. And once you have one weak link, the entire chain is useless. (Mentoring and Community-Based, 2007)

Vallas’s testimony revealed the philosophy undergirding the support for community-based probation. Vallas’s idea of bolstering accountability in schools is paradigmatic of the types of “alternative” programs that are purported to reduce the need for secure detentions because they can solve delinquency in the community. In 2003, Vallas hired 250 truant officers in partnership with the justice department (Associated Press, 2003).

161 Vallas came to the city after working in Chicago and went on to the New Orleans school district after leaving Philadelphia (Mezzacappa 2007)
The community-based effort draws from the same philosophy undergirding “get tough” policies and therefore also expands punitive policies, like school policing, in the community. Rather than repudiate the idea that delinquency is derived from the moral failings of youth, their parents and their families, community-based reforms infuse this logic and the belief in the value of punitive accountability into community institutions.

III. Consequences of BARJ

The implementation of BARJ in Pennsylvania has increased privatization, bolstered the power of probation officers, expanded punishment in local schools, and expanded “alternatives” like restitution programs and drug courts. These elements of the Pennsylvania juvenile justice system illustrate how a devolved and privatized system of corrections operates on the ground. BARJ has resulted in a system that reserves the harshest possible punishments while also targeting juveniles for behavioral interventions as one broad approach to addressing juvenile delinquency.

Privatization

The two pillars of the Pennsylvania justice system, one aimed at “accountability” and punitive responses ranging all the way to LWOP sentences and the other aimed at “competency development” through community-based programs do not just coexist in the state, but complement and support one another. The line between the two approaches is not easy to draw since strength of BARJ is that it brings together these two approaches. Privatization plays a key role in stitching together these two pillars into one approach. Private service providers are chiefly responsible for competency development programs.
by providing therapeutic treatment, but they also provide secure detention. As scholars discovered in the aftermath of Massachusetts’ decarceration experiment, private service providers monopolized control of the “soft end” of punishments in the state, but they also eventually were involved in the “hard end” of punishment (Armstrong, 2002, p. 357). The argument for privatization is often framed as an alternative to the problems of large state-run institutions; yet, private interests end up investing in the “hard end” (secure detention) of the juvenile justice system as well.

This relationship is particularly pronounced in Pennsylvania where a continuum of punishment is an essential part of having a therapeutic, community-based juvenile justice system. Ideologically and materially, the pillars of accountability and “competency” development are closely woven together in Pennsylvania. The following section details several examples of the way these two features of the juvenile justice system operate together on the ground through private service provider contracts.

After the 1995 legislation passed, private providers received licenses from the Department of Public Welfare to expand existing services to include secure detention. For example, in Philadelphia in 1999, the Northwestern Human Services (NHS) opened the Northwest Academy Secure Detention Unit. NHS came into existence as a result of federal funding for community mental health centers in the early 1960s. The large non-profit describes itself as “the safety net for people who otherwise could not afford care and who often ‘fall between the crack’ of bureaucracy and red tape” and its mission is to excel in all aspects of care and treatment (Northwestern Human Services, 2016). Today NHS employs over 10,000 workers in the education and human services industries. With
the addition of a secure program for youth offenders as well as an intermediate secure treatment unit, NHS is emblematic of the principles and model of BARJ. A local, community-based, private service provider that offers a broad continuum of services.

Similarly, in 1998 the Department of Public Welfare made a deal with Cornell-Abraxas, part of GEO Group, Inc. (one of the world’s largest private correctional companies)\(^{162}\) to open up secure detention facilities in the state. Today the company operates 10 facilities in Pennsylvania\(^{163}\) and 10 facilities in Ohio, Texas and Illinois. Abraxas provides a variety of residential, community-based, alternative education, detention and shelter services.\(^{164}\)

In Berks County, one of the ten facilities GEO Group, Inc. runs in Pennsylvania is a shelter and detention program that has a facility capacity of 148 beds (GEO Group, Inc., 2016).\(^{165}\) Below is a picture of the facility in Morgantown, Pennsylvania a small town in Pennsylvania with a population of 826 residents (as of 2010 census).

Illustration 2. Abraxas Berks County

\(^{162}\) Abraxas is part of GEO Group, Inc. However, GEO Group also has the GEO Care segment, which comprises GEO’s privatized mental health and residential treatment services business.

\(^{163}\) Abraxas has 10 facilities in Pennsylvania and a capacity of about 1,518 beds in just 7 of these facilities.

\(^{164}\) GEO Group, Inc. has 70 Day Reporting Centers across the United States (for both adults and juveniles) and considers itself the “nation’s leader in safe, secure alternatives to detention and reentry services for offenders released to community treatment and supervision” (GEO Group, Inc., 2014). BI Incorporated, part of GEO Care is the U.S.’s largest provider of electronic monitoring products and services, a major component of community-based “secure alternatives.”

\(^{165}\) 34 sexual offender beds, 36 habitual offender beds, 24 shelter beds, and 54 detention beds.

248
(County of Berks, 2016a)

In addition to providing secure detention, the facility also carries out all of the most popular evidence-based programs and follows the principles of the BARJ model. Abraxas Academy uses Aggression Replacement Training® (ART), Olweus Bullying Prevention Program, and Casey Life Skills166 (Abraxas Academy, 2016). Youth participate in the Sanctuary Model a trauma-informed method of treatment.167 The treatment philosophy at the detention center complies with the BARJ pillars of accountability, community and competency development. Abraxas is a perfect embodiment of the BARJ model: the combination of punitive secure detention with community-based treatment, all run by a private service provider.

166 All of these programs are part of the evidence-based movement (detailed in later section), widely promoted by the MacArthur and Annie E. Casey Foundations. Casey Life Skills is part of the Annie E. Casey Foundation’s Casey Family Services.
167 One of the major components of the Sanctuary Model is the “Seven Commitments”: nonviolence, emotional intelligence, inquiry and social learning, shared governance, open communication, social responsibility and growth and change (County of Berks, 2016a).
The partnership between Alternative Rehabilitation Communities, Inc. (ARC) and Pennsylvania is another example of the types of community-based programs that have flourished in the state since the implementation of BARJ.\(^{168}\) ARC has been providing services in Philadelphia since 1975 and prides itself as being the “hallmark of continuum of services” as well as a pioneer in “providing staff-secure programs” (Alternative Rehabilitation Communities, 2016a). ARC is a model of BARJ and the community-based movement, providing treatment and secure detention all through a broad continuum of services carried out by a community-based non-profit corporation. As of 2016, ARC has 11 residential programs in Pennsylvania.\(^{169}\) In 2014, the company had 320 employees, $6.4 million in assets and $14 million in income (GuideStar, 2016).

ARC demonstrates the degree to which a strategy of promoting individual uplift and individual behavioral modification undergirds the continuum of sanctions model. ARC uses the most popular evidence-based programs in its services such as Aggression Replacement Therapy and Motivational Interviewing. Testimonials from youth who have been placed at ARC facilities and participated in their treatment programs reflect the personal, behavioral and emotional strategies of these types of interventions. For example, a youth named Annette describes that she used to have a “horrible attitude because of a bad situation at home, but she claims coming to ARC, “opened my eyes and my brain up to a lot of different things. I started going to Feelings Group and learned how

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\(^{168}\) Recall, ARC is the organization Dan Elby, the leader of the DMC initiatives in Pennsylvania works for. ARC is a charitable tax-exempt organization.

\(^{169}\) One Secure Care Program, four Male Residential Programs, two Male Special Needs Residential Programs (one for sexual behavior and the other for mental health), one Female Residential Program, two Neighborhood Reporting Centers and one Shelter Care Program.
to talk about my anger” (Alternative Rehabilitation Communities, 2016b). Testimony from another youth, Victor, reflects on the religious education that is part of some ARC programming:

I got better with my self-esteem and my behavior. I learned how to act, think, and speak. Peers on the streets are not good and drugs are junk. We have to love ourselves. Suffering is something positive and we shouldn’t just think of the past. Instead, we should believe in God so that everything is ok. (Alternative Rehabilitation Communities, 2016b)

In 2012, ARC took over the Schaffner Facility in Dauphin County. The takeover is part of a statewide trend; only a minority of Pennsylvania counties still operate their own juvenile centers (Miller, 2012).

Evening Reporting Centers (ERCs) are one of the many “alternative” services of the community-based approach and also are part of private-sector expansion in the juvenile justice system under the BARJ model. ARC runs several of these in which juveniles often enter the program after being released from a detention center. Juveniles typically get 90 to 120 days of treatment. If they succeed in the treatment program they get in-home probation where they are placed on electronic monitoring supervision (Pennsylvania Juvenile Court Judges’ Commission, 2010a). A number of counties use Evening Reporting Centers as part of a continuum of community-based programs and services. The MacArthur Foundation has funded and promoted the use of ERCs and folded these centers into its DMC initiative.

The PROGRESS program from Bucks County is another BARJ program leveraging private/public partnership in community-based juvenile justice services.
PROGRESS stands for Partnerships for Restorative Outcomes, Growth, Redemption and Enhancement of Social Skills, which is essentially an all-inclusive tag line of the BARJ platform and the foundation led model of community-based corrections. PROGRESS brings together community residents, local agencies and private-sector businesses in providing life skills training for youth.\textsuperscript{170} Participation in PROGRESS is part of the conditions for probation supervision for youth selected to participate.\textsuperscript{171} The program does not replace involvement with the juvenile justice system. Instead, it is part of bringing the surveillance and punishment of a delinquent youth to the community level.

Youth Advocate Programs, Inc. (YAP) is another major private organization that flourished after the passage of the 1995 legislation and is a staple of the privately run community-based programs for juveniles in the state. YAP was founded in 1975 as an alternative to sending juveniles to be housed alongside adult offenders at the State Correctional Institution in Camp Hill, PA. Today, YAP is one of the largest non-profit agencies in the country providing community-based programs (Youth Advocate Programs, 2016).\textsuperscript{172} The Annie E. Casey Foundation endorses the program as an effective alternative to institutional care. YAP is a model community-based program; it recruits staff from local communities in order to “promote true cultural competence” and emphasizes individualized and family-based behavioral interventions. The company’s goal is that, “Together, the youth, Advocate and family build new and augment existing

\textsuperscript{170} PROGRESS incorporates the following “competency development” domains: Pro-social skills, moral reasoning skills, academic skills, workforce development skills and independent living skills (Pennsylvania Juvenile Court Judges’ Commission, 2006).
\textsuperscript{171} In order to graduate the program youth must participate in all of the sessions as well as satisfy 30 hours of Service Learning Projects (Pennsylvania Juvenile Court Judges’ Commission, 2006).
\textsuperscript{172} YAP runs programs in 17 states and overseas in Ireland, Scotland, Guatemala and Sierra Leone (Youth Advocate Programs, 2016).
social and emotional skill sets so that the young person can succeed in often harsh environmental conditions” (Youth Advocate Programs, 2013). YAP is a foundation model program, a private run agency that uses individual uplift as the strategy for solving delinquency.

One consequence of the expanded and institutionalized role of private organizations in the juvenile justice system is that the percentage of youth sent to private institutions has continued to grow. The following graph only captures the trend post 2001 when the state and counties had already substantially increased their use private contracts. Private companies play a large role in community-based services, but because of the expanded dual role of community-based services and secure detention, the state has also seen a continued increase of juveniles placed in private institutions. The percentage of youth sent to private institutions has continued to grow, as of 2011, 46.7% of youth in Pennsylvania placed out-of-home\(^{173}\) were sent to a private institution. Consistent data on private institutional placements is only available from 2001 to 2011.

Graph 14. Placement in Private Institutions, 2001-2012

\(^{173}\) Out-of-home placements include being sent to groups homes, drug treatment, boot camps, wilderness camps, state-run facilities (secure and non-secure) foster care and other placements.

Despite a drop in the number of youth given a disposition in the state from 45,504 in 2005 to 38,978 in 2010, the number of youth sent to private institutions has, except for between 2010 and 2011 continued to increase or stay pretty much constant. The following graph shows the number of youth sent to private institutions in comparison to youth sent to state-run Youth Detention Centers.

Graph 15. Placement in Private Institutions and State-Run Detention Centers

This trend is occurring in Pennsylvania at the same time that according to FBI Arrest statistics for juveniles in the state, the number of youth arrested is significantly declining. Total arrests, the violent crime index and property crime index have all substantially dropped from the mid-1990s to 2010s.

Graph 16. Total Arrests in Pennsylvania, 1994-2012
In addition to the number of juveniles given a placement in a private institution, a large number of youth are also sent to private placements upon release from detention. From 1997 to 2002 the percentage of youth released from detention to enter private placements more than tripled. The following table shows the percentage of youth sent home and the percentage of youth who enter a private placement once they leave a detention placement. The remainder of youths go to shelters, foster care, public facilities (about 4%) or “other” (Zawacki & Torbet, 2004).

Table 12. Youth Released from Detention

<table>
<thead>
<tr>
<th>Year</th>
<th>Home</th>
<th>Private Placements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>38%</td>
<td>9%</td>
</tr>
<tr>
<td>1998</td>
<td>38%</td>
<td>10%</td>
</tr>
<tr>
<td>1999</td>
<td>32%</td>
<td>13%</td>
</tr>
<tr>
<td>2000</td>
<td>45%</td>
<td>33%</td>
</tr>
<tr>
<td>2001</td>
<td>43%</td>
<td>32%</td>
</tr>
</tbody>
</table>

174 Data only available for 1997 to 2002 and does not include Philadelphia County.
The role of the private-sector in the Pennsylvania juvenile justice system has been institutionalized since the 1995 legislation. Scholars have long argued that a major consequence of private-sector involvement in the justice system is that these entities have an interest in growing their clientele (Bakal, 1998; Lucken, 1997; Segal & Aviram, 1978; DiMaggio & Anheier, 1990). Pennsylvania has experienced this consequence in the continued expanding role of the private-sector, just in institutionalization alone (which is not even the major role for the private-sector in the juvenile justice system), despite dramatically declining arrest rates in the state.\textsuperscript{175} Even as the number of youth in private institutions dropped from 2010 to 2011, the percentage of all youth given an out-of-home placement in a private facility continued to grow.

Even for county detention centers run locally and not by a private company, the pressure of privatization has influenced the way these detention centers operate. It has made them adapt to market forces in carrying out services. For example, in Westmoreland County, the idea of a continuum of services is all wrapped up into one facility that houses the probation department, detention center, shelter and behavioral unit. In 2010 the county spent $4.2 million to renovate the center to modernize it and to bring it into congruence with the BARJ mission. The county Family Court Judge John Driscoll described the center as a “break with the past” comparing it to the old center,

\textsuperscript{175} It is very difficult to systematical map or account for the number of non-residential privately run programs in the state. There are over 1,000 private children and youth social service agencies that are part of the formal juvenile justice system in Pennsylvania, but these is not consistent accounting of the number of youth these programs serve over time.
which was “cold and severe” in contrast to the new transformed facility “with its muted earth tones” making it “both warmer and roomier” (Pennsylvania Juvenile Court Judges’ Commission, 2010c). Below is a picture of the renovated detention center:

Illustration 3. Westmoreland County Detention Center

(Section Image)

The center provides secure detention as well as a non-secure youth shelter for dependent and delinquent youth. The facility houses 18-21 years olds who have agreed to or have been court ordered to remain in the custody of the placing county’s Juvenile Probation Department or Children’s Bureau. Part of the mission statement of the detention center states: “We view juvenile detention as a process, not a place” (Westmoreland County, 2016).

On Westmoreland County’s website the facility is described as: “Renovated in 2010, the Center boasts attractive, well-lit common spaces including a TV lounge, library and an outdoor basketball and recreation area. Current rates are per diem: $199.00 for Detention and $190.00 for Shelter” (Westmoreland County, 2016). In 2013, the
county cut the rates by about 28% (the daily rate had previously been $276/day) in an attempt to attract more out-of-county placements. The detention center’s chief competitor is a detention center in Steubenville, Ohio that houses young offenders from Western Pennsylvania (charging about $135 a day for youth offenders coming from other counties). Rich Gordon, the director of Westmoreland County’s regional Youth Services Center, described the price cut strategy as, “This will be like Hotwire for juvenile detention” (Cholodofsky, 2013). Another strategy to increase placements was to expand the shelter program. A number of counties have considered this move as judges in Pennsylvania are increasingly sending more juveniles to private residential programs and treatment centers instead of detention centers.

After reducing the per diem costs, the facility ended up receiving an influx of inmates due to the transfer of teens charged with adult crimes as part of the implementation of the Prison Rape Elimination Act requiring that youth be segregated from adults. As of 2015, the Westmoreland facility was overcrowded and county commissioners were looking to expand it. During the previous renovation, the county cut the number of beds to increase space, but now will add more beds at no cost to the county-- they just have to pass a state inspection to qualify for more beds (Cholodofsky, 2013). The pressure to compete for youth referrals is just one way in which the pressures of privatization and competition in corrections affect the way juvenile justice services are carried out. Facilities re-label the same beds and facility space as “detention” versus “shelter” and treatment-focused versus punishment-focused in order to qualify for different funding reimbursements and referrals from judges.
Privatization in Pennsylvania also has occurred with the simultaneous expansion of programs and services directly targeting the individual deficiencies of juveniles. There is a strong relationship between private service providers and the ascendancy of evidence-based programs premised on individual uplift. The state has been successful in bolstering this portion of the juvenile justice system. An overwhelming number and percentage of juveniles are ordered to participate in “competency development” programs (Pro-Social Skills, Moral Reasoning Skills, Academic Skills, Workforce Development Skills and Independent Living Skills). Data between 2004 and 2013 show that about three fourths of youth were ordered to participate in a “competency development” activity while under supervision (Pennsylvania Juvenile Court Judges’ Commission, 2013).\(^\text{176}\)

Over the same period of time an increasing percentage and number of juveniles under supervision have been found in violation of their probation conditions. In 2004, 2,164 juveniles (12.2%) violated probation while under supervision. In 2013, 2,340 juveniles (19.1%) violated probation while under supervision. The state has increased required competency development programming for youth, yet youth are more likely to violate probation perhaps because they are more tightly monitored (Pennsylvania Juvenile Court Judges’ Commission, 2013). Overall, a large percentage of youth are required to participate in “competency development” programs showing that the goal of BARJ has been effectively implemented in the state. Over this same period of time, juveniles have become increasingly more likely to be found in violation of their probation conditions.

\(^\text{176}\) Data for “competency development” program participation in only available from 2004 to 2013. Likely, the number of juveniles and percentage of juveniles participating in these programs grew substantially between 1995 and 2004.
conditions. The robustness of this pillar of the BARJ model is largely due to Pennsylvania’s longstanding role as a leader of the Evidence-Based Movement.

School Discipline

Part of the larger effort to localize juvenile corrections has been to forge a stronger relationship between law enforcement and public schools. By emphasizing juvenile justice interventions at the local level, a consequence is to imbue these local institutions with elements of law enforcement and blur the line between schooling and addressing delinquency. The infusion of juvenile justice services into local communities has contributed to the increased presence of law enforcement in schools in Pennsylvania. Additionally, it has bolstered the powerful role of probation officers who are the main point of contact for juveniles caught up in the system.

In 1992, the Pennsylvania Commission on Crime and Delinquency (PCCD) began supporting school-based juvenile probation. School-based probation moves probation officers from traditional offices into middle, junior and high school buildings where juveniles on probation spend the majority of their day (Torbet et. al, 2001). Probation officers are supposed to be able to better monitor youth by being housed in schools. Between 1992 and 1995 the state provided over $3.5 million to support 35 school-based probation programs covering 36 of Pennsylvania’s 67 counties (Clouser, 1995). From 1998 to 2001 school-based probation expanded to more than two-thirds of Pennsylvania counties (Torbet et. al, 2001).
As part of promoting community-based programs in the BARJ legislation from 1995, the Pennsylvania Council of Chief Juvenile Probation Officers pushed Governor Ridge to increase funding for specialized probation services such as school-based probation officers in public schools (Pennsylvania Council of Chief Juvenile Probation Officers, 2016). In the 1995 legislative session, Gov. Ridge signed into law a “Safe Schools” bill that increased punishments for truancy and established the Office of Safe Schools in the Pennsylvania Department of Education. The legislature also passed Act 26, which required the expulsion of students found possessing a “weapon” (which was broadly defined) (Jordan, 2015). Subsequently, the state has invested millions of dollars for school-based probation.

In a radio address in 2000, Ridge continued to promote the expansion of school probation, stating “we’ve provided nearly half of all school districts in the state with their own school-based probation officers, who not only help supervise students caught up in the juvenile court system, but become part of the fabric of the school themselves” (Pennsylvania Juvenile Court Judges’ Commission, 2000). In the same address, Ridge also stated, “I believe we can change hearts and minds and win the battle against juvenile crime” (Pennsylvania Juvenile Court Judges’ Commission, 2000). The result of expanding this form of community-based probation in schools has been a large increase in the number of suspensions, arrests, and law enforcement contacts in Pennsylvania’s public schools.

There is limited and conflicting data on the presence and outcome of law enforcement personnel in schools. Data compiled by the federal Civil Rights Data
Collection (CRDC) reports much higher rates of school discipline than Pennsylvania’s data collection through the Safe Schools office. The following description use available years to suggest that over time there has been an increase in arrests, out-of-school suspensions, and law enforcement contacts since the state implemented school-based probation and increased school resource officers.

In the 2009-2010 school year, 1 out of every 15 students in Pennsylvania was suspended from school at least once. In the same year, 1 out of every 6 Black students was suspended, Latinos were three times more likely to be suspended than white students, and students with disabilities were twice as likely to receive an out of school suspension as other students (Jordan, 2015). In 2011-2012, there were 166,276 out-of-school-suspensions (OSSs) (when a student is removed from school for up to 10 consecutive days) issued in Pennsylvania’s school districts. In the same year, 5,359 students were given detention as a sanction for school discipline; this was up from 2,440 in the 1999-2000 school year (Pennsylvania Department of Education, 2016). In 2002-2003 there were 4,841 arrests in Pennsylvania school, which grew to 12,918 arrests in 2006-2007 (Pennsylvania Commission on Crime and Delinquency 2008). In 2002-2003 there were 9,432 law enforcement contacts in Pennsylvania schools, which grew to 14,829 in 2012-2013 (Pennsylvania Department of Education, 2016; Pennsylvania Commission on Crime and Delinquency, 2008).

177 There are major discrepancies between the data published by the Pennsylvania Safe Schools office and the federal Civil Rights Data Collection (CRDC). This data is from the CRDC dataset.
178 The Safe Schools data shows 37,200 OSSs for 2011-2012 significantly lower than the CRDC data.
179 The Safe Schools data had a significantly lower report for OSSs than CRDC; there is no other comparable data set for detention to know whether or not this is also a low count.
The legislation coming out of the mid-1990s also contributed to the expansion of law enforcement personnel in schools. In the late 1990s PCCD began supporting School Resource Officer (SRO) programs in the state giving three-year grants using federal funds. These grants cover 75% of the local community’s costs in the first year of operation, 50% in the second, and 25% in the third (Griffin, 2000). The use of SROs caught on in the 1990s as a component of “community-oriented policing” (Griffin, 2000).

Data available on SROs from the Pennsylvania Department of Education only goes back to 2004 (well after the implementation of school discipline programs), but it shows a continued increased presence of law enforcement in Pennsylvania schools. In 2003-2004 School Resource Officers (SROs) worked in 26 districts; by the 2011-2012 school year there were SROs in 87 school districts. In 2005 the state began to track the number of school security personnel in its Safe School data collection. From 2005-2006 to 2014-2015, the number of School Security Officers has gone from 551 to 981 (Pennsylvania Department of Education, 2016). Combining School Police Officers, School Resource Officers and School Security Officers, in total there has been an increase from 2005-2006 of 1,364 security personnel to 1,812 in 2014-2015.180

Well after the mid-1990s influx of security personnel, the state has continued to invest and expand security in Pennsylvania schools. The trend continues despite the lack of evidence that the presence of full-time police increases school safety (Jordan, 2015).

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180 Schools Police Officers (SPOs) are in-house school officers with police powers that are hired directly by the school district rather than directly by a law enforcement agency outside of the school district. A number of school districts have their own police departments. School Resource Officers (SROs) is a law enforcement officer commissioned by a law enforcement agency who is stationed at a school. School Security Officers (SSOs) are noncommissioned officers employed by a school district assigned to a school for routine safety and security duties.
The popularity of “zero-tolerance” and police in schools has begun to wane in part due to publicized opposition to these draconian policies that often predominantly target students of color. However, the core principles of community-based programming remain popular.

_Probation Officers’ Increased Power_

The Pennsylvania Council of Chief Juvenile Probation Officers (PCCJPO) (who also influenced the 1976 reimbursement legislation) lobbied for the BARJ model. Probations officers are highly professionalized in Pennsylvania thanks to the state’s probation officer training program created in 1982 at Shippensburg University, which is a national model for juvenile justice training. Consequently, BARJ was successful in expanding the role of probation officers working actively in their communities. The council was instrumental in leading the promotion of community-based probation, as required under the BARJ principles (Pennsylvania Council of Chief Juvenile Probation Officers, 2016). The council pushed the 1995 legislation as part of a broader trend of expanding probation and giving probation departments more power in the state. In 1994, the legislature passed Act 158 establishing the Pennsylvania County Probation and Parole Officers’ Firearm Education and Training Commission (FETC) to provide uniform firearms training for county probation officers. Individual Pennsylvania counties fund FETC (Pennsylvania Firearm Education and Training Commission, 2016).

BARJ mandates close supervision as an absolute necessity. Consequently, the council has argued this increases the danger for officers. As a result an increasing number of departments began arming their officers with firearms. Counties began equipping probation officers with his/her own handcuffs, oleoresin capsicum (OC) spray, portable
communications radios and bullet resistance vests (Pennsylvania Juvenile Court Judges’ Commission, 1999). In 2002, the state legislature passed Act 215, which permits juvenile probation officers to conduct warrantless searches of a youth’s person, vehicle or property (Pennsylvania State Legislature, 2002). In 2004, Columbia County became the first juvenile probation unit to add a drug canine unit to its department (Pennsylvania Juvenile Court Judges’ Commission, 2004a). In 2005, Venango County became the first juvenile department in Pennsylvania to use Secure Continuous Remote Alcohol Monitor (SCRAM) technology.\(^\text{181}^\) Youth in the program wear a unit around their ankle 24 hours a day that tests their blood alcohol level as many as 48 times a day (through testing the sweat excreted through the wearer’s skin). SCRAM is now used in 37 counties in Pennsylvania.\(^\text{182}^\)

BARJ expanded the responsibility and punitiveness of county probation programs. As officers are tasked with an increasingly more active role in monitoring juveniles, their professional association has pushed for further professionalization and arming of probation officers.\(^\text{183}^\) County probation officers carry out functions from traditional probation roles of monitoring youth but also have adopted many practices of law enforcement. Probation officers can both counsel juveniles and punish them if they violate the conditions of their probation. These multiple roles for probation officers encapsulate the BARJ model of a continuum of sanctions and the conflation of treatment.

\(^{181}\) To set up the program, the county contracts with Alcohol Monitoring Systems (AMS) a private for-profit company (Alcohol Monitoring Systems, 2016).
\(^{182}\) 38 Pennsylvania counties contract with AMS to use their SCRAM products (Alcohol Monitoring Systems, 2016).
\(^{183}\) See Werth (2013) and Lynch (2000) for extended discussions of the punitive ideology common amongst parole personnel. Both authors discuss the tension between notions of rehabilitation in parole services and the practice of surveillance and punishment.
and punitive accountability. Similar to the case of school discipline, the changes to the probation officer profession also exemplify the consequences of infusing local community-based institutions with law enforcement responsibilities and functions. As the justice system becomes more integrated into communities it makes community services more punitive.

Restitution

Pennsylvania has expanded a number of alternative evidence-based community programs as a strategy for addressing juvenile delinquency. The following sections detail just two major alternatives, restitution and drug courts, as examples of how these approaches are rooted in 1990s “get tough” policies. Additionally, the two examples show the ways in which these community-based alternatives combine punitive accountability and therapeutic behavioral interventions as one unified approach to handling delinquency. In this way, the policies replicate punishment at the local level rather than replace punishment as the approach to handling youth found to be delinquent. In addition to these programs, the state also invests in a myriad of community-based treatment programs (many of which were detailed in the privatization section), community service requirements, and a wide range of community probation services (such as day treatment centers, evening reporting centers, electronic monitoring, intensive probation supervision, intermediate punishments). This constellation of policies and alternatives combines to provide a network of locally operated policies that are imbued with measures of punitive accountability as well as behavioral interventions in order to comply with BARJ. In sum, these policies, which are paradigmatic of community corrections, entrench punishment at the local level.
Restitution is a key aspect of the BARJ approach. The collection of restitution is held up as a key feature of BARJ and of its success in bringing accountability into the juvenile justice system as well as putting victims’ needs at the forefront of the purpose of the system (Griffin, 2006). Requiring juveniles to pay restitution is one of many alternative policies proposed in an effort to reform the juvenile justice system. Right on Crime as well as the MacArthur Foundation promote restitution as a promising new alternative and a key feature of restorative justice (Freed, 2015). Many diversion programs, alternative courts and community-based programs use restitution as a component of a juvenile’s disposition. In the MacArthur Foundation’s “Juvenile Diversion Handbook,” restitution is a core element of diversionary programs because it is necessary for “assuring accountability” (Models for Change, 2011). The appeal to reformers of restitution is that it is an “alternative” that has been framed as both rehabilitative and punitive. As an attorney from the Human Rights Commission advocating for civil citations put it, “Civil citations provide an alternative,” and “Civil citations are not, by any means, a slap on the wrist” (Freed, 2015).

In Pennsylvania the two primary rationales for restitution are compensation and rehabilitation (Ruback, 2002). Restitution is framed as a boon for victims and also for offenders who learn important lessons through the process. Steve Custer, head of the juvenile probation department in Montgomery County, describes the policy: “It’s not the money, it’s that we are getting something out of the kids and they are thinking about what they did. This is the whole idea of restitution to begin with” (Ciavaglia, 2016). For decades researchers have studied the impact that restitution has on recidivism. Much like
the findings from drug courts (detailed in the next section), the outcome has been widely varied results. Studies have found recidivism rates ranging anywhere from 10% to 80% (Roy, 1995). Meta-analyses of studies on different restitution programs find that they have a small impact on recidivism rates (Schneider & Schneider, 1985; Schneider, 2006).

Restitution laws are rooted in the punitive policies passed in the 1980s and 1990s (Ruback 2002). While restitution is part of the new reform vision of large foundations and many state legislatures, the use of restitution has been a feature of the juvenile justice system for decades now (Schneider, 2006). In the 1970s and 1980s OJJDP studied the use of restitution and promoted it as an alternative to incarceration. In 1978 OJJDP published a report advocating for the expansion of restitution for juvenile offenders. It described restitution as “one of the most promising approaches available to the court and probation” in order to impose “a tangible and enforceable form of accountability on juvenile offenders” (Maloney, Romig & Armstrong, 1988).184 In 1979 there were less than 100 restitution programs and in 1991 there were over 400 programs in large part thanks to funding and support from OJJDP (Schneider & Finkelstein, 1998). By the mid-1990s, every state in the United States had implemented statutes regarding restitution and 29 states (including Pennsylvania) had made provisions to make restitution mandatory in particular instances (Ruback, 2002).185

184 In 1992 OJJDP awarded a grant to Florida Atlantic University and a number of juvenile justice experts across the state to expand OJJDP’s juvenile restitution training and technical assistance program (RESTTA). The restitution program was a key element of the BARJ project, increasing the community supervision of juvenile offenders (Bilchik, 1998).

185 Making restitution mandatory (rather than giving judges discretion on restitution orders) for adult offenders in Pennsylvania was part of the special crime legislative session of 1995. Before the state made
In 1998, Pennsylvania passed legislation that made court probation departments responsible for collecting restitution and allowed these local courts to use private collection agencies (Ruback, 2002). In 2004, the state passed legislation requiring juveniles to pay “reasonable amounts of money as fines, costs, fees of restitution as deemed appropriate as part of the plan of rehabilitation” (Pennsylvania Juvenile Court Judges’ Commission, 2004b). For juveniles restitution is not mandatory, but there is still a high priority placed on the ordering and collection of restitution in the juvenile justice system.

Between 2004 and 2011, the state collected about $19.5 million in restitution from juvenile offenders (Pennsylvania Office of the Victim Advocate, 2013). In 2009, the state collected $2.8 million in restitution from juveniles, an all time high in nine-years (Ciavaglia, 2016). In 1993 there were 789 juvenile with a restitution obligation in Pennsylvania and in 2011 there were 3,779. The following table shows the number of juveniles with a restitution obligation between 1993 and 2011. Data collected from 2004 to 2011 shows that about one fourth of all youth in the juvenile justice system have a restitution obligation.\(^\text{186}\)

In Bucks County about one quarter of juveniles who have been found delinquent are ordered to pay restitution and in Montgomery County about 40% of juveniles have restitution orders (Ciavaglia, 2016). Juvenile offenders who owe restitution are typically restitution mandatory, offenders in 35% of cases were given a restitution order and after 1995 the percentage rose to about 58% of cases (Ruback, 2002).

kept on probation until they complete their restitution payment (Ciavaglia, 2016). About 80% of juveniles required to pay restitution eventually pay in full their restitution; however, there is no accurate information on how long that takes different offenders to pay (Pennsylvania Office of the Victim Advocate, 2013). Failure to pay restitution can result in a juvenile being held in contempt of the court and may come with jail time of as much as six months (Ciavaglia, 2016). Pennsylvania is one of 27 states where parents can be held liable for part or all of a delinquent child’s restitution (Ciavaglia, 2016).

Ordering and enforcing restitution varies from county to county. Across the state jurisdictions are trying to increase the collection of restitution. In 2010 the York County Juvenile Probation Department started aggressively pursuing juvenile restitution payments. Probation officers in York started making home visits and requiring appearances before a Common Pleas Court Judge. The offenses that most often require restitution are summary offenses such as vandalism, shoplifting, traffic offenses and fistfights (Pennsylvania Juvenile Court Judges’ Commission, 2010b). The county paid for two officers to put in extra hours to confront offenders. The county is paying these two officers an additional $1,500 a year and claims their work more than pays for itself (Pennsylvania Juvenile Court Judges’ Commission, 2010b). As of the 2015-2016 Pennsylvania legislative session there are a number of bills up for consideration that deal with increasing the enforcement of restitution for juveniles and adults. The bills propose deducting restitution from an offender’s state income tax, from their bail payment and through wage garnishment. One bill also would allow counties to outsource or establish

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187 This suggests the program is not a way to offset incarceration since most of these offenses would not necessitate time behind bars.
their own unit responsible for collecting restitution (Pennsylvania State Legislature, 2016).\textsuperscript{188}

Restitution does not lower incarceration rates, in part because it is often a component of a juvenile offender’s disposition (serve time, pay restitution and complete probation). The payment of restitution is defended as teaching youth responsibility and therefore “fixes” them of their bad behavior. However, the participation in restitution has little effect on recidivism rates for youth.\textsuperscript{189} Further, research on adult restitution has suggested that the payments are an obstacle to reintegration in society once an offender is released, particularly when the order exceeds the financial means of the offender (Dickman, 2009). Restitution is one of a number of programs that extends principles of punitive accountability into the community. Youth are required to pay or can face time in prison, and the payment of restitution can be particularly burdensome to youth with limited resources. However, restitution satisfies the core philosophy of BARJ, a victim-centered approach that holds youth accountable and is aimed at transforming their behavior.

\textit{Drug Courts}

Juvenile drug courts are another alternative that adheres to the principles of BARJ. Interest in drug courts began to spread in Pennsylvania in the early 2000s.

\textsuperscript{188} Two of the four major restitution bills are sponsored by Democrats and two are sponsored by Republicans. All of the bills are still pending but have received bipartisan support.

\textsuperscript{189} Studies on juveniles and adults that find a positive impact of restitution on reducing recidivism show that the more someone pays the less likely he or she is to reoffend. However, this ignores the confounding variables of what type of offender is able to pay and how this affects chances of rearrest (Schneider & Schneider, 1985; Schneider, 2006; Roy, 1995).
Pennsylvania currently operates nine juvenile drug courts (Pennsylvania Juvenile Court Judges’ Commission, 2007). Specialty courts are a popular strategy in criminal justice reform today. Pennsylvania has 32 adult drug courts, 11 DUI courts as well as a number of mental health courts and truancy courts. The first therapeutic drug court for adults was started in Florida in 1989 and caught on as a popular reform (Hoffman, 2002). As of 2006, there were over 1,100 drug courts operating in the United States (Shaffer, 2006).

Drug courts are popular amongst both liberals and conservatives. Liberals support the idea that drug courts are more therapeutic than traditional courts. Conservatives applaud the “broken windows” contribution drug courts make by tightly monitoring offenders in a pro-active manner (Hoffman, 2002). For politicians in both political parties, support for drug courts is popular because it allows politicians to do something about drug law reforms while sidestepping the contentious debate over the decriminalization of drugs (Hoffman, 2002).

The first juvenile drug courts in the country were established in 1995 and were imported from the adult drug court model (Sloan, Ortiz & Rush, 2004). From 1995 to 2013 more than 447 juvenile drug courts were established in the United States (Blair et. al, 2015). Juvenile drug courts are supposed to be a treatment-based alternative to traditional juvenile courts that often provide intensive monitoring and structure in a youth’s life. Drug courts provide more supervision, more frequent drug testing, and closer monitoring than other forms of community supervision (Belenko, 1998).

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Though research was scarce for the first years of drug courts operating in the United States and continues to be inadequate and incomplete, the existing studies on drug courts tend to have diverse and conflicting results. Many researchers find support for drug courts’ effectiveness in reducing recidivism (Gottfredson & Exum, 2002; Brewster, 2001; Goldkamp & Weiland, 1993). However, many other researchers have found mixed results or have found that drug courts do not work at reducing recidivism (Hoffman, 2000; Shaw & Robinson, 1998; Shaffer, 2006; Litswan et al., 2003; Wilson et al., 2006; Henggeler et al., 2006). The results vary greatly depending on whether or not the researchers study only those who successfully complete their drug court sentences (versus counting all participants) and depending on how long after the completion of a drug court sentence the study follows offenders to measure recidivism rates. Including this wide range of approaches, most meta-analysis of studies on drug courts find that at best they reduce recidivism by about 9% compared to traditional courts (Shaffer, 2006). The subset of studies on juvenile drug courts have found these programs to be even less effective than adult drug courts and have even less robust support for their effectiveness (Shaffer, 2006; Rodriguez & Webb, 2004; Henggeler et. al, 2006).\(^1\) In 2015, the Office of Juvenile Justice and Delinquency Prevention conducted a study of nine juvenile drug courts from three regions nationwide. The researchers found that in seven of the nine sites youth in drug courts had higher rates of new referrals and new adjudications compared to youth on traditional probation (Blair et. al, 2015).

\(^1\) One study found that juveniles who participate in drug courts were more likely to test positive for cocaine than juveniles in the comparison group (Rodriguez & Webb, 2004). In the same study there was no significant difference between the two groups in marijuana use.
All of the studies find that drug courts have low rates of completion. In one three-year study of juvenile courts the researchers found that “the majority of juveniles in drug court were unsuccessful in meeting program requirements and were subsequently resentenced to state-operated facilities or standard probation” (Rodriguez & Webb, 2004). Offenders in a drug court program are more likely to be unsuccessfully removed from their programs than those placed on probation (Brewster, 2001). Most studies show that drug court programs have low retention rates with about 60% of participants failing to complete the program (Deschenes, Turner & Greenwood, 1995). In 2001 OJJDP put out a bulletin on juvenile drug court programs and profiled seven exemplary drug court programs, amongst these best programs the failure rate ranged from 23% to 44% (Cooper, 2001). The very best program in the nation in 2001 still had almost a one in four failure rate.

In addition to having an inconclusive effect on reducing recidivism rates, researchers have found detrimental effects of drug courts. Research shows that drug courts contribute to net widening, they are more stigmatizing than traditional probation, and they are a financial burden on participants (Hoffman, 2002; Miethe, Lu & Reese, 2000; Turner et. al, 1999). Drug courts have not substantially decreased incarceration rates (in some instances they increase incarceration rates) (Hoffman, 2002). Additionally, scholars and practitioners have argued that drug courts are undemocratic because they give the judicial branch too much power and discretion (Hoffman, 2000, 2002). Studies on drug courts have also found that African Americans do significantly poorer than white drug court participants (Brewster, 2001; Dannerbeck, 2006). Lastly, the expansion of
drug courts has been a boon for private treatment providers who often get contracts with the state or county to carry out substance abuse treatment ordered by the court (Hoffman, 2000, 2002).

**IV. Bifurcation and Punishment for the “Worst of the Worst”**

The preceding sections profiling the number of strategies the state has invested in to try to “cure” youth of delinquency occurs in a policy context where the state at the same time reserves some of the harshest policies available for punishing juvenile offenders in the world for youth that are deemed beyond redemption. Like the previous cases of Texas and California, this points to an important limitation of the community-based reform strategy. Devolution and privatization do not challenge the use of punitive policies but rather carve out exceptions to who most appropriately deserves these punishments. By not challenging the “redeemable/irredeemable” paradigm of a bifurcated juvenile justice system, the outcome is to entrench punitive policies at the local level through a privatized system of corrections. This process also legitimates and enforces the need for exceptionally punitive policies such as LWOP sentences, mandatory minimums, abusive conditions of confinement, adult transfer and sex offender laws.

In Pennsylvania the number of programs at the local level has proliferated, increasing the role of the private-sector in carrying out a large network of community-based services that combine punitive accountability and behavioral interventions. Over time, Pennsylvania has also continued to ratchet up its punitive response to serious juvenile offenders. Despite leading the nation in the privately run community-based
program model, the state has also continued to pass legislation to punish “serious”
juvenile offenders and youth sent to the adult system.

The next section details Pennsylvania’s uniquely harsh legacy of juvenile life
without the possibility of parole sentences. The section that follows details the state’s
treatment of sexual offenders. In both instances these examples highlight the ways in
which Pennsylvania has not challenged the “get tough” approach to juveniles deemed the
“worst of the worst,” despite bolstering interventions at the community-level.

Juvenile Life Without the Possibility of Parole Sentences

Pennsylvania passed a major “adult time for adult crime” law as part of the same
piece of legislation that transformed its juvenile system into the BARJ model. Since
implementing these policies the state has continued to levy this harshest punishment, life
without the possibility of parole, at one of the highest rates in the country and in the
world. As Supreme Court decisions in the 2000s and 2010s have pushed the state to
reform its sentencing policy, the state has remained committed to a “get tough” approach.
For all of the talk of reform in the juvenile justice system there has been very little
change to the punitive treatment of serious offenders. Most of the community-based
legislation is premised on addressing wayward youth who need to learn a lesson and be
put on the right track, but there has been no serious discussion of what to do with youth
charged with serious crimes, such as eliminating mandatory minimums and all LWOP
sentences. The notion of treatable versus untreatable youth, promulgated through the
proliferation of risk assessment and scientific data collection on youth, has legitimated
the harsh sentences for youth who are “objectively” deemed “high risk” and beyond treatment.

Recent Supreme Court decisions, *Miller v. Alabama* (2012) and *Montgomery v. Louisiana* (2015) ruling that mandatory LWOP for juveniles is unconstitutional has opened up space for reform, but Pennsylvania has been reluctant to significantly alter its exceptionally punitive treatment of serious offenders. Similar to Texas, the state has complied with these court rulings by replacing mandatory LWOP with the next harshest mandatory minimum sentences available. Pennsylvania, despite being a juvenile justice system extensively committed to the Child Savers model of community-based private organizations handling juveniles has reacted in line with tough Southern states like Texas, Louisiana and Florida. Pennsylvania’s tough stance is a result of the ways in which the community-based model is rooted in a similar philosophy to these tough approaches.

The debate over mandatory LWOP reforms shows that Pennsylvania continues to have a bipartisan commitment to viewing sentencing policy as a zero-sum balance between victims’ rights and punishing offenders. Further, because of the highly devolved and locally autonomous configuration of juvenile justice policy in Pennsylvania, compliance with the court decisions is contingent on the disparate philosophies of individual judges. The community-based approach not only fails to challenge the use of extreme punitive sentencing policy, but it also legitimizes these responses to serious offenders by proving these youth are irredeemable (through risk assessments and failed
behavioral interventions) and contributes to the highly unequal distribution of these punitive policies in a devolved system.

Pennsylvania is exceptional in its treatment of juvenile offenders. It sentences more juveniles to life imprisonment with no possibility of parole than any other state in the nation or country in the world. The state incarcerates about one in five of all juvenile lifers in the United States (“Youth Should,” 2010). There are over 500 people in Pennsylvania serving life without parole sentences for crimes they committed while a juvenile. The average time served for these JLWOP inmates is 36 years; the longest time served is 62 years (Melamed, 2016b). Of the more than 500, about 300 of these inmates are from Philadelphia County (Mitman, 2016). Philadelphia County has the highest percentage of juveniles sentenced to life without parole in the country (Fair Punishment Project, 2016). Around 71% of those serving JLWOP sentences in Pennsylvania are African Americans (Pennsylvania State Legislature, 2012b).192

The state’s treatment of juvenile lifers is part of a larger trend where governors in Pennsylvania have ceased to commute life sentences. Through the 1970s lifers often served as few as 10 to 15 years before having their sentences commuted. Between 1971 and 1978 Governor Milton Shapp (Democrat) commuted 251 life sentences. Between 1995 and 2015 Pennsylvania governors have commuted only six lifers (Melamed, 2016a). The table below shows commutations overtime in Pennsylvania.

Table 13. Commutation of Life Sentences

192 This is in part due to the influence of the super-predator rhetoric undergirding the 1990s “get tough” laws, a discourse employed by Philadelphia District Attorney Lynne Abraham, who was D.A. from 1991 to 2010.
<table>
<thead>
<tr>
<th>Governorship</th>
<th>Heard by the Board of Pardons</th>
<th>Recommended to the Governor</th>
<th>Granted by the Governor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shapp Administration (Democrat, 1971-1978)</td>
<td>733</td>
<td>267</td>
<td>251 (7 females)</td>
</tr>
<tr>
<td>Thornburgh Administration (Republican, 1979-1986)</td>
<td>375</td>
<td>75</td>
<td>7</td>
</tr>
<tr>
<td>Casey Administration (Democrat, 1987-1994)</td>
<td>249</td>
<td>118</td>
<td>27 (2 females)</td>
</tr>
<tr>
<td>Ridge Administration (Republican, 1995-2001)</td>
<td>15</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Schweiker Administration (Republican, 2001-2002)</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Rendell Administration (Democrat, 2003-2010)</td>
<td>11</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Corbett Administration (Republican, 2011-2014)</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wolf Administration (Democrat, 2015-Present)</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>


The lack of commutations, which fits with a broader “get tough” philosophy, has contributed to the large population of lifers in Pennsylvania. Beyond juvenile lifers, Pennsylvania has the second highest number of people serving LWOP sentences of any state in the country and is one of only six states that deny parole to lifers (Decarcerate PA 2016). Nearly one-in-ten prisoners in Pennsylvania are serving an LWOP sentence (9.4 percent) (Human Rights Watch, 2012b). Pennsylvania has the second highest percentage of prisoners over 55 years of age in the country (7.9 percent) and the highest percentage of prisoners over 60 years of age in the country (3.8%) (Human Rights Watch, 2012b).

Recent developments at the national level through Supreme Court decisions have forced states to make changes to their mandatory LWOP sentencing policy for juveniles.
In 2012, the Pennsylvania legislature passed Act 204 in an attempt to put the state in compliance with the Supreme Court rulings. Much like the account of how Texas has responded to these federal legal developments, Pennsylvania has made adjustments that do not significantly shift it away from “get tough” policies. Pennsylvania, like Texas, has replaced its toughest sentencing law with the next toughest sentencing laws allowable by the Supreme Court. Act 204 replaced mandatory LWOP sentences with 35-year mandatory sentences and retained the ability for judges to use LWOP and even longer sentences on a case-by-case basis. In Pennsylvania, judges can still give juveniles a life without parole sentence or a sentence up to 100 years; this is just no longer a mandatory sentence (Hambright, 2012).

Act 204 received strong bipartisan support. Seven Democrats and three Republicans sponsored the legislation. The final vote on the legislation was 174-20 in the House and 37-12 in the Senate in favor of the bill. While the mandatory minimums may continue to be severe, the mandated sentence of life without parole for juveniles has ended in Pennsylvania. However, in the legislative debate over the 2012 legislation, it was clear in the arguments made by legislators that the same “get tough” principles that supported the “adult time” law in the first place continued to shape the new legislation.

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193 Juveniles convicted of first-degree murder who are under 15 years of age receive a mandatory minimum sentence of 25 years. Juveniles between 15 and 17 years of age receive a mandatory minimum sentence of 35 years. For second-degree murder (killing in the course of a felony, such as robbery) the state set a mandatory minimum sentence of 20 years for those under the age of 15 and a 30-year sentence for those between 15 and 17 years of age.

194 The main objection in the Senate to the bill was that the legislation had circumvented the Committee on the Judiciary. Senator Mary Jo White (Republican) accused the sponsors of the bill of avoiding the committee because the “committee has expressed an extreme displeasure with mandatory minimum sentences” (Pennsylvania State Legislature, 2012b). But in the end the Senate supported the bill 37-12 (Six Republicans and six Democrats voted against the bill).
Despite various states’ forays into community-based reforms, the prevailing commitment nationally has been to retain long mandatory minimum sentences for serious juvenile offenders. Pennsylvania, Florida and Louisiana combined imprison 40% of all juvenile lifers in the country and all three states decided to not make their new sentencing policy retroactive. These three states also replaced mandatory life without parole with a mandatory sentence of 35 years. Only Texas and Nebraska set a mandatory minimum higher than this at 40 years (but these states have far fewer juveniles serving life without parole sentences) (Rovner, 2014). Most other states set mandatory minimums at 25 or 30 years.

The Supreme Court decisions have challenged the constitutionality of the most severe punishments for juveniles: the death penalty and mandatory life without parole. However, the Supreme Court decisions have not made substantial incursions into the idea that young offenders need severely harsh punishments for serious crimes. Further, because the court decisions have been narrowly targeted at juvenile offenders, the court has not fundamentally challenged the use of the death penalty and LWOP broadly. These sentences are still sanctioned as constitutional and acceptable punishments for criminals, just not for all youth.

Representative Curtis Thomas, a Democrat from Philadelphia was the only outspoken critic of the Act 204. He detailed several reasons he opposed the bill, foremost that the new mandatory minimums for juveniles are a cruel and unusual punishment that violates the constitution. Thomas even called for a vote on the constitutionality of the bill, which was overwhelmingly voted down 166-28. Representative Bryan Barbin, a
Democrat from Cambria County, argued that the mandatory minimums were rational because they had been set through a consensus in the Pennsylvania legislature. “As for me 35 years is appropriate… if I am wrong, God will judge me, but the collective voice of the General Assembly is a rational basis,” Barbin stated (Pennsylvania State Legislature, 2012b).

Other support for the bill echoed the sentiment that 35 years was not overly harsh. Rep. Anthony DeLuca, a Democrat from Alleghany County, said in support of the bill:

We talk about cruel and unusual punishment. Tell that to the victim whom they might have murdered or raped or the families who never get over that the rest of their lives. I call that cruel and unjust punishment. We need to talk about the victims. We talk about what it is going to cost our prison system. Well, let us see what it costs our families. Let us see what it costs society or costs the family who, God forbid, had one of their loved ones murdered. (Pennsylvania State Legislature, 2012b)

DeLuca’s references to “cost” were in response to Rep. Thomas’s account of how expensive it was to imprison juvenile offenders for decades. DeLuca’s response to this rationale exposed the weakness of appealing to the logic of cost-efficiency as a basis for reform. Just like the framework of 1990s “get tough” policies, lawmakers have long been able to articulate the ways in which punitive policies are good for taxpayers given the “cost” of not punishing criminals (Cate, 2010).

DeLuca’s argument touched on the core rationale that continues to guide legislation over serious juvenile offender sentences — that severe and long punishments are necessary for supporting victims’ rights. The centrality of a zero-sum equation between victims’ rights and punishment for offenders has been the longstanding
cornerstone of “get tough” policies and was reaffirmed in the 2012 legislation. Jennifer Storm, the State Victims’ advocate, stated that the families of the victims “are not happy,” and that they told her life without parole is “absolutely” still the right sentence (Melamed, 2016a).

The Pennsylvania District Attorneys Association was a major force in pushing steep mandatory minimums and retaining the option of life-without-parole sentences for juveniles convicted of murder. In defense of this position, Lancaster County District Attorney Craig Stedman argued, “It is critical for the protection of the public that Pennsylvania preserved the option to make sure that the worst of the worst have no possibility of ever being released to kill again” (Hambright, 2012). The D.A. Association also opposed making the 2012 ruling retroactive in Pennsylvania (Yates, 2016). The support for the legislation was premised on the need to protect the public and ensure victims’ rights.

The Juvenile Law Center and other proponents of juvenile justice reforms pushed back against the 2012 legislation. The center filed a motion to declare Act 204 unconstitutional (Commonwealth v. Mikechel Brooker, 2012). The motion was not successful and the dissatisfaction reformers felt with the 2012 legislation did not lead to any major changes in the measure or in the treatment of juveniles convicted of first-

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195 The reasons in the motion for unconstitutionality were, 1. The bill changed its original purpose (bill started as bill about cyberbullying and sexting). The sponsors crafted the statute as an amendment to an already existing bill thereby ensuring it would bypass the Senate Judiciary Committee. 2. The bill pertains to more than one subject (changes juvenile and adult criminal code). 3. The bill still does not comply with Miller’s requirement of individualized sentencing and Graham’s requirement that children have a meaningful opportunity for release. 4. Petitioners should be resentenced to statutes that were in place at the time of their offenses.
degree murder. However, since the state passed the 2012 legislation, the Supreme Court has again changed the terrain by making retroactive the ban on automatic life-without-parole sentences for juveniles in their ruling in *Montgomery v. Louisiana* (Melamed, 2016a). States like Pennsylvania, Florida and Louisiana that did not make their changes retroactive will now have to decide how to handle offenders serving JLWOP. The court decision gives a great amount of leeway for states and individual judges to determine what to do in resentencing and it remains unclear what the overall effect of this development will be.

The combination of the great amount of leeway in sentencing decisions and devolution has led to major inequities across jurisdictions in Pennsylvania. So far there have been differences from one county to another in how judges are handling the resentencing of juveniles serving life without parole sentences. One Chester County judge converted all LWOP sentences to “time served to life” sentences, which immediately gives these inmates the possibility of parole (Melamed, 2016b). In Monroe County, a judge re-sentenced two inmates to life without parole (Yates, 2016). Richard Long, the director of the Pennsylvania District Attorneys Association, argues judges should use the 2012 legislation in guiding their decisions on resentencing, thus only those who had served 35 years would be eligible for parole (Melamed, 2016b).

Getting justices to resentence inmates so that they will be eligible for parole is a difficult obstacle. Beyond this, Marsha Levick from the Juvenile Law Center has expressed concern that for offenders serving JLWOP sentences parole boards will be a major hurdle to their release. Currently, Pennsylvania’s parole board’s approval rate is
about 60%. Levick cautions that LWOP inmates often lack family ties and have no employment history – factors that are used to show someone will have stability upon release. Further Levick pointed out that parole boards are not accustomed to the idea that juveniles are less culpable than adults.

It is yet to be seen how Philadelphia District Attorney Seth Williams will handle resentencing, which will be significant since Philadelphia is responsible for such a large portion of juvenile lifers. In 2015, Williams seemed reluctant to make any dramatic changes, putting front and center the concerns of victims. He stated that new hearings would create emotional turmoil for victims and reminded residents of Philadelphia that, “these aren’t kids in 5th grade doing these things. We’re talking about killings. Not someone who stole someone’s laptop” (Allyn, 2015). Williams’ statement furthers the notion that JLWOP inmates are “the worst of the worst.” Yet, about one third of those serving JLWOP sentences are in for felony murder, which means they did not actually kill anyone but were involved with the murder (for example, a getaway driver for a robbery in which someone was killed) (Pennsylvania State Legislature, 2012b).

Even Seth Williams, who many hoped would be a reformist district attorney, has remained stubbornly committed to a “get tough” approach to handling serious juvenile offenders.196 Pennsylvania’s investment in therapeutic programs at the local level legitimizes its continued use of punitive policies, allowing the state to be both concerned with rehabilitating youth and holding them accountable – the essence of the BARJ model.

196 Seth Williams has defended the death penalty during his time in office. In February 2015, when Governor Wolf issued a moratorium on the death penalty, Williams sued the governor (Fiorillo, 2015; Pishko, 2016).
The state’s approach to juvenile sex offender legislation also exposes the limits of the community-based model to reform the toughest laws in the juvenile justice system.

*Juvenile Sex Offender Legislation*

Pennsylvania’s policies and legislative debates over sentencing for juveniles convicted of sex offenses is another example of how the state continues to promote a “get tough” approach to the “worst” offenders in the state. In 2003, the Pennsylvania legislature passed Act 21, which requires the State Sexual Offenders Board to assess juvenile sexual offenders who are about to turn 21 (and therefore age out of the juvenile justice system) and consider them for involuntary civil commitment. Many states have adult sex offender civil commitment legislation, but Pennsylvania was the first state to pass civil commitment legislation for juvenile sex offenders (Lawrence & Barnes, 2014).

The legislation requires that the juvenile committed a qualifying sexual crime and they exhibit “a mental abnormality as defined in Section 6402 (relating to definitions) or personality disorder, either of which results in serious difficulty in controlling sexually violent behavior.”

A mental abnormality is defined as “a congenital or acquired condition of a person affecting the person’s emotional or volitional capacity” (Lawrence & Barnes, 2014). A youth can be recommitted yearly for up to 99 years (Lawrence & Barnes, 2014). As of 2016, 13 states allow civil commitment in sexually violent predator

197 This includes: rape, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, indecent assault, incest.
programs for people who committed their crimes as juveniles (Steptoe & Goldet, 2016).\textsuperscript{198}

The 2003 legislation passed unanimously in the Senate and 197-3 in the House.\textsuperscript{199}

In addition to garnering bipartisan support, the bill was also supported by the state’s district attorneys as well as the Pennsylvania Coalition Against Rape, an advocacy organization founded in 1975 that works to end sexual violence and partners with rape crisis centers. In the floor debate there was just one voice of dissent, Senator Greg Vitali, a Democrat from Delaware County. He argued that the law was “something you may expect in Stalinist Russia…to be able to be confined year after year after year as an adult for an act you may have committed as a 14-year-old is kind of frightening” (Pennsylvania State Legislature, 2003). Vitali’s fellow Democrats came back, describing his objections as “outrageous” and strongly supporting the bill. Senator Michal O’Brien a Democrat from Philadelphia County, echoing the “adult time for adult crime” line responded, “We are talking about juveniles who have been convicted of very serious offenses very late in their life, probably from the age of 17 through 21” (Pennsylvania State Legislature, 2003).

Defense for the legislation was spurred by a case in central Pennsylvania where a violent offender reportedly told a judge he was going to commit a crime again, but the judge was forced to release the youth. As a local newspaper put it, “a rapist identified as

\textsuperscript{198} About 5,400 people in 20 different states are being held indefinitely in civil commitment programs for sex offenses (Steptoe & Goldet, 2016).

\textsuperscript{199} In 2004, the state passed a bill requiring youth convicted of a sex offense to have a DNA sample drawn and submitted to the DNA Detection Fund. The cost of the DNA sample is $250 and is added to the other costs imposed on delinquent offenders (Pennsylvania Juvenile Court Judges’ Commission, 2005a).
someone with homicidal tendencies continues to fantasize about raping 4- to 6-year old-girls but will be released from prison Friday on his 21st birthday” (Bowman 2003). The discourse supporting the legislation harkened to the super-predator rhetoric, as Republican Senator Peter Zug framed the legislation as “protecting our children, protecting our neighborhoods, protecting our Commonwealth from predators – in this case, a sexual predator” (Pennsylvania State Legislature, 2003). Senator Mauree Gingrich, a Republican from Lebanon County, described sex offenders as posing a “grave danger to our communities” (Pennsylvania State Legislature, 2003). The defense of the bill described sex offenders in pathologizing and stigmatizing terms. But it also included language that youth would be treated in addition to incarceration. The pretense of treatment is the justification for a lack of legal protection and representation in involuntary commitment decisions. A civil commitment is not a criminal conviction.

From 2004 to 2014, about 350 youth were referred to the Sexual Offender Assessment Board, and about 50 of them were committed to the Sexual Responsibility and Treatment Program (SRTP). Over this time 6 youth have been discharged from the program, but only one of these youth left the program because he “successfully” completed his treatment (Lawrence & Barnes, 2014). Of the five other individuals who have left the program, three were transferred to the Torrance State Hospital (one won an appeal the other two were from Luzerne County200), one individual was reincarcerated, and one individual passed away at the facility due to “an unexpected illness” (Lawrence & Barnes, 2014). A conservative estimate of the average length of stay, so far, of youth

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200 A large number of cases from Luzerne County have been reviewed and resentenced due to the Kids for Cash scandal detailed in the following section.
in the program is 5.8 years.\textsuperscript{201} Of all youth committed to the program over this time period, only one has been deemed “successfully” treated, so the average length of stay will continue to grow over time.

In 2015, the Pennsylvania Supreme Court ruled 5-1 that lifetime registration for juveniles in the provisions of the federal Sex Offender Registration and Notification Act (SORNA) were unconstitutional.\textsuperscript{202} The court left intact the lifetime registration requirements in SORNA for juveniles in the “Act 21 Program” (the 2003 legislation) who are classified as “sexually violent delinquent children” (Pennsylvania Juvenile Court Judges’ Commission, 2015). Similar to the state’s policies on LWOP, Pennsylvania supports some of the most punitive responses to sex offenses committed by juveniles. In response to court rulings requiring the state to curtail its policies, Pennsylvania has complied with minimal changes.

\textit{Kids for Cash Scandal}

In addition to maintaining punitive policies for juveniles convicted of serious offenses, the state has had one of the most sensational cases of abuse in its juvenile system directly related to its highly privatized and localized system. A particularly dark consequence of Pennsylvania’s exceptionally privatized system was the “Kids for Cash”

\textsuperscript{201} The data from JCJC does not specify the year of commitment for the youth discharged. This calculation considered that youth who left the program were the ones admitted in the first two years of the program. Therefore this is potentially a low estimation. It is possible that 10 youth have been involuntarily committed for 10 years or more.

\textsuperscript{202} SORNA was enacted by the federal government in 2006 as part of the Adam Walsh Child Protection and Safety Act. It provides minimum standards for sex offender registration and notification in the United States. SORNA increased the terms of registration for offenders and for many made registration lifetime. Many registrants have sued and challenged the law. The Pennsylvania Supreme Court has recently accepted to review some of these claims.
scandal that broke in 2008. The incident of judges receiving kickbacks for sending youth to private juvenile facilities underscores a number of broader concerns about the organization of the juvenile justice system in Pennsylvania, particularly the consequences of local and private control over juvenile justice services. Judges Michael Conahan and Mark Ciavarella of Luzerne County received at least $2.6 million in payments from PA Child Care and its sister company Western PA Child Care, two private juvenile detention centers, for imposing harsh sentences on juvenile offenders to ensure that the detention centers would be used. From 2003 to 2008 the judges sent 2,500 youth in 6,000 cases to private for-profit prisons for minor offenses youth committed at school (Jordan, 2015).

Judge Ciavarella was elected in Luzerne County by running on a law-and-order platform as the Democrat nominee. He outspent his opponent and after winning dispensed jobs to his largest supporters (Ecenbarger, 2012). The county-owned River Street juvenile detention center in Luzerne County was old and run down. After being elected, Ciavarella attempted to get a new center built, but the county commissioners denied his request. He went to his lifelong friend Rob Mericle, a private developer, for assistance in getting a private juvenile detention center built. Ciavarella and Conahan campaigned to get the River Street center closed, even though the county commissioners wanted to keep it open as it had passed inspection. The judges worked to cut off funding to the county facility to pave the way to build the private facility that would be PA Child Care (Ecenbarger, 2012). Once the private detention center was built the judges ensured that capacity would be filled and the center would earn a profit. PA Child Care eventually
made huge profits, suggesting the state was paying too much for these services (Ecenbarger, 2012, p. 84).

The conditions in Luzerne County contributed to the bribe scandal and also call attention to the consequences of local control over the juvenile justice system. Luzerne County has a strong network of local patronage and nepotism in a number of its public services. Further, judges in Pennsylvania are given a great amount of discretion and there are significant differences from one county to another. Despite guidelines coming from the state level there is little control over how one county compared to another carries out its juvenile justice system. Ciaveralla completely ignored any pretenses at following BARJ principles and explicitly carried out a zero tolerance policy\(^\text{203}\) (Ecenbarger, 2012).

Another major county-level difference in Pennsylvania is the degree to which juveniles get legal representation. Pennsylvania is just one of two states that does not provide funds for public defenders to represent juveniles. The burden falls completely on counties to carry out this part of the juvenile justice system and so there are significant differences geographically on which youth get legal representation and which do not (Ecenbarger, 2012). The result is “justice by geography” where a juvenile receives different treatment in the justice system depending on where they live.

The scandal finally broke thanks to the hard work done over a long period of time by the Juvenile Law Center (the nation’s first comprehensive non-profit law firm exclusively for children). The state subsequently responded by investigating and

\(^{203}\) Ciavarella reportedly went so far as to throw a BARJ video presentation into the trash (Ecenbarger, 2012).
prosecuting the judges as well as addressing the issue of inadequate legal representation for minors. The Juvenile Law Center deservedly has been commended for its work in exposing the scandal in Luzerne County. Even this aspect of the scandal points to the consequences of a devolved and privatized system. Such an egregious violation of the law and deep corruption was detected and brought to light by a non-profit firm, not by any formalized state system of regulation.

In response to the scandal, legislature unanimously voted in 2009 to create the Interbranch Commission on Juvenile Justice to investigate the Luzerne case and to discuss ways to prevent similar events from occurring. The commission met and issued its final report to the Governor in 2010. In the report, the Interbranch Commission report concluded:

Schools in Luzerne County too quickly turned to the juvenile justice system as a vehicle to address school climate and learning conditions... In Luzerne County, school referrals made under zero-tolerance policies were integral to the overall scheme as they provided an easy removal of children from their homes and schools and a constant stream of children to be placed in detention. (Jordan, 2015)

In the hearings it was suggested that the commission should recommend creating an office of ombudsman. The commission did not recommend the creation of an office of ombudsman. The final report stated, “The statewide juvenile justice system as currently constituted can be improved without additional bureaucratic structures.” Additionally, the commission claimed the resources to create the office could be put to “more productive uses” (Interbranch Commission on Juvenile Justice, 2010). Even after the scandal, the state has resisted efforts to create a stronger oversight mechanism at the state level to
oversee county operations. The commission did endorse the Annie E. Casey Foundation’s JDAI model to use risk assessment tools for determining juvenile placement decisions (Interbranch Commission on Juvenile Justice, 2010, p. 54). Thus, in many ways the commission reinvigorated longstanding commitments of the Pennsylvania juvenile justice system rather than substantially restructure the system and its methods of regulation and oversight.

The changes coming out of the scandal have not changed the oversight structure of the juvenile justice system. The most notable changes have been to increase the legal representation of juveniles in Pennsylvania. In 2010, the Juvenile Justice and Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency, which advises the commission on the distribution of federal and state juvenile justice funding, approved $250,000 in Justice Assistance Grant money for enhanced juvenile defense in Luzerne and Dauphin counties. The hope of JJDPC is to have this model spread to other counties throughout the state. In 2012 the legislature approved a new law that would allow only juveniles older than 13-years-old to waive counsel and only under limited circumstances in another effort to increase the legal representation of youth in Pennsylvania. This was a direct response to the Kids for Cash scandal where juveniles and their parents were routinely bullied and tricked into waiving counsel. The new law also presumed that all juveniles are indigent regardless of their parents’ income (Ecenbarger, 2012).

Aside from the bribes, Ciaveralla’s philosophy and sentencing could not really be contested as unlawful. Indeed as William Ecenbarger, the investigative reporter who
wrote a book-length account of the Kids for Cash scandal, put it: “A basic question emerges from the Luzerne County tragedy that cannot be addressed by any law or regulation: Were it not for the millions of dollars in bribes, how much public outcry would there have been against the actions of these two judges?” (Ecenbarger, 2012). In the hearings for the Interbranch Commission, Gerald Zahorchak (Pennsylvania’s then Secretary of Education) testified that nothing in the safety and discipline reports provided to the Pennsylvania Department of Education indicated there had been a problem in Luzerne County with inappropriate referrals of students to the juvenile justice system for “minor misbehavior.” He stated there were no “red flags” in the data (Jordan, 2015).

The state’s response to the scandal was to increase the procedural fairness of the juvenile justice system. Even this goal has not been fully successful given the devolved, local control structure of the juvenile justice system, where counties are encouraged to provide public defenders for juveniles but the state does not have a centralized way to pay for and ensure that all juveniles can access this resource. Core conditions that contributed to the scandal such as local county autonomy and the widespread use of private detention centers have not been addressed in any meaningful way as a result of the scandal.

V. Recent Developments and Community-Based Intransigence

The final two sections of this chapter examine recent developments in justice policy in Pennsylvania in the juvenile and adult system, particularly highlighting the consequences of a decades-long commitment to the community-based approach to
corrections in the state. Devolved control to the local level, often through privatized
service providers, has become a common sense strategy for addressing crime, saving
money and reforming the justice system. As the prior evidence in this chapter has
suggested, this type of reform pushes the criminal justice system closer to a market logic
that has negative consequences for juvenile and adult offenders in Pennsylvania. The
ascendancy of cost-efficient, evidence-based public policy has thoroughly pervaded the
justice system. The consequence has been increasingly privatized services that emphasize
individual uplift and displace debates about structural inequality. Furthermore, this model
of corrections does not repudiate the most punitive policies but folds them into a holistic
approach to address delinquency.

For the first decade of the 2000s Pennsylvania began scaling back its funding of
BARJ programs. Allocations to the Victims of Juvenile Offenders program, specialized
probation and evidence-based programs declined between 2002 and 2010. Meanwhile the
state over this same period of time continued to fund and increase allocations for
detention centers and probation and parole. The response to these developments has been
to reinvigorate the programs and policies at the core of BARJ to ensure that Pennsylvania
remains a leader in the evidence-based movement. Even though the cuts to these
programs were in part due to declining state funds and budget crises at the state level, the
solutions have yet again been packaged as being foremost a significant cost savings
measure for the state. PCCD and the Juvenile Justice and Delinquency Prevention
Committee (JJDPD) have all forcefully defended evidence-based programs on the
principle that they will save the state money.
In 2011, JJDPC advocated for the state to carry out the Models for Change initiative (MacArthur Foundation) arguing, “During this budget crisis, we cannot afford to eliminate programs with proven outcomes that provide significant return on investment” (Juvenile Justice Delinquency Prevention Committee, 2010). Once again, the problem was framed as an overly expensive and burdensome juvenile justice system and the solution is therefore “cheaper” solutions. But these cheaper solutions require investing in alternative programs and the solution does not offer a clear way of divesting from the cost of detention centers and parole and probation. The only way that the cost-savings work is through the idea that the preventative services will solve problems of delinquency and therefore reduce demand on detention, parole and probation. Yet again, the rationale behind juvenile reforms is to “solve” delinquency. The policies continue to be based on the idea that delinquency (and all problems related to the juvenile justice system) is caused by individual behavioral deficiencies that can be solved through individual behavioral modification programs.

In 2013, Governor Corbett, building off the justice reinvestment work from the adult system (to be detailed in the next section), followed the JJDPC request and led an effort to reinvigorate the principles of BARJ. Corbett’s plan invested $10 million into prevention and intervention programs for juvenile offenders. The core objective of the plan was to reduce the cost of the juvenile justice system by preventing delinquency. The programs the initiative invested in were all of the evidence-based programs promulgated by the foundation-led model that heavily emphasized individual uplift through behavioral interventions. Corbett’s initiative recommended expanding diversionary court and
intermediate punishment programs and combining treatment with incarceration. The other two pillars of the initiative were to invest in risk-assessment measures and job training for juvenile offenders. The plan of the juvenile reinvestment initiative of 2013 was to “intervene early on in an individual’s life of crime by bolstering the front end of the criminal justice system, such as local probation and parole and law enforcement” (Wetzel, 2012). Corbett’s 2013 solution directly replicated the strategy that Pennsylvania has long invested in and the foundation model for reform which is to bolster local-run corrections in an attempt to save money for the state and increase accountability for offenders as the chief way to address problems of delinquency.

The main supporters and architects of the initiative and leaders in the juvenile justice system emphasized the primacy of cost-savings and cost-efficiency as the primary policy goals in their remarks in 2013 when the governor revealed the reinvestment plan. Corbett explained the rationale behind the initiative:

As we examined our resources, we realized we needed to take a closer look at the juvenile system. If we can prevent at-risk youth from becoming offenders, we can reduce the likelihood that they will spend time behind the bars of our country and state prisons, costing taxpayers billions of dollars each year. (Pennsylvania Office of the Governor, 2013)

Similarly, Mark Zimmer, the chairman of PCCD stated, “we know the best way to prevent juvenile crime is through early identification and intervention. This long term strategy benefits Pennsylvania’s at-risk youth, while providing a greater return on taxpayers’ investments” (Pennsylvania Office of the Governor, 2013). John Wetzel, Pennsylvania’s Secretary of Corrections, described the plan succinctly: “Our goal is to
reduce the future criminality of the offender—turning tax burdens into taxpayers” (Wetzel, 2012). These endorsements of the justice reinvestment plan effectively aligned the interests of juvenile offenders with the interests of “the taxpayer” in a key strategy to forge a strong bipartisan consensus around the reforms. Investing a mere $10 million (given the Department of Corrections budget by this time was over $2 billion) as a way to both “save money” and help juvenile offenders proved to be politically popular.

The initiative highlighted that it continues to be a given that the only way to save money in corrections is to reduce delinquency. That is why the reinvestment strategy does not include any plan to reduce spending on traditional forms of punishment (detention and parole) because these are still required once delinquency does happen. The state continues to position punitive accountability as the appropriate response to delinquency. The reforms only target trying to reduce delinquency to prevent having to pay for these expensive, but necessary, responses to delinquency. Further, the only valid solution to delinquency continues to be through individualized behavioral interventions carried out by the private-sector at the local level. These basic understandings of delinquency and the role of the juvenile justice system result in perpetually investing in prevention and punishment. When prisons and jails expand and overfill, the state invests in more prevention programs and expands its jail space.

*Justice Reinvestment in the Adult System*

The reform strategies discussed so far have consequences beyond the juvenile justice system. Devolution, privatization and community-based solutions are popular in
the adult system as well with similar or even worse outcomes. Developments in the adult system parallel problems in the juvenile justice system and provide further evidence of the pervasive, bipartisan focus on community corrections as the cost-efficient and most popular strategy for targeting penal reform today. Similar to the California case, the developments in the adult system show even more glaringly the limitations of this configuration of penal policy.

The state of Pennsylvania has an adult incarceration rate lower than the national average. However, between 2000 and 2011 the state incarceration rate increased seven times faster than the incarceration rate nationally, despite experiencing a decline in violent and property crime rates as well as arrest rates. During this time period, while the rest of the country saw a drop in probation and parole, Pennsylvania increased and expanded local jails. In the 2000s the average daily population in jails increased 25%, the number of people admitted to prison increased 41% and General Fund spending on corrections increased 76%. The state has had to spend millions of dollars to add thousands of beds to its capacity, expand existing institutions, send prisoners to out of state facilities and contract with county jails to hold inmates. At the same time, Pennsylvania has increased investments in community-based residential programs to provide alternatives for those sentenced to less serious crimes. Over this same period of time the state has increased spending on these programs by 37% (Council of State Governments Justice Center, 2012).

Pennsylvania has also been a leader and at the forefront of the popular reform strategy of justice reinvestment at the adult level. Similar commitments and reform goals
undergird the adult justice reinvestment efforts and these too come from the leadership of foundation led policy reform models. Like the reform policies for the juvenile justice system, justice reinvestment heavily emphasizes the goals of cost-savings and increased efficiency in the justice system. The popularity of justice reinvestment at the adult level along with all the measures in the juvenile justice system exemplifies, “how the language and techniques of cost-benefit analysis have come to dominate mainstream conceptions of penal reform” (Gottschalk, 2015, p. 17). The ascendancy of this fiscal discourse and policy aim fuels the broad attack on universalistic public goods and protections for citizens which in turn undermines efforts to address structural conditions that cause high rates of crime and poverty in certain communities (Gottschalk, 2015, p. 15).

In 2011, Governor Corbett along with Chief Justice Ronald Castille, the chairs of the House and Senate Judiciary Committees and other state leaders requested technical assistance from the Pew Center on the States and the U.S. Department of Justice to initiate a data drive “justice reinvestment” approach. Governor Corbett established a working group under the Pennsylvania’s Commission on Crime and Delinquency (Council of State Governments Justice Center 2012). Pennsylvania joined the Justice Reinvestment Initiative (JRI) and also the Council of State Governments Justice Center this same year. Much like the juvenile reform efforts, this model is led in a top-down manner by large non-profits (Gottschalk, 2015, p. 100).

\[204\] For an extended analysis of the role of justice reinvestment, reentry program and efforts to reduce recidivism in justice reforms see Caught (Gottschalk, 2015).
The reforms that came out of the working group culminated in Senate Bill 100, which the state legislature unanimously approved in 2012. The reforms created new sentencing guidelines for probation and parole revocations, expanded existing programs targeted at reducing recidivism and required low level offenders be handled at the local level rather than sent to prison. The goal of the legislation was to save $139 million and reduce the prison population by 1,200 by 2018. To put this goal in context, the corrections budget at this time was nearly $2 billion and between 2002 and 2011 the prison population in Pennsylvania had grown by 5,600 inmates. As part of the wider justice reinvestment effort the legislature also increased funding for nonresidential services such as cognitive behavioral interventions, sex offender treatment and monitoring and job training, all focused on recidivism reduction as a way to achieve cost-savings (Pennsylvania Office of the Governor, 2013).

Justice reinvestment was not predicated on repudiating the state’s most punitive policies and in fact, much like the wider community-based movement was explicitly targeted at bolstering law enforcement, parole and probation to hold offenders accountable in a “cheaper” manner. These front-end approaches seem to be a reincarnation of the “broken windows” philosophy. Over the past decade the state had already been investing in these alternative forms of punishment, by establishing the State Intermediate Sanction Punishment (SIP) program in 2004, establishing the Recidivism Risk Reduction Incentive (RRRI) program in 2008 and by expanding the County Intermediate Punishment (CIP) program established in 1990.
By 2012, the state had a large network of residential programs targeting people released from prison or under parole supervision (as part of the goal to reduce recidivism). The state at this time had 14 state run community corrections centers (CCCs) and 38 non-profit community contract facilities (CCFs) that together housed over 4,000 adults per day (Council of State Governments Justice Center, 2012). All of this investment in community-based programs had not solved the issues of the high expense of corrections or the growing prison population in the state. A study from the Department of Corrections found that these community corrections residential programs actually had higher recidivism rates than parolees who returned directly home (Justice Reinvestment Initiative, 2015).

Between 2000 and 2011 the state went from spending $1.1 billion of its general fund on corrections to $1.9 billion (a 76% increase) (Council of State Governments Justice Center 2012). And, between 2000 and 2011 the number of people in prison on any given day increased by 40% going from about 36,603 to 51,312 (Council of State Governments Justice Center 2012). From 2000 to 2009 the average daily population in jails increased by 25% (Council of State Governments Justice Center, 2012). However, Pennsylvania continued to pursue the justice reinvestment initiative.

In addition to bolstering community-based facilities and services, the state also continued to ratchet up its punitive response to crime. In the years following the passage of the Justice Reinvestment law from 2012 to 2014 the legislature passed nearly two-

205 Despite the findings of the study sponsored by the Department of Corrections, in 2013, the DOC still rebid its contracts with these community corrections centers, including a requirement that their reduce recidivism or risk losing their contracts (Justice Reinvestment Initiative, 2015).
dozen new bills that either create new crimes or extended sentencing for existing ones (Moraff, 2014). In the two years following the passage of the JRI, the prison population actually increased by 3,000 prisoners. Pennsylvania has more people serving parole-ineligible sentences than any other state except Florida (Felker-Quinn & Henderson, 2014). In 2013, the Department of Corrections facilities were at 115% capacity even after constructing new prisons (Troxell & Frenzel, 2011). County jails similarly are overcrowding and counties have been forced to expand their jail capacity (Troxell & Frenzel, 2011). To deal with overcrowding, Pennsylvania has spent tens of millions of dollars to add thousands of beds to its capacity over the past decade (Council of State Governments Justice Center, 2012). From the early 2000s to 2012, the state expanded existing institutions and sent inmates to out-of-state facilities in Michigan and Virginia as well as contracted out jail space from county jails (Council of State Governments Justice Center, 2012). All of this occurred in the context of falling crime rates. Between 2000 and 2010 violent crime dropped by 13%, property by 15% and arrests rates declined by 10% (Council of State Governments Justice Center, 2012).

Despite these outcomes of the JRI effort, the state continues to pursue justice reinvestment and in fact has been a leader in the larger national movement. In 2014 Governor Corbett and Congressman Chaka Fattah went to Washington D.C. to promote justice reinvestment. Corbett described the effort to “shift corrections costs to the ‘front end’ of the criminal justice system” by investing in law enforcement and specialty courts (Council of State Governments Justice Center, 2014). The two leaders from Pennsylvania positively discussed the state’s use of evidence-based practices and their programs to
divert low-level offenders to treatment options (Council of State Governments Justice Center, 2014).

In 2016, newly elected Governor Tom Wolf continued the newest JRI effort. In March 2016, the governor announced the first meeting of the JRI working group, which continues to be comprised of the same political leaders in the state as well as the Council of State Governments. The initiative has received bipartisan and bi-cameral support from all four chairs of the General Assembly’s Judiciary Committees as well as endorsement from Chief Justice Thomas G. Saylor (Pennsylvania Office of the Governor, 2016a). JRI work continues to be funded by the Pew Charitable Trusts and the U.S. Department of Justice.

Wolf echoed the exact same plan for JRI that Corbett launched in 2012 describing the effort as “an incredible opportunity… to save money, improve public safety and promote fairness.” He emphasized that the strategy is to focus on the “front-end” of the criminal justice system and work in a “bi-partisan, data-driven way to make real criminal justice reform a reality” (Pennsylvania Office of the Governor, 2016b). Key legislators also backed the continuation of JRI describing how effective the effort has already been in the state. House Speaker Republican Mike Turzai endorsed the JRI remarking:

When legislators from both sides of the aisle work together to tackle these tough issues, we create genuine results. We proved that with the justice reinvestment approach we took in 2012. That bipartisan spirit must be invoked again in order to build on the positive outcomes that we are seeing to create a safer and more cost effective system. (Pennsylvania Office of the Governor, 2016a)
Similarly, Senate President Pro Tempore Republican Joe Scarnati urged the legislature to continue to “increase efficiencies” to “ensure that taxpayer dollars…are being used productively (Pennsylvania Office of the Governor, 2016a). From the other side of the aisle, Democrat Daylin Leach also stated, “JRI has helped us reduce our prison population and costs” and urged the continuation of justice reinvestment efforts in Pennsylvania. Despite the positive faith these leaders place in justice reinvestment and the positive improvements they credit to the prior JRI efforts, Pennsylvania continues to be the state with the highest rate of incarceration in the entire Northeast. The Department of Corrections requested $2.3 billion in state funds for the 2015-2016 budget, a 7% increase from the prior year (Pennsylvania Office of the Governor, 2016a).

Initially justice reinvestment was based on the notion of “community empowerment in which local communities would take the lead in developing solutions for their problems” (Gottschalk, 2015, p. 98). This original intent has morphed into instead a heavy emphasis on reallocating resources within the criminal justice system and as a cost-savings measure for corrections (Gottschalk, 2015). However, even in the original intentions of justice reinvestment and the way this type of reform is frequently articulated in the juvenile justice system, the approach still falls into the inadequate model of localization and community-uplift. Community empowerment as a reform to the problems with the criminal justice system continues to contribute to the broad social policy pattern of devolution and undermines universalistic social policies that address structural conditions and inequality.

VI. Conclusion
Pennsylvania has a long history of carving out the “worst of the worst” from its juvenile system in order to promote goals of rehabilitation for youth but also accountability for youth offenders. Similar to Texas and California there has always been a boundary between redeemable youth in need of care and treatment and “serious,” “violent” and irredeemable youth that need to be punished. Pennsylvania never developed as robust of a centralized state-run prison system as California and Texas. In these states, the juvenile justice system was more bifurcated between youth handled in the community versus sent to state-run institutions. In the mid-1990s when many states ramped up the punitive treatment of juveniles, Pennsylvania chose to infuse accountability into local community-based institutions as a groundbreaking new model of juvenile corrections. At the same time, in the same piece of legislation, the state also passed an adult time law that contributed to the state’s large population of juveniles serving life without the possibility of parole sentences.

Since this time, many other states have turned to this devolved and privatized community-based model, which is backed by large foundations and the federal government. The implementation of BARJ in 1995 earned Pennsylvania the distinction as a national model and attracted the MacArthur Foundation, Annie E. Casey Foundation and the federal government to promote their reform model in this particular location. Pennsylvania provides a long running case of the consequences of the community-based model of a largely privatized juvenile justice system heavily focused on the implementation of evidence-based programs. This chapter provided some examples of the on the ground consequences of this model: the blurred distinction between secure
confinement and treatment in juvenile services provided by private organizations, regional variation, punitive “alternatives” and the effect of introducing competition into juvenile corrections. The long-term consequence is increasing privatization, localization, regional inequality, and a lack of oversight. Between California, Texas and Pennsylvania, Pennsylvania is by far the least accessible juvenile justice system with a lack of reliable and consistently reported data, little organized oversight mechanisms making it very unclear what happens from one jurisdiction to another. The most egregious example of these consequences is the Kids for Cash scandal, which provides a cautionary tale of the perverse outcomes of local autonomy mixed with privatization.

All three state case studies show how longstanding the belief that delinquency is caused by individual deficiencies has prevailed in the operations of the juvenile justice system. The influence of this view in the Child Savers movement was particularly pronounced in the Northeast and in Pennsylvania. The heavy emphasis on individual uplift remains strong in today’s evidence-based programs, which are central to Pennsylvania’s approach to juvenile delinquency. Increased interventions targeting personal behavioral deficiency is a part of a neoliberal turn in social policy where a broad range of social ills are blamed on individual limitations (Soss, Fording & Schram, 2011; Lafer, 2004; Brown, 2003; Larner, 2000). This strongly held belief in the juvenile justice system contributes to the persistence of punitive policies and effectively divorces debates surrounding justice policy from debates about political economy or even the function of the state (HoSang & Cate, 2016; Gottschalk, 2015). This evolution of social policy has
had particularly negative consequences for racial minorities and the poor (Soss, Fording & Schram, 2008; Lieberman, 1998).

Pennsylvania shows how and why the community-based “balanced approach” is politically popular and a resilient approach to corrections even after decades of implementation and little success on measures of cost-savings, improved treatment of juveniles and reducing the role of the justice system in the lives of youth in Pennsylvania. The community-based approach satisfies a wide range of stakeholders’ interests and therefore strengthens and legitimizes the system without substantially overhauling how it operates.

In Pennsylvania a particularly strong probation officer and juvenile court judge professional associations have shaped the system such that these stakeholders have a great deal of autonomy and resources. Subsequently, these actors have worked hard to further professionalize and arm probation officers and maintain local control. Private companies have flourished in Pennsylvania due to the opportunities afforded by heavily subsidized community-based programs. The motivation to grow and expand these private companies has contributed to ensuring these subsidies continue. Additionally, legislators can be at one time both “tough” on crime and at the forefront of justice reforms, since community-based programs are seen as holding offenders accountable and constituting “alternatives” to state-run prisons. The community-based approach has established interests at the local level amongst the private-sector, local practitioners and politicians in maintaining and expanding the network of privatized services targeted at solving juvenile delinquency.
Much like Texas and California, the Pennsylvania case demonstrates that the community-based approach is not incongruent with “get tough” policies. Despite claims that community-based and evidence-based solutions are transformative, these approaches are actually rooted in the “get tough” approach and are often complementary with the toughest policies levied at juvenile offenders. In fact, these policies such as intermediate punishment, probation or community-based treatment programs are a key part of a tough system that tightly monitors youth for even minor offenses with robust measures of punitive accountability. As long as the idea undergirding juvenile justice reforms is to better reduce delinquency and as long as that is funneled almost exclusively into behavioral interventions, then the system for the most part maintains the status quo. If at the same time, which is the case in Pennsylvania, California and Texas, the reforms do not truly challenge the need for punishing youth, then the use of secure detention, harsh sentences, abusive conditions of confinement and adult transfers continue to be core policies in the juvenile justice system.
CHAPTER 5

Conclusion: Consequences of Bipartisanship and Market-Based Reforms

Many have celebrated that in a moment of extreme legislative intransigence, criminal justice reform is perhaps one policy area where something can be accomplished since there are key points of agreement between the left and right. For example, in the first Democratic debate in October 2015, Hillary Clinton stated,

We need to tackle mass incarceration, and this may be the only bipartisan issue in the Congress this year. We actually have people on both sides of the aisle who have reached the same conclusion, that we cannot keep imprisoning more people than anybody else in the world. (Cable News Network, 2015).

Months later, President Obama voiced a similar sentiment in his last State of the Union address, remarking, “I hope we can work together this year on bipartisan priorities like criminal justice reform” (Office of the Press Secretary, 2016). Summits on criminal justice reform have created unlikely photo-ops of Van Jones and Newt Gingrich shaking hands, Pat Leahy and Tim Scott side-by-side, and Cory Booker and Rand Paul smiling at the camera together. Powerful advocacy organizations from the right, such as FreedomWorks and from the left such as the ACLU both include reforming the criminal justice system on their policy platforms. And, after years of sidestepping the issue of mass incarceration (Alexander, 2008; Fortner, 2013), major civil rights organizations (NAACP, Urban Institute, National Urban League, Rainbow Coalition) list criminal justice reform as a key advocacy issue.
Out of this bipartisanship and momentum for doing something to address the fact that the U.S. incarcerates more people than anybody else in the world, the federal government and a number of states have passed major criminal justice reform legislation. In the juvenile justice system, states across the country are slashing the number of youth sent to state-run prisons. Celebrated as a rare example of politicians and organizations rising above petty partisan bickering to “do something” for their constituents, these bipartisan initiatives, particularly in the juvenile justice system, represent something far less heartening. In a political context where both parties are increasingly supportive of market-based solutions to social problems, bipartisanship may be more of a cause for concern than celebration.

As the Texas, California and Pennsylvania case studies demonstrate, the bipartisan initiatives to reform the juvenile justice system in many instances do rise above political bickering; reform legislation in all three states has had near unanimous or unanimous support. Rather than a promising development, the erasure of political struggle from this issue area is a concern for long-term fundamental improvements for juveniles. It is a political question to decide what constitutes criminalized behavior and to decide how to respond to criminal behavior. These questions and debates cannot be solved through technocratic solutions that are solely aimed at improving the efficiency and reducing the costs of the juvenile justice system. As the previous chapters have suggested the bipartisan consensus supporting community-based reforms entrenches punishment at the local level, increases privatization and legitimizes the continued use of some of the toughest policies levied on juveniles in the world.
Part I of this final chapter highlights the unique contributions of the three case studies as well as the common lessons drawn from comparing Texas, California and Pennsylvania. Despite their many differences, all three states have implemented community-based reforms in the juvenile justice system. This reform strategy has been ineffectual at reducing the overall incarceration rate. Instead the policy reconfiguration has contributed to the privatization of the juvenile justice system and has reduced democratic accountability. Despite these failures, Part II details the main reasons community-based policies remain popular. Community-based reforms are part of a broader trend of devolution and privatization in American social policy since the New Deal and are supported by both political parties. It is a popular approach because it forges a powerful broad alliance of support by maintaining punitive policies and because it is billed as the cheaper, most effective way to cure delinquency. Ultimately, Part II shows that the features that make the reform strategy popular are the very aspects that inhibit the political vision needed to fundamentally improve the lives of youth.

I. Overview of Case Studies

Analyses of Texas, California and Pennsylvania provide important opportunities to better understand broader national trends in juvenile justice policy. The three states together incarcerate about one third of all juveniles in custody across the country. Each one has been held up as a juvenile justice model for the nation. Additionally, these are key locations that large foundations and advocacy organizations have invested their resources. As large foundations and advocacy organizations, most notably MacArthur and Annie E. Casey, increasingly capture national leadership and dominate the juvenile
justice policy field in generating research and policy recommendations, they are creating a broad national movement toward the community-based model. Texas, California and Pennsylvania are emblematic of national trends because they are model locations for the reform agenda being promoted through the leadership of large foundations.

Each case study, in addition to contributing to common lessons about the development of the juvenile justice system, also makes unique contributions to the analysis of criminal justice reform policy. Texas is the birthplace of the conservative movement for criminal justice reforms, which has had a large influence on the policy field and helped forge a bipartisan consensus around juvenile justice reforms. Progressive advocacy organizations in Texas have signed on to the conservative approach to juvenile justice reforms and large foundations applaud the reform efforts in the state. The policies in Texas highlight the centrality of cost-efficiency and anti-statism in the community-based movement and how it fits into a broader conservative politics premised on shrinking the public sector, promoting privatization and stigmatizing the state and public employees. The evidence on the ground in Texas describes the ways in which these broader political commitments undermine oversight and the treatment of youth in the justice system. Further, the case study also shows how devolution and community-based policies are compatible with upholding and in some instances expanding tough policies such as solitary confinement and adult sentences for juveniles.

206 For example, in 2015 the MacArthur Foundation awarded Harris County with $2 million as a winner of its Safety and Justice Challenge where over 200 counties applied for the grant (Hasan, 2015). Shortly after receiving the grant, the county shipped 133 inmates to private prisons in two other Texas counties. (Barned-Smith, 2016)
Devolution in California is the most responsible for driving the national trend of declining rates of incarceration for youth sent to state-run prisons. The state has transported the devolution, community-based model in the juvenile justice system to the adult system, exemplifying the broad popularity and wider consequences of this reform politics. California also shows the compatibility of devolution and community-based programs with punitive policies. The state has the toughest anti-gang laws in the nation, which target harsh punishments at poor racial minorities. The developments on the ground in the Golden State also highlight the contradictions of “community-based” goals and reality. Prisons at the county-level, similar to state-run prisons, are plagued with instances of abuse and harmful conditions of confinement. The “closer to home” promise fails because of the strong drive in the state to promote regionalization and the exclusion of youth labeled gang offenders from returning to their community. The broad trend of localization of public services and the tax system has undermined statewide programs (such as Medi-Cal and CalWORKs). Youth are returned to “the community” in a context when most communities lack basic social provisions and are deeply unequal.

Pennsylvania provides a unique insight into the long-term outcomes and politics of a community-based, devolved, privatized juvenile justice system. After decades of implementing a model of local control and a high level of privatization in the juvenile justice system, the state still has a juvenile incarceration rate substantially higher than any other industrialized nation and a rate higher than California and Texas. In addition to failing to reduce the overall reach of the carceral system, privatization and devolution also compromise oversight and standardization of care. One long-term consequence of
Pennsylvania’s model of juvenile corrections is that youth experience “justice by geography,” meaning treatment within the justice system is often dependent on where a youth lives. The “Kids for Cash” scandal, where judges received kickbacks for sending youth to private prisons in Luzerne County, is the most egregious consequence of privatization and local autonomy. Lastly, the analysis of Pennsylvania contributes to an on the ground account of the ways in which localization and devolution inject punitiveness into local institutions such as schools and probation departments. By embedding the justice system into the community, local actors are enlisted to take on the powers of law enforcement, such as parents being hired to be truant officers. Thus, youth are returned to communities that replicate rather than replace punitive polices.

The differences between the three cases in their partisanship, geography, size, as well as in their timing in implementing community-based reforms provides a good comparison to explore the common lessons about reform politics. The convergence amongst these diverse states on the community-based approach suggests that it is not something particular about individual states that explains the ineffectiveness of community-based reforms. From the rights revolution of the 1960s, to the “get tough” period in the 1990s, to today’s technocratic reform era, community-based policies have consistently failed to curtail the expansion of the carceral state. The adoption of community-based reforms and devolution has entrenched punishment at the local level and increased the privatization of the juvenile justice system in each of these different contexts.

*Impact on Incarceration Rates*
Community-based reforms have been ineffective at substantially retracting the overall reach of the carceral state in the lives of juveniles. On one measure, the number of youth sent to state-run prisons, there has been a reduction in the rate of youth sent to these facilities. But, the majority of youth processed in the juvenile justice system are not sent to state-run facilities so the declines here are not substantially shrinking the entire juvenile justice system. Rates of youth sent to state-run facilities have steadily declined in California since the mid-1990s when the state passed its major devolution legislation. In Texas, the rate of youth sent to state-run prisons has declined since 2007 when the state passed its major devolution initiative. Meanwhile, Pennsylvania has maintained a steady rate of youth sent to state-run prisons through the past several decades despite major reductions in arrest rates. The following graph shows the rates of youth sent to state-run facilities in Texas, California and Pennsylvania from 1997-2011.

Graph 17. Rate of Youth Sent to State Facilities: Texas, California, Pennsylvania

While the decline in rates of youth sent to state-run prisons in Texas and California is promising, it is just one part of the juvenile justice system. The overall incarceration rate, including placements to state, local and private facilities in these three states is still substantially higher than other industrialized nations. Even the state-run incarceration rate alone is much higher than the total incarceration rate of other countries in the world.

Graph 2 looks at a snapshot of the three states’ overall incarceration rate in 2011, when the rate of youth sent to state-run prisons was at their lowest point in the past several decades, in comparison to the rate of incarceration in other industrialized countries in the world.\(^{207}\) Graph 2 shows that the reduction in state-run incarceration rates has not substantially lowered the overall incarceration rate – the United States still incarcerates youth at a significantly higher rate than other countries in the world.

Graph 18. Juvenile Incarceration Rate Per 100,000 Youth Population, Texas, California and Pennsylvania compared to Industrialized Nations

\(^{207}\) The data for the other countries are from 2008 and are the best uniform, comparable data on all of the countries. This is compared to rates in the U.S. states at 2011 to give a sense of, even after drops in incarceration rates in the U.S., how much higher the case studies are compared to other industrialized western nations.
The three model states for juvenile justice policy continue to be major outliers globally in how they treat youth offenders.

Privatization

A common theme amongst the three cases is that the move towards community-based reforms and public-private partnerships has increased privatization in the juvenile justice system. Texas, California and Pennsylvania have all increased the percentage of incarcerated youth they send to private prisons. This general trend does not even capture the aspects of the juvenile justice system that are the most privatized, such as non-institutional services. Pennsylvania has always had the highest level of privatization. In 1999, 61% of youth given an institutional placement were sent to private facilities, which
grew to 73% by 2013. California and Texas have far lower starting points of privatization; however, in recent years these proportions have increased. In California from 1997 to 2011, the percentage of placements to private facilities was stable at about 10%, but in 2013 the percentage increased to about 13%. Similarly in Texas, only 8% of placements were sent to a private institution in 2010, a proportion that grew to 13% by 2013.

Each case study has shown the number of ways in which the community-based movement has contributed to privatization in juvenile corrections. The major reform leaders, MacArthur, Annie E. Casey, Right on Crime, and the federal government explicitly advocate for public-private partnerships in corrections and use for-profit companies as models for evidence-based programs (EBP). These national leaders in directing juvenile justice policy often describe the private-sector as best suited to carry out community-based programs while saving states money. Further, devolution makes it easier for the private-sector to secure public funds to expand its role in the juvenile justice system.

Democratic Accountability

Community-based reforms are often justified by relying on the rhetoric of democratic community empowerment. However, while youth are supposedly brought “closer to home,” there is often less democratic accountability because services are contracted out to private companies that are not transparent, lack oversight and do not have clear channels to express grievances. In addition to contracting out prisons,
intermediate punishment, and treatment programs to private companies the leadership in the juvenile justice policy realm is also increasingly privatized. The dominant role that large foundations have in controlling research and juvenile justice policy recommendations is in part responsible for the convergence of diverse states around the community-based model.

As a result, policy leadership from large foundations is contributing to a crisis of civic disempowerment (Faber & McCarthy, 2005). These organizations are not organically grounded in the communities they serve and they actually “inhibit broad-based citizen involvement in social problem-solving” (Faber & McCarthy, 2005). Civic life in the United States is largely controlled by elites and it is replicating, not challenging, the already existing inequalities in society (Eliasoph, 2013). Large foundations, such as MacArthur and Annie E. Casey, are almost entirely unaccountable to anyone except their trustees (Reckhow, 2013; Fleishman, 2007; Faber & McCarthy, 2005).208 Scholars have pointed out that a lack of democratic accountability in the policymaking process contributed to the build up of mass incarceration (Barker, 2009; Miller, 2008). The juvenile justice reforms examined in the case studies have worsened democratic responsiveness by eroding or eliminating mechanisms of oversight and accountability rather than strengthening these democratic processes. Fundamental and durable change to the criminal justice system requires a broad base of well-organized alliances and constituents. This is nearly the opposite of the foundation model of reform,

208 In 2002 large foundations held $429 billion in assets (Faber & McCarthy, 2005, p. 4).
which is often pursued top-down without accountability to any broad constituency (Reckhow, 2013).

II. Why is Community-Based Popular?

Given the number of flaws in the community-based approach outlined in the previous chapters, why have so many states adopted this approach? A bipartisan consensus in favor of devolution and community-based policies has animated a number of public policy areas in the wake of the New Deal. The juvenile justice system is just one of many policy areas that has developed in this manner. Both parties have embraced the turn to “the community” as a solution to a number of social ills. These reforms are also popular because they entrench punitive policies and are hailed as the “cheaper” and “effective” approach to delinquency. By not repudiating punitive policies, community-based reforms maintain the support of key stakeholders in the justice system such as law enforcement, district attorney associations and other law-and-order interests. The two central goals of community-based reforms, to cut costs and implement “effective” anti-delinquency programs, contribute to the proliferation of privately-run, individualized behavioral interventions at the expense of structural solutions.

Post-New Deal Social Policy

Community-based policies are rhetorically powerful and politically popular solutions to a number of social problems. Welfare policy has gone through a similar process of devolution as the juvenile justice system. Prior to the New Deal, programs to

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209 Some notable areas of policy that have undergone devolution are social welfare, environmental policy, health care, and highway construction (Kettl, 2000).
aid the poor were primarily administered by local governments and charities. The New Deal increased the role of the federal government and state governments to carry out this aid. Since the 1990s, there has been a “second-order devolution” where the responsibility to carry out welfare programs, increasingly privatized is returning to local jurisdictions (Nathan & Gais, 1999). In many ways devolution in juvenile justice policy also reflects a grand circling back to the configuration of social policy at the turn of the century.

The popularity and political efficacy of community-based solutions is in part due to the convergent interests both political parties have for this type of policy solution. On the right, community-based reforms fit with the anti-statist goals of conservatives as a broader effort to dismantle centralized social policies (Smith & Lipsky, 1993). On the left, “community” connotes grassroots and represents another kind of attack on the state, a way to combat discrimination in policy implementation. For Democrats and many progressive advocacy organizations, appeals to make public policy more equitable and democratic have been funneled into the promise of community-based solutions (Immerwahr, 2015; Morris, 2004). While shoring up support from both ends of the political spectrum, community-based reforms are also popular with the private-sector, which benefits from local control and devolution. In the case of juvenile justice policy, devolution and the proliferation of community-based programs has not reduced the number of youth processed in the justice system, but it has increased the role of the private-sector and local governments in carrying out the interventions.

*Still Tough*
Another factor in the continued popularity of community-based reforms is that the approach does not challenge or repudiate punitive policies. Pennsylvania has successfully integrated “get tough” policies with devolution and community-based policies. California and Texas’s forays into community-based reforms in the late 1960s were more explicitly articulated as liberal reforms challenging punitive policies and the abusive excesses of state-run prisons. These policies experienced backlash from politicians wishing to flex “get tough” credentials. Ultimately, Pennsylvania in the 1990s and now California and Texas since the 2000s have effectively combined the community-based approach with a “get tough” approach. This strategy has worked to bring a broad coalition of interests together in support of the reforms – from conservative law-and-order actors to progressive advocacy organizations.

By focusing only on prevention and low-level offenders, the community-based approach leaves intact the most punitive institutions and policies in the juvenile justice system, set to handle the supposed “worst of the worst” youth. In fact, the community-based approach, by implementing risk assessments and a wide network of prevention and behavioral intervention programs creates the appearance of more effective identification of these “worst of the worst” juveniles, justifying and legitimizing their punitive and often abusive treatment.

The response to recent Supreme Court decisions has revealed how committed Texas, California and Pennsylvania remain to the “get tough” philosophy of handling youth offenders, despite implementing community-based reforms. The decisions made by the Supreme Court exempting juveniles from the most punitive policies, the death
penalty and life without the possibility of parole (LWOP) sentences, has been a major opening for rethinking and reshaping the treatment of youth in the justice system. The court based its decisions on considerations of neuroscience research showing that youths do not have fully formed brains and therefore they are less culpable than their adult counterparts.

The idea of diminished culpability has subsequently become a core reason reformers argue youth should be treated differently in the justice system. The construction of “youth” as a distinct population in need of special care is not new to juvenile justice policymaking, but the enthusiasm for new technologies and research on the biological basis of this difference has been influential in the discourse of juvenile reforms. Using studies on the biological differences of youth has not been effective for ending punitive policies, perhaps unsurprising given claims of biological difference have been used throughout the development of the juvenile justice system to justify the implementation of these policies.

Texas, Pennsylvania, and California have responded to these court decisions in modest and minimally compliant ways. Texas, having a large juvenile death row population, replaced death sentences with the longest mandatory minimum sentences of any state in the nation. Pennsylvania, the state with the largest juvenile LWOP population, responded to the court ending mandatory LWOP sentences by replacing them

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210 In 2005, in Roper v. Simmons, the Supreme Court ruled to prohibit states from giving the death penalty to offenders under the age of eighteen. In 2010, in Graham v. Florida, the court prohibited states from giving youth under eighteen life without parole (LWOP) sentences for a non-homicide offense. In 2012, in Miller v. Alabama, the court ruled that states could not have mandatory life without parole sentencing for youth convicted of murder. In 2015, in Montgomery v. Louisiana, the court made the ban on automatic life-without-parole sentences for juveniles retroactive.
with lengthy mandatory minimums and did not retroactively apply the court decision. In addition to the Supreme Court decisions, states have also been reluctant to comply with lawsuits over conditions of confinement. In California, reforms stemming from an extensive court case over abusive conditions of confinement resulted in minimal and inadequate compliance until finally the state pursued devolution as a way to circumvent the costly court mandates. While the court decisions opened up the political space to make major reforms to the juvenile justice system, most states have simply skirted the requirements and replaced these policies with similarly tough policies.

The continued use of long sentences, solitary confinement, and abusive conditions of confinement have been rationalized by the idea that the reforms have better determined that only “serious” youth offenders are given these punishments. However, evidence from the case studies suggests that youth in the adult system and state-run juvenile prisons are no more “serious” offenders than before the reforms. In some instances, youth are less likely to be imprisoned for a violent crime after the reforms due to increases in parole and probation violations leading to incarceration. Poor and racial minority youth are also heavily concentrated in the so-called “worst of the worst” population. Rather than an alternative to the “get tough” model, community-based corrections are a key part of the approach.

*Cheaper Alternatives*

Community-based solutions have continued to remain popular because they also promise “cost-savings” in corrections, which garners support from policymakers on the
right and the left. Since both political parties have adopted a commitment to fiscal austerity with the goal of “doing more with less,” cheaper alternatives are a boon for politicians on both sides of the aisle. The commitment from both political parties to the primacy of cost-savings and efficiency substantially limits the political debate over what is politically possible. For example, in Texas and California the call for reforms in the juvenile justice system was in part sparked by major abuse scandals. The obvious problem to tackle in this political moment was reducing abuse and ensuring that youth in prison received adequate care. However, the reforms were sold as cheaper and better for the treatment of juveniles. Once the goal of cost-savings became part of the equation, the possibilities for what could improve the treatment of youth significantly shrunk.

In Texas, funding for the ombudsman was insufficient, proposals for increasing guard-to-inmate ratios were scoffed at and investments in health care and mental health care were slashed during the reform period. In Pennsylvania, the ability to argue that these alternatives were “cheaper” was key to the successful implementation of this model. A Pennsylvanian senator in the floor debate over the major devolution legislation in the state from the 1970s explicitly stated that whether or not legislators thought community-based programs were a good policy, they should support it because it was cheaper. In a political landscape dominated by the primacy of cost efficiency, the reforms do not even really need to be effective, they are popular simply because they are cheaper.

The goal of cost-savings is problematic because it fits into a broader conservative politics that is aimed at shrinking and privatizing public goods in an attempt to reduce public spending. In reality, these cost-cutting policies typically do not lead to significant
reductions in public spending, but they do lead to the reallocation of spending. In the case of community-based reforms in the juvenile justice system, spending is reallocated to subsidies for the private-sector. Additionally, more state general fund money flows to the county level where local actors control how the money is spent with little oversight.

Prioritizing cost-savings harms poor and racial minority youth, those most negatively affected by the justice system, in two ways. As a part of a broader political commitment, the attack on public services marginalizes those youth who suffer from inadequate funding of education, health care, housing and other public goods. Secondly, cost-efficiency undermines the ability to promote adequate oversight of the justice system, which is important for reducing abusive practices. Cheaper alternatives within the juvenile justice system often mean cutting back on professional mental health workers, reducing the quality of care youth in prison receive. Fiscal austerity prevents adequate care both inside of prisons and outside of prisons for youth.

Most Effective

In addition to being billed as the cheaper option, community-based reforms are also defended as the more “effective” solution to delinquency. Both political parties favor technocratic policy solutions; therefore, the fact that the community-based programs are rigorously evaluated gives the approach a popular standing in policy debates despite small effect sizes. Everyone in the policy-making world, from professional associations, foundations and the federal government has accepted the evidence-based paradigm (Clear, 2010). However, as Todd Clear (2010) stated in his 2009 Presidential Address to
the American Society of Criminology, “the evidence-based policy paradigm is, at its core, extraordinarily conservative.” By directing policy only to “proven” solutions to delinquency, the political possibilities surrounding the justice system are substantially narrowed into a conservative retrospective approach to policy. Juvenile justice programs are measured primarily on their ability to reduce recidivism, increase academic performance and improve the emotional, behavioral and moral soundness of youth. These categories for evaluating the reforms ignore the broader qualitative experience of youth and fail to address concerns about what is best for them beyond their chances of being caught up in the justice system in the future.

Community-based programs are described in grand terms as effective and proven solutions to delinquency. However, despite a large body of social science research backing the evaluation of these programs through randomized trial studies, there is little consensus or shared standards of what “effective” means. The studies vary as to whether or not they include control comparisons, how long the studies follow youth, where the youth in the study are from and a number of other aspects of research design.\(^\text{211}\)

Large foundations have contributed to the centrality of evidence-based programs in juvenile justice policy. These organizations, particularly the MacArthur and Annie E. Casey Foundations, are responsible for a great deal of knowledge production on the topic of juvenile justice policy and they heavily emphasize the scientific promise of identifying and treating delinquency. It was an article of faith for the founders of the original juvenile

\(^{211}\) Measuring success through recidivism rates and completion rates is limiting and even perversely incentivizing. For example, abusive conditions of a program and high suicide rates are not captured or monitored by either measure and may even coexist with low recidivism rates.
court that science could be used to identify the causes of, and solutions to, delinquency (Schur, 1973). The persistent belief in scientific solutions to delinquency has led the MacArthur Foundation to pour a great deal of resources into neuroscience research on juvenile brains and development as key to understanding and treating delinquency.\textsuperscript{212} Nearly every major large non-profit advocating for juvenile reform today cites research on the science of juvenile brains as a justification for reforming the system. Like many times in the past, these reformers believe new scientific studies will be the answer to solving the problems of juvenile delinquency and crime policy. The core reliance on scientific research as a basis for policy has translated to implementing evidence-based programs and relying heavily on data-driven statistical analyses of recidivism rates to determine the success of programs.

Like the ascendant position of cost efficiency in social policy, the emphasis on scientifically driven policy limits the possibilities for what the role of the state can be. If the two criteria for a given policy are that it not cost money and that it be scientifically proven to be successful (measured narrowly by statistically significant improvements in recidivism rates and academic testing), the policymaking process becomes trapped by a narrow conception of what is possible in the given economic, social and political context rather than a more comprehensive discussion of what people want.

\textit{Cure Delinquency}

\textsuperscript{212} In 2007 the foundation announced an initial $10 million grant to fund the first systematic effort to integrate law and neuroscience by establishing the Research Network of Law and Neuroscience (MacArthur Foundation, 2016b).
The goal of curing delinquency that is expressed through the dissemination of community-based programs misidentifies the fundamental problems in the juvenile justice system. The focus on reducing delinquency presumes solving youth crime is necessary to retract the wide reach and punitiveness of the juvenile justice system. Rather than fundamentally changing the system by ending the punitive policies and conditions of confinement, the reforms are aimed at reducing the number of juveniles subjected to these policies. This focus affirms that when juveniles are delinquent, they do need to be punished and often quite severely. The community-based reforms recycle and perpetuate the same discourses about the major social threat that “youth criminality” poses that animated “get tough” policy debates in the 1980s and 1990s. Reducing delinquency as a way to reform the juvenile justice system suggests there is a rational connection between levels of youth crime and rates of youth incarceration—yet, a substantial body of research suggests that the incarceration rate in the United States has a tenuous connection to crime rates (Travis, Western & Redburn, 2014, p. 156).

Another problem with the core goal of curing delinquency is that it has been solely channeled into behavioral interventions. The community-based solutions are built on the premise that delinquency stems from individual behavioral, emotional and moral flaws. The heavy emphasis on individual uplift perpetuates stigmatizing notions of youth criminality and pathologizes youth offenders. From the Progressive Era to the super-predator theory in the 1990s, youth offenders have long been described as biologically flawed-- justifying their punishment and separation from society (Platt, 1977; Krisberg & Austin, 1993; Dilulio, 1995; Chávez-García, 2012; Ward, 2012).
Locating solutions to delinquency in the “community,” which as a unit of analysis would seem to suggest structural approaches and solutions, instead takes on the same discourse of individualistic approaches. In so far as community-based solutions address conditions beyond a youth’s personal attitude and morality, they are typically directed towards “bad parenting” and “negative social influences” – targeting the other individual members of a community. Thus, delinquency is defined as either rooted in the individual youth or rooted in the cultural depravity of the community they live in. Either way, the solutions are targeted at fixing the individual to either transform their moral and emotional defects or strengthen their ability to ward off the negative influences around them coming from members of their community. What fades from view or is explicitly removed from the debate over juvenile justice policy is the impact of structural conditions of inequality that contribute to how delinquency is defined, policed, and punished in the United States.

The two central goals of the community-based approach, to cut costs and reduce delinquency, are incompatible. Reducing delinquency -- which is not necessary to improve the treatment of youth in the justice system-- requires investment from the state in broad social programs. Redistributive policies that would ensure all youth and their families had access to basic social provisions (such as housing, health care, education and employment) would be the most effective in addressing the many conditions that contribute to “delinquency” as defined in community-based programs. However, the politics and policies required to support this role for the state are antithetical to the first goal of the community-based movement to improve efficiency and cut-costs.
Individual Behavioral Interventions

A key component of the community-based model – the promotion of cheaper and scientifically proven solutions to delinquency – has resulted in a major investment in individual behavioral interventions in the juvenile justice system rather than addressing economic and health inequalities. The goal of cost-efficiency is part of a neoliberal turn in American governance, placing ever more emphasis on individual responsibility and uplift while sidelining and limiting the role of the government in providing basic public services (Soss, Fording & Schram, 2011; Lafer, 2004; Brown, 2003; Larner, 2000). The ascendant position of fiscal austerity and neoliberal politics has shaped rehabilitation programs in the justice system into “people changing institutions” (Lynch, 2000; Miller, 2014). Scholars have long argued that volitional criminology, where crime is attributed to individual pathology, is misguided. Without providing structural reform, even the very best efforts to relieve suffering in the criminal justice system may fall short of their more ambitious goals because of the persistence of material deprivations and social conflicts occurring outside of the system (Scheingold, 1991, p. 192; Quinney, 1973, p. 171; Rusche & Kirchheimer, 1968).

Placing the solution to delinquency solely on counseling and treatment affirms that “the problem” resides in the individual not in their environment (Klein, 1979, p. 168). Rehabilitative policies such as counseling and drug treatment are best carried out in a structural context where individuals have access to employment, health care and housing. Counseling and drug treatment are important services but they cannot alone secure a job, health care and housing for a former prisoner.
While all three case study states have been hailed as reform models for the nation, a consideration of broad indicators of health and well-being reveals that these states continue to treat their youth no better, and in some cases worse, than the national average.213 The following table shows a selection of these measurements in order to suggest that the resounding “success” these states have declared in the juvenile justice system is narrowly defined.

Table 14. Health and Economic Indicators from 2012

<table>
<thead>
<tr>
<th></th>
<th>United States</th>
<th>Texas</th>
<th>California</th>
<th>Pennsylvania</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children living in poverty</td>
<td>23%</td>
<td>26%</td>
<td>24%</td>
<td>20%</td>
</tr>
<tr>
<td>Children living in high poverty areas</td>
<td>13%</td>
<td>19%</td>
<td>11%</td>
<td>15%</td>
</tr>
<tr>
<td>Children whose parents lack secure employment</td>
<td>31%</td>
<td>30%</td>
<td>35%</td>
<td>30%</td>
</tr>
<tr>
<td>Children who live in households with a high housing cost burden</td>
<td>38%</td>
<td>34%</td>
<td>51%*</td>
<td>33%</td>
</tr>
<tr>
<td>Children without health insurance</td>
<td>7%</td>
<td>12%**</td>
<td>8%</td>
<td>5%</td>
</tr>
<tr>
<td>Child and teen deaths per 100,000</td>
<td>26</td>
<td>26</td>
<td>21</td>
<td>25</td>
</tr>
<tr>
<td>Youth (18-24) suicides per 100,000</td>
<td>11.1</td>
<td>11.3</td>
<td>7.4</td>
<td>11.3</td>
</tr>
</tbody>
</table>

*Highest in the nation
**Fourth highest in the nation


213 The national average on these indicators are exceptionally high compared to other industrialized countries. There are not direct comparisons across other countries on all of these measures. For child poverty, the U.S. ranks 34th out of 35 developed nations surveyed by the United Nations Children’s Fund (Fisher, 2013). The U.S. has the worst infant mortality rate out of 13 OECD countries (Squires & Anderson, 2015). The U.S. is 30th out of 32 OECD countries for income inequality and its poverty rate (OECD, 2016).
For the most vulnerable youth, poor and racial minorities, who are the most heavily concentrated in the juvenile justice system, the juvenile justice reforms have done little to improve their overall wellbeing. A fundamental commitment to improving the treatment of youth who are caught up in the justice system would entail investing in other measures of social protection such as health care, housing, and employment.

Defenders of the reforms might argue that the changes to the juvenile justice system were never intended or expected to improve these other indicators of wellbeing for youth. The reformers’ solution to the negative treatment and experiences of youth in the justice system is to return them to their communities. Even if the reforms were successful at achieving this goal, they fail to address the unjust political, economic and social condition of these communities.

III. Conclusion

The three case studies provide empirical, on the ground accounts of the consequences of the politics and policies of community-based corrections. This most popular reform strategy spreading across the country is ineffectual at substantially reducing overall reach of the juvenile justice system – particularly local and private prisons and a wide network of punitive alternatives at the local level. The reforms promote privatization and they undermine accountability and democratic control over policymaking. The bipartisan consensus around fiscal austerity channels reforms into
anti-delinquency initiatives that promote individual interventions and undermine efforts for structural changes. The remarkable convergence of diverse states on the community-based approach stems from the ascendant leadership of large foundations. The MacArthur and Annie E. Casey foundations in particular make up part of a cohesive set of elite actors that dominate the funding of research on delinquency and the dissemination of juvenile justice policy models nationally.

The developments in the juvenile justice system are part of a larger trend in American governance where policy is increasingly devolved to the local level and privatized. This development has negative consequences for poor and racial minorities, through both the effects the process has on the justice system but also other policy areas undergoing similar developments. The alternatives coming out of the community-based movement do not repudiate punitive policies, but instead replicate these conditions at the local level. The historical analysis of juvenile justice system development in the cases of this project delineates the ways in which alternatives like intermediate punishment, intensive probation supervision, restitution, electronic monitoring and a number of other community-based programs are actually rooted in the same philosophy that undergirds a “get tough” approach. The same ideas about “youth criminality” continue to animate debates over juvenile justice policy and continue to stigmatize youth offenders and affirm the value of punitive accountability.

By signing onto and supporting the community-based movement, both political parties have contributed to stigmatizing the state. Similar to other attacks on the public sector, the community-based approach blames the state and seeks to undermine and
eliminate centralized state-run social programs and replace them with private contracts. In the realm of the criminal justice system, this is portrayed as a positive development as it can mean retracting the punitive reach of the state; however, a more nuanced approach that envisions an *alternative* role for the state is needed. Rather than join a broader politics that deems public institutions a “failure” and calls for introducing market-based solutions, reforms should articulate a role for the state in which it provides social protection for people instead of protecting “the taxpayer” from criminals.

The bipartisan convergence around market-based solutions to the juvenile justice system and the ascendant position of foundations in policymaking are disconcerting developments in American politics. These two trends are major obstacles to forging an alliance to push for broader changes to the political, economic and social order that would significantly improve the basic treatment and needs of youth. As long as solutions to the problems of the justice system, such as high rates of confinement, abusive conditions of confinement, and punishment for minor offenses are channeled into fixing the individual youth offender, high rates of incarceration will persist, privatization will flourish and broader anti-statist, fiscal austerity politics win out. A different vision is needed; one that eschews the logic and rhetoric of fiscal austerity, repudiates the value of profit motives in corrections and treatment, and focuses on eliminating punitive policies, decriminalizing minor youth offenses, establishing robust oversight and improving the lives of youth beyond prison walls.


Bateman, T. (2011). ‘We Now Breach More Kids in a Week Than We Used to in a Whole Year’: The Punitive Turn, Enforcement and Custody. Youth Justice 11(2) 115-133.


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