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COVER STORY

Department of Juvenile Justice: Empower or end?



Daily Journal Photo

Michael Bien of Rosen Bien Galvan & Grunfeld LLP says oversight of county juvenile corrections is presently weak. A hearing this month will determine whether the DJJ can be released from a consent decree demanding system-wide reforms.

By L.J. Williamson
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A hearing scheduled for Feb. 25 will tackle the question of whether the Department of Juvenile Justice will be released from a 2004 consent decree that demanded a long list of system-wide reforms to correct a troubling list of violations and abuses that included rampant and “staggering” levels of excessive force and inhumane conditions for wards.

The DJJ is reported to have made meaningful improvements during the intervening years, though juvenile realignment, a dramatic decrease in juvenile crime, and the slow pace of change have made the very existence of the state agency the topic of heated debate.

Barry Krisberg, criminologist at UC Berkeley School of Law, expects the DJJ to be released from the consent decree it entered

into as a result of *Farrell v. Beard*, No. RG 03079344 (Alameda Super. Ct. July 28, 2014), which Krisberg called in a report “one of the most far-reaching remedial plans in American juvenile justice history.”

Krisberg said that around 2005, if someone told him the DJJ — then known as the California Youth Authority — could be reformed, he would have replied, “You’re smoking crack.” While conditions remain imperfect, Krisberg says there has been “enormous reform” in the past decade.

Not everyone agrees that reforms have gone far enough, however, and some would like to see the DJJ phased out entirely.

An alternative to the DJJ would be to have smaller, county-level facilities more in line with the aims of 2007’s SB 81, or juvenile realignment, which increased county funding for juvenile corrections.

There is wide agreement that housing juvenile offenders in smaller county facilities confers significant advantages: more family visits, closer connection to the communities they’ll eventually return to. The DJJ survived a 2012 proposal for its elimination after the plan received push-back from probation officials, who voiced concern that counties did not have the capacity, programs, or facilities to manage more serious offenders serving longer sentences or with greater needs.

The space is available and plentiful, though, argues Daniel Macallair, director of the Center on Juvenile and Criminal Justice, as is funding post-SB 81. And even more funding could be made available if DJJ’s aging facilities were shuttered.

The missing pieces, instead, are programs and oversight — which likely won’t fully come into existence until DJJ’s closure forces them to. “It will never be developed as long as we have a state system,” Macallair said.

After unprecedented drops in juvenile crime numbers, which have left the DJJ population — once close to 10,000 in the early 2000s, a relatively minuscule 700 today — at a historic low, Macallair said there are approximately 4,000 beds available at the county level at any given time. As a result, he is troubled by talk of investing more dollars to revamp state facilities and by a proposed plan to build a new one for young adults ages 18-25, called the California Leadership Academy (CLA).

“Why in the world would the state invest in new institutions when you have all of this at the

county level?” Macallair said.

From a fiscal standpoint, as well as a juvenile welfare one, he argues, it makes more sense to do things at the county level, and to create a state oversight body to ensure the creation and implementation of quality rehabilitative programs, which most states have. Oversight of county juvenile corrections is at present undertaken by a small and by some accounts ineffectual committee of the Board of State and Community Corrections, which lacks authority to correct errant facilities.

“They have a duty to go out and send inspectors, but don’t have much power to do anything with reports, and the reports are weak,” said Michael Bien of Rosen Bien Galvan & Grunfeld LLP. “So unless you sue a county, you’re not going to get much info about their juvenile system, and there’s a wide range of quality.”

Macallair is also troubled by what he sees as a conflict of interest on the part of Nancy M. Campbell, the special master appointed by the court to report on DJJ’s compliance with the consent decree of the *Farrell* suit, who also, through her consulting firm Justice System Partners, entered into an \$865,000 contract with CDCR in 2015 for planning and evaluation of the proposed CLA facility.

“She appears to be using her current position as a special master to grease the skids for her next contract,” Macallair said.

Campbell refused to comment on her role as a consultant for the CLA evaluation, other than to say that it served a different age cohort. Macallair responded

DJJ still needs work: experts

that the average age of offenders serving sentences in the juvenile system is 19.

The view that the DJJ should be phased out is far from universal in the juvenile justice community, especially in light of post-*Farrell* reforms and Gov. Brown's recent proposal, slated for the November ballot, which would do away with prosecutor power to direct file juvenile cases in adult court. If the initiative succeeds, it is expected to increase the population of offenders housed in DJJ, "and that would be a good thing," said juvenile justice probation consultant David Muhammad, national justice partner of Impact Justice. "They would be better served in the juvenile system than in the adult system — a thousand times better."

Both Muhammad and Krisberg said they once supported a DJJ

phaseout, but no longer. Bien is also reluctant to turn the reins over to the counties, given the lack of any oversight body and the fact that lawsuits are, at present, the only available means of ensuring compliance with state and federal laws.

"We have multiple agencies in each county," Bien said, "and you can sue a county, but who's going to sue 50 counties? We've given money to counties, but not a lot of requirements, so there's little uniformity." Bien said there may be terrible DJJ facilities. "But you have to take into account the whole system. You can't just fix one part of it."

"I'm confident that DJJ has, in many areas, state-of-the-art programming and well-trained staff," said Sara Norman of Prison Law Office, who said that the decade plus of scrutiny after *Farrell* as

well as the leadership of CDCR's Michael Minor has contributed to a remarkable, yet incomplete, turnaround.

"I don't deny that smaller and closer is better," Norman said, of county lockups, "but if they put youth in solitary, that is not necessarily better. There is a certain degree of trade-off." Minor, director of the CDCR's division of juvenile justice, declined to comment for this story.

Sue Burrell, policy and training director for the Pacific Juvenile Defenders Center, who helped craft Brown's initiative to reform direct filing, called the state-versus-county debate a complicated question. While she favors smaller programs, closer to communities, she said now is not the time to close DJJ.

"At the same time we're moving toward realignment of resources

to counties, we also have thousands of young people in the adult system, and we need a place for them to land. DJJ is the best place at this moment in time." Burrell agreed that California is in serious need of a strategic approach from a juvenile corrections oversight body, and agreed that the closest existing entity, BSCC's Juvenile Justice Standing Committee — of which she is a member — is ineffectual, hamstrung by weak regulations and underfunding. "We have no budget and no authority. The system is not set up for anyone to provide leadership on juvenile justice issues."

While *Farrell* has helped DJJ eliminate the most egregious abuses, Burrell said, there is still far more work to be done. "If we've gotten rid of the worst, now we should ask: is this the best we can do?"