IMPROVING THE EDUCATION OF CALIFORNIA'S JUVENILE OFFENDERS: AN ALTERNATIVE TO CONSENT DECREES

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Access to public education is undeniably important, particularly in the context of the juvenile justice system. It is especially difficult for juvenile wards to receive an adequate education in California, which currently has one of the worst juvenile justice systems in the nation. This Comment examines the current legal responses to California's state and local juvenile correctional facilities' frequent violations of the statutory minimum educational standards.

Taxpayer lawsuits that have been filed against California juvenile facilities have resulted in settlements through the use of consent decrees. This Comment argues that consent decrees are an improper solution to the lack of education in juvenile facilities. Consent decrees have numerous problems, including their lack of precedential value and their potential to produce unjust results. Furthermore, consent decrees have left the state of education in California juvenile facilities in a virtually unchanged position. This Comment analyzes several potential alternatives to the use of consent decrees and proposes a solution that involves legislative reform coupled with the use of court-based adjudication as a reactive measure.

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INTRODUCTION

California used to serve as the national model for juvenile justice because of its focus on rehabilitation and education instead of punishment.[1] In the past couple of decades, however, California's juvenile justice system retreated from its successful model and instead has become a failing, highly criticized institution.[2] Particularly problematic is the lack of educational services provided to youth offenders. Although the California Constitution includes an educational guarantee,[3] and several California Supreme Court decisions and California appellate court decisions have ruled that education is a fundamental right,[4] California's juvenile prison facilities do not even meet some of the minimal educational standards required by law. For example, the California Education Code mandates a minimum of 240 minutes of schooling per day,[5] but juvenile court schools frequently provide well below this amount. In some cases, especially in restricted programs, juvenile wards receive only one hour of education per week.[6]

Taxpayer lawsuits have been filed against the directors of county and state juvenile correctional agencies in response to California's broken juvenile justice system. These lawsuits have resulted in settlements in the form of consent decrees. A consent decree is a settlement agreement that results in the

1. LITTLE HOOVER COMM'N, JUVENILE JUSTICE REFORM: REALIGNING RESPONSIBILITIES 2 (2008), http://www.lhc.ca.gov/studies/192/report192.pdf; *see also* CHRISTOPHER MURRAY ET AL., CAL. DEP'T OF CORR. & REHAB., SAFETY AND WELFARE PLAN: IMPLEMENTING REFORM IN CALIFORNIA 3 (2006), http://www.prisonlaw.com/pdfs/DJJSafetyPlan.pdf.

2. *See* Editorial, *Troubled Teenagers Need a Second Chance: System Now Creates Career Criminals*, SAN JOSE MERCURY NEWS, Oct. 22, 2004, at 8C [hereinafter *Troubled Teenagers*] ("If the purpose of the California Youth Authority were to take teenage troublemakers and turn them into career criminals, it would be a national model."); MURRAY ET AL., *supra* note 1, at 1 (finding that California's current system is "broken almost everywhere you look").

3. CAL. CONST. art IX, § 1.

4. *See, e.g.*, Butt v. State, 842 P.2d 1240, 1247 (Cal. 1992).

5. *See* CAL. EDUC. CODE § 46141 (West 2006) (mandating that any high school not specifically exempted must have a minimum of 240 minutes of schooling per day); CAL. EDUC. CODE § 48645.3 (West 2006) (mandating that juvenile court schools have the same 240 minute minimum school day requirement).

6. *See* THOMAS O'ROURKE & ROBERT GORDON, EDUCATION PROGRAM REVIEW OF CALIFORNIA YOUTH AUTHORITY 36 (2003), http://www.prisonlaw.com/pdfs/CYA3.pdf.

entry of an order by the court.[7] The primary benefits of consent decrees are that they are generally less expensive than litigation, and that they tend to be less time consuming.[8] However, consent decrees also have several disadvantages that outweigh these efficiency benefits. Consent decrees may not lead to a just result, and they lack precedential value because they are binding only on the two parties to the decree.[9] There are also frequent problems with implementation, enforcement, and compliance.[10] The disadvantages of consent decrees are even more pronounced in class action suits, such as prison reform litigation, when fundamental interests such as education are at stake. The *Farrell v. Harper*[11] consent decree, for example, which was entered into by the California Youth Authority (CYA) and Margaret Farrell, on behalf of juveniles in state correctional facilities, illustrates many of these problems. Although the consent decree calls for many structural changes, little progress has been made.[12]

This Comment contends that the current use of consent decrees is an inadequate response to the educational deficiencies in California's juvenile correctional facilities. Instead, legislative reform should be the first course of action to ensure that juvenile offenders receive adequate educational opportunities. The new legislation should involve clearly stated educational standards and should address the problems that exist in both county and state juvenile facilities. Courts would then be able to issue judgments as a reactive measure if violations do occur.

Section I provides an overview of the California juvenile justice system from the creation of the CYA in 1941 to the present. This section also describes existing legislative provisions and court cases that highlight the importance of educational opportunities in juvenile correctional facilities. Additionally, this section discusses the current minimum educational standards in California, and details the educational problems in the state and county juvenile facilities that contributed to the filing of several taxpayer lawsuits over the past few years. Section II analyzes the use of consent decrees as a mechanism for resolving disputes, with a particular focus on the *Farrell v. Harper* consent decree and its

7. Eric A. Rosand, *Consent Decrees in Welfare Litigation: The Obstacles to Compliance*, 28 COLUM. J.L. & SOC. PROBS. 83, 96 (1994).

8. Susan B. Dorfman, *Mandatory Consent: Binding Unrepresented Third Parties Through Consent Decrees*, 78 MARQ. L. REV. 153, 165 (1994).

9. *See* Robert V. Percival, *The Bounds of Consent: Consent Decrees, Settlements and Federal Environmental Policy Making*, 1987 U. CHI. LEGAL F. 327, 333; Rosand, *supra* note 7, at 104.

10. *See infra* Part II.A.

11. Consent Decree, Farrell v. Harper, No. RG03079344 (Cal. Nov. 19, 2004), 2003 WL 24034136. The suit was renamed *Farrell v. Allen* in 2004, when a new director replaced Harper, then *Farrell v. Hickman* when Allen was replaced. For consistency, this Comment will refer to the suit as *Farrell v. Harper*.

12. *See infra* Part II.D.

effectiveness. Section III then examines possible alternative solutions to addressing the lack of educational opportunities in juvenile correctional facilities, and proposes a standard to improve education that involves the introduction of new legislation and the use of the courts' power to issue binding judgments.

I. BACKGROUND

A. History of the California Juvenile Justice System

In 1941, the California legislature passed the Youth Authority Act,[13] which created the CYA. The Act abandoned the prior juvenile justice system's retributive and punitive approach[14] in favor of an innovative model based on rehabilitation.[15] Under the new model, the CYA brought in social workers, teachers, doctors, and sociologists to create individualized treatment plans for its youths.[16] California's novel system allowed the state to enjoy success both nationally and internationally as the leader in the treatment of juvenile offenders up through the early 1970s.[17]

In the mid-1970s, the California juvenile justice system started to undergo changes that would eventually lead to its decline. The CYA began experiencing a high turnover rate of its leaders, and its new directors often had backgrounds in law enforcement or bureaucracy, which shifted the CYA's focus away from rehabilitation.[18] In the 1980s and 1990s, the CYA was subject to budget cuts and drifted farther away from its rehabilitative roots as the nation experienced an ideological shift back to favoring a more punitive juvenile justice system.[19] The decline is quite evident: in the last

13. CAL. WELF. & INST. CODE §§ 1700–1703 (West 1998 & Supp. 2009).

14. California's previous system was "disjointed, underfunded and prone to brutality. . . . There were no guidelines for length of stay, educational services, or the quality of correctional treatment and training." ENCYCLOPEDIA OF JUVENILE JUSTICE 41 (Marilyn D. McShane & Frank P. Williams III eds., 2003).

15. *See id.*; LITTLE HOOVER COMM'N, *supra* note 1, at 2; *see also* CAL. WELF. & INST. CODE § 1700 (stating that "community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses").

16. ENCYCLOPEDIA OF JUVENILE JUSTICE, *supra* note 14, at 41.

17. *Id.* at 42; *see also* Anna L. Benvenue, Comment, *Turning Troubled Teens Into Career Criminals: Can California Reform the System to Rehabilitate Its Youth Offenders?*, 38 GOLDEN GATE U. L. REV. 33, 33 (2007); LITTLE HOOVER COMM'N, *supra* note 1, at 2.

18. LITTLE HOOVER COMM'N, *supra* note 1, at 2.

19. ENCYCLOPEDIA OF JUVENILE JUSTICE, *supra* note 14, at 42; Tara Kole, *Recent Developments*, 38 HARV. J. ON LEGIS. 231, 234 (2001).

several years, the CYA and various county juvenile correctional facilities[20] have been successfully sued for their inhumane conditions of incarceration. Because the cases settled through consent decrees, however, the conditions in juvenile facilities, including the lack of education, remain largely unchanged.[21]

The CYA was renamed the Division of Juvenile Justice (DJJ) in 2005.[22] The DJJ currently holds approximately 2,600 youths in its facilities—a significant reduction from its population of 10,112 in 1996[23]—and California has a budget that is significantly higher than that of any other state, with projected costs of $252,000 per ward for 2008–09.[24] However, California's recidivism rate for juveniles is also one of the highest in the nation, with rates ranging from 74 to 91 percent.[25] Moreover, the average length of incarceration for a juvenile offender in California is 25.9 to 36 months, which is a substantially longer term than in other states.[26]

B. Legislation and Legal Precedent Detailing the Importance of Education in Juvenile Facilities

The provision of education has been essential to California ever since the adoption of the original California Constitution in 1849.[27] Article IX, Section 1 states that "[a] general diffusion of knowledge and intelligence being

20. California's juvenile justice system is decentralized. The most serious offenders are held in state facilities, and less serious offenders are held in local facilities. Jesse Jannetta & Jeffrey Lin, Univ. of Cal. Irvine Ctr. for Evidence-Based Corr., *The Role of the DJJ in the California Juvenile Justice System* 2 (Univ. of Cal., Irvine, Ctr. for Evidence-Based Corr. Working Paper, 2007), *available at* http://ucicorrections.seweb.uci.edu/pubs#papers (follow "The Role of the DJJ in the California Juvenile Justice System" hyperlink).

21. *See, e.g.*, Sumayyah Waheed, *Closure Tomorrow of Two Notorious California Juvenile Prison Facilities Is Beginning of Needed Reform*, CAL. PROGRESS REP., July 30, 2008, http://www.californiaprogressreport.com/2008/07/closure_tomorro.html.

22. LEAGUE OF WOMEN VOTERS OF CAL., CHANGES COMING TO CALIFORNIA'S DIVISION OF JUVENILE JUSTICE (2007), http://ca.lwv.org/lwvc/edfund/citizened/socpolicy/jj/changescoming.html.

23. Jannetta & Lin, *supra* note 20, at 2.

24. LITTLE HOOVER COMM'N, *supra* note 1, at 6.

25. Benvenue, *supra* note 17, at 41. In comparison, Texas has a recidivism rate of 47 percent. *Id.* at 55. Missouri has a recidivism rate of less than 10 percent. *In Praise of the Missouri Model*, JUVIENATION, Jan. 3, 2008, http://juvienation.wordpress.com/2008/01/03/in-praise-of-the-missouri-model. Massachusetts has a recidivism rate of 23 percent. Jennifer M. O'Connor & Lucinda K. Treat, *Getting Smart About Getting Tough: Juvenile Justice and the Possibility of Progressive Reform*, 33 AM. CRIM. L. REV. 1299, 1324 (1996).

26. *Rehabilitating the California Youth Authority: Informational Hearing of the S. Select Comm. on the California Correctional System* 7 (2004) [hereinafter *Rehabilitating the California Youth Authority*] (statement of Gregory Jolivette, Director, Legislative Analyst's Office, Criminal Justice Section); MURRAY ET AL., *supra* note 1, at 2. As a comparison, the average length of stay of the nineteen states, including California, that participated in a national survey by the Council of Juvenile Correctional Administrators, was 9.4 months. MURRAY ET AL., *supra* note 1, at 2.

27. Cal. Teachers Ass'n v. Hayes, 7 Cal. Rptr. 2d 699, 704 (Ct. App. 1992).

essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement."[28] Furthermore, Article IX, Section 5 guarantees a free system of common schools that is maintained at least six months per year.[29]

California courts have reinforced the significance of education in the state. The California Supreme Court in *Serrano v. Priest*[30] held that education is a "fundamental interest"[31] and thus is one of the rights that "lie[s] at the core of our free and representative form of government."[32] In *Butt v. State*,[33] the California Supreme Court noted that since the adoption of the California Constitution, California "has assumed specific responsibility for a statewide public education system open on equal terms to all."[34] Furthermore, the court declared that California is obligated to ensure educational equity, and reiterated that education is a unique fundamental right.[35] The court explained that the significant amount of educational regulation demonstrates the state's role in ensuring a "fair, high quality public education for all California students."[36] California appellate courts have similarly emphasized the importance of education in California's history.[37]

Several statutes make it explicit that the educational guarantee of the California Constitution extends to juvenile offenders, who exist outside of the traditional public school system. The general California Education Code provisions indicate that the legislative intent is to allow "all persons in public schools" to have educational equality;[38] further, the legislative intent of Section 1120 of the California Welfare and Institutions Code "insure[s] an appropriate educational program for wards committed to the Department of the Youth Authority."[39] This educational program includes a standard curriculum

28. CAL. CONST. art IX, § 1.

29. *Id.* § 5; *see also* Hartzell v. Connell, 679 P.2d 35, 39 (Cal. 1984) (discussing support for free education at the California Constitutional Convention).

30. 557 P.2d 929 (Cal. 1976).

31. *Id.* at 951.

32. *Id.* at 952.

33. 842 P.2d 1240 (Cal. 1992).

34. *Id.* at 1247.

35. *See id.* at 1249.

36. *Id.* at 1254.

37. *See generally* Cal. Teachers Ass'n v. Hayes, 7 Cal. Rptr. 2d 699 (Ct. App. 1992); Tinsley v. Palo Alto Unified Sch. Dist., 54 Cal. Rptr. 591 (Ct. App. 1979).

38. CAL. EDUC. CODE § 200 (West 2002 & Supp. 2009); *see also* CAL. EDUC. CODE § 51004 (West 2006) (noting that the state policy is to provide education so that all students will have marketable skills and will have the opportunity to become employed).

39. CAL. WELF. & INST. CODE § 1120(a) (West 2008).

combined with vocational and life skills training.[40] The statute also requires the Department of the Youth Authority to conduct individualized assessments of wards in order to create appropriate educational programs.[41]

Section 48645 of the California Education Code provides for the operation and administration of public schools in juvenile correctional facilities,[42] and expressly provides that juvenile offenders should receive a "quality education."[43] The maintenance of a public school system in juvenile correctional facilities and the "all persons in public schools" language of Section 200 of the California Education Code[44] indicate that the California legislature intended to provide for educational equity for all youth, including juvenile offenders. Furthermore, the California Welfare and Institutions Code recognizes the significance of educational opportunities for youth offenders, as evidenced by its inclusion of a section providing for the establishment of pilot regional youth educational facilities. This provision requires that the pilot programs consist of a "short-term intensive educational experience" with "competency-based education services" as well as computer education, physical education, and vocational training.[45]

The enactment of a more recent bill, the 2007 Youth Bill of Rights,[46] demonstrates that the provision of educational services for juvenile offenders is still of critical concern for the legislature. The bill, as originally introduced to the California State Senate, contained substantially the same rights as the bill as passed. However, the educational right was less developed in the original bill—youth in juvenile facilities would merely have the right to "attend school classes."[47] The final version of the bill includes more comprehensive educational guarantees. It provides a right to not be deprived of education, as well as other necessities, as a disciplinary measure.[48] The final version of the bill also affords children the right "[t]o receive a quality education that complies with state law, to attend age-appropriate school classes and vocational training, and to continue to receive educational services while on disciplinary or medical

40. *Id.* § 1120(c).
41. *Id.* § 1120(b).
42. CAL. EDUC. CODE § 48645 (West 2006). Juvenile correctional facilities include "juvenile halls, juvenile homes, day centers, juvenile ranches, juvenile camps, regional youth educational facilities, or Orange County youth correctional centers." *Id.* Section 889 of the California Welfare and Institutions Code has a nearly identical provision for the maintenance of public schools in juvenile correctional facilities. *See* CAL. WELF. & INST. CODE § 889 (West 2008).
43. CAL. EDUC. CODE § 48645.
44. CAL. EDUC. CODE § 200 (West 2002 & Supp. 2009).
45. CAL. WELF. & INST. CODE § 894 (West 2008).
46. S.B. 518, 2007 Leg., Reg. Sess. (Cal. 2007).
47. S.B. 518, 2007 Leg., § 224.71(n) (Cal. Mar. 29, 2007, 1st Amended).
48. S.B. 518, 2007 Leg., § 224.71(m) (Cal. June 21, 2007, 4th Amended).

status."[49] The inclusion of more detailed rights in the final version of the bill indicates that education in juvenile facilities is an essential right. Though the phrase "quality education" is not defined and remains rather vague, it is clear that a "quality education" involves more than just attending school classes.

The minimum educational requirements in juvenile correctional facilities mirror the requirements in the general California public education system. The minimum school day for juvenile court schools, as prescribed by the California Education Code, is required to be 240 minutes,[50] and juvenile facilities are recommended to have a 220-day school year.[51] The course of study in juvenile facilities must conform to the standards of the state Education Code,[52] and must include at a minimum classes in English/language arts, social sciences, physical education, science, health, mathematics, fine arts, and foreign languages.[53] Moreover, educational programs must follow the model curriculum standards of the Superintendent of Public Instruction[54] and comply with the California Education Code and California Code of Regulations, which require juvenile facilities to develop individualized high school graduation plans or provide General Education Development (GED) preparation plans.[55] Juvenile offenders with special education needs must also be enrolled in an Individualized Education Program (IEP), and wards that are in restricted security or lockdown facilities must be given educational instruction.[56]

Besides the numerous statutes and cases that address education in juvenile correctional facilities, there are other compelling reasons why the provision of a high-quality education is necessary for juvenile offenders. One reason is that juvenile offenders in California frequently spend two to three years in juvenile facilities,[57] an inordinately long time compared to other states. In addition, many juvenile offenders do not come from strong educational backgrounds,

49. *Id.* § 224.71(n).

50. CAL. EDUC. CODE § 48645.3 (West 2006); *cf.* CAL. EDUC. CODE § 46141 (West 2008) (providing that the minimum school day in any high school in the state shall be 240 minutes if not specifically exempted by statute).

51. EDUC. SERV. BRANCH, CAL. EDUC. AUTH., EDUCATION SERVICES REMEDIAL PLAN (2005), *available at* http://www.prisonlaw.com/pdfs/DJJEdPlan.pdf. California's regular school year is 180 days. CAL. EDUC. CODE § 46200 (West 2006).

52. CAL. EDUC. CODE § 51220 (West 2006).

53. CAL. WELF. & INST. CODE § 1120.2(b) (West 2008) (for state juvenile facilities); CAL. CODE REGS. tit. 15, § 1370(b) (West Supp. 2009) (for local juvenile facilities).

54. CAL. WELF. & INST. CODE § 1120.2(b).

55. *Id.* § 1120.1(b)–(c); CAL. CODE REGS. tit. 15, § 1370(b)(2).

56. CAL. CODE REGS. tit. 15, § 1370(d); CAL. WELF. & INST. CODE § 1120.2(c)(2).

57. *See Rehabilitating the California Youth Authority*, *supra* note 26, at 7; MURRAY ET AL., *supra* note 1, at 2.

and many read below the fourth grade level.[58] Studies indicate that good educational programs allow incarcerated youth to make "significant gains in education."[59] Juvenile offenders' reading levels "can improve dramatically [with effective instruction]."[60] In addition to pure educational gains, the provision of better instruction enables juvenile offenders to experience psychological benefits, such as "a newly found self-esteem and improved self-image."[61] Moreover, higher levels of education correlate with lower recidivism rates and an increased likelihood of continued schooling or employment after juvenile wards are released.[62] Thus, the provision of high-quality instruction in juvenile correctional facilities will allow juvenile offenders to improve their skills and increase their opportunities in the long run, and therefore benefit both them and society as a whole.[63]

C. The Lack of Education in Juvenile Correctional Facilities

Although a quality education in juvenile facilities is clearly a high priority for the state of California, the reality is that juvenile facilities across the state have not provided even the most basic education to their wards. Over the past few years, this has led to the filing of taxpayer lawsuits against the CYA and county juvenile correctional facilities.

In 2003, Dr. Thomas O'Rourke and Dr. Robert Gordon conducted an independent educational review of CYA facilities.[64] The review consisted of thirteen areas of inquiry about the adequacy of education at the eight CYA facilities. Surprisingly, the study found that the CYA did in fact provide sufficient educational programs to its wards.[65] However, the adequacy of plans for education does not necessarily mean that these educational programs were

58. Cynthia M. Conward, Essay: *Where Have All the Children Gone?: A Look at Incarcerated Youth in America*, 27 WM. MITCHELL L. REV. 2435, 2447 (2001).

59. Katherine Twomey, Note, *The Right to Education in Juvenile Detention Under State Constitutions*, 94 VA. L. REV. 765, 772 (2008); *see also* Kathleen Kelly, *The Education Crisis for Children in the California Juvenile Court System*, 27 HASTINGS CONST. L.Q. 757, 760 (2000) (noting that "when given the opportunity, [juvenile offenders] are remarkably responsive").

60. Jane Hodges, Nancy Giuliotti, & F.M. Porpotage II, *Improving Literacy Skills of Juvenile Detainees*, *in* JUVENILE JUSTICE BULLETIN 1 (1994), *available at* http://www.ncjrs.gov/pdffiles/lit.pdf. "Fewer than 71 hours of instruction can result in an average gain in reading comprehension of 7 to 12 months." John J. Wilson, *From the Administrator*, *in* JUVENILE JUSTICE BULLETIN *supra* at 1.

61. Hodges, Giuiotti, & Porpotage, *supra* note 60, at 2.

62. Twomey, *supra* note 59, at 773; *see also* EDUC. SERV. BRANCH, *supra* note 51, at 3 ("CYA parole statistics since 1985 have shown that parolees are 3–5 times more likely to succeed on parole if they have earned a high school diploma or GED prior to being paroled.").

63. *See* Twomey, *supra* note 59, at 773–74.

64. *See generally* O'ROURKE & GORDON, *supra* note 6.

65. *Id.* at 3.

implemented. In fact, a major problem is that juvenile wards in many cases were not given access to these educational opportunities. Instead, they were pulled from classes to attend other programs,[66] and received well below the mandated education level per day.[67] This indicates that the existence of a sufficient amount of educational programs does not automatically lead to an adequate or quality education. Moreover, during initial interviews at the CYA juvenile facilities, the CYA had extensive policy handbooks that guided the daily operation of the educational program. These documents were missing, incomplete, or outdated during individual site inspections.[68] Additionally, the juvenile facilities did not comply with CYA educational programming or policies. For example, 55 percent of the teachers at the facilities did not use lesson plans and did not have standards or course syllabi. Three facilities did not have committees for curriculum development.[69] In addition, 25 percent of high school graduation plans at all of the CYA facilities were not implemented, and the facilities kept inaccurate records of their wards. For example, 25 percent of class schedules at one juvenile facility did not reflect actual enrollment numbers.[70] The sites did not have uniform processes for identifying wards with special education needs, and they did not have appropriate IEPs for special education wards.[71]

Another finding was that the CYA did not have an adequate number of teachers, which is a violation of the California Education Code. Furthermore, there were not enough general education credentialed teachers to teach courses in all of the areas required by the Education Code.[72] The limited number of teachers meant that the CYA policy of 15:1 regular education and 12:1 special education student-to-teacher ratios could not be met. The CYA was also unable to recruit credentialed teachers, which caused extended teacher vacancies. Credentialed teachers may not want to work at juvenile facilities because CYA provides less compensation than do other public schools,[73] and the school year lasts forty days longer than the typical school year.[74] Budgetary problems also contributed to the inadequacy of educational opportunities. If the population of a juvenile facility decreased by fifteen wards, teacher positions

66. *Id.* at 8.
67. *Id.* at 19–22.
68. *Id.* at 49.
69. *Id.* at 18.
70. *Id.* at 16.
71. *See generally id.* at 28–35, 46–48.
72. *Id.* at 5. See CAL. EDUC. CODE § 51220 (West 2006) for the required course of study.
73. O'ROURKE & GORDON, *supra* note 6, at 5.
74. *See supra* note 51 and accompanying text.

were eliminated immediately.[75] This disproportionately affected English, mathematics, and special education classes because the CYA had strict staffing ratios for general and special education teachers.[76]

Site-specific findings highlight the depth of this problem. At Johanna Boss High School, two vacancies and a lack of substitute teachers resulted in class closures.[77] N.A. Chaderjian High School not only had an insufficient number of general education teachers and substitute teachers, but also did not even have a credentialed language arts teacher. Even more concerning was Lyle Egan High School, where six teachers taught outside of their credentialed areas. Also, a credentialed mathematics teacher was not assigned any teaching responsibilities.[78] Jack B. Clarke High School/Southern Youth Correctional Reception Center and Clinic did not have any credentialed mathematics or science teachers, and the physical education teacher was not certified.[79] Since wards had limited opportunities to learn about several core subject areas, the education that they received was necessarily inadequate.

Another troubling issue is that the attendance rate in CYA facilities was grossly inadequate. Over a six month period, an average of 20 to 30 percent of juvenile wards were absent from school each day. Wards were pulled from classes to participate in other activities,[80] such as counseling or activities in their living units, which meant that they were not allowed to receive the state-mandated 240 minutes of daily education. O'Rourke and Gordon declared that "[i]t is evident that education is not the primary focus during the school day."[81] At Johanna Boss High School, wards were routinely returned to their living units when the amount of wards attending class was greater than eighteen.[82] This also occurred at N.A. Chaderjian High School, where both wards and teachers stated that school attendance appeared to be optional. Moreover, wards frequently failed to make up missed classes, and officials did not write up reports for wards that refused to attend school.[83] Although juvenile wards were scheduled for 240 minutes of instruction, the most they could receive was 210 minutes because of ward movement, and many wards

75. O'ROURKE & GORDON, *supra* note 6, at 5.
76. *See id.*
77. *Id.*
78. *Id.* at 6.
79. *Id.* at 7.
80. *Id.* at 8–10. However, the source notes that this problem has been improving. *See id.*
81. *Id.* at 8.
82. *Id.* The CYA policies required materials to be made available for three hours of independent study, and for one hour of instruction for wards who were returned to their dorms due to overcrowding. However, Johanna Boss did not comply with this requirement, and the assigned materials did not relate to the classes that were missed. *Id.* at 19.
83. *Id.* at 8–9.

received only 120 minutes of instruction daily.[84] At Fred C. Nelles High School, wards were required to miss several hours of school if their first period teacher was absent, even if their subsequent period teachers were then present.[85] Lyle Egan High School also appeared to disregard the importance of education: dorm staff let wards "sleep in"; staff did not write reports for wards that refused to go to school; and wards were removed from class for trivial reasons.[86] The wards there generally received 120 minutes or less of education per day.[87]

A related problem is the frequency of class cancellations. Approximately 25 to 28 percent of classes were canceled each day at the CYA facilities for reasons that did not relate to school.[88] In addition, classes were not held for long periods of time when teachers were absent, on vacation, or on leave. In one instance, a class was canceled for one month for a teacher's vacation, and there were no makeup classes.[89] The CYA facilities also did not provide a sufficient number of classes, mainly because of overcrowding and the inadequate number of credentialed teachers. At Fred C. Nelles High School, excess wards were sent to the library for "educational activities."[90] N.A. Chaderjian High School's class schedules provided for the fifth period class to be held in living units, but this did not happen.[91] The study found that Lyle Egan High School decreased the amount of regular education classes to provide the minimum special education hours.[92]

The most egregious issue is the complete lack of education provided to wards in restricted settings or in lockdown units. At Lyle Egan High School, wards in restricted programs received only one hour of education per week. Wards in some cases were required to take elective classes that did not relate to their high school graduation plan. Additionally, restricted wards

84. *Id.* at 20–21. Instead of full educational activities, teachers "spend up to 90 minutes per day standing at their classroom doors observing wards as they transition across campus." *Id.* at 21.

85. *Id.* at 9.

86. One ward was pulled from class to get a haircut. *See id.* at 9–10. At O.H. Close Youth Correctional Facility, which contains the Johanna Boss High School, students were required to act as janitors instead of attending school. Amended Complaint for Injunctive & Declaratory Relief at 22, Farrell v. Harper, No. RG03079344 (Cal. Super. Ct. Sept. 23, 2003) [hereinafter *Farrell v. Harper* Amended Complaint].

87. O'ROURKE & GORDON, *supra* note 6, at 21.

88. *See id.* at 13–14. Teacher absences, lack of available substitute teachers, maintenance issues, and security concerns were the predominant reason for class cancellations. *See id.* Ventura Youth Correctional Facility, which contains Mary B. Perry High School, had an average of 644 class cancellations per month. *See Farrell v. Harper* Amended Complaint, *supra* note 86, at 22.

89. O'ROURKE & GORDON, *supra* note 6, at 14.

90. *Id.* at 11–12.

91. *Id.* at 11.

92. *Id.* at 12.

sometimes did not receive any education.[93] At Johanna Boss High School, restricted wards often requested "extra" school work, but were routinely denied.[94] Wards in lockdown units at N.A. Chaderjian High School had very little interaction with teachers.[95]

The lack of quality education programs is also a widespread problem in local juvenile facilities across California. Juvenile halls in Los Angeles County, for example, have some of the same problems as the state correctional facilities. An investigation revealed that these juvenile halls had inadequate mechanisms for identifying youth that required special education.[96] These facilities also lacked sufficient teachers and had overcrowding problems. Excess students were sent to overflow classrooms, where little instruction occurred. When overflow classrooms were too crowded, students were sent back to their living units and did not receive any education. Additionally, students were moved to other classes without regard to their education levels, in order to balance classroom numbers.[97] Teachers also did not review homework assignments.[98] In 2003–04, only 26 percent of students in county juvenile halls passed the English portion of the California High School Exit Examination, and 35 percent passed the math portion.[99]

II. CONSENT DECREES AS A REMEDY TO THE INADEQUACY OF EDUCATION IN JUVENILE FACILITIES

In addition to several other systemic problems, the lack of adequate educational opportunities in juvenile correctional facilities led to the filing of

93. *See id.* at 36–40. One ward was in a restricted setting for six months and did not receive any schoolwork. *See id.* at 39–40; *see also* SUE BURRELL, YOUTH LAW CTR., GETTING OUT OF THE RED ZONE 7 (2003), http://www.ylc.org/pdfs/GettingOutoftheRedZone.pdf.

94. O'ROURKE & GORDON, *supra* note 6, at 37.

95. *Id.* at 39. Teachers gave restricted wards assignments, then returned to collect the assignment, which violates the CYA policy of one hour of instruction and three hours of independent study materials. *Id.*

96. Memorandum From Ralph F. Boyd, Jr., Assistant Attorney Gen., to Yvonne B. Burke, Chair, L.A. County Bd. of Supervisors 31 (Apr. 9, 2003), *available at* http://www.usdoj.gov/crt/split/documents/la_county_juvenile_findlet.pdf.

97. *Id.* at 35.

98. *Id.* at 36 ("[W]ork . . . had inappropriate language . . . evidencing the lack of instructor review . . . . Assignments several weeks old had no correction or other teacher's markings, and many youth complained that they did work on which they never received feedback.").

99. JACQUELYN MCCROSKEY, L.A. COUNTY CHILDREN'S PLANNING COUNCIL, YOUTH IN THE LOS ANGELES COUNTY JUVENILE JUSTICE SYSTEM: CURRENT CONDITIONS AND POSSIBLE DIRECTIONS FOR CHANGE 23 (2006), *available at* http://www.lapublichealth.org/childpc/resourcefiles/JuvJustice_yfa_Final4.20.6prot.pdf. In comparison, 70 percent of all students in the county passed the English and Math portions of the examination. *Id.*

lawsuits against California state and local facilities. In 2003, the Prison Law Office[100] filed a taxpayer action against Jerry Harper, then director of the CYA. The complaint detailed many of the disturbing findings from O'Rourke and Gordon's study, and charged the CYA with the "illegal denial of access to education."[101] Several other suits have been filed since *Farrell v. Harper*.[102] All of the suits have been settled through consent decrees, rather than court-based judgments.

A. An Analysis of Consent Decrees

A consent decree is a settlement that a court enters as an order after the mutual consent of the parties.[103] It usually requires the defendant to complete certain actions by a specified deadline, and appoints a party to monitor compliance over the established time period.[104] If a violation of the consent decree occurs, the parties may return to court or may independently try to resolve the problem.[105] The court can also hold the defendant in contempt, issue an injunction ordering compliance, or fine the defendant.[106]

It is unsettled whether consent decrees are contracts or judgments,[107] but the predominant view is that they are either hybrid or more contractual in nature.[108] *Black's Law Dictionary* states that a consent decree "is not properly a judicial sentence, but is in the nature of a solemn contract or agreement of the parties."[109] Either way, however, they are clearly not final judgments, as they may be modified or terminated at the will of either party.[110] Thus, they do not have value as binding precedents on parties outside the scope of the consent decree.

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100. The Disability Rights Advocates, Latham & Watkins LLP, and Jones Day LLP also represented the plaintiffs in this action. *See Farrell v. Harper* Amended Complaint, *supra* note 86, at 1.

101. *Id.* at 36.

102. *See* discussion *infra* Part II.C.

103. Rosand, *supra* note 7, at 96.

104. *See id.* The monitor can either be "the plaintiffs, the court, a magistrate, a special master, or a special committee appointed by the court." *Id.*

105. *See id* at 97–99.

106. *See id.*; *see also* Dorfman, *supra* note 8, at 169 (stating that courts have the authority to penalize parties that do not comply with a consent decree, including the imposition of contempt sanctions).

107. Dorfman, *supra* note 8, at 154.

108. Bernard T. Shen, Comment, *From Jail Cell to Cellular Communication: Should the* Rufo *Standard Be Applied to Antitrust and Commercial Consent Decrees?*, 90 NW. U. L. REV. 1781, 1788 (1996).

109. Rosand, *supra* note 7, at 83 n.4 (quoting BLACK'S LAW DICTIONARY 411 (6th ed. 1990)).

110. *See* Shen, *supra* note 108, at 1787; *see also* Deborah Decker, Comment, *Consent Decrees and the Prison Litigation Reform Act of 1995: Usurping Judicial Power or Quelling Judicial Micro-Management?*, 1997 WIS. L. REV. 1275, 1282 (stating that parties to a consent decree under the PLRA may ask the court to terminate the decree after a certain time period).

Consent decrees generally involve a less time-consuming, less expensive, and less complicated process than litigation, because the plaintiff can receive relief without waiting for a court decision.[111] Additionally, consent decrees protect against the uncertainty of trials. Parties can avoid the risk that the court may rule in favor of the other party.[112] Consent decrees are also beneficial because "the parties can formulate, through their own creative endeavors[,] a more . . . finely-tuned decree than could a judge," given the parties' vast experience and "intimate knowledge" of the matter.[113] Another advantage of consent decrees is that they enable the parties to create specific obligations with mutually agreed upon deadlines, which are then monitored by the plaintiff or another court-appointed party to assess compliance.[114]

Consent decrees do have some shortcomings. One unjust characteristic of consent decrees is that defendants can enter into the agreement without admitting to guilt or the illegality of their actions. Another disadvantage is that since a consent decree is a compromise, it sometimes may not result in justice.[115] A settlement "may be a necessary precondition of justice [but] it is not justice itself," because "[t]o settle for something means to accept less than some ideal."[116] This less-than-ideal settlement can be exacerbated in cases where the parties may have unequal bargaining power, because this further distorts the settlement process. This is particularly troubling in situations where there are facts that clearly indicate "pervasive . . . lawlessness or callousness" on the part of the defendant.[117] Furthermore, since a consent decree is a prospective remedy, it may become "outdated and nonresponsive to the problem it was designed to address," and may have other unintended side effects.[118]

Moreover, consent decrees are negotiated between two parties, without the precedential value that exists in the case of a court judgment.[119] This signifies

111. *See* Dorfman, *supra* note 8, at 165; Rosand, *supra* note 7, at 83–84.

112. Rosand, *supra* note 7, at 101.

113. *Id.* (citing Lloyd C. Anderson, *Implementation of Consent Decrees in Structural Reform Litigation*, 1986 U. ILL. L. REV. 725, 726–27).

114. *See id.* at 103.

115. Owen M. Fiss, Comment, *Against Settlement*, 93 YALE L.J. 1073, 1085 (1984) ("[S]ociety gets less than what appears, and for a price it does not know it is paying. Parties might settle while leaving justice undone.").

116. *Id.* at 1085–86; *see also* Shen, *supra* note 108, at 1791 ("[A] consent decree is a compromise and therefore both parties get less than they might have achieved at trial." (citing Thomas M. Mengler, *Consent Decree Paradigms: Models Without Meaning*, 29 B.C. L. REV. 291, 343–44 (1988))); Percival, *supra* note 9, at 333 ("[S]ociety is not necessarily always better off simply because the individual parties perceive themselves to be better off.").

117. Rosand, *supra* note 7, at 84. In fact, defendants who take part in consent decrees "rarely admit liability." Shen, *supra* note 108, at 1790.

118. Shen, *supra* note 108, at 1788.

119. *See* Rosand, *supra* note 7, at 104.

that consent decrees are not binding authority on other parties. One commentator has stated that "[s]ettlements deprive society of the precedential value of an adjudicated judgment," and that "[d]efendants often agree to settle to avoid an adverse judgment that can be used against them by others."[120] Thus, a consent decree may be valuable for the two parties involved in the immediate dispute, but it will not address systemic problems that require more than a temporary solution.

Also, the main time-saving advantage of consent decrees disappears in class action suits where complicated systemic reforms are involved. The negotiations in these circumstances involve substantial time, delays, expense, and complexity, and may not be effective. For example, in the case of a foster-care system dispute, the case was ongoing for over two years before a consent decree was entered, and many families were probably separated during this time.[121] In the areas of school desegregation and antitrust, some cases remain pending for twenty or thirty years.[122] Furthermore, whatever time-saving benefits that consent decrees do have, through limited factfinding in the interest of "streamlining dockets,"[123] should not be a primary concern when dealing with fundamental rights such as the education of juvenile offenders, which clearly should require much more attention and care.

Problems with implementation, enforcement, and compliance also limit the effectiveness of consent decrees, especially when plaintiffs are seeking real structural reform.[124] However, effective enforcement will always be a concern for consent decrees. The plaintiff must be prepared to monitor the defendant's actions, which is very time consuming. If extensive monitoring does not occur, the plaintiff "will have had little success in achieving [his or her] . . . goal [of] . . . systemic reform."[125] Even if the court appoints a special master or a committee, "there is no guarantee" that the special master or committee will effectively monitor enforcement, or that they will even enforce

120. Percival, *supra* note 9, at 333.

121. Elizabeth A. Sammann, Note, *The Reality of Family Preservation Under* Norman v. Johnson, 42 DEPAUL L. REV. 675, 733 (1992); *see also* James A. Kushner, *The Unintended Consequences of Consent Decrees and the Case of the Century Freeway Litigation:* Keith v. Volpe, 36 SW. U. L. REV. 301, 306 (2007) (finding that in an environmental law situation, a consent decree led to "higher costs and longer delays").

122. *See* Fiss, *supra* note 115, at 1083.

123. *Id.* at 1075.

124. For example, in the context of welfare litigation, problems occurred because the state did not properly instruct child-support enforcement agency caseworkers how to implement the provisions of the consent decree. Rosand, *supra* note 7, at 114. Negotiations in welfare litigation occur at the state level, and the new policies are implemented by the counties. *Id.*

125. *Id.* at 142.

the decree.[126] If the monitor finds a violation, "irreparable harm" may already have happened before the plaintiffs are able to bring the issue to the attention of the court.[127] Thus, while consent decrees may involve monitoring, they "cannot provide an adequate basis for that necessary continuing involvement [of the court], and thus [are] no substitute for judgment."[128] Another frequent issue is that the parties may have "different interpretations concerning what constitutes compliance with certain ambiguous provisions of the decree."[129]

Another problem is that even with sufficient monitoring mechanisms, the defendant may simply fail to comply with the decree.[130] One commentator has asserted that "the bargain is at best contractual and does not contain the kind of enforcement commitment already embodied in a decree that is the product of a trial and the judgment of a court."[131] Courts are reluctant to exercise their power to hold a party in contempt of court or to issue an injunction if the party does not comply with the consent decree, as they view consent decrees as mere bargains.[132] After a violation of a term of the decree, judges tend to "nudge along rather than coerce the process of compliance in the hopes of keeping alive the spirit of consent."[133] In one consent decree, noncompliance led the parties to "approach [the judge], who then simply directed them to negotiate a resolution."[134] With an almost nonexistent threat of judicial action, the defendant may thus not have enough of an incentive to comply with the terms of the decree.

In the context of prison litigation in particular, consent decrees are even more problematic. As with welfare litigation,[135] where implementation problems have occurred due to the fact that only high-level state officials participate in consent decree negotiations, only high-level agency officials negotiate the

126. *Id.* at 99–100 & n.83.

127. *Id.*

128. Fiss, *supra* note 115, at 1082.

129. Rosand, *supra* note 7, at 97. Often, the parties include "intentionally vague" terms to avoid conflicts. *Id.*

130. *See* Fiss, *supra* note 115, at 1082–83 ("One of the parties will invariably return to the court and again ask for its assistance, not so much because conditions have changed, but because the conditions that preceded the lawsuit have unfortunately not changed.").

131. *Id.* at 1083.

132. *Id.* at 1084 ("[C]ourts hesitate to use that power to enforce decrees that rest solely on consent . . . . Courts do not see a mere bargain between the parties as a sufficient foundation for the exercise of their coercive powers.").

133. Lloyd C. Anderson, *Implementation of Consent Decrees in Structural Reform Litigation*, U. ILL. L. REV. 725, 727 (1986).

134. Kushner, *supra* note 121, at 306 (citing Lance Wilfred Shoemaker, *The Use of Equitable Tools in Freeway Construction Litigation*, 28 TRANSP. L.J. 15, 67 (2000)).

135. *See supra* note 124 and accompanying text.

terms of consent decrees for prison litigation. Thus, communication problems may arise between the correctional-agency directors and the individuals that will ultimately implement the terms of the decree.

In addition, the Prison Litigation Reform Act (PLRA)[136] exacerbates the problem of using consent decrees in prison litigation. The Act introduces a provision that allows consent decrees to be terminated two years after their issuance.[137] This further limits the ability of consent decrees to create lasting structural reform. Also, when large groups such as prison wards are involved, it is difficult to obtain true consent because they "do not have any formal organizational structure and therefore lack any procedures for generating authoritative consent."[138] Furthermore, the fact that defendants do not have to admit to any wrongdoing in consent decrees means that correctional agencies can agree to implement changes without admitting that they violated prisoner's rights,[139] even though a court might have found that they did in fact act illegally.

Although consent decrees have some benefits, these benefits are greatly outweighed by the many disadvantages. The main time- and cost-saving advantages quickly disappear, especially in areas such as prison reform. As detailed in the following section, the prevalence of disadvantages indicates that consent decrees should not be used in cases dealing with educational opportunities for juvenile offenders.

B. The *Farrell v. Harper* Consent Decree

The *Farrell v. Harper* taxpayer suit was filed in early 2003 in state court,[140] and a consent decree was entered in November 2004.[141] The parties agreed that the information contained in the expert reviews, including O'Rourke and Gordon's Education Program Review, was "substantially correct and . . . sufficient to support the remedies set forth" in the consent decree.[142] However, in the consent decree, the parties agreed to "discharge each other from any and all liability" regarding the facts and claims in the complaint.[143]

136. 18 U.S.C. § 3626 (2006).
137. *Id.* § 3626(b).
138. Fiss, *supra* note 115, at 1079.
139. Decker, *supra* note 110, at 1276–77.
140. The lawsuit began as a federal suit in January 2002. Sue Burrell & Jonathan Laba, *Violence-Prone Youth Authority Still Fails Its Children, Its Taxpayers*, S.F. DAILY J., Apr. 26, 2006, *available at* http://www.ylc.org/articleDetail.php?id=13&type=article.
141. Consent Decree at 1, Farrell v. Harper, No. RG03079344 (Cal. Nov. 19, 2004), 2003 WL 24034136.
142. *Id.* at 2.
143. *Id.*

The decree provides for an Education Remedial Plan with a "Standards and Criteria" section, implementation schedules, and a special master to monitor compliance with the plans.[144] The standards of compliance are substantial compliance, partial compliance, and noncompliance.[145] A juvenile facility may be substantially compliant with a provision even if a serious violation occurs, as long as the facility creates and administers a remedy that results in compliance.[146] The decree provides that if a facility is substantially compliant with an issue for one full year, and is in substantial compliance when reviewed by experts one year later, expert tours will end for that issue.[147] The defendant may then move for termination of that provision, and the remedial area will be dismissed from the case.[148] According to the consent decree, the special master monitors compliance by collecting information from the experts; issuing quarterly reports assessing the defendant's compliance; creating a procedure to resolve disputes between the parties; interviewing juvenile wards and CYA employees; and advising the court of any necessary modifications to the decree.[149]

The Education Remedial Plan consists of recommendations for staffing of teachers, student access to academics, vocational education and life survival skills, attendance and class cancellations, curriculum guides and adequate supplies, special education, record keeping, and the California High School Exit Examination.[150] In terms of staffing, the Plan calls for a minimum of one teacher credentialed in each area necessary for graduation and additional teachers using a staffing ratio of 12:1 for general education, 10:1 for special education, 5:1 for restricted or lockdown programs, plus a number of relief teachers equal to 15 percent of the ward population.[151] The plan recommends specific numbers of teachers for each facility.[152] For student access to educational programs, the plan introduces a 220-day school year, with a 240-minute school day for 49 days and a 330-minute day for 161 days.[153] The plan creates a Student/Ward Accountability Tracking (SWAT) system to track student enrollment and attendance, as well as information on class cancella-

144. *Id.* at 11–12.
145. THOMAS O'ROURKE & ROBERT GORDON, CALIFORNIA DIVISION OF JUVENILE JUSTICE SUMMARY EDUCATION PROGRAM REPORT FOR SCHOOL YEAR 2006–2007 app. D, at 2–3 (2007), *available at* http://www.prisonlaw.com/pdfs/DJJ4thSMReportAppD.pdf.
146. Consent Decree, *supra* note 141, at 11.
147. *Id.*
148. *Id.* at 19.
149. *Id.* at 12–14.
150. *Id.* at 8.
151. EDUC. SERV. BRANCH, *supra* note 51, at 6.
152. *See id.* at 8–22.
153. *Id.* at 27.

tions. The facility management team is in charge of reviewing SWAT reports and ensuring student access to the minimum 240 minutes of education.[154] The plan allows for restricted wards to have the same amount of instruction as regular education wards.[155] Curriculum guides must comply with the state Department of Education content and performance standards, and library books must be available in living units.[156] The plan also requires quarterly observations of classrooms to determine if teachers have adequate lesson plans and course syllabi.[157]

Some of the advantages that are typically attributed to consent decrees are not present in the *Farrell v. Harper* consent decree. Actual litigation would have involved a budget of millions of dollars, but the California legislature decided it was too expensive.[158] However, the consent decree process was also expensive.[159] The budget for juvenile programs increased substantially after the decree was entered, and is currently projected to be $252,000 per ward for 2008–09.[160] The issuance of the decree also occurred almost three years after the suit was first filed, which is not a significant advantage over the time period for court adjudication. Additionally, the fact that the decree provided for certain deadlines did not deter the defendant from failing to comply.

Furthermore, the disadvantages that apply to consent decrees were present in the *Farrell* decree. The CYA did not admit to liability,[161] which is disconcerting because a court would likely have found that the CYA's behavior, particularly the consistent failure to provide its wards with 240 minutes of instruction daily, was illegal. Moreover, since California has a decentralized juvenile justice system,[162] the consent decree only binds the CYA, and not county correctional agencies. This is problematic because many other juvenile facilities across the state, and not solely CYA facilities, provide inadequate education

154. *Id.* at 28.
155. *Id.* at 30.
156. *Id.* at 32–33.
157. *Id.* at 35–36.
158. *Rehabilitating the California Youth Authority*, *supra* note 26, at 17 (statement of Richard Ulmer, Partner, Latham & Watkins LLP).
159. California Annual Review, *California Youth and Criminal Law: 2007 Juvenile Justice Reform and Gang Prevention Initiatives*, 13 BERKELEY J. CRIM. L. 145, 147 (2008) (noting that the *Farrell* consent decree was a "costly settlement agreement").
160. LITTLE HOOVER COMM'N, *supra* note 1, at 6. The budget for the year prior to the consent decree was $115,000 per ward, and the budget for the year in which the consent decree was entered was $178,000. As a comparison, in the years before the *Farrell v. Harper* consent decree, budget increases averaged a few thousand dollars per ward each year, with only two years having increases of $20,000. *Id.*; *see also* Waheed, *supra* note 21 (noting that the current budget is $488 million).
161. *See supra* text accompanying note 143.
162. *See supra* note 20.

to juvenile offenders. Thus, while the terms of the *Farrell* consent decree may provide a better quality of education for wards under the CYA, they do nothing to correct the problem in county facilities. Also, as noted in Section II.A, there remain communication and implementation problems.

Additional problems occurred at the monitoring stage, in which the special master was required to submit quarterly progress reports. This amount of monitoring is not extensive enough to ensure that juvenile offenders receive an adequate education on a widespread basis, reflected in the fact that the problem still remains uncorrected.[163] Finally, the *Farrell v. Harper* consent decree is problematic because it allows for termination after two years of substantial compliance in an area that is part of the consent decree. This means that a DJJ facility may revert to its prior practices after two years of substantial compliance, because there is no longer an obligation to remain in substantial compliance. This situation is especially troublesome considering that education is a fundamental right. Juvenile facilities should not have the ability to violate a fundamental right after only a few years of compliance.

C. Other Consent Decrees

Other consent decrees have also sought to address the problems in California's juvenile justice education system, but their provisions have been much less detailed and specific than those in the *Farrell* decree. In August 2004, a consent decree was issued that dealt with conditions of confinement in the three Los Angeles County juvenile halls.[164] To correct the insufficient screening mechanisms for identifying special education youth, the consent decree simply recommends that the county must create and implement a process to screen and identify special education youth.[165] The decree does not directly address the problems of teacher staffing, overcrowding, lack of instruction in overflow classrooms, or the lack of feedback on school assignments.[166] Instead, the decree merely provides that classes in the county juvenile facilities must "have appropriate materials, space, and equipment." The language in these provisions seems to be intentionally vague.[167]

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163. *See infra* Section II.D.

164. *See generally* Memorandum From Ralph F. Boyd, Jr., Assistant Attorney Gen., to Yvonne B. Burke, Chair, L.A. County Bd. of Supervisors, *supra* note 96.

165. Agreement Between the United States, Los Angeles County and the Los Angeles County Office of Education 4 (Aug. 12, 2004), *available at* http://www.usdoj.gov/crt/split/documents/Split_setagree_lajuvhall_8-12-04.pdf [hereinafter Los Angeles County Agreement].

166. *See id.*

167. *See supra* note 129.

Even more problematic is the monitoring and enforcement section[168] of this decree. The "Satisfaction of the Agreement" clause[169] states that if the defendants substantially comply with the terms of the decree for one year, the agreement is fully satisfied and can be terminated. Furthermore, a temporary failure to comply during a period of "sustained compliance" can still be substantial compliance.[170] This provision is concerning because it means that the defendant has an earlier opportunity to revert back to its prior illegal practices. Another problem is that the word "temporary" in the "Satisfaction of the Agreement" provision is ambiguous. This is problematic because it does not specify the maximum allowable time period of noncompliance that still qualifies as substantial compliance, and does not address whether "temporary" can include several separate instances of noncompliance.[171]

In another case, San Joaquin County Juvenile Hall agreed to a consent decree in June 2008.[172] The complaint, which was filed in 2006, found that the juvenile hall operated a public school but did not require its wards to attend it. Almost half of the wards remained in their cells and did not receive an education.[173] The consent decree instituted a mandatory school attendance policy.[174] While this provision creates an improvement over the previously existing situation, it is not sufficient to ensure that juvenile offenders receive an adequate education. As the Youth Bill of Rights[175] indicates, a quality education involves more than the ability to attend classes. Furthermore, the mandatory school-attendance policy does not specify the amount of instruction per day that wards must receive, and it does not specify the classes that wards must take.

D. The Ineffectiveness of the Use of Consent Decrees

The California juvenile justice system has a history of promises of sweeping reforms, followed by little or no action.[176] For example, governors in the 1980s

168. Los Angeles County Agreement, *supra* note 165, § X, at 16.

169. *Id.* para. 57.

170. *Id.*

171. For example, it is not clear whether a three- or four-month block of time during a year of otherwise sustained compliance is allowable, or whether several two-week blocks of time spread out during the year would still constitute substantial compliance. Either of these situations would be problematic.

172. News Release, Prison Law Office (June 18, 2008), http://www.prisonlaw.com/pdfs/SanJoaquinPR.pdf.

173. [Proposed] Consent Decree at 13, Hixson v. Hope, No. CV 029154 (Cal. June 8, 2008).

174. *Id.*; *see also* News Release, *supra* note 172.

175. *See supra* notes 46–49 and accompanying text.

176. *Juvenile Injustice*, L.A. TIMES, Nov. 17, 2004, at 12 ("The settlement does an excellent job of pointing out problems like these and urging that they be fixed. That might generate more excitement

and 1990s promised structural reforms, but then "nothing happened."[177] The plaintiff in *Farrell v. Harper* similarly asserted that the state has "a long-standing, severe and damaging inability to comply with court orders."[178] Moreover, the evidence from the years following the aforementioned consent decrees illustrates that the conditions in juvenile correctional facilities across the state remain largely unchanged. There have been some improvements in education in juvenile facilities, but only after considerable delays and inaction in many other areas of education.[179] It is clear that the "achingly slow" pace of reform, and the long years of negotiated settlements, have eliminated one of the purported benefits of consent decrees.[180]

The first problem with the *Farrell v. Harper* consent decree arose in the development of the remedial plans. In January 2005, the parties filed a stipulation declaring that the remedial plans would be based on a new rehabilitative system and "[could not] be submitted in accordance with the schedule set forth in the Consent Decree."[181] This set the tone for delays in implementation of the plans.[182] A Safety and Welfare Plan, released in March 2006 as a commentary on the effectiveness of the *Farrell v. Harper* consent decree, noted that there were "hours on end when many youths have nothing to do" and that there was

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if not for the long history in California of passionate entreaties to reform the CYA and promises of action, with no follow-up."); *see also Troubled Teenagers*, *supra* note 2, at 8C.

177. *Juvenile Injustice*, *supra* note 176, at 12; *see also Rehabilitating the California Youth Authority*, *supra* note 26, at 3 (statement of Sen. Gloria Romero, Chair, S. Select Comm. on the California Correctional System); *Reforming CYA: Bringing Juvenile Justice Back to a National Model: Public Hearing of the S. Select Comm. on the California Correctional System* 69 (2004) [hereinafter *Reforming CYA*] (statement of Daniel Macallair) (stating that "every few years there's a scandal . . . and it brings public attention to it. . . . And then, a couple of years later we're back doing the same thing, and the reason is, the systems never change"); Burrell & Laba, *supra* note 140 ("The CYA's failings had been documented repeatedly over the years, but meaningful reform had proved elusive."); Christian Berthelsen, *California State Audit Critical of Juvenile Prisons*, S.F. CHRON., Jan. 4, 2005, at B8 (stating that "the system is incapable of repairing itself").

178. LITTLE HOOVER COMM'N, *supra* note 1, at 6.

179. *See* James Sterngold, *Sweeping Reforms of State's Juvenile Justice System Get Green Light From Legislature*, S.F. CHRON., Aug. 23, 2007, *available at* http://jjustice.org/pdf/CA%20Reforms%20Aug%2007.pdf.

180. Maura Dolan, *Lawyers Go Behind Bars as Guardians of Prisoner Rights*, L.A. TIMES, Oct. 11, 2005, at A1; *see also* Douglas E. Abrams, *Reforming Juvenile Delinquency Treatment to Enhance Rehabilitation, Personal Accountability, and Public Safety*, 84 OR. L. REV. 1001, 1021 (2005) ("On January 26, 2006, the head of the State's Department of Corrections and Rehabilitation abruptly resigned because he no longer saw 'will and commitment' from State authorities to produce the reforms he had been hired to effectuate two years earlier.").

181. Stipulation Regarding California Youth Authority Remedial Efforts at 1–2, Farrell v. Allen, No. RG03079344 (Cal. Super. Ct. Jan. 31, 2005).

182. In fact, the DJJ "missed dozens of court-ordered deadlines for change . . . making 'a mockery of compliance.'" Michael Rothfeld, *Fixes Slow for Youth Prisons: Lawyers Say the State Hasn't Kept Promises to Reform the System and Are Urging a Judge to Appoint a Receiver*, L.A. TIMES, Feb. 18, 2008, at 1.

"abysmal achievement despite enormous outlays for education."[183] The Youth Law Center observed that there were still juvenile wards who did not leave their cells except for one hour of exercising, and that "[m]any youth miss school every day because long-promised teachers still are not on the job."[184]

In May 2007, O'Rourke and Gordon filed an Education Program Report in conjunction with the fourth quarterly Special Master report for *Farrell v. Harper*.[185] The report analyzed the extent of the defendant's compliance with the Education Remediation Plan and provided assessments of each DJJ facility.[186] Although the facilities were substantially compliant with some portions of the plan, they were only partially compliant or noncompliant with the majority of it.[187]

In terms of education program policy, the experts found that DJJ facilities increased the development of High School Graduation Plans, but did not conduct required semi-annual reviews of these plans to ensure that wards were making progress toward graduation.[188] The report found that only two of the eight DJJ sites substantially complied with the semi-annual review requirement.[189] Furthermore, students at a majority of the sites were not making sufficient progress toward graduation.[190] O'Rourke and Gordon also reported that staffing problems continued at DJJ facilities. While five sites were substantially compliant in ensuring that their teachers were credentialed and taught in their certification areas, three sites remained noncompliant.[191] Only three sites had sufficient credentialed teachers in courses required for graduation.[192] Additionally, the report noted that further recruitment efforts were necessary, and that six sites did not have a sufficient amount of substitute teachers. Moreover, class cancellations due to teacher absences remained a problem.[193]

183. MURRAY ET AL., *supra* note 1, at 1; *see also Court to Consider Takeover of California Youth Prisons*, JUVIENATION, June 2, 2008, http://juvienation.wordpress.com/2008/06/02/court-to-consider-takeover-of-california-youth-prisons ("[T]he dates have come and gone with little significant change, while the price tag has grown astonishingly.").

184. Burrell & Laba, *supra* note 140.

185. *See generally* Fourth Report of Special Master, Farrell v. Tilton, No. RG03079344 (July 27, 2007).

186. *See generally* O'ROURKE & GORDON, *supra* note 145.

187. *See generally id.*

188. *Id.* at 5.

189. *Id.* attachment A, at 1. Two other sites were partially compliant, and the remaining four were noncompliant. *Id.*

190. *Id.*

191. *Id.* at 2; *id.* attachment B, at 1.

192. *Id.* attachment A, at 2; *id.* attachment B, at 1.

193. *Id.* attachment A, at 2; *id.* attachment B, at 1. Six sites were noncompliant in the area of class cancellations due to teacher absences, one site was partially compliant, and one site was substantially compliant. *Id.*

The report indicated that the areas of student access and attendance continued to be particularly problematic. For example, students who were not making progress toward graduation still did not have adequate opportunities to obtain a GED.[194] In addition, all of the DJJ sites were noncompliant with the requirement that they increase student attendance. The experts stated that "[s]tudent absentee rates continue to be unacceptable" and that although the facilities introduced a policy of a five period school day, students were not attending school for the full amount.[195] Seven of the sites did not have corrective action plans for reducing absentee rates,[196] and there were still students who were pulled from class at half of the sites.[197] Additionally, only three sites had adequate classroom space to address the problem of sending students back to their living units due to overcrowding.[198] The report found that all of the facilities containing restricted settings still had inadequate educational opportunities.[199]

The experts found that the sites made progress in the use of lesson plans and course syllabi. However, they found that the required quarterly teacher observations did not occur consistently at any of the sites.[200] Also, there were still numerous problems in the area of special education. Special education students were denied access to full school days, and there were inadequate compensatory services for missed classes. Furthermore, the majority of sites did not provide students access to general education classes, which was required by their IEPs, and teachers did not provide progress reports on IEP plans.[201] Finally, for the California High School Exit Examination, many of the juvenile facilities did not provide alternatives for students to complete their education if they were unable to pass the exit examination.[202]

More recent reports further demonstrate that although there have been minor improvements since the *Farrell v. Harper* consent decree, educational reforms in DJJ juvenile facilities have been overwhelmingly inadequate. The special master's seventh report indicates, for example, that the high school graduation rate merely increased from 6.4 to 8.3 students per 100.[203] California

194. *Id.* attachment A, at 4.
195. *Id.* at 6.
196. *Id.* attachment A, at 5. One site was only partially compliant. *Id.*
197. *Id.* at 6.
198. *See id.* at 7.
199. *Id.*
200. *Id.* attachment A, at 11. Three sites were only partially compliant, and the other five sites were noncompliant. *Id.*
201. *Id.* at 8–9.
202. *Id.* at 10.
203. Seventh Report of Special Master at 2, Farrell v. Tilton, No. RG03079344 (Apr. 17, 2008).

Department of Corrections reports note that college enrollment and the number of GEDs increased.[204] However, the special master noted that these improvements "do not appear to be reliably sustainable and replicable," and that "DJJ will not succeed in implementing the education services remedial plan without more effective educational leadership and management than it has had to date."[205] Indeed, recent news affirms that the DJJ is failing: attendance, removal from class, and class cancellations remain significant problems.[206] N.A. Chaderjian High School lost its school accreditation in 2005.[207] The DJJ's inaction is so severe that two facilities have closed, and a judge may appoint a receiver to take over the system.[208] The judge's other alternatives are to hold the DJJ in contempt of court or to forbid the DJJ from accepting new juvenile offenders.[209] The judge's delay in taking coercive action against the DJJ provides further evidence that judges may be unwilling to do what is necessary to make defendants comply with a consent decree.[210]

Problems outside of state DJJ facilities also persist. In 2006, the Prison Law Office filed a suit against the Corrections Standards Authority (CSA) for failure to comply with its duties in several different county juvenile correctional facilities.[211] For example, Los Angeles County was subject to a prior lawsuit, in which the U.S. Department of Justice found that conditions of confinement

204. *See generally* Memorandum From Jim Cripe, Principal, Sch. Accountability, Div. of Juvenile Justice Educ. Servs., to Education Staff (Sept. 4, 2008), http://www.cdcr.ca.gov/News/docs/2007-2008_Academic_Report.pdf; Press Release, Cal. Dep't of Corr. & Rehab., Youthful Offender College Enrollment Up 300 Percent, With GED and Voc-Ed Programs Increasing Graduation Rates (Sept. 12, 2008), http:/www.cdcr.ca.gov/News/2008_Press_Releases/Sept_12.html.

205. Seventh Report of Special Master, *supra* note 203, at 3, 9.

206. Rothfeld, *supra* note 182, at 1.

207. Cal. Corr. Supervisors Org., Inc., Weekly Update, (June 17, 2005), http://www.ccsonet.org/page_archives.htm (follow "06-17-05" hyperlink).

208. *See* Waheed, *supra* note 21 (asserting that the *Farrell v. Harper* plaintiffs "have found reforms so impossible to extract from the lead-footed and inept DJJ that they are now seeking a receiver"); Don Thompson, *Judge Scolds State on Lack of Youth Prison Reforms*, VENTURA COUNTY STAR, Oct. 31, 2008, *available at* http://www.venturacountystar.com/news/2008/oct/31/judge-scolds-state-on-lack-of-youth-prison ("California is 'in gross violation' of court orders by taking too long to reform . . . . 'In some areas, the State has failed to take even the most basic, fundamental steps to implement reform.'"); *see also* Rothfeld, *supra* note 182; *In Praise of the Missouri Model*, *supra* note 25.

209. Don Thompson, *Judge: Reforms Too Slow in California's Youth Prisons*, NEWSVINE, Aug. 2, 2008, http://www.newsvine.com/_news/2008/08/02/1715948-judge-reforms-too-slow-in-califs-youth-prisons.

210. *See supra* text accompanying notes 132–134.

211. *See generally* Complaint for Injunctive and Declaratory Relief, Waters v. Woodford, No. 88C06-451449 (Super. Ct. Sept. 26, 2006) [hereinafter *Waters v. Woodward* Complaint]. The CSA is responsible for inspecting county juvenile correctional facilities to monitor compliance with minimum state educational standards. The CSA must notify a facility if it is noncompliant, and the facility must either submit a Corrective Action Plan within sixty days or be deemed an "unsuitable place for minors." *Id.* at 4–5.

in the juvenile halls, as well as education, were grossly inadequate.[212] Despite this, the CSA inspected these facilities and found that there was no violation of state minimum standards of education.[213] Even after the county entered a consent decree, the CSA did not find that the facilities were noncompliant.[214]

The Alameda County juvenile hall has consistently been found to be noncompliant with California minimum educational standards. Students missed class because the juvenile hall lacked sufficient classroom space, and the county rotated students out of the school program.[215] Alameda County also has not given its students access to 240 minutes of instruction as required by state law.[216] Similarly, a San Diego County juvenile hall did not provide any instruction for its restricted wards.[217] San Joaquin County also denied restricted wards access to education, and denied education as a disciplinary measure.[218] In Tulare County, almost half of the population did not receive education each day, due to space concerns.[219] A separate complaint was filed in Sacramento County, which also cited overflow problems, a lack of "meaningful instruction,"[220] and violations of the minimum 240 minute school day in restricted units. Juvenile wards in lockdown units were limited to one hour of school per day, and did not receive homework. Youth who were in room confinement did not receive any educational instruction at all, and often did not receive any educational materials.[221]

The wording of the Youth Bill of Rights,[222] which was enacted at the end of 2007, illustrates that the legislature appreciates the scope of the problem.

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212. *See supra* notes 96–99, 164–170.

213. *Waters v. Woodward* Complaint, *supra* note 211, at 7.

214. *Id.* at 8.

215. *Id.* at 9–10. Despite a clear statement that juvenile wards missed school because of full classrooms, the CSA said that the county was in compliance with state standards. Additionally, the CSA did not address overflow concerns, and instead noted in a report that "no plan is in place to provide schooling for the frequent occasions when more than 16 minors are present in the living unit." *Id.* at 10–11.

216. *Id.* at 12.

217. *Id.* at 19. Restricted wards received assignments and had to complete them by themselves, because "[t]he facility simply does not have the space or teaching resources to have a classroom for the five or less status offenders held during school days." *Id.*

218. *Id.* at 20. Wards received little "real" work. For example, education for restricted wards "consists of 'Books on Tape' placed over the audio system to the rooms." *Id.*

219. *Id.* at 22. The facility had four classrooms that each fit fifteen students. During an inspection of the facility, the population was 114. *Id.*; *see also id.* at 23–24, which describes overflow problems at Santa Barbara County.

220. Amended Complaint for Injunctive and Declaratory Relief at 7, Porter v. Speirs, No. 06AS03654 (Dec. 19, 2006) ("Fridays are often spent watching commercial, general release movies. Youth who choose not to watch movies are allowed to do crossword puzzles.").

221. *Id.* at 8.

222. *See supra* notes 46–49.

The fact that the bill writers revised the wording of the education provision, when most of the other provisions remained the same, demonstrates that the legislature recognizes that the lack of education in juvenile facilities is highly problematic. Moreover, the fact that the bill writers found it necessary to include the right to not be denied education as a disciplinary measure suggests that juvenile wards had been denied education as a disciplinary measure, and the complaint against the CSA supports this.[223] Also, the fact that the bill was revised to include the right to a "quality education," rather than merely the right to "attend school classes," indicates that the legislature is aware that students were not only denied the opportunity to attend classes, but that they were also denied other services that lead to a quality education.

Both the *Farrell v. Harper* consent decree and the consent decrees entered into at the county level thus highlight some of the limitations of consent decrees. Neither the CYA nor county correctional agencies admitted to being guilty or behaving illegally, even though it is clear that their inability to comply with minimum educational standards is in direct violation of state law. Moreover, these consent decrees did not have precedential value. Thus, the terms of that decree did not apply to the consent decrees entered into by county correctional facilities. For example, the *Farrell v. Harper* consent decree included specific staffing formulas to provide for an adequate number of teachers. County juvenile facilities did not have to rely upon the *Farrell v. Harper* decree for guidance in obtaining a sufficient amount of teachers, since it was not binding on them. In fact, the consent decree for Los Angeles County juvenile halls did not even propose a solution to their teacher staffing problems.[224]

Furthermore, the consent decrees involved substantial time, expenses, and delays. The state's budget for programs for juvenile facilities increased significantly after the *Farrell v. Harper* consent decree was entered, and the decree was entered several years after the initiation of the suit.[225] Delays occurred almost immediately after the consent decree was entered.[226] The lack of results is indicative of the noncompliance that is characteristic of consent decrees. The *Farrell v. Harper* consent decree provided for a special master to oversee compliance. However, the consent decree did not specify any means for the special master to enforce the decree. The special master's duties merely included occasionally visiting DJJ facilities and issuing quarterly reports. With the lack of continual monitoring, it is not surprising that the DJJ did not

223. *See supra* note 211.
224. *See supra* text accompanying note 166.
225. *See supra* note 141.
226. *See supra* notes 181–184.

comply with the terms of the consent decree, and that the conditions in juvenile facilities remain uncorrected.

Thus, it is evident that consent decrees are an inadequate response to improving education in juvenile correctional facilities. Many of the problems remain uncorrected several years after the consent decrees were issued. Additionally, since California's juvenile justice system is decentralized, complications occur because the provisions of the state consent decree cannot be applied to county juvenile facilities. While provisions in the *Farrell v. Harper* consent decree are very specific, other consent decrees in county facilities are ambiguous or do not directly address the problem. Thus, any improvements will be inconsistent between juvenile facilities.

III. PROPOSAL

A. Potential Solutions

There are several potential remedies to the issues presented by the use of consent decrees in suits involving the adequacy of education for juvenile offenders in California. One alternative is to incorporate elements of programs that exist in other states. However, it is important to note that California differs greatly from other states, so it is difficult to make a fair comparison between the states or to evaluate the potential effectiveness of another state's programs in California. Furthermore, there is a lack of information regarding other states' educational programs or their effectiveness. A second alternative is to introduce new legislation. While this choice is appealing, legislation alone cannot solve the problem. For example, California currently has numerous educational provisions pertaining to juvenile wards, and yet facilities still do not provide them with an adequate education. A third option is to attempt to correct the problems that arose in the consent decrees that were issued, though this solution is also problematic. Finally, a fourth potential alternative is to adjudicate the claims against the correctional facilities in court, and to seek an injunction.

1. The Missouri Model

The most notable state for juvenile justice reform is Missouri, which currently serves as the national model,[227] a position that California occupied

227. *See* Douglas E. Abrams, *Lessons From Juvenile Justice History in the United States*, 2004 J. INST. JUST. & INT'L STUD. 7, 23 (stating that Missouri is a "guiding light for reform"); Abrams, *supra* note 180, at 1004–05 ("Missouri . . . has emerged as a national model of excellence against which

decades ago. The Missouri Model[228] involves thirty-one small, regional juvenile facilities that focus on counseling, rehabilitation, and education.[229] Missouri's Division of Youth Services (DYS) residential facilities offer education, vocational, and counseling services to serious offenders. These facilities have libraries and computer rooms that promote learning.[230] One DYS facility even used to be an elementary school.[231] DYS staff members, who are all college-educated specialists rather than corrections officers, lead small group discussions that focus on counseling and treatment.[232] Younger, minor offenders may attend DYS day treatment facilities, which consist of six hours of daily education, tutoring, counseling, and community service programs.[233] DYS also has an extensive aftercare program that aids youth in finding jobs or furthering their education in the three years following their release.[234] Additionally, Missouri strives to keep its youth offenders in contact with their families and communities, and in as normal an environment as possible.[235] This occurs through a home-like setting, in which youth reside in open dorms.[236] They are allowed to wear their own clothes and have pets and stuffed animals.[237] The Missouri

other state systems are measured."); *see also Reforming CYA*, *supra* note 177, at 2 (statement of Sen. Gloria Romero, Chair, S. Select Comm. on the California Correctional System); Benvenue, *supra* note 17, at 50; Nancy Cambria, *Teen Offenders Get Help 'They Treat Us Like Human Beings' 'Missouri Model' Lets Troubled Kids Be Kids — but Grow up*, ST. LOUIS POST-DISPATCH, Sept. 14, 2008; Todd Lewan, *Missouri Model: Turning Around Teen Offenders With Schooling, Therapy in Homelike Settings*, INT'L HERALD TRIB., Dec. 29, 2007, *available at* http://www.thefreelibrary.com/Missouri+model:+Turning+around+teen+offenders+with+schooling,+therapy...-a01611431107; Advocates for Children & Youth, Policy Issues, Missouri Practice Model, http://www.acy.org/articlenav.php?id=93 (last visited July 18, 2009); Missouri Youth Services Institute, Changing Juvenile Justice Systems for Children and Youth, http://mysiconsulting.org (last visited July 18, 2009). Note that Missouri had a failed juvenile justice system for almost a century. *See* Abrams, *supra* note 180, at 1005.

228. *See* Cambria, *supra* note 227. The Missouri Model started thirty years ago. *Id.*

229. Abrams, *supra* note 180, at 1065–68; *see also* Missouri Youth Services Institute, *supra* note 227.

230. *See* Cambria, *supra* note 227 (describing the successful story of a youth offender who read 130 books in the library, filled out financial aid forms for college, and obtained his GED).

231. *All Things Considered: Missouri Sees Teen Offenders as Kids, Not Inmates*, (NPR radio broadcast, Oct. 30, 2007), *available at* http://www.npr.org/templates/story/story.php?storyId=15784264.

232. Advocates for Children & Youth, *supra* note 227.

233. Abrams, *supra* note 180, at 1067; *see also* Abrams, *supra* note 227, at 22.

234. Jessica Jean Kastner, *Beyond the Bench: Solutions to Reduce the Disproportionate Number of Minority Youth in the Family and Criminal Court Systems*, 15 J.L. & POL'Y 941, 976–77 (2007). The aftercare program helps youth to obtain a high school diploma or GED, and to attend college. *Id.*; *see also* Lewan, *supra* note 227.

235. Advocates for Children & Youth, *supra* note 227; *In Praise of the Missouri Model*, *supra* note 25.

236. Advocates for Children & Youth, *supra* note 227; *see also* Joline Gutierrez Krueger, *Show Us, Missouri: New Mexico's Treatment Program Borrows From a Model of Reform Success*, ALBUQUERQUE TRIB., Dec. 9, 2006, at A5.

237. Cambria, *supra* note 227; *see also Reforming CYA*, *supra* note 177, at 3 (statement of Sen. Gloria Romero, Chair, S. Select Comm. on the California Correctional System) (based on Senator Romero's observations during a visit to Missouri's juvenile facilities).

Model has resulted in very low recidivism rates,[238] while remaining relatively inexpensive.[239]

Although the Missouri Model is clearly successful, the state differs from California. Therefore, this model may not necessarily produce the same results in California on a statewide basis.[240] For example, California has an extensive gang culture that is not present in Missouri.[241] Missouri also sends seventeen-year-olds to adult court, so its juvenile offender population is substantially smaller than California, which has an extended age of jurisdiction.[242] In California, adults as old as twenty-five can remain in juvenile facilities.[243] Also, it is unclear whether Missouri juvenile facilities had the same problems as those in California. For example, it is unclear whether Missouri had problems of high absentee rates, overcrowding, inadequate teachers, or a school day that did not meet the minimum number of minutes mandated by law. Thus, Missouri and California may not be comparable.

Furthermore, the Missouri Model's success is measured through its recidivism rate, which is not perfectly equivalent to educational success. The model is based on a complete structural overhaul that does not specify the quality of education provided to DYS youth offenders, but instead focuses on the normalization of the setting. The most specific educational standard that it includes is the six hours of daily combined education, tutoring, and counseling for minor offenders.[244] For more serious offenders, there is only a very broad "education" component to the model. Also, Missouri is not subject to extensive expert reviews that track its educational programs. Thus, it is hard to measure the adequacy of education in Missouri. Moreover, educational requirements vary by state. For example, Missouri requires only 180 minutes of education daily,[245] whereas California requires 240 minutes. Therefore, educational

238. Currently, approximately 8.6 percent of youth detained in Missouri become incarcerated as adults. *See In Praise of the Missouri Model*, *supra* note 25. In 2007, 7.3 percent reentered the juvenile justice system. *Id.*

239. *See* Abrams, *supra* note 180, at 1069 ("Missouri spends about $103 per day for each youth in the DYS program, considerably less than the amounts spent per day by other states with significantly higher recidivism rates. . . ."). This results in less than $38,000 spent per youth annually.

240. *See Reforming* CYA, *supra* note 177, at 10 (statement of Sen. Gloria Romero, Chair, S. Select Comm. on the California Correctional System).

241. *Id.* at 42 (statement of Walter Allen, Director, California Youth Authority).

242. Cambria, *supra* note 227.

243. *See* MURRAY ET AL., *supra* note 1, at 2 (noting that "a 'juvenile offender' may be 24 years old"); *see also* National Center for Juvenile Justice, California, http://www.ncjj.org/stateprofiles/profiles/CA06.asp (last visited July 18, 2009) ("California's extended age of juvenile court jurisdiction is 21; however, if a juvenile is committed to the Department of Juvenile Justice for certain offenses, the juvenile court retains jurisdiction until the offender is 25 years old.").

244. *See supra* note 233.

245. MO. ANN. STAT. § 160.041(1) (West 2008).

standards are not comparable between the two states. The most favorable solution to the inadequacy of education in California's juvenile facilities would be to specifically address the violations that have occurred, rather than using a model that does not have clear educational guidelines and may not be applicable to a state like California.

2. Introducing Legislation

The introduction of new legislation regarding education in juvenile facilities would provide a beneficial alternative to the use of consent decrees in lawsuits involving the provision of a satisfactory education to juvenile wards. Legislative reform does not need to involve changes to the California Constitution, as the Constitution is generally meant to involve rather broad provisions. Instead, more specific provisions in the California educational and administrative codes, as well as the passage of bills detailing specific educational rights of juvenile wards, and that provide a clear definition and measurable standards for a "quality education," would be optimal.

In the public school arena, a class action suit, *Williams v. California*,[246] was filed in 2000 that argued that schools provided inadequate education to low-income students of color.[247] Many of the allegations in the complaint were the same as those that exist in California juvenile correctional facilities.[248] The *Williams* settlement was unique because it required the creation of specific legislation to develop educational standards and an accountability system for schools.[249] In 2004, five bills passed that addressed the problems in the schools. For example, S.B. 550 and A.B. 2727 created minimum standards of teacher quality, new instructional materials, and accountability systems to enforce the standards. Also, A.B. 3001 created an oversight mechanism to ensure that teachers are properly credentialed.[250] The bills included specific definitions by which to measure the quality of education. For example, they specified that "sufficient textbooks" means that "each pupil . . . has a textbook or instructional materials, or both, to use in class and to take home to complete required

246. Williams v. California, No. 312236, (Cal. Super. Ct., Dec. 10, 2004), *available at* http://www.decentschools.org/courtdocs/01FirstAmendedComplaint.pdf.

247. *See* UCLA'S INST. FOR DEMOCRACY, EDUC., & ACCESS, WILLIAMS VERSUS CALIFORNIA (2004), *available at* http://justschools.gseis.ucla.edu/news/williams/pdf/Williams1.pdf.

248. *See id.* (observing that "there are many teachers without enough training in the schools, and that many classrooms do not have enough textbooks," and that many schools were overcrowded).

249. *Id.*

250. DECENT SCHS. FOR CAL., *WILLIAMS* SETTLEMENT HIGHLIGHTS 1–2 (2005), http://www.decentschools.org/settlement/Williams_Highlights_April_2005.pdf.

homework assignments."[251] The bills also included several clearly defined accountability provisions.[252] Two years after these bills passed, a study that analyzed the impact of the *Williams* legislation found that "teaching and learning conditions in California's public school classrooms have materially improved as a direct result of the *Williams* standards and accountability systems."[253] In particular, the number of textbooks increased significantly, and building facilities were improved. As a result, the schools were better able to "attract and retain qualified teachers."[254] Additionally, the changes brought about from the new legislation "also brought intangible changes" such as "encouraging open lines of communication, an emphasis on students' needs, and accountability."[255]

Although new legislation is an improvement over the use of consent decrees, legislative reform alone cannot be the solution. It is true that California's juvenile justice system would benefit from an extension of the bills from the *Williams* settlement. Furthermore, specific language would create clearer, more measurable standards. For example, the Youth Bill of Rights is a good concept, but it would benefit from language that clarifies the definition of a "quality education." However, a legislative solution that provides specific educational standards, such as that of the *Williams* settlement, may still suffer in the juvenile correctional context, or in any other context in which implementation and enforcement are difficult. This is evident from the fact that some provisions in the California Codes mandate specific educational standards, yet there have still been severe violations. For example, the California Codes require juvenile facilities to provide a 240 minute school day and to have a course of study that includes several specific classes. The state's history of filing lawsuits and consent decrees shows that juvenile facilities have grossly violated these provisions. Therefore, the mere existence of new legislation will not necessarily produce adequate educational opportunities. In order for legislative reform to work, then, it must be combined with another solution that will help ensure better compliance.[256]

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251. *Id.* at 2.

252. For example, county superintendents must annually inspect each low-ranking school, as well as monitor for teacher misassignments. Moreover, each school must have an accountability report. *Id.* at 3–4.

253. ACLU FOUND. OF S. CAL., *WILLIAMS V. CALIFORNIA:* THE STATEWIDE IMPACT OF TWO YEARS OF IMPLEMENTATION 6 (2007), http://www.decentschools.org/settlement/WilliamsReportWeb2007.pdf. "In many cases, the results have been dramatic." *Id.*

254. *Id.*

255. *Id.* at 7.

256. *See infra* Section III.B for a discussion of the best solution.

3. Correcting Problems in the Consent Decrees

One problem with consent decrees is that they often include vague language that hinders compliance. To remedy compliance issues and to prevent confusion, the plaintiff may include clearer language. The most successful consent decrees contain "very clear, precise provisions," and are "limited in scope" and "offer both parties measurable compliance criteria."[257] In the context of education in juvenile correctional facilities, the inclusion of more specific language may be helpful, but it will not completely resolve the problem. Some of the components of a high-quality education are not easily measurable. For example, it is difficult to determine the optimal student absenteeism rate, as 0 percent is not realistic. Also, "measurable compliance criteria" for most of the areas where California juvenile facilities have failed would require a specific number, but a specific number in some cases may be interpreted as a limitation. For example, the consent decrees included a precise number of credentialed teachers that juvenile facilities must add to their staff, which is an improvement over the original staffing numbers. However, the number of teachers was based on certain ratios. The staffing numbers may have been accurate at the time the Education Remedial Plan was created, but the number of students change frequently. If the population of wards increases, the number of teachers in that facility as required by the Education Remedial Plan would be seen as a limitation. Additionally, some provisions would need language allowing exceptions to general rules. For example, consent decrees should not include language such as "no student should be pulled from class to attend other programs," because certain situations, such as parole hearings or medical appointments,[258] are necessary and may not be available outside of school hours.

Also, the Los Angeles County and the San Joaquin County consent decrees suffer from a lack of provisions that specifically address the problems at their juvenile halls, in addition to having ambiguous provisions. A potential solution is for the judge to instruct the parties to include provisions that directly resolve problems that are brought up in complaints. However, this would greatly reduce the value of consent decrees, since one of the benefits is the ability to formulate flexible and creative agreements.[259] Moreover, alteration of the language of consent decrees does not remove the problems of implementation, monitoring, and compliance.

257. Rosand, *supra* note 7, at 125–26.
258. EDUC. SERV. BRANCH, *supra* note 51, at 28.
259. *See supra* text accompanying note 113.

The problem also remains that consent decrees do not have precedential value beyond the two parties to the decree. Since the provision of an adequate education in juvenile correctional facilities is extremely important,[260] it is clear that the state of California would find it more desirable to have judgments that are binding on juvenile correctional agencies across the state, not just on the one agency that takes part in the consent decree negotiations.

B. The Best Solution for Addressing the Lack of Education in Juvenile Facilities

As described in Section III.A, the introduction of new legislation has been successful in reforming the inadequacy of education in public schools, and may lead to similar success in the context of juvenile correctional facilities, if coupled with another method that would enhance compliance. The adequacy of education in juvenile facilities would be best facilitated by a combination of minimum educational standards enacted in the California Codes and the use of court-based adjudication as a reactive measure.

The new legislation should include clear language, and should directly address the problems inherent in California's juvenile facilities. One commentator has advocated the use of a bill similar to S.B. 609, which addresses conditions in juvenile facilities.[261] However, this bill fails to provide clear educational standards. For example, a provision in the bill requires DJJ to provide "adequate classrooms . . . to offer educational services."[262] The use of the phrase "educational services" suffers from the same problem[263] as the phrase "quality education" in the Youth Bill of Rights, and the number of "adequate classrooms" is not apparent. The new legislation should provide specific, clearly defined standards that address concerns in juvenile facilities. For example, it can specify a course of action available to wards that are placed in classrooms that exceed the maximum classroom capacity. It can also codify the 220-day school year that is recommended by the Education Remedial Plan. Additionally, it can mandate that each hour of instruction that is missed must be made up with compensatory services. Moreover, it can clarify the extent of instruction that is required for wards in restricted settings or on lockdown, and specify standards to which assignments given to restricted wards must conform.

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260. *See generally supra* Section I.B.
261. *See generally* Benvenue, *supra* note 17, at 56–60.
262. *Id.* at 58.
263. Both phrases are vague and not clearly defined.

Once the legislation is in place, there should be an implementation mechanism to help juvenile facilities comply with the new standards. One manner in which implementation can be facilitated is through documents that provide explicit guidance on the specific actions that parties can take in order to meet the requirements of the new legislation. For example, in the context of waste management, the California Integrated Waste Management Board creates an "Implementation Guidance" section on their website that provides local enforcement agencies with "suggested procedures, problem solving approaches, and scientific methods" for "performing their duties as required by legislation."[264] Similarly, a document that provides guidelines for juvenile correctional facilities to implement the new legislation will help to further clarify the requirements and describe methods by which the juvenile facilities can comply with the law.

To provide an additional check on juvenile facilities, adjudication should be allowed as a reactive measure to any remaining violations of the law, because of its advantages over consent decrees. For example, one commentator has stated that judges "possess a power that has been defined and conferred by public law . . . . Their job [is to] explicate and give force to the values embodied . . . in the Constitution and statutes: to interpret those values and to bring reality into accord with them."[265] Another commentator has contended that "if society wants to advance the public interest, society should look to a fair judgment that is reached after litigation on the merits, but not to consent decrees."[266]

Additionally, court judgments are stronger than consent decrees because they have the force of the law behind them.[267] They are "judicially imposed limitations on executive authority [that] derive from law," whereas consent decrees "purport to make legally enforceable . . . a requirement or limitation that has not been imposed by law." Commentators have argued that consent decrees are "designed to serve the purposes that have been articulated in the

264. CAL. INTEGRATED WASTE MGMT. BD., LOCAL ENFORCEMENT AGENCY (LEA) CENTRAL: LEGISLATION IMPLEMENTATION GUIDANCE (2009),http://www.ciwmb.ca.gov/LEACentral/Regs/Implement/Leg/default.htm.

265. Rosand, *supra* note 7, at 105 n.111.

266. Shen, *supra* note 108, at 1790.

267. Rosand, *supra* note 7, at 106 n.114 (stating that "[i]f a lawsuit goes to judgment, a court has the authority to issue an order that requires government executive officials to comply with legal requirements and that defines their legal obligations" (quoting Robert V. Percival, *The Bounds of Consent: Consent Decrees, Settlements and Federal Environmental Policy Making*, 1987 U. CHI. LEGAL F. 327, 351)). BeyondIntractability.org, Adjudication, http://www.beyondintractability.org/essay/adjudication (last visited July 18, 2009).

decree itself[,] . . . not the purposes of the substantive law."[268] This is particularly true when classes of individuals are involved, where "[t]he authority of judgment arises from the law, not from the statements or actions of the putative representatives, and thus [where] we [want to] allow judgment to bind persons not directly involved in the litigation even when we are reluctant to have settlement do so."[269] As stated in Section III.A, the lack of legal precedential value for consent decrees in juvenile facilities is disconcerting because of the importance of education. If court adjudication is allowed as a remedy, there will not need to be a multitude of lawsuits filed every time a juvenile facility violates the law, because parties will instead be able to rely on the court's judgment as precedent. Moreover, there will be greater incentives for juvenile facilities to comply with the new legislation in order to avoid the threat of being found liable. As one commentator has noted, "[a]djudication produces an imposed, final decision that the parties are obligated to respect. . . . The outcomes of litigation are, without exception, binding and enforceable."[270] Thus, if a judgment is entered in the future, other juvenile facilities will be more likely to abide by the law, because they will face prior binding judgments. Finally, final court judgments are more favorable because they do not have the ability to be terminated at the will of either party upon correction of the violated rights.

CONCLUSION

An analysis of the past and current educational situation in California juvenile correctional facilities makes it apparent that the use of consent decrees as a means of correcting violations of state minimum standards is insufficient. Consent decrees have many shortcomings, most notably the ability to avoid admitting to any wrongdoing, their lack of precedential value, and their subsequent inability to bring about large-scale reform. The *Farrell* consent decree demonstrates how a combination of these problems and the elimination of the primary advantages of consent decrees has resulted in a substantially unchanged state of affairs.

There are several alternatives that may help to resolve the failures of consent decree-driven reform in the context of the education of juvenile offenders, but ultimately, the best solution is to introduce legislation and allow the

268. Shen, *supra* note 108, at 1791. "A litigated decree seeks to redress a wrong that the trier of fact has found or a party has admitted. The court's role is to make sure that the decree serves the purposes of the law that has been violated." *Id.* at 1791–92.

269. Fiss, *supra* note 115, at 1080–81.

270. BeyondIntractability.org, *supra* note 267.

courts to issue judgments for lingering violations. The legislation should establish well-defined juvenile rights and clear educational standards that are directly applicable to juvenile correctional facilities. Court judgments should be used to ensure compliance and set binding precedents for all juvenile-system schools to deter future violations of minimum educational standards. By allowing both the legislative and judicial branches to take active roles, the proposed solution would create more pressure for juvenile facilities to provide adequate education to their wards.