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Stephanie Watson

Pacific McGeorge School of Law

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The Family Connection and Young Offender Rehabilitation Act of 2007: No Room for Retribution

Stephanie Watson

Code Sections Affected

California Welfare and Institutions Code § 1712.1 (new), §§ 1710, 1714 (amended).
AB 1300 (Price); 2007 STAT. Ch. 458.

I. INTRODUCTION

On August 31, 2005, staff at a juvenile correctional facility in Stockton, California, discovered Joseph Maldonado's body hanging in his cell, a sheet wrapped tightly around his neck.¹ Joseph, an eighteen-year old Hispanic gang member, had been in isolation for eight weeks.² The confinement began when members of Joseph's gang attacked three facility staff members.³ After an initial lockdown, all other units resumed normal operation, but facility staff kept Joseph's entire gang in isolation to get all members to renounce gang behavior.⁴

Joseph's sister Renee was unable to visit Joseph⁵ for five months following his transfer to the Stockton facility.⁶ She firmly believes that if she could have seen him, he would still be alive.⁷ The Inspector General's Office, responsible for oversight of the California Department of Corrections and Rehabilitation (CDCR) and the Department of Juvenile Justice (DJJ), investigated the suicide.⁸ The final report found that the eight weeks of isolation and the corresponding denial of services⁹ conflicted with the DJJ's mission and possibly contributed to Joseph's suicide.¹⁰

1. OFFICE OF THE INSPECTOR GEN., SPECIAL REVIEW INTO THE DEATH OF A WARD ON AUGUST 31, 2005 AT THE N.A. CHADERJIAN YOUTH CORRECTIONAL FACILITY 1 (2005), http://www.oig.ca.gov/reports/pdf/death_of_a_ward.pdf [hereinafter SPECIAL REVIEW] (on file with the *McGeorge Law Review*); see also Scott Smith, *Official Report: Recent CYA Death was Preventable*, STOCKTON REC., Dec. 30, 2005, at A1, available at <http://www.november.org/stayinfo/breaking06/CYASuicide.html> (noting that Joseph Maldonado was the "Ward" who committed suicide on August 31 at the Chaderjian Youth Correctional Facility).

2. SPECIAL REVIEW, *supra* note 1, at 1.

3. *Id.*

4. *Id.*

5. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 9 (Apr. 10, 2007); see also *id.* at 5 ("If you listen to the family of young Joseph Maldonado who hung himself in his cell in a juvenile facility in Stockton, you will know how devastating it was for Joseph to be isolated for months from family and loved ones, only because he was transferred.").

6. SPECIAL REVIEW, *supra* note 1, at 7 (stating that Joseph transferred to the Stockton facility March 18, 2005, the lockdown began July 6, and Joseph committed suicide on August 31).

7. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 9 (Apr. 10, 2007).

8. SPECIAL REVIEW, *supra* note 1, at 1.

9. See *id.* ("Aside from brief showers about three times per week, the Ward and the other northern Hispanics in Pajaro Hall received virtually no exercise, education, mental health treatment or other mandated

The California Welfare and Institutions Code states that the “punishment” of minor wards “does not include retribution.”¹¹ In 2004, state legislators renewed attempts to reform California’s juvenile justice system into a rehabilitative model after expert reports found that the DJJ not only failed to help but “affirmatively damag[ed] its youthful population.”¹² The media attention garnered by Joseph’s suicide in 2005 focused on the remaining conflict between the DJJ’s official goals of rehabilitation and actual facility procedures.¹³ DJJ chief Bernard Warner addressed this conflict by noting the need for change in facility culture,¹⁴ the active steps already taken to further that goal, and the future changes promised.¹⁵ Cultural change has been slow in coming, but Chapter 458 proponents hope the increased focus on family connection introduced by this legislation will eliminate some disparity between official policy and facility practice.¹⁶

services during the lockdown.”).

10. *Id.*

11. CAL. WELF. & INST. CODE § 202(e) (West 1998 & Supp. 2007); *see also* William Bradshaw & David Roseborough, *Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism*, FED. PROBATION, Dec. 2005, at 15, 15 (“The retributive model defines a juvenile offense as a crime against the state and the state provides suitable punishment to the offender. The assumption of the retributive model is that punishment will deter future offenses. However, the retributive model often creates situations that increase the likelihood of further delinquent activity.”).

12. Sue Burrell & Jonathan Laba, *Violence-Prone Youth Authority Still Fails its Children, its Taxpayers*, S.F. DAILY J., Apr. 26, 2006, available at <http://blog.ylc.org/news/2006/04/violence-prone-youth-authority-still.htm> (“[T]he CYA acknowledged that the reports were substantially correct, and committed to working with . . . lawyers to improve conditions rather than defend the failed system in court.”).

13. *See* Letter from Donna J. Warren, Project Coordinator, Families to Amend California’s Three Strikes (FACTS), to Assembly Member Jose Solorio, Cal. State Assembly (Apr. 7, 2007) (on file with the *McGeorge Law Review*).

California is extremely repressive towards juvenile justice. Through Proposition 21 and other repressive measures, California sentences youth harshly, including handing out life sentences without parole to over 200 young people. Already during the recent past, five youth[s] have died in [the] California Youth Authority (CYA). In addition, families of youth, often poor, are made to endure additional hardships because youth are transferred without notice to their parents[,] making trips to attempt family reunification overly costly and frustrating.

Id.

14. Culture is essentially the expression of core values. *See generally* University of Manitoba, Definition of Culture, <http://www.umanitoba.ca/faculties/arts/anthropology/courses/122/module1/culture.html> (last visited Oct. 5, 2007) (on file with the *McGeorge Law Review*) (stating that a working definition of culture is a system of values that impact how people interact with each other and the world).

15. Smith, *supra* note 1; *see also* Cal. Dep’t of Corr. & Rehab., Div. of Juvenile Justice, Mission and Justice Philosophy, http://www.cdcr.ca.gov/Divisions_Boards/DJJ/About_DJJ/Mission.html (last visited Jan. 9, 2008) (on file with the *McGeorge Law Review*) (stating that DJJ facilities value input and evaluation from the public, the ethics and professionalism of facility staff, and the physical and mental health of the minor wards).

16. *Compare* CAL. WELF. & INST. CODE § 202(a) (stating that family ties should be strengthened whenever possible), with Books Not Bars, Family Connection—Help Families of Youth Prisoners Stay Together (Feb. 27, 2007), <http://ellabakercenter.org/page.php?pageid=18&contentid=186> [hereinafter Youth Prisoners] (on file with the *McGeorge Law Review*) (stating that the policies prior to Chapter 458 “thwart[ed] family connection in ways that families perceive[d] as cruel, and criminologists perceive[d] as stupid”).

II. BACKGROUND

A. California's Division of Juvenile Justice

At one time, California led other states in rehabilitation and juvenile justice.¹⁷ From a statutory perspective, the DJJ still appears to adhere to a rehabilitative model.¹⁸ California's legislature designed the DJJ's programs to promote rehabilitative training and treatment rather than retributive punishment for the wards.¹⁹ Further, juvenile courts are encouraged to promote family ties as much as possible to protect the public and the minor's safety.²⁰ While every minor must be held accountable for his or her behavior, punishment must be appropriate and consistent with the minor's best interests.²¹

The reality, however, is that the DJJ's practices and procedures do not effectively implement statutory goals and rehabilitative purposes.²² The DJJ's programs "are still the most expensive and least effective in the nation."²³ States that originally followed California's lead in rehabilitation now reap the benefits that elude the DJJ.²⁴ In fact, after a recent evaluation of the DJJ, experts found

17. CHRISTOPHER MURRAY ET AL., CAL. DEP'T OF CORR. & REHAB., SAFETY AND WELFARE PLAN: IMPLEMENTING REFORM IN CALIFORNIA 3 (2006), http://www.cdcr.ca.gov/News/docs/DJJ_Safety_and_Welfare%20Plan.pdf (on file with the *McGeorge Law Review*).

18. See CAL. WELF. & INST. CODE § 202(a) (stating that punishment of minors does not refer to retribution).

19. *Id.* § 1700 (West 1998 & Supp. 2007).

20. See *id.* § 202(a) ("The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible . . .").

21. *Id.* § 202(b).

Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. If a minor has been removed from the custody of his or her parents, family preservation and family reunification are appropriate goals . . .

Id.

22. Compare *id.* § 1710(b)(2) (West 1998 & Supp. 2007) (stating that the statutory purposes of the DJJ's programs are to provide minor wards with "comprehensive training, treatment, and rehabilitative services"), with AB 1300 FACT SHEET, 2007-2008 Sess. (Cal. 2007), <http://democrats.assembly.ca.gov/members/a51/factsheets/AB1300.pdf> [hereinafter FACT SHEET] (on file with the *McGeorge Law Review*) ("The Division of Juvenile Justice's current practices, policies and procedures thwart parents' attempts to have an active role in their children's rehabilitation.").

23. FACT SHEET, *supra* note 22, at 1; see also Thomas L. Sexton & James F. Alexander, *Functional Family Therapy*, JUV. JUST. BULL., Dec. 2000, at 1, 1 ("[M]any communities turned to exclusively punitive approaches such as incarceration. Mounting evidence, however, indicates that such approaches are ineffective and costly. By removing adolescents from their families and communities, punitive programs inadvertently make adolescents' problems more difficult to solve in the long run.").

24. See MURRAY ET AL., *supra* note 17, at 3-4.

Some of those states remained true to a rehabilitative model while California drifted from its roots. Over time, leaders in the field moved increasingly toward a public health model where evidence-based practices focusing on measurable results began to demonstrate success. Now, a large body of

that a retributive rather than rehabilitative culture permeated the facilities—mimicking adult correctional facilities.²⁵

In 2003, the DJJ faced a federal conditions lawsuit regarding systemic deficiencies, later re-filed as a taxpayer action and now referred to as *Farrell v. Hickman*.²⁶ The state soon discovered that litigating *Farrell* would be an uphill battle and instead decided to let a group of jointly selected experts evaluate the scope of the DJJ's problem.²⁷ Under a consent decree, the DJJ was required to file remedial plans in areas found deficient by that team of experts.²⁸ In 2004, the experts reported "horrible abuses and major deficiencies in almost every aspect of institutional operation."²⁹ The DJJ's current system was characterized as so broken that reform alone could not repair it.³⁰

In an initial stipulation, the DJJ slated immediate changes for two facilities, ensuring that all wards would be allowed out of their cells on a daily basis for specified educational, vocational, and treatment programs.³¹ Additionally, the

work that is constantly growing continues to demonstrate that smart on crime is far more effective than tough on crime ever was.

Id.; see also Mike Stefanko, Conference Notes, Elizabeth Siggins, Chief of Juvenile Justice Policy, Cal. Dep't of Corr. & Rehab., Keynote Address at the Association for Criminal Justice Research Conference, Reform in California (Mar. 30-31, 2006) (on file with the *McGeorge Law Review*) (stating that the benefits that elude the DJJ include: safety, due process, adequate medical and mental health care, proper confinement, adequate facilities for those with disabilities and adequate access to education).

25. Burrell & Laba, *supra* note 12 (commenting that the DJJ facilities are run with "an adult corrections mentality").

26. *Id.* The *Farrell* settlement was filed as *Farrell v. Harper* (against former DJJ director Jerry Harper), changed to *Farrell v. Allen* (when Walter Allen III replaced Harper as the DJJ director), and is now *Farrell v. Hickman* (against former CDCR secretary Roderick Hickman). See Cal. Dep't of Corr. & Rehab., Div. of Juvenile Justice, History, http://www.cdcr.ca.gov/Divisions_Boards/DJJ/About_DJJ/History.html (last visited Jan. 9, 2008) [hereinafter DJJ History] (on file with the *McGeorge Law Review*) (stating that Jerry Harper was appointed director of the DJJ in 2000 and was replaced by Walter Allen III in 2003); *Governor Schwarzenegger Appoints Secretary Hickman and More than 20 Staff to the Department of Corrections and Rehabilitation*, STAFF NEWS (Cal. Dep't of Corr. & Rehab., Sacramento, Cal.), July 18, 2005, at 1, 1, http://www.cdcr.ca.gov/About_CDCR/Staff_News/sn20050718.pdf (on file with the *McGeorge Law Review*) (stating that Roderick Hickman was appointed secretary of the CDCR in 2005).

27. Burrell & Laba, *supra* note 12 ("[I]t quickly became apparent [*Farrell*] would be a costly and losing battle.").

28. Consent Decree at 5-10, *Farrell v. Allen*, No. RG 03079344 (Cal. Super. Ct., signed Nov. 8, 2004); DIV. OF JUVENILE JUSTICE, CAL. DEP'T OF CORR. & REHAB., SAFETY AND WELFARE REMEDIAL PLAN: IMPLEMENTING REFORM IN CALIFORNIA I (2006), <http://www.prisonlaw.com/pdfs/SafetyPlanFinal.pdf> [hereinafter REMEDIAL PLAN] (on file with the *McGeorge Law Review*).

29. Burrell & Laba, *supra* note 12.

30. MURRAY ET AL., *supra* note 17, at 1 ("For this is not a system that needs tinkering around the edges, this is a system that is broken almost everywhere you look. . . . It is not just reform that is needed. Everything needs to be fixed.").

31. Press Release, Prison Law Office, Press Release on Reform of California Youth Authority (Jan. 31, 2005), <http://www.prisonlaw.com/pdfs/CYAPR.pdf> [hereinafter PLO Press Release] (on file with the *McGeorge Law Review*); see also Stipulation Regarding California Youth Authority Remedial Efforts at 2, *Farrell v. Allen*, No. RG 03079344 (Cal. Super. Ct. Jan. 31, 2005) [hereinafter Stipulation].

By February 15, 2005, the CYA will develop a plan and by March 1, 2005, will begin implementation to institute an open programming model at N.A. Chaderjian Youth Correctional Facility and Heman [sic] G. Stark Youth Correctional Facility to end their lockdown model and

stipulation's terms required minimization of the DJJ's lockdown procedures for all facilities by March 2005.³² Unfortunately, just months after the new changes were due to be implemented, the eight-week lockdown at the Stockton facility began and access to the promised programs was denied.³³

In the wake of *Farrell* and its call for rehabilitative reform, Governor Schwarzenegger hired a new DJJ chief.³⁴ Bernard Warner—a juvenile justice professional known for his rehabilitative focus—assumed command in July 2005.³⁵ This leadership change was not unusual; the DJJ's directorship has changed hands eight times in the last twenty years.³⁶ But in that “inevitable delay as yet another [leader got] up to speed,”³⁷ Joseph Maldonado committed suicide.³⁸ Bernard Warner faced a crisis after leading the DJJ for only one month.³⁹ He responded by calling for cultural change.⁴⁰

Under Warner's direction, on July 10, 2006, the DJJ released the Safety and Welfare Remedial Plan to transition the DJJ's facilities back to a rehabilitative model.⁴¹ The Remedial Plan gave concrete suggestions to counteract the culture of violence and fear in the DJJ's facilities.⁴² Because the institutional culture serves as a barrier to true reform, once that culture is eliminated, rehabilitation will be easier to realize.⁴³ The Remedial Plan also noted the need for clarity and consistency between official policy and facility procedure, adequate infrastructure to hold facility staff accountable at all levels, and training for the appropriate standard of care due minor wards.⁴⁴

restore safe general population programming and to ensure that wards are out of their rooms/cells daily for educational, vocational, and treatment programming as well as meals and recreation.

Id.

32. See Stipulation, *supra* note 31, at 2 (“By March 1, 2005, the CYA will modify its lockdown protocol to minimize the use of lockdowns through direct intervention by staff.”); *id.* at 4 (“Lockup may be used only as a temporary intervention in emergencies or as a last resort.”).

33. SPECIAL REVIEW, *supra* note 1, at 5.

34. Burrell & Laba, *supra* note 12 (stating that after the *Farrell* reports—announcing CYA's dramatic failure in its rehabilitative mission—were released in January 2004, Governor Schwarzenegger called for reform and hired a new DJJ chief, a man known for his rehabilitative focus).

35. *Id.*

36. DJJ History, *supra* note 26 (listing former DJJ directors as C.A. Terhune (1987), B.T. Collins (1991), William B. Kolender (1991), Craig L. Brown (1995), Francisco J. Alarcon (1996), Gregorio S. Zermeno (1999), Jerry L. Harper (2000), and Walter Allen III (2003)).

37. Burrell & Laba, *supra* note 12.

38. Smith, *supra* note 1 (stating that August 31 was the day Joseph Maldonado hanged himself).

39. See Burrell & Laba, *supra* note 12 (stating Bernard Warner was hired as DJJ chief in July 2005).

40. Smith, *supra* note 1.

41. See REMEDIAL PLAN, *supra* note 28, at 33 (stating that the *Farrell* lawsuit requires the DJJ conform to a rehabilitative model, defining the components of such a model, and outlining the approach that will be used to meet that goal).

42. *Id.* at 24 (suggesting preventative measures to counteract the DJJ's existing institutional culture, such as verbal persuasion and strongly worded warnings, intervention by uninvolved persons, supervisory presence for any use of force, containment, minimal reliance on physical restraints, etc.).

43. *Id.*

44. *Id.* at 8.

B. *The Importance of Family Connections for Minor Wards*

The Remedial Plan's drafters emphasized family involvement as key to the success of the DJJ's rehabilitation efforts.⁴⁵ Family connections ease separation anxiety, preserve family unification, and facilitate reunification upon release.⁴⁶ In this way, a ward with familial support can more easily resist assimilation into facility culture.⁴⁷ Chapter 458's author, Assembly Member Curren Price, further notes that a large body of research supports the contention "that families play a central role in disciplining and rehabilitating young people in trouble."⁴⁸

Most general research conducted in this area focuses on the positive effect of family connections on incarcerated adults.⁴⁹ An incarcerated minor ward is no different from an adult inmate in the sense that he or she connects with family only through visits, phone calls, and letters.⁵⁰ Thus, when those channels of communication are hindered, family connections and public safety suffer.⁵¹ An incarcerated ward, however, is different from an adult inmate; the normal

45. *Id.* at 62.

46. Shirley R. Klein et al., *Inmate Family Functioning*, 46 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 95, 99 (2002).

47. *Id.*

48. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 5 (Apr. 10, 2007); see also Nancy G. La Vigne et al., *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*, 21 J. CONTEMP. CRIM. JUST. 314, 316 (2005) (indicating family contact lowers recidivism rates); Madeleine Severin, Note, *Is There a Winning Argument Against Excessive Rates for Collect Calls from Prisoners?*, 25 CARDOZO L. REV. 1469, 1473 (2004) (stating that legislators agree with families that family ties play an important role in reducing recidivism).

49. Juvenile-specific research is less helpful because it targets specific types of intervention rather than family connections generally. See Randall Brown et al., *Familial Functioning as a Support System for Adolescents' Postdetention Success*, 47 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 529, 537 (2003) ("[E]vidence supports beginning family focused intervention while youths are still incarcerated."). Further, not all types of intervention are as successful as family connection is in a broader sense. *Compare Connecticut Family Counseling Plan Reduces Youth Recidivism by 50%*, JUV. JUST. DIG., Jan. 31, 2002, at 1,1 (suggesting programs involving the ward's family in rehabilitation "are more effective than detention or delinquency-specific counseling such as for substance abuse or violence"), with Jeff Latimer, *A Meta-Analytic Examination of Youth Delinquency, Family Treatment, and Recidivism*, 43 CAN. J. CRIMINOLOGY 237, 246 (2001) ("Overall, the evidence in support of family intervention for young offenders is not convincing.").

50. See FACT SHEET, *supra* note 22, at 1 (describing the difficulty of maintaining family connections when institutions do not provide the materials necessary to write letters, phone calls are expensive, and visitation requires extensive travel and time off work for family members).

51. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 5 (Apr. 10, 2007) ("Unfortunately, through a series of missteps, DJJ has built barriers to family communication, visitation and connection."); Letter from Matt Gray, Taxpayers for Improving Public Safety (TIPS), to Assembly Member Jose Solorio, Cal. State Assembly (Apr. 5, 2007) (on file with the *McGeorge Law Review*) ("It is in all of our best interest to constructively deal with our offenders so that when they are released into our midst that they are prepared to succeed. In doing so, we reduce criminality and prevent the creation of any further victims."); see also Steven J. Jackson, *Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry*, 22 CRITICAL STUD. MEDIA COMM. 263, 272 (2005) ("[S]everal decades of recidivism and community impact studies, some of which were used to justify the introduction of prison calling in the first place. . . . found that a powerful predictor of re-offending is the failure to maintain family and community contact while incarcerated." (citations omitted)).

developmental processes of adolescence, such as identity formation and societal integration, are much more difficult in an institutional setting, making family connections even more vital.⁵²

California's legislature formally addressed family connections in 2002, when it enacted California Penal Code section 6400.⁵³ Section 6400 incorporated the Senate's legislative findings on inmate visitation.⁵⁴ Section 6400 states that any amendments to existing or future regulations affecting inmate visitation must recognize the important role visitation plays in making prisons safer, making family communication meaningful, and making rehabilitation successful.⁵⁵ The law implicitly recognizes that visitation reduces recidivism and discourages violent inmate behavior.⁵⁶

In alignment with section 6400, the Safety and Welfare Remedial Plan's terms require the DJJ to place minors in a facility near their homes;⁵⁷ however, this does not always occur.⁵⁸ Logistically, visitation policy is affected by the DJJ's facility locations, many of which are located in remote areas of California.⁵⁹ Moreover, a minor ward must first go through a reception site before

52. David E. Arredondo, *Principles of Child Development and Juvenile Justice*, 5 J. CTR. FAMILIES, CHILD. & CTS. 127, 127 (2004).

Simply put, there is the very real risk that the justice system can do more harm than good to a child who is still in the process of neurobiological, psychological, social, and moral development. And the negative consequences of careless sanctioning may last longer for a child (and for society) than they might for an adult.

Id.

53. See CAL. PENAL CODE § 6400 (West Supp. 2007). The statute required any amendments or future regulations adopted by the CDCR to:

(a) Recognize and consider the value of visiting as a means to improve the safety of prisons for both staff and inmates. (b) Recognize and consider the important role of inmate visitation in establishing and maintaining a meaningful connection with family and community. (c) Recognize and consider the important role of inmate visitation in preparing an inmate for successful release and rehabilitation.

Id.

54. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2133, at 2 (June 25, 2002).

55. CAL. PENAL CODE § 6400.

56. See *id.* (stating that visiting "improve[s] the safety of prisons for both staff and inmates" and contributes to "successful release and rehabilitation").

57. Stipulation, *supra* note 31, at 3 ("When reasonably possible and consistent with delivery of specialized programs, youth must be placed in the facility closest to their homes. All treatment services must be designed to include families, except where neither practical nor determined to be consistent with treatment goals.").

58. See Cal. Dep't of Corr. & Rehab., Div. of Juvenile Justice, Frequently Asked Questions About the DJJ, http://www.cdcr.ca.gov/Divisions_Boards/DJJ/About_DJJ/FAQs.html (last visited Jan. 26, 2008) [hereinafter CDCR FAQ] (on file with the *McGeorge Law Review*) (stating that wards are assigned to a location based on factors such as "age, maturity level, educational needs, program availability and the seriousness of their committing offense").

59. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 7 (Apr. 10, 2007); see also Cal. Dep't of Corr. & Rehab., Div. of Juvenile Justice, Youth Correctional Facilities, http://www.cdcr.ca.gov/Divisions_Boards/DJJ/About_DJJ/Locations/Youth_Facilities.html (last visited Jan. 26, 2008) (on file with the *McGeorge Law Review*) (stating that facilities are located in Stockton, Paso Robles, Chino, Ione, and Camarillo).

being placed in a more permanent DJJ facility.⁶⁰ This delays the ability to contact a minor for some time after placement.⁶¹

Once the ward is permanently placed, the DJJ's visitation policy only allows a person to visit a minor ward after he or she is first placed on the ward's visitation list and is determined not to be a security risk.⁶² The visitor verification process takes time.⁶³ Prior to Chapter 458's passage, the visitation list was also facility specific; thus, the verification process began anew each time a ward was transferred to a different facility.⁶⁴ Further, even apart from the DJJ's official policy, other visitation restrictions are imposed on a facility level.⁶⁵

Given these barriers to visitation, families rely on the telephone to connect with minor wards.⁶⁶ Families are forced to limit telephone call length and frequency, however, because the cost of calls from DJJ facilities is exorbitant.⁶⁷ Telephone usage is also limited because it is a privilege that is revocable for disciplinary purposes.⁶⁸ Chapter 458's author contends that these restrictions on

60. Cal. Dep't of Corr. & Rehab., Div. of Juvenile Justice, Facility Locations, http://www.cdcr.ca.gov/Divisions_Boards/DJJ/About_DJJ/Locations/index.html (last visited Jan 26, 2008) (on file with the *McGeorge Law Review*) ("Two institutions provide reception and diagnostic services for males. Female offenders are housed at the Ventura Youth Correctional Facility, which also serves as the reception site for all females.").

61. *Id.* Family, friends, and others who wish to locate a minor ward incarcerated at a DJJ facility must

1. Write a letter to the individual in question 2. Place the letter in an envelope with your return address, addresses [sic] as follows . . . The Master File Unit will then locate the ward and forward your letter. It is the ward's responsibility to respond to the questions in your letter. . . . If the letter is returned to you unopened, the ward has not been located within the DJJ based on the information you provided.

Id.

62. CDCR FAQ, *supra* note 58.

63. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 8 (Apr. 10, 2007) (stating that a new visitation list often takes months to build and requires concerted effort between the facility, wards, families, and others).

64. *Id.*

65. CDCR FAQ, *supra* note 58 ("The times and days of visiting vary at each institutions [sic] so the best way to determine the visiting hours is by calling the facility. In addition each institution will have guidelines available that explain required apparel, use of a cameras [sic], numbers of visitors, etc."); see also ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 7 (Apr. 10, 2007) (stating families specifically complain and "consistently report that they are blocked from visiting their children and relatives in DJJ" facilities).

66. See FACT SHEET, *supra* note 22, at 1 (stating that although still difficult, phone usage and letter writing are other methods that families use to communicate with minor wards).

67. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 5, 8 (Apr. 10, 2007) ("Families pay hundreds and thousands of dollars in collect charges, many losing their phone service because they could not afford the bills."); see also FACT SHEET, *supra* note 22, at 1 ("The current MCI WorldCom charge for the Department of Juvenile Justice (DJJ) families is approximately 250% to 300% of market commercial long distance rates, based on the contract between the Department of General Services and MCI WorldCom."); Books Not Bars, Victory for Family Connection, <http://ellabakercenter.org/page.php?pageid=18&contentid=211> (last visited Jan. 26, 2008) [hereinafter Family Connection] (on file with the *McGeorge Law Review*) (stating that families of minor wards struggle to maintain connections due to the four-dollar-a-minute collect call cost).

68. 28 C.F.R. § 540.100(a) (2007) ("Restrictions on inmate telephone use may also be imposed as a disciplinary sanction.").

family connections are counterproductive because “families promote peace and well being in a child.”⁶⁹

III. CHAPTER 458

Chapter 458, known as “The Family Connection and Young Offender Rehabilitation Act of 2007,” is described as a “deliberative package of measures” designed to facilitate connection between youthful offenders in the CDCR and their families.⁷⁰ Chapter 458 adds education to the list of rehabilitative services provided by the Department of Juvenile Programs and expands the list of objectives to include promoting family ties.⁷¹ Chapter 458 also amends the minor ward transfer policy by requiring the Division of Juvenile Facilities to consider the proximity of the ward’s family to the transfer facility.⁷²

In addition, Chapter 458 requires the DJJ to encourage communication between the ward and his or her family and participation in programs that forward the Department of Juvenile Programs’ objectives.⁷³ If a correctional facility requires lists of pre-approved visitors, callers, or correspondents, those lists must be transferred with the ward.⁷⁴ Also, a minor ward is expressly permitted a minimum of four telephone calls a month, and telephone usage restrictions may no longer be imposed as discipline.⁷⁵ Finally, Chapter 458 requires the Division of Juvenile Facilities to provide a toll-free number with current information on visiting times and any relevant changes for families and other visitors.⁷⁶ Family members can also call the individual facility to determine whether a minor ward’s visitation rights have been suspended.⁷⁷

IV. ANALYSIS OF CHAPTER 458

Chapter 458 does not purport to bring comprehensive reform to California’s DJJ.⁷⁸ Assembly Member Price introduced the bill to implement only a “few of

69. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 5 (Apr. 10, 2007) (“Taking away the right to call home or to speak to a grandparent or parent is a mistake.”).

70. 2007 Cal. Stat. ch. 458, § 1; Letter from Ignacio Hernandez, Legislative Advocate, Cal. Attorneys for Criminal Justice (CACJ), to Assembly Member Curren Price, Cal. State Assembly (Apr. 4, 2007) (on file with the *McGeorge Law Review*).

71. CAL. WELF. & INST. CODE § 1710(b)(2) (amended by Chapter 458) (stating that other objectives include “community restoration, . . . accountability to victims and to produce youth who become law-abiding and productive members of society, consistent with the purposes set forth in Section 202”).

72. *Id.* § 1714 (amended by Chapter 458).

73. *Id.* § 1712.1(a) (enacted by Chapter 458).

74. *Id.* (enacted by Chapter 458).

75. *Id.* § 1712.1(b) (enacted by Chapter 458).

76. *Id.* § 1712.1(c)(2) (enacted by Chapter 458).

77. *Id.* § 1712.1(c)(1) (enacted by Chapter 458).

78. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 6 (Apr. 10, 2007) (stating that much more can be done to strengthen family connections than the few inexpensive methods

the most common-sense, and least expensive, ways to promote humane and effective rehabilitation of youth.”⁷⁹ The bill was a direct response to specific complaints of families frustrated by the barriers preventing them from visiting and communicating with their children.⁸⁰ Chapter 458 capitalizes on the widely accepted idea that family connections reduce recidivism and play an important role in the rehabilitation process.⁸¹ Due to the high rate of recidivism in the DJJ’s facilities, proponents foresee Chapter 458 eventually lowering the CDCR’s prison population.⁸² Chapter 458’s potential benefits and narrow scope made passage unanimous.⁸³

A. Core Values: Consistency in Litigation and Legislation

Chapter 458 lays a foundation for rehabilitation through statutory language that reinforces existing goals.⁸⁴ For instance, existing law already references the importance of education for minor wards in the DJJ.⁸⁵ Chapter 458 adds

implemented by Chapter 458).

79. *Id.*

80. *Id.* at 7; *see also* Family Connection, *supra* note 67.

Last year, we asked Families for Books Not Bars members what would make the biggest difference for them in dealing with California’s youth prison system. They all agreed that it should be easier for them to stay in touch with their loved ones. They were struggling with the costs of . . . collect calls and hours-long drives across California to see their children. Books Not Bars took our members’ concerns and wrote legislation known as the Family Connection Bill to address this need.

Id.

81. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 5 (Apr. 10, 2007) (stating that family connections benefit rehabilitative goals through reducing recidivism). *See generally* La Vigne et al., *supra* note 48, at 316 (“With remarkable consistency, studies have shown that family contact during incarceration is associated with lower recidivism rates . . .”).

82. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 8 (Apr. 10, 2007).

This bill will address many, but not all, of the systemic barriers to family contact, improving the likelihood of successful rehabilitation, which will make our families more stable and our communities safer. It should also help, over time, reduce the number of persons in adult prisons, as well as DJJ facilities.

Id.; *see also* Letter from Willie L. Pelote, Sr., Assistant Dir. of Political Action, Int’l Am. Fed. of State, County and Mun. Employees (AFSCME), to Assembly Member Mark Leno, Cal. State Assembly (Apr. 25, 2007) [hereinafter Pelote Letter] (on file with the *McGeorge Law Review*) (“These programs should be considered . . . an investment in our prison system, as programs of this nature today will reduce the number of criminals tomorrow.”); Letter from Daniel Felizzatto, Deputy Dist. Attorney, L.A. County, to Assembly Member Jose Solorio, Cal. State Assembly (Apr. 5, 2007) (on file with the *McGeorge Law Review*) (stating that the L.A. County District Attorney’s Office supports AB 1300 because the bill will help to reduce recidivism).

83. Mark Sorkin, California Senate Passes Family Connection Bill, Aug. 31, 2007, <http://juvienation.wordpress.com/2007/08/31/> (on file with the *McGeorge Law Review*) (describing the key reforms of AB 1300, a bill passed by the California Senate in a 39-to-0 vote); *see also* ASSEMBLY FLOOR VOTE, UNOFFICIAL BALLOT (Sept. 4, 2007) (77-0); SENATE FLOOR VOTE, UNOFFICIAL BALLOT (Aug. 30, 2007) (39-0).

84. *See infra* notes 91, 94-96 and accompanying text.

85. *See* CAL. WELF. & INST. CODE § 1120 (West 1998) (stating the California Legislature’s intent to provide appropriate educational programs and individualized educational assessments for minor wards incarcerated in DJJ facilities).

“comprehensive education” to the list of services provided to minor wards, enhancing continuity between Chapter 458 and existing law.⁸⁶ Chapter 458 supporters find this an important part of the legislation and consider it an investment in the future of the minor wards.⁸⁷

Similarly, Chapter 458 expands the DJJ’s objectives to include the promotion of family ties.⁸⁸ This amendment brings the DJJ’s objectives further into alignment with the California Welfare and Institutions Code, which notes the importance of family ties.⁸⁹ This statutory foundation of rehabilitation paves the way for Chapter 458’s subsequent functional fixes.⁹⁰

B. Expression of Core Value for Family Connections

Chapter 458 articulates several sensible ways to improve family connections in the DJJ’s facilities.⁹¹ Immediately helpful to families is the toll-free number now available to facility visitors.⁹² Prior to Chapter 458, a person who wanted to know the general visiting hours of a particular facility would need to call that specific facility.⁹³ Visitation hours often changed without an effective way to communicate those changes to visiting families.⁹⁴ The toll-free number provides a cost-effective solution to that problem: family and friends can call a single number to verify visiting times and receive “timely updates on interruptions and

86. *Id.* § 1710(b)(2) (amended by Chapter 458).

87. Pelote Letter, *supra* note 82.

AFSCME supports Assembly Bill 1300 because this bill seeks to provide comprehensive education and health services to youth offenders in California. These services will help to rehabilitate young offenders and provide them with tools and resources for them to begin to plan a future that is crime free. These programs should be considered an investment in the future of these youth . . .

Id.

88. CAL. WELF. & INST. CODE § 1710(b)(2) (amended by Chapter 458) (stating that other objectives include “community restoration, . . . accountability to victims and to produce youth who become law-abiding and productive members of society, consistent with the purposes set forth in Section 202”).

89. *Id.* § 202(a) (West 1998 & Supp. 2007) (stating that one purpose is “to preserve and strengthen the minor’s family ties whenever possible”).

90. *See infra* Part IV.B.

91. Letter from Timothy H.B. Yaryan, Legislative Counsel & Advocate, L.A. County Prob. Officers Union, to Assembly Member Curren Price, Cal. State Assembly (Apr. 24, 2007) (on file with the *McGeorge Law Review*).

92. *See* CAL. WELF. & INST. CODE § 1712.1(c)(2) (enacted by Chapter 458) (requiring the DJJ generally, or the DJJ facility specifically, to provide a toll-free telephone number that families may call to confirm visiting times).

93. CDCR FAQ, *supra* note 58 (“The times and days of visiting vary at each institutions [sic] so the best way to determine the visiting hours is by calling the facility. In addition each institution will have guidelines available that explain required apparel, use of a cameras [sic], numbers of visitors, etc.”).

94. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 6 (Apr. 10, 2007) (stating “interruptions in visitation hours at the facility due to staff shortages, discipline problems, or other reasons beyond the family’s control” were a problem for those who took time off of work and traveled to the facility only to find out they could not visit their loved one).

rescheduling of visiting days, times, and conditions” for any facility.⁹⁵ Further, a family member may also call an individual facility to determine if a specific minor ward’s visitation rights are suspended.⁹⁶ By calling two numbers, a family member receives assurance before arriving at the facility that he or she can visit the minor ward.⁹⁷

Chapter 458 also directly addresses the DJJ’s previous visitation policy.⁹⁸ Prior to Chapter 458’s passage, when a minor ward was transferred from one facility to another, his or her visitation list was not transferred.⁹⁹ This list may have taken several months to accumulate and that time-consuming process would need to be repeated at the new facility.¹⁰⁰ This policy created a period of up to several months during which the ward could not receive visitors.¹⁰¹ Chapter 458 provides the reasonable solution of allowing the visitation list to transfer along with the ward’s other records so that the transfer “does not unduly interrupt family and community communication.”¹⁰² This is not to say that the list cannot be amended or reviewed, but the increased continuity in family contact is likely to immediately benefit the emotional health of transferred wards.¹⁰³

Chapter 458 additionally requires the DJJ to consider the location of the ward’s family for each transfer.¹⁰⁴ The distance between a ward’s family and a

95. CAL. WELF. & INST. CODE § 1712.1(c)(2) (enacted by Chapter 458).

96. *Id.* § 1712.1(c)(1) (enacted by Chapter 458).

97. *Cf.* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 9 (Apr. 10, 2007) (“Monique Johnson, whose son is incarcerated in the DJJ writes, ‘As a working adult, it’s hard for me to squeeze in some time to visit. And when I do visit, I don’t know until I get there whether or not I’m going to get to see my child.’”).

98. *See* CAL. WELF. & INST. CODE § 1712.1(a) (enacted by Chapter 458) (providing that facilities that require visitation lists must allow the list to be “transferable from facility to facility, so that the transfer of the ward does not unduly interrupt family and community communication”).

99. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 8 (Apr. 10, 2007) (“Often, when a ward is transferred from one facility to another, the ward has to build a new approved visitation list, which takes months of effort by staff, the ward, families and other concerned persons.”).

100. *Id.*

101. Youth Prisoners, *supra* note 16 (“When [Joseph] Maldonado . . . was transferred to the Stockton prison, his family in Sacramento lost their right to visit. They were slogging through the bureaucratic reapplication process for months, but Joseph took over his [sic] life before the paperwork cleared.”).

102. CAL. WELF. & INST. CODE § 1712.1(a) (enacted by Chapter 458).

103. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 8 (Apr. 10, 2007); *see* Letter from Jakada Imani, Dir., Books Not Bars, to Assembly Member Jose Solorio, Cal. State Assembly (Mar. 20, 2007) (on file with the *McGeorge Law Review*) (“Families for Books Not Bars members express continual frustration with DJJ’s bureaucratic roadblocks and the exorbitant costs of maintaining contact with children behind prison walls. These barriers not only undermine rehabilitative efforts, but also contribute to deep depression inside DJJ prisons, leading to numerous suicide attempts.”); Letter from Patricia J. Arthur, Senior Attorney, Nat’l Ctr. for Youth Law, to Assembly Member Jose Solorio, Cal. State Assembly (Mar. 27, 2007) (on file with the *McGeorge Law Review*) (“These [bureaucratic and economic] barriers [to family connection] undermine rehabilitative efforts and contribute to the anger and depression youth feel inside DJJ facilities.”); CAL. PERFORMANCE REVIEW, CORR. INDEP. REVIEW PANEL, REFORMING CORRECTIONS 174 (2004), <http://cpr.ca.gov/report/indrpt/corr/pdf/from7to11.pdf> (on file with the *McGeorge Law Review*) (stating that between 2001 and 2003 there were 172 suicide attempts in DJJ facilities).

104. CAL. WELF. & INST. CODE § 1714 (amended by Chapter 458).

ward's placement is a significant barrier to visitation that the DJJ never successfully addressed.¹⁰⁵ *Farrell's* Safety and Welfare Remedial Plan similarly required minors to be placed in a facility nearest home whenever possible,¹⁰⁶ but the DJJ never fully incorporated that requirement into ward placement protocol.¹⁰⁷ Unfortunately, as even the closest DJJ facility may be far from a ward's home, Chapter 458 may not impact the status quo for ward placement.¹⁰⁸

Practical considerations, like limited visitation hours and remotely located facilities, indicate that the telephone may be the primary method of communication between a minor ward and his or her family.¹⁰⁹ In this way, Chapter 458's promise of at least four phone calls a month may be the Act's principal benefit, especially since these calls are not revocable for disciplinary purposes.¹¹⁰ Phone calls to or from family members can emotionally reassure both the family and the ward, maintain family bonds, and facilitate the relationships and support system that will be there when the ward is released.¹¹¹ A minor ward with familial support can more easily resist the violence and fear present in the DJJ's facilities.¹¹² In contrast, a minor ward without familial support is likely to succumb to the institutional culture.¹¹³

While Chapter 458 mandates phone calls for wards, it fails to address the exorbitant cost of the collect calls from the DJJ's facilities.¹¹⁴ This result leaves many families unable to afford long or frequent phone calls, even with four guaranteed calls per month.¹¹⁵ Thus, Chapter 458 provides the right for a minor

105. See FACT SHEET, *supra* note 22, at 1 (stating that because distance was a known barrier to family contact, a recommended policy to remove that barrier would be to house the ward as close to his or her family as possible).

106. Stipulation, *supra* note 31, at 3 ("When reasonably possible and consistent with delivery of specialized programs, youth must be placed in the facility closest to their homes. All treatment services must be designed to include families, except where neither practical nor determined to be consistent with treatment goals.").

107. See CDCR FAQ, *supra* note 58 (stating that wards are assigned to a location based on factors such as "age, maturity level, educational needs, program availability and the seriousness of their committing offense.").

108. See Letter from Jim Lindburg, Legislative Dir., Friends Comm. on Legislation (FCL), to Assembly Member Jose Solorio, Cal. State Assembly (Aug. 5, 2007) (on file with the *McGeorge Law Review*) ("Unfortunately, DJJ facilities, like adult prisons, are located far away from the state's urban centers which makes family visitation a hardship for many families").

109. *Id.*

110. CAL. WELF. & INST. CODE § 1712.1(b) (enacted by Chapter 458).

111. See *supra* note 45 and accompanying text.

112. See *supra* note 46 and accompanying text.

113. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 9 (Apr. 10, 2007) (quoting a former DJJ ward as stating, "I vividly remember spending Christmas in my cell all day torturing myself with old pictures and letters, desperately attempting to bring those I love in my presence. . . . Physical wounds heal, but the emotional pain this system has inflicted on me will last forever.").

114. See *supra* note 66 and accompanying text.

115. See *supra* note 67 and accompanying text.

ward to call home but not the means through which that ward can maintain family connections.¹¹⁶

V. CONCLUSION

Joseph Maldonado's suicide contributed to the enactment of the Family Connection and Young Offender Rehabilitation Act of 2007.¹¹⁷ Following the tragedy, DJJ chief Bernard Warner assured the public that he knew how "critical [it was] to change the culture of th[e] facility."¹¹⁸ It still is. As recently as March 2006, experts still found evidence of retributive culture in a rehabilitative system.¹¹⁹ In response, exactly two years after Joseph's death, the California Senate unanimously voted to enroll the bill that might have prevented it.¹²⁰

Chapter 458 expands the DJJ's rehabilitative values to include comprehensive education and the importance of family ties.¹²¹ Chapter 458 attempts to implement those values through a toll-free number for families,¹²² transferable visitation lists,¹²³ facility placement consideration,¹²⁴ and a minimum of four unrestricted phone calls per month.¹²⁵ The California Legislature thus responded to the DJJ chief's call for cultural change in DJJ facilities.¹²⁶ In doing so, the Legislature addressed many of the concerns of Joseph Maldonado's family and the families of all other DJJ wards.¹²⁷

Farrell v. Hickman's Welfare and Remedial Plan¹²⁸ started the DJJ on a road to reform.¹²⁹ Chapter 458 is the next step on that road. Although legislation cannot force an institution to invest in its wards or foster the values it proclaims, Chapter 458 calls attention to the fact that education and family ties are (or

116. See CAL. WELF. & INST. CODE § 1712.1(b) (enacted by Chapter 458) (providing a ward the right to call home at least four times per month, and restricting a ward's ability to do so only "to the extent reasonably necessary for the continued operation and security of the facility"); ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 5 (Apr. 10, 2007) ("Current policy punishes families along with the wards. Families pay hundreds and thousands of dollars in collect charges, many losing their phone service because they could not afford the bills. This is a travesty and an unfair tax on the poorest Californians.").

117. See *Youth Prisoners*, *supra* note 16 (stating that Joseph Maldonado's family worked with Assembly Member Curren Price to pass AB 1300).

118. Smith, *supra* note 1.

119. Burrell & Laba, *supra* note 12 (commenting that the DJJ facilities are run with "an adult corrections mentality").

120. Sorkin, *supra* note 83.

121. CAL. WELF. & INST. CODE § 1710(b)(2) (amended by Chapter 458).

122. *Id.* § 1712.1(c)(2) (enacted by Chapter 458).

123. *Id.* § 1712.1(a) (enacted by Chapter 458).

124. *Id.* § 1714 (amended by Chapter 458).

125. *Id.* § 1712.1(b) (enacted by Chapter 458).

126. See Smith, *supra* note 1 (stating that directly following Joseph Maldonado's suicide, DJJ Chief Bernard Warner informed the public that "[i]t was critical to change the culture of [the specific] DJJ facility").

127. *Youth Prisoners*, *supra* note 16.

128. REMEDIAL PLAN, *supra* note 28.

129. PLO Press Release, *supra* note 31.

should be) important DJJ values.¹³⁰ Moreover, Chapter 458 provides opportunities for much-needed family connections.¹³¹ So the question remains: will the DJJ continue along this road of reform and reduce the disparity between official policy and facility practice? Or will Joseph Maldonado's death be in vain?

130. See CAL. WELF. & INST. CODE § 1710(b)(2) (amended by Chapter 458) (adding education and family ties to the DJJ programs' purpose); ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1300, at 6 (Apr. 10, 2007) ("A social investment in prisoners' families and children will require the adoption of more positive views of prisoners' families and family relationships, better understanding of family needs and societal responses, and dedicated attention to changing the prevailing system responses.").

131. See Klein et al., *supra* note 46, at 99-100 ("[A]lthough family ties do not guarantee success after release, the absence of such ties increases the likelihood of failure. The relationship between family ties and lower recidivism has been consistent across study populations, different periods, and different methodological procedures." (citation omitted)).

* * *