

Interest Groups and Criminal Justice Policy

Ignoring the Evidence:

The role of the California District Attorneys Association in California's prison crisis

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Introduction

The California District Attorneys Association (CDAА) was incorporated in 1974 to “serve the needs and promote the interests of California prosecutors” (CDAА, 2011). The association accomplishes this mission by operating over 30 special interest committees that draft and analyze legislation and a full-time staff member headquartered in Sacramento to lobby on measures related to “public safety, environmental and consumer protection” (CDAА, 2011).

CDAА’s membership of over 2,500 includes a seventeen-person Board of Directors that consists of District Attorney and Deputy District Attorney members. This Board conducts the majority of CDAА’s decision-making business and is largely elected through annual District Attorney voting (CDAА, 2011c). As a statewide organization, CDAА represents the interests of District Attorneys across California’s 58 counties, many of which consist of small rural communities. As a result CDAА’s agenda leans towards a conservatism that is more prevalent in these rural areas, despite the fact that those counties are home to a minority of the state’s population. Unlike some other states, California does not have a separate district attorney’s association to represent the state’s urban jurisdictions and the unique public safety issues more common in urban environments.

This publication reviews the history of CDAА’s legislative advocacy and analyses the underlying agenda behind CDAА’s criminal justice policy recommendations. It demonstrates that CDAА-recommended legislation and lobbying efforts are primarily designed to pursue sentencing and incarceration policies that grant increased incarceration power to prosecutors in the courtroom. These policies often contradict independent research and national consensus and circumvent the procedural safeguards provided in the justice system, contributing to California’s current prison crisis.

CDAА’s Legislative Advocacy

The strategies used by CDAА to promote or oppose legislation involve bill drafting and sponsorship, authoring white papers to support recommended legislation, and advocacy at legislative hearings. Although CDAА has strong political connections, it does not monetarily

contribute to candidate campaigns. However, CDAA actively maintain positions on hundreds of bills every year, and sponsors as many as twenty bills per legislative session (CDAA, 2011a). Its primary legislative advocate is Cory Salzillo, who has represented CDAA since 2007.

In 2010, CDAA’s legislative advocacy focused on criminal justice legislation including elder abuse, child abuse, and child pornography (CJCJ, 2011). Historically, CDAA supported the 1977 voter initiative to reinstate the death penalty, and opposed sentencing reform to stem the burgeoning prison population (CJCJ, 2011). In fact, when CDAA was established in 1974, California operated 12 adult prisons, and by 2005 California had expanded its operations to 21 adult prisons (CDCR, 2008).

Here are some examples of legislation that CDAA has taken an interest in over the last ten year period, 1991-2011:

Table 1. Sample of CDAA-supported or opposed legislation, 1991-2011

Year	Legislation	Content	Position	Result
1991	Proposition 115	Grants prosecutors significant flexibility in grand jury and preliminary hearings, death penalty appeals, and hearsay evidence	Support	Passed
1995	Public Protection Safety Act* (p.24)	Provides non-unanimous jury verdicts, parole reform, and repeal of inmates Bill of Rights	Support	Failed
1998	Proposition 8	Provides for mandatory expulsion of students who possess controlled substances on school campuses	Support	Failed
2000	Proposition 36	Mandates probation and drug treatment for defendants convicted of non-violent drug possession regardless of prior drug convictions	Oppose	Passed
2000	Proposition 21	Allows direct adult criminal court filing for youth committing violent and serious felonies	Support	Passed
2005	Proposition 66	Reform 3-strikes law to ensure the 3rd strike is a violent felony	Oppose	Failed
2006	Proposition 83	Enacts reforms to sentencing of sexual assault offenders, “making California’s child protection laws the toughest in the nation” (p.37)	Support	Passed
2007	Assembly Bill 900	Substantially increases state and local correctional capacity and relies on reentry and other local programs to reduce recidivism	Support	Passed
2011	Senate Bill 9	Provides the possibility of re-sentencing for juveniles serving LWOP	Oppose	Failed
2011	Assembly Bill 694	Widens the net for juveniles to be committed to state youth prison	Support	Failed

* After extensive search, CJCJ staff were unable to locate the original bill.

Source: CDAA, 2011b.

As can be seen in Table 1, the strategy of CDAA-supported bills is to promote “tough on crime” legislation that increases the power of prosecutors to pursue harsher sentences and wield more weight in plea negotiations. This has included legislation to provide prosecutors with significant liberties in grand jury and preliminary hearing proceedings, death penalty appeals, and hearsay evidence (*see* Proposition 115 (1991) for an example). The association’s policy advocacy not only increases prosecutorial power in the courtroom, but also perpetuates California’s excessive incarceration rates.

An additional example of this legislative advocacy occurred in 1995, when CDAA contributed \$50,000 towards an initiative titled “The Public Protection Safety Act” that provided for non-unanimous jury verdicts, parole reform, and repeal of the Inmates Bill of Rights (CDAA, 2011b). These measures erode the rights of the defendant and expand the role of the prosecutor in the courtroom. For example, non-unanimous jury verdicts increase the likelihood that prosecutors can secure a guilty verdict, and admission of hearsay evidence inhibits the defendant from cross-examining the witness. As of February 2011, only two states in America have implemented non-unanimous jury verdicts, Oregon and Louisiana (Ravio, Kohlmetz & Steen PC, 2011).

CDAA produces numerous white papers to bolster its policy recommendations. However, according to Death Penalty Focus (2003) there are severe flaws in CDAA’s methodology, analysis, and representation of legal concepts. For example, in its March 2003 white paper, *Prosecutors’ Perspective on California’s Death Penalty*, CDAA draws a metaphysical distinction between ‘legal innocence’ and ‘actual innocence’ (Death Penalty Focus, 2003). CDAA indicates that “no matter how overwhelming the evidence of a defendant’s guilt, the prosecution cannot appeal if a jury finds the defendant ‘not guilty.’ Nor may the prosecution retry an acquitted defendant” thus they proffer, “the defendant, no matter how guilty, goes free” (CDAA, 2003, p.32). However, several of over 100 documented cases in which a defendant was wrongfully convicted and given the death penalty were later exonerated through DNA evidence (Death Penalty Focus, 2003, p.6). Moreover, this distinction between ‘actual’ and ‘legal’ innocence undercuts the role of the jury and courts as the arbiters of justice and recasts the prosecutor in the role instead. This reframing violates over 200 years of American legal tradition and contradicts its strongest foundation as an adversarial system of justice.

Not only does CDAA engage in confirmation bias¹ by misapplying legal constructs; it also discounts independent research that is inconsistent with its agenda. For example, in 2003, when CDAA published its white paper endorsing the death penalty, numerous studies had been conducted nationwide demonstrating that the death penalty is not a deterrent to crime (*see*, for example, Sorenson et al., 1999). In addition, several academic studies provided criticism of capital punishment in California specifically, including the Liebman Columbia University study (2002), the Mintz San Jose Mercury News studies (2002), and the Sanger Report on the Illinois Commission Recommendations as Compared to California (2003).

CDAA’s unabated support of the death penalty and other tough-on-crime laws, such as California’s three strikes law, has contributed to prosecutors being able to leverage more power in the courtroom; secure longer and harsher sentences for those convicted, and drive incarceration rates upwards. Even after research demonstrated that harsher and longer sentences do not deter or reduce crime (*See*, CJCJ, 1999, 2011a), CDAA has continued to promote incarceration-driven policies that have only exacerbated California’s prison crisis, such as AB 900 that sought to address overcrowding through construction of new prisons, and did not address the underlying causes for the increase in prison population (*See*, CJCJ, 2007). In addition the Legislative Analyst’s Office (2009) noted that while crime rates decreased over the period 1987 to 2007, prosecutors have increased “the number of felony charges filed, convictions

¹ “Confirmation bias” is a tendency to favor information that confirms preconceived hypotheses and disregard information that disproves the hypotheses regardless of the accuracy or reliability of the information (*See* http://en.wikipedia.org/wiki/Confirmation_bias).

achieved, and prison sentences ordered” (p.13). In fact, prosecutors have increased the proportion of convictions resulting in a prison sentence so that “a felony arrest is almost twice as likely to result in a prison sentence than it was two decades ago” (LAO, 2009, p.13).

Another example of CDAA’s agenda and lobbying efforts can be seen in its 2008 opposition of Proposition 5 or “The Nonviolent Offender Rehabilitation Act.” The proposition aimed to increase funding and oversight for individualized treatment and rehabilitation programs for nonviolent drug offenders and parolees. CDAA opposed the proposition, donating \$15,000 to the opposition campaign, largely because it also reduced criminal consequences for nonviolent drug offenses, including dealing drugs (Follow the Money, 2011). The proposition failed by a vote of 59.5% to 40.5% (League of Women Voters of California, 2008). Rather than embracing modern community-based best practices, CDAA has pursued drug policies that increase prosecutorial ability to incarcerate this non-violent population.

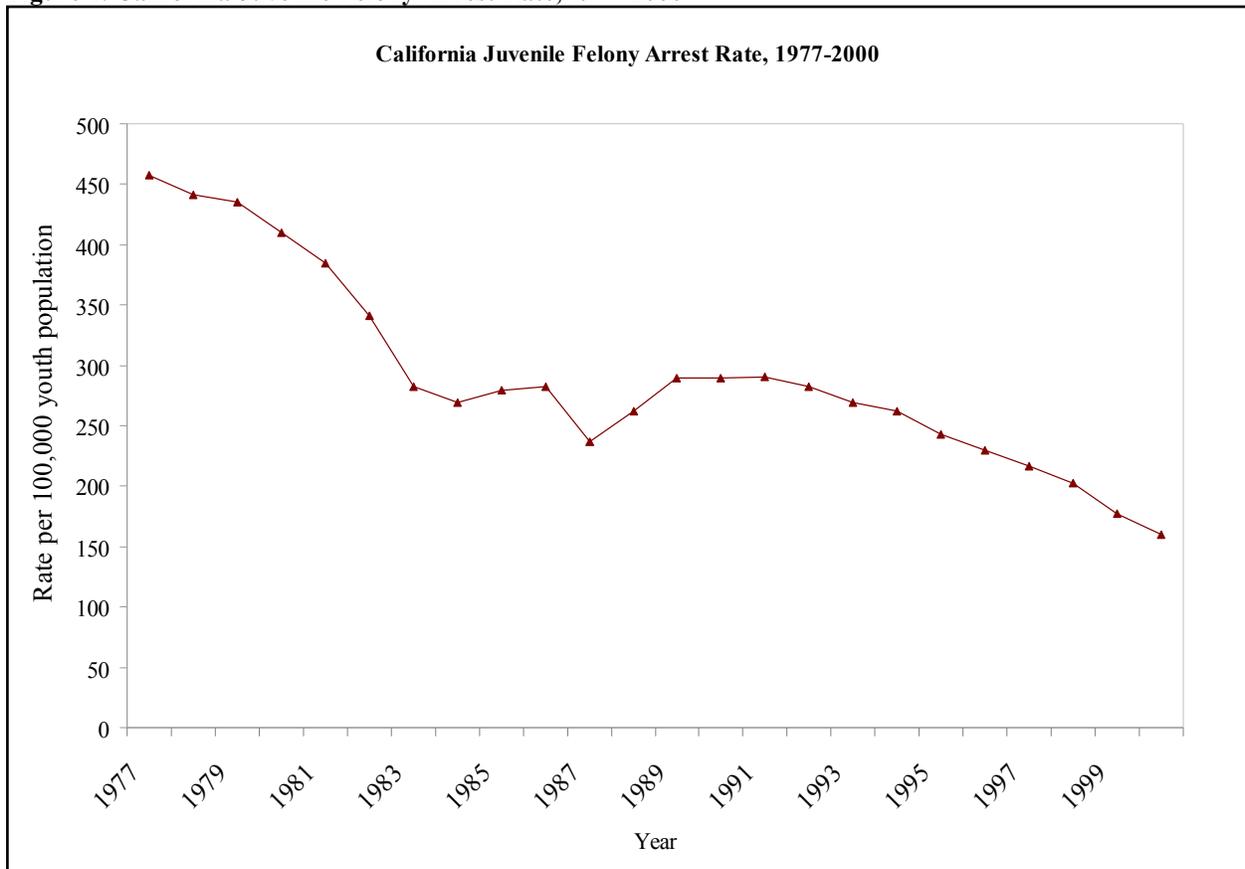
This tough-on-crime philosophy extends beyond adult incarceration and can also be seen in CDAA’s juvenile justice recommendations. In 1996, when the state’s youth prisons were overcapacity by 150%, CDAA released a white paper entitled *Reforming the Juvenile Justice System: The Prosecutor’s Perspective on Juvenile Justice Reform*, that outlined recommendations to toughen juvenile laws against violent offenders. This formed the basis of Proposition 21 (2000) that created the ability for prosecutors to circumvent juvenile court jurisdiction and directly file a juvenile in adult criminal court.

CDAA lobbied hard for the passage of Proposition 21, releasing a joint statement with the California Police Chiefs Association and Crime Victims United, stating

Despite great strides made recently in the war against adult crime, California Department of Justice records indicate *violent juvenile crime arrests--murders, rapes, robberies, attempted murders and aggravated assaults--rose an astounding 60.6% between 1983 and 1998*. The FBI estimates the California juvenile population will increase by more than 33% over the next fifteen years, leading to predictions of a juvenile crime wave (California Secretary of State, 2000).

Yet the data shows that between 1983 and 2000, when CDAA was advocating for Prop. 21, California's juvenile felony arrest rate had dropped by 44% (CJSC, 2011), and juvenile violent felonies has also been in sharp and steady decline (CJCJ, 2010).

Figure 1. California Juvenile Felony Arrest Rate, 1977-2000



Source: CJSC, 2011.

CDAAs selection of data, from 1983 to 1998, is another example of confirmation bias. By selecting a period of time that best illustrated the hypothesis it was promoting while ignoring the most current and thus relevant data that contradicted its bias, CDAAs drove the policy dialogue towards unwarranted tough-on-crime legislation.

Former California Youth Authority Director, Allen Breed joined the California Chief Probation Officers Association and the California State Commission on Justice, Crime and Delinquency Prevention in opposition of Proposition 21 (California Secretary of State, 2000a). In addition, policy organizations such as the Legislative Analyst’s Office, the Little Hoover Commission, and the Center on Juvenile and Criminal Justice also strongly opposed the bill. Moreover, judges, sheriffs, and even individual District Attorneys made statements opposing Proposition 21 (Wagner, 2000).

Ultimately the Proposition, which passed 62.1% to 37.9%, created a new and extensive avenue for prosecutors to evade judicial review of serious or violent juvenile cases by a juvenile court. The result has been a significantly disparate application of direct filing powers across California’s 58 counties without any demonstrable effect on crime trends (CJJC, 2011b). This data indicates Proposition 21 did not contribute positively towards public safety but simply expanded prosecutorial power to incarcerate youth.

Conclusion

Despite the availability of sound research and data, the California District Attorneys Association pursues an agenda that provides more prosecutorial power to incarcerate rather than pursue effective alternatives that serve the interests of public safety. The association's incarceration-driven agenda is hidden behind rhetoric that stands directly opposed to the majority of research and consensus in the field. As CDAA conducts its research utilizing in-house committees who are versed in its agenda, its white papers are infused with confirmation bias and generally ignore otherwise relevant data that contradict the association's conclusions.

CDAA is one of the many special interest groups in California that have significant influence over criminal justice policy making in California. This allows the association to pursue its "tough on crime" approach which has contributed to California's current state of mass incarceration. Even within its own membership, individual District Attorneys have developed alternative approaches to criminal justice, such as San Francisco County's former District Attorney Kamala Harris, who developed a "smart on crime" approach that emphasized model reentry programs to reduce the recidivism of low-level offenders (Harris, 2009). Yet, although the Governor, Courts, and individual District Attorneys have recognized the need to halt the overcrowding within the prison system, the association's agenda continues to drive incarceration rates. The result is an imbalance in the criminal and juvenile justice systems in California that does not conform to the fair dispensing of justice, nor does it contribute to public safety.

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