

JUVENILE PROBATION DEPARTMENT STATEMENT ON ORDINANCE NO. 228-09
PRESENTED AT THE SAN FRANCISCO BOARD OF SUPERVISORS' RULES
COMMITTEE HEARING ON MARCH 4, 2010

Ordinance No. 228-09 directs the Juvenile Probation Department to "modify its policies and practices to comply with the provisions of this Ordinance **to the extent permitted by state and federal law.**

The Juvenile Probation Department has reviewed the amendment contained in Ordinance No. 228-09 to determine whether it can adopt the amendments consistent with state and federal law.

With the benefit of legal advice provided by the City Attorney's Office and outside legal counsel and in light of the current restrictions imposed by federal law, particularly the position taken by federal law enforcement authorities, the Department has concluded that it cannot modify its policies and practices.

The prior practice of our Juvenile Justice system involved the return of undocumented juveniles to their country of origin as well as placement in group homes, with no notification to federal authorities that the Department suspected that the individual was in the US in violation of the federal immigration law.

In addition, when released from custody prior to adjudication, and in many instances after a sustained finding was made, many of these youths absconded from court jurisdiction, often returning only after subsequent arrests involving new criminal charges. Examples of this problem can be found in instances where a youth would be arrested for selling crack cocaine in the Tenderloin only to be released from custody, placed in a group home, later to run away and be rearrested for selling crack in the same neighborhood.

The situation became most problematic for the Department when on two occasions probation officers were detained, interrogated and threatened with arrest by federal criminal authorities while transporting undocumented minors pursuant to orders of the Juvenile Court. Subsequently, the U.S. Attorney's Office convened a federal grand jury to criminally investigate the practices of the Juvenile Probation Department in housing and transporting undocumented individuals. That investigation continues to this day.

The Department's current policy was adopted in response to these significant public safety concerns.

We believe that any modification of our policy, like the one advocated by the supporters of the Ordinance would create the opportunity for the release of alleged felons who are undocumented into the community in advance of adjudication and could therefore place probation officers at risk of criminal liability under federal law for attempting to perform their duties to supervise these youths.

Federal law enforcement authorities have asserted that Department employees violate federal criminal law if they harbor or transport undocumented juveniles. Moreover, they have referred the Department to Title 8 Section 1373 of the United States Code, which provides that, "...a Federal, State or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the INS (ICE) information regarding the citizenship or immigration status, lawful or unlawful, of any individual."

Until a court rules otherwise, the Department must conclude that this law would not allow the Department to change its policy to comply with the restrictions contained in the City of Refuge ordinance.

Although the Department believes that its employees have at all times acted legally, we must seriously consider these statements by federal authorities as well as their actions to issue federal subpoenas to the department.

Until these issues of federal civil and criminal law are resolved, possibly by the courts, the Department cannot modify its policies and practices.

The Juvenile Probation Department, however, will continue its commitment to treat every individual with dignity and respect, and to provide services and equal treatment to all juveniles referred to it, without regard to race or ethnicity.

The existing Department policy that governs the reporting of juveniles to immigration authorities specifically prohibits reporting based on ethnicity or ability to speak English.

Similarly, Department policy does not permit probation officers to detain juveniles based on perceived undocumented status.

Under state law, juvenile probation officers are required to investigate the circumstances of the juvenile, including inquiries about their living situation, but San Francisco's probation officers are not to directly question juveniles, their parents or their guardians about their immigration status.

The Department will continue to educate and train its probation officers in these principles of equal treatment.

The Department remains steadfast in its commitment to deliver comprehensive probation services to all juveniles in a manner that promotes rehabilitation and ensures public safety.

We are committed to our public safety responsibilities in the short term, by promptly addressing behaviors of youth brought to detention by law enforcement for immediate attention, and then ensuring public safety in the long term, by establishing pathways that promote the development of pro social behaviors.

We are equally committed to the principles of diversion, restorative justice, detention alternatives and the pursuit of the least restrictive interventions and placements that do not compromise public safety.

Historically, the largest group of undocumented youth at YGC have been unaccompanied Hondurans arrested for dealing crack cocaine in the Tenderloin. Since the current policy was implemented in August 2008, there has been a marked reduction in the number of detentions of undocumented/unaccompanied youth identified from Honduras for trafficking drugs in the City's neighborhoods.

We believe this policy has significantly reversed a fifteen year arrest trend in the City.

Not having received the list of items requested by Supervisor Campos for JPD's presentation at today's hearing until I personally requested this information and received the form late Tuesday afternoon, I did not have ample time to prepare responses to all of the items listed.

Nevertheless, the following information offered:

- Since 7/1/08, JPD has released 107 unduplicated youth to ICE 125 times.
- 17 of the 125 were released to ICE more than once. Some returned from their country of origin and reoffended; other were reunited with their parents by ICE and reoffended.
- 92% of the youth were released to ICE after a felony level finding.

- Over the last 20 months of the current policy, JPD has released only a small number youths to ICE without having been determined to have committed a felony. This occurred for a variety of reasons that only an individual case would reveal.
- The monthly average of releases to ICE in the first 4 months of the policy change was 10.
- The monthly average of releases to ICE in the past 16 months is 5. We attribute this decline mostly to the fact that the Honduran youths are no longer returning to the Tenderloin to sell crack cocaine with the same frequency.
- There are a number of undocumented youth previously released to ICE who have been returned to their homes and are still subject to juvenile court jurisdiction and under our supervision. (That number seems to be increasing.)
- Initial training on JPD's written policy was provided to all probation officers in August of 2008.
- A supplemental training curriculum is being developed for probation officers that will emphasize the policy directive that ensures the equal treatment of youth without regard to race or ethnicity and will reinforce the established criteria that forms "reasonable belief".
- While there has been a reduction in the number of persons presented for detention and later suspected of being in violation of civil immigration laws, there has been no measureable decline in the caseload/workload of probation officers who continue to supervise suspected undocumented youth residing in San Francisco who have not been reported to ICE, because of their entry into our juvenile justice system came by way of a non detention citation.
- The Department has dedicated none of its financial and human resources to "Collaboration w/ ICE".
- Our interaction w/ ICE is limited to minimum fax transmittals and any necessary follow up phone calls in those instances occasioned by the initial reasonable belief that an individual may be in violation of civil immigration laws and follow-up response to any subsequent federal detainer notices.
- Time expended in the performance of these infrequent ministerial functions is de-minimus.
- Probation officers do not arrest or detain youth based on the suspicion of undocumented status nor do they assist ICE in taking undocumented persons into custody.
- The Department continues to provide all undocumented youth in our custody with the same quality care provided all other detainees, and provides vigilant supervision over the cases of youth returned to the community by ICE, who are still under our jurisdiction.

In conclusion, I want to re-affirm this Department's commitment to supervise and rehabilitate those youths who come into contact with the Juvenile Justice system in a fair, even-handed and unbiased manner that is consistent with the dictates of federal, state and local laws.

We perform these duties day in and day out with a client population that is predominantly comprised of youth and families of color and/or economically challenged who are in most need of our guidance and direction.

While the best interests of our charges are always a predominant concern, we must also recognize the public safety implications of our policies.

I am happy to listen to your questions and answer those I feel I can. I am also eager to listen to the comments of those in attendance.

William P. Siffermann
Chief Probation Officer
San Francisco Juvenile Probation Department
3/4/2010