

**Juvenile Justice Commission**  
**County of Santa Clara**  
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## **Interim Report**

### **Juveniles 12 & Under**

#### **Background, Purpose, and Focus**

The Santa Clara County Juvenile Justice Commission (JJC) is a state-mandated, court-appointed authority.<sup>1</sup> The JJC's purpose is to inquire into the administration of juvenile law in Santa Clara County. The JJC is dedicated to the promotion of an effective juvenile justice system operated in an environment of credibility, dignity, fairness, and respect for the youth of Santa Clara County.

The Juvenile Justice Commission (JJC) is concerned, like other Santa Clara County Juvenile Justice system partners, that children are entering the justice system at younger ages and for offenses of increasing severity.<sup>2</sup> As a result, the JJC established an ad hoc committee in January 2018 to inquire into the youngest minors entering the justice system.

The JJC previously examined the matter of very young minors in detention and published a report in 2010, *Children 12 Years Old and Younger in Juvenile Hall*<sup>3</sup>. A survey of the pertinent research and literature led the JJC to the conclusion that, for minors 12 and younger, who are by definition developmentally immature, incarceration at Juvenile Hall is not appropriate, and is in fact counter-productive, with lasting negative consequences. The JJC recommended that the County should develop alternative placements for these children. Following that report, the SCC Board of Supervisors (BOS) added to its Policy Manual a new section, 3.51: POLICY TO PROTECT YOUTH (Adopted 5-11-10), stating "It is the policy of the Board of Supervisors that juveniles under the age of 13 should not be placed in Juvenile Hall and that the County shall take every possible effort to find a more suitable placement for the juveniles."<sup>4</sup>

Also in 2010, the Supervising Judge of the Juvenile Justice Court issued Standing Order 287, a directive to seek alternatives to admission to Juvenile Hall for minors under age 13 who had failed Electronic Monitoring.<sup>5</sup>

Beginning in 2017, the JJC observed from the Probation Department's daily census reports the admission to Juvenile Hall of several children 12 and under. During the same period, the Public Defender, Probation Department, District Attorney, San Jose Police Department, and others were

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<sup>1</sup> CA Welf & Inst Code § 229.5 (2017)

<sup>2</sup> See *Appendix A* to this report, charts derived by the JJC from SCC Probation Department statistics.

<sup>3</sup> *Children 12 Years Old and Younger in Juvenile Hall: A Report by the Juvenile Justice Commission*, January 5, 2010. <http://www.sccscourt.org/documents/jjc/2010/Children12AndUnderInJHall.pdf>

<sup>4</sup> Santa Clara County Board of Supervisors Manual, 3.51 (2018)

<https://www.sccgov.org/sites/bos/Legislation/BOS-Policy-Manual/Documents/BOSPolicyCHAP3.pdf>

<sup>5</sup> See *Appendix B*

expressing concern about minors 14 and younger increasingly committing offenses and entering the justice system, both in and out of custody.

Convened in February 2018, the JJC Committee decided to focus the initial phase of its inquiry on children age 12 and under admitted to Juvenile Hall, based on the hypothesis that these youngest minors may represent a distinct cohort and suggest distinct interventions. We report here on that initial phase and on preliminary findings, conclusions, and recommendations. The JJC will continue and broaden its inquiry in the coming months and will publish updated reports.

### **Approach & Methodology**<sup>6</sup>

The Committee's approach included:

- Review of pertinent:
  - Reports, data analysis, and meeting minutes by system partners
  - SCC Board of Supervisors policy and Superior Court standing orders
  - California statutes and case law
- Systematic review of the court case files of children 12 and younger detained in Juvenile Hall over the 18-month period beginning January 2017.
- Discussions, over a period of five months, with numerous leaders and staff of seven SCC departments, to explore their expertise, views, perspectives, and ideas for reducing or eliminating detention of young children.

### **Case Review**

The Committee reviewed court cases filed between January 1, 2017 and April 6, 2018 with a date of birth after January 1, 2005. The review comprised six minors involved in seven cases.<sup>7</sup>

Cases fell into two general categories:

1. Three cases involved children with little or no system history, doing well in school, and with apparently engaged families. These cases appeared to be related to opportunistic access to a gun, access to phones and social media, and school/student disputes that escalated out of control. Detention duration was 0, 4, and 6 days, respectively.
2. In three cases, the children had Child Protective Services and/or mental health history, were either not in school or attending inconsistently, and had apparently unstable families. One case involved a sex offense within the home, spurred by cyber activity. One child, for whom a petition alleging attempted murder was filed, was the subject of numerous incident reports while in detention. All these children appeared to have experienced significant traumatic Adverse Childhood Experiences (ACES)<sup>8</sup>.

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<sup>6</sup> See *Appendix C*

<sup>7</sup> See *Appendix D* for tabulation

<sup>8</sup> Adverse Childhood Experiences, Centers for Disease Control  
<https://www.cdc.gov/violenceprevention/acestudy/index.html> (2018)

Two new cases since the case review brought the census at Juvenile Hall to 3 as of June 29, 2018. By August 27, 2018, there were no children 12 and under in custody.

While the Committee has not ascertained the current status of all the children whose cases were reviewed, three anecdotal reports may be illuminating – both encouraging and illustrative of the unique and diverse challenges of these cases.

- One child, in the first general category, received tailored gun-control education and went on to develop with his father a presentation on gun safety, which may be used by the county and court in education/prevention programs. A reduction of charges from felony to misdemeanor was under consideration.
- One child, in the second general category, was placed by Probation in an out of county specialized group home, where he progressed well enough that he is now living with an aunt.
- The child with the petition alleging attempted murder remained in Juvenile Hall after 10 months.

### **Synthesis of System Partner Discussions**

#### *Contributing Factors – younger minors with more severe offenses.*

Consensus among system partners, supported by the case file reviews, is that the following dynamics are factors that may be driving the detention of more young minors:

- Cyber activity, through both the pervasive use of social media and online gaming, appears a significant factor. It was observed that high schools are recognizing and beginning to address the problem but that elementary and middle schools still are not engaging the problem.
- Younger onset of puberty leading to riskier behaviors at early ages.
- Schools reacting, understandably, to school shootings, in the context of long-standing zero-tolerance policies.
- Crews, the non-traditional, fluid, cyber-enabled crime groups, recruiting younger minors.
- Increased family stress, related to both economic and legal uncertainty, that is destabilizing families further.

The Commissioners note that substantiation is needed to support these dynamics as causal factors.

#### *Questions of Capability and Competence.*

Whether a child 12 years old or younger is capable of appreciating the wrongfulness of his act and/or is competent to participate in the judicial proceeding is the subject of debate. Two court cases apply.

The California Supreme Court has held that a hearing is required to determine whether the prosecution can introduce clear proof showing that “a child under the age of 14 years at the time of committing the act appreciated its wrongfulness.”<sup>9</sup>

A California Court of Appeals held that a finding of incompetence does not require a showing of mental illness, or developmental disability, but may be based on the child’s developmental immaturity (which only time can cure).<sup>10</sup>

While perspectives and opinions among system partners differ, the Committee heard virtually unanimous agreement that children 12 and under are developmentally immature, do not belong in detention, and are progressively more damaged in proportion to the degree of justice system involvement. Finding appropriate alternatives is the challenge.

California Senate Bill 439, introduced in the current legislative year, would exclude children under 12 years old from juvenile court prosecution, except for the most serious and violent offenses. It directs the county to release the minor to his or her parent, guardian, or caregiver and to develop a process for determining the least restrictive responses that may be used.<sup>11</sup>

### Getting Services.

In some situations, charges are filed with the goal of obtaining Court-ordered Informal Supervision (IS) and services. In cases of Dually Involved Youth (DIY),<sup>12</sup> more intensive services are provided by the DIY unit. If the child does well, petitions can be dismissed. While an effective way of securing services, this is inconsistent with the goal of minimizing system penetration for minors, and would in any event be restricted by the passage of SB 439.

An alternative that has shown some success is referral to the Probation Department for Probation IS. This effectively secures services and the oversight of a probation officer while representing a reduced level of system involvement.

A recent California Supreme Court case may provide an avenue that does not involve the delinquency system. The Court in *In Re R. T.*<sup>13</sup> held “that no showing of parental blame is required before a juvenile court may assert dependency jurisdiction over a child at substantial risk of physical harm or illness due to her parent’s ‘failure or inability to adequately supervise or protect’ her. (Welf. & Inst.Code, § 300, subd. (b)(1).)”<sup>14</sup> This allows DFCS to assert jurisdiction in cases where a parent is unable to control the

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<sup>9</sup> In Re Gladys R., California Supreme Court (1970)  
<https://caselaw.findlaw.com/ca-supreme-court/1826444.html>

<sup>10</sup> Timothy J. v. Superior Court, 150 Cal.App.4th 847 (2007)  
<https://caselaw.findlaw.com/ca-court-of-appeal/1251766.html>

<sup>11</sup> SB-439 Jurisdiction of the juvenile court (2017-2018)  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB439](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB439)

<sup>12</sup> DIY, or Dually Involved Youth, are minors officially involved in both the dependency and delinquency systems.

<sup>13</sup> In Re R.T., California Supreme Court (2017)

<sup>14</sup> Ibid.

child and ensure her safety and welfare, without meeting a standard of abuse or neglect (and triggering the attendant stigma). However, insufficient availability of specialized and high intensity placements and services continues to hamper this option in Santa Clara County.

Similarly, San Andreas Regional Center, which serves children and adults with developmental disabilities, has limited placements for children with high-intensity needs.

We note that the Probation Department contracts with Bill Wilson Center for two foster homes, paid to be on stand-by, for difficult, high-risk wards.

### Mental Health Resources.

Resources in the community, in schools, and in placements and detention are inadequate to address the mental health issues that contribute to behaviors that result in, and from, detention of children. As noted, DFCS struggles to identify appropriate placements for dependent children with mental health needs, beyond short-term stays in Short-Term Therapeutic Programs (STRTPs).

Some of the issues highlighted in discussions were:

- Insufficient mental health services in Juvenile Hall overall.
- No specialized mental health resources for the youngest children in detention.
- Heightened challenges with respect to children charged with sex offenses, including:
  - No sex offender services in Juvenile Hall or James Ranch. (One-on-one services required for children 12 and under.)
  - No juvenile sex offender placements within Santa Clara County.
  - Scarcity of juvenile sex offender outpatient services in SCC; and no Spanish-speaking therapists.
- The need for more robust school mental health services and interventions.

### Family Therapy Needed.

One system partner urged that the system “Stop pouring everything down the throat of the kid alone.” As the JJC and others have long maintained, a child-centered approach that fosters a stable and engaged environment in the home likely is the best and, in the long run, the most cost-effective way to support children and minimize justice system involvement in the present and the future.

California statute<sup>15</sup> provides that the Court may order family counseling, not just services for the minor, pursuant to § 601 and 602 offenses.

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<sup>15</sup> Welfare & Institutions Code (WIC) § 727, 729.2

## **Efforts Underway**

### **Probation Department.**

Pursuant to its publication of a comprehensive report relating to youth 14 and under who commit serious offenses, the Probation Department has proposed to the BOS an innovative, evidence-based program, referred to as Multisystemic Therapy (MST).<sup>16</sup> “MST is an intensive family- and community-based treatment that addresses the multiple causes of serious antisocial behavior in juvenile offenders. The MST program seeks to improve the real-world functioning of youth by changing their natural settings - home, school, and neighborhood - in ways that promote prosocial behavior while decreasing antisocial behavior. Therapists work with youth and their families to address the known causes of delinquency on an individualized, yet comprehensive basis. By using the strengths in each system (family, peers, school, and neighborhood) to facilitate change, MST addresses the multiple factors known to be related to delinquency across the key systems within which youth are embedded. The extent of treatment varies by family according to clinical need. Therapists generally spend more time with families in the initial weeks (daily if needed) and gradually taper their time (to as infrequently as once a week) over the 3- to 5-month course of treatment.”<sup>17</sup>

The Committee understands that MST will be a cross-system effort, in which DFCS and the schools, alongside Probation, will provide essential leadership.

### **SCC Behavioral Health Services Department (BHS).**

BHS is undertaking efforts to address high-acuity mental health needs by:

- Mobilizing resources to assist Probation with children under 12 who present at Juvenile Hall.
- Contracting with Uplift, Bill Wilson Center, Seneca, and Rebekah for Therapeutic Foster Care (TFC) homes (one child, with a parent trained as a mental health provider). The effort to identify, recruit, and qualify TFCs in this county is extremely challenging, however.
- Participating in regional discussions seeking a Community Treatment Facility to be operated by a Community-Based Organization, to serve multiple counties.

### **“Youth Under 14 Years of Age” DIY Subcommittee.**

The DIY is forming a cross-system committee, to be convened by the Deputy Public Defender in September 2018. The JJC, along with many system partners, will participate.

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<sup>16</sup> Report from Probation Department relating to youth 14 years old and younger who commit serious offenses, proposed interventions and projected costs. (Probation Department, May 1, 2018 to SCC Board of Supervisors) [http://sccgov.iqm2.com/Citizens/Detail\\_LegiFile.aspx?Frame=SplitView&MeetingID=9960&MediaPosition=&ID=92606&CssClass=](http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=SplitView&MeetingID=9960&MediaPosition=&ID=92606&CssClass=)

<sup>17</sup> <https://www.blueprintsprograms.org/factsheet/multisystemic-therapy-mst> (2018)

## **Conclusions**

The JJC concludes that:

- System partners are concerned when young children, especially those 12 and under, come into the juvenile justice system. They agree that detention should be a last resort.
- School attendance and success are key factors in preventing justice system involvement and must be a major element of any action plan.
- Family engagement and support services are essential, to help families keep children where they belong, at home, developing in healthy, prosocial ways.
- More robust and specialized services are needed in the local community and in detention, to respond to and intervene on behalf of children 12 and under.
- As has been demonstrated many times by SCC system partners, they can achieve effective collaborative action on challenging issues when they come together to share perspectives, resources, and ideas. Our county is a leader in its commitment to juvenile justice reform.

## **Commendations**

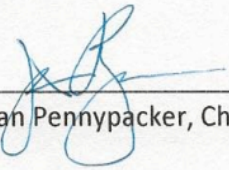
The JJC commends the Chief of Probation and the Deputy Public Defender for initiating concrete and decisive action to address the issue of justice system involvement of children 12 and under.

## **Recommendations**

1. Fund and implement the MST program, under Probation Department leadership, and with robust participation of DFCS and the schools (COE and districts). Ensure rigorous longitudinal outcomes data collection and analysis. *(Approved at the September 2018 SCC Board of Supervisors meeting)*
2. Convene a cross-system work group, with broad participation by system leaders and field staff, to develop an action plan to which key departments commit. The newly forming DIY subcommittee may be an appropriate existing vehicle for this effort. *(This committee is convening September 26, 2018)*
3. Fund both voluntary and court-ordered parental participation in counseling and therapy. *(Court and BOS)*
4. Expand and enhance the Parent Project, tailored to the individual child and family. *(DA)*
5. Find alternatives to filing criminal charges in order to access services. *(All system partners)*
6. Support the education of school leaders in methods to promote attendance, deescalate incidents, and address underlying issues. *(School superintendents)*
7. Revisit zero-tolerance policies. *(School boards)*

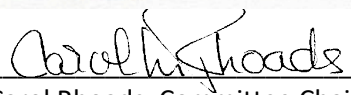
8. Support the passage of SB 439. (*Enrolled and presented to the Governor 9/11/18*)
  9. Decline to detain children 12 and under at Juvenile Hall. (*Probation*)
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Approved by the Santa Clara County Juvenile Justice Commission on September 18, 2018.



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Jean Pennypacker, Chair

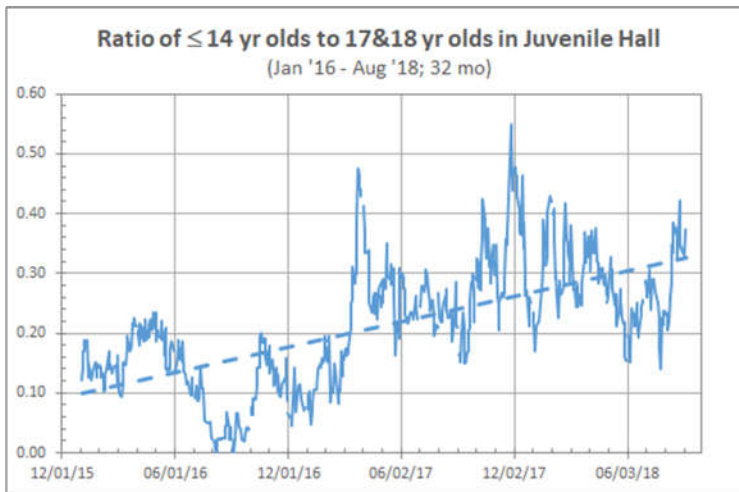
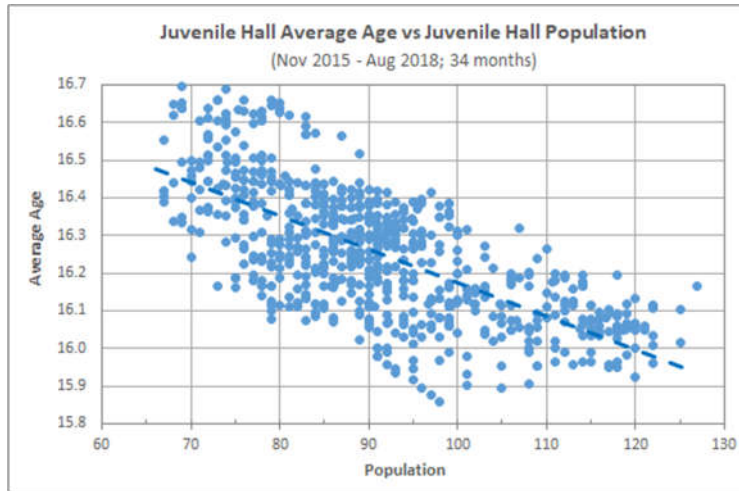
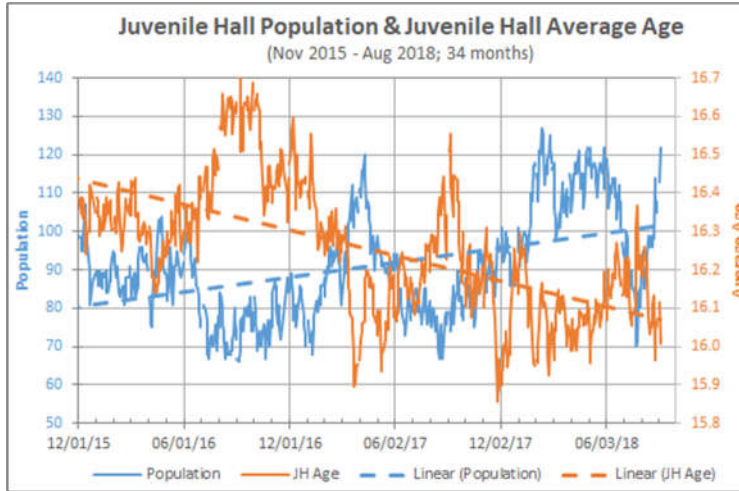


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Carol Rhoads, Committee Chair



APPENDIX A



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Dkt. Melanie Buesco  
S. M. Buesco

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

**Standing Order**

Consistent with the desire to prevent very young minors from being brought into Juvenile Hall and recognizing that some failures on the Electronic Monitoring Program are due to unstable homes and family dynamics, it is hereby Ordered that in any case where a minor 12 years of age or younger may be brought into the Hall for either Pre-Court or Post-Court Electronic Monitoring failure, and Probation has both located a community facility or center such as the Bill Wilson Center, and believes an alternative to juvenile hall is proper, Probation, in lieu of receiving the minor into the Hall, may terminate the Electronic Monitoring Program and place the minor in the community facility.

It is so ordered

Dated: 3.10.10



The Honorable Patrick Tondreau  
Supervising Judge  
Juvenile Justice Court

## APPENDIX C COMMITTEE PROCESS

### Background review:

- 2010 JJC report
- Past reports and data analysis by system partners
- 2010 BOS policy statement and Superior Court standing order
- Current and historical Probation Department data

### Initial court case file review:

- Court files of children in Juvenile Hall between January 1, 2017 and April 6, 2018, with birthdates after January 1, 2005. (Seven cases, representing 6 minors.)

#### Cases were reviewed with special attention to:

- Type, nature, and circumstances of offenses
- Duration in detention
- School status and history
- Previous referrals; SCC Dept. of Family and Children's Services (DFCS) history
- Family status and response
- Gang involvement
- Positive assets
- Post-disposition history

### Review of statute and case law, including:

- Welfare & Institutions Code (WIC) § 727, 729.2, allowing the Court to order family counseling (not just services for the minor) pursuant to § 601 and 602 offenses.
- In Re R.T., CA Supreme Court, 2017,  
Holding "that no showing of parental blame is required before a juvenile court may assert dependency jurisdiction over a child at substantial risk of physical harm or illness due to her parent's "failure or inability to adequately supervise or protect" her. (Welf. & Inst.Code, § 300, subd. (b)(1).)"
- Timothy J. v. Superior Court, 150 Cal.App.4th 847 (2007),  
Holding that a finding of incompetence does not require a showing of mental illness or developmental disability, but may be based on developmental immaturity.
- In Re Gladys R., CA Supreme Ct., 1970,  
Requiring a hearing to determine whether the prosecution can introduce clear proof showing that "a child under the age of 14 years at the time of committing the act appreciated its wrongfulness." If not capable, then how can the child waive Miranda rights?

### Discussion with the system partners, including:

- SCC Chief Probation Officer, Deputy Chief Probation Officer, and others
- SCC Deputy District Attorneys, Juvenile Justice Unit
- SCC Deputy Public Defender
- Director, Children Family, and Youth Services of SCC County Dept. of Behavioral Health Services
- Director, SCC Department of Family and Children's Services
- Medical Director and Nurse Manager, Custody Services, Valley Medical Center
- SCC Counsel – Lead Deputy Counsel and Attorney, Juvenile Dependency

**APPENDIX D**

**SUMMARY OF CASES REVIEWED**

Case	Initial Age Yr / Mo	Offense	Duration in Detention	At School	Previous Referrals	CPS/DFCS	Family Intact	Gang	MH history	Internet related
1	12 / 5	Robbery 2 <sup>nd</sup>	0	?	0	?	No	No	?	
2	12 / 0	Attempted murder, etc.	~ 1 year	Expelled	0	Yes	Yes, but troubled	Yes	Yes	
3	12 / 10	Gun to school after social media argument	4 days	Yes; Good student	0	Yes	Both parents remarried; lives with father	No	No	Yes
4	11 / 4	Multiple; 707(b)	?	No	Yes	Yes	No Grandmother present	?	Yes	
5	12 / 9	Texted shooting threats after social media dispute	6 days	Straight As	0	No	Yes	No	No	Yes
6	13	Sexual assault	2 days	Yes; Special needs	0	Yes	Yes	No	Yes	Yes