

Gender Responsive Best Practice Guide for Juvenile Justice Stakeholders

COUNTY OF SANTA CLARA



Prepared by Juvenile Justice Gender Responsive Collaborative

November 2023

JUVENILE JUSTICE GENDER RESPONSIVE COLLABORATIVE

Juvenile Justice Gender Responsive Membership

Art of Yoga
CARAS-Community Agency for Resources, Advocacy, and Services
Community Solutions
FLY Program
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National Center for Youth Law
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Santa Clara County Department of Children’s Services
Santa Clara County District Attorney’s Office
Santa Clara County Probation Department
Santa Clara County Public Defender Office
Santa Clara County Office of Women’s Policy
South Bay Coalition to End Human Trafficking
South County Task Force
Superior Court of Santa Clara County
Youth Alliance
Young Women’s Freedom Center

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Purpose

This document provides guidance to Santa Clara County law enforcement agencies and juvenile justice stakeholders regarding gender-responsive practice and policies. It is in accordance with the County's commitment to creating viable alternatives to prevent the unnecessary incarceration of girls and gender-expansive youth.¹

Background

This guide reflects the growing body of research indicating that gender plays a significant role influencing how young people enter, move through, and experience the juvenile justice system. Nationally, girls and gender-expansive youth in the juvenile justice system report higher rates of adverse childhood experiences,² including physical and sexual abuse,³ as compared to their peers who are boys. Studies of adolescent brain development have shown that gender also influences how young people respond to trauma, grieve, and heal as well as how they respond to supervision and services.⁴ Across the country, most girls come into contact with the juvenile justice system for non-violent lower-level offenses, including survival-related offenses.⁵

Girls and Gender-Expansive Youth

Throughout this document the terms “girls and gender-expansive youth” are used to refer to and are meant to be inclusive of cis- and transgender girls, as well as non-binary and gender nonconforming. “Gender expansive youth” is used to encapsulate the range of gender identities and expressions that exist outside of the gender binary, including gender non-confirming youth.

¹ National and local research has highlighted gender disparities in confinement decisions, suggesting unique pathways that bring girls and gender-expansive youth into the juvenile justice system. Historically, confinement decisions for girls and gender-expansive youth have largely been driven by concerns for their own protection rather than concerns for community safety. Santa Clara stakeholders have worked collaboratively to reduce the number of girls detained for reasons other than public safety, and this guide documents the policy and practice changes that have supported this shift. Note that nothing in this guide prevents juvenile justice stakeholders from using their authority to detain young people, regardless of gender or gender identity.

² Baglivio, M. T., et al. “The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders.” *Office of Juvenile Justice & Delinquency Prevention Journal of Juvenile Justice*, 3, 2, 2014, 1-23.

³ Saada Saar, Malika, et al. *The Sexual Abuse to Prison Pipeline: The Girls' Story*. Center for Poverty and Inequality, Georgetown University Law Center, 2015, <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls'-Story.pdf>; Kerig, Patricia K. and Julian Ford. *Trauma among Girls in the Juvenile Justice System*. National Child Traumatic Stress Network, 2014, https://www.nctsn.org/sites/default/files/resources/trauma_among_girls_in_the_jj_system.pdf; DeHart, Dana D. *Poly-Victimization among Girls in the Juvenile Justice System: Manifestations & Associations to Delinquency*. The Center for Child & Family Studies, 2009, <https://www.ncjrs.gov/pdffiles1/nij/grants/228620.pdf>.

⁴ Chaplin, Tara M. and Amelia Aldao. “Gender Differences in Emotion Expressions in Children: A Meta-Analytic Review.” *Psychological Bulletin*, 139, 4, 735-765.

⁵ More than 80% of girls in the juvenile justice system are incarcerated for nonviolent offenses, including misdemeanors or noncriminal violations (see Sickmund, M., Sladky, A., and Kang, W. (2021). "Easy Access to Juvenile Court Statistics: 1985-2019." Online. Available: <https://www.ojjdp.gov/ojstatbb/ezajcs/>); In Santa Clara County, analysis of Probation data from the Vera Institute of Justice showed that 59% of girls' admissions to detention in 2018 were of young people deemed low or medium risk on Santa Clara County's Risk Assessment Instrument.

The juvenile justice partners in this county have dedicated themselves to reducing the number of girls that are detained for reasons other than public safety and identifying appropriate community-based alternatives. This work has resulted in a significant decline in the number of girls in custody in the last several years: girls' detention admissions declined 58% between 2018 and 2020. Through intentional policy and practice change, the county has had regular stretches of time with zero incarceration across girls' units and has maintained a monthly average daily population between 0 and 2 young people in the girls' unit at Juvenile Hall between July 2021 and July 2022, and 0 in the girls' unit at the Ranch between July 2021 and June 2023. Quarterly reviews of data have shown that the small number of girls admitted to Juvenile Hall in 2022 were admitted on serious felony charges.

Juvenile Justice Gender Responsive Task Force Spotlight

In 2015, the Juvenile Justice Gender Responsive Task Force (JJGRTF) was established by the Office of Women's Policy, Probation Department, and Juvenile Court to discuss and address the needs of justice-involved girls. In 2019, the JJGRTF announced its participation in the Vera Institute of Justice's Initiative to End Girls' Incarceration and set the goal of achieving zero incarceration on the girls' side of the justice system. In 2020, in response to the COVID-19 pandemic, juvenile justice stakeholders responded quickly and collaboratively to further prevent unnecessary confinements. In 2022, the JJGRTF completed a restructuring and strategic planning process to develop the infrastructure needed to continue to support girls and gender-expansive youth in the juvenile justice system.

Santa Clara County juvenile justice partners believe that girls and gender-expansive youth enter the juvenile justice system through different and unique pathways than boys and therefore may need to be addressed differently. To that end, Santa County Clara stakeholders have developed this best practice guide to support stakeholders in implementing procedural and practice changes using a gender-responsive lens.

Best Practices

In determining action steps for youth entering the girls' side of the juvenile justice system, Santa Clara County law enforcement agencies and juvenile justice stakeholders should consider the unique needs of girls and gender-expansive youth, particularly girls and gender-expansive youth of color, and try to avoid unnecessary confinement while balancing legal mandates, community safety, and the best interest of the young person. The least restrictive safe setting should be prioritized⁶ and, whenever possible and appropriate, community resources shall be utilized as alternatives to incarceration.

Juvenile justice agencies are committed to working with community partners to create viable alternatives to prevent the unnecessary incarceration of girls and gender-expansive youth.

⁶ See California WIC § 626: "In determining which disposition of the minor to make, the officer shall prefer the alternative which least restricts the minor's freedom of movement, provided that alternative is compatible with the best interests of the minor and the community."

Guiding Principles

The following principles guide the development of this document:

- As part of the efforts to create viable alternatives to prevent the unnecessary incarceration of girls and gender-expansive youth, all steps should be taken to explore community-based alternatives to incarceration whenever possible and appropriate.
- Research informs us that even short periods of incarceration are counterproductive for young people with low risk of recidivism and those who have experienced trauma.⁷ Stakeholders should work together to avoid detention and incarceration due solely to:
 - Concerns for the safety of the young person—including concerns driven by a young person’s sexuality or gender identity.
 - Inability to locate parents, guardians, or counsel.
 - Lack of support from parents, guardians, or counsel.
 - Lack of stable housing.
 - Truancy or lack of school attendance.
 - Concerns regarding trafficking or sexual violence.
 - Desire to stabilize or connect to treatment or services, including substance use treatment.
 - Non-violent family conflict, including tensions between the young person and their mother, father, siblings, or guardians.
- Recognizing that girls and gender-expansive youth in the juvenile justice system are often survivors of trauma and/or at-risk of further trauma,⁸ stakeholders are focused on implementing responses that are as trauma informed as possible and with the goal of providing services, rehabilitation, and accountability rather than solely focusing on sanctions, adjudication, or detention.
- Collaboration across and within agencies and community-based organizations is necessary to create and utilize viable alternatives to prevent the unnecessary incarceration of girls and gender-expansive youth.

⁷ McCarthy, Patrick, et al. *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, Harvard Kennedy School, 2016, <https://www.ojp.gov/pdffiles1/nij/250142.pdf>; National Research Council. *Reforming Juvenile Justice: A Developmental Approach*. The National Academies Press, 2013, <https://doi.org/10.17226/14685>; Mendel, Richard A. *No Place for Kids: The Case for Reducing Juvenile Incarceration*, The Annie E. Casey Foundation, 2011,

<https://assets.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>; Mulvey, Edward P. *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, Office of Juvenile Justice and Delinquency Prevention, 2011, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/highlights-pathways-desistance-longitudinal-study-serious>

⁸ Saada Saar, Malika, et al. *The Sexual Abuse to Prison Pipeline: The Girls’ Story*. Center for Poverty and Inequality, Georgetown University Law Center, 2015, <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls’-Story.pdf>; Kerig, Patricia K. and Julian Ford. *Trauma among Girls in the Juvenile Justice System*. National Child Traumatic Stress Network, 2014, https://www.nctsn.org/sites/default/files/resources/trauma_among_girls_in_the_jj_system.pdf; DeHart, Dana D. *Poly-Victimization among Girls in the Juvenile Justice System: Manifestations & Associations to Delinquency*. The Center for Child & Family Studies, 2009, <https://www.ncjrs.gov/pdffiles1/nij/grants/228620.pdf>; Baglivio, M. T., et al. “The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders.” *Office of Juvenile Justice & Delinquency Prevention Journal of Juvenile Justice*, 3, 2, 2014, 1-23.

Guidelines

The following procedural changes have been adopted by the respective stakeholders and shall be considered current best practices regarding girls and gender-expansive youth incarcerated or at-risk of being incarcerated on the girls' side of the juvenile justice system.

All justice stakeholders should note the following:

Girls and gender-expansive youth in the juvenile justice system report higher rates of adverse childhood experiences, including physical and sexual abuse, as compared to their peers who are boys.⁹ National and local data show that girls in the juvenile justice system are likely to have had interactions with the child welfare system¹⁰ and/or be at risk of commercial sexual exploitation,¹¹ factors which can prompt runaway behaviors or contribute to minor violations of probation. Violations in and of themselves are not always evidence of public safety risk, but may indicate that new safety concerns are present or that a different combination of supports are needed to wrap around the young person. Research informs us that even short periods of incarceration are counterproductive for young people with low risk of recidivism and those who have experienced trauma.¹² Juvenile justice stakeholders in Santa Clara County have committed to working together to avoid detention and incarceration due solely to the following:

- Concerns for the safety of the young person, including concerns due to a young person's gender identity.
- Inability to locate parents, guardians, or counsel.
- Lack of support from parents, guardians, or counsel.
- Lack of stable housing.
- Truancy or lack of school attendance.

⁹ Baglivio, M. T., et al. "The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders." *Office of Juvenile Justice & Delinquency Prevention Journal of Juvenile Justice*, 3, 2, 2014, 1-23; Saada Saar, Malika, et al. *The Sexual Abuse to Prison Pipeline: The Girls' Story*. Center for Poverty and Inequality, Georgetown University Law Center, 2015, <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls'-Story.pdf>; Kerig, Patricia K. and Julian Ford. *Trauma among Girls in the Juvenile Justice System*. National Child Traumatic Stress Network, 2014, https://www.nctsn.org/sites/default/files/resources/trauma_among_girls_in_the_jj_system.pdf; DeHart, Dana D. *Poly-Victimization among Girls in the Juvenile Justice System: Manifestations & Associations to Delinquency*. The Center for Child & Family Studies, 2009, <https://www.ncjrs.gov/pdffiles1/nij/grants/228620.pdf>.

¹⁰ Girls in the juvenile legal system are disproportionately likely to also have child welfare involvement, and the child welfare system is the largest referral source for girls into the juvenile legal system. 37 percent of youth in the juvenile justice system for the first time who were also involved in the child welfare system were female, although females only comprised 24 percent of first-time youth who were not involved in child welfare. See: Denise Herz, Philip Lee, Lorrie Lutz, Macon Stewart, John Tuell, Janet Wiig, Shay Bilchik, and Edward Kelley. *Addressing the Needs of Multi-System Youth: Strengthening the Connection between Child Welfare and Juvenile Justice* (Washington, DC: Center for Juvenile Justice Reform and the Robert F. Kennedy Children's Action Corps, 2012); Saada Saar et al., 2014. A case file review of 2017 girls' admissions to Juvenile Hall in Santa Clara County conducted by the Vera Institute of Justice found that 80% of the sample had a documented child welfare history.

¹¹ In 2021, Santa Clara County Probation complete a CSEC evaluation of 378 young people. 54% of girls in the sample were at risk of or confirmed CSEC as compared to 11% of boys in the sample. Read more here: www.bscc.ca.gov/wp-content/uploads/Santa-Clara-2021-JJCPA-YOBG-Annual-Data-Expenditure-Report.pdf

¹² McCarthy, Patrick, et al. *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, Harvard Kennedy School, 2016, <https://www.ojp.gov/pdffiles1/nij/250142.pdf>; National Research Council. *Reforming Juvenile Justice: A Developmental Approach*. The National Academies Press, 2013, <https://doi.org/10.17226/14685>; Mendel, Richard A. *No Place for Kids: The Case for Reducing Juvenile Incarceration*, The Annie E. Casey Foundation, 2011, <https://assets.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>; Mulvey, Edward P. *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, Office of Juvenile Justice and Delinquency Prevention, 2011, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/highlights-pathways-desistance-longitudinal-study-serious>

- Concerns regarding trafficking or sexual violence.
- As a means to stabilize or receive treatment or services, including substance use treatment.
- Non-violent family conflict, including tensions between the young person and their mother, father, siblings, or guardians.

Law Enforcement

- In cases where detention is being considered, law enforcement agencies should call the Probation Screening Unit (408-278-5818) to inquire about eligibility for admission *before* bringing the young person to Juvenile Hall.
- If the young person is having a mental health crisis, law enforcement officers should contact the mobile crisis unit.
- In appropriate cases, officers can make referrals directly to gender-responsive diversion programming¹³. Law enforcement agencies can reach out to the Probation Screening Unit for a list of gender-responsive programs by location.
- If appropriate, law enforcement officers should refer to and follow protocols pertaining to specialized groups, including those below (see appendices list below for full list). Note that girls and gender-expansive youth are disproportionately likely to have child welfare involvement and/or to have experienced commercial sexual exploitation, which would activate the Dually Involved Youth (DIY) and/or Commercial Sexual Exploitation of Children (CSEC) protocols.¹⁴
 - a. Dually Involved Youth Protocol (appendix A)
 - b. Commercial Sexual Exploitation of Youth Policy and Procedure (appendix B)
 - c. Under 12 Protocol (appendix C)
- Note that courts have begun to issue discretionary warrants in response to most reports of runaway behavior and failure to appear. If law enforcement arrests a youth with a Discretionary Warrant, the officer will transport the youth to Juvenile Hall, and the Screening Officer will follow the Discretionary Warrant protocol (see appendix D).
 - a. Law Enforcement Agencies are responsible for calling the Sheriff to note that the Warrant was served.

¹³ WIC §626 states that an officer who takes a minor into temporary custody may refer the minor to diversion services; per WIC §625.3, only those young people 14 years of age or older who have been taken into custody by an officer for the personal use of a firearm in the commission or attempted commission of a felony or for any offense listed in subdivision (b) of Section 707, are required to be brought before a judicial officer. All other young people are eligible for release or diversion.

¹⁴ Denise Herz, Philip Lee, Lorrie Lutz, Macon Stewart, John Tuell, Janet Wiig, Shay Bilchik, and Edward Kelley. *Addressing the Needs of Multi-System Youth: Strengthening the Connection between Child Welfare and Juvenile Justice* (Washington, DC: Center for Juvenile Justice Reform and the Robert F. Kennedy Children’s Action Corps, 2012); Saada Saar et al., 2014; A case file review of 2017 girls’ admissions to Juvenile Hall in Santa Clara County conducted by the Vera Institute of Justice found that 80% of the sample had a documented child welfare history; Santa Clara County Juvenile Justice Crime Prevention Act – Youthful Offender Block Grant 2020 Expenditure and Data Report: www.bscc.ca.gov/wp-content/uploads/Santa-Clara-2021-JJCPA-YOYG-Annual-Data-Expenditure-Report.pdf

Juvenile Probation Department – Screening and Intake

- JPD is available 24/7 to provide guidance to law enforcement regarding admission to Juvenile Hall. Probation should regularly update a list of community-based gender-responsive programming referrals and share with law enforcement upon request.
- If appropriate, probation officers should refer to and follow protocols pertaining to specialized youth groups, including those below. Note that youth on the girls’ side of the juvenile justice system are disproportionately like to have child welfare involvement, to have experienced commercial sexual exploitation, and to identify as gender non confirming or transgender, which could activate the DIY, CSEC, and Transgender Housing protocols in particular.¹⁵
 - a. Dually Involved Youth Protocol (appendix A)
 - b. Commercial Sexual Exploitation of Youth Policy and Procedure (appendix B)
 - c. Under 12 Protocol (appendix C)
 - d. Transgender Housing Policy (appendix E)
- Note that courts and probation have collaborated on a discretionary warrant protocol resulting in discretionary warrants in response to most reports of runaway behavior and failure to appear, behaviors which disproportionately impact girls and gender-expansive youth. Screening Officers should review all warrants to determine if they are discretionary and follow the discretionary warrant protocol (appendix D).
- All admissions to detention should receive multiple levels of oversight to ensure that they are appropriate for detention. In addition to existing oversight mechanisms, the Juvenile Justice Gender Responsive Collaborative should review admission trends at quarterly meetings. Because bias regarding gender, gender identity, race, and sexual orientation can impact decision-making, close attention should be paid to trends regarding discretionary overrides. **Probation should work to avoid detention of any girl or gender-expansive youth based solely on a need to protect that young person, to connect them to treatment or services, or because of concerns about housing instability.**
- If Probation determines that admission to Juvenile Hall is not warranted, but housing is a barrier to release, intake and screening officers should work to expedite a family finding process and work to locate an alternative location (as required by law pursuant to WIC §628 (d)).
 - a. If no family is located, a 241.1 must be ordered as required by law.

Juvenile Probation Department – Probation Supervision

- If a referral to the district attorney is made, the probation officer should make readily accessible all information available to assist the district attorney’s decision in determining whether to file a petition. Probation officers should work to avoid advocating for incarceration based solely on protection of the girl and/or gender-expansive youth. Information shared should include, but not be limited to:
 - Family conflict.
 - Whether the youth was in the presence of an older youth or adult.
 - Gender identity.
 - The seriousness of the offense and role of the youth.

¹⁵ Ibid

- Involvement with child welfare (see WIC 241.1 protocol).
- Using an individualized approach for each case, Probation officers should work to avoid remand and detention in response to technical violations of probation absent a public safety concern that cannot be mitigated by community-based interventions, or a significant inability by the youth to follow the rules of release. This includes working with the young person to understand what may have caused the behavior that resulted in the technical violation and collaborating with the young person’s support network to explore additional community-based services to support the young person in successfully completing supervision.¹⁶
 - If the officer determines that the young person has absconded from supervision and a warrant must be issued, they can consider issuing a discretionary warrant per the discretionary warrant protocol (see appendix D).
 - Officers are encouraged to work with relevant stakeholders outside the courtroom when appropriate to problem solve and respond to minor violations of probation. If a probation officer determines that a young person may need a different combination of community-based supports to successfully complete probation supervision, they can use case conferencing or Child and Family Team (CFT) meetings to discuss and align on services and supports.¹⁷ Note that case conferencing can be a useful tool for convening system partners informally as needed. If needed, probation can schedule a Parte review to share information with the courts.
- Probation Officers should refer to the Discretionary Warrant protocol before requesting a Warrant (see appendix D). Youth who have been adjudicated for a WIC 707(b) offense within the last two years or are pending a Petition alleging a WIC 707(b) offense are ineligible for a discretionary warrant. Probation Officers may consider requesting discretionary warrants for the following behaviors for eligible youth:
 - Failure to appear in court.
 - Absconding from Probation (i.e., parent reports the youth has left the home).
 - Youth cannot be located (i.e., family may have moved and not notified Probation).
 - Youth has violated EMP for unauthorized leave.
 - Youth has violated CRP for unauthorized leave.

¹⁶ Probation staff use a Guided Responsive Informed Decision-Making (GRID) tool to ensure that conditions of probation are enforced with consistency and equity. The GRID provides a structure for utilizing a continuum of informal, strategy responses and appropriate, targeted service interventions that best respond to the needs of youth who are out of compliance with their court-ordered probation conditions. runaway behavior, like all behaviors out of compliance with probation conditions, is considered utilizing the GRID tool to avoid remand whenever possible.

¹⁷ CFT meeting processes are governed by WIC 16501(a)(4). See recent guidance on CFT processes developed by the California Health and Human Services Agency Department of Social Services here: <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2022/22-73.pdf>. Note that neither CFT nor case conferencing meetings will result in changes to supervision orders or case plans. The goals of these meetings are to discuss adjustments to community-based services to support the young person in successfully completing probation.

- Case carrying probation officers and supervisors should be in close communication with EMP/CRP counselors and supervisors and should work together to avoid repeated violations and detention due to EMP/CRP violations.
- Probation officers, CRP counselors, and EMP counselors can incorporate runaway safety planning into their practices to support girls and gender-expansive youth in identifying a small network of safe locations to which they might run. Running to these pre-identified locations will not be considered a violation. Safety plans should be included in the young person’s file.¹⁸
- As long as this is an allowable process by the court, when all parties are in agreement, JPD should default to using the App and Order process to terminate probation supervision and record sealing without necessitating a court appearance.

EMP/CRP

- EMP and CRP counselors and supervisors should be in close communication with case carrying probation officers and supervisors and should work together to seek alternatives to EMP/CRP violations where possible.
- Using an individualized approach for each case, EMP and CRP counselors should work to avoid remand and detention in response to minor violations of EMP or CRP absent a public safety concern that cannot be mitigated by community-based interventions, or a significant inability by the youth to follow the rules of release. This includes working with the young person to understand what may have caused the behavior that resulted in the violation and collaborating with the young person’s support network to explore additional community-based services to support the young person in successfully completing supervision.¹⁹
 - If the EMP or CRP counselor determines that the young person has absconded from supervision and a warrant must be issued, they can consider issuing a discretionary warrant per the discretionary warrant protocol (see appendix D).
 - Counselors are encouraged to work with relevant stakeholders outside the courtroom when appropriate to problem solve and respond to minor violations of probation. If a probation officer determines that a young person may need a different combination of community-based supports to successfully complete probation supervision, they can use case conferencing or Child and Family Team (CFT) meetings to discuss and align on services and supports. Note that case conferencing can be a useful tool for informally convening system partners as needed. If needed, probation can schedule a Parte review to share information with the courts.

¹⁸ For more information on safety planning procedures, view the Santa Clara County Probation CSEC protocol.

¹⁹ Probation staff use a Guided Responsive Informed Decision-Making (GRID) tool to ensure that conditions of probation are enforced with consistency and equity. The GRID provides a structure for utilizing a continuum of informal, strategy responses and appropriate, targeted service interventions that best respond to the needs of youth who are out of compliance with their court-ordered probation conditions. runaway behavior, like all behaviors out of compliance with probation conditions, is considered utilizing the GRID tool to avoid remand whenever possible.

Juvenile Court

- WIC §635 allows detention based on the “immediate and urgent necessity for the protection” of the young person. The Courts as a matter of course, should avoid detaining solely for this reason unless all other options have been explored.
- Courts should take the following into consideration when making detention decisions:
 - Using Juvenile Hall as a temporary placement during the process of identifying longer-term options can cause further trauma to the youth.
 - Girls and gender-expansive youth may have lengthy runaway histories related to experiences of trauma.
- If returning home is contrary to the welfare of the young person, a judge may detain the young person and authorize temporary emergency placement with a family member or non-relative extended family member pre-adjudication.²⁰ These orders should be re-assessed regularly, including when requested by the young person and their family, and should be terminated once the young person is able to safely return home.
- The Courts should work to minimize court appearances as much as possible, including encouraging and supporting Probation’s authority to release girls and gender-expansive youth without court appearances and encouraging and supporting stakeholders to initiate MDTs, CFTs, and case conferencing instead of court reviews to discuss additional community-based services to support a young person in successfully completing probation supervision.
 - When Probation schedules Parte hearings to provide updates on adjustments to supervision or case planning, the court can consider waiving the youth’s appearance at the request of youth’s counsel.
 - Courts can consider issuing blanket permission for out-of-custody youth on probation supervision to participate in field trips with community providers.
- Courts should refer to the Discretionary Warrant protocol before issuing a Warrant (see appendix D). Youth who have been adjudicated for a WIC 707(b) offense within the last two years or are pending a Petition alleging a WIC 707(b) offense are ineligible for a discretionary warrant. Courts can consider issuing discretionary warrants in response to following behaviors:
 - Failure to appear in court.
 - Absconding from Probation (i.e., parent reports the youth has left the home).
 - Youth cannot be located (i.e., family may have moved and not notified Probation).

²⁰ WIC 636 authorizes the Court to temporarily detain young people “in the Juvenile Hall or other suitable place designated by the juvenile court” when returning home is contrary to the welfare of the child. A suitable place can include release to a family member as well as foster care settings (e.g., relatives and non-relative extended family members, foster family agencies (FFA), short term residential treatment programs (STRTP) and non-secure detention facilities. WIC 727.05 outlines the emergency RFA approval process for the types of emergency kinship placements outlined above. Further, 727.05(c)(6) permits the court to approve placement in the home of a relative on an emergency basis regardless of the status of any criminal record exemption of resource family approval if the court finds that the placement does not pose a risk to the health and safety of the child. Note that while a young person is ordered to be removed from their home, WIC 636.1 requires Probation to create a case plan to establish and provide the services needed to enable the young person’s legal guardian to effectively provide care and control so the young person can safely return home.

- Youth has violated EMP for unauthorized leave.
- Youth has violated CRP for unauthorized leave.

District Attorney

- When the deputy district attorney receives a referral to issue a wardship petition they should coordinate with JPD and/or DFCS in a timely manner to gather all relevant case information. All known mitigating information, especially what is more likely to be present for girls and gender-expansive youth, should be considered at the time of making a filing decision. For example:
 - Family conflict and context of previous child welfare history.
 - Concerns about trafficking or commercial sexual exploitation.
 - Whether the youth was in the presence of an older youth or adult.
- When contemplating the detention of any girl or gender-expansive youth based solely on the need to protect the young person, to connect the young person to treatment or services, or because of concerns about housing instability, DDA's should consider whether there are viable safe alternatives to detention.
- If appropriate, deputy district attorneys should refer to and follow protocols pertaining to specialized groups, including the below (see Appendices for a full list). Girls and gender-expansive youth are disproportionately likely to have child welfare involvement and/or to have experienced commercial sexual exploitation, which would activate the Dually Involved Youth (DIY) Protocol and Commercial Sexual Exploitation of Children (CSEC) protocol.
 - Dually Involved Youth Protocol (appendix A)
 - Commercial Sexual Exploitation of Youth Policy and Procedure (appendix B)
 - Under 12 Protocol (appendix C)
- In appropriate cases, deputy district attorney can make referrals to gender-responsive diversion providers and Probation can provide an updated list of programs.
- Although deputy district attorneys are not required by law to have a minimum number of training or education like appointed counsel for youth, the Office of the District Attorney should ensure that all deputy district attorneys assigned to the juvenile justice team have access to trainings on specific legal topics related to this protocol.

Public Defender

- Appointed counsel for the youth, as soon as possible, should contact a community-based organization to seek support for the youth at any scheduled court date if the youth consents and requests support. This includes detention hearings and any other hearing.
- When appropriate, appointed counsel should submit a referral to a social worker, who can provide a safety plan, release plan, psychosocial assessment, family finding or support, services assessment (including San Andreas Regional Center), support with educational issues, as well as other supports.
- When appropriate, appointed counsel should refer to and follow protocols pertaining to specialized

groups, including the below (see Appendices for a full list). Girls and gender-expansive youth are disproportionately like to have child welfare involvement and/or to have experienced commercial sexual exploitation, which would activate the Dually Involved Youth (DIY) and Commercial Sexual Exploitation of Children (CSEC) protocols. Note that experience with commercial sexual exploitation is an affirmative defense for nonviolent offenses and can prompt child welfare support independent of parental neglect or abuse (see appendix XX for more information).

- Dually Involved Youth Protocol (appendix A)
- Commercial Sexual Exploitation of Youth Policy and Procedure (appendix B)
- Under 12 Protocol (appendix C)

Training

Santa Clara County juvenile justice stakeholder agencies should provide regular training on this best practices guideline and on relevant related topics, including:

1. DIY protocol
2. CSEC protocol
3. Gender, race, and sexual orientation bias
4. Gender affirming care
5. Trauma-informed care
6. Cultural competency
7. Youth development
8. COVID and gender-responsive practices changes
9. Victim awareness
10. Discretionary warrant protocol
11. Family Finding

Santa Clara County Probation Department should offer training for probation officers and counselors to know the options and resources available to support girls and gender-expansive youth to ensure that young people are quickly connected to community-based organizations both in and out of custody.

Appendices

1. Appendix A: Dually Involved Youth Protocol
2. Appendix B: Commercial Sexual Exploitation of Youth Policy and Procedure
3. Appendix C: Under 12 Protocol
4. Appendix D: Discretionary Warrant (draft)
5. Appendix E: Transgender Housing Policy

This guide was agreed upon and approved by the follow county stakeholders.

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Judge Michael Clark
Presiding Judge, Juvenile Division

1/3/2024
Date

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2/6/2024
Date

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