

SPECIAL DIRECTIVE 20-09

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN   
District Attorney

SUBJECT: YOUTH JUSTICE

DATE: DECEMBER 7, 2020

This Special Directive addresses current policies in the previously named Juvenile Delinquency Practice Manual. Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of the Juvenile Delinquency Practice Manual.

**INTRODUCTION**

In upholding the laws as they presently stand, this office will support efforts that recognize children as a separate class in line with decisions<sup>1</sup> from the Supreme Court of the United States and state-wide legislation<sup>2</sup>. This office will do its part to find alternatives to detention and make diversion the default. The following changes to existing practices seek to bring this office in step with the trend to seek “care over cages” and address “need over deed.” This will also include the creation of a juvenile division that allows for specialization and promotability, and that receives specialized training.

All prosecutorial practices in youth justice will account for the established science demonstrating young people’s unique vulnerabilities (including their impulsivity, susceptibility to peer influences, risk-taking and lesser ability to fully appreciate long-term consequences, and their lack of control over their home/family/life circumstances), their malleability and capacity for growth and maturation, and thus their diminished culpability and potential for rehabilitation.

Specifically, we will be guided by the following principles:

- Our prosecutorial approach should be biased towards keeping youth out of the juvenile justice system and when they must become involved, our system must employ the “lightest

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<sup>1</sup> *Roper v. Simmons* 543 U.S. 51 (2005), *Graham v. Florida* 560 U.S. 48 (2010), *Miller v. Alabama* 567 U.S. 460 (2012), *Montgomery v. Louisiana* 577 U.S. \_\_ (2016).

<sup>2</sup> Proposition 57 (Eliminated prosecutors’ direct file authority and established new court procedures for transferring a youth’s case to adult court), SB 1391 (Repealed prosecutors’ authority to motion to transfer a case of youth age 14 or 15 to adult court), SB 439 (Set minimum age of juvenile court jurisdiction at 12, excluding murder and violent rape offenses), SB 395 & 203 (Require youth under age 18 to consult with legal counsel prior to custodial interrogation or waiving constitutional rights), SB 823 (Plans closure of DJJ and transferring the responsibility for youth to the counties).

- touch” necessary in order to provide public safety;
- A juvenile justice system must be family and child centered, holistic and collaborative with other systems and communities in order to heal trauma, foster positive youth development, and promote true public safety;
- A juvenile justice system must incorporate research and data in order to create effective responses to crime and youth need;
- We must invest in community-based services, schools, health and mental health programs and other resources that allow all children to thrive, no matter their zip code, race or gender;
- Any court involvement in a young person’s life should be proportionate, for the shortest duration possible and result in a pathway towards a better future for youth; and
- Youth justice approaches should reflect what science and data clearly demonstrate-that youth are malleable and continue to mature until their early-to mid-20s, affording the juvenile justice system a unique opportunity to support youth in achieving well-being.

The following policies shall be implemented **immediately**:

### **I. FILING DECISIONS**

1. **Youth accused of misdemeanors will not be prosecuted. If deemed necessary and appropriate, youth accused of misdemeanor offenses and low-level felonies will be referred to pre-filing, community-based diversion programs.**
2. **Crimes involving property damage or minor altercations with group home (STRTP) staff, foster parents, and/or other youth shall not be charged** when the youth’s behaviors can reasonably be related to the child’s mental health or trauma history. Involvement in the justice system can exacerbate, rather than improve, mental health issues or trauma and seeking resolution or supports through alternatives like restorative justice and health systems can better address the root causes of such behaviors,
3. **We will decline charges for property damage or minor altercations with members of the youth’s household** when the family can be better served by DCFS, or by way of an appropriate plan by a parent or legal guardian, and the behaviors can reasonably be related to the child’s mental health, trauma history, or alleged child abuse or neglect.
4. **We will continue to work with the Youth Justice Workgroup to develop collaborative decision-making teams** that facilitate information sharing, collaboration and input into filing decisions by other key partners, including schools, health systems, families and youth themselves.
5. **We will support and work with the Youth Justice Workgroup and Office of Youth Development to eliminate provision of diversion programs by probation and law enforcement, such as** Probation’s Juvenile Citation Diversion Program (in which youth are cited for infractions to appear in juvenile traffic court), and instead dismiss or refer such cases where appropriate to YDD’s expanding

diversion infrastructure.

6. **EFFECTIVE JANUARY 1, 2021: The Abolish Chronic Truancy (ACT) unit and other truancy interventions by the District Attorney is disbanded.**

## II. PETITIONS

1. **Filings will consist of the lowest potential code section that corresponds to the alleged conduct and mandate one count per incident.** (a) The only exception to misdemeanor filings will be in the case of “wobbler” offenses that warrant intervention (such as assault (Penal Code § 245)). Absent a documented history of violence, such cases will be filed as misdemeanors and require approval from the Deputy in Charge (DIC) to bypass diversion. (b) Filing Wobbler offenses as felonies will require a documented history of violence for the charged youth and/or serious injury to the alleged victim. In such cases, appropriate charging, including the decision to file a felony, must receive Head Deputy approval. Request for permission to file a felony shall include the basis for the request on a written memorandum. *This memorandum shall be forwarded from the Head Deputy to the appropriate Bureau Director.*
2. **Filing deputies are instructed to NOT file any potential strike offense if the offender is 16 or 17 years of age at the time of the offense. The only exception to this policy shall be charges involving forcible rape and murder.**
  - a. For example, all robberies will be filed, at most, as a grand theft person and/or assault by means likely to cause great bodily injury. For all open cases, a strike offense shall be withdrawn or refiled/amended as a non-strike offense, or vacated and replaced with a finding of a non-strike offense, or dismissed.
3. **Enhancements shall not be filed** on youth petitions consistent with the office wide directives on ending enhancement filings.
4. **The office will immediately END the practice of sending youth to the adult court system.**
  - a. **All pending motions to transfer youth to adult court jurisdiction shall be withdrawn** at the soonest available court date, including agreeing to defense counsel’s request to advance.
  - b. Cases will proceed to adjudication or disposition within the existing boundaries of juvenile jurisdiction.
5. **The following guidelines shall be followed in sexual offense cases:**
  - a. **We will avoid labeling normative adolescent behavior as a sex offense** and instead collaborate with appropriate partners to provide effective interventions that reduce recidivism and support a youth’s education and development around healthy sexual behavior.
    - i. Example: Child pornography statutes shall not be used to charge

- youth who consensually own or send sexually explicit photographs.
- b. **We will strive to structure charges, filing and prosecution wherever possible to avoid the requirement of sex offense registration.**
  - c. **We will withhold objections to removal from sex offense registries** for individuals who were youth when they committed their offenses.

### **III. TRANSPARENCY**

1. **Provide timely, complete and “open discovery”**, including Brady and other information calling into question the integrity of law enforcement action involved at the earliest opportunity-- including with the initial discovery packet when available.
  - a. Consistent with the ABA rules and best prosecutorial practices, our office will approach discovery in a manner that maximizes transparency and accountability.

### **IV. DETENTION**

1. **The office Presumption shall be against detention<sup>3</sup>.**
  - a. In the vast majority of cases, youth should be released to their families and/or caregivers, or to the least restrictive environment possible consistent with WIC § 636.
  - b. In line with the spirit of WIC § 202(a), detention will only be sought where a child poses an immediate danger to others, and only *for as long* as the child represents a danger to others.
  - c. Detention will not be sought on the grounds that a child has no other place to go, or that a child has serious mental health problems. If detention is sought in an exceptional case, the request should be for a minimal period and should only be after failed attempts at community detention (CDP).
2. **Deputies shall not seek detention for a probation violation** unless the violation constitutes an independent, serious crime that poses an imminent risk of harm to others.
3. **Deputies shall not seek detention for leaving placement.**
  - a. Engaging a Child Family Team (CFT) meeting shall be the first remedial measure taken to assist in stabilizing the youth.
  - b. If immediate replacement is not available, the youth should be sent to DCFS Transitional Shelter Care (TSC) to await Probation identifying placement.
4. **House arrest (CDP) shall not be sought in excess of 15 days** and deputies shall stipulate to house arrest credits toward maximum confinement.

### **V. DISPOSITION AND RESOLUTION OF CASES**

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<sup>3</sup><http://www.pjdc.org/wp-content/uploads/Californias-County-Juvenile-Lockups-November-2020-Final.pdf>

1. **Deputies shall not oppose dismissal on competency grounds** when presented with evidence of incompetence.
2. **Deputies shall seek to avoid immigration consequences.**
  - a. Deputies are instructed to offer dispositions in accordance with Penal Code § 1016.3(b):
    - i. “The prosecution, in the interests of justice, and in furtherance of the findings and declarations of Section 1016.2, shall consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution.”<sup>4</sup>
3. **Deputies shall only seek probation supervision in serious felony cases and request terms that are individually tailored to a youth’s needs.**
  - a. Probation conditions will not include automatic search conditions, gang conditions, and other conditions that are overboard.
4. **Deputies shall not object to sealing records** pursuant to WIC § 786 and 781, or dismissing strike offenses pursuant to WIC § 782.

## **VI. DUAL STATUS (CROSS-OVER) YOUTH**

5. **Deputies shall make every effort to prevent a dependent youth from crossing over into the delinquency system.**
  - a. If the court determines dual status is appropriate, deputies will encourage a dependency lead for children involved in the dependency system. When available, diverting cases to other systems will be the default position.
6. **No delinquency filing if the circumstances that give rise to the potential petition also give rise to the dependency petition.**
  - a. Examples: Parent and youth are delivering drugs; both are arrested and charged with drug trafficking; dependency petition is filed; teen will not be charged.
  - b. In a physical fight where the parent is hitting teen and the teen responds by hitting back, resulting in a dependency petition, the teen will not be charged.
7. **For any child awaiting placement, the District Attorney will support the release of youth to a temporary, non-secure setting** so that youth do not face prolonged detention simply because no safe placement has been identified.
8. **The presumption for youth in congregate care and housing based on mental health needs** will be that the alleged conduct was within the scope of behaviors to be managed or treated by the foster home or facility.

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<sup>4</sup> 1016.2 codifies Padilla v. Kentucky 559 U.S. 356 (2010)

- a. Formal filing in these situations will require DIC approval and conform to all other policies enumerated herein regarding misdemeanors and charging the lowest possible offense.

***The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.***

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