

**Superior Court of California, County of Santa Clara
Juvenile Delinquency Court
2008 Report to the Presiding Judge**

Fourth Department

Two Thousand Eight began with the expansion to a fourth Delinquency Department hearing cases three days a week. The success of this expansion required both the commitment of additional resources and personnel on the part of all the stakeholders, as well as flexibility. Because of the location of the new Department 79A, transportation of the minors to Court initially involved hand and leg shackling with two guards through the public lobby area. This potential breach of confidentiality and exposure to public humiliation and derision was not acceptable to the Juvenile Judicial Officers.

After exploring a number of potential solutions, Judge Ray Davilla and Commissioner Jesus Valencia agreed to have Department 79A occupy Department 79 on Thursdays and Fridays. Commissioner Valencia also agreed to occupy Department 77 on Wednesdays. With the creation of Out-of-Custody calendars on Mondays and Tuesdays, Department 79A could have In-Custody calendars on Wednesdays thru Fridays without having minors transported through common areas.

This arrangement worked surprisingly well and will continue to be utilized with the expansion to four full-time departments in 2009.

Juvenile Detention Reform

A six-year court, county and community initiative on Juvenile Detention Reform (JDR), initially inspired by a grant from the Annie E. Casey Foundation, transformed this year into the Juvenile Justice System Collaborative (JJSC), a continuing collaborative of all juvenile justice stakeholders. The continuing goal of the JJSC is to ensure and oversee process and system improvement and the use and improvement of evidence-based practices.

The Supervising Judge of Juvenile Delinquency, Judge Patrick Tondreau, is a standing member of this new collaborative, with Judge Margaret Johnson serving as the Court's alternative member. Two formal workgroups have been formed: (1) Prevention Programs, and (2) Cases, System and Process. The Court has chosen participation in the latter workgroup and both Judge Johnson and Judge Tondreau will be involved.

Indian Child Welfare Act

On January 22, 2008, the first meeting of the ICWA (Indian Child Welfare Act) workgroup took place. Supervising Judge Patrick Tondreau serves as the chair of this Committee. Stakeholders soon agreed that it was appropriate to finally implement ICWA in Delinquency Court. Numerous meetings, as well as a half-day training by the

Administrative Office of the Courts (AOC), have prepared all stakeholders to fully launch implementation on January 6, 2009. At that time, appropriate inquiries, notices and findings will be made at every hearing, beginning with the initial detention.

Education

On July 17, 2008, the first meeting of the new Education Rights Committee was held. This Committee is co-chaired by Judge Tondreau and Andrea Flint, Supervisor of the Public Defenders in Delinquency Court. This Committee was initially formed to implement CRC Rules 5.650(a) and 5.651, and Welfare and Institutions Code Section 726's mandate that the Court consider at every hearing who should hold the educational rights of the minor.

Although this initially appeared to be a limited undertaking involving appropriate information and recommendations in probation reports, it soon became clear that an appreciation of special education needs of minors was at the core of these inquiries and decisions. Appointment of surrogates and education rights holders requires a pool of responsible adults who could either mentor the parents through the education process or stand ready to be appointed as a surrogate holding the education rights of the minor where parents are either unable or unwilling to do so. Thus, a Subcommittee has been formed to explore the creation of a volunteer group, similar to CASA, that can be ready to perform these services.

This Education Committee now has members from Legal Advocates for Children and Youth (LACY), the Juvenile Justice Commission, County Counsel, the National Center for Youth Law, Santa Clara County Probation Department, and all attorney organizations. The expectation is that this Committee will continue well into the future and may subsume the current IEP Subcommittee of the original Special Committee on the Education of Children of the Juvenile Court. That Subcommittee continues to meet and is focusing on creating a seamless transition for students from Juvenile Hall back into their schools.

Probation has been very engaged and has already drafted templates to be used in every report. Court Administration has also agreed to notify every school district when the Court removes the education rights from parents and appoints a surrogate.

Probation has shown a strong commitment to this project by creating a new unit of Probation Officers who are assigned to school sites in county school districts. This is an important step forward in the intensification of Probation presence in our community.

Psychotropic Medication Implementation Committee

The first meeting of the Psychotropic Medication Implementation Committee was held on July 7, 2008. Public Defender Supervisor Andrea Flint and Judge Tondreau co-chair this Committee. The purpose of this Committee is to implement Welfare and Institutions Code Section 739.5 and CRC Rule 5.640. These require that in all placement cases and,

after January 1, 2009, in all local commitments where there are no parents available to make decisions, the Court decide who will hold the right to make decisions involving Psychotropic Medication.

When the Court retains that right, hearings will be set when an Opposition is filed after a Notice of Request for Medication. When the Court authorizes medication, each Judicial Officer has the discretion to set a review hearing within 30 to 60 days to insure the medication is appropriate and to inquire whether adjustments are needed.

The Committee is developing best practices and coordinating the preparation and notice of applications, notifications procedures to group homes, Juvenile Hall and the Ranches, and developing appropriate information and recommendations that should appear in Probation Reports. Judicial Officers, Probation, County Mental Health and the attorneys are engaged in this process.

Consistent with new Rule 5.640(h), the Delinquency Supervising Judge issued a new Standing Order filed November 26, 2008 concerning Psychotropic Medications for minors in our Hall and at the Ranches.

Access to Record Committee

June 9, 2008 marked the first meeting of the Access to Records Committee, which is chaired by Judge Tondreau. This Committee was formed in response to two developments in the law: (1) a modification of Welfare and Institutions Code 827 which, starting January 1, 2008, gave a number of parties and agencies, including parents, the right to a copy of the juvenile case file, and (2) a series of California Rules of Court that gives parents the right to a copy of reports at all hearings. Currently, parents never receive a copy of the reports at our hearings.

One of the goals of the Committee is getting parents more involved in their children's case. This reflects Key Principle Number 10 of the National Council of Juvenile and Family Court Judges (NCJFCJ) Delinquency Guidelines. Parents have very limited understanding of what goes on in court. Unfortunately, they do not have a right to court-appointed attorneys, as they do in Dependency. This makes every step at trying to engage the parent more difficult.

In an attempt to change the culture of the criminal justice system, and in addition to eventually providing the parents with copies of reports, the Court began changing some of the practices in Juvenile Delinquency. First, the Judge engages the parents at every hearing, giving them an opportunity to speak. Unfortunately, without attorneys, they often do not know, or are apprehensive, about what to say. Second, the Judge asks each parent at detentions if they know the charges their child is facing. This "arraignment" is required by the Code. Third, the Judge never waives an interpreter, especially in cases involving continuances. Sometimes because there is only one full time interpreter for Juvenile Court and four judicial departments, an attorney for the minor, who does not represent the parent, will try to waive an interpreter for the parent in the interest of time.

Unfortunately the parent is then completely left out if any discussion ensues. Fourth, the Judge does not allow the attorney for the minor to waive the parent's presence. And fifth, the Judge does not allow the attorneys to waive their client's (the minor's) appearance, unless they notify the Judge on the record that they have discussed the issue with their client, and the client affirmatively indicated they do not want to be present. Anecdotally, Delinquency Court Judges estimate that in 95% of the cases where the Court required this, the minor appears. Their appearance not only increases the incentive for parental participation, but empowers the minor.

The Court is also working with the District Attorney's truancy unit to facilitate ordering parents into the Parent Project, a multidisciplinary training that will provide parents with the tools to begin to meaningfully exercise parental control of defiant youth. It is in this spirit that the Committee is working on getting parents copies of reports in court and access to the Juvenile file.

Access to the Juvenile case file is complicated by the fact that Welfare and Institutions Code Section 827 (a) (3) (A) provides that anything that is privileged or confidential by any law, statute or regulation overrides access. After significant research, discussion and canvassing around the state, the Committee has tentatively agreed upon a process whereby certain documents will be placed into confidential envelopes (Psychological Evaluations, Drug Treatment Assessments and Reports, Reports concerning Developmental Disability, and Restraining Orders), and an agreed upon list of items (names of other juveniles, social security numbers, names of Domestic Violence Shelters, etc.) will be provided to our 827 research staff. When a parent makes an application for a copy of the file, research will redact the agreed upon items, and will send a copy of the remaining file (except that which is in confidential envelopes) for judicial review and dissemination. If a parent wants any of the redacted/confidential information, they will be required to file an 827 Petition.

The Committee is continuing to work on providing reports to parents and other interested persons.

Juvenile Sex Offender Treatment Committee

On November 19, 2007, the Juvenile Sex Offender Treatment Committee was created. The Delinquency Supervising Judge serves as co-chair on this Committee with Probation Manager Robert DeJesus. The purpose of this Committee is to develop best practices for assessing the level of risk of minors who sexually offend and match those minors with appropriate treatment.

This Committee has been hampered in its progress primarily because there is no generally accepted risk assessment instrument that has been tested and shown to be reliable and validated for juvenile offenders. For the time being, the Committee has agreed not to limit clinicians' use of instruments, but will recommend (1) the use of the most promising instrument, the Juvenile Sex Offense Recidivism Risk Assessment Tool II (JSORRAT II) but, (2) only with risk range recommendations (low, medium, high), i.e.

discouraging numerical scoring, and (3) only in conjunction with other instruments and clinical judgment. Participation on this Committee includes Probation, the Santa Clara County Mental Health Department, attorneys and community treatment providers. The Committee will continue to develop best practices.

Dual Status Committee

The Dual Status Committee, to address the needs of children who are simultaneously in Dependency Court and Delinquency Court, was formed on January 17, 2008 by Supervising Judge Tondreau to review whether the Court is adhering to the Dual Status Protocol, last revised in January 2006, as well as the March 2006 Addendum. The Committee also has reviewed compliance with the True Dual Status Pilot Project, and the need of the Court to consider better practices. The Supervising Judge co-chairs this Committee with Carol Robinson of County Counsel.

The Dual Status Committee determined that the Protocol, in many significant respects, was not being followed and a revision was necessary. Over the course of the year, members have fine tuned current practices within each system, agency, department and the Court. Each agency created a draft of their current procedures and process, and with the leadership of Carol Robinson, the Committee is in the final stages of finalizing a new Protocol.

All participants have agreed to create a truncated Protocol, which will be signed off by the heads of each agency, department and respective courts. This will not be changed without authorization from all who sign on to the protocol. The Committee is also creating a procedures guideline which contains the nuts and bolts of dual status operation. This, however, can be changed by the working participants as needed. This is to insure a flexible mechanism for adapting best practices. Hopefully these new Protocols and Procedures will be fully adopted in early 2009.

The Dual Status Court is in Delinquency Court and has been greatly enhanced by the decision of the Department of Families and Children (DFCS) to fund a full-time liaison/facilitator to work with Probation and the Court on these cases. Rose Litvin has taken this position and has been a significant help in coordinating issues of notice, dissemination of reports, setting of meetings, and advice to the Court concerning dependency issues. She attends the entire Dual Status calendar in Delinquency Court each Tuesday morning, and participates in all hearings or meetings concerning Dual Status situations.

Ranch Program Entry

The significant number of minors in Juvenile Hall awaiting transfer to one of our Ranch programs has been a major concern of our Court and our community. Judge Johnson and Judge Tondreau meet with the Probation Managers, Ranch Managers, and Chief of Probation, Sheila Mitchell, monthly to review this issue. Significant progress has been made. In June, the backlog was 67 minors. Today it stands at 45. Nevertheless, this is

still an important concern because minors are continuing to wait as long as four and a half months in the Hall before transferring to a Ranch. The Judicial Officers share with Probation a conviction that this is unfair and inappropriate, and are working closely and intensely to solve this problem. To relieve the backlog, Probation has assisted in opening four new group homes for Pre-Ranch Placement consideration. They have also instituted serious scrutiny and oversight internally before any Ranch recommendations are made.

The Board of Supervisors has authorized 24 new beds at James Ranch, which will hopefully be available sometime in early 2009. Probation intends to ask for 24 additional beds in the near future. The Juvenile Judicial Officers have publicly supported the addition of new beds. While these Judges support early intervention and a robust use of community based alternatives, they also are realistic about the minors in question. The minors are high end at-risk youth with histories of violence, absconding from placement, gang entrenchment, and mental health and substance abuse problems. While there is significant pressure from forces in the community to utilize community based alternatives, to do so indiscriminately would be to act contrary to the best interests of the minors and without appropriate sensitivity to the safety of the community.

A new Silicon Valley Council of Non-Profits/Probation Department Standing Committee has been formed to develop and strengthen the continuum of care for minors focusing on community based residential placement options. Judge Tondreau participates on this Committee with the District Attorney and Public Defender Offices.

At the recommendation of this Committee, Judge Tondreau agreed to participate in a project of reviewing each of the 67 cases involving minors then awaiting the Ranch. Probation, the District Attorney's Officer, the Public Defender's Officer, and the Alternative and Independent Defender's Offices all participated. This team set strict conditions so as not to remove the ultimate authority of the Judicial Officer assigned to the case. Each case was handled with anonymity. No identifiers were used nor was the Department which handled the case mentioned. Probation only presented "profiles" of the minors. The team did not determine that a change of disposition should take place, as that was ultimately up to the Judicial Officer handling the case. Only cases where it was deemed that Probation should take a second look were identified, especially in light of the new four Pre-Ranch placements that were not previously available.

At the end of the review, parties identified seven minors, the Defense Counsel and Judge agreed on two additional, and Defense Counsel, the District Attorney and the Court agreed on one additional minor who should be given further consideration. Of these ten, four were already at the Ranch and didn't want to change disposition, and two advised their attorney they wanted to go to the Ranch rather than Placement. This left four minor's for which the Independent Defense Organization would consider filing a 778 Motion for a change of Disposition.

This process confirmed Probation's and the Court's view that, on the whole, the minors who received a Ranch Commitment received appropriate Dispositions and community-based options were not appropriate.

The Court and collaborative partners will continue to work on this urgent problem.

Adoption of Restitution Guidelines

After much hard work, many meetings, and the leadership of Judge Margaret Johnson, Delinquency Court adopted a new Restitution Guideline at the August 25, 2008 Court Systems Monthly Meeting. This Guideline represents best practices in dealing with issues of Restitution from the time a Petition is filed until dismissal of probation. It is designed to enhance the ability of victims to get Restitution. Most importantly, at the end of each case where Restitution is still owed, a Civil Judgment is created, giving the victim a further future means of collection.

Recognition of Therapeutic Court Programs

The Three Therapeutic Courts in Santa Clara County continue to adopt best practices and have all received National and/or State recognition as Model Treatment Courts.

The University of Cincinnati has chosen the Juvenile Treatment Court (JTC), under the leadership of Judge Margaret Johnson, as one of ten nationwide Courts for a research project into the efficacy of Treatment Courts and best practices.

The Juvenile Mental Health Court (JMHC), under the leadership of Judge Ray Davilla, was selected by the National Center for State Courts as the Court to study for best practices. It also received the "Best Practices Award" from the California Council on Mentally Ill Offenders.

The Juvenile Domestic Violence/Family Violence (DV/FV) Court, currently under the leadership of Commissioner Jesus Valencia, and originally established under the direction of Judge Eugene Hymen, was the winner of the 2008 United Nations Public Service Award in the category of Improving Transparency, Accountability and Responsibility in Public Service.

Systemwide Training

Consistent with recommendation 51 of the Juvenile Delinquency Court Assessment 2008 and Key Principle Number 16 of the NCJFCJ Delinquency Guidelines that Judicial Officers, attorneys and Probation should be adequately trained and educated to understand the myriad of issues in the Delinquency system, the Court and partners held twelve system-wide trainings in 2008: (1) a new judges/attorneys orientation, (2) ICWA Implementation, (3) CSOM Sex Offender Treatment, (4) Specialty Courts' training, (5) Placement and Transitional Independent Living Programs, (6) a Dual Status Retreat, (7) a Delinquency Assessment 2008 Report, (8) a JTC Day Away Training, (9) New Pre-Ranch Placement Alternatives, (10) Psychotropic Medications, (11) an Education Roundtable, and (12) the local annual Delinquency Beyond the Bench. Each participant averaged seven full days of training.

The Court also created an extensive Orientation Manual for new Judges and an Inspection Manual to guide Judges in the future inspection of juvenile and adult facilities.

Judicial Education Taskforce

December 2006 was the launch of the Judicial Education Taskforce (JET), co-chaired by Judges Katherine Lucero and Richard Loftus. Initially organized and funded by the Silicon Valley Children's Fund, the goal is to bring together the 33 school districts, the County Office of Education (COE), DFCS, Probation and the Courts into a countywide Foster Youth System (FYS) Database to enable immediate sharing of education information across agencies and systems. This is particularly important when foster children's homes are moved. Oftentimes it takes weeks or months for their records to follow, so that a child with special needs is not serviced promptly.

After much planning, Phase I was implemented this year. Phase I brings together three significant school districts into the Data System (East Side Union School District, San Jose Union and Franklin McKinney). Phase 2 will begin in 2009, which will expand to the remaining 30 school districts. Eventually, both the Dependency and Delinquency Courts will be involved.

This project is consistent with Key Principle Number 15 of the NCJFCJ Delinquency Guidelines which encourages the facilitation of information sharing, when necessary, for the best interests of minors.

Additional Achievements

There have been many other achievements in 2008, including, but not limited to: (1) an update of all Standing Orders and Local Court Rules, (2) an adjustment of 737 hearing schedules to relieve Court congestion, (3) the reintegration of Child Advocates into Delinquency Court including, with the collaboration of Probation and Court staff, access of Child Advocates to the inner waiting room prior to hearings, and immediate access to minors in Juvenile Hall, (4) adoption of new protocols for the handling of ex parte applications, (5) regular meetings of all Delinquency Judicial Officers, (6) quarterly Joint training meetings of Dependency and Delinquency Judicial Officers, (7) implementation of SB 81/AB 191 transfer of juvenile parolees to local probation, (8) quarterly meetings with Probation Managers, and (9) use and expansion of cell phones in the Electronic Monitoring Program (EMP).

All of this represents tremendous hard work on the part of everyone involved. Although there is some concern about the number of meetings to attend, the level of collaboration is significant and has produced many results. None of the achievements could have been obtained without all the stakeholders' involvement, and this collaboration demonstrates four core principles of the Juvenile Justice System: (1) the need for shared institutional goals, (2) collaborative decision making, (3) system accountability, and (4) that mutual trust builds mutual influence.

Judicial Officers and other Delinquency Court stakeholders have a shared vision that every minor is a national treasure and have pledged to never give up on them because to do so is to let down the poorest and highest at-risk minors in our community.

The Court understands that the earlier the intervention, the less chance Delinquency will follow, and that problems cannot be isolated and addressed by simply starting when the minor shows up at the Courthouse. Nevertheless, when the minors do get here, the Court has to be the best that it can. That is why Judicial Officers and Court stakeholders are willing to hold themselves and the system accountable, which is mandated by W&I Section 202 and reflected in Key Principle Number 14 of the NCJFCJ Delinquency Guidelines.

Community Leadership

Consistent with Key Principle 11 of the NCJFCJ Delinquency Guideline and subdivision (e) of Standard 24 of the Standards of Judicial Administration, which mandate active leadership in the community, close liaison with school authorities, and the development of community services and resources, the Supervising Judge of Delinquency has participated in the following Committees, programs and commissions:

Mayor's Gang Prevention Task Force Steering Committee
Mayor's Gang Prevention Task Force Interagency Collaborative
Juvenile Hall Advisory Board (JHAB)
Children's Agenda Vision Council, Kids in Common
Juvenile Detention Reform Steering Committee
Juvenile Justice System Collaborative
Juvenile Education Task Force Steering Committee
Juvenile Treatment Court Grant Committee
Juvenile Justice Commission
Executive Committee, Juvenile Court Judges of California (JCJC)

The Supervising Judge also meets from time to time with representatives from the Alternative Education Collaborative and various school districts.

Goals for 2009

Looking ahead to 2009 presents many challenges and opportunities, including but not limited to:

- (1) Completing the Juvenile Sex Offender treatment protocols;
- (2) Completing the new Dual Status Protocol and continuing to implement best practices;
- (3) Full Implementation of ICWA in Delinquency Court;
- (4) Providing Parents with reports at all hearings and appropriate juvenile case files;

- (5) Allowing minors in Placement to participate in their six months review/permanent planning hearings;
- (6) Creation of a mentor program for parents and full implementation of Education Rights responsibilities;
- (7) Full implementation of Psychotropic Medication responsibilities;
- (8) Bringing the NCJFCJ Model Delinquency Courts Project to Santa Clara County;
- (9) Reviewing our responsibilities concerning questions of Parentage;
- (10) Begin judicial inspection of all juvenile detention facilities and all adult facilities not inspected by the Juvenile Justice Commission; this is required by W&I Section 209 and is consistent with subdivision (e)(10) of Standard 24 which mandates that the Juvenile Judges be familiar with all detention facilities;
- (11) Continue the work of the MGPTF Interagency Collaborative to create a new Transition Center for youth not taken to the Hall at arrest but needing immediate Services;
- (12) Simplify language used in our forms and at Court to make them more understandable;
- (13) Creating a working relationship between the Court and Juvenile Hall/Ranch Mental Health Management team;
- (14) Create automated data sharing between the Court and Probation;
- (15) Implement the new forms for 827 Petitions;
- (16) Implement another annual local Delinquency Beyond the Bench;
- (17) Continue with system-wide trainings;
- (18) Sharing of Supervisorial responsibilities with other Judicial Officers;
- (19) Expansion to four full-time Departments; next year the Court will have four Judges in Juvenile Delinquency, which is consistent with the Blue Ribbon Commission's Recommendation and Key Principle 4 of the NCJFCJ Delinquency Guidelines that Juvenile Delinquency Judges should have the highest status possible to promote the importance and centrality of juvenile justice.

Message from Supervising Judge Tondreau

I want to especially thank the three Judicial Officers I worked with this year, Judges Margaret Johnson and Ray Davilla, and Commissioner Jesus Valencia. They worked hard, tirelessly, and without complaint. I am honored to have been a part of their team.