

Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM:** Edgardo Garcia
Chief of Police

**SUBJECT: DUTY MANUAL REVISIONS:
L 3011 STATUS OFFENDERS
(601 W&I) and L 3012 LAW
VIOLATORS (602 W&I)**

DATE: June 22, 2020

Memo# 2020-030

BACKGROUND

On September 30, 2018, California Senate Bill (SB) 439 was approved by Governor Edmund G. Brown Jr. The bill amends Welfare and Institution Code (W&I) Sections 601 and 602, relating to the jurisdiction of the juvenile court, and creates a new W&I Section 602.1.

SB 439 raises the age range for a minor to come within the jurisdiction of the juvenile court which may declare the minor to be a ward of the court from any minor under the age of 18 years to any minor between 12 years of age and 17 years of age. There is an exception under subsection (b) of W&I Section 602 for any minor under 12 years of age when he or she is alleged to have committed murder or rape, sodomy, oral copulation, or sexual penetration by force, violence, or threat of great bodily harm would still be within the jurisdiction of the juvenile court and may be declared a ward of the court.

Pursuant to the new W&I Section 602.1, on and after January 1, 2020, counties are required to release a minor under 12 years of age who comes to the attention of law enforcement because his or her behavior or actions are as described in W&I Sections 601 or 602, to his or her parent, guardian, or caregiver, except as provided. Counties are also required to develop a process for determining the least restrictive responses that may be used instead of, or in addition to, the release of the minor to his or her parent, guardian, or caregiver.

Refer to the attachments regarding the Santa Clara County Juvenile Protocol for Youth Under Age 12 as a guideline and the Santa Clara County Police Chief's Association Juvenile Detention Reform Protocol. A copy of the Juvenile Detention Reform Protocol is available on the Department's intranet's Policies and Procedures Library.

ANALYSIS

The Duty Manual has been revised to reflect changes made to L 3011 STATUS OFFENDERS (601 W&I) and L 3012 LAW VIOLATORS (602 W&I). Additions are shown in italics and underlined. Deletions are shown in "strike-through" form.

L 3011 STATUS OFFENDERS (601 W&I):

Revised 06-22-20

Officers may, without a warrant, take custody of any juvenile *minor between 12 years of age and 17 years of age* when the juvenile *minor* continuously disobeys the reasonable and proper orders or directions of a parent, guardian or custodian, or is beyond the control of such persons.

The officer assigned to the incident will determine that the elements of 601 W&I are clearly present and that the juvenile *minor between 12 years of age and 17 years of age* is not a law violator (602 W&I) or a dependent minor (300 W&I). These facts are recorded on a J.C.R. (Juvenile Contact Report) by the assigned officer.

The officer will then inform the reporting party that juvenile laws do not provide for placement of status offenders into secure detention facilities and will then attempt to resolve the issue in accordance with the following procedures.

- REFERRAL FOR COUNSELING: Officers will first attempt to resolve the issue through use of public or private counseling services. Available agencies can be located in the Department's "Community Resource Manual" or by contacting the Juvenile Division Detail.

At no time will a "status offender" (601 W&I) be taken into the main detention facility.

L 3012 LAW VIOLATORS (602 W&I):

Revised 06-22-20

~~The Juvenile Detention Reform—Pre Disposition Committee established the Santa Clara County Law Enforcement Policy for the Release of Juveniles, which balances legal mandates, community safety and the best interests of the juvenile.~~

~~When the juvenile is a suspect in a criminal offense, the officer assigned will process the incident in accordance with the following appropriate procedures:~~

- ~~1. Officers shall release juvenile offenders, including release to parents, release with a written promise to appear, release to a diversion program or release to alternative community resources, unless one or more of the following circumstances exist:~~
 - ~~• The juvenile is 14 years old or older and commits a violation specified under section 707(b) of the Welfare and Institutions Code (see below).~~
 - ~~• An outstanding warrant exists for the juvenile or a probation officer directs incarceration.~~
 - ~~• The release of the juvenile would create a continuing threat to public safety and/or an individual.~~
 - ~~• The crime is violent, serious or involves a firearm.~~

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- ~~Release of the juvenile would compromise an investigation.~~
- ~~The juvenile demands to be taken to a magistrate.~~
- 2. ~~Exceptions to Section 1 shall be reviewed and approved by a supervisor. Crimes specified under Welfare and Institutions Code 707(b) includes:~~
 - ~~Murder~~
 - ~~Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code~~
 - ~~Robbery~~
 - ~~Rape with force or violence or threat of great bodily harm~~
 - ~~Sodomy by force, violence, duress, menace or threat of great bodily harm~~
 - ~~Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code~~
 - ~~Oral copulation by force, violence, duress, menace or threat of great bodily harm~~
 - ~~Any offense specified in subdivision (a) of Section 289 of the Penal Code~~
 - ~~Kidnapping for ransom~~
 - ~~Kidnapping for purpose of robbery~~
 - ~~Kidnapping with bodily harm~~
 - ~~Attempted murder~~
 - ~~Assault with a firearm or destructive device~~
 - ~~Assault by any means of force likely to produce great bodily injury~~
 - ~~Discharge of a firearm into an inhabited or occupied building~~
 - ~~Any offense described in Section 1203.09 of the Penal Code~~
 - ~~Any offense described in Section 12022.5 or 12022.53 of the Penal Code~~
 - ~~Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code~~
 - ~~Any felony offense described in Section 136.1 or 137 of the Penal Code~~
 - ~~Manufacturing, compounding or selling one half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code~~
 - ~~Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code~~

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- ~~Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape~~
- ~~Torture as described in Sections 206 and 206.1 of the Penal Code~~
- ~~Aggravated mayhem, as described in Section 205 of the Penal Code~~
- ~~Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon~~
- ~~Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code~~
- ~~Kidnapping, as punishable in Section 209.5 of the Penal Code~~
- ~~The offense described in subdivision (c) of Section 12034 of the Penal Code~~
- ~~The offense described in Section 12308 of the Penal Code~~
- ~~Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code~~

Any minor between 12 and 17 years of age who violates any federal, state, city or county criminal statutes or ordinances other than a curfew violation based solely on age, is within the jurisdiction of the juvenile court, which may declare the minor to be a ward of the court. (602(a)W&I)

Any minor who is under 12 years of age when he or she is alleged to have committed any of the following offenses will be taken into custody:

1. Murder.
2. Rape by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.
3. Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.
4. Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.
5. Sexual penetration by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

The Santa Clara County Police Chief's Association's Juvenile Detention Reform Protocol provides procedures regarding the decision to release a minor or to take a minor into custody. The releasing or taking a minor into custody shall be performed in compliance with the procedures contained in the most current Juvenile Detention Reform Protocol.

Diversion resources for juveniles minors issued a criminal citation include:

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- The Bill Wilson Center - 3490 The Alameda, San Jose, which provides alternative community housing resources for juveniles. Officers should contact the Center at 408-243-0222 prior to transporting a juvenile minor to the facility to ensure a bed is available.
- The Alum Rock Counseling Center can be contacted anytime at 408-294-0579 and will respond for on-scene crisis intervention or to set up long-term counseling services.
- ~~A full time probation officer and part time Deputy District Attorney are available in the Assaults/Juvenile/Missing Persons Unit, through a state grant, to review and identify such cases of juveniles in need of focused intervention services.~~
- Juvenile Hall staff also connects juvenile minor offenders with appropriate diversion programs.

This policy does not preclude officers from collecting and preserving evidence for criminal investigations. As such, officers should still transport in-custody juveniles, prior to citation and release or physical booking, involved in crimes in which the collection of photographic or fingerprint evidence would be beneficial.

CITIZEN'S ARREST INVOLVING MISDEMEANOR VIOLATION: Discretion will be used in permitting juveniles minors to arrest other juveniles minors, and the procedure should not be followed in such cases unless no other alternative is available.

A completed "Juvenile Contact Report" will then be submitted detailing the circumstances of the incident. Officer(s) shall also complete a general offense report detailing the entities involved.

ORDER

The above stated changes to the Duty Manual are effective immediately.



EDGARDO GARCIA
Chief of Police

EG:PC:MB

Attachments:

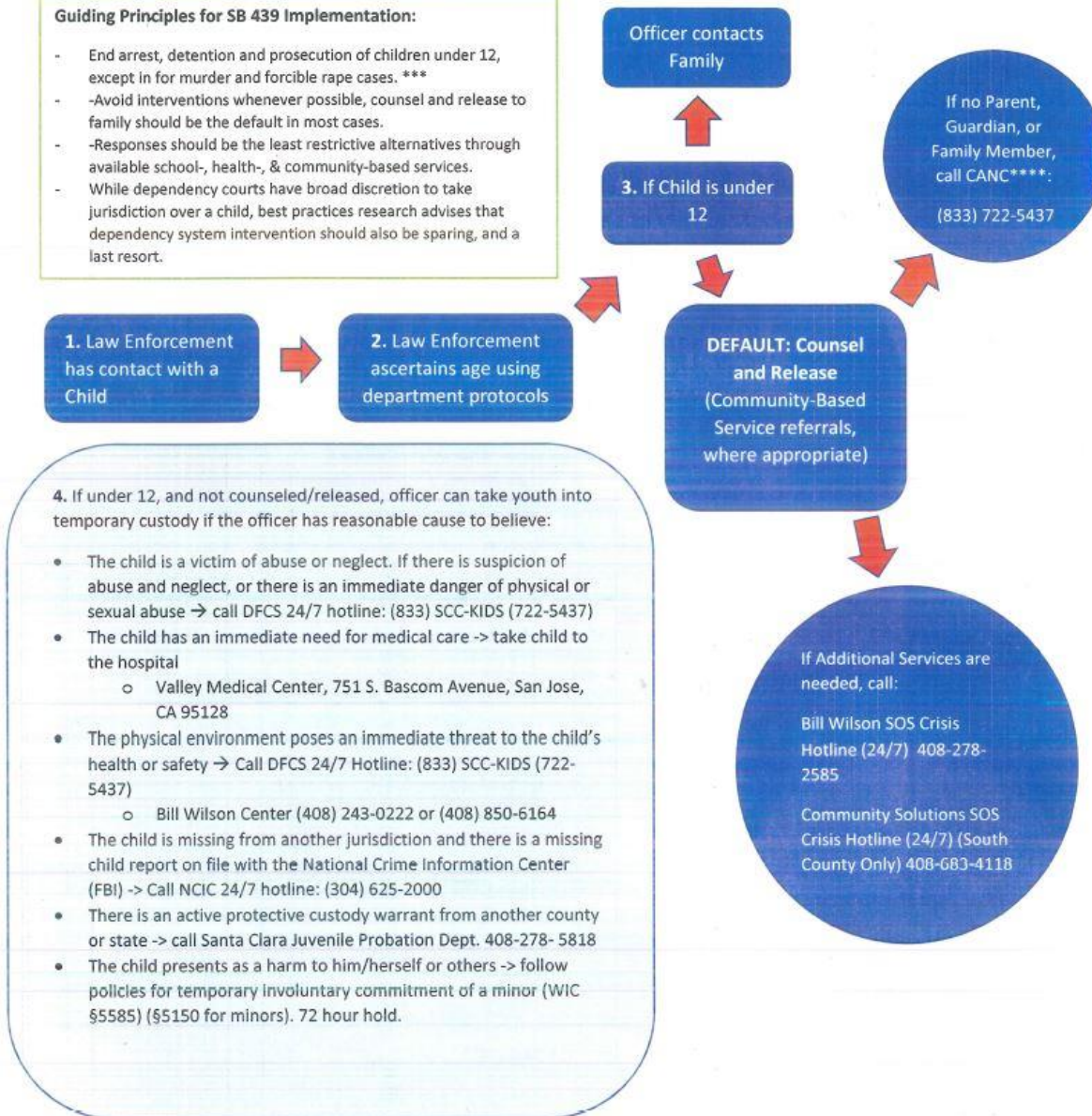
Santa Clara County Juvenile Protocol for Youth Under Age 12

Santa Clara County Police Chief's Association Juvenile Detention Reform Protocol

SANTA CLARA COUNTY JUVENILE PROTOCOL FOR YOUTH UNDER AGE 12 **

Guiding Principles for SB 439 Implementation:

- End arrest, detention and prosecution of children under 12, except in for murder and forcible rape cases. ***
- Avoid interventions whenever possible, counsel and release to family should be the default in most cases.
- Responses should be the least restrictive alternatives through available school-, health-, & community-based services.
- While dependency courts have broad discretion to take jurisdiction over a child, best practices research advises that dependency system intervention should also be sparing, and a last resort.



** This document serves as an interim protocol to implement SB439, (amending WIC §601, §602, and §602.1) as the county develops a long-term protocol by January 1, 2020 as mandated by WIC §602.1(c).

*** If the child is under 12, and accused of murder, forcible rape, forcible sodomy, forcible sexual penetration or forcible oral copulation, law enforcement may take a child into custody pursuant to WIC §625.

**** CANC: Child Abuse and Neglect Center



CALIFORNIA HIGHWAY
PATROL

CAMPBELL
POLICE DEPARTMENT

GILROY
POLICE DEPARTMENT

Los ALTOS
POLICE DEPARTMENT

Los GATOS/
MONTE SERENO POLICE
DEPARTMENT

MILPITAS
POLICE DEPARTMENT

MORGAN HILL
POLICE DEPARTMENT

MOUNTAIN VIEW
POLICE DEPARTMENT

PALO ALTO
POLICE DEPARTMENT

SAN JOSE
POLICE DEPARTMENT

SAN JOSE
STATE UNIVERSITY
POLICE DEPARTMENT

SANTA CLARA COUNTY
DISTRICT ATTORNEY

SANTA CLARA COUNTY
SHERIFF'S OFFICE

SANTA CLARA
POLICE DEPARTMENT

SUNNYVALE
DEPARTMENT OF
PUBLIC SAFETY

SANTA CLARA COUNTY POLICE CHIEFS' ASSOCIATION

Juvenile Detention Reform Law Enforcement Policy for the Incarceration of Juveniles. Adopted by Santa Clara Police Chief's Association, August 2009

Purpose:

The purpose of this protocol shall be to provide guidance to Santa Clara County Law Enforcement agencies in making informed decisions regarding incarceration of youthful offenders.

Goal:

The goal of Santa Clara County law enforcement agencies shall be to minimize unnecessary incarceration of youthful offenders by seeking alternatives to custodial confinement.

Policy:

In determining disposition of youthful offenders, it shall be the policy of Santa Clara County Law Enforcement agencies to balance legal mandates, community safety, and the best interests of the juvenile. The alternative that is least restrictive to the juvenile is preferred. Whenever appropriate, community resources will be utilized as an alternative to incarceration.

Santa Clara County Law Enforcement agencies are committed to working with community partners to create viable alternatives to the unnecessary incarceration of juveniles.

Procedures:

1. Officers shall release juvenile offenders, including release to parents, release with a written promise to appear, release to a diversion program, or release to alternative community resources, unless one or more of the following circumstances exist:

- The juvenile is 14 years old, or older, and commits a violation specified under section 707(b) W&I.
- An outstanding arrest warrant exists for the juvenile, or a probation officer directs incarceration,
- The release of the juvenile would create a continuing threat to public safety and/or an individual,
- The crime is violent, serious, or involves a firearm.
- Any crime involving domestic violence.
- When satisfactory evidence of identity cannot be established.

- When a parent or guardian cannot be located.
- Release of the juvenile would compromise an investigation.
- The juvenile demands to be taken before a magistrate.

2. Exceptions to Section 1 shall be reviewed and approved by a supervisor and documented on the JCR and arrest report.

Community Alternatives to Incarceration

Santa Clara County Law Enforcement agencies can refer 602 offenders - not eligible to be admitted to Juvenile Hall and when parents are not available or unwilling to accept the youth - to the following resources on a 24-hour basis. The resource agencies are:

- **Alum Rock Counseling Center (ARCC)**

Area Served: San Jose, Milpitas, Campbell, Los Gatos, Saratoga, Cupertino, and unincorporated areas North, East and West of the San Jose City limits.

Contact Phone Number: (408) 294-0579

- **Bill Wilson Center**

Area Served: Santa Clara, Sunnyvale, Mountain View, Los Altos and Palo Alto (and all South County).

Contact Phone Number: (408) 243-0222

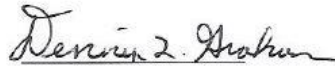
Countywide shelter services provided

- **Community Solutions**

Area Served: Morgan Hill, San Martin, Gilroy and unincorporated areas South of San Jose City limits.

Contact Phone Number: (408) 683-4118

Provide the responding case manager with a completed green copy of the JCR. Ensure the JCR contains a case number.



Chief Dennis Graham
Milpitas Police Department
Chair, Police Chiefs' Association of
Santa Clara County

Date: August 10, 2009