

## **AGENDA**

Wednesday, August 6, 2014

10:00 a.m. – 12:00 p.m.

Hall of Justice

District Attorney's Office, Library

850 Bryant Street, Room 322

San Francisco, CA 94103

*Note: Each member of the public will be allotted no more than 3 minutes to speak on each item.*

1. Call to Order; Roll call.
2. Public Comment on Any Item Listed Below (discussion only).
3. Review and Adoption of Meeting Minutes from June 11, 2014 (discussion & possible action).
4. Staff Report on Sentencing Commission Activities (discussion & possible action).
5. Presentation on Federal Sentencing Commissions by Judge Charles R. Breyer (discussion & possible action).
6. Presentation of the Reset Foundation model by Jane Mitchell (discussion & possible action).
7. Presentation on youth diversion and support programing by Denise Colman and Stacey Sciortino of the Huckleberry Community Assessment & Resource Center (CARC) (discussion & possible action).
8. Presentation on better sentencing for violent youthful offenders by David Muhammad of National Council on Crime and Delinquency (NCCD) (discussion & possible action).
9. Members' comments, questions, and requests for future agenda items.
10. Public Comment on Any Item Listed Above, as well as Items not Listed on the Agenda.
11. Adjournment.

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Persons who are unable to attend the public meeting may submit to the San Francisco Sentencing Commission, by the time the proceedings begin, written comments regarding the subject of the meeting. These comments will be made a part of the official public record, and brought to the attention of the Sentencing Commission. Written comments should be submitted to: Tara Anderson Grants & Policy Manager, San Francisco District Attorney's Office, 850 Bryant Street, Room 322, San Francisco, CA 941023, or via email: [tara.anderson@sfgov.org](mailto:tara.anderson@sfgov.org)

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**The San Francisco Sentencing Commission  
City and County of San Francisco**

**MINUTES**

**Wednesday, June 11, 2014**

**Hall of Justice**

**Room 551**

**850 Bryant St.**

**San Francisco, CA 94103**

Members in Attendance: District Attorney George Gascón; Board of Supervisors Appointee Theshia Naidoo (Drug Policy Alliance); Reentry Council Appointee Karen Roye (Director, Department of Child Support Services); Craig Murdock (Department of Public Health); Federico Rocha (Sheriff's Department); Chief Juvenile Probation Officer Allen A. Nance (Juvenile Probation Office); Public Defender Jeff Adachi (San Francisco Public Defender's Office); Chief Adult Probation Officer Wendy Still (Adult Probation Officer); Commander Michael Redmond (San Francisco Police Department); Reentry Council Appointee Kate McCracken (Director of Policy and Development, Center for Juvenile and Criminal Justice)

**1. Call to Order; Roll Call**

At 10:05 a.m. District Attorney Gascón called the meeting to order and welcomed commission members and members of the public to the San Francisco Sentencing Commission meeting. District Attorney Gascón asked the group to introduce themselves. Each member of the group introduced him/herself.

District Attorney Gascón provided an overview for the meeting.

**2. Public Comments**

District Attorney Gascón reviewed the procedure for public comment and asked if the public would like to comment on agenda items. Hearing none, the meeting proceeded to the next item.

**3. Review and Adoption of Meeting Minutes From Previous Meeting**

District Attorney Gascón asked commission members to review the minutes from the previous sentencing commission meeting and asked if anyone had edits or additions to the Wednesday, March 26, 2014, meeting minutes.

Public Defender Adachi motioned to accept the March 26, 2014, meeting minutes. The motion was seconded and passed unanimously.

#### 4. Staff Report on Sentencing Commission Activities (discussion and possible action)

Antoinette Davis of the National Council on Crime and Delinquency (NCCD) thanked District Attorney Gascón and members of the sentencing commission. Davis reminded members of the upcoming commission meetings scheduled for August 6 and December 3, 2014. Davis stated that there were a few revisions to the notes from the March commission meeting and that NCCD would forward an updated copy of the notes to members. She also updated the agenda for that day's meeting, reporting that Allen Hooper would be presenting on the prospects for statewide sentencing reform, rather than on penal code reform as noted on the agenda.

Davis next updated the group on pending items from the previous commission meeting, focusing on requests for information. The commission had requested an update/presentation from the JUSTIS project. This presentation is being planned and is expected to be scheduled for the August 6 meeting. The commission had also requested information on criminal justice outcomes, disaggregated by offense type, for San Francisco residents. NCCD is working with the sheriff's department and other city departments, as well as the California Department of Corrections and Rehabilitation (CDCR), to obtain this data.

Davis then provided a communications update. She stated that members were recently sent the latest issue of the quarterly newsletter as well as an email blast. Davis said these items are part of a coordinated communications strategy designed to provide useful information and updates to members. She asked members to let her know if they feel they are receiving more emails/information than is helpful and encouraged members to submit items for upcoming newsletters or email blasts.

Davis described three points of interest, which will also be covered in the next email blast sent to the commission. First, Davis stated that AB 1050 tasked the Board of State and Community Corrections (BSCC) with defining recidivism and other key research terms. In support of these activities, the BSCC will hold three public comment sessions around the state, including one in San Francisco on June 25. Davis noted this information was provided by Kate McCracken. Next, Davis said that the US Sentencing Commission is seeking public comment on the issue of whether to retroactively apply the amendment to the drug quantity table, which changes sentencing guidelines for individuals convicted of crack cocaine offenses at the federal level. The commission was to receive public comment on this issue through July 7, 2014, by email at [public\\_comment@ussc.gov](mailto:public_comment@ussc.gov). To facilitate public comment on this issue, the commission made available the following materials: [Impact Analysis of Retroactive Application of 2014 Drug Guidelines Amendment](#) and [Updated Recidivism Study of Crack Cocaine Offenders Receiving Retroactive Sentence Reductions](#). Davis noted that these materials would be forwarded to commission members. Finally, Davis said that the Smarter Sentencing Act, sponsored by Senators Richard Durbin (D-IL) and Mike Lee (R-UT), passed the Senate Judiciary Committee on January 30, 2014, with a favorable recommendation. The latest poll results from the [Pew Research Center](#) indicated that 63% of Americans say that the states' move away from mandatory minimum sentences for drug crimes is a good thing (p. 8); and two thirds said that treatment, not jail, should be the solution for heroin and cocaine users (p. 1).

Regarding the second item described above, Chief Still made a motion for the commission to draft a memo to the federal sentencing commission in support of the proposed drug sentencing reform. The motion was seconded by Theshia Naidoo and was passed unanimously by the members. District Attorney Gascón was to provide Davis with a sample letter that could be reduced to approximately two pages. Davis stated that NCCD would develop a draft and forward it to the commission for review. The

draft will then be submitted to the Mayor's Office for approval, as per the Charter (3.100 (1) ), which states that the Mayor is responsible for coordination of all intergovernmental affairs for the City and County.

Theshia Naidoo updated the commission on a recent visit from a senior judicial delegation from Macedonia. Based on a recommendation from the delegation's US State Department host, the group requested a meeting with the sentencing commission. Naidoo met with them to represent the commission. Naidoo stated that Macedonia is facing a prison overcrowding problem. They are examining criminal justice system reform efforts and considering creating a sentencing commission, but are unsure of which sentencing commission model to use. Naidoo reported that the group was interested in the sentencing commission's day-to-day operations, its authority, etc. Naidoo described for the delegation how the commission, as a local entity, differs from state and federal sentencing commissions and the reasons for its establishment. Naidoo said the meeting was productive, with the potential for future communication with the Macedonian delegation. Public Defender Adachi and Chief Still reported that the delegation also met with them at their respective offices. Public Defender Adachi noted that he was asked why San Francisco prosecutes mentally ill individuals (this practice is not used in Macedonia). Chief Still reported that Macedonia does not have a system of community corrections and is interested in creating one. District Attorney Gascón noted that the delegation seems interested in looking at San Francisco's entire criminal justice system.

Karen Roye reported that the Reentry Council last met April 29. At this meeting Gary Levene, supervising probation officer with the juvenile probation department, and Rebecca Marcus of the public defender's office gave a presentation on the Juvenile Collaborative Reentry Unit (JCRU). The JCRU began as part of a three-year Department of Justice grant; due to its success, the project received a one-year extension. JCRU works to serve and support youth in out-of-home placement represented by the public defender's office. Its objective is to present the court with a reentry plan for the youth with its partners. Also at the Reentry Council meeting, Zoë Polk, director of policy and social justice for the city/county Human Rights Commission, gave a presentation about the implementation of the Fair Chance Ordinance. Additionally, Lore Joplin of the Crime and Justice Institute gave an update on the Justice Reinvestment Initiative and summarized interviews regarding San Francisco's strategies for this initiative. These include eliminating the disproportionality of people of color in the criminal justice system and shortening the standard length of probation sentences. Finally, Whitney Tymas, director of the prosecution and racial justice program at the Vera Institute for Justice, provided an update on Vera's work with the district attorney's office to analyze data on the impact of prosecutorial discretion and assist with developing policies to promote fairness. The next Reentry Council meeting will take place August 12.

District Attorney Gascón asked if anyone had questions or comments; with none offered, he moved the meeting to item 5 and introduced Bob Weisberg, faculty co-director of the Stanford Criminal Justice Center, which promotes and coordinates research and public policy programs on criminal law and the criminal justice system, including examination of the police and correctional systems.

**5. Presentation on Penal Code Reform by Bob Weisberg, Stanford Criminal Justice Center (discussion and possible action)**

Bob Weisberg, faculty co-director of the Stanford Criminal Justice Center, stated that he wanted to inform the commission about an incipient research project on the subject of enhancements. Weisberg

said that he recently completed analyses of realignment issues including interviewing experts around the state such as probation officers and district attorneys, including District Attorney Gascón. Weisberg said that before working on realignment, he and other researchers had been part of a campaign to promote a statewide commission on sentencing, an effort that was ultimately unsuccessful. As part of this campaign, the group advocated the idea of “stock taking on the oddities of the California penal code.” In the last quarter the Plata court has looked kindly on penal code reform, which it does not require but would encourage. Weisberg, with his colleague Joan Petersilia, have been encouraged through informal conversations with members of the state judiciary to examine the phenomenon of enhancements in California compared to more conventional states, as well as the federal system, which have broader sentencing guidelines. In California, enhancement—which represents aggravating factors—often leads to bizarrely disproportionate outcomes. The general view is that enhancements produce odd irrationality, which can lead to disparate and erroneous outcomes due to complexity of statutory analysis.

As an example, Weisberg described the 2009 death of Oscar Grant and subsequent criminal trial. When Johannes Mehserle was tried in this case, he was convicted of involuntary manslaughter and received a prison sentence. During the trial, the jury was asked to and did find that he was guilty of the enhancement that he used a gun in the crime. This would have increased his sentence. If he deserved a long sentence, that should not have been part of the double counting effect of having a gun (as he was a law enforcement officer).

Weisberg stated that the goal of the current project is to conduct a fresh analysis of the modern penal code, look at how enhancements happened, and develop a map of the current state of the field. While it is not possible to conduct a statistically significant analysis of this data, Weisberg and his colleagues hope to trace patterns of enhancement due to the most common crimes, look at where disparities occur, and see if they can trace enhancement outcomes to specific numbers of human years of sentencing in order to see the effect of enhancements on the prison population. The project will take place over the next year.

Chief Nance asked Weisberg if he and his team are talking to people in Sacramento about this project. Weisberg stated that they are, and they have good relationships with the governor’s office and attorney general’s office. He added that they have not talked much with legislators, except for Senator Darrell Steinberg, who has expressed interest in the project. Weisberg said it is not clear yet if that is a direct partnership they should pursue.

Chief Still said if the governor takes action on this issue it will be during his second term.

Public Defender Adachi said he was in Sacramento the day before the commission meeting and it sounded like sentencing reform was still being discussed. He stated that although Assembly Member Tom Ammiano’s attempt at reform was not successful, interest in the topic seems to exist in Sacramento; Public Defender Adachi encouraged Weisberg to continue with his efforts.

The group then briefly discussed the retooling of Ammiano’s bill. Weisberg said there may be serious thought about the issue after the upcoming election. He also stated that earlier efforts to establish a state sentencing commission were unsuccessful due to fear that sentencing reform would be done by a de facto commission. Weisberg said his research has nothing to do with that, and his team hopes the right audience would be legislators so the issue of a sentencing commission doing de facto reform becomes a moot issue.

Chief Still asked about the proposed outcome of Weisberg's research. Weisberg said that the project is designed to provide an analysis of current sentencing practices and share this information with judges. A long-term objective is for legislators to rethink sentencing practices. The research team does not plan to include recommendations as part of their project.

District Attorney Gascón asked for other questions and seeing none, stated that Weisberg's and Petersilia's work on realignment is of very high quality and has helped eliminate the mystique around the topic. He thanked Weisberg for his presentation.

District Attorney Gascón introduced item 6 on the agenda, a presentation by Ann Hollingshead and Maura Liévano, members of a graduate student research team from the Goldman School of Public Policy at UC Berkeley. The group has been conducting a thorough feasibility analysis of pre-booking and pre-charging diversion models for drug offenders.

#### **6. Presentation on Feasibility Analysis of Pre-Booking and Pre-Charging Alternatives by Goldman School of Public Policy Graduate Students (discussion and possible action)**

Hollingshead thanked the commission for allowing the Goldman research team to conduct this research project and for the insight members have provided over the last few months. She stated that the team has evaluated the feasibility, benefits, and cost of replicating a Seattle-based program called Law Enforcement Assisted Diversion (LEAD) in San Francisco. She noted that many commission members recently conducted a site visit to LEAD in Seattle and hoped that this presentation would build on what members saw during the visit.

Hollingshead stated that the research team's data collection and analysis involved four components: key informant interviews, a field visit to Seattle, a literature review of pre-booking and pre-charging programs nationally and internationally, and an analysis of local data such as visits to hospital emergency room departments for drug-related reasons. The data analysis suggested a need to consider policy alternatives to address drug-related arrests. As a result, the team analyzed a pre-booking diversion program (diversion done by police officers) and a pre-charging diversion program (diversion done by prosecutor's office).

The team used three criteria to compare the programs: equity, effectiveness, and efficiency. Regarding equity, the team's analysis confirmed that most low-level drug crimes in the city occur in the Tenderloin neighborhood. If the pre-booking program were implemented in this neighborhood, eligible individuals in other neighborhoods would not have access to this alternative. However, the pre-charging program would be more widely available across the city.

While a full cost-benefit analysis was not conducted, the team identified key areas where costs would be realized if either of these programs were implemented. These areas included avoiding costs associated with victimization and improved health outcomes. The team stated that program effectiveness would be measured by the extent to which the program would effectively rehabilitate participants, leading to reduced recidivism; indicators would include a reduced number of days spent in jail and reduced arrests and bookings.

When comparing the two programs to the status quo, the team found that the pre-charging program was probably more equitable, while the pre-booking diversion program appeared to be more efficient in terms of costs. The team also looked at implementation feasibility (project management, partnerships, training, etc.) as part of their analysis. From the Seattle site visit, the team observed the importance of partnerships for the successful implementation of the LEAD program, and saw the level of integration and communication that was achieved at bimonthly meetings for the program, where the prosecutor, public defender, social services, and other entities meet to review cases of program participants. Due to the existing partnerships in San Francisco, the team felt the city was well-positioned to implement such a program.

Based on their analysis, the team recommended implementing a pre-booking diversion program. Guidelines for implementing the program include determining a pilot geographic area, building consensus about eligibility criteria for program participants, and determining a program management strategy.

Chief Still said she found it interesting that, regarding partnerships, the presenters did not mention the Reentry Council or the community corrections partnerships that have been in effect for several years. She stated that these partnership examples underscore the strength of partnerships in San Francisco over the long term.

Public Defender Adachi asked if the research team talked with any consumers who would potentially qualify for services. The researcher responded that they did not; however, they did talk to two staffers at the REACH Center in Seattle, who provided substantial information regarding potential partnerships.

Public Defender Adachi asked the researcher what questions she would like to pose to a focus group of consumers. She said it would be helpful to understand what consumers consider to be the most important services for reaching their individual goals. Public Defender Adachi also asked if the research team had information on the per-participant cost for the program; for example, would this draw on existing services, or would additional funding be required? The researcher replied that the team would recommend seeking funding outside of the public budget and strategically using existing services. The main source of funding for the Seattle program is provided by a foundation to community-based organizations.

Roye asked what population of consumers would be supported by this pilot project. The research team stated that capacity must be analyzed, then individuals who are appropriate for the type of treatment available can be identified.

Chief Still said she was impressed by the way the Seattle program was funded. Foundations stepped in to help with resources, and they are now at a point where the warden will invest a million dollars to expand the program when research on it is completed.

District Attorney Gascón thanked the Goldman team for their analysis.

Naidoo then provided an overview of the commission's visit to Seattle. Six members of the commission as well as an NCCD staff member visited Seattle June 3 and 4 to conduct a site visit of the LEAD program. This visit included meeting with a range of stakeholders such as the downtown business association, department of corrections, and sheriff's department, and attending a workgroup meeting. The group was interested in hearing about the challenges and lessons learned that could be taken into

consideration if the program was implemented in San Francisco. Common themes that emerged included: LEAD's front-door access to services; LEAD's wide range of responses to problems traditionally dealt with by the criminal justice system; the role of law enforcement in exercising discretion about who needs services; and the use of a case management model that avoids setting up a client up for failure. Some of the lessons learned related to evaluation criteria. The program is now undergoing a three-phase evaluation, with a recidivism evaluation due to be completed in September 2014.

District Attorney Gascón stated that a number of unresolved issues remain. He made a motion to convene a subgroup (including representatives from the police department, DA's office, and public health) for 90 days to continue to look at pre-booking and pre-charging options, specifically as related to San Francisco. He said he thought the authors of the Goldman report would be willing to continue working with the commission. After 90 days, the small group would provide clear recommendations about whether to implement such a program and whether it should be a pre-booking or pre-charging program. The motion was seconded by Michael Redmond.

After the motion, discussion on this topic continued briefly. When asked, District Attorney Gascón stated his preference for a pre-booking program, while acknowledging the existence of concerns regarding this type of model because it is location-driven. Pre-booking also places a tremendous responsibility on individual officers by requiring considerable training and supervision. Seattle has spent a lot of resources on this. It does not reduce police work and will probably increase workload because officers take a greater level of responsibility in a pre-booking model. If both the police department and the community overall are ready, District Attorney Gascón said he would lean toward the pre-booking program, although he is not sure if the resources are available. Redmond said that is one of the police department's concerns also. Chief Nance said that the Community Assessment and Referral Center (CARC) is a long-standing diversion model in San Francisco for juveniles that allows probation to identify offenders who do not need to be referred to court or detained in juvenile hall. It keeps them in the community without moving them further into the system. He recommended that the subgroup examine this model and perhaps ask CARC representatives to make a presentation to the commission.

Chief Still said that in Seattle it took some time to get the police department on board, especially line officers. Systemic change must start with engaging line officers at the front end. She also noted that the meetings they attended included discussion of methamphetamines and cocaine but not heroin. However, heroin should be part of San Francisco's examination.

District Attorney Gascón said that the subgroup can look at all of the areas mentioned here.

McCracken said that voices of formerly incarcerated individuals were not included in the process in Seattle. She would like to ask members of the San Francisco Reentry Council to be included in the 90-day process, as it is meaningful to include those touched by the system as part of the design.

The motion was passed with all in favor. District Attorney Gascón asked Chief Assistant District Attorney Sharon Woo to convene the subgroup, and she agreed.

District Attorney Gascón introduced the next item on the agenda, a presentation by Meredith Desautels. A staff attorney at the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Desautels directs the Second Chance Legal Clinic. This clinic provides free legal services to people with arrests and convictions to help them overcome the barriers to successful community reintegration

## **7. Presentation on the Collateral Consequences of Incarceration by Meredith Desautels, Lawyers' Committee for Civil Rights (discussion and possible action)**

Desautels began her presentation by introducing the Lawyers' Committee for Civil Rights, which was founded in 1968 and works on issues of racial, immigration, and economic justice. The organization works closely with the private bar to advance social justice.

One in four adults in California has a criminal record. These individuals face a number of barriers including legal barriers (certain exclusions from jobs, housing, education programs, etc.); discrimination related to employment, housing, etc.; loss of civil rights; criminal-justice related debt; and family disruption. These barriers, which disproportionately affect low-income communities and communities of color, have impacts on unemployment, intergenerational economic mobility, and other issues.

A criminal record is permanent, imposing barriers that will surface throughout an individual's lifetime. A criminal record is also more accessible than in previous eras: Since 9/11, a huge background check industry has emerged. While (with limited exceptions) no true expungement for convictions exists in California, there are some remedies or the possibility for a "cleaner slate." However, remedies for cases with a prison sentence are very limited. Accessing a clean slate is also limited due to crowded court calendars; additionally, the need for legal services as well as the presence of criminal justice-related debt often pose major barriers.

A primary collateral consequence of incarceration relates to employment. Having a record severely impacts an individual's ability to get a job. For example, one study found that callbacks for jobs are reduced by 50% for people with records, and the rate is even lower for African American applicants with records. While certain legal protections—such as federal EEOC guidance, state laws, and the Fair Chance Ordinance in San Francisco—exist for formerly incarcerated job seekers, there are also a number of barriers. This includes professions that require a state license; often individuals with records are initially denied such a license, and an attorney is needed for an appeals process.

Fewer issues are related to housing. Some federal housing exclusions exist, but these are fairly narrow, and local housing authorities have a considerable amount of discretion. Desautels said that the city's Fair Chance Ordinance should be expanded to include all housing.

Regarding background checks for employment and housing, for individuals with a record the enforcement of legal restrictions is low. Errors are often rampant in background check data—such as mistaken identity and multiple entries for a single case—and applicants are generally unaware of their rights and lack the resources to enforce them.

There are a variety of restrictions for public benefits. CalWORKS and CalFresh (food stamps) impose a federal lifetime ban for felony drug convictions, but states can opt out of the ban. For SSI, SSDI, and General Assistance, no bans are related to criminal records.

In terms of higher education and student loans, schools are not limited in what they may ask about or consider for applicants. However, California public schools of higher education do not ask about juvenile or criminal history. The "common application" used by many schools does include some justice-related questions. Additionally, federal student loans have some exclusions.

Regarding immigration, federal enforcement is increasingly focused on individuals with criminal justice contact. Removal is often mandatory, and new policy proposals would expand deportable offenses. Additionally, individuals may get deported for decades-old, minor offenses. Post-conviction relief is often the only method for preventing deportation. This fall the Lawyers' Committee for Civil Rights will bring a Soros Justice fellow on board to explore post-conviction relief.

Other areas that may impact formerly incarcerated individuals include case-related debt; driver's license suspension; and child support arrears.

Areas for potential reform include incorporating consideration of collateral consequences at plea bargaining and sentencing stages; advisement of collateral consequences at sentencing and upon release; exploring potential local strategies to reduce collateral consequences of past convictions; and reviewing case-related debt practices and exploring opportunities for debt relief to facilitate expungement and driver's license reinstatement.

Desautels closed her presentation by noting that the Second Chance Legal Clinic is offered once a month at the West Bay Community Center.

Public Defender Adachi stated that when an individual pleads guilty and makes a deferred entry of judgment, once the charge is withdrawn and dismissed, the California Department of Justice counts this as a conviction. He asked if Desautels knew any remedies for this situation. She replied that labor code protections should prevent employers from using that information against an applicant. However, because it is on record, a lawyer probably needs to explain this to an employer. It is also a state record-keeping issue, in terms of how things are recorded (e.g., vacated as opposed to removing a conviction). District Attorney Gascón said this is a state issue and could be remediated in court. District Attorney Gascón stated that he and Public Defender Adachi could have a conversation about this.

District Attorney Gascón asked for other questions and seeing none, thanked Desautels for her presentation. He noted that there would be some reordering of the remaining items on the meeting agenda due to time constraints of some presenters.

District Attorney Gascón introduced the next item on the agenda, a presentation by Ameerah Tubby. District Attorney Gascón stated that Ameerah represents a perspective that is all too often overlooked in our criminal justice system: the voice of a youth with an incarcerated parent. Ameerah is a participant in Community Works' Project WHAT!, which stands for "We're Here and Talking." Project WHAT! raises awareness about children with incarcerated parents, with the long-term goal of improving services and policies that affect these children.

## **8. Presentation by Project WHAT! Youth Participant on the Experience of Having an Incarcerated Parent (discussion and possible action)**

Mailee Wang, program and policy director for Project WHAT!, provided brief background on the program. Project WHAT! is a youth-led program that raises awareness about children with incarcerated parents. Wang said that 2.7 million children have an incarcerated parent. She introduced Ameerah, a Project WHAT! participant, to share her story with the commission.

In 2009, Ameerah's mother went to jail. Ameerah was concerned about her siblings' safety and where they would live while their mother was incarcerated. She also missed her mother very much but had a hard time expressing this emotion when she visited her mother in jail. Her mother was moved from San Francisco County Jail to Santa Rita in Alameda County, which made it more difficult to visit. While her mother was in jail, Ameerah ran away and smoked marijuana. Eventually she decided she wanted to be a better role model for her siblings. Her mother's incarceration was painful for Ameerah, but now she feels better about life. She and her mother were reunified about one year ago.

**9. Presentation by Formerly Incarcerated Person on the Collateral Consequences of Felony Conviction (discussion and possible action)**

Ameerah's mother April spoke next. In 2009, after previously dealing with personal challenges including breast cancer and divorce, April was arrested on a variety of charges and sentenced to jail. She had trouble seeing her children while she was in Santa Rita and did not receive appropriate services. When she was released, she faced a variety of barriers. For example, she did not qualify for reunification services; additionally, her children were not allowed to stay with her in a shelter. She has since graduated from culinary school with an associate's degree and is trying to find work as a caterer. April is working with Wang of Project WHAT! to expunge her record. She has obtained six jobs since being released and is honest about her record in interviews; however, she has been terminated several times due to her record. She stated that it would be helpful to have reunification and housing services for people who are not on parole and do not qualify for certain kinds of benefits. She also said that Alameda County does not have a reentry center for women, and she could not seek services in San Francisco because she is not a San Francisco resident. She thanked the commission for listening to her and her daughter.

District Attorney Gascón thanked Ameerah and April for sharing their stories.

District Attorney Gascón introduced the next item on the agenda, a presentation by Allen Hopper. Hopper is the criminal justice and drug policy director of the ACLU of California, where he develops and implements strategies to reform California's criminal justice system and drug policies. District Attorney Gascón stated that Hopper's presentation would include an overview of current prospects for statewide sentencing reform in the context of the Plata litigation, realignment implementation, and SB 105.

**10. Presentation on the Prospects for Statewide Sentencing Reform by Allen Hopper, Director of Criminal and Drug Policy ACLU of Northern California (discussion and possible action)**

Hopper stated that the meeting packet included an article that he authored and that informed his remarks for this meeting. He said the article is adapted from a longer piece that will be published in the *Santa Clara Law Review*; he will provide this article to the commission when it is available.

Hopper said that if the state is eventually able to comply with the Plata litigation to reduce the prison population, California prisons will still be overflowing, housing many more individuals than the facilities were designed to hold. Hopper said that although the state's focus is on realignment guidelines, good governance and morality require more than meeting the Plata population cap.

The results from three years of realignment are mixed. A compliance monitor with independent authority to order prison releases if the state does not comply with benchmarks by the deadline was

recently appointed. While the state is now motivated to bring prison numbers down, the focus is not on reducing the prison population. Under Plata, the state can spend more money to increase the capacity of prisons. This month the state prison population is 3,700 more than it was one year ago. In many counties, jails are more crowded than prior to realignment. SB105, passed last year, provides \$315 million to CDCR to increase the state's prison capacity. While this funding is not designed to support new construction, it has led to the state contracting with private prisons.

To bring about sustained reductions for the numbers of individuals incarcerated in jail and prison, front-end sentencing reform is needed; however, there is opposition from statewide associations of district attorneys, police chiefs, and sheriffs to reform sentencing laws. Sentencing reform is needed to reduce the number of non-serious, nonviolent felonies—an issue that is not addressed by realignment. Excessive sentences still apply; now these consist of jail instead of prison sentences for many. Jails are not meant to house people for extended periods. No serious consideration has been given to people with non-serious, nonviolent crimes with no previous conviction for violent crimes and are being incarcerated for 10 years, mostly due to enhancements. Hopper noted a current state ballot initiative, of which District Attorney Gascón is a part, that would reduce many low-level, non-violent felonies to misdemeanors. This initiative excludes low-level drug sales.

Hopper provided an example of the law enforcement lobby's opposition to moderate sentencing reforms. Senator Mark Leno authored a bill that would have reduced the penalty for simple possession drug crimes. This would result in significant annual savings for counties and the state, as well as reductions in jail populations and recidivism. Many organizations supported this reform. The only opposition came from the associations of police chiefs, sheriffs, and district attorneys; the bill did not pass. When Leno brought the bill back the next year with some modifications, it faced the same opposition from these associations. This compromise version of the bill was vetoed by the governor, who stated in his veto message that SB 105 would involve evaluation of the state's criminal justice system including sentencing.

Plata has provided debate and discussion regarding criminal justice reform and sentencing. While the state contends it cannot change the population cap unless the federal court is willing to change state law, this is not true. The governor and legislature could affect this, for example, through sentencing laws. Overly punitive sentencing laws have created the state's current incarceration crisis. California has the second highest recidivism rate in the United States and some of the harshest sentencing laws in the country. Hopper encouraged commission members who belong to the statewide associations of district attorneys, police chiefs, and sheriffs to help change the associations' mindset regarding sentencing, as the state laws are out of step with the rest of the nation, including the federal government.

District Attorney Gascón thanked Hopper for his presentation.

#### **11. Members' Comments, Questions, and Requests for Future Agenda Items**

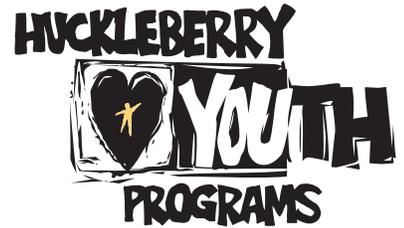
This agenda item was skipped due to lack of time. Members were asked to send any comments, questions, and requests for future agenda items to Davis at NCCD.

#### **12. Public Comment on Any Item Listed Above, as Well as Items Not Listed on the Agenda**

District Attorney Gascón asked if any members of the public had comments. Jane Mitchell, who stated that she is with The Reset Foundation, addressed the commission. Mitchell said she was excited to hear about the commission's decision to send a letter regarding the Smarter Sentencing Act. She encouraged the commission to include a sentence in the letter about diverting funds to community alternatives to prison and to ask lawmakers to have enabling language for judges and the federal system to consider local alternatives. District Attorney Gascón asked the commission if the group would like to make a motion to include this language in the letter. This motion was seconded and passed unanimously.

### **13. Adjournment**

District Attorney Gascón asked if there was a motion to adjourn the commission's eighth meeting. This motion was seconded, all members voted in favor, and the motion passed. At 12:10 p.m., the meeting was adjourned.



## Do You Know About The CARC ? (Huckleberry Community Assessment & Resource Center)

**The Huckleberry Community Assessment & Resource Center (CARC)** is a San Francisco program for youth, ages 11-17, who are arrested for misdemeanors or certain felonies. With a focus on positive youth development, CARC helps youth avoid detention and further involvement in the juvenile justice system. **Thirty percent of all arrested youth in San Francisco are served by CARC.** SF Police General Orders state that CARC must be contacted for all juvenile arrest cases.



Members of the Huckleberry Community Assessment & Resource Center (CARC) Staff

### Program Components Include:

- Assessment of all areas of youth's life, including strengths, needs, and interests
- Intervention Case Plan with linkages to community resources
- Support of youth and family through the juvenile justice system and any other systems affecting the family
- Individual and family counseling
- Youth Mentoring Program

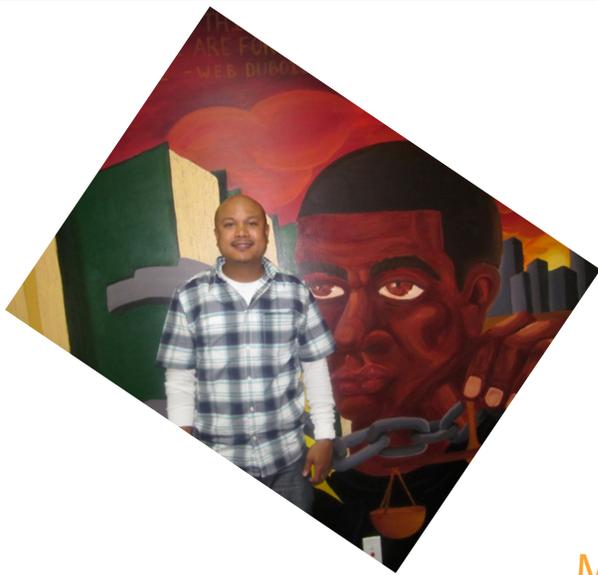
## Case Management

Youth are brought to CARC in police custody at the time of their arrest. At CARC, youth meet with a Probation Officer and a Case Manager for an assessment. The assessment focuses on what is happening in the youth's life: their strengths and interests; what's happening (or not happening) at home and at school; substance abuse issues; and how they spend their time.

Once a case plan is developed with parent input, youth are released home with a new sense of support, opportunity, and hope. We get our youth back in school, arrange for special educational services, help obtain mental health services, facilitate completion of community service and probation requirements, and engage youth in social, arts, and athletic strengths-building programming.



CARC Case Manager Kisai Henriquez (second from right), recently won Huckleberry's Danny Keenan Award for her exemplary work with clients. CARC staff also pictured from left: Case Manager Andres Rios, Therapist Meghan Kearney, and Jeff Lin, Night Lead Case Manager.



## Mentoring Program

The Huckleberry CARC Mentoring Program is designed to provide mentoring for clients, ages 11-17, who have been arrested in San Francisco and sent to Huckleberry CARC.

Currently, mentors are recruited throughout San Francisco. This collaborative was designed using evidence-based research on the effectiveness of mentoring in reducing recidivism among youth. Contact Huckleberry CARC at 415.437.2500 if you are interested in becoming a mentor.

Pictured at left: CARC Case Manager Harvey Lozada

## Making A Difference: Raul & George



Raul and George\* were brought to CARC by the SF Police Department for graffiti vandalism. CARC Case Manager Harvey Lozada noticed how well the young men were progressing, and encouraged them to team up and pursue their passion for art. Harvey guided them through a proposal to an organization that funds youth art projects. Raul and George wrote the proposal and were awarded a \$7,000 grant to complete four mural projects throughout San Francisco.

*\*Names have been changed to protect client confidentiality.*

## A public/private partnership involving the following organizations:

### Private:

- Huckleberry Youth Programs (lead agency)
- Community Youth Center
- Edgewood Center for Children and Families
- Instituto Familiar de la Raza

### Public:

- SF Department of Children, Youth, and their Families
- SF Juvenile Probation Department
- SF Sheriff's Department
- SF Police Department

## Huckleberry Community Assessment & Resource Center (CARC)

Hours of Operation:  
Monday through Friday  
9 am to Midnight

44 Gough Street, Suite 104  
San Francisco, CA 94103  
415.437.2500



Huckleberry Director of Juvenile Justice, Denise Coleman (center) was honored as a Local Hero by KQED and Union Bank. Also pictured Lieutenant Governor Gavin Newsom (left) and Huckleberry Executive Director Bruce Fisher.



Want to learn more? Visit [www.huckleberryyouth.org](http://www.huckleberryyouth.org)

# YOUNG ADULTS AND THE JUSTICE SYSTEM

DAVID MUHAMMAD,

NATIONAL COUNCIL ON CRIME AND DELINQUENCY

## Emerging Research

2

***“ Adolescents lack mature capacity for self-regulation because the brain system that influences pleasure-seeking and emotional reactivity develops more rapidly than the brain system that supports self-control.”***

- - “Reforming Juvenile Justice: A Developmental Approach”  
National Research Council of the National Academies

# Emerging Research

3

- Most criminal careers start before 25; most mature out by 25
- Studies on psychosocial maturity show 18-21 year olds as significantly less mature than those 22-25, with increasing maturity in those ages 26-30
- NIJ Study Group on the Transitions between Juvenile Delinquency and Adult Crime in its 2013 report suggest:
  - ▣ Raising the age of referral to the adult court to 21 or even 24
  - ▣ Create specialty courts for young adult offenders ages, 18-24 with fewer ongoing stigmatizing effects.

# National Data

4

- Young Adults overrepresented at many stages of the system. 13% of US population; 30% of arrests; 21% of prison admissions
- Once released, 75% will be rearrested within 3 years; highest of any age cohort;
- African American young adults 15 times more likely to be imprisoned than young whites;
- Of “disconnected” male youth in America, nearly 4 in 10 were disconnected because they were currently incarcerated

# Experiences in Other Countries

5



In Germany, all adults ages 18-21 are transferred to the juvenile court, with the option of sentencing according to adult or juvenile law;



In Sweden, young adults can be treated as juveniles until age 25; no mandatory minimums for those under 21;



In Finland, everyone under 21 serves sentence in a juvenile prison where they are eligible for release after completing one third of time; emphasis is on education and vocational training



Series of reports issued by Transitions to Adulthood (UK):  
<http://www.t2a.org.uk/>

# And in the United States...

6



Florida has had a youthful offender law since 1978 that allows the courts to use alternative processing for 18-21 year olds



Michigan's "Holmes Youthful Trainee Act" allows a judge to sentence a youth between 17-20 without having to incur a criminal conviction



New York State's Youthful Offender Law provides for certain confidentiality protections for those who are 16-18

# Possible Responses

# Pretrial

8

- Utilize/Adapt risk assessments that recognize greater malleability and potential for change in young adults;
- Allow for bail setting that recognizes resource issues of young people – perhaps allowing for the sponsoring of youth;
- When released (pretrial), having specialized caseloads/supervision and utilization of mentors, family and community members;
- When held, ensure that jail or detention facilities provide enhanced assessments of trauma, mental health needs and offer young adults the opportunity to stay “current” with their education

# Trial/Sentencing/Post Conviction

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- Provide specialty courts for young adults with key stakeholders trained in relevant developmental issues;
- Include alternative resolutions like “Common Justice” diversion with treatment;
- Shorter and more creative sentencing;
- Alternatives to incarceration that address underlying issues and build life skills;
- For those detained – specialized housing with treatment, education, and workforce development options;
- Accelerated release from supervision with community partnerships

# Completion of Sentence

10

- Expand confidentiality protections for some to diminish collateral consequences,
- Record sealing/expungement after a crime-free period;
- Connections to community partnerships, mentoring and natural family supports

## **Young Adult Courts & Other Justice Programs for Young Adults**

### **NEBRASKA**

#### **Young Adult Courts – Douglas County**

The Young Adult Court is a problem-solving alternative sentencing court for young adults ages 16 – 22 who are charged with non-violent felonies. The program diverts young adults from prison, and if a participant successfully completes the program, his or her charge is reduced to a class I misdemeanor. Defense attorneys can make a request to the County Attorney that an eligible young adult be admitted to the court. If the County Attorney approves, the young person is then referred to the YAC coordinator for an interview, who administers a Level of Service Inventory. If accepted into the program, the young person must plead guilty in the court and then is referred to a 3-phase, 1 ¼ - 3 year program. During the first and second phase of the program, the young person is referred to services including GED classes, job readiness, counseling, substance abuse treatment, transitional living, mentoring, and victim offender mediation. Services are combined with traditional probation/supervision tools. Once the first two phases are completed, the young person's felony is reduced to a class I misdemeanor. The third and final phase is a 1-2 year probationary period.

### **FLORIDA**

**Youthful Offender Statute** – The Florida Youthful Offender Act passed in 1978 was intended to separate young adults ages 18 – 21 from interaction with older adults in prison, and to provide alternative sentencing options focusing on rehabilitation for some young adults. Young adults who are between 18 and 21 years-old or who are under 18 but were tried as adults are eligible for sentencing as youthful offenders if they have been found guilty or plead no contest to any non-capital non-life felony, and have not been previously classified as youthful offenders. Youthful offenders can be sentenced to prison, community supervision, county jail or a community residential facility (for no longer than 364 days), or a split sentence. The total sentence may be no longer than 6-years. The court may reduce the sentence if the young person successfully completes the youthful offender program and the Department of Corrections recommends a reduction. Florida designates separate facilities and programming with the goal of meeting the needs of youthful offenders, and trains staff to work with the young adult population.

### **MICHIGAN**

**“Holmes Youthful Trainee Act”** – Courts may assign people who committed crimes between the ages of 17 – 21 the status of “youthful trainee,” which allows the court to place young adults in prison or probation without a conviction that would otherwise go on their criminal record. Young adults are excluded if charged with crimes with a maximum life-sentence, major drug offenses, traffic offenses, or if they are on the sex

offender registry or have been convicted or charged with a crime that would require them to register. Sentences can be no longer than three years and trainees who successfully complete the program are left without a criminal record.

## **NEW YORK**

### **Adolescent Diversion Program**

New York's Adolescent Diversion Program (ADP) assigns the cases of some 16 and 17-year-olds to criminal court judges who are specially trained on issues facing court-involved adolescents. In New York, youth 16 and over are treated as adults in the criminal justice system. New York State Chief Judge Jonathan Lippman called for the establishment of pilot ADP courts in 2011 to offer another option, with age-appropriate alternatives for some 16- and 17-year-olds. The program operates in nine court parts around the state – one in each of New York City's five boroughs, and four other parts in Erie, Onondaga, Westchester, and Nassau counties.

The ADP involves family members throughout the court process, and encourages collaboration between the youth, their family, the prosecution, the defense, and the judge with an emphasis on rehabilitation and community safety. Successful completion of programming generally allows youth to avoid criminal conviction through dismissal or a non-criminal violation plea, averting a permanent criminal record.

### **New York Youthful Offender Status**

The court can grant young people over 16 but younger than 19 (or youth under 16 tried as adults) "Youthful Offender" status at sentencing. Youth in this age range are eligible for YO status unless the crime is a class A-I or A-II felony, an armed felony, rape or sexual assault (except when there are certain mitigating factors). Youth who have been previously adjudicated as youthful offenders for a felony charges, or adjudicated delinquent for felony-level offenses in juvenile court are also not eligible.

Misdemeanants between 16-18 are automatically treated as youthful offenders, and judges can award youthful offender status at their discretion to youth tried for eligible felonies. If the court grants the young person YO status, their conviction is replaced with a "youthful offender finding." This means that their records are automatically sealed, and that the finding cannot be used to bar them from public employment or licenses in the future. Youthful offenders must also be sentenced to an indeterminate term that is not longer than four years.

## **SAN FRANCISCO**

**Probation Department: 18 – 25 Transitional Age Case Loads** – The San Francisco Probation Department was awarded a grant in 2009 through SB 678 to train officers in evidence-based practices to work with transitional age youth. The small group of officers supervise young adults ages 18 – 25, and uses risk and needs assessments, a graduated sanctions and rewards system, motivational interviewing, and case planning

and management. Based on risk and needs assessments the officers refer young adults to local services including substance abuse treatment, job training, and education.

**Back on Track (BOT) Reentry Court** is a problem-solving court designed for 18-30 year-olds facing first time felony charges for low-level drug sales. The program is a partnership between the District Attorney's Office and Goodwill Industries. Established in 2005 by then San Francisco District Attorney Kamala Harris, BOT refers young adults to a 6-week intensive community service probation program, followed by a 12-18 month program geared towards achieving personal goals and developing accountability. Participants outline educational, career, parenting, health, and community goals in a Personal Responsibility Plan (PRP) and meet 3-times per-week with BOT case managers who connect them with services and support for achieving their plan. They also appear in reentry court 3-times per-month. Graduates of the program earn a dismissal of their charge and a clean criminal record. They must either gain employment or enroll in school full-time in order to be eligible for graduation.

### **TEXAS: Young Adult/Youthful Offender Caseloads**

Texas Department of Criminal Justice's Community Justice Assistance Division (CJAD), which administers and monitors county community supervision (adult probation) departments in Texas, recommends youthful offender caseloads as potential specialized caseloads for probation departments.

The following Texas County Adult Probation Depts. have specialized caseloads for young adults:

- Travis County (Austin) Community Corrections and Supervision Department's Youthful Offender Caseload – "targets high risk/high needs youthful felony offenders who have a limited criminal history and/or have limited or no access to resources. The caseload provides maximum supervision, intervention, and resource linkage to offenders 17-21 years-old, with an emphasis on assisting young adults to complete education goals and develop employment and pro-social skills."
- Bexar County (San Antonio) Young Offender Program – "Identifies and screens individuals in the community service supervision and corrections system in ages ranging from 17-29 both from felony and misdemeanor sections."
- Tarrant County (Fort Worth) High Risk Youth caseload- "established to provide more structure for the youthful offender who is an identified or potential gang member. Primary emphasis is placed on academic/vocational education, gainful employment, personal responsibility, pro-social affiliations and identifying goals."

## **GERMANY**

**Young Adult Sentencing Law** - German reformed its laws in 1953 to allow young adults 18 - 21 to be included in the juvenile court system. All young adults are referred to juvenile/youth court, and the judge then determines whether to apply juvenile court law or to sentence them under adult criminal law. A judge may sentence a young adult in the juvenile system if he or she determines either that the young person has the moral and psychological maturity level of a juvenile, or that the motive and circumstances of the crime were of a “typical juvenile” nature.

Generally, interpretation of the law errs on the side of treating 18-21 year-olds as juveniles if there is any question about their maturity level. In 2008, German courts applied juvenile sentencing to 66 percent of young adult cases. More than 90 percent of serious and violent crimes (murder, rape, robbery) were sentenced under juvenile law.

## **SWEDEN**

**Young Adult Sentencing** - In Sweden, age is taken into account as a mitigating factor in sentencing for all youth and young adults under 21. Youth 15 – 21 are sentenced under adult sentencing rules, but with “youth mitigation” applied to reduce the sentence. Fines are reduced to half for youth 15-17, and two-thirds for 18-21 year-olds. Short prison sentences are replaced with fines, youth under 18 are rarely incarcerated, and long prison terms are reduced significantly based on age. Prison terms are one-fifth of the adult sentence for 15-year-olds, a quarter for 16 year-olds, one third for 17 year-olds, half for 18 year-olds, two third for 19 year-olds, and three quarters for 20 year-olds.

## **FINLAND**

**Young Adult Sentencing** - Finland is similar to Sweden in that youth under 15 are not held criminally responsible, and youth 15 – 21 are prosecuted in the adult system but with “youth mitigation”. Sentences are reduced based on age, and provisions passed in the 1980s specified that youth only be incarcerated in exceptional cases. Those young people under 21 who do receive prison sentences generally serve one third of the sentence before being released on parole. The criminal justice and rehabilitative systems are separate, and the courts leave rehabilitation to the child welfare system.

## **ENGLAND**

**Transition to Adulthood Alliance (T2A) Projects** – T2A is a coalition of 13 nonprofit organizations in the UK working to promote new developmentally-appropriate strategies and interventions for working with justice-involved young adults ages 16-24. The T2A Pathway makes recommendations for changing the way transition-age youth are dealt with at 10 different points along the continuum of the criminal justice process, from policing and arrest to reentry. Between 2009 – 2013, T2A tested

demonstration programs in three locations across England. In January, 2014, the T2A Pathway launched pilot interventions in 6 new locations. T2A programs provide drug treatment, mental health services, case management, mentoring, employment assistance, and housing. Two examples include:

- **Together for Mental Wellbeing (Rotherham)** – A mental health program for young adults ages 18-24 who have come into contact with the police or with emergency services, and are at risk of offending or at a pre-conviction stage. Based on an individual assessment, the program provides mental health services, housing support, job services, and substance abuse services, as well as support accessing community resources.
- **PACT (Staffordshire)** – A family support service for male and female prisoners during and after incarceration. The project uses Pact's Transforming relationships model and Family Group Conferencing to work with young adults and their families. A Family Engagement Worker provides case management to the young person in prison and to their families in the community.