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Setting a Minimum Age for Los Angeles County’s Juvenile Justice System

In 2015, 687 referrals were made in California to prosecute young people under 12, including one five-year-old and 13 seven-year-olds. Ultimately, of those 687, approximately 250 youth under age 12 were prosecuted. There are extensive studies and court decisions demonstrating that the immaturity of youth – especially youth this young - lessens their culpability and makes it more difficult for them to meaningfully navigate the justice system processes, including working with their own attorneys. National Juvenile Justice Network research also indicates that 11 to 13 year olds demonstrated significantly poorer understanding of trial matters as well as poorer reasoning and recognition of the relevance for information for a legal defense than did older youth, raising significant concerns about young children’s capacity to understand and exercise their legal rights in any meaningful way.

Additionally, research shows that contact with the juvenile justice system can have lasting and negative psychological and health impacts on anyone, but can be

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especially traumatic for a child. In the past decade, advances in knowledge and understanding around youth brain development and punitive systems have taught us that formal justice processing is often harmful to children's health and development, in that it exposes them to a system that they do not fully understand with devastating consequences on their future, increasing their likelihood of future incarceration, including as adults, while failing to address their underlying needs. Studies also show that even short detention periods for a child can lead to higher recidivism and increased suicidal thoughts. Furthermore, a MacArthur Foundation study found that incarceration of young people leads to declines in psychosocial maturity, meaning that youth are even more impulsive and susceptible to negative peer influence upon release, placing them at higher risks for re-arrest. Also, children who have been in detention are 39 percentage points less likely to finish high school than other public school students who come from the same neighborhood, according to national experts at the Juvenile Justice Initiative.

Acknowledging the harm of youth arrest and justice-system involvement, the Los Angeles County Board of Supervisors (Board) has committed to developing a countywide system of youth diversion. In November 2017, the Board unanimously approved the creation and funding of a new division within the Office of Diversion and Reentry on Youth Diversion and Development (YDD), dedicated to developing Los Angeles County's first comprehensive approach in youth development, with mechanisms for diverting young people away from arrest, probation and prosecution and instead towards community-based solutions.

Included in this is a growing body of research establishing that age matters, and that for many younger adolescents, an alternative to even entering a diversion program would be more appropriate. Compelling and extensive research shows that alternative systems and services outside of the juvenile justice system – such as community- and family-based health and mental health, education, and child welfare systems and services – can better meet the needs of young people while maintaining public safety. Furthermore, based on recent data that four out of five incarcerated probation youth in the County, had touched the child welfare system, on March 13, 2018, the Board committed to developing a plan to prevent youth in the child welfare system from crossing over to the justice system.

Senators Holly Mitchell and Ricardo Lara co-authored Senate Bill 439, known as the “Setting a Minimum Age for Juvenile Court Prosecution bill, to establish a minimum age of 12 years old for juvenile delinquency court jurisdiction, and thus prohibit prosecution of youth 11 years old and under except in the most serious cases of murder and certain sex offenses. SB 439 requires all law enforcement agencies to be responsible for diverting youth under the age of 12, unless in cases of the extreme exception. On August 14, 2018 this Board passed a motion in support of sending a 5-signature letter to the California Senate in support of this bill, and on September 30, 2018, Governor Jerry Brown signed Senate Bill 439 into law, which will take effect in 2019. California now joins 22 other states that have a minimum age for juvenile justice jurisdiction.

While the data shows that the number of children under 12 years of age arrested and referred for juvenile court jurisdiction in Los Angeles County is approximately half of

the State average, the data indicates that this is still a serious issue. Early-age court processing across California is beset with significant geographic, racial, and ethnic disparities. Between 2003 and 2017, about 92 percent of the petitions filed against young people under 12 were youth of color. And Los Angeles is no exception: nearly all of the young adolescents arrested in our County in the last year were youth of color. Additionally, almost all had a history of dependency system contact.

As the County plans on how to ensure SB 439 compliance for youth under age 12, there is an opportunity to reexamine the way it treats younger youth of all ages. Last year, there were just over 100 12-year olds and just over 350 13 year-olds arrested in the County. National best-practices research has found that probation and other juvenile justice programming and practices are focused on teenagers, and may not be suited for the needs of pre-teens. Therefore, even a best-practice detention model, for instance, may not be appropriate or effective for younger adolescents. Given this, other jurisdictions have committed to treating youth of this age differently. For example, since 2010, Santa Clara County has prohibited detention of youth under 13. And in September of 2018, Cook County, Illinois followed suit.

Ultimately, meeting the unique needs of the young people who have previously fallen under juvenile court jurisdiction and the Probation Department's care through programming and services that align with best practices, requires our agencies with relevant expertise to come together with community-based service providers to determine diversion pathways for these youth. The County should expand upon its growing youth diversion and development infrastructure to ensure that younger adolescents receive the particular attention and appropriate response they deserve.

While SB 439 sets a floor, the County has an opportunity, based on best practices and the efforts on youth development and diversion, along with the dual-status work it has already begun, to provide leadership to other counties across the State, and to reduce disparities in outcomes for young people based on geographical location, and racial and ethnic identity.

WE, THEREFORE, MOVE that the Board of Supervisors direct the Office of Diversion and Reentry's (ODR's) division on Youth Diversion and Development, with consultation of the Probation Department, to collaborate with the Department of Mental Health, Department of Public Health, Department of Health Services, Department of Children and Family Services, Office of Child Protection, Workforce Development, Aging, and Community Services, Juvenile Courts, Office of the Public Defender, Office of the Alternate Public Defender, the Independent Juvenile Defender Program, law enforcement agencies, the District Attorney, the Chief Executive Office, County Counsel, the Los Angeles County Office of Education and other voluntary school district partners, the Center for Strategic Public-Private Partnerships, community-based service providers and community stakeholders, including those who have been impacted by these systems, and other relevant stakeholders, to report back in writing in 60 days with a status report and in 120 days with a comprehensive plan (Plan) to divert younger youth from juvenile court jurisdiction and detention by:

- A. Authorizing the Director of ODR, or his designee, to hire a consultant with relevant expertise to support ODR in the development of the Plan, and
- B. Ensuring the Plan does the following:
 - 1) Build on the County's current youth diversion and development efforts;

- 2) At a minimum, comply with the recently passed Senate Bill 439;
- 3) Include as a first priority a specific plan for the pending or active cases, over which the Juvenile Court is expected to lose jurisdiction in January 2019;
- 4) Identify holistic programming and services for youth and families based on best practices, focused on positive youth development, that may be appropriate for younger youth;
- 5) Consistent with the County's current youth diversion plan, utilize "counsel and release" as the default in the vast majority of these cases and graduated responses thereafter, with Dependency Court jurisdiction to be a last resort; and
- 6) Include recommendations regarding the minimum age for arrest and confinement of youth for Los Angeles County, including expanding on the requirements set by SB 439, based on a review of best practices, and relevant research.

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