

REFORMING DETENTION FOR JUVENILE BENCH WARRANTS IN SAN FRANCISCO

INTRODUCTION

In San Francisco, a significant percentage of the monthly admissions into juvenile hall are due to a bench warrant. These admissions result from current policies requiring detention for all youth arrested for juvenile bench warrants. For this reason, the Data & Needs Assessment Subcommittee of the Close Juvenile Hall Work Group (CJHWG) has identified reform of San Francisco's juvenile bench warrant policies as critical for achieving closure of the juvenile hall. This policy brief outlines the primary issues related to bench warrants and makes recommendations for reform.

I. SUMMARY OF RECOMMENDATIONS

Below is a summary of our recommendations. See Section V. for a full description of each.

- 1) San Francisco should implement policies to avoid the issuance of bench warrants to the greatest extent possible.
- 2) When a bench warrant cannot be avoided, San Francisco should implement bench warrant policies that preserve options to release the youth pending their court hearing.
- 3) When a youth cannot be released, San Francisco must expedite its court hearings.
- 4) San Francisco must create processes to allow outstanding warrants to be resolved and cleared without detention of the young person.

II. ISSUE OVERVIEW

What is a juvenile bench warrant?¹

A juvenile bench warrant is an order issued by a juvenile court judge. The specific terms of a bench warrant order vary by county and court. In San Francisco, juvenile bench warrants are issued with the following terms:

¹ Note that this brief addresses only *bench* warrants, meaning warrants requiring that the youth be brought before the court. There are other types of warrants that are not included in this analysis, such as arrest warrants based on new delinquency charges.

“You are commanded forthwith to arrest the above named person and to bring said person before the Court, or if the Court is not in session, you are commended to deliver said person into the custody of the Superintendent of the Juvenile Detention Home of this County, or to the Sheriff at the San Francisco County Jail if the person is 18 years of age, to be detained until the next regular session of this Court.”²

Under these terms, when young people are arrested due to a juvenile bench warrant in San Francisco, they are taken into detention at juvenile hall and held until they can be brought to court for a detention hearing. This hearing typically takes place within two days but may take longer due to weekends/court holidays.³

When is a bench warrant issued?

Bench warrants are issued when a young person already has a case pending before the court. They can be issued before the youth’s charges have been adjudicated (pre-trial), or after adjudication and/or disposition (when the youth is under court jurisdiction—for example, while on probation).

The juvenile court has the authority to issue a bench warrant on its own, or it may issue a bench warrant at the request of the District Attorney or Probation Department. Typically, the court issues a bench warrant when a youth has failed to appear at a court hearing, or there is probable cause to believe that the youth is out of compliance with court orders (for example, home detention orders or probation conditions).

Can the Juvenile Probation Department (JPD) decide to release a youth who has been arrested on a bench warrant?

Not currently. Under the terms of the bench warrants currently being issued by San Francisco’s juvenile court, JPD does not have the discretion to release youth who are brought to juvenile hall as a result of a bench warrant. The court order directs JPD to detain the youth in juvenile hall until his or her court hearing. This mandatory detention is an exception to the discretion

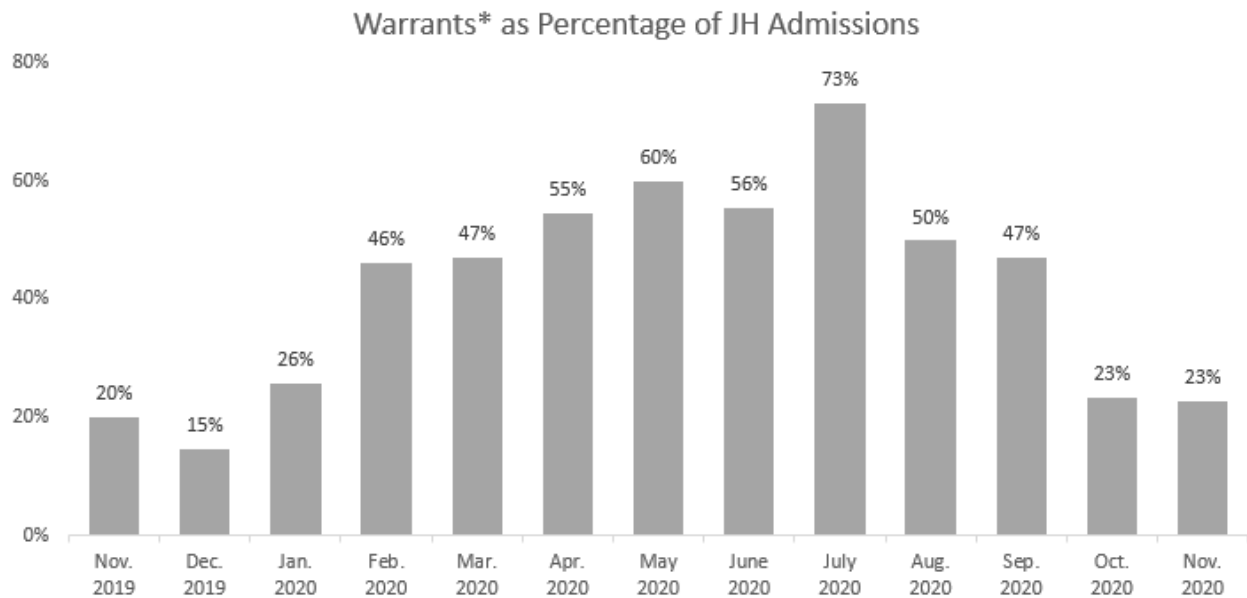
² Note that the policy of detaining youth over age 18 in county jail appears to conflict with current law. California recently revised Welf. & Inst. Code section 208.5, which mandates that youth who are being held in secure custody pursuant to a juvenile court matter must remain in the county’s juvenile facility. Holding such youth in the county jail would require a petition from the probation department. See Welf. & Inst. Code § 208.5(a)-(b).

³ Under California Rules of Court, Rule 5.752(e), when a young person is detained in juvenile hall based on a warrant, they must be brought to court within 48 hours of being taken into custody, but non-court days (i.e. weekends and holidays) are not counted. As a result, it is possible for a youth to remain in juvenile hall custody for several days before being brought to court.

that JPD usually has under Welfare & Institutions Code section 628 to decide whether or not to take a youth into detention custody.

III. DATA ANALYSIS

JPD data from November 2019 to November 2020 show that warrants were the reason for detention in a significant percentage of cases. Due to recent changes in how JPD collects warrant-related data, there are several caveats to what existing data captures.⁴ However, a high-level picture of the data is included here to illustrate the importance of this issue for reducing detention in San Francisco’s juvenile hall.



⁴ Note that JPD’s reporting of admissions based on warrants changed in August 2020. From Nov. 2019-July 2020, the chart reflects the percentage of youth in custody for a bench warrant on the last day of that month. For Aug. - Sept. 2020, the chart reflects the percentage of youth in custody for a bench warrant over the course of the month. Categorization of warrants also changed in JPD Reports. From Nov. 2019- April 2020, Juvenile Hall Detention Reasons are categorized as misdemeanor / felony offenses or “Technical Violations” (including Home Detention Violations, for example) and Warrants. From Nov. 2019-April 2020 Detention Reasons that are categorized as Warrants or Technical Violations are included in the chart above. From May 2020- July 2020 Juvenile Hall Detention Reasons are recategorized in JPD Reports. From May 2020- July 2020, Detention Reasons that are categorized as “Warrants, Placement Failures, Court Orders, Probation Violations and Home Detention Violations” are included in the chart above. From August 2020 on, the Detention Reasons are again recategorized in JPD Reports. From August 2020 on, Detention Reasons categorized as “Warrant/Court Order” are included in the chart above.

IV. RESEARCH & ISSUE ANALYSIS

- ❖ **San Francisco’s policy of mandatory detention for all juvenile bench warrants conflicts with the overarching juvenile court principle of keeping youth at home whenever possible.**

Under the law of the juvenile court, one of the court’s primary goals is to “preserve and strengthen” the family ties of any child under its jurisdiction.⁵ Thus, the law directs that the court remove a child from their parents’ custody “*only when necessary* for his or her welfare or for the safety and protection of the public.”⁶

California has a robust statutory scheme for detention of children that is intended to protect their due process rights and curtail excessive detention practices.⁷ One basic premise of this scheme is that each young person must be treated as an individual, and not be subject to automatic or mandatory rules of detention.⁸

By issuing bench warrants that require detention in all cases, San Francisco’s practices contradict the key principles of juvenile court law that youth should remain home whenever possible, and that detention should occur only when justified based on the youth’s individual circumstances.

- ❖ **Detention for bench warrants imposes significant harms on youth and is counter-productive to the rehabilitative goals of the juvenile court.**

As with any type of youth incarceration, detention based on a bench warrant imposes significant harms. It disrupts the youth’s ties to their family, school, and community. It exposes the youth to the trauma of being strip searched and confined in a cell, and it imposes a stigma of being incarcerated.⁹ Incarcerated youth experience exacerbation of mental health issues and increased risk of self-harm, as well as increased risk of exposure to violence and abuse.¹⁰

⁵ Welf. & Inst. Code § 202(a).

⁶ *Id.* (emphasis added).

⁷ See *In re Ryan B.*, 216 Cal. App. 3d 1519, 1526 (1989). As stated by the Cal. Supreme Court, the law of the juvenile court was enacted to end “California’s lamentable practices as to excessive detention.” *In re William M.*, 3 Cal. 3d 16, 25 (1970).

⁸ See *In re William M.*, 3 Cal. 3d at 31.

⁹ Sarah Cusworth Walker & Jerald R, Hertin, “The Impact of Pretrial Juvenile Detention on 12-Month Recidivism: A Matched Comparison Study,” *Crime and Delinquency*, p.5 (2020).

¹⁰ Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, p. 8-9 (2006).

Detention is also associated with more punitive case outcomes, particularly for youth of color.¹¹ In the long-term, youth who have been detained have higher recidivism rates.¹² They also have decreased rates of high school graduation,¹³ increased rates of adult incarceration,¹⁴ and poor life¹⁵ and health¹⁶ outcomes. Even short periods of confinement have been associated with higher rates of depression later in life.¹⁷

❖ **There is no deterrence justification for detaining youth with bench warrants.**

One possible justification for detaining youth with bench warrants might be to help deter youth from violating court orders; however, there is no research basis to support this approach. Existing research offers no empirical evidence to suggest that detention pursuant to a bench warrant works to deter youth from violating court orders.¹⁸ Just the opposite, current research suggests that deterrence-based strategies do not prevent future offending, and may actually increase it.¹⁹ Similarly, in the adult context, the research shows deterrence-based detention strategies have been found to be ineffective in changing behavior.²⁰

The science of adolescent development raises further doubt that detention for bench warrants will promote compliance with court orders. Behavioral and neuroscience research demonstrate that during adolescence, youth are “more impulsive, more likely to focus on potential rewards in lieu of potential costs of a risky situation, and more likely to be short-sighted in their decision making.”²¹ These characteristics are developmentally normal and linked to the biological immaturity of the adolescent brain. The use of detention for bench warrants

¹¹ Meghan R. Ogle & Jillian J. Turanovic, "Is Getting Tough With Low-Risk Kids a Good Idea? The Effect of Failure to Appear Detention Stays on Juvenile Recidivism," *Criminal Justice Policy Review*, p. 3-4 (2016).

¹² *Id.*

¹³ Anna Aizer & Joseph J. Doyle, Jr., Juvenile Incarceration, Human Capital, and Future Crime: Evidence from Randomly Assigned Judges, 130:2 Q. J. OF ECON. 759-803 (2015).

¹⁴ *Id.*

¹⁵ Karen M. Abram, et al., Sex and Racial/Ethnic Differences in Positive Outcomes in Delinquent Youth After Detention: A 12-Year Longitudinal Study, 171:2 JAMA PEDIATRICS 123-32.

¹⁶ Elizabeth S. Barnert, et al., How Does Incarcerating Young People Affect Adult Health Outcomes?, 139(2) PEDIATRICS 7 (2017).

¹⁷ *Id.*

¹⁸ Ogle and Turanovic, *supra* note 11, p. 5.

¹⁹ M.W. Lipsey, J. Howell, M. Kelley, & G. Chapman, Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice. Washington, DC: Georgetown Public Policy Institute (2010).

²⁰ *Id.*; J. McGuire (2013). "What works" to reduce re-offending: 18 years on, p. 30. In L. A. Craig, L. Dixon, & T. A. Gannon (Eds.), What works in offender rehabilitation: An evidence-based approach to assessment and treatment (pp. 20-49). Chichester, UK: Wiley-Blackwell (concluding through meta-analysis that sanctions and deterrence-based methods repeatedly fail as a strategy for changing behavior).

²¹ Kathryn Monahan, Laurence Steinberg, & Alex Piquero, "Juvenile Justice Policy and Practice: A Developmental Perspective," 44 Crime and Justice: A Review of Research, p. 587 (2015).

conflicts with research demonstrating that constructive interventions are more effective in promoting positive behavior change in young people.²²

❖ **There is no public safety justification for detaining youth with bench warrants.**

There is no clear public safety justification for detaining youth with bench warrants. First, youth who are detained on bench warrants are likely not considered public safety risks by probation or the court. These youth have typically already had at least one court appearance, and have remained in the community (or returned to the community) after their initial arrest or referral. If there were evidence that these youth presented a significant safety risk, it would be expected that they would face a new delinquency petition, not merely a bench warrant to appear in court.

Instead of promoting public safety, the issuance of bench warrants for youth who are non-compliant with court orders may actually increase non-compliance. If youth are aware that they will automatically be detained due to a pending bench warrant, their foreseeable response will be to stay out of contact with probation and the court to avoid detention. This need to “stay under the radar” prevents youth from fulfilling their court obligations and puts youth at an increased risk of homelessness and victimization.

Thus, there is no clear public safety justification for detaining all youth with a bench warrant, and in fact this policy may undermine public and youth safety.

❖ **Detention on bench warrants may lead to an increased risk of recidivism.**

There does not appear to be any academic research evaluating the general practice of detaining youth for bench warrants in juvenile court. However, one study looked specifically at detention following failures to appear for a juvenile court hearing, which is one subset of the larger category of juvenile bench warrants in San Francisco. This study specifically examined low-risk youth and found that imposing detention for a failure to appear in court increased recidivism.²³ The study found that detention for failing to appear in court led to increased rates of re-detention, technical violations, and new offenses.²⁴

²² John A. Tuell, Jessica Heldman & Kari Harp, "Developmental Reform in Juvenile Justice: Translating the Science of Adolescent Development to Sustainable Best Practice," RFK National Resource Center for Juvenile Justice, p. 3.

²³ Ogle & Turanovic, *supra* note 11, p., 18-19 (2016).

²⁴ *Id.*

In addition, as mentioned above, there is a large body of research showing that deterrence-based strategies, including incarceration, do not promote positive behavior change for youth, and may have the opposite effect.²⁵

This body of research suggests that detaining youth for bench warrants may conflict with public safety goals by increasing youth non-compliance or reoffending.

❖ **Other jurisdictions have implemented policies to reduce the need for bench warrants.**

The Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI) calls on jurisdictions to implement strategies to reduce the need for bench warrants.²⁶

The recommended strategies include interventions to reduce failures to appear for court hearings. Oklahoma County in Oklahoma reduced the rates of families failing to appear in court by improving parent and child notification procedures and by improving transportation to court.²⁷ Similarly, in Baltimore County, a call notification program reduced detentions that were due to failure to appear writs. Prior to the policy change, 40 percent of detentions were the result of FTA writs, after the policy change, the proportion reduced to 5 percent.²⁸

The “Warrant Prevention Program” in King County, Washington, relies on outreach workers from the YMCA to connect with youth and families and prevent the need for warrants.²⁹

❖ **Other jurisdictions have implemented policies to reduce detention of youth who are arrested on bench warrants.**

When bench warrants cannot be avoided, the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI) calls on jurisdictions to reduce detention for bench warrants.

A number of jurisdictions have implemented policies to allow release of youth arrested for warrants, described in more detail below. To support these policies, many jurisdictions have

²⁵ Tuell, Heldman, & Harp, *supra* note 22, p. 3.

²⁶ Steinhart, David, “Special Detention Cases: Strategies for handling difficult populations,” Baltimore: The Annie E. Casey Foundation, p.14 (2001).

²⁷ *Id.* at 19.

²⁸ Douglas Young, Christina Yancey, Sara Betsinger & Jill Farrell, “Disproportionate Minority Contact in the Maryland Juvenile Justice System,” Institute for Governmental Service and Research, University of Maryland (2011), <https://goccp.maryland.gov/wp-content/uploads/juvenile-dmc-201101.pdf>.

²⁹ Sarah Cusworth Walker, Elizabeth Haumann & Teddi Edington, “Warrant Prevention Program, Preliminary Program Evaluation,” (2014).

built out an expanded range of options for detention alternatives (such as evening reporting centers) and for non-secure detention (such as home confinement).³⁰

Several jurisdictions outside of California have implemented options for probation departments to release youth after they have been arrested on a bench warrant. For example, in Multnomah County, Oregon, the juvenile court can authorize probation to release such youth to detention alternatives.³¹ Cook County, Illinois, also differentiates warrants into categories, allowing certain categories of warrants to be eligible for release.³² Similarly, in King County, Washington, a “two-tiered” warrant policy exists whereby warrant orders issued by a juvenile court judge designates whether the warrant requires detention or permits release.³³

Several jurisdictions in California, including Santa Cruz, Santa Clara, and Ventura Counties, have implemented strategies for differentiating among warrants to eliminate automatic detention for all youth with bench warrants. Santa Cruz, Ventura, and Santa Clara Counties all have a similar policy for issuance of bench warrants that allow discretion in releasing youth pending their next court date. The policies are aimed at reducing the unnecessary detention of youth who are detained due to an active bench warrant.

- **Santa Cruz County “Two-Tiered Warrants.”** In Santa Cruz County, the court may issue a bench warrant that will allow release of the youth at the probation officer’s discretion. For these youth, the local risk assessment instrument is used to determine whether the youth may be released. If released, the youth and their parent or guardian signs a promise to appear for a hearing that is to be scheduled within 48-hours.
- **Ventura “Two-Tiered Warrant.”** In Ventura County, the “two-tiered” bench warrant gives the court the opportunity, in appropriate circumstances, to authorize specific conditions upon which the youth may be released pending his/her next court date. For youth arrested with a warrant authorizing release, the Ventura County Probation Agency's Juvenile Facilities (VCPA-JF) conduct the standard booking screening procedure, including administering the risk assessment instrument (RAI), for consideration of a detention alternative.

³⁰ Steinhart, *supra* note 26, p. 16-17.

³¹ *Id.* at 15.

³² *Id.*

³³ King County Superior Court Juvenile Department Offender Manual (2015), p. 25, <https://www.kingcounty.gov/~media/courts/superior-court/docs/juvenile/juvenile-offenders/juvenile-offender-manual.ashx?la=en>.

- **Santa Clara “Discretionary Bench Warrant.”** In Santa Clara County, the Discretionary Warrant Policy allows for the discretionary release at screening of some youth with an existing warrant when they are brought to Juvenile Hall. Under this policy, when issuing a discretionary warrant, the court will indicate whether the youth is eligible for release pending the next scheduled court hearing.
- ❖ **Other jurisdictions have implemented policies to clear outstanding bench warrants without detention.**

To further prevent detention for bench warrants, the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI) calls on jurisdictions to implement processes for clearing warrants.

Several jurisdictions have reduced detention for warrants by utilizing procedural mechanisms that allow the court to clear or resolve outstanding warrants. For example, in Cuyahoga County, Ohio, the court implemented a “warrant scrubbing” program to clear a backlog of warrants that were either invalid or outdated.³⁴

In King County, Washington, the court sets an expiration date on every warrant.³⁵ Warrants then automatically expire, either on the date of expiration or when the young person reaches a certain age.³⁶

King County also allows young people to voluntarily appear in court to address and “quash” (or clear) their warrant, without requiring that youth first come into detention.³⁷ In some cases, the court can even resolve the warrant through a paper filing, without requiring a court hearing or appearance by the youth.³⁸

By allowing young people an opportunity to affirmatively place their warrant issue on the court’s calendar, without putting themselves at risk of incarceration, courts can encourage youth to take responsibility for their court obligations.

V. RECOMMENDATIONS

Successfully closing San Francisco’s juvenile hall will require reform of San Francisco’s juvenile bench warrant policies and practices. We offer four recommendations:

³⁴ Steinhart, *supra* note 26, p. 17.

³⁵ King County Superior Court Juvenile Department Offender Manual, *supra* note 33, p. 27-28.

³⁶ *Id.*

³⁷ *Id.* at 26-27.

³⁸ *Id.*

1) San Francisco should implement policies to avoid the issuance of bench warrants to the greatest extent possible.

Resources must be invested in preventing the need for warrants. San Francisco should employ a strategy similar to King County, Washington, and partner with a community-based organization to employ outreach workers for the purpose of warrant prevention. The current Detention Diversion Alternatives Program may serve as a useful model for this effort. Drawing on the science of adolescent development, the program should utilize incentives and a strengths-based framework to encourage compliance with court orders and appearance at court hearings.

Implementing a pilot warrant prevention program would allow San Francisco to collect data and fine-tune its intervention strategies over time to address emerging needs or barriers.

2) When a bench warrant cannot be avoided, San Francisco should implement bench warrant policies that preserve options to release the youth pending their court hearing.

In line with juvenile court law and as recommended by the Annie E. Casey Foundation, San Francisco should revise its bench warrant practices so that they do not result in automatic detention. San Francisco's bench warrants should allow for release options, including release to non-detention alternatives or to non-secure detention options.

3) When a youth cannot be released, San Francisco must expedite its court hearings.

When a youth cannot be released following arrest for a bench warrant, San Francisco should implement *immediate* detention hearings, ideally on the same day as the arrest. Such hearings would allow the court to address the bench warrant and make an appropriate order for release as quickly as possible, reducing the need for any period of secure detention.

4) San Francisco must create processes to allow outstanding warrants to be resolved and cleared without detention of the young person.

a. Court hearings to clear warrants

San Francisco must have a clear, transparent process that allows any youth to seek a court hearing to resolve an outstanding warrant without coming into detention. Currently, these hearings happen on an *ad hoc* basis, leaving youth unsure of whether they will face incarceration if they proactively appear in court. This uncertainty encourages youth to avoid court and undermines the court's rehabilitative goals. It also conflicts with the practices in

adult court in San Francisco, where it is a routine practice to allow people to add matters to the court's calendar for the purpose of addressing an outstanding warrant.

b. Warrant expiration and scrubbing

San Francisco should adopt a policy of warrant expiration dates, to be set at the time that they are issued. Expiration dates would help ensure that youth are not unnecessarily detained on warrants that are invalid or outdated. To the same end, San Francisco should conduct a review of outstanding warrants, and "scrub" or clear warrants that are no longer appropriate. Regular review of outstanding warrants would help ensure that only necessary warrants remain outstanding and help reduce unnecessary detention.

VI. ABOUT THIS REPORT

The report was prepared in February 2021 by the Data & Needs Assessment Subcommittee of the Close Juvenile Hall Working Group in San Francisco. Contributors include:

- Dan Macallair, Subcommittee Chair, dmacallair@cjcf.org
- Meredith Desautels, Subcommittee Co-Chair, mdesautels@ylc.org
- Laura Ridolfi, Subcommittee Consultant, lridolfi@burnsinstitute.org
- Clarence Ford, Subcommittee Consultant, cford@burnsinstitute.org