

1 [Confidentiality of juveniles' immigration status.]

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3 **Ordinance amending the San Francisco Administrative Code by amending Sections**

4 **12H.2, 12H.2-1, and 12H.3 to allow City law enforcement officers and employees to**

5 **report information regarding the immigration status of a juvenile to any state or federal**

6 **agency when the juvenile has been adjudicated to be a ward of the court on the ground**

7 **of felony conduct, the court makes a finding of probable cause after the District**

8 **Attorney directly files felony criminal charges against the minor, or the juvenile court**

9 **determines that the minor is unfit to be tried in juvenile court and the superior court**

10 **makes a finding of probable cause; and to update references to the federal agency**

11 **responsible for enforcing federal immigration laws.**

12 NOTE: Additions are single-underline italics Times New Roman;

13 deletions are ~~strike through italics Times New Roman~~.

14 Board amendment additions are double-underlined;

15 Board amendment deletions are ~~strikethrough normal~~.

16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. Findings

18 A. San Francisco's City of Refuge Ordinance currently states that law enforcement

19 personnel may report to federal immigration authorities any individual who is in custody after

20 being booked for a felony and is suspected of violating the civil provisions of the federal

21 immigration laws. The Ordinance does not distinguish between adults and juveniles.

22 B. Although the focus of the adult criminal justice system is on punishment, the

23 juvenile justice system focuses on rehabilitation, guidance, treatment, stability and family

24 reunification. Juvenile courts and other agencies charged with enforcing the laws governing

25 juvenile delinquency are required by California law to consider the best interests of the child

when making any decision relating to a juvenile who comes into contact with the juvenile

1 justice system. In furtherance of the goals of the juvenile justice system, California law also
2 requires that those who have access to juvenile court records maintain the confidentiality of
3 those records to avoid stigmatizing juveniles and to promote the rehabilitation of young
4 offenders. Juvenile court records include records and information maintained and gathered
5 by police, probation, and dependency agencies. State law prohibits state and local officials
6 from releasing these records without a court order, except under specific and limited
7 circumstances.

8 C. The City and County of San Francisco recognizes the importance of maintaining
9 the confidentiality of juvenile court records to the effective functioning of the juvenile justice
10 system, and it is the policy of the City and County to maintain that confidentiality to the full
11 extent required and permitted by state and federal law.

12 D. One of the primary concerns of the juvenile justice system is preserving and
13 strengthening a juvenile's family ties, and his or her ties to the community. The juvenile courts
14 and Juvenile Probation Department rely on assistance from juveniles' families and community
15 agencies to ensure that juveniles who come into contact with the juvenile justice system
16 receive the guidance, treatment and rehabilitation they need. The family's and the
17 community's trust in the Juvenile Probation Department, and their belief that the Juvenile
18 Probation Department's primary focus and concern are the juvenile's best interest, are critical
19 to the ability of the Juvenile Probation Department to gather the information it needs to assist
20 the juvenile and his or her family. If juveniles, their families, or members of the community are
21 afraid to provide information to the Juvenile Probation Department, they will be unwilling to
22 cooperate with the Department. This lack of cooperation could undermine the effective
23 functioning of San Francisco's juvenile justice system.

24 E. San Francisco has a large immigrant population that includes many individuals
25 who are in the country legally, as well as individuals who lack legal immigrant status.

1 Determination of immigration status can be complex, and many juveniles are uncertain of their
2 own status. Consequently, there is a significant risk that the Juvenile Probation Department
3 could make erroneous referrals to the U.S. Department of Homeland Security, Immigration
4 and Customs Enforcement (ICE) of juveniles who are lawful residents of the United States,
5 and that those referrals may result in the erroneous detention of juveniles in federal
6 immigration detention facilities far from their homes. Juveniles and their family members may
7 be deterred from providing information to law enforcement personnel because a juvenile may
8 be mistakenly reported to federal immigration authorities. The consequences of reporting and
9 detention – removal of the juvenile from his or her family and community -- may also deter
10 school officials and other members of the community from contacting the police when they
11 suspect that a juvenile has committed a crime.

12 F. For these reasons, San Francisco law enforcement personnel should follow a
13 different procedure for children than for adults. Welfare & Institutions Code section 202
14 provides that the purpose of the juvenile court is "to provide for the protection and safety of
15 the public and each minor." In determining the appropriate point for reporting information
16 concerning a juvenile's immigration status, the City and County strikes a balance between
17 these two policy goals.

18 G. The mere fact that a juvenile has been detained upon suspicion of committing a felony
19 is insufficient to justify reporting in the interests of public safety. But that balance shifts when:
20 (1) the court declares the minor to be a ward of the court on the ground that he or she
21 engaged in felony conduct; (2) the court makes a finding of probable cause after the District
22 Attorney directly files felony criminal charges against the minor in adult criminal court; or (3)
23 the juvenile court determines that the minor is unfit to be tried in juvenile court, the minor is
24 certified to adult criminal court, and the superior court makes a finding of probable cause.
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1 Therefore, balancing the interest in public safety with the interest in protecting minors can best
2 be achieved if law enforcement officers are permitted to disclose information to state and
3 federal agencies about the immigration status of a detained juvenile when: (1) the San
4 Francisco District Attorney files a petition in the juvenile court alleging that the minor is a
5 person within the description of Section 602(a) of the California Welfare and Institutions Code
6 and the juvenile court sustains a felony charge based upon the petition; (2) the San Francisco
7 Superior Court makes a finding of probable cause after the District Attorney directly files
8 felony criminal charges against the minor in adult criminal court; or (3) the San Francisco
9 Superior Court determines that the minor is unfit to be tried in juvenile court, the minor is
10 certified to adult criminal court, and the Superior Court makes a finding of probable cause in
11 adult criminal court.

12
13 Section 2. The San Francisco Administrative Code is hereby amended by amending
14 Sections 12H.2, 12H.2-1, and 12H.3 to read as follows:

15 **SEC. 12H.2. USE OF CITY FUNDS PROHIBITED.**

16 No department, agency, commission, officer or employee of the City and County of San
17 Francisco shall use any City funds or resources to assist in the enforcement of federal
18 immigration law or to gather or disseminate information regarding the immigration status of
19 individuals in the City and County of San Francisco unless such assistance is required by
20 federal or State statute, regulation or court decision. The prohibition set forth in this Chapter
21 shall include, but shall not be limited to:

22 (a) Assisting or cooperating, in one's official capacity, with any *Immigration and*
23 *Naturalization Service (INS)* investigation, detention, or arrest procedures, public or clandestine,
24 conducted by the federal agency charged with enforcement of the federal immigration law and relating
25 to alleged violations of the civil provisions of the federal immigration law.

1 (b) Assisting or cooperating, in one's official capacity, with any investigation,
2 surveillance or gathering of information conducted by foreign governments, except for
3 cooperation related to an alleged violation of City and County, State or federal criminal laws.

4 (c) Requesting information about, or disseminating information regarding, the
5 immigration status of any individual, or conditioning the provision of services or benefits by the
6 City and County of San Francisco upon immigration status, except as required by federal or
7 State statute or regulation, City and County public assistance criteria, or court decision.

8 (d) Including on any application, questionnaire or interview form used in relation to
9 benefits, services or opportunities provided by the City and County of San Francisco any
10 question regarding immigration status other than those required by federal or State statute,
11 regulation or court decision. Any such questions existing or being used by the City and County
12 at the time this Chapter is adopted shall be deleted within sixty days of the adoption of this
13 Chapter.

14 **SEC. 12H.2-1. CHAPTER PROVISIONS INAPPLICABLE TO PERSONS**
15 **CONVICTED OF CERTAIN CRIMES.**

16 Nothing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer
17 from identifying and reporting any ~~person~~ adult pursuant to State or federal law or regulation
18 who is in custody after being booked for the alleged commission of a felony and is suspected
19 of violating the civil provisions of the immigration laws. In addition, nothing in this Chapter shall
20 prohibit, or be construed as prohibiting, a law enforcement officer from identifying and reporting any
21 juvenile who is suspected of violating the civil provisions of the immigration laws if: (1) the San
22 Francisco District Attorney files a petition in the juvenile court alleging that the minor is a person
23 within the description of Section 602(a) of the California Welfare and Institutions Code and the
24 juvenile court sustains a felony charge based upon the petition; (2) the San Francisco Superior Court
25 makes a finding of probable cause after the District Attorney directly files felony criminal charges

1 against the minor in adult criminal court; or (3) the San Francisco Superior Court determines that the
2 minor is unfit to be tried in juvenile court, the minor is certified to adult criminal court, and the
3 Superior Court makes a finding of probable cause in adult criminal court.

4 ~~In addition,~~ Nothing in this Chapter shall preclude any City and County department,
5 agency, commission, officer or employee from (a) reporting information to the federal agency
6 charged with enforcement of the federal immigration law INS regarding an individual who has been
7 booked at any county jail facility, and who has previously been convicted of a felony
8 committed in violation of the laws of the State of California, which is still considered a felony
9 under ~~S~~state law; (b) cooperating with a ~~n~~ INS request from the federal agency charged with
10 enforcement of the federal immigration law for information regarding an individual who has been
11 convicted of a felony committed in violation of the laws of the State of California, which is still
12 considered a felony under state law; or (c) reporting information as required by federal or state
13 statute, regulation or court decision, regarding an individual who has been convicted of a
14 felony committed in violation of the laws of the State of California, which is still considered a
15 felony under state law. For purposes of this Section, an individual has been "convicted" of a
16 felony when: (a) there has been a conviction by a court of competent jurisdiction; and (b) all
17 direct appeal rights have been exhausted or waived; or (c) the appeal period has lapsed.

18 However, *no* officer, employee or law enforcement agency of the City and County of
19 San Francisco shall stop, question, arrest or detain any individual solely because of the
20 individual's national origin or immigration status. In addition, in deciding whether to report an
21 individual to the federal agency charged with enforcement of the federal immigration law INS under
22 the circumstances described in this Section, an officer, employee or law enforcement agency
23 of the City and County of San Francisco shall not discriminate among individuals on the basis
24 of their ability to speak English or perceived or actual national origin.

1 This Section shall not apply in cases where an individual is arrested and/or convicted
2 for failing to obey a lawful order of a police officer during a public assembly or for failing to
3 disperse after a police officer has declared an assembly to be unlawful and has ordered
4 dispersal.

5 Nothing herein shall be construed or implemented so as to discourage any person,
6 regardless of immigration status, from reporting criminal activity to law enforcement agencies.

7 **SEC. 12H.3. CLERK OF BOARD TO TRANSMIT COPIES OF THIS CHAPTER;**
8 **INFORMING CITY EMPLOYEES.**

9 The Clerk of the Board of Supervisors shall send copies of this Chapter, including any
10 future amendments thereto that may be made, to every department, agency and commission
11 of the City and County of San Francisco, to California's United States Senators, and to the
12 California Congressional delegation, the Commissioner of the *INS-federal agency charged with*
13 *enforcement of the federal immigration law*, the United States Attorney General, and the
14 Secretary of State and the President of the United States. Each appointing officer of the City
15 and County of San Francisco shall inform all employees under her or his jurisdiction of the
16 prohibitions in this ordinance, the duty of all of her or his employees to comply with the
17 prohibitions in this ordinance, and that employees who fail to comply with the prohibitions of
18 the ordinance shall be subject to appropriate disciplinary action. Each city and county
19 employee shall be given a written directive with instructions for implementing the provisions of
20 this Chapter.

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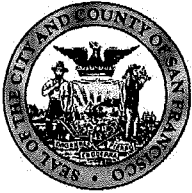
1 Section 3. Implementation

2 The San Francisco Juvenile Probation Department shall, within 60 days of the effective
3 date of this Ordinance, modify its policies and practices to comply with the provisions of this
4 Ordinance to the extent permitted by state and federal law.

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6
7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9 By:

10 *Mariam Morley*
11 Mariam Morley
12 Deputy City Attorney



City and County of San Francisco

Tails

Ordinance: 228-09

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 091032

Date Passed: November 10, 2009

Ordinance amending the San Francisco Administrative Code by amending Sections 12H.2, 12H.2-1, and 12H.3 to allow City law enforcement officers and employees to report information regarding the immigration status of a juvenile to any state or federal agency when the juvenile has been adjudicated to be a ward of the court on the ground of felony conduct, the court makes a finding of probable cause after the District Attorney directly files felony criminal charges against the minor, or the juvenile court determines that the minor is unfit to be tried in juvenile court and the superior court makes a finding of probable cause; and to update references to the federal agency responsible for enforcing federal immigration laws.

October 05, 2009 Public Safety Committee - RECOMMENDED

October 20, 2009 Board of Supervisors - PASSED ON FIRST READING

Ayes: 8 - Avalos, Campos, Chiu, Daly, Dufty, Mar, Maxwell and Mirkarimi

Noes: 2 - Chu and Elsbernd

Excused: 1 - Alioto-Pier

October 27, 2009 Board of Supervisors - FINALLY PASSED

Ayes: 8 - Avalos, Campos, Chiu, Daly, Dufty, Mar, Maxwell and Mirkarimi

Noes: 3 - Alioto-Pier, Chu and Elsbernd

October 28, 2009 Mayor - VETOED

November 10, 2009 Board of Supervisors - APPROVED OVER THE MAYOR'S VETO

Ayes: 8 - Avalos, Campos, Chiu, Daly, Dufty, Mar, Maxwell and Mirkarimi

Noes: 3 - Alioto-Pier, Chu and Elsbernd

File No. 091032

I hereby certify that the foregoing Ordinance was FINALLY PASSED on October 27, 2009 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board

10-28-09

Date Approved

Vetoed

Mayor Gavin Newsom

The foregoing measure, having been passed by the Board of Supervisors at the meeting of October 27, 2009, was referred to his Honor, the Mayor, in accordance with the provisions of Section 3.103 of the Charter was returned by him under the date of October 28, 2009, with his disapproval and veto thereon.

The Board of Supervisors, on November 10, 2009, overrode the Mayor's veto by the required 2/3 vote, by the following vote:

Ayes: 8 - Avalos, Campos, Chiu, Daly, Dufty, Mar, Maxwell, Mirkarimi

Noes: 3 - Alioto-Pier, Chu, Elsbernd



Angela Calvillo, Clerk of the Board