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**MEMORANDUM**

TO: Mayor Newsom  
FROM: Linda M. Ross *DMR*  
Molly Stump  
Deputy City Attorneys  
DATE: July 1, 2008  
RE: **UNDOCUMENTED YOUTH DETAINED IN THE JUVENILE JUSTICE SYSTEM**

You have asked for a written confirmation of oral advice that this Office has given to City officials regarding federal, state and local laws relating to undocumented youth in the juvenile justice system. This memorandum describes the relevant legal rules and does not apply them to any particular case or circumstance.

**I. LOCAL LAW – CITY SANCTUARY ORDINANCE**

**The City's Sanctuary Ordinance does not prohibit the City from reporting to federal immigration authorities about juveniles in custody after being booked for the alleged commission of a felony.**

- The Sanctuary Ordinance does not preclude giving information to federal immigration authorities, among instances, for an individual who is "in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws." (Admin. Code § 12H.2-1.)
- 1994 City Attorney written memorandum concluded that this exception applied to both adults and juveniles. (Memorandum, dated Feb. 7, 1994, from Deputy City Attorney Buck Delventhal to Nelba Chavez, Director of Probation Services.)

**II. STATE LAW – CONFIDENTIALITY OF JUVENILE COURT RECORDS AND DISPOSITION OF JUVENILE COURT CASES**

**A. State Law requires that juvenile court records be kept confidential but permits inspection without a court order by law enforcement agencies under certain circumstances.**

- Welfare and Institutions Code Section 827 requires that juvenile court records be kept confidential but authorizes the following persons, among others, to inspect a juvenile court file:

(E) The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor. (W & I Code 827(a)(1)(E).)

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- San Francisco Superior Court, Juvenile Division, Standing Order No. 303 permits inspection without filing a petition by:

"All California and Federal law enforcement agencies, California school systems, California Probation Departments, and the California Youth Authority, if that agency is investigating criminal or juvenile proceedings involving the child...."

- Welfare and Institutions Code Section 828 permits disclosure of "any information gathered by a law enforcement agency...relating to the taking of a minor into custody...to another law enforcement agency...or to any person or agency which has a legitimate need for the information for the purposes of official disposition of a case." This provision is broadly worded and we found no case law that narrowed it.

**B. After hearing from the District Attorney, the Juvenile Probation Department and an attorney representing the juvenile (most often the Public Defender), the Superior Court orders dispositions in juvenile criminal cases.**

- Depending on the facts, the Court may place a juvenile on probation, make the minor a ward of the court, order the juvenile returned to his or her residence in another state or country or take other appropriate action. (W & I Code §§ 725, 738.)

### III. FEDERAL IMMIGRATION LAW

**Federal civil law does not require the City to give federal authorities information about juvenile detainees who appear to be in the country illegally, but federal authorities have threatened City employees with arrest if they transport or harbor such detainees.**

**A. Federal civil law.** No federal, state or local official or entity may "prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." (8 USC § 1373.)

- Under this law, the City itself is not compelled to turn over information, but the City possibly cannot penalize a City employee or official for turning over information.
- An "Immigration Detainer – Notice of Action" does not require City officials to turn over a juvenile. An INS detainer issued under 8 CFR 287.7 is not an order of custody but is a "request that another law enforcement agency notify the INS before releasing an alien from detention so that the INS may arrange to assume custody." But certain federal orders may require the City to turn over a juvenile, such as a warrant of arrest or final order of deportation.

**B. Federal criminal law.** Federal authorities have threatened to arrest City employees who transport or harbor undocumented youth detained in the juvenile justice system.

Federal law makes it a crime for any person in knowing or reckless disregard of the fact that an alien is illegally in the U.S. to:

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- transport, move or attempt to transport or move the alien within the United States "in furtherance of such violation of law," or
- conceal, harbor or shield from detection such alien in any place, including any building or any means of transportation. (8 USC § 1324(a)(1)(A)(ii) and (iii).)

cc: William Sifferman, Chief Juvenile Probation Officer