

SAN FRANCISCO JUVENILE PROBATION DEPARTMENT

Detention Risk Assessment Instrument (RAI) Guidelines – January, 2003

This document provides supplemental information for probation officers who will be scoring minors for detention risk using the Risk Assessment Instrument (RAI), updated in 2002 and officially adopted for implementation in January, 2003. Below are basic instructions on how to complete and implement the RAI and the detention process in specific cases. These guidelines are to be followed by intake officers unless countermanded or over-ridden by a supervisor or by the Juvenile Court.

OFFENSE SCORING

1. *Score only the most serious instant offense.* Do not compound scores for multiple charges.
2. *WIC 707 (b) offenses.* Due to the change in WIC Section 625.3 (Proposition 21), minors 14 or older charged with any WIC 707 (b) offense must be detained until the case is reviewed by a court officer. Normally, this means that such a minor must be detained until the detention hearing. The case may not be mitigated or over-ridden to effectuate release without judicial approval. In these cases, please check the first box under “Special Detention Cases”, for WIC 707 minors 14 and older. Minors younger than 14 who are charged with a WIC 707 (b) crime may be mitigated and released at intake based on their total score. Since the mandatory detention provision of Proposition 21 now requires the secure detention of minors 14 or older charged with lesser forms of robbery (added to the 707 (b) list by Proposition 21), a new process is being designed to accelerate judicial review and possible release for these lower level robbery cases. This accelerated review process would be triggered by a probation officer seeking to release the minor in question, but the process is not yet finalized.
3. *“Other violent or sex felonies against persons”.* These are non-707 (b) felonies against persons, where the offense involves violence or is a sex crime. An example would be P.C. 288.5, “continuous sexual abuse of a child”.
4. *Drug offenses.* Assign 9, 7 or 5 points for sale, possession for sale or felony possession of narcotics or drugs. Prior to district attorney charging, some cases will require you to make a judgment call based on the facts offered by police and based on your experience (e.g., discriminating between possession and possession for sale). Misdemeanor possession (e.g., less than one ounce of marijuana) is scored under “All misdemeanors” (3 points).
5. *Possession of a firearm.* It is City and County policy to presume that these minors possessing firearms (loaded or unloaded) should earn 11 points and be detained. However, these cases are also subject to mitigation or over-ride, depending on all the facts of the individual case. Toy guns, knives and other non-firearm weapons do not earn 11 points in this category.
6. *Felony property crimes* including auto. Only felony property crimes earn 5 points.
7. *Misdemeanors* earn 3 points
8. *Probation violations.* Probation violations, without a new crime, earn zero points on the risk instrument. These minors should be cited or referred to a non-detention alternative. Additional

“graduated sanctions” for probation violators are being reviewed and are likely to be developed in the context of the Juvenile Detention Alternatives Initiative.

PRIOR OFFENSE HISTORY

Score only one of the “prior history” situations listed in this section. For example, if the minor has a felony petition pending, assign 6 points and move on to the next section.

AGGRAVATING AND MITIGATING FACTORS

THESE SECTIONS ARE NEW in San Francisco. The risk instrument being replaced did not have aggravating or mitigating factors. Some of these factors require a judgment call by the intake officer, and for some factors listed there may be insufficient information on file or available at intake to make that judgment call. Below are guidelines for rating aggravation or mitigation; strategies to improve the level of information available at intake are still under review.

TIMING OF RATING AGGRAVATING AND MITIGATING FACTORS: Risk scoring must not be delayed to obtain aggravating or mitigating score information. If you lack information you feel is needed to make a reasonable judgment on any aggravating or mitigating factor, skip that factor (no points either way) and move on to complete the intake form and process.

Aggravating factors: You may add up to three points to the score in aggravation.

1. *Multiple offenses are alleged.* This means the minor is charged with more than one new criminal event— e.g., multiple burglaries or robberies. Do not count lesser included offenses that may be charged as part of the same criminal event; for example, assault with a firearm and illegal possession of a firearm in the same event are not to be treated as multiple offenses; same with sale and possession for sale or burglary/possession of stolen property.
2. *Crime was particularly vicious or violent.* You may use your own judgment here.
3. *Home situation is unstable* increasing risk of flight, FTA or misconduct. Information on this point at intake may be limited or nonexistent. If you have child welfare documentation or other reliable information about the home that leads you to believe reasonably that the minor is a flight risk, you may aggravate here. You may interview the minor and use information he or she provides in the interview to supplement your evaluation.
4. *Minor has willfully failed to appear* one or times in the last 12 months. The FTA should appear in the case file. The minor should be allowed to explain the FTA so you can confirm that it is not a mistake on the record or completely excusable for some legitimate reason.

Mitigating factors: You may subtract up to three points from the score in mitigation.
(Note again that arrests of minors 14 or older on WIC 707(b) charges may not be mitigated).

1. *Involvement in the offense was remote or otherwise mitigated.* This provides you with a flexible opportunity to lower the score of minors whose behavior is not fully reflected by the offense charged. Some examples:

- Assault is charged but the minor was essentially standing around watching
- Drug possession is charged but this minor was riding in the car and there is no evidence that he personally possessed the substance.
- The minor is 11 or 12 years old and did not appear to fully appreciate the seriousness or criminality of the act.
- The minor has a clean record, the offense is not serious and the parents are eager and available to take custody.

2. *Family member or caretaker able to assume responsibility for the minor.* Minors will earn mitigation points if they have a family member who is reliable and immediately available to take custody of the minor. The mitigation point is earned if you believe that the family is not only willing but is also able to take custody and to supervise their child, thus lowering the risk of reoffending before a court appearance. Ordinarily, some contact with a responsive family member is necessary to trigger this point in mitigation.

3. *No arrests or citations within the last year.* This must appear on the minor’s record. A probation violation that has been validated in court counts as an arrest or citation.

4. *Minor demonstrates stability in school or employment.* This is perhaps the most difficult factor to rate, because school and employment records are not normally available at intake. Nevertheless, for a variety of reasons the JDAI committees designing the new RAI nevertheless elected to keep this mitigating factor, while also endorsing strategies to improve the quality of information available at intake. To evaluate this mitigating factor, you may use information self-reported by the minor. You should use your judgment to decide whether the self-report is reliable, and you may inform the minor that if the mitigation results in release and the information turns out to be inaccurate, he or she will be re-detained. Information given by the minor, which results in reducing the minor’s score here, should be verified to the extent possible within 24 hours.

TOTAL SCORE AND DETENTION SCALE:

Add scores for all four main factors and write the total in the box for “total score”. The detention decision scale tells you what should then happen: 11 or more points would normally result in detention, while 10 or fewer points would result in non-detention options including home supervision or referral home to parents.

Home Supervision. The detention scale indicates “release on restriction” for minors who score between 8 and 10 points. In San Francisco, the primary restrictive release option is home supervision. California Welfare and Institutions Code Sections 840 and 628.1 require the probation department to maintain a home supervision program for release to parents on specific conditions with enriched probation supervision (1:10 caseload). Currently, San Francisco does not meet this code requirement. The Juvenile Court makes referrals to a contract home supervision agency, but the probation department does not directly refer to home supervision. This will change. Until the home supervision program is developed for immediate utilization at intake, minors scoring 8 to 10 points should be released to the custody of their parents, if available.

SPECIAL DETENTION CASES

This section lists cases that are subject to secure detention regardless of their detention score. It includes WIC 707(b) mandatory detention for minors 14 and older. It also documents secure detention outcomes for minors who score less than 11 risk points but for whom a specific program, placement or case processing alternative to detention is not presently available. New alternatives are under discussion or development for certain types of warrant cases, placement failures and inter-county transfers. Until these alternatives are in place, the case should be treated as a special detention case. Mark the appropriate box.

NOTE THAT: Special detention minors must be risk scored (by offense, prior history and aggravating or mitigating factors) even if they are subsequently detained as a special detention case.

NOTE THAT: Probation violations are not automatic special detention cases; probation violators must be risk scored to qualify for secure detention.

DETENTION OVER-RIDES

The probation officer retains discretion to detain a minor, even though the minor scores less than 11 points (the detention cutoff) on the risk instrument. At the same time, it is the policy of the San Francisco Juvenile Probation Department to limit these over-rides to exceptional situations in which the probation officer reasonably believes that the minor presents some risk of criminality or flight that can justify secure detention in spite of the low risk score.

All minors with scores of 0-10 points, who are securely detained beyond 24 hours, must be accounted for in this section as a detention override, with supervisor sign-off. For purposes of completing the risk instrument at intake, you should mark the case as an over-ride if you reasonably expect that the minor will be detained for 24 hours under one of the circumstances listed in the detention over-ride section. Specific situations for detention override are as follows:

- *Parents cannot be located.* The Welfare and Institutions Code (Section 628) provides for release of a minor to a “parent, legal guardian or responsible relative”. If no such person can be located, the minor may be detained as an over-ride. To justify this type of detention, a diligent and extended effort must be made to locate a parent, guardian or responsible relative. This level of effort should include: ask minor to provide contact information; minor’s records are searched to determine the location of family members; multiple and periodic phone calls or other contact attempts are made while the minor is in custody. Calls that go unanswered in night-time hours should be tried again the next day. Attempts to contact family members should be documented by the probation officer.
- *Parents refuse to take custody.* A parental refusal to come to the Youth Guidance Center to retrieve a minor should be carefully handled. Though some latitude may be given to working parents who cannot leave their job without losing it, every effort should be made to convince parents of seriousness of the situation and to establish a time-certain when the retrieval will be made. Refusals based on “I don’t want him/her back” should be countered with specific strategies unless it is clear that the minor will lack supervision or be endangered if returned home. Strategies to encourage parental pickup may include pointing out the liability of parents for the costs of probation custody under WIC Section 903.25. Persistent refusals or refusals

signifying child endangerment will justify a detention over-ride. The refusal circumstances should be documented by the probation officer.

- *Youth refuses to return home.* A refusal to return home may be taken as both a sign that the minor is at higher risk than indicated by the score and also as consent to detention. The reasons why a minor refuses to return home should be documented by the probation officer.
- *Home supervision not available.* This is a temporary over-ride circumstance that is included on the form until the home supervision program is ready for utilization at intake. Normally, minors who score 8-10 points, for whom no home supervision program is currently available, should be returned home. However, the probation officer has the option of detaining the minor if special risks can be identified justifying secure detention in a particular case.
- *Other.* The RAI is a basic triage device that cannot capture every situation presented at intake. The “other” category gives the intake officer a means of justifying secure detention in unusual and high-risk situations. It may be that a serious and unusual offense, not listed in the offense section, has been charged (e.g., bomb-making). It may be that the minor has threatened to injure or kill some person in retaliation, or that you have evidence the minor may be at serious risk of gang retaliation. It may be that the minor has made a terrorism threat that requires further investigation for the protection of others. It may be that the minor has severe mental health problems or drug-intoxication problems requiring further evaluation or treatment. This form of detention over-ride should be used only when the probation officer has reason to believe that there is a special need to detain the minor as a matter of immediate necessity to protect the minor or another from harm, or to prevent a specific flight risk. **WHEN THE “OTHER” CATEGORY IS USED, YOU SHOULD DESCRIBE SUCCINCTLY YOUR REASON FOR OVER-RIDE, USING ADDITIONAL SPACE AS NEEDED.**

RELEASE OVERRIDES

A detention score of 11 or higher can be over-riden in favor of release, if there are reasonable grounds for release despite the higher score. Examples might include: very young minors whose parents demonstrate an immediate ability to supervise and protect the minor; minors whose involvement in the offense was extremely remote but whose mitigation score is not high enough; or cases where the probation officer learns that the arrest is a case of mistaken identity. **THE REASONS FOR A RELEASE OVER-RIDE MUST BE STATED IN THE SPACE PROVIDED.**

SUPERVISOR APPROVAL

The signature of a Supervising Probation Officer is required to confirm any over-ride— detain or release.

MONITORING INFORMATION

The release information (date, time, released to) must be completed at the time of release.

SIGNING THE FORM

The intake officer completing the risk assessment form must sign it at intake.

SPECIFIC CASE SITUATIONS

Prostitution cases. Concern has been expressed, by probation officers and other JDAI stakeholders, about girls arrested for prostitution in “turnstyle” situations, where boyfriends or other adults representing themselves as family members try to obtain custody and the girls go immediately back to work on the street. Probation officers are justified in taking special steps to verify the identity of persons representing themselves as family members in prostitution cases. At the same time, if the young woman qualifies for release and has a legitimate family member able to take custody, then the release should proceed. Under discussion within the JDAI in San Francisco is the establishment of a temporary shelter facility or “safe house” which could, in lieu of juvenile hall, serve as a place of custody for these young women—helping them connect with legitimate family members and offering services that may deter resumption of illegal activities on the streets.

Terrorism charges. In the post 9/11 environment there is growing social anxiety about terrorism, and we have seen increases in the number of minors referred for terrorism threats under Penal Code Section 422. This offense can be charged either as a misdemeanor or as a felony, and there is no convenient place at present on the RAI to score PC 422 offenses. The RAI working group considered adding a special offense category for terrorism but decided against this—mainly because the offense covers such a wide range of possible behaviors, from schoolyard horseplay to focused and malicious threats backed by a present ability to produce serious harm. Instead of trying to lump all terrorism threats and behaviors into one category, the JDAI working group has suggested that probation officers, guided by police information, make their best judgment calls using the RAI as drafted and using over-ride provisions if necessary for public protection.

Minors 12 and under. Presently, very young minors get no special treatment on the RAI. Even with juvenile hall classification criteria designed to protect younger detainees, there is always concern about predatory or bullying behavior when they are in the same institution with older youth. Santa Clara County has adapted to the special risks of detaining young minors by requiring a judge’s order to confirm continued detention of any minor 12 or younger. The JDAI/RAI working group reviewed eight cases of minors 12 and under referred to YGC during the April-May RAI test period. It found that the charges were mainly felony level and that petitions were filed in all cases. There is no recent evidence of abuse of younger minors at YGC. The working group therefore recommended that the decision to treat younger youth appropriately should be left to the discretion of the intake probation officer. When minors 12 or under are presented at intake, the probation officer should include in his or her evaluation a consideration of whether the highest levels of personal and public protection will be achieved in the detention center or in the family home.

Probation violations. Minors with technical (non-criminal) violations of conditions of probation earn zero points under the offense section. They are not special detention cases. They may be detained only if they earn 11 or more points when properly scored, or as an over-ride under in special situations where the probation officer can identify a specific public safety risk. Sanctions for probation violators are currently under review in the JDAI, and there is great interest in creating new and intermediate sanctions that will be made available to the probation department and the juvenile court for the enforcement of orders of probation. A special screening instrument, rating minors for probation violator risk, is also being considered. These reviews may produce new risk screening procedures and new sanctions for probation violations, based on the severity of the violation. Meanwhile, probation

violations should be properly scored on the updated risk instrument, and scoring will be monitored to assure compliance.

Warrant cases. Arrest and bench warrant cases are presently special detention situations in which the probation officer lacks authority to release the minor. Minors presented at intake on warrants are universally detained in deference to the authority of the court issuing the warrant. However, it is recognized that some behaviors leading to a warrant are more serious than others, with higher associated public safety risks. Similarly, some failures to appear which cause a warrant to issue may be excusable for various reasons—for example, the minor or the family never received notice of an altered court date. Under JDAI, stakeholders are reviewing ways to provide the probation department with additional tools in warrant cases that may be low-grade or excusable for various reasons. There is no change in warrant policy as yet, and any future change that comes about will require Juvenile Court approval. In the meantime, warrants will continue to be handled as special detention cases.

Placement failures. Minors returned from private placements are almost always detained, pending resolution of the problem with the placement or placement in a new facility. Like the “old” RAI, the new RAI treats these as special detention cases. However, it is clear that there are many kinds of placement failures— some which are clearly due to the misbehavior of the minor and some which are not (an example of the latter would be a minor who leaves a placement after being beaten or sexually assaulted). Minors returned to the juvenile hall as placement failures should be scored on the RAI prior to being detained as special detention cases. With the help of a Placement Coordinator in the Public Defenders Office, additional efforts have been made to accelerate the movement minors with placement problems to appropriate facilities, and their numbers in detention have declined. Further efforts will be made under JDAI to develop options for minors returned from private placements.