

County of Santa Clara

Probation Department




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Laura Garnette
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DATE: December 10, 2018

TO: Honorable Members of the Board of Supervisors
Jeffrey V. Smith, County Executive

FROM: Jermaine Hardy, Acting Chief Probation Officer 

SUBJECT: Revised Off-Agenda Report RE: June 14, 2018 Children, Seniors, and Families Committee Meeting Agenda No. 4: Held from May 9, 2018 Children, Seniors, and Families Committee meeting (Item No. 5): Receive report from Probation Department relating to Peer Court.

At the June 14, 2018 Children, Seniors, and Families Committee meeting, the Probation Department (“Department”) presented a report regarding Peer Court program eligibility requirements and referral rates. This report addresses additional questions that were raised at that meeting about Peer Court eligibility.¹

EXECUTIVE SUMMARY

The Probation Department Peer Court Program (“Peer Court”) currently serves Eastside Union High School District (“ESUHSD”) and San Jose Unified School District students who are referred to Peer Court by school administrators for school-based infractions. The Department’s sole restriction on Peer Court eligibility is the exclusion of students who receive criminal citations or are currently on probation. Although most students who commit school-based infractions are eligible for Peer Court, school district administrators tend to limit referrals to particular types of infractions. For example, participating school districts reported that they avoid referring students for more serious infractions because they prefer to assign more immediate consequences. The types of infractions for which students are referred can vary significantly from district to district and school to school. This broad discretion afforded to administrators and the program structure, which addresses school-based behaviors in a more formal setting managed by a criminal justice agency, also raise preliminary concerns about whether Peer Court could be viewed as similar to youth accountability programs in other counties that have been challenged as unlawful. To expand Peer Court’s reach and ensure fidelity to Peer Court’s intended diversionary function, the Department plans to return Peer Court to its original referral process, in which the Department screened and referred participants from its youth diversion programs. This approach could expand Peer Court’s

¹ The Department addressed questions relating to its general standards for evaluating and developing evidence-based programs at the November 14 meeting of the Children, Seniors, and Families Committee.

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reach and ensure appropriate program oversight.

DISCUSSION

A. Peer Court Eligibility

1. Probation Department Referral Model

Peer Court was established in November 2011 to divert youth who were alleged to have committed certain low-level offenses (e.g., vandalism) away from the criminal justice system by offering an alternative process for informal adjudication. For the first five years of the program, the Department screened and referred cases to Peer Court from its Prevention/Early Intervention (PEI) and Deferred Entry of Judgment (DEJ) programs for youth. Referred youth participated in a mock hearing in which volunteer students mentored by Lincoln Law School students would represent the referred participants before a student jury with the authority to assign identified interventions, including community service, tutoring or counseling sessions, and substance use classes. The Department's community worker offered guidance and case management to support completion of the assigned interventions. If a youth failed to complete the intervention, the Department would enter their name in the Juvenile Record System, as they would for any youth who fails to complete a PEI program.

2. School District Referral Model

While hearing and adjudication procedures have remained constant, Peer Court's referral process was revised in 2016 to permit local school districts to refer students who commit eligible school-based infractions. While most school-based infractions make students eligible for Peer Court, school districts can exercise their discretion in selecting appropriate cases. The severity of the school-based infraction for which a student is referred to Peer Court can vary from district to district, school to school, and administrator to administrator. In each instance, the discretion to refer—and not to refer students—lies with the participating school districts.

Under the current Peer Court model, the Department's referral criteria only exclude a student who receives a criminal citation for the school-based behavior. For this reason, students who have booking numbers, which are received when youth are formally processed through juvenile hall, are generally ineligible for the program.² That said, a student who commits a citable offense but is not cited (and who is not currently on probation) can generally participate in Peer Court. There are no eligibility barriers based solely on the type of school-based infraction (e.g., cannabis possession), so long as the student's infraction does not result in a criminal citation.³ Likewise, students are eligible even if the school-based offense exposes them to possible expulsion or suspension. But students who are facing expulsion or suspension are more likely to be ineligible for Peer Court because it is more likely that these students receive a disqualifying citation. In fact, each of the five offenses for which a school may expel a student can result in an arrest or prosecutable citation.⁴

² These youth are typically alleged to have committed felony-level criminal offenses, which require formal processing through the District Attorney's Office and Juvenile Court

³ Peer Court has served students referred to it based on cannabis possession allegations in each of the last two school years (one student in 2016-2017 and two students in 2017-2018).

⁴ The offenses for which a school district may expel a student include possession of an explosive or firearm and committing or attempting to commit a sexual assault. As an example of the relationship between expulsions and criminal citation, San Jose Unified School District expelled six students in the 2017-2018 school year and every one of those students received a criminal citation.

3. Concerns Regarding School-Based Referrals

School district partners have explained that programmatic concerns prevent them from referring more students to Peer Court. The timing of Peer Court interventions is a primary concern. To provide participants and volunteers sufficient time to adequately prepare for hearings, Peer Court hearings typically occur four to six weeks from when a student is referred, which means a student will not receive their assigned intervention until two months from when they committed an infraction.⁵ While the delay is necessary for hearing preparation, it is viewed as problematic by school administrators who are accustomed to assigning more immediate consequences and who value the immediacy of those consequences to reinforce the connection between the student's behavior and assigned consequence. School district administrators view the delay as particularly problematic for more serious infractions that could warrant suspension or expulsion.

School districts expressed equity concerns associated with the limited capacity of Peer Court. School district administrators were concerned with the inability to make Peer Court generally available as an intervention and the perception that certain students benefit from Peer Court's additional support and services while it is unavailable to others. Because Peer Court can only support hearings for 20-22 students per year, the Department cannot address this concern. School districts limit the number of their referrals so as to limit the potential for the perception of unequal access to services. While it is unclear whether Peer Court in fact offers a service or benefit that is unavailable through regular school disciplinary processes, this concern nonetheless decreases referrals.

While school districts raised concerns about the possible exclusion of students, another consideration is enrolling youth who have not been involved with the juvenile justice system in a probation-operated program based solely on conduct occurring at school. A recent complaint filed by the American Civil Liberties Union ("ACLU") identified potential concerns with students who participate in criminal justice system-operated programs that receive school-based referrals.⁶ The ACLU filed a lawsuit against Riverside County alleging that its youth accountability program unlawfully permits school staff to exercise broad discretion in assigning students to an informal but onerous county probation supervision program, which included search conditions and restricted student's ability to associate with peers.⁷ While elements of the Riverside program as described in the complaint are clearly distinct from Peer Court—e.g., Peer Court's interventions, such as an apology letter or community service, are more restorative in nature than the supervision condition imposed in Riverside's program—the school-based referral process is a common feature of the programs and may give rise to related concerns. The ACLU alleged that school-based referrals and the broad discretion afforded to school administrators referring students to the Riverside program were problematic because behaviors that would have otherwise been addressed by school-based consequences were indiscriminately elevated to a criminal justice system proceeding. That same high-level concern applies to Peer Court's current referral model, though the alleged consequences of referral to the Riverside program are far more severe. School districts have broad discretion to refer students for school-based behavior as they see appropriate, and the Department

⁵ Preparing for a Peer Court hearing involves gathering information from the school or district; holding a training prior to the hearing to assign volunteer roles and responsibilities; and, arranging a meeting between the student, his or her parent(s) or guardian(s) and the youth volunteer and his or her Lincoln Law School mentor. This process ensures the referred student and volunteer students have a strong understanding of the circumstances that led to the student's behavior and the offense itself.

⁶ See ACLU complaint against Riverside County, available at

https://www.aclusocal.org/sites/default/files/aclu_socal_yat_20180701_complaint.pdf (last visited November 17, 2018).

⁷ *Id.*

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recognizes that referral practices appear to vary from school to school. School-based referrals to Peer Court cause students who would have otherwise been assigned school-based discipline (e.g., detention) to have their behavior adjudicated in a setting managed by a criminal justice agency, which, while informal as compared to actual criminal proceedings, exposes youth to involvement in a proceeding overseen by a criminal justice agency and interventions supervised by a criminal justice agency. In other words, Peer Court, under its current school referral process, could be viewed as facilitating more criminal justice system involvement for youth when it was intended to do the opposite (i.e., divert youth away from further justice system involvement).

4. Expanding the Reach of Peer Court

Peer Court has experienced a decline in referrals in the past few years. Some of the Peer Court-related questions attempt to identify opportunities to broaden the scope of the program's reach, and the Department recognizes that early intervention programs can provide a benefit to appropriate youth populations. Although opportunities to expand Peer Court's reach appear limited under the current model, a revised referral process could expand the population served and ensure the program avoids the types of concerns alleged against Riverside's program.

One suggestion to expand the program's reach was to incorporate middle school students. But, before any expansion to serve middle school students, research and participant district's feedback indicate that Peer Court's model would need to be adjusted significantly to accommodate the developmental levels of middle school students and additional resources would be required to meet the behavioral health needs of middle school students. Research has shown that formal adversarial proceedings can adversely impact youth and that middle school students may have a more difficult time understanding the requirement that a Peer Court participant take responsibility for the alleged behavior. Districts noted that additional behavioral health services and social work support for students' families would need to be secured before it would refer middle school students to Peer Court.

More generally, despite the Department's outreach efforts, the opportunities to secure more school-based referrals appear limited. Because school district's only view Peer Court as a fit for a particular subset of its students and they control referrals, the program's reach will be limited unless it is drastically altered to meet the needs of school districts or transitioned to serve youth referred to the program from non-school district sources.

CONCLUSION

By returning Peer Court to a Department-based referral process operated by the PEI unit, the Department can support the expansion of Peer Court's impact, while ensuring the program reaches the appropriate population in a manner that is consistent with its objectives.

c: Chief Board Aides
Miguel Márquez, Chief Operating Officer
Martha Wapenski, Deputy County Executive
James R. Williams, County Counsel
Megan Doyle, Clerk of Board of Supervisors