

National Juvenile Defender Center Statement on COVID-19 Pandemic & Urgent Need for Juvenile Legal System to Act

April 2, 2020

With the COVID-19 pandemic, the United States is facing a public health crisis unlike anything experienced in our lifetimes. As public entities responsible for the safety and wellbeing of their communities, all decisionmakers in the juvenile legal system must act immediately to mitigate the devastating impact the pandemic will have on our nation's most vulnerable youth, their families and communities, and their fellow juvenile legal system professionals.

Each point of contact between the juvenile legal system and a youth—from interaction with law enforcement through court hearings, incarceration, and supervision—represents an opportunity to interrupt the exponential growth of the COVID-19 pandemic. The juvenile legal system must intentionally reduce its impact on youth at every touchpoint until the pandemic has been resolved.

The National Juvenile Defender Center calls upon all decisionmakers in the juvenile legal system—including law enforcement, prosecutors, judges, defenders, probation and parole officers, and detention and commitment facility administrators—as well as governors, state lawmakers, and others to immediately:

- **Stop the influx of new cases into the juvenile court system.**

Law enforcement officers should not detain any youth unless serious physical harm has been caused to another person. In all other situations, youth should, at most, be cited and called to court after the current COVID-19 pandemic has been resolved. Restricting incoming cases protects the health and safety of youth, families, defense attorneys, and all court personnel and stakeholders.

- **Release from detention facilities all youth who can safely return home to their families or caregivers.**

Youth should not be detained prior to adjudication to ensure their appearance at future court dates, because they may present a risk of harm to themselves or to property, or because their families cannot afford to pay for monetary bail or other forms of conditional release, like electronic monitoring. Youth should be home with their families or in a safe, home-like setting with caregivers and receive free, community-based, COVID-19 compliant supports and services as necessary.

- **Release from secure commitment facilities all youth who were committed for status, misdemeanor, or non-violent felony offenses or for technical parole or probation violations, and youth who have a pending release date in the next 180 days.**

To lessen the number of youth held in commitment facilities ill-equipped to withstand a viral epidemic, release all youth held for status, misdemeanor, or non-violent felony offenses and technical parole or probation violations. As courts and parole boards close or limit their operations, youth who are on track to complete their term of commitment in the near future should be released immediately.

- **For youth on supervision, eliminate in-person contact with probation or parole staff and service providers; modify probation or parole conditions to reflect life under pandemic-related guidelines and restrictions.**

Youth who are under probation and parole supervision cannot safely meet in-person with probation or parole staff or service providers. Check-ins and services should be eliminated where possible and provided electronically as needed, with the understanding that some youth may not have internet and other technology at their homes. Probation and parole conditions should be modified as necessary to reflect the guidelines and restrictions most Americans are living under, including social distancing recommendations, shelter-in-place orders, and closed schools.

Throughout the COVID-19 pandemic, all youth must have free, timely, safe, and confidential access to defense counsel to advance youth rights, ensure youth safety, and promote youth wellbeing in a manner consistent with the young person's stated interests and goals.

The COVID-19 pandemic has also abruptly, severely impacted the nation's economy. In light of these economic changes and what may be a looming recession, the juvenile legal system also has a responsibility to do no financial harm to the youth and families it is designed to serve. As such, the National Juvenile Defender Center also calls upon juvenile legal system professionals and policymakers to immediately:

- **Cancel all costs and fees imposed on youth and families by the juvenile legal system.**

As states and communities close nonessential businesses and instruct people to remain at home, lower-income families are particularly impacted financially. Utilities, banks, and other companies are suspending or canceling debt during this crisis. The juvenile legal system must do the same.

Why are these steps necessary?

The U.S. leads the world in incarcerating children.

Nearly 45,000 youth are locked up in juvenile facilities across the United States.ⁱ Nearly 60 percent of these youth are incarcerated for non-person offenses.ⁱⁱ Nearly 10,000 youth are being held pre-trial, meaning they have not been found guilty or delinquent.ⁱⁱⁱ More than 8,000 youth are being held for status offenses (acts that would not be a crime if they were adults) or technical violations of parole or probation.^{iv}

Being separated from families during crisis causes youth trauma.

Children, teens, and people with preexisting mental health conditions are among those "who may respond more strongly" to the stress and fears associated with the COVID-19 pandemic.^v Research has consistently demonstrated that the prevalence of mental health disorders among youth in detention and commitment facilities is at least twice that of youth who are not detained.^{vi} Young people forced to endure this pandemic locked in facilities and separated from their families may experience trauma and the exacerbation of existing mental health disorders; the long-term consequences of this trauma could impact their lives and public safety for years to come.^{vii}

Juvenile detention and commitment facilities are not equipped for a pandemic.

Like adult prisons, juvenile detention and commitment facilities are designed to maximize control of young people. They are not designed to allow for the practices necessary to limit the spread of COVID-19: frequent hand

washing with soap and water, social distancing, and regular cleaning and disinfecting of surfaces.^{viii} The provision of medical care in juvenile facilities is “extremely inadequate,”^{ix} solitary confinement is an inhumane response to incarcerated youth who test positive for COVID-19, and support and care will only worsen as the country’s healthcare system becomes increasingly strained by the pandemic.

The juvenile legal system disproportionately impacts youth and families of color.

The juvenile legal system’s disproportionate arrest and incarceration of youth of color will lead to devastating, racially disparate results if the system does not take the steps necessary to ensure the health of the youth in its care during the COVID-19 pandemic. Additionally, asthma, which increases risks of complications from COVID-19, is more prevalent among Black and Hispanic youth.^x

Health of youth, families, defenders, court personnel, and facility staff must be prioritized.

The juvenile court system has a responsibility to act during this national crisis to protect the health and safety of young people, their families, and the professionals within it. Court operations should be focused on the safe return of young people to their families to allow them to shelter in place. To stem the exponential growth of the COVID-19 pandemic, court hearings should be limited to those focused on release and removal of youth from the court system and those involving serious physical harm to an individual.

Juvenile legal system costs and fees cripple economically insecure families.

The COVID-19 pandemic has sent unemployment claims skyrocketing, and economists predict a recession for the United States and potentially the world. Juvenile court-related debt exacerbates economic disparities, as the vast majority of youth and families involved with the court system are in already-precarious financial situations.^{xi} Families can be forced to choose between paying their outstanding court debts or covering the costs of food, housing, and other necessities.^{xii} At this time of a global pandemic and ensuing recession, vulnerable youth and their families should not be saddled with court-related debt.

The National Juvenile Defender Center is a nonprofit organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense.

ⁱ *Youth Confinement: The Whole Pie 2019*, PRISON POLICY INITIATIVE, <https://www.prisonpolicy.org/reports/youth2019.html> (last visited Apr. 1, 2020).

ⁱⁱ *Id.*

ⁱⁱⁱ *Id.*

^{iv} *Id.*

^v *Managing Anxiety & Stress*, CTNS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/managing-stress-anxiety.html> (last visited Apr. 1, 2020).

^{vi} Seena Fazel et al., *Mental Disorders Among Adolescents in Juvenile Detention Correctional Facilities: A Systemic Review and Meta-analysis of 25 Surveys*, 47 J. AM. ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY 1010-1019 (2008); Linda A. Teplin et al., *Comorbid Psychiatric Disorders in Youth in Juvenile Detention*, 60 ARCHIVES GEN. PSYCHIATRY 1097-1108 (2003); Linda A. Teplin et al., *Psychiatric Disorders in Youth in Juvenile Detention*, 59 ARCHIVES GEN. PSYCHIATRY 1133-1143 (2002).

^{vii} Dr. Antoinette Kavanaugh, Ph.D., ABPP Decl., Mar. 30, 2020, <https://njdc.info/wp-content/uploads/Declaration-of-Dr.-Antoinette-Kavanaugh-Ph.D.-ABPP.pdf>.

^{viii} *How to Protect Yourself*, CTNS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html> (last visited Apr. 1, 2020).

^{ix} *Unjust Medicine: Why Health Care in Juvenile Justice Facilities is Often Atrocious and What’s Being Done About It*, YOUTH TODAY (Jul./Aug. 2004), <https://www.centerforhealthjournalism.org/fellowships/projects/health-care-juvenile-detention-centers>.

^x Eric Forno, *Health Disparities in Asthma*, 185 AM. J. RESPIRATORY AND CRITICAL CARE MED. 1033 (2012).

^{xi} See Tamar R. Birkhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J. L. & POL’Y 53 (2012).

^{xii} U.S. Dep’t of Justice, *Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles* (Jan. 2017), <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf> (last visited Apr. 1, 2020).