



March 16, 2020

**Statement on COVID-19 and Youth in the Juvenile Justice System**

We, the Pacific Juvenile Defender Center (PJDC), call upon our state, county, and municipal governments to take immediate action against COVID-19 to protect one of California’s most vulnerable group of children—young people in the juvenile delinquency system. PJDC is California’s largest organization of juvenile justice advocates, comprised of over 1,600 juvenile defenders, policy professionals, and law school faculty, and we work across the state to advocate for the safety and wellbeing of California’s youth. Below we provide a set of recommendations to ensure that our young people are not put at heightened risk of being impacted by COVID-19.

The COVID-19 pandemic has swept across the globe, causing widespread upheaval in unprecedented ways. All levels of government are taking action to protect our vulnerable populations and the public at large. Governor Newsom has declared a State of Emergency and continues to issue orders and recommendations. County and local governments have been taking action. As a result, large swaths of our population are being told to "shelter in place"; schools and universities across the state have shut down; businesses are closing; gatherings of increasingly smaller numbers are banned; and worldwide travel has been sharply curtailed. Everyone is being asked to practice “social distancing” and to stay home to “flatten the curve.” Seemingly every minute, there is another call to radically alter our lives as humanity comes together to fight this virus.

There is broad recognition that inmates in custodial settings are at great risk and must be protected. These concerns stem from lessons learned from other countries. When COVID-19 suddenly exploded in China’s prisons, there were reports of more than 500 cases spreading across five facilities in three provinces. In Iran, 54,000 inmates have already been temporarily released back into the country amid virus fears.

At this time of great uncertainty, our children in juvenile detention facilities must become a priority.

Every measure to address safety in adult jails and prisons must also address the many young people held in juvenile halls and state facilities. Young people in the court system are especially vulnerable because they have little control over their situation and have specialized needs. Any local and statewide plans to mitigate the pandemic and to “flatten the curve” of the virus must include this population. Even though research has not yet borne out how exactly the virus affects the young, all of these children are part of multigenerational households. Moreover, just as adults are experiencing significant stress, fear, and anxiety, those feelings are only compounded for detained and non-detained youth and their families who are already susceptible to health and economic instability. Justice-involved children, like all of us, seek solace among those we love and who love us.

On any given day, upwards of 5,000 California youth are in some form of detention, either in county facilities or at the state Division of Juvenile Justice. Detained youth are at greater risk of contracting and exposing others to COVID-19 if they remain in detention. Young people are arrested and brought into detention facilities daily. Probation officers and facility staff enter and leave these institutions daily. Law enforcement, attorneys, community organizations, and family members regularly visit these facilities. COVID-19 has multiple opportunities to enter and to spread in juvenile facilities just as in adult detention facilities. Further, while some counties have closed courthouses for non-emergency matters, this measure exacerbates the situation for those in custody. Not only is their time in detention lengthened, but as the Chief Justice's order has made clear, every day of delay tolls procedural protections such as speedy trial rights.

Even as courts are announcing courthouse closures, others are continuing to operate. Children are summoned to appear for these pre-trial and post-disposition hearings. Unlike adult cases, juvenile cases routinely have ongoing court hearings after the disposition (or sentencing) stage until the probationary period ends. These young people, and those who accompany them to court, often via public transportation, are vulnerable to the disease.

**At its core, the juvenile justice system is about rehabilitation and public safety. In the face of this pandemic, the balance of interests must favor releasing young people from locked facilities.** Especially in local juvenile hall detention facilities, many youth are being held for misdemeanors or low-level felonies, for violating probation conditions, or are simply waiting to be placed at a residential group home. Youth who present little to no public safety threat must be released immediately. For those who are not released, affirmative protective measures must be put in place so that any detained youth's health is not compromised nor their due process rights violated.

The need is urgent. As an organization providing voice for young people, we propose the following recommendations. We offer to work in partnership with statewide and local jurisdictions to create policies regarding youth in detention, their family members, legal counsel, and facility staff. COVID-19 threatens the health and lives of untold numbers of Californians. Continued confinement in juvenile hall facilities will exacerbate the pandemic.

Therefore, we urge Governor Newsom, Surgeon General Nadine Burke Harris, the Department of Health and Human Services, the Judicial Council, County Probation Departments, the Courts, and District Attorneys throughout the state to implement the following measures:

County Probation Departments, Chief Probation Officers of California, the Division of Juvenile Justice/Department of Youth and Community Restoration (DJJ/YCR):

1. Immediate release of all pre-adjudication youth.
2. Immediate release of all post-adjudication youth being held on technical probation violations.
3. Clearance of existing warrants and a moratorium on detention for probation violations. Youth should be allowed to appear in court or by phone without having to surrender to clear warrants. Reducing these unnecessary detentions will reduce the risk of transmitting a virus between the facilities and the community, and vice versa.
4. Immediate release of youth from local Camp or Ranch programs.
5. For youth in custody awaiting residential placement, immediate release either to a family member, a residential group home, or a different non-custodial setting.

6. Early Release from DJJ as follows:
  - (1) Immediate release of any and all young people whose release will not pose a serious physical safety risk to the community;
  - (2) Immediate release of any and all young people with release dates within 90 days or less of their DJJ disposition remaining; and
  - (3) Advanced parole dates for youth scheduled for a hearing in the next six months.
7. Suspend detention for new arrests on low-level cases, including all misdemeanors and non-violent felonies.
8. All arresting agencies should cite and release all youth who are eligible rather than booking them and potentially introducing COVID-19 into juvenile detention facilities.
9. For youth who remain in detention, each local Probation Department and DJJ/YCR, in conjunction with county Departments of Health, needs to address care inside the facilities.
  - a. Care for all youth who remain in custody in accordance with Title 15 Minimum Standards for Juvenile Facilities and Welfare and Institutions Code 202.
  - b. Develop a thorough and public preparation plan that addresses basic hygiene and safety concerns. This preparation plan should include the frequent and deeper cleaning of facilities, including dining and recreational areas, clothing, and bedding in all shared and private spaces, as well as the use of effective disinfectants.
  - c. Develop a plan to address the mental health and emotional needs of detained youth living through this crisis who are separated from their families.
10. Ensure that all measures protect the due process and human rights of detained youth.
  - a. No quarantine or other methods of “social distancing” in a carceral setting that infringe of due process and basic human rights. All efforts should be made to ensure that policies and staff are not resorting to practices that would amount to constitutional violations, such as room confinement or terminating visitation.
  - b. Youth showing symptoms of COVID-19 should be removed from juvenile hall immediately, sent to a hospital or other medical facility, tested and quarantined in their homes or another safe non-carceral setting pending testing results.
11. Immediate development of testing protocols for all employees who live, work and visit inside juvenile facilities.
  - a. Develop and publish protocols for screening and/or testing of staff, youth in detention and visitors.
  - b. Provide regular online updates for the public, officials and media on the impact of COVID-19 on youth inside the facilities, including data on both detained youth and staff.
12. Guarantee access to visiting and guarantee access to free phone calls, mail and court hearings. Detained children already experience profound isolation from their families and communities. Fear of exposure should not be used to justify further isolation of detained youth. Some probation departments and DJJ/YCR have suspended regular visitation. All facilities should reinstate or maintain visitation access, continue to provide access to mail, and institute daily, free phone calls to provide reassurance to families worried about their children inside and improve access to defense counsel. Efforts should also be made to make video-visiting available through Skype, FaceTime or similar programs.
13. Detained children should continue to have access to their court hearings, unless the child and defense counsel request to waive their appearance, in which case all efforts should be made for the child to appear telephonically or through video.

County District Attorneys:

1. Advocate for the immediate release of any youth within six months of completing their sentence and all youth charged with an offense that does not involve a serious physical safety risk to the community, in the interests of justice. This includes technical violations of parole or probation regardless of the underlying offense. This will reduce the risk of transmitting a virus between the facilities and the community, and vice versa.
2. Immediately implement a pretrial policy that requires all prosecutors to advocate for the pretrial release of all young people, unless there is clear evidence that release would present an unreasonable risk to the physical safety of the community. The vast majority of youth facing pretrial detention should be released and allowed to remain in the community.
3. In all cases, provide public health/COVID-19-informed justification for any actions or requests before the court that will bring young people into courthouses and juvenile detention facilities.

County Superior Courts:

1. Uphold the statutory presumption of release for all pre-adjudication youth. In making detention determinations, weight heavily the significant risk of mortality and spread of disease inside detention facilities, and the traumatic stress that is inflicted on young people by being separated from their loved ones during a global crisis.
2. Eliminate in-person court appearances for non-essential hearings, including probation progress hearings, technical probation violations, and all misdemeanor and low-level felony cases. If requested by defense counsel, agree to waive young people's appearance for status court dates (for youth both in and out of detention).
3. Decline to issue "failure to appear" warrants or "bench warrants."
4. Cancel all probation, DJJ parole, and pretrial meetings; court-ordered classes; in-person drug testing; collection of court debt; and modify all reporting conditions to permit phone reporting.
5. Cancel probation or DJJ parole violation hearings based on technical violations upon request of defense counsel, and release those youth held in detention on these violations.
6. Require that prosecutors provide public health/COVID-19-informed justification for any actions that will bring people into courthouses and juvenile detention facilities. Ensure those justifications are on the record for public scrutiny.

These are unprecedented times, and we cannot wait for confirmation that COVID-19 has entered our local and state juvenile detention facilities before we act. We urge you to take immediate and decisive steps now to save the lives of our young people, their caregivers, communities, probation officers and detention facility staff. All of us in the juvenile justice system are working towards the better good of these young people. We offer these suggestions in partnership. Together, we must ensure community safety as well as the emotional and physical health of our young people.

On behalf of the Pacific Juvenile Defender Center and the children we represent,

  
Ji Seon Song  
President