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April 7, 2020

By Electronic Transmission

Honorable Tani Cantil-Sakauye
Chief Justice of California
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688 (Attention Martin Hoshino)

Re: Follow Up Request for COVID-19 Guidance in Delinquency Cases

Dear Chief Justice Cantil-Sakauye:

We attended the April 6th Judicial Council meeting, and were both impressed and gratified by the work you and your colleagues are doing to address the enormous challenges COVID-19 presents for every aspect of our court system. The steps you took yesterday will surely help to reduce suffering and provide guidance in the many areas touched by the new emergency rules.

By this letter, we are taking you up on the statement that you are constantly re-evaluating and assessing the need for additional rules and advisories. That makes very good sense, since the COVID-19 situation changes on a daily basis and as time goes on, it is easier to see where further guidance is needed. While the new delinquency rule (Emergency Rule 7, effective April 6, 2020) will protect youth and court personnel by implementing remote hearings, and will help to prevent protracted delays in many cases, there are two additional front-end issues urgently needing immediate attention.

1. Need for An Organized Process for Evaluating/Processing Release

First, there is a need to focus immediate attention on the process and authority for release. You addressed this in the adult context by providing an order eliminating bail for low level offenses. Because juveniles do not have a right to bail, there is a pressing need for a process for all detained youth to be evaluated for release and to have the court order release where appropriate. Our members are telling us that there is enormous confusion over who has the authority to release and what the grounds for release should be. While our lawyers are going into court on individual motions for release, that is a time consuming and inefficient process. Some counties are setting up protocols for this process, but many are not.

We urge you to promulgate a rule requiring the following (a version of this was also included in our April 4th letter):

The presiding juvenile court judge in each county juvenile court shall immediately convene and oversee a process in which probation, the district attorney, the public defender or other defender agency, and other relevant agencies evaluate each youth in custody for immediate release. Those involved in this process shall act from the principle that COVID-19 poses an unprecedented to youth and staff who work in the system, and to the public if our health system should be overwhelmed by failure to stem the spread of COVID-19 in institutions. In this context, public safety includes consideration of the public health risks of any decision.

The release decision shall be based upon the following criteria:

- Underlying health issues that expose the youth to complications from COVID-19, including but not limited to asthma, respiratory disease, pregnancy, or other conditions that compromise the young person's immune system
- Whether the young person can be safely released to the community. In evaluating this, the parties consider the individual characteristics and background of the youth. They shall also consider release for youth detained for minor probation violations, youth serving short periods of confinement as a condition of probation, and youth who are successfully nearing the end of commitment programs
- Whether the underlying rehabilitative purpose of confinement for rehabilitation cannot be fulfilled because education and programming ordered by the court cannot currently be provided
- Whether the juvenile facility where youth are held is able to provide the protective measures for the youth outlined in the CDC Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities guidance ((distancing, hand washing/disinfectants, masks, shared facilities, etc.); and the need to release of youth who have been exposed to COVID-19 where the facility is unable to provide needed care and protections

In addition, the presiding judge of the juvenile court shall meet regularly with probation, the district attorney, and public defender or other defense counsel, to set expedited dates or to resolve other matters without a hearing, by consent of the parties.

2. Need for Prompt Detention Hearings/Immediate Appointment of Counsel

Second, we urge you to issue additional guidance for the detention phase. Although the new emergency rule requires compliance with the timelines in Welfare and Institutions Code section 632, that still means that youth may spend 3 to 5 (or even more) days in custody before a detention hearing and often, before seeing a lawyer, depending on what day of the week they were arrested. We know from the experts that

every day counts in trying to prevent the spread of COVID-19. Having prompt detention hearings would result in some youth being released, and would facilitate the work of detention staff, who could possibly keep pre-detention hearing youth separate from general population, thus reducing potential exposure. We have two suggestions for expediting the process. The first would assure immediate access to counsel:

The presiding juvenile court judge in each county shall issue an emergency order provisionally appointing the public defender or other defense entity in the county at the time a youth is brought to the juvenile hall, and order the probation officer to notify the public defender or other defense entity when a youth is received.

This would help to open lines of communication that could result in release or a step-down alternative to detention prior to the detention hearing, or more complete information for the court at the time of the detention hearing. It would also lessen the anxiety youth are experiencing upon being detained in the midst of the COVID-19 crisis by giving them someone who can immediately act on their behalf if something is going wrong.

In addition, we urge you to issue an emergency rule shortening the time for the detention hearing. Although the California Supreme Court has not yet been given an opportunity to rule on whether the timelines in Welfare and Institutions Code 631 and 632 violate the ruling in *Riverside v. McLaughlin* (1991) 500 U.S. 44, the current statutory timelines are too long in the context of this crisis. With fewer youth being arrested and detained, and the remote capacity now unfolding, timelines can be made shorter. We suggest that the following emergency rule be issued:

A detention hearing for a child who is in custody under Welfare and Institutions Code section 631/632 shall have their initial court hearing and probable cause determination within 48 hours from arrest (excluding weekends and holidays), as required by *Riverside v. McLaughlin* (1991) 500 U.S. 44.

We strongly believe that providing an organized process for evaluation and processing of youth for release will efficiently use court resources and help to clear out space, so that the many juvenile facilities that are understaffed (and becoming more so on a daily basis) can do the best job possible in protecting the youth who remain detained. Assuring expedited detention hearings with immediate assistance of counsel may help to prevent some youth from staying in detention, or allow them to be released after a shorter period.

These practices will help to bring county facilities closer into compliance with CDC guidelines (*Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*), and the recommendations of the Physicians for Criminal Justice Reform that governors, court systems and correctional departments, “Immediately release youth in detention and correctional facilities who can safely return to the home of their families and/or caretakers, with community-based supports and supervision, in order to alleviate potential exposure to COVID-19” and that

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they “Halt new admissions to detention and incarceration facilities to mitigate the harm from the COVID-19 pandemic. (*COVID-19 Risks for Detained and Incarcerated Youth.*)

We are already hearing feedback on yesterday’s emergency rules. Some defenders are troubled that adult defendants, but not youth in delinquency cases, may refuse to consent to remote hearings. We also know, from yesterday’s meeting, that this was a difficult issue and that you were trying to balance public safety for COVID-19 with the need to protect constitutional and due process rights during this period. This may be an issue to revisit as things move forward. We also have heard that people are concerned about the timelines for youth in competency proceedings being extended, since those are among the most vulnerable youth in the system. We would be glad to assist you in reconsidering those issues.

In the meantime, prompt attention to the issues set forth in this letter are critically important to prevent the spread of COVID-19 in California juvenile facilities. Every day is important in reducing the number of young people who may be exposed. Thank you for your consideration. We very much appreciate all that you are doing to make things work as well as they can in this unprecedented crisis.

Sincerely yours,



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