

Model Covid-19 Population Reduction Protocol for Secure Juvenile Facilities

This model protocol provides a simple process to fairly and safely reduce the population in secure juvenile facilities to protect youth and staff during the Covid-19 pandemic. The protocol leaves to the discretion of counties its exact implementation, while providing a uniform framework that ensures consistency in the application of justice across the state. It would supersede existing law as authorized by Executive Order N-38-20 and is intended to be in force for the duration of the state of emergency in California.ⁱ

New Admissions to Detention

1. The county probation department shall immediately notify the district attorney and the public defender (or other defense counsel) when a youth is transported to detention.
2. In determining whether to detain a youth, the probation department shall presume the following youth to be inadmissible, unless a probation officer determines and documents how the youth presents a substantial and immediate safety risk to others:ⁱⁱ
 - a) Youth at heightened risk of serious illness from the virus because of a pre-existing health condition or pregnancy;
 - b) Youth arrested for a probation violation and no new crime is alleged;
 - c) Youth arrested on a warrant and no new crime is alleged;
 - d) Youth arrested for any misdemeanor offense; or
 - e) Youth arrested for any felony offense in which no one is injured.
3. If a youth is detained, the juvenile court shall hold a detention hearing within 48 hours of arrest, excluding weekends and holidays, and shall detain the youth only if the court determines the youth presents a substantial and immediate safety risk to others.ⁱⁱⁱ

Review of Existing Population in Custody

1. The juvenile court shall immediately convene a meeting with the probation department, defense counsel, and the district attorney to conduct a review of every youth in county detention.
 - a) If the parties agree release is appropriate, the court shall issue an order for the youth to be released.
 - b) If the parties disagree about release, the court shall promptly hold a hearing to determine whether the youth presents a substantial and immediate safety risk to others. This standard shall not be met solely because the youth does not have an alternative placement.
 - c) The following currently detained youth shall be presumptively eligible for release:
 - (i) Youth at heightened risk of serious illness from the virus because of a pre-existing health condition or pregnancy;
 - (ii) Youth detained for a probation violation and no new crime is alleged;
 - (iii) Youth detained on a warrant and no new crime is alleged;
 - (iv) Youth detained or committed for misdemeanor offenses;
 - (v) Youth detained or committed for any felony offense in which no one is injured;
 - (vi) Youth undergoing competency proceedings;
 - (vii) Youth awaiting placement or pending re-placement; or
 - (viii) Youth with dispositions to juvenile halls or camps:

- who cannot complete programming requirements because services are not being provided during the emergency and/or
 - whose release date is within 90 days of the hearing.
2. The party objecting to release bears the burden of overcoming the presumption by clear and convincing evidence.
 3. The court shall issue an order approving or denying release.

Re-entry Services

1. The court shall order release of the youth to family, relatives, or other responsible adults, giving preference to the least restrictive appropriate placement.
2. If these options are not available, probation shall make reasonable efforts to identify the least restrictive appropriate placement and support services.
3. Probation shall make reasonable efforts to identify community-based organizations that are able to offer services to youth.
4. Discharge planning should ensure that youth will have continued access to health care and other essential services.

ⁱ California Governor Gavin Newsom, Executive Order N-38-20, March 27, 2020. <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf>.

ⁱⁱ This is the standard adopted by Michigan Governor Gretchen Whitmer in her Executive Order 2020-29 (March 10, 2020), requiring release of youth from detention facilities who are not “a substantial and immediate safety risk to others.” https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523422--,00.html.

ⁱⁱⁱ The United States Supreme Court has held that in jurisdictions that combine probable cause determinations with arraignments the hearing must occur within 48 hours of arrest, and intervening weekends or holidays do not constitute extraordinary circumstances to extend that period. *Riverside v. McLaughlin* (1991) 500 U.S. 44, 56-59. California's statutory scheme for youth (Welf. & Inst. Code sections 631-632), exceeds that period in allowing extra time for weekends and holidays, plus an extra day for going to court. During the COVID-19 crisis, youth should be afforded an initial hearing within the time that adults in California always receive.