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April 4, 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: Request for COVID-19 Guidance for Delinquency Proceedings

Dear Chief Justice Cantil-Sakauye:

We write to request specific COVID-19 emergency guidance for juvenile delinquency courts, which has not been provided in your earlier orders. In the month since you issued your statewide order (Statewide Emergency Order by Hon. Tani G. Cantil-Sakauye, March 30, 2020), the ravages of COVID-19 virus pandemic have grown exponentially and are now affecting court personnel and correctional facilities.

Contrary to initial information, we now know that young people are very much in danger of harm from the virus, particularly in correctional settings. While detention is traumatic for youth under any circumstances, being separated from their home and families is particularly great for young people in the midst of this crisis. We also have much greater information about what is needed to keep staff and youth safe and to have the best chances of containing the virus both in and outside of correctional facilities.

The enormous dangers of COVID-19 for all correctional facilities have been described by the Centers for Disease Control. (*Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.) The Physicians for Criminal Justice Reform have detailed the particular dangers for detained juveniles (*COVID-19 Risks for Detained and Incarcerated Youth*, <https://njdc.info/wp-content/uploads/PFCJR-Statement.pdf>.) Because of the near impossibility of providing appropriate protections in detention, the group has recommended 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 “Halt new admissions to detention and incarceration facilities to mitigate the harm from the COVID-19 pandemic.”

While some counties may be fashioning good responses, there is great uncertainty about who has the authority to do certain things and what should

be done. Just yesterday, a news article reporting extremely troubling COVID-19 interventions in county juvenile facilities quoted a juvenile defender in Los Angeles:

We now have reports that the probation department has supposedly generated a list of youth that are eligible for release. And the courts have largely been blocking these releases," he said. "None of us have seen the actual list. The judge has to make the order to release a kid. We're really operating in the dark here.

The same article quoted from a statement from Los Angeles County Probation:

The L.A. County Probation Department is working with the courts and legal partners on methods to safely reduce the juvenile population housed at Probation facilities... Those that meet eligibility criteria will be sent to court with a recommendation for release, however, only the court can authorize a release. Unlike the adult system, we are unable to unilaterally release children from custody. Youth are committed to our care by a judicial process and court order and can only be released from custody by the juvenile court.

(O'Neil, *'10 To A Room, A Few Feet Apart': Advocates Say LA County's Incarcerated Youth Are At High Risk*, LAist, (Apr. 3, 2020), <https://laist.com/2020/04/03/coronavirus-youth-offenders-risk-los-angeles-county.php>.)

This confusion in the state's largest county exists in many parts of the state. There is tremendous need for clear guidance to juvenile courts and court professionals. It is also important to dispel the argument being made in some courts that youth are safer in detention than locked in a detention facility in the midst of this pandemic. This is simply not the case, given the very real dangers that youth and staff may succumb to the virus and that facility health systems may be overwhelmed. While some youth may not be able to go home to their birth parent, our laws contemplate a series of alternative placements that should be considered before retaining the youth in detention. As we know from watching the news, every day is critically important in taking the needed measures to stop COVID-19.

Accordingly, we write to ask that you issue an order specifically addressing delinquency court proceedings. There is a need for guidance to the courts in setting up a process for evaluating release decisions, shortening the time for detention hearings and appointment of counsel, and triaging on the time for and process for other kinds of hearings. We very much appreciate your efforts to protect constitutional and due process rights during this period and offer these suggestions toward that end.

Our organization, the Pacific Juvenile Defender Center provides support to more than 1600 juvenile defenders and advocates throughout the state. We have actively been collecting information about what is happening on the ground during this period and how courts and juvenile facilities are dealing with the emergency. We have also been collecting information from public health organizations and experts about what is needed to protect youth and staff and to contain the virus.

1. Process for Determining Release Decisions

While many juvenile defenders and probation officers are pursuing individual motions for release, and surely will continue to do so, this emergency calls for a systemic approach to evaluating and processing release decisions. The virus is growing exponentially on a day-to-day basis and is now appearing in California juvenile facilities. We urge you to issue the following order:

As part of social distancing, the presiding judge in each county juvenile court shall take immediate steps to provide alternatives to in-person appearances and confidential visiting for youth, families and attorneys for youth in delinquency cases.

The presiding 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 remove youth who have actually been exposed to COVID-19 if the facility is unable to provide needed care

- When the young person can safely be released, what steps are needed to assure an appropriate setting for release. The court shall assure that there have been reasonable efforts to reunify youth with their family in accordance with Welfare and Institutions Code section 636.

2. Detention Hearings and Appointment of Counsel

Your March 30, 2020 Order extended the time period set forth in Penal Code section 825 within which a defendant charged with a felony offense must be taken before a judicial officer from 48 hours to not more than seven days. The Order did not specifically address detention hearings in delinquency cases. In the time since March 30, we know several things. First, every day that a person is in custody is significant in exposing them to other youth and staff who are coming in and out of the facility. Second, once COVID-19 takes hold in a facility, there is a danger that its health services will be overwhelmed, that social distancing will become impossible, and that people will then need to be moved or released in an even more complicated scenario. This means that the less time a person is held in detention, the better, in terms of potential COVID-19 transmission both from people coming in and from the institutional population. Also, for youth who are likely to be released at a detention hearing, a shorter wait time would enable facilities to more easily separate them from general population for the brief period before their hearing.

Under current law, youth may be held 3-7 days before seeing a judge (Welf. & Inst. Code 631, 632) and having a lawyer appointed. Having a lawyer involved early on could help the relevant parties to have more complete information about the youth and release options. Also, we know that fewer youth are being arrested and brought to juvenile halls, so the workload is not as great as it otherwise would have been. Rather than extending the time for detention hearings, the staffing that would have been utilized further down the road could simply be moved up to an earlier point. Also, since court hearings are now being provided remotely, judicial officers should be more readily available to preside in detention hearings. We urge you to issue the following order:

- The presiding judge in each county juvenile court shall assure that each youth who is taken into custody is afforded a detention hearing, which may be provided remotely within 48 hours (not excluding weekends and holidays) with the assistance of counsel.
- The presiding judge in each county juvenile court shall order probation to notify the public defender or other defense counsel when youth are delivered to the juvenile hall -- to facilitate pre-detention hearing investigation. Formal appointment of counsel will occur at the 48-hour detention hearing.
- The presiding judge in each county juvenile court shall direct stakeholders to act in conformity with public health directives to halt new admissions to detention and incarceration facilities as a means of mitigating the harm from the COVID-19 pandemic, and to permit such detention or incarceration only where there is a serious public safety risk of harm to the community.

2. Time for trial and other hearings

The March 30, 2020 Order allows trial in adult proceedings to be held at a date later than would have been the case under existing statutory law. Again, since the time that Order was issued, we have become increasingly aware that the longer someone is in custody, the greater the chance that they will be exposed to COVID-19 because facilities are inherently unable to provide adequate social distancing and protection. Accordingly, we urge you to issue an order calling for juvenile courts to adhere to statutory timelines, but also to consider whether the time for some hearings may be shortened by agreement of the parties:

With the exception of the detention hearing timelines set forth in this Order, county juvenile courts shall adhere to statutory timelines for the holding of juvenile delinquency hearings. 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.

We have not addressed the many issues involved in non-detained cases in this letter, because the issues facing detained youth and system personnel are truly the most pressing. Thank you for your leadership on these issues. We are glad to work with you or your staff in helping to further develop this proposed order.

Sincerely yours,

Ji Seon Song, President
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Thomas C. Grey Fellow and Lecturer in Law
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Cc: Honorable Jerilyn Borack and Honorable Mark A, Juhas, Co-Chairs,
Family and Juvenile Law Advisory Committee