

March 23, 2020

To Juvenile Court Administrators, and Presiding and Juvenile Court Judges:

We, a broad coalition of community-based organizations, legal service providers, and concerned stakeholders, are calling on you to take immediate action to protect the health of youth incarcerated by local county detention facilities throughout the state (collectively “Youth Detention Centers”). COVID-19 threatens the lives of countless youth under the care and control of Youth Detention Centers. Given the current health crisis, without decisive action, youth incarceration in Washington may quickly turn into a death sentence.

Our detained youth—like all people in prisons and detention centers—are particularly vulnerable to COVID-19 outbreaks.¹ We know that any detention has a profoundly negative impact on a young person’s life.² Put plainly, “Incarceration harms children.”³ The current health crisis only aggravates that harm.⁴ Given the inherently high risk of infection in detention settings on top of the pre-existing negative impact of youth detention, the best protection is release for every youth currently held in Youth Detention Centers.

As a first step, immediate actions must be taken to protect the youth in Youth Detention Facilities and slow the spread of COVID-19 within this vulnerable population. These actions include the following:

- Release immediately the most medically vulnerable youth in your facility;
- Immediately reduce the population of currently incarcerated youth through diversion and other strategies;
- Create transition plans to support youth who are released and ensure that they have safe and stable housing;
- Repurpose probation away from issuing violations and toward providing assistance and supports to keep people safe;
- Change intake and admissions practices so that no new youth are incarcerated;

¹ See <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>.

² Barry Holman & Jason Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2011), at 3-4, http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf; Richard A. Mendel, Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration* (2011), at 5-9, <https://files.eric.ed.gov/fulltext/ED527944.pdf>.

³ *State v. B.O.J.* 194 Wn.2d 314, 332 (2019) (Gonzalez, J. concurring).

⁴ See <https://www.motherjones.com/crime-justice/2020/03/health-care-behind-bars-is-already-abysmal-are-prison-officials-prepared-for-the-coronavirus/>.

- Provide COVID-19 testing and treatment in a manner that meets or exceeds community-based standards of care;
- Provide all incarcerated youth unfettered access to soap and water, hand sanitizers, and single use towels;
- Implement social distancing measures, without placing youth in solitary confinement or locking youth in their cells for extended periods of time;
- Provide increased telephone, email, and video access to incarcerated youth free of cost;
- Ensure that Youth Detention Centers set up distance learning or other educational opportunities for incarcerated youth; and
- Ensure that incarcerated young people and their families receive updated, comprehensive, timely and thorough information.

The emergency facing Youth Detention Centers, their staff, and the youth in their custody.

The danger that COVID-19 poses to the youth living under Youth Detention Centers' care cannot be overstated. Current projections of the spread of this virus indicate that as many as 50% of people living in the United States could become infected, with roughly 20% of that number requiring intensive hospital care.⁵ Despite initial data that showed elderly people and those with underlying health conditions were most vulnerable, new evidence in the United States suggests that young people are also falling seriously ill and require intensive care.⁶

Youth Detention Centers are particularly ill-suited to address the current pandemic. The risk of exposure to COVID-19 is exacerbated by the facts that youth live in close contact with one another, social distancing is difficult, hygiene services and essential medical equipment is in short supply, and medical treatment is not easily accessible. Once COVID-19 breaks out, it will likely spread quickly through the detention facilities.⁷ COVID-19 has already infected at least three correctional officers in the adult prisons;⁸ Youth Detention Centers are equally vulnerable and infections will occur, if they haven't already.

The burden upon Youth Detention Centers and their resources will be extreme. Given the rate of infection in the community, and the close quarters of the facilities, it is not alarmist to believe that Youth Detention Centers could be facing many youth infected with the virus, requiring intensive medical interventions. Youth Detention Centers are

⁵ See https://www.washingtonpost.com/health/coronavirus-forecasts-are-grim-its-going-to-get-worse/2020/03/11/2a177e0a-63b4-11ea-acc8-80c22bbee96f_story.html.

⁶ See <https://www.bloomberg.com/news/articles/2020-03-19/coronavirus-in-young-people-is-it-dangerous-data-show-it-can-be>.

⁷ See <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus>.

⁸ See, e.g., <https://www.heraldnet.com/news/employee-tests-positive-for-covid-19-at-monroe-prison/>; <https://www.doc.wa.gov/news/2020/03182020p.htm>.

simply not equipped for providing the level and quality of medical care that will be required in such an outbreak, and unless immediate and serious steps are taken to slow transmission within its facilities, youth will die needlessly.

In order to rise to the coming crisis, advocates, community members, and families demand that you take the actions detailed below.

Release all youth, starting immediately with the most vulnerable

While we believe that release of all detained youth is necessary, we understand that COVID-19 poses the greatest risk of death to those who are immunocompromised, or those who suffer from diabetes, chronic obstructive pulmonary disorder and other lung conditions, high blood pressure, and those with cancer.⁹ Some youth currently detained fall into one or more of these vulnerable groups. This vulnerable population should be released immediately.

Not only will release remove this population from the extreme risk of infection they face in prison but reducing the overall population will also provide more flexibility to Youth Detention Centers and medical staff in relation to housing placements and other exigencies that facilities will undoubtedly have to implement in the coming months.

This crisis only highlights the need for Youth Detention Centers and policymakers to take further action to permanently stop detaining and incarcerating youth. Historically, mass incarceration has provided the breeding ground for the spread of infection and demonstrated a lack of necessary resources to combat it in our jails and prisons and keep people safe. This crisis will affect everyone both inside and outside the detention center. People and their communities will always be much safer when they can receive appropriate health care within the existing community-based, health care system rather than rely on the prisons or jails.

Immediately reduce the population of currently incarcerated youth through diversion and other strategies

In order to further decrease the overall population and provide more flexibility and resources to meet the coming crisis, Youth Detention Centers should immediately release all sentenced offenders and convert their remaining detention time to in-home self-quarantine. In addition, all youth awaiting probation modification should be immediately released and given a new court date and instructions as to how to cure the alleged violation. Doing so will not only reduce the population within detention but also provide increased flexibility as the virus spreads and Youth Detention Centers face inevitable staff shortages.

Youth Detention Centers should also work with local prosecutors to explore other avenues for decreasing the overall youth detention population in the face of this public

⁹ See <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> ; <https://www.nytimes.com/2020/03/12/health/coronavirus-midlife-conditions.html?auth=login-email&login=email>.

health emergency, such as offering diversion agreements to all eligible youth¹⁰ and pursuing alternatives to detention and incarceration.

Create transition plans to support youth who are released and ensure that they have safe and stable housing

For all youth who are released, Youth Detention Centers should create transitional plans to ensure that they have a place to live that would meet their basic needs and maintain their own and their community's safety. This is aligned with the state's commitment to keep young people from becoming homeless after their release from detention.¹¹ Additionally, these releases should be coordinated with local and state public health agencies and social service providers to ensure that medically fragile youth leaving custody receive an appropriate continuum of care. This includes ensuring that released youth have immediate access to educational programming and if needed to Medicaid. They should receive immediate and adequate medical care. Coordinated care will ensure that the most vulnerable members of our communities are protected and reduce the likelihood of unnecessary spread of the virus.

Redirect probation officers away from issuing violations and toward providing assistance and supports to keep people safe

The dangers facing youth currently held in detention are significant. Issuing probation violations to youth under supervision unnecessarily increases the risk of spreading the virus through courtroom and detention contact.

Accordingly, all youth currently under probation or community supervision should be released from that status to allow probation officers to focus on assisting youth being released from detention to stay safe and effectively reintegrate into their communities. Youth Detention Centers should also immediately place a moratorium on violations and instead provide resources and support to youth under their supervision in order to keep them out of facilities that would put their health at risk.

Change intake and admission practices so that no new youth are incarcerated

In alignment with the need to lessen the burden on detention centers, juvenile courts and Youth Detention Centers should significantly limit the Juvenile Detention Intake Criteria to only allow youth referred on certain serious offense types to be eligible for a detention booking. Moreover, Youth Detention Centers should review their detention risk assessment and screening tools to ensure that no youth exhibiting low-risk factors and no youth exhibiting medium or high risk of failure to appear are admitted. Furthermore, community resources should be leveraged to support any remaining youth so that they are not detained.

¹⁰ See RCW 13.40.070(8) (allowing for unlimited diversions for all misdemeanors and most felonies).

¹¹ See <https://www.seattletimes.com/seattle-news/homeless/youth-often-become-homeless-just-after-leaving-juvenile-detention-can-state-really-stop-it/>.

In accordance with the Washington Supreme Court's Order in response to the Covid-19 emergency¹², no youth should be detained for failure to appear at a court hearing during this crisis. The fear of failing to appear should be addressed through less restrictive means rather than cited as a reason to detain a youth.

A "Screen and Release" procedure must be adopted and expanded to ensure that a judge reviews all potential booking into juvenile detention, regardless of offense, except those that occur very late at night or early in the morning. These measures will help ensure that the incarcerated youth population currently at risk of infection does not grow.

Provide COVID-19 testing and treatment in a manner that meets or exceeds community-based standards of care

Youth detained in Youth Detention Centers must be provided at least the same level of care that people living outside detention receive. Facilities must issue clear standards that meet current best practices regarding testing for the virus and follow-up medical care; it must also train staff to implement these measures effectively.

To the extent that Youth Detention Centers will continue to hold youth, they must be able to meet their health needs. Specifically, there must be adequate medical services, supplies, and practitioners available to diagnose and refer infected youth to local medical facilities. Additionally, the mental health of youth in custody may be especially affected during this time of uncertainty and chaos. Youth Detention Centers should increase youth's access to mental health providers, including virtual access through a video-chat platform.

Provide all incarcerated youth unfettered access to soap and water, hand sanitizers, and single use towels

While we understand that Youth Detention Centers are already taking steps to ensure that they protect their staff and youth living under their care, we want to underscore how important these steps are to effectively address this crisis. To this end, facilities should immediately suspend any prohibition on the possession of alcohol-based hand sanitizer and provide all youth living in facilities with an adequate supply of essential hygiene products at no cost. It should also ensure that all youth, including those in infirmaries, have access to hot water and soap.

To the extent specific facilities are having difficulty accessing sufficient supplies to meet these basic public health requirements, resources must be expended immediately.

Implement social distancing measures without placing youth in solitary confinement or locking youth in their cells for extended periods of time

¹² IN THE MATTER OF STATEWIDE RESPONSE)BY WASHINGTON STATE COURTS TO THE COVID-19 PUBLIC HEALTH EMERGENCY No 25700-B- (3/19/20).

Releasing all youth is the strategy most likely to mitigate risks to the most vulnerable people in custody. Facilities should also implement social distancing, one of the most effective measures to prevent the spread of COVID-19. To that end, Youth Detention Centers should cease transfer of youth to Juvenile Rehabilitation facilities unless medically necessary. Additionally, Youth Detention Centers should immediately assess their programming, dining, yard, movement, and work schedules to assess what measures can be taken to limit large gatherings within their facilities.

However, these efforts should not result in prolonged, widespread disruptions of programming. Any lockdowns or interruptions in regular activities, such as exercise or visits and phone calls with families or attorneys, should be based solely on the best science available, as determined by public health experts, and should be as limited as possible in scope and duration. Moreover, Youth Detention Centers should immediately cease any use of solitary confinement, a practice that is immensely harmful towards youth and does not mitigate the risks of infection. Releasing youth will likely relieve much of the need for long term isolation or lockdowns.

Provide increased telephone and video access to incarcerated youth free of cost

During this time of great social disruption and widespread fear, when facilities have stopped all in person visitation, the need to provide our youth access to family and loved ones is particularly important. Youth Detention Centers must accordingly take all necessary steps during this public health crisis to ensure that our young people can maintain and expand contact with their family members through increased access to video and phone calls. Family visitation rights can be preserved with precautions (such as glass wall barriers) that address concerns around the virus but also respect our youth's need for connection. Further steps could include increasing access and time for phone calls and setting up virtual communications for face-to-face calls.

Ensure that Youth Detention Centers establish distance learning or other educational opportunities for incarcerated youth

With many schools closing for the foreseeable future, it is critical that distance learning be available to detained youth to ensure stability in their learning and progress towards graduation. Educational support is especially critical for youth receiving special education services, and all youth with special education and 504 plans should continue to receive the services consistent with their Individualized Education Program and Section 504 plans. If e-learning is not possible, Youth Detention Centers should loosen any current restrictions on receiving educational materials such as paperback books through third party vendors (ie. Amazon) or other educational materials (ie. crossword puzzles, Sudoku, etc.) so that young people are engaged intellectually.

Ensure that incarcerated young people and their families receive updated, comprehensive, timely and thorough information

Many youth in Youth Detention Centers lack basic information about how to protect themselves, or what to expect should they become infected. Facilities must issue appropriate, thorough, regularly updated, and accessible instructions and directives to all youth under their care, as well as to their family members. They must take steps to ensure that this information is accessible to youth for whom English is not their primary language, those who lack literacy skills, and people with cognitive or sensory disabilities who may require assistance in accessing this crucial information.

Request for a Meeting

We understand that Youth Detention Centers, like all of us, are struggling to keep up with this rapidly changing situation, and we believe that the above steps are needed and we would like to meet with you, remotely, within the next few days to address these requests and share information. Please have your staff contact Kendrick Washington, American Civil Liberties Union of Washington, at kwashington@aclu-wa.org to arrange a telephone call.

Sincerely,

s/ Michele Storms
Executive Director
ACLU of Washington

s/ Anne Lee
Executive Director
TeamChild

s/ Megan Pirie
Vice President
ALL of US or NONE Eastern Washington

s/ JM Wong
Asian Pacific Islander Cultural Awareness
Group (APICAG)

s/ Sean Goode
Executive Director
Choose 180

s/ Tarra Simmons
Executive Director
Civil Survival

s/ Merf Ehman
Executive Director
Columbia Legal Services

s/ Aaron Counts
Co-Executive Director
Creative Justice

s/ Paul Benz
Co-Director
Faith Action Network

s/ JM Wong
Formerly Incarcerated Group Healing
Together (FIGHT)

s/ Anita Khandelwal
Director
King County Department of Public
Defense

s/ Maru Mora Villalpando
La Resistencia

s/ Erin Lovell
Executive Director
Legal Counsel for Youth and Children

s/ Annie Blackledge
Executive Director
Mockingbird Society

s/ Jorge L. Baron
Executive Director
Northwest Immigrant Rights Project

s/ JM Wong
Pacific Rim Solidarity Network
(PARISOL)

s/ Lisa Daugaard
Executive Director
Public Defender Association

s/ Sarah Tatistcheff
Staff Attorney
Snohomish County Public Defender
Association

s/ Carmen Pacheco Jones
Chair, Racial Equity Committee
Spokane County Regional Law & Justice
Council

s/ Shelton McElroy
National Director of Strategic Partnership
The Bail Project

s/ Thy Nguyen
The People's Assembly

s/ Joseph Seia
Co-Chair
Undoing Institutional Racism
Collaborative

s/ Willard C. Jimerson Jr.
Executive Director
United Better Thinking

s/ Eric Trupin, Ph.D.
Professor
University of Washington Medical School
Department of Psychiatry and Behavioral
Science

s/ Amy Hirotaka
Executive Director
Washington Association of Criminal
Defense Lawyers

s/ Christie Hedman
Executive Director
Washington Defender Association

s/ Nicole McGrath
Juvenile Attorney
Seattle, Washington

s/ Rachel Seevers
AVID Program Attorney
Disability Rights Washington

s/ Kimberly Ambrose (in personal
capacity)
Senior Lecturer
Director, Race and Justice Clinic
University of Washington School of Law

s/ Dominique Davis
CEO
Community Passageways