

March 23, 2020

Secretary Ross Hunter
Washington Department of Children, Youth, and Families
1500 Jefferson St. SE
Olympia, WA 98501

Dear Secretary Hunter:

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 Washington's Department of Children and Family Service's Juvenile Rehabilitation (JR). COVID-19 threatens the lives of countless youth under the care and control of JR. Given the current health crisis, without decisive action, youth incarceration in Washington may quickly turn into a death sentence.

Our incarcerated and 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 incarceration settings on top of the pre-existing negative impact of youth incarceration, the best protection is to release for every youth in JR.

As a first step, we are writing to ask that you take a number of actions to protect the youth in JR and slow the spread of COVID-19 within this vulnerable population. These actions include the following:

- Release all youth under JR's jurisdiction, starting immediately with the most vulnerable;
- Immediately release youth who are within 6 months of their release date;
- Create transition plans to support youth who are released and ensure that they have safe and stable housing;
- Repurpose probation, community supervision and parole officers away from issuing violations to people under supervision and toward providing assistance and supports to keep people safe;

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 to the extent possible, without locking youth in their rooms for extended periods of time;
- Provide increased telephone, email, and video access to incarcerated youth in those facilities that have limited visitation;
- Ensure that JR establishes distance learning or other educational opportunities for youth in custody; and
- Ensure that incarcerated youth and their families receive updated, comprehensive, timely and thorough information.

The emergency facing JR, its staff, and the youth in its custody

The danger that COVID-19 poses to the youth living under JR's 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

JR is particularly ill-suited to address the current pandemic. 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 JR.⁶ COVID-19 has already infected at least three correctional officers in the adult prisons;⁷ JR is equally vulnerable and infections will occur, if they haven't already.

The burden upon JR and its 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 JR could be facing many youth infected with the virus, requiring intensive medical interventions. JR is 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 under JR's jurisdiction, starting immediately with the most vulnerable

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

⁶ See <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus>.

⁷ 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>.

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.⁸ Some youth currently living in JR 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 JR 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 JR 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 the 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 prison. However, 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 release youth who are within 6 months of their release date

In order to further decrease the overall population and provide more flexibility and resources to meet the coming crisis, JR should immediately release those youth who are within 6 months of their estimated release date. Removing this large category of youth will alleviate stress on the institutions and allow resources to be focused where most needed. It will also provide increased flexibility as the virus spreads and JR faces inevitable staff shortages.

JR should also work with Governor Inslee's office, the Sentencing Guidelines Commission, and local prosecutors to explore other avenues for decreasing the overall JR population in the face of this public health emergency, including expedited clemency proceedings and discretionary resentencing. Alternatives to detention and incarceration should also be seriously pursued.

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

For all youth who are released, JR should create transitional plans to ensure that they have a place to live that would meet their basic needs. This is aligned with the state's commitment to keep young people from becoming homeless after their release from detention.⁹ Additionally, these releases should be coordinated with local and state

⁸ 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>.

⁹ See <https://www.seattletimes.com/seattle-news/homeless/youth-often-become-homeless-just-after-leaving-juvenile-detention-can-state-really-stop-it/>.

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 Medicaid and 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.

Repurpose probation, community supervision and parole officers away from issuing violations to people under supervision and toward providing assistance and supports to keep people safe

The dangers facing people currently held in JR custody are significant. However, many local and county jails are even more unprepared to address the coming health crisis in their facilities. JR must not add to the burdens of local jails by issuing probation or parole violations to youth under supervision, thereby adding more people to these risky locations.

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

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

People living in JR facilities 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 JR will continue to hold youth, it must be able to meet their health needs. Specifically, there must be adequate medical services, supplies, and practitioners available. Facilities must ensure they have enough ventilators, intensive care beds, negative pressure rooms, quarantine areas, and practitioners who are skilled in treating the youth who may soon be requiring care. Additionally, the mental health of youth in custody may be especially affected during this time of uncertainty and chaos. JR should consider increasing 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 JR is 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 segregation, suicide watch, and 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 to the extent possible, without locking youth in their rooms for extended periods of time

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, JR should cease transfer of youth to DOC custody unless medically necessary. Additionally, JR 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. Additionally, pill lines and infirmary waiting rooms should have limited numbers of youth, particularly given that these locations are more likely to have medically compromised individuals present.

However, these efforts should not result in prolonged, widespread lockdowns. 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 and should be as limited as possible in scope and duration. Moreover, JR 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 many youth will likely relieve much of the need for long term isolation or lockdowns.

Provide increased telephone, email and video access to incarcerated youth in those facilities that have limited visitation

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. We recognize that JR has already taken some 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. We commend these actions and urge JR to continue expanding communication channels. These steps could include further increasing access and time for phone calls; setting up virtual communications for face-to-face calls; or allowing youth to email families and loved ones.

Ensure that JR establishes distance learning or other educational opportunities for youth in custody

With many schools closing for the foreseeable future, it is critical that distance learning be available to youth in custody 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, JR 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 youth and their families receive updated, comprehensive, timely and thorough information

Many youth living in JR 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 JR, like all of us, is 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/ Anita Khandelwal
Director
King County Department of Public
Defense

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

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

s/ Lisa Daugaard
Executive Director
Public Defender Association

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

s/ Thy Nguyen
The People's Assembly

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

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

s/ Nicole McGrath
Juvenile Attorney
Seattle, Washington

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

s/ Maru Mora Villalpando
La Resistencia

s/ Annie Blackledge
Executive Director
Mockingbird Society

s/ JM Wong
Pacific Rim Solidarity Network
(PARISOL)

s/ Sarah Tatistcheff
Staff Attorney
Snohomish County Public Defender
Association

s/ Shelton McElroy
National Director of Strategic Partnership
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s/ Rachel Seevers
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s/ Kimberly Ambrose (in personal capacity)
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s/ Dominique Davis
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Community Passageways