

September 23, 2020

RE: Depopulating Juvenile Detention Centers during COVID-19

Dear Stakeholder:

We hope this letter finds you and your family healthy.

Since the beginning of the coronavirus pandemic (COVID-19), the ACLU of Ohio has urged decision makers to safely decrease incarcerated populations and develop and implement holistic policies with guidance from public health experts to minimize harm to those incarcerated and the broader community. The Centers for Disease Control and Prevention warns that individuals in “long-term care facilities,” like jails and prisons, are at high-risk for severe illness from COVID-19. We are writing today to specifically encourage depopulation methods and age-appropriate pandemic policies for court-involved youth.

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Unfortunately, the pandemic has not subsided. Ohio experienced its highest daily case increases in July, and throughout August, the average number of new cases was higher than in May or June.¹ On September 1st, Ohio reported 1,453 new cases, over 400 more than the 21-day average.² While all those held in congregate environments are put at greater risk during this global health crisis, youth held in such facilities are especially vulnerable given what we know about youth development, mental health care, and the demographics of detained youth.

Many of the procedures reportedly utilized in an attempt to protect youth from COVID-19 expose them to other harm. It has been reported that facilities in Ohio have used quarantining procedures that in practice amount to solitary confinement, despite it being well-documented that solitary confinement can cause “permanent psychological damage and may lead to self-harm, psychosis, and suicide.”³ Devastatingly, we have heard numerous accounts of youth attempting suicide while being quarantined. Many facilities have stopped in-person family visitation due to the pandemic, but have not provided additional opportunities to make up for this strain on family

¹ *Mapping Ohio's 115,651 coronavirus cases, trends, updates*, Cleveland.com, August 27, 2020, <https://www.cleveland.com/datacentral/2020/08/mapping-ohios-115651-coronavirus-cases-trends-updates.html>.

² Courtney Shaw, *Ohio reports highest number of new COVID-19 cases since July 31*, News 5 Cleveland, September 1, 2020, <https://www.news5cleveland.com/news/continuing-coverage/coronavirus/ohio-reports-highest-amount-of-new-covid-19-cases-since-july-31>.

³ Josh Rovner, *COVID-19 in Juvenile Facilities*, The Sentencing Project, September 4, 2020, <https://www.sentencingproject.org/publications/covid-19-in-juvenile-facilities/>; *Solitary Confinement & Harsh Conditions*, Juvenile Law Center, <https://jlc.org/issues/solitary-confinement-other-conditions>.

relations. This is especially alarming due to the stress caused by the pandemic and enhanced concerns for the well-being of family members. Additionally, youth in the juvenile system are disproportionately likely to have experienced childhood trauma and to have special education needs.⁴ As the school year begins, there remain serious concerns about youth having access from behind bars to the same special education services they may be legally entitled to and that they would have access to in the community. While COVID-19 remains a serious and deadly concern in all Ohio detention facilities, youth merit special consideration due to their heightened vulnerabilities.

Thankfully, many jurisdictions across Ohio jumped into action and implemented life-saving policies that decreased incarcerated youth populations and sought to protect those who remain incarcerated with age-appropriate and trauma-informed policies. Ohio was not alone in its response, as efforts have been made nationwide to address COVID-19 concerns for detained youth. A national survey of juvenile justice agencies in 30 states, including Ohio, found that the number of youth in local secure detention centers dropped by nearly a quarter (24%) between March 1, 2020 and April 1, 2020, demonstrating that jurisdictions can safely reduce detention facilities with positive outcomes. A decline in the rate of admissions, coupled with the fact that juvenile justice systems released youth at a higher rate, led to the decrease in population.⁵

Given the impracticability of safeguarding detained youth without creating other significant harms, we—along with medical professionals—strongly encourage courts to release all youth from pretrial detention to safe, home-based alternatives, starting with the most medically vulnerable.⁶ Below we have provided a list of common sense practices we encourage each court, at a bare minimum, to continue, adopt, or expand:

- 1. Institute a moratorium on new admissions.** In order to prevent the spread of COVID-19, some jurisdictions have stopped admitting new youth charged with low-level offenses to youth detention centers. For example, Cuyahoga County stopped admitting all youth other than those charged with specific, serious offenses.⁷ Further, they are no longer bringing youth arrested on outstanding

⁴ Andrea J. Sedlak & Karla S. McPherson. *Youth's Needs and Services: Findings from the Survey of Youth in Residential Placement*, Office of Juvenile Justice and Delinquency Prevention, April 2010, 2020, <https://www.ncjrs.gov/pdffiles1/ojjdp/227728.pdf>; NDTAC Fact Sheet: *Youth with Special Education Needs in Justice Settings*, The National Evaluation and Technical Assistance Center, December 2014, https://neglected-delinquent.ed.gov/sites/default/files/NDTAC_Special_Ed_FS_508.pdf.

⁵ *At Onset of the COVID-19 Pandemic, Dramatic and Rapid Reductions in Youth Detention*, The Annie E. Casey Foundation, April 23, 2020, <https://www.aecf.org/blog/at-onset-of-the-covid-19-pandemic-dramatic-and-rapid-reductions-in-youth-de/>.

⁶ Physicians for Criminal Justice Reform, *Statement – RE: COVID-19 Risks for Detained and Incarcerated Youth*, March 22, 2020, <https://njdc.info/wp-content/uploads/PFCJR-Statement.pdf>.

⁷ Adam Ferrise, *Cuyahoga County Juvenile Detention Center rejecting kids arrested for misdemeanors due to coronavirus*, Cleveland.com, March 24, 2020, <https://www.cleveland.com/metro/2020/03/cuyahoga-county-juvenile-detention-center-rejecting-kids-arrested-for-misdemeanors-due-to-coronavirus.html>.

warrants or on parole violations to the detention center, unless the warrant is for a first- or second-degree felony.⁸

- 2. Release all youth to safe, home-based alternatives, starting with specific subsets.** In response to COVID-19, certain jurisdictions have released youth to mitigate the spread. For example, Hamilton County Juvenile Court Youth Center reportedly reduced their population by nearly half between mid-March and the end of May.⁹ These measures demonstrate that depopulation is possible and practical. To ensure physical and psychological safety, all youth should be released to safe, home-based alternatives, and jurisdictions should begin with the most medically vulnerable. In order to facilitate these transitions, courts need to be aware of all placements options available to youth within their communities and plan ahead to have the appropriate alternative in place.
 - a. Medically-vulnerable youth.** Youth detention should never be a death sentence. Youth who have co-morbidities—such as obesity, sickle cell disease, diabetes, asthma—that put them, or may put them, at a higher risk for serious health complications or death from COVID-19 should be released to safe, home-based alternatives.¹⁰ Similarly, youth known to struggle with mental illness and who are therefore more susceptible to exacerbated mental health problems as a result of policies in place to address COVID-19 should be released to safe, home-based alternatives.
 - b. Youth held on certain offenses.** Youth who were previously admitted to detention centers on charges for which there may now be a moratorium on new admissions should not continue to languish in detention simply because they were arrested prior to the pandemic. Similarly, youth who are likely, if convicted, to be sentenced to time served or home-based alternatives should be immediately released.
 - c. Youth with special education needs.** Youth with special education needs are overrepresented in youth detention facilities. Unfortunately, for many students with special education needs, distance learning may create new barriers to success. In the community, distance learning can be supplemented through additional familial instruction, internet tutorials, books, etc. If a detention center is unable to adequately satisfy

⁸ Adam Ferrise, *Cuyahoga County Juvenile Detention Center rejecting kids arrested for misdemeanors due to coronavirus*, Cleveland.com, March 24, 2020, <https://www.cleveland.com/metro/2020/03/cuyahoga-county-juvenile-detention-center-rejecting-kids-arrested-for-misdemeanors-due-to-coronavirus.html>.

⁹ Kevin Grasha, *Two juveniles at Hamilton County detention center test positive for coronavirus*, Cincinnati Enquirer, May 30, 2020, <https://www.cincinnati.com/story/news/2020/05/30/2-juveniles-hamilton-county-youth-center-positive-coronavirus/5290262002/>.

¹⁰ Centers for Disease Control and Prevention, *Coronavirus Disease: People with Certain Medical Conditions*, September 11, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

a child’s Individualized Education Plan or provide sufficient supplemental supports, the youth should be released to safe, home-based alternatives where they can access the supports to which they are legally entitled or may otherwise require.

- 3. Hold Frequent Detention Review Hearings.** The underlying circumstances and factors that may have led to an initial detention determination can change and subside over time. A youth should not remain in custody when they no longer meet the criteria to be, simply because there are long periods of time until their detention status is again reviewed. We encourage judges to schedule detention review or status hearings within two weeks of initial detention decisions, and continue to review thereafter, to ensure that incarcerated youth are quickly released when detention is no longer appropriate.
- 4. Decrease or remove monetary bonds.** Recommendations from the Supreme Court of Ohio and Chief Justice O’Connor in March included the need for judges to reduce money bonds to decrease jail populations.¹¹ Nobody should remain in jail simply because they do not have the resources to buy their freedom. Youth with, or eligible for, monetary bonds—such as youth whose cases have been bound over to adult court or who have been labeled a “serious youthful offender”—should have their bond amounts decreased or removed so they can return to safe home-based alternatives. In counties where there are separate juvenile and adult court judges, efforts should be made to ensure the youth is considered for a bond hearing by the adult court judge.

We recognize that some, but not all, juvenile administrative and presiding judges have oversight responsibilities over the juvenile detention center in the county where they preside. For those who do, we have additional urgent suggestions:

- 5. Provide daily family contact.** It is a scary time for everyone, and is undoubtedly worse for young people held in detention without access to their families. Youth should be provided daily opportunities for free family contact, through phone calls, video calls, or in-person visits. The Ohio Department of Youth Services has been providing youth in quarantine who are unable to use the wall phones with either cell phones or tablets so they can maintain daily contact with their families.
- 6. Ensure quarantine procedures do not amount to solitary confinement.** While many facilities are receiving guidance from medical experts about best practices for halting the spread of the virus, juvenile detention centers should also confer

¹¹ *Guidance to Local Courts: COVID-19 Public Health Emergency*, The Supreme Court of Ohio, March 30, 2020, <http://www.supremecourt.ohio.gov/coronavirus/resources/localCourtGuidance03.20.20.pdf>.

with youth mental health experts to ensure that practices are not creating other long-term problems for mental health.

While everyone sincerely hopes that the pandemic soon dissipates, youth held in congregate environments like detention centers are particularly vulnerable as it persists. Detention facilities are “designed to maximize control of the young people in their population, not to minimize disease transmission or to efficiently deliver health care.”¹² As Ohio continues to loosen its social-distancing mandates, youth will continue to be exposed to the virus by staff members who may now legally go to restaurants and attend weddings of up to 300 individuals.¹³ While youth in the community have the autonomy to strictly adhere to the social distancing guidelines of medical health professionals, those held in detention centers are denied the freedom to protect themselves and instead must rely on the actions of those entrusted with their care.

The best way to avoid unnecessary death and long-term complications for youth and staff is to continue to depopulate. As a local leader and judge, you have the ability to make and influence policy changes that could save lives now and in the future.

If you have any questions or would like to discuss further, please don't hesitate to contact Sabrina Harris at sharris@acluohio.org.

Sincerely,



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¹² Physicians for Criminal Justice Reform, *Statement – RE: COVID-19 Risks for Detained and Incarcerated Youth*, March 22, 2020, <https://njdc.info/wp-content/uploads/PFCJR-Statement.pdf>.

¹³ Jeremy Pelzer, *Ohio will allow wedding receptions of up to 300 people starting June 1*, Cleveland.com, May 22, 2020, <https://www.cleveland.com/coronavirus/2020/05/ohio-will-allow-large-venues-to-reopen-for-wedding-banquet-receptions-on-june-1.html>.