



JUVENILE JUSTICE

CAMPAIGN OF THE NATIONAL JUVENILE JUSTICE & DELINQUENCY PREVENTION COALITION

www.act4jj.org

June 8, 2020

The Hon. Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Hon. Charles Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington DC, 20510

The Hon. Nancy Pelosi
Speaker
1236 Longworth House Office Building
Washington, DC 20515

The Hon. Kevin McCarthy
House Minority Leader
2468 Rayburn House Office Building
Washington, D.C. 20515

Dear Sen. McConnell, Sen. Schumer, Rep. Pelosi, and Rep. McCarthy,

On behalf of the Act 4 Juvenile Justice Coalition, we the undersigned write to express our deep opposition to recent guidance issued by the Office of Juvenile Justice and Delinquency Prevention.¹ This guidance is counter to prevailing science and research and has the potential to endanger our youth. We call on you to hold an oversight hearing to determine what, if anything, OJJDP is doing to keep our young people safe in this moment, and beyond.

As we navigate the “new normal” of Covid-19 and communities begin to reopen, it continues to be critical for states, tribal nations, and territories to have clear guidance, grounded in research and public health recommendations, on how they can best ensure that young people under their care are kept safe. As you know, many young people in the justice system have underlying health conditions and high rates of exposure to trauma. Social distancing to ensure that they are able to stay safe, both mentally and physically, is not possible inside facilities, despite OJJDP’s assertion. This has resulted in multiple widespread outbreaks of Covid-19 within detention facilities and jails, putting young people, staff, and communities at heightened danger of the virus’s spread.²

¹ See OJJDP COVID–19 Guidance: State Juvenile Detention and Correctional Facilities

<https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/OJJDP-COVID-19-Guidance-for-States.pdf>

² Detention facilities that have been particularly hard-hit by Covid-19 outbreaks, including: [Mingus Mountain Academy](#) (Arizona), [Silver Oak Academy](#) (Maryland), [Bon Air Juvenile Correctional Center](#) (Virginia), [Franklin County Juvenile Detention Center](#) (Ohio), and the [Swanson Center for Youth](#) (Louisiana).

While OJJDP asserts that there have been a “relatively small number of coronavirus cases reported in juvenile facilities” and that this “does not support the wholesale release of juvenile offenders into communities,” that is simply not true. Infection rates at multiple facilities have been reported at between 20 and 50 percent once testing has taken place.³ As of June 8, 562 youth and 653 staff have been publicly reported to have tested positive, an increase of 145 percent and 85 percent, respectively, over the numbers that OJJDP reported in its May 30 guidance.⁴ Community infection rates during that same period decreased, clearly refuting OJJDP’s insistence that holding youth in detention facilities “can maintain their well-being and reduce their risk of contracting COVID-19.”

While the initial phase of virus response is coming to an end, we have seen the need to prepare for these types of emergencies and whatever may come next. This includes the process of reopening, and the need to be cognizant of the differing levels of comfort that families and individuals may have with potential exposure and social contact for the foreseeable future. Clear guidance is needed on how to ensure that young people and their families are kept safe, and on how states, territories, and tribal nations can ensure compliance with the Juvenile Justice and Delinquency Prevention Act, during these challenging times.

I. Guidance for Emergency Planning: The following guidance is needed to help states and territories address the current emergency and craft emergency plans that address the needs of young people and staff in the event that a similar emergency occurs in the future:

- **Release:** Detention, commitment, and treatment facilities, and adult jails and prisons have proven to be sites where Covid-19 can rapidly spread and clear guidance is needed to help safely reduce populations both through sending young people home and permitting incarceration only when there is clear and imminent danger. No child who has an assessment of moderate risk or lower should be detained and those who have less than 60 days left on their sentence should go home. Illinois, by way of example, has reduced its detention population by 50% during the pandemic. Maryland released 200 youth who were being held on low-level offenses through the courts. Clayton County, Georgia, was able to reduce its detention population by nearly 80 percent by following these guidelines.

Contrary to what OJJDP contends, health care inside facilities, particularly detention centers designed for short-term stays, are inadequate. In 2019, the American Academy of Pediatrics reported that “[m]ost juvenile correctional facilities are not accredited by the NCCHC (National Center on Correctional Health Care). . . . fewer than half of the facilities were compliant with recommended health screening and assessments. Few

³ Examples of juvenile detention facilities that have experienced Covid-19 outbreaks include: [Mount Mingus Academy](#) (Arizona), [Silver Oak Academy](#) (Maryland), [Bon Air Juvenile Correctional Center](#) (Virginia), [Franklin County Juvenile Detention Center](#) (Ohio), and the [Swanson Center for Youth](#) (Louisiana).

⁴ See <https://www.sentencingproject.org/publications/covid-19-in-juvenile-facilities/>. Note that these numbers are not based on data sets that OJJDP would have access to but are instead based on public news reports. Undercounting, according to the source of this data, is a real possibility because there is no public reporting requirement.

detention facilities met even minimal levels of care, although better care was seen as the length of stay increased.” It is both inaccurate and dangerous to assert that children receive better care inside correctional facilities than in communities with supports.⁵

- **Testing:** All youth with symptoms suggestive of Covid-19 or with known exposure to an individual who has Covid-19 should be tested. Positive test results are not a crime and should never be the sole basis of detaining a young person when they would otherwise be released. The least-obtrusive and most-accurate testing option should be used and should be done in a way that preserves community and family safety. Findings of test results should be made publicly available in aggregate form, and data should be disaggregated by race, ethnicity, gender, sexual orientation, tribal citizenship, and disability status.
- **Staff and youth inside facilities:** As noted above, despite what OJJDP asserts, social distancing is not realistic in detention centers, jails, and prisons. As such, young people should be released unless there is clear and imminent danger to a specified individual if they were permitted to return.

Solitary confinement should not be used as a means of medical isolation. Data should be collected on the use of solitary during periods of medical emergencies to ensure that it is not being used as a means of quarantine. Guidance should also be provided to distinguish medical quarantines from solitary confinement.⁶

Facilities should permit more socially-distanced outdoor time. As noted by the CDC, outdoor activities that can be done alone or socially distanced are safe, healthy, and an important way to maintain physical and emotional health.

Personal protective equipment, soap, hygiene products, and cleaning materials are all essential to keeping young people and staff healthy. Our young people, facility staff, and their communities need clarity, in keeping with prevailing science, on the use and provision of personal protective equipment among youth and staff in facilities, while being processed, while before the courts, and while in contact with law enforcement. Young people and staff must have access to soap, hand sanitizers, disinfectant wipes, and other materials that are needed to prevent the virus.

Young people need to be able to safely continue communicating with critical individuals such as family, attorneys, spiritual providers, and the courts. It is essential that young people have access to free, frequent, and confidential communications with these critical individuals, especially during times of such an emergency. Social distancing has been a period of emotional challenge even in the best of circumstances. Young people who are incarcerated face the additional trauma of uncertainty about loved ones at home, as well

⁵ See <https://pediatrics.aappublications.org/content/128/6/1219>.

⁶ See for example: https://amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary_Amend.pdf.

as the status of their case. Young people must have access to their family and their attorneys to ensure mental well being and proper preparation of their case. Young people must be able to remotely access court hearings whenever possible to limit transportation in and out of facilities, and thus limit potential transmission of communicable diseases. Ongoing accommodations are needed to address needs of families with higher risk levels and lower comfort in accessing public spaces during this period.

Education also remains critical to young people's well being and future success. We call on OJJDP, in partnership with the Department of Education, to provide support to states, territories, and tribal nations to ensure that young people inside facilities continue to receive quality education, in keeping with the provisions found in the JJDPA, ESSA, and the IDEA.

- **Reentry supports:** OJJDP is correct that young people need services and supports when they reenter the community. Regulations and guidance related to reentry planning is sorely needed, both as it relates to reentry planning generally and in times of emergency. Such reentry planning is required under the JJDPA's 2018 reauthorization, but has gone largely ignored and with no concrete guidance from OJJDP for the past 18 months. Such reentry planning is more critical now than ever to ensure that young people are able to return to their families safely and that they are not forced from the juvenile justice system into the child welfare system or into youth homelessness. Had OJJDP issued appropriate guidance prior to this emergency, states would be better equipped to do their jobs in this moment and to release young people.

As young people return to the community, we call on OJJDP, in partnership with the Department of Education, to provide support to the states, territories, and tribal nations to ensure that young people continue to receive a quality education, in keeping with the provisions found in the JJDPA, the ESSA, the IDEA, and section 504 of the Rehabilitation Act.

Notice should be provided to tribal nations when their young people are released to allow nations to assist in safely transitioning the youth back home. Tribal notice is vitally important as many American Indian and Alaska Native youth live in multi-generational homes. With proper notice, tribal nations will be able to provide their youth and their families with additional support to prevent the spread of Covid-19 in their communities.

- **Probation and community based services:** Community-based supports are critical to young people's ongoing success. Current telemedicine regulations should be amended to provide increased flexibility and options for medical professionals. Regulations should be amended to help states, territories, and tribal nations ensure that these services can continue during the current emergency and during future similar emergencies if they should arise. Similarly, support is needed to ensure that young

people have access to electronic devices, internet, and phone services so they can continue to receive therapeutic and educational services.

Fines and fees place serious burdens on already-struggling families. A reported 40% of low-wage workers have filed for unemployment since the pandemic's onset. Guidance should be provided that clarifies that during the ongoing emergency families should not be charged for community-based services that they are ordered to participate in. Similarly, guidance should clarify that courts should halt the collection of all other fines and fees for young people in juvenile and adult court.

As noted earlier, even as courts and service providers begin to reopen, families and individuals with higher risks may not be able to safely visit public spaces, particularly those who would need to rely on public transportation to do so. As such, it is critical that young people and their families are able to access probation meetings and related services remotely. Violations and revocations for failure to attend meetings in person should not be issued during an emergency.

II. Guidance related to compliance with JJDPA

- **Guidance for monitoring facilities:** States have explicitly requested that OJJDP provide guidance for how they can safely monitor facilities where youth are housed during the current emergency, and during similar future emergencies if they should occur. Such guidance was conspicuously absent from OJJDP's May 30 guidance but is essential to ensuring that states can continue to provide the JJDPA's core protections to young people. As communities reopen, staff and others who come in and out of facilities will begin to have more contacts and may be at heightened risk, thus increasing the risk for those who are still detained. States and territories need clear guidance for how they can safely ensure that there are eyes and ears in facilities to ensure that young people there are not being mistreated and that they are adhering to the JJDPA's protections.

During state travel bans, many have fallen behind on site visits. They need clear guidance on how and if virtual visits will be permitted, and how such visits can take place in a way that ensures the safety and wellbeing of young people and staff involved. States need clarity on whether virtual visits will be temporarily permitted or whether additional time will be allowed to complete compliance monitoring during the ongoing emergency. OJJDP's only relevant statement, however, was that "[p]ursuant to 34 USC §§ 11133(a)(11), (12), (13), and (15), compliance with the four core protections of Title II (deinstitutionalization of status offenders, adult jail removal, sight and sound separation, and racial and ethnic disparities) is still a requirement to receive Title II funding." They have remained completely silent, though, on how such compliance can and should take place in this moment.

- **Data collection and notice:** OJJDP has the opportunity to support states through its training and technical assistance functions to help collect and publicly report data on the number of youth in each state who are released during this emergency, the number of youth under each state’s care who are tested, and the number of confirmed cases among youth in each state’s justice system. Each data set should be disaggregated by race, ethnicity, sexual orientation and gender identity, tribal citizenship, and disability status. Not only should data be collected regarding American Indian and Alaska Native youth, but tribal nations should also be notified when their young citizens are to be sent home.
- **Flexibility:** We recognize that OJJDP has long been committed to ensuring that states, territories, and tribal governments have flexibility within the Act. This flexibility is more important now than ever. We ask OJJDP to use its discretion within the Act to ensure states, territories, and tribal nations have as much discretion as possible during this time. Over the past three years, the number of non-participating and non-compliant states has grown dramatically. Without flexibility as we navigate Covid-19 and the challenges it has presented for Governors, it is likely that more states could be vulnerable to leaving the Act.

Inaction from OJJDP in recent years has left numerous ambiguities on issues that should have been addressed through updated guidance and regulation following the JJDPA’s reauthorization. This has put hundreds of young people in danger from Covid-19, and could lead hundreds of thousands more to be endangered from their continued detention. Unlike OJJDP’s assertion, detention is dangerous, retraumatizing, and can expose youth to potential physical and sexual harm.⁷ We call on you to consider closer oversight of OJJDP and the manner in which recent guidance flew in the face of public health and was dismissive of young people’s safety. We further call on you to support the youth justice-related provisions in the HEROES Act, which would give states the resources needed to implement the above recommendations.

Sincerely,

⁷ Justice Policy Institute. “Dangers of Detention.”
http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JI.pdf.