

March 17, 2020

Chief Justice Paula Carey  
Massachusetts Trial Courts

Commissioner Peter Forbes  
Department of Youth Services

Commissioner Ed Dolan  
Massachusetts Probation Services

Chief Counsel Anthony Benedetti  
Committee for Public Counsel Services

Dear Chief Justice Carey, Commissioner Forbes, Commissioner Dolan and Attorney Benedetti,

We are reaching out to get a sense from you how each of your agencies is planning around **protecting the health and due process of legal system-involved young people, including emerging adults, particularly those still subject or aged out of child welfare proceedings and those entitled to DESE education**. While much of the guidance is out to ensure Massachusetts residents reduce exposure through public health guidance, our concern is in regard to incarcerated and justice-involved individuals' whose actions and physical presence is dictated by the state, putting a greater public safety responsibility for state actors to reduce exposure at various decision points. Justice-involved young people are especially vulnerable due to unstable housing, foster care involvement, higher barriers to accessing primary health care and, due to their age, may not be as attuned to the public health measures necessary to reduce exposure.

We reviewed the [Juvenile Court](#) Standing Orders, [CPCS](#) guidance to attorneys and the [DYS](#) congregate care guidance and find the information is insufficient in addressing the responses that will be implemented to protect young people's health, legal cases and their delinquency or child welfare case outcomes. We seek assurance and information to ensure that our state's response to system involved young people and their families' well-being is proactive and using best available public health information. The public health risk of exposure and transmission is a public safety issue and therefore we urge the Commonwealth to provide guidance and policies to reduce the entry of young people into state confinement [DYS](#), adult prisons and jails and immigration detention, and expedite release for those who can live safely in their communities, even if temporarily, during this pandemic.

Following the example of EOHHS's provider call on Wednesday, we request that you schedule a stakeholder conference call where you can address questions pertaining to young people. We recognize that in these trying times each of your agencies is moving as fast as you can, and guidance and practice is changing rapidly, we request that we can set up such a call within the next two weeks.

## **Social Distancing for Justice Involved Youth**

1. How are young people accessing the information or instructed on how to safely interact with staff (attorneys, court personnel, etc) in age-appropriate ways?
2. What guidance is probation sharing with probation officers to minimize required meetings with youth?
3. What precautions are being put into place when transporting youth from court to other facilities?

## **Due Process Protections**

1. Show cause hearings (delinquency) and non-evidentiary hearings, adjudications and best interests trials (care and protection) shall be continued to May 4, 2020 or later. How will these court delays specifically not be held against parties, including against families facing permanent separation under Termination of Parental rights timelines?
2. For youth who are held in detention pending a jury trial on a Youthful Offender or Delinquency petition, whose trial are now continued to April 21st or later, what is the process for review of their bail? Are there options for release for low/mid risk youth or release on monitoring for high risk youth given the public health emergency?

## **Reducing Admissions into Locked Facilities**

1. Can you please clarify whether the anticipated delay in probable cause hearings (as indicated in section II.C of the Juvenile Court Standing Order 1-20) apply to children and youth in custody? We hope this delay does not apply to children in custody.
2. The guidance by the [courts](#) and [CPCS](#) spelled out ways for conducting bail hearings via telephone to minimize staff exposure. What guidance is provided-to expand the use of release on recognizance to prevent the use of pre-trial detention for non-safety reasons?
3. Will judges be instructed to modify their decisions to minimize the detention of young people who do not pose a safety risk? Youth dually involved with child welfare will need special attention, what arrangements will be made to minimize detention of young people due to their unstable housing (unless a youth requests such a placement)?
4. The primary caregiver statute allows judges to require the least restrictive setting for primary caregivers. Will there be guidance to expand the use of that statute to allow for a presumption of community-based placement for parenting youth and emerging adults?
5. Probation has piloted the reduction of probation conditions and revocations. What guidance will be given to probation officers to early discharge youth who are near the end of their probation period? Will probation consider eliminating revocations for technical violations? While Probation's move to administrative hearings has reduced

these revocations, administrative hearings increase social interactions and youth may be hindered in meeting those requirements due to social distancing.

6. Will DYS use its placement discretion to release any incarcerated youth who can safely live in the community - even if only temporarily - as a measure to further minimize the number of people who will likely be infected in custody? Further, will DYS apply this same lens regarding revocation of GCL, especially based on technical (non-delinquent) violations?

### **Youth in Confinement**

1. What is the strategy to release youth who are confined due to the health crisis? If a youth is committed and doing well, is there an opportunity for them to be released due to the crisis?
2. Lack of access to clean water and basic hygiene products (such as free soap) in adult correctional facilities are and inconsistent at best and problematic at worst among county facilities. Will judges be given information on basic hygiene conditions to include as a factor in decisions to detain or incarcerate a young person?
3. The Governor has closed public and private schools through April 6<sup>th</sup>, but not residential schools. Does the school closure include youth in DYS's care and custody? How is DYS addressing any educational disruption due to barriers to enrollment, educational records, IEPs either at entry into DYS or as part of re-entry planning? Schools are making accommodations for online or distance learning, what educational accommodations will be made for youth in DYS confinement?
4. How is DYS incorporating public health guidance in re-entry planning for youth? And for those in independent living programs, how are youth given guidance on social distancing and ways to avoid social isolation?
5. If staff has been reduced, what extra measures are being taken to make sure the safety and mental health of youth, particularly those most vulnerable in confinement such as LGBTQ youth, are being provided for?
6. What is the plan for housing young people and their access to programming and family members be impacted if an individual within a DYS facility is exposed to the virus?

Thank you for considering this request and hope that such a stakeholder call can be helpful to organizations and individuals who care for and work with young people to better guide them during these challenging times.

Sincerely,

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Executive Director

Sana Fadel  
Deputy Director