
Date: April 3, 2020

**Re: COVID-19 EMERGENCY EXECUTIVE ORDER AUTHORIZING IMMEDIATE
RELEASE OF YOUTH IN SECURE and NON-SECURE CARE**

To: Governor John Bel Edwards

From: Louisiana Center for Children's Rights

Dear Governor Edwards,

We write to request that you take urgent action to protect the health and welfare of Louisiana's children and families.

As you know, the novel coronavirus (COVID-19) is a respiratory illness that is highly contagious and can cause serious health complications and death. There are currently no antiviral treatments or approved vaccines for this strain of coronavirus, and it is highly communicable. As of March 31, Louisiana's Office of Juvenile Justice has reported nearly a dozen presumptively positive COVID-19 cases at youth centers across the state.¹ Detained children, and persons who work in close proximity to them, are at extraordinarily high risk to contract and transmit COVID-19.

In order to reduce further exposure to and transmission of COVID-19, we urge you to take the following actions as part of an executive order, effective immediately:

- 1) *Order the Office of Juvenile Justice ("OJJ") to immediately release from secure and non-secure juvenile detention facilities any youth:*
 - *Currently held for offenses that are not crimes of violence; or*
 - *Who has served more than 50% of their sentence or adjudicated disposition; or*
 - *Who has less than one year remaining on their sentence or adjudicated disposition.*
- 2) *Order OJJ, in any circumstance where a youth is not eligible for release under the emergency release criteria outlined above in Action 1, to identify youth eligible for extended furloughs, allowing these youth to shelter-in-place with their families for the remainder of the health crisis;*
- 3) *Order OJJ to refuse custody of any juvenile ordered into secure or non-secure care post-adjudication, for non-violent offenses, misdemeanors, or parole or probation revocations;*

¹ *OJJ COVID-19 Information*, State of Louisiana Office of Juvenile Justice, <https://ojj.la.gov/ojj-covid-19-information/> (updated Apr. 2, 2020) (COVID-19 youth positive results); Kailey McCarthy, *Louisiana Office of Juvenile Justice Reports Almost a Dozen Positive COVID-19 Cases*, KALB (Mar. 31, 2020), <https://www.kalb.com/content/news/Office-of-Juvenile-Justice-reports-almost-a-dozen-positive-COVID-19-cases--569254961.html>.

- 4) *Order OJJ parole and probation officers to cease any and all requests for secure detention in the event of parole or probation violations or parole or probation revocation;*
- 5) *Order that any juvenile awaiting placement to a non-secure OJJ facility will remain at home under probation supervision;*
- 6) *Order the suspension of all interagency transfers of youth from one secure care facility to another secure care facility;*
- 7) *Order OJJ and local detention centers to prohibit the use of room confinement in individual cells as a method of COVID-19 quarantine in all secure and non-secure facilities;*
- 8) *Order OJJ and local detention centers to make available to all youth held in secure and non-secure facilities cost-free telephone calls to their family, available without limitation but at minimum, once per week, for a minimum allowed duration of one hour;*
- 9) *Order OJJ and local detention centers to make available to all youth held in secure and non-secure facilities confidential and cost-free telephone calls to their attorneys, or any member of their legal team, within 24 hours of request by the legal team, and immediately upon request of the youth.*
- 10) *Order the suspension of all transfers of youth from juvenile detention facilities into adult jails or prisons, whether pre- or post-trial;*
- 11) *Order all OJJ staff to wear facemasks and disposable patient examination gloves, and to adhere to social distancing guidelines, whenever possible, during all interactions with youth;*
- 12) *Order OJJ to consult with public health officials, with expertise in epidemiology, to coordinate a public health safety inspection and review of all secure and non-secure detention facilities, and to adhere to any emergency recommendations made by public health officials; and*
- 13) *Recommend that authorities in local jurisdictions implement the following changes:*
 - *Local law enforcement should decline to arrest juveniles for status offenses and minor misdemeanors;*
 - *If an arrest must be made, law enforcement should counsel and release youth to their parents or guardians, as outlined under Louisiana Children's Code Article 814(B)(1);²*
 - *Local authorities should cease use of pre-trial detention of any child for misdemeanors, status offenses, or technical violations, including failures to appear, and offenses that are not crimes of violence; and*
 - *There should be a presumption of release for all children who are arrested, even for more serious offenses. Secure detention should not be considered unless there is clear and convincing evidence that detention is required to reduce the likelihood that the child may*

² La. Child. Code Ann. art. 814(B)(1).

inflict serious bodily harm on others pending the next hearing. Localities should make full use of alternatives to detention using remote technologies and strategies.

I. The Governor Has the Authority to Order These Actions Under the Louisiana Homeland Security and Emergency Assistance and Disaster Act, and the Louisiana Health Emergency Powers Act.

United States Department of Health and Human Services Secretary Alex Azar declared a national public health emergency on January 31, 2020.³ Governors across the nation have declared public health emergencies, and a national emergency was announced on March 13, 2020.⁴ The first presumptively positive case of COVID-19 in the state of Louisiana was identified on March 9, 2020,⁵ and you issued Louisiana Proclamation No 25 JBE 2020 on March 11, 2020,⁶ declaring a state of emergency under La. R.S. 29:760, et seq.⁷

Under the Homeland Security and Emergency Assistance and Disaster Act (“Disaster Act”), in times of emergency, the governor is “responsible for meeting the dangers to the state and people presented by emergencies or disasters.”⁸ In order to meet this responsibility, the governor is granted broad powers to issue and rescind any executive orders, proclamations, and regulations necessary to preserve the lives of the people of the state of Louisiana.⁹

Pursuant to the Disaster Act and the Louisiana Health Emergency Powers Act, the governor is authorized during a state of public health emergency to “suspend the provisions of any regulatory statute prescribing procedures for the conducting of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency.”¹⁰

II. Public Health Authorities Predict That Detention and Correctional Facilities Will Be Epicenters of COVID-19 Transmission.

The United States Centers for Disease Control and Prevention (“CDC”) provides strict guidelines on physical distancing and sanitation¹¹ that detention facilities are unlikely to fully meet. Physical distancing may be impossible in detention facilities with limited beds and rooms, and it is unrealistic for detained youth to be appropriately distanced from staff. Constant sanitation of surfaces and hands is

³ U.S. Department of Health & Human Services, Office of the Assistant Secretary for Preparedness and Response, *Determination that a Public Health Emergency Exists*, Public Health Emergency (Jan. 31, 2020), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

⁴ Donald J. Trump, President of the United States, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

⁵ *Gov. Edwards Confirms Louisiana’s First Presumptive Positive Case of COVID-19*, Office of the Governor (Mar. 9, 2020), <https://gov.louisiana.gov/index.cfm/newsroom/detail/2392>.

⁶ La. Proclamation No. 25 JBE 2020 (Mar. 11, 2020), <https://gov.louisiana.gov/assets/ExecutiveOrders/25-JBE-2020-COVID-19.pdf>.

⁷ La. R.S. 29:760 et seq. (Louisiana Health Emergency Powers Act).

⁸ La. R.S. 29:724(A).

⁹ La. R.S. 29:722, La. R.S. 29:724.

¹⁰ La. R.S. 29:724, La. R.S. 29:766(D)(1); *see also* La. R.S. 29:769 (articulating the governor’s authority during a public health emergency to assert control over facilities that represent a danger to public health).

¹¹ *How to Protect Yourself*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last reviewed Mar. 18, 2020) (Coronavirus Disease 2019 (COVID-19)).

also unlikely in facilities with limited resources and where the ability to move freely is impeded. As evidenced by the swift spread of COVID-19 in nursing homes and cruise ships, enclosed spaces with large groups of people risk becoming epicenters of infection due to the inherent difficulties in adhering to proper physical distancing and sanitation.¹²

Detained youth are especially at risk of physical harm during the COVID-19 pandemic. Transmission of other infectious diseases is already common in detention centers.¹³ Furthermore, individuals with underlying health conditions tend to be harder-hit by COVID-19 compared to healthy peers. Research shows that detained youth, as well as youth of color, have a higher likelihood of being medically vulnerable with conditions such as asthma compared to healthy peers.¹⁴

In addition to physical harm, emotional and mental harm is also likely. Family separation during a global crisis is especially distressing.¹⁵ The CDC identifies that youth with preexisting mental health conditions “may respond more strongly” to the COVID-19 outbreak,¹⁶ and OJJ estimates that 44% of youth in secure care have a serious mental illness.¹⁷ Furthermore, isolating individuals in a cell or room as an attempt to provide physical distance is an unacceptable solution and has been shown to increase the likelihood of anxiety, depression, and self-harm.¹⁸

Public health experts expect that detention and correctional facilities will become epicenters of COVID-19 transmission if action is not taken.¹⁹ Continuing to operate detention facilities not only puts detained youth at risk, but also places detention center staff and medical professionals at increased risk. These individuals may then infect their respective families, workplaces, and communities. With nearly a dozen COVID-19 infections already confirmed in Louisiana group homes and youth detention facilities, time is of the essence.²⁰

¹² Jack Healy & Serge F. Kovalski, *The Coronavirus’s Rampage Through a Suburban Nursing Home*, N.Y. Times (Mar. 21, 2020), <https://nyti.ms/2QlcVaS>; see also John Balance et al., *Louisiana Identifies New Cluster of Coronavirus Cases in Donaldsonville Retirement Home*, Advocate (Mar. 23, 2020), <https://bit.ly/39hxQZ9>; Victoria Forster, *What Have Scientists Learned About COVID-19 and Coronavirus By Using Cruise Ship Data?*, Forbes (Mar. 22, 2020), <https://bit.ly/2UeSgNS>.

¹³ Letter from Physicians for Criminal Justice Reform, to State Governors, State and Local Juvenile Detention & Correctional Departments, & Juvenile Court Judges & Magistrates, COVID-19 Risks for Detained and Incarcerated Youth 2-3 (Mar. 22, 2020), <https://njdc.info/wp-content/uploads/PFCJR-Statement.pdf>.

¹⁴ American Academy of Pediatrics, Committee on Adolescence, *Health Care for Children and Adolescents in the Juvenile Correctional Care System*, 107 Pediatrics 799 (2001), <https://pediatrics.aappublications.org/content/107/4/799>; James H. Price et al., *Racial/Ethnic Disparities in Chronic Diseases of Youths and Access to Health Care in the United States*, 2013 BioMed Research International 1 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3794652/>.

¹⁵ Letter from Physicians for Criminal Justice Reform, to State Governors, State and Local Juvenile Detention & Correctional Departments, & Juvenile Court Judges & Magistrates, COVID-19 Risks for Detained and Incarcerated Youth 3 (Mar. 22, 2020), <https://njdc.info/wp-content/uploads/PFCJR-Statement.pdf>.

¹⁶ *Stress and Coping*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/managing-stress-anxiety.html> (last reviewed Mar. 30, 2020).

¹⁷ Louisiana Legislative Auditor, *Oversight of Rehabilitation and Treatment in Secure Care Facilities: Office of Juvenile Justice* (June 13, 2018), [https://lla.la.gov/PublicReports.nsf/71C88F049AA3563A862582AB0075C861/\\$FILE/00019598.pdf](https://lla.la.gov/PublicReports.nsf/71C88F049AA3563A862582AB0075C861/$FILE/00019598.pdf).

¹⁸ Barry Holman & Jason Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf.

¹⁹ Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, N.Y. Times (Mar. 12, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

²⁰ *OJJ COVID-19 Information*, State of Louisiana Office of Juvenile Justice, <https://ojj.la.gov/ojj-covid-19-information/> (updated Apr. 2, 2020) (COVID-19 youth positive results); Kailey McCarthy, *Louisiana Office of Juvenile Justice Reports*

Therefore, to mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Louisianans who work at or are incarcerated in juvenile detention facilities across the state, it is reasonable and necessary to order limited and temporary COVID-19-related protocols and procedures for juvenile detention facilities; and to temporarily suspend certain rules and procedures to facilitate the implementation of those orders.

This executive order will ensure the health and safety of Louisiana youth and families, as well as the general public as our community navigates the COVID-19 pandemic. We thank you for your timely attention to this important matter.

Sincerely,

[Signatures]

Almost a Dozen Positive COVID-19 Cases, KALB (Mar. 31, 2020), <https://www.kalb.com/content/news/Office-of-Juvenile-Justice-reports-almost-a-dozen-positive-COVID-19-cases--569254961.html>; Robin McDowell & Margie Mason, *Juvenile Detention Centers May Become a Coronavirus Hotbed, Experts Warn*, Time (Apr. 1, 2020), <https://time.com/5813755/juvenile-detention-centers-coronavirus/>.