

To: Santa Clara County Juvenile Justice Stakeholders

From: The Judges of the Juvenile Justice Division

Date: December 10, 2020

The following memo documents the JJ Court's response to the Shelter in Place Orders issued by the Santa Clara County Public Health Officer on March 16, 2020. It further outlines the Court's plans for reopening and to move from essential hearings to incorporate all hearings by August of 2021. Please keep in mind that all decisions going forward will continue to be made in conjunction with guidance from the Public Health Department and the Presiding Judge Deborah Ryan. This memo has been updated today to include a new paragraph at the end of the document which addresses a change in the request for release protocol from Juvenile Hall due to the current outbreak of COVID in our custodial settings. This protocol was also extend to August 1, 2021 at the request of all of our stakeholders.

Recap March 17, 2020 through May 3, 2020:

Access to Court- essential hearings plus other matters as defined by the JJ Stakeholders as defined in memo of April 20, 2020¹.

1. All matters (juris/dispo/detentions) for in custody minors. Attorneys can now appear remotely, however, typically we have at least one PD, and IDO in court. Minors continue to come into court and parents/guardians are admitted from the general public with social distancing and mask precautions.
2. Matters on for dismissal or I/S compliance are heard so that probation can be dismissed where appropriate. Most minors appearing remotely or appearance is waived. In some cases, app and order are submitted in lieu of court hearing.
3. Time sensitive matters such as competency restoration, PPH hearings remain on calendar and often can be heard with minor's appearance being waived or minor appearing remotely and a new date set with appropriate timing.
4. 241 reports for Dually Involved Youth continue to be submitted and decided for planning purposes.
5. Emergency procedures have already been set up for calendaring a hearing for emergency relief (due to non-COVID 19 reasons).
6. SDT's allowed to be set on the already existing court date (as of April 24th, 2020).
7. W&I Section 827 petitions.
8. All reviews were vacated.
9. Two Judicial Officers trading off for one open department per day to minimize staff needs and court traffic.

May 11, 2020 through May 29, 2020

1. Continue all hearings and court access as outlined above (and in memo of April 20, 2020).

¹ Attachment One

2. JURIS RESOLUTIONS² to be put on the record for out of custody youth. These can be heard remotely. No contested jurisdiction hearings for out of custody youth may be set in May. If there is already a date that date will be used. If the matter will not resolve that date will be continued until after Emergency Orders expire.
3. IDC/JURIS: Currently set IDC can be heard if Minors can appear remotely so that counsel can be appointed and begin working on the matter. If there is an agreed upon juris resolution with a completed waiver at the IDC appearance date, it will be handled same as #2 above.
4. UNCONTESTED DISPO MATTERS to be heard, if parties have the Dispo report in advance of court (this may take some coordination with probation), gone over report with minor, and are in agreement with recs (with the exclusion of maybe some arguments related to a term of probation). Minor can appear remotely and this will allow probation to then have the minor under their supervision
5. Rationale: Resolving JURIS and DISPO allow for minors to move their cases forward, and allow for the court to manage appropriate supervisions (such as EMP/CRP “commitments”) as well as put probation terms into effect so that probation can appropriately supervise the youth.
6. Cases set for Juris and Dispo that are set for more than two weeks into the future can be advanced for resolution with permission of the Supervising Judge and if there is room on the calendar.
7. It is the expectation of the Court that all out of custody youth appear remotely.
8. EMP/CRP downgrade requests may be submitted on paper only.³
9. Three Judges will be in the rotation for the division. Each judge will make every effort to schedule cases on their assigned court days. Each judge is available for case conferencing on the non-court day to manage and resolve cases.

May 29, 2020 through June 29, 2020

1. Continue all hearing types as described above.
2. CONTESTED Jurisdiction Hearings for in-custody youth a priority
3. CONTESTED Disposition Hearings for in-custody youth a priority
4. One Department open unless social distancing measures and remote access is mastered for all participants.⁴ Remote access could be available for high risk victims and witnesses and to reduce foot traffic in court.

June 30, 2020 through July 30, 2020

1. Continue all hearing types as described above.

² If counsel has gone over the waiver form with their attorney, and the court is simply taking an admission, then the case can move forward. Court can run through the calendar at 8:30 calendar call and continue all matters not ready to proceed and then call the matters ready for an admission.

³ Following the EMP/CRP Covid-19 protocol as published on May 4, 2020.

⁴ Our Courthouse is unique to other courthouses in Santa Clara County in that the building is shared with JPD. JPD and the Court will have to work together to make sure that lobbies and courtrooms can be set up with social distancing queues, like chairs blocked off with tape and tape on the floor to designate distancing. We should also decide the capacity of each lobby and courtroom and place that number in public view.

2. Contested Jurisdiction, Disposition and RESTITUTION SETTINGS for Out of Custody Youth.
3. Contested Competency Hearings
4. Transfer Hearings
5. Two to three Departments open with continued social distancing and remote appearances.

Attachment One: Memo of April 20, 2020

Background:

On February 3, 2020, the County of Santa Clara Public Health Officer declared a local public health emergency to protect the public health in response to the novel coronavirus disease (COVID-19) and the Director of Emergency Services likewise proclaimed a local emergency. The Board of Supervisors ratified and extended the local health emergency and local emergency on February 10, 2020.

On March 16, 2020, at approximately 1:30 pm, the Santa Clara County Public Health Department issued a “Shelter in Place” Order for a three (3) week period beginning March 17 through April 7, 2020. The Shelter in Place Order explicitly exempts Court personnel but directs each governmental entity like the Court to identify and designate appropriate employees to carry out essential functions.

On March 17, the Court and sought and received emergency orders for juvenile justice extending mandated deadlines due to COVID-19.

On March 31, 2020 Dr. Sarah Cody extended the SCC Shelter in Place orders to May 3, 2020.

Current Countywide Precautions

As of the March 25, 2020, elected official briefing, Dr. Cody reported that the Bay Area-wide shelter-in-place order has only been in effect for eight full days. Because COVID-19 has an incubation period of up to two weeks, it will take more time for public health officials to get enough data to see how well our social distancing efforts are working and whether we need to extend or tighten restrictions. However, she stated that the faster the community collectively complies with the shelter in place order, the faster we can get through it. As of April 1, 2020, the shelter-in-place had been extended to May 3, 2020, with some additional restrictions being placed on essential functions. The County continues to strive to “flatten the curve” of those infected with COVID-19. Repeatedly, Dr. Cody as indicated that the only tools currently available to address the pandemic is through social distancing.

The Court takes seriously its obligation to strictly adhere to the County’s Shelter in Place Order while continuing to perform essential functions. The Court must balance and individuals’ statutory and Constitutional rights with an unprecedented Public Health concern, which by all reports is expected to surge in the next week or two. The Court must take into consideration the health and safety of minors and their families, but also counsel, staff, deputies, and the public.

Juvenile Court is different than Adult Court

The Court acknowledges first and foremost that Juvenile Court is different than Adult Court and has attempted to balance the stakeholder requests to alternatively treat the crisis protocols in the Juvenile system the same as the Adult Court and to NOT treat the systems the same. The Court continues to factor in for every decision that has been made that youth may be more susceptible to fear and anxiety

at being away from home during this COVID-19 crisis than the adult population. The Court is also keenly aware that efforts to continue rehabilitative programming while in custody benefits both the youth and our community safety. Due to a decade of efforts to reduce the in-custody population of youth in custody in Santa Clara County, our in-custody population is low. For example, a decade ago, we had a daily population of several hundred youth and today we have approximately 74 youth in Juvenile Hall and 44 youth in the James Ranch. The youth in custody have been placed in custody due to serious public safety concerns. Many of them have complex and difficult home lives which does not easily allow for release without stable services in place. This Court will continue to balance the needs of the youth and the public safety concerns that we are mandated to simultaneously consider by law.

Overview of court process since the first shelter in place orders were issued March 16 to April 7, 2020

As a reminder, due to wanting to meet with all justice partners (on March 17) and waiting on Emergency Orders specific to juvenile justice, the court continued to hear ALL cases (in custody or out of custody) through and including Wednesday, March 18th. So, while we went down to one courtroom, staff had not yet processed vacating matters. Many matters were handled telephonically resulting in the resolution of jurisdiction (through admission) and acceptance of disposition orders. Unfortunately, that process created a significant backlog of work for the skeleton crew staff.

From March 19 through April 7, (just 9 court dates total through and including April 1, with March 31 being a court holiday), the Court vacated all reviews. Although the Court obtained emergency orders for extensions of mandatory timelines, the Court has been committed to hear matters related to minors in custody as well as some time sensitive out of custody matters. The court has heard every detention under regular timelines. In addition, the court has continued to hear in custody jurisdiction and disposition matters, accepting admissions and adopting dispositions. As each of these matters have come to Court, the Court has heard argument and ruled on custodial status as appropriate. In addition, cases set for dismissal remained on calendar and have been heard and granted, typically with counsel waiving their client's appearance. For 707(b) offenses, the Court is not entertaining sealing orders at this time, but minors and counsel can seek such order in due course under the regular process. Other time sensitive matters, such as PPH hearing and competency restoration proceedings have been heard to stay within the mandatory timelines. Said cases have consistently been set for the next court date within the statutory framework. The court has additionally addressed 241 issues where appropriate.

All out of custody cases from March 19-April 7 were continued exactly 8 weeks out to their original departments and original times, with minor exceptions to account for court holidays or a judge's availability. The court believes a consistent continuance date will assist minors, families, counsel and probation for clarity on the next court date. We will be relying on counsel and probation to notice minors and their families of the next court date. The court recognizes that notice may be imperfect, and we will make accommodations before issuing any warrant for failure to appear on that first court date after the continuance. While cases are being continued, the expectation is that counsel will continue to communicate and work together to make sure all discovery is received and investigation completed (to the extent possible with shelter in place orders) and that negotiations continue so that when minors return for their case, we can hopefully move toward resolution.

For minors in custody, probation did an initial review of all cases at Juvenile Hall and the James Ranch and presented to counsel for stipulation those cases where they recommended release. Several minors were released as a result of those stipulations. The Court has continued to urge parties to meet and confer regarding releases from custody. A process for emergency review when the parties cannot agree will be discussed below.

Current Status of Minors in Custody

From the initial concerns expressed related to COVID-19 outbreak, probation had immediately implemented safety precautions for the hall, the ranch, screening and admissions, and all in-custody minors.

There is a health screening process in place which has been distributed to all justice partners. The temperature of each youth is taken two time per day. Thankfully, there are been no known cases of COVID 19 in the Juvenile Hall or at the James Ranch, for youth or staff. Appropriate sanitation and social distancing are being implemented as best as possible given the age and maturity of the youth. Both Juvenile Hall and the James Ranch are operating at low capacity⁵ which allows for the possibility appropriate social distancing (unlike the main jail and the adult populations). Currently minors are not being moved to the Ranch from Juvenile Hall, but they are receiving credits from their date of commitment to not be penalized due to the shelter in place order.

FACILITY	TOTAL POP	CAPACITY	%
JUVENILE HALL	70	390	18%
JAMES RANCH	43	108	40%
TOTAL	113	498	23%

Deputy Chief Nick Birchard has updated us as to the fact that educational services have been begun as of March 26 in Juvenile Hall through Odysseyware, a web based online educational management system. Probation staff, (group counselors) are working with the youth in the classroom providing assistance with educational needs as appropriate. Odysseyware provides course materials and a learning management system to deliver courses to students in grades 3-12. Instructors can select courses to supplement the regular classroom, or for credit recovery or advancement. For many courses, instructors can choose which parts of the course materials to include and add customized assignments

Youth in custody also continue to receive mental health services, through intake screening, crisis stabilization, and other services. While there is less staff, there is also a smaller population. Youth in custody will continue to receive competency restoration services. Additionally, probation is working with the IT department to obtain tablets for youth to maintain communication with support services currently not allowed into the hall. Starlight services and probation staff continue to do groups at the ranch while maintaining appropriate social distancing. Youth in custody are also allowed time outside,

⁵Data published on March 31, 2020 by JPD

are eating outside rather than in the cafeteria weather permitting, and are allowed liberal phone and when available, video calls with their families and some service providers.

Proposed Court Process April 7 – May 1:

1. **DETENTIONS:** continue to be heard daily, unless illness or some other unforeseen circumstance or emergency mandates that the court utilize the extension orders in place.
2. **IN CUSTODY UNCONTESTED JURISDICTION AND DISPOSITION MATTERS:** The Court will hear all in custody uncontested jurisdiction (admissions) and disposition matters. Minors whose disposition orders include a Juvenile Rehabilitation Facility (Ranch) Commitment will not be transported to the ranch. However, their time will start as of the date of commitment to not penalize them due to shelter in place orders.
3. **PPH (Permanency Planning Hearing), COMPETENCY RESTORATION REVIEW:** The Court will continue to hear these matters and continue them within the statutory deadlines. The court will handle matters with minors remotely (by phone) with the minors so as not to violate shelter in place orders.
4. **RECEIPT OF REPORT:** Receipt of reports for competency, 602 evaluations, SDTs or other matters set prior to shelter in place orders will be heard, but counsel is requested to either waive their client's appearance or have the client appear remotely so as not to violate shelter in place orders. If the report has been received, it will be distributed. If the report has not been received, it will be continued to such time as to allow completion of the report given current shelter in place orders.
5. **DISMISSALS:** Cases set for DEJ dismissal or DEJ reviews that are at the 1-year mark (and would be eligible for dismissal) or cases previously set (prior to shelter in place orders) for dismissal will be heard and when appropriate dismissed. Counsel should either waive their client's appearance and send the order via mail or have the client appear by phone to not violate shelter in place orders.
6. **DEPARTMENT OF JUVENILE JUSTICE (DJJ) RETURNS:** Individuals returned from DJJ after release to our county (upon completion of their DJJ commitment) will be heard as they are returned in custody.
7. **REVIEWS:** All reviews (except for those listed above) will be vacated with no further court dates. The court will rely on probation (after shelter in place is lifted) to calendar reviews as needed for violations, concerns, or dismissals as appropriate.
8. **CONTESTED JURISDICTION HEARINGS:** Previously scheduled time waived, out of custody contested jurisdictional hearings will be heard in the morning calendar to continue to a date

agreed upon by counsel and the court, considering shelter in place orders and the court's calendar. Counsel shall have the minor appear remotely for resetting and ordering back. In custody contested jurisdiction hearings will be set or continued according to currently timelines approved by orders during shelter in place. Due to public health concerns, and consistent with the Chief Justice's Orders, the Court will not ask members of the public to violate shelter in place orders to attend trial. Counsel is strongly encouraged to meet and confer to see if there is a reasonable resolution without a contested hearing during this time. In addition, the Court will hear custodial requests for those minors whose CJH are being continued.

9. **OUT OF CUSTODY CONTESTED JURIS AND DISPO and IDC/JURIS:** All out of custody IDC, juris and dispo will be vacated and continued for 8 weeks, to manage calendars, keep consistencies, and allow sufficient time for attorneys to obtain and review discovery, conduct investigation, engage in negotiations, and be prepared to move forward.
10. **RESTITUTION SETTING:** Will be continued 12 weeks.
11. **TRANSFER HEARINGS:** There are a limited number of pending transfer hearings currently set. If they have not done so already, counsel should contact the judge (while cc'ing opposing counsel) to discuss future dates so that the matters can be reset off the record. The court will not be hearing contested transfer hearings during shelter in place.
12. **TRANSFER TO DJJ:** At this time, by mandate of the Governor and even prior to that, by order of DJJ, DJJ will not be receiving any individuals at this time. Those committed to DJJ will remain in the hall pending transfer to DJJ.
13. **MOVES TO COUNTY JAIL AT AGE 19:** The Court acknowledges that during this time, minors that turn 19 should not be transferred to County Jail, but rather remain in Juvenile Hall if at all possible. However, pursuant to Title XV mandates and the requirements for *a waiver* by State to house youth over the age of 19 without sight and sound separation--- keeping the 19 year old in JH would jeopardize the State and Federal licensing mandates which could result in the closure of the facility. However, during the SIP, the Court would authorize an emergency hearing on this issue if the attorney for the youth believes that the youth would be particularly vulnerable to COVID-19 at the main jail due to underlying health conditions documented to create an increased risk to that youth. That would require a noticed hearing with a written motion be served on the Court, the DA, JPD and on County Counsel.
14. **REMOTE HEARINGS:** The Court will continue to explore Skype, Zoom, and other forms of remote hearings. The Court is asking JPD to email reports to the stakeholders in order to prevent attorneys from having to appear in court if that attorney wishes to appear remotely.

Review of Minors in Custody for Early Release

Probation initially reviewed several youths who they recommended for release from the hall and ranch. Those where there was agreement by justice partners and stipulated to have already been signed off by the Court and released.

Pursuant to guidance suggested by the California Supreme Court Chief Justice⁶ the Court required the justice stakeholders to develop a meaningful meet and confer process when there was a disagreement about an early release of a youth from custody. The DA and the Public Defender submitted their suggested protocols to the court on May 27th, 2020. It is unknown if the parties met and conferred about submitting a joint process after reviewing one another's since that time. Certainly, that would have been ideal.

Many of the community-based organizations are willing to help with a plan of support once the youth is released⁷. The Court values this offer of support from the community at a time when government partners have needed to scale back. Please consider meeting with community partners when designing a plan of support once the youth is released home or to a suitable family or family friend. Here is an excerpt from the Young Women's Freedom Center letter to the Board of Supervisors.

The Young Women's Freedom Center and the Sister Warriors Freedom Coalition⁸, representing our members and communities we work with, are ready and willing to partner, meet with officials, and contribute our expertise to developing immediate plans and policies to support young people most at risk during this crisis. We have already begun working to ensure that youth have access to the internet at home, covering the costs ourselves, and have raised additional private funding to ensure

⁶ Excerpt from the guidance of the Chief Justice of the California Supreme Court

Criminal Procedures

1. Revise, on an emergency basis, the countywide bail schedule to lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to \$0 for many lower level offenses – for all misdemeanors except for those listed in Penal Code section 1270.1 and for lower-level felonies. This will result in fewer individuals in county jails thus alleviating some of the pressures for arraignments within 48 hours and preliminary hearings within 10 days.
2. In setting an adult or juvenile defendant's conditions of custody, including the length, eligibility for alternative sentencing, and surrender date, the court should consider defendant's existing health conditions, and any conditions existing at defendant's anticipated place of confinement that could affect the defendant's health, the health of other detainees, or the health of personnel staffing the anticipated place of confinement.
3. With the assistance of justice partners, identify those persons currently in county jail or juvenile hall custody who have less than 60 days remaining on their jail sentence for the purpose of modifying their sentences to permit early release of such persons with or without supervision or to community-based organizations for treatment.
4. With the assistance of justice partners, calendar hearings for youth returning to court supervision from Department of Juvenile Justice following parole consideration for a Welf. & Inst. Code, §1766 hearing.
5. With the assistance of justice partners, determine the nature of supervision violations that will warrant "flash incarceration," for the purpose of drastically reducing or eliminating the use of such an intermediate sanction during the current health crisis.
6. Prioritize arraignments and preliminary hearings for in-custody defendants, and the issuance of restraining orders.

⁷ See attached letter dated March 30, 2020

⁸ San Jose Blue Stars Admissions Consulting, De-bug Silicon, Valley Community Agency for Resources, Advocacy and Services, Youth Outreach and Learning Institute, Youth Alliance, Johnathan Gomez, SJSU Chicana/o Studies Dept

access to laptops so they can do schoolwork, engage in support groups, receive one-on-one support, and continue in on-the-job training and employment support.

We hope that the model we have developed as grassroots community organizations working in partnership and on behalf of young people most isolated can be adopted and supported by the city and counties in which these young folks and their families live.

The Court has considered the input of the parties and at this time the Court identifies the following Process for filing of emergency requests for release:

1. Emergency motions are defined as motions that seek immediate relief that cannot wait until the shelter in place order is lifted, e.g., a motion for release of a minor when there is no stipulation to release, but there has been a change in circumstances since the detention hearing *other than the onset of the COVID-19 pandemic*.
2. Prior to submitting a motion for emergency relief, parties must meet and confer.
3. For requests for emergency release from custody where there is not agreement, Defense Counsel should file a W&I Code section 778 include the following information:
 - a. Statement that counsel met and conferred with the DA with dates and time.
 - b. Statement as to whether probation agrees or disagrees with the request for release.
 - c. Statement that includes information as to why they believe there is an urgent need for release based on circumstances specific to that minor other than the COVID-19.
 - d. Statement of the stage of case (pre-juris or post-dispo). It post-dispo, the time remaining on commitment.
 - e. Location of confinement: Juvenile Hall, James Ranch, or Juvenile Hall awaiting transfer for ranch commitment.
 - f. What charges the minor is in custody on (707(b), VOP, etc) and date of offenses/allegations.
 - g. What is the minor's living situation upon release? (any victim's residing at home, any need for protective orders that the court can implement)
 - h. Support that can and will be provided to the youth upon release by either government or community-based stakeholders.
 - i. After the parties meet and confer regarding the urgency of the request and there is no agreement, notice should immediately be given by counsel to JPD and to the DA as to which case the Defense Counsel will be seeking emergency judicial review. Within 24 hours of the filing for emergency relief, the DA should respond, succinctly stating their objection to the

release. Another 24 hours may be granted to the DA to respond upon a showing of good cause.

- j. Emergency motions shall be filed in the designated open courtroom for that day. The court will review emergency motions and make every effort to have the motions decided and a written order issued within three court days of the final submission. The Court will notify the parties if it believes that it needs additional information or if it decides a hearing is necessary, and if so, with notice of the time and mode of such hearing (in court or remote).

Motions for Early Release after December 9, 2020 during COVID-19 Outbreak in JH and James Ranch

After 10 months of containing the virus and keeping our youth and staff free of COVID-19, there has been an outbreak in both custodial facilities. Extreme measures are now being taken to eliminate the virus before more youth and staff are infected. The youth at JH will be spending a majority of their waking hours in their rooms. They are not allowed to eat together, or be outside their rooms except to use the phone to call family one time per day, and to get some exercise. They will be receiving packets for school attendance as of today. Only one or two youth can be out of their rooms at a time and the must be separated at all times. The virus and the quarantine response is a significant change in circumstances. Dr. Han of the public health department continues to opine that congregate care is the worst setting for the COVID virus. In that regard several youth were released from James Ranch last week.

Judge Lucero met yesterday with all of the Juvenile Justice Stakeholders and has indicated that any youth that is considered a low to medium risk for public safety may be considered for release from Juvenile Hall with appropriate service planning with family and government and community providers. After a request was made from the Defense attorneys with the DA’s agreement, the attorneys were told that they do not have to meet and confer on each request for release as was required in the earlier COVID-19 protocol, but that a request could be submitted directly to the court with notice to the District Attorney. The D.A. will have a chance to respond if they choose, and then the judge will consider releases on the Electronic Monitoring Program with services in place. As stated earlier, the Court considers the recent spike of the virus in the custodial setting, and the quarantine measures being taken in the Juvenile Hall, to be a change of circumstances. The Court will continue to balance public safety with what is in the best interest of the youth when exercising its discretion for a release from custody. This exception only applies until the virus is again eradicated from Juvenile Hall and the James Ranch.

Below is the current total of youth in custody posted yesterday.

FACILITY	TOTAL POP	CAPACITY	%
JUVENILE HALL	51	390	13%
JAMES RANCH	18	108	17%
TOTAL	69	498	14%

