



September 25, 2019

Denver Butler, Commissioner
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Greg Fischer, Mayor
City of Louisville
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RE: Protecting the Interests of the Youth of Jefferson County Regarding Juvenile Detention

Dear Commissioner Butler and Mayor Fischer:

As concerned legal advocates, we are writing to you on behalf of the children and families of Jefferson County, Kentucky who will be impacted by the impending closure of Jefferson County Youth Detention Center (JCYC). It is the position of the ACLU of Kentucky, Children's Law Center, and the Institute for Compassion in Justice that any final decisions made regarding this course of action should be based on informed and evidence-based considerations which will protect the well-being and legal rights of Kentucky youth. Based on our reading of the Tentative Agreement released on September 19, 2019, the current plan will not protect the rights of the youth or their families.

The ACLU of Kentucky works in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the constitution and the laws of the United States guarantee to all people in Kentucky. One of our priority issue areas is juvenile justice, and we work closely with lawmakers and community advocates to ensure that our young people are protected and cared for.

Children's Law Center, Inc. (CLC) is a unique non-profit legal service center protecting the rights of children and youth to help them overcome barriers and transition into adulthood, better self-advocate for their needs, and successfully contribute to society. It provides individual legal advocacy to children and youth, and through public policy work, training and education, impact litigation, and juvenile defender support services, seeks to improve the systems that serve children. CLC offers services in both Kentucky and Ohio, and collaborates with other organizations within the region and nationally on a variety of topics.

The Institute for Compassion in Justice (ICJ) is a nonprofit civil rights law firm dedicated to the rights of young people in Kentucky from birth to twenty-five years of age. We are guided in our work by the

important scientific breakthroughs which have established the unique needs of young people. To serve young people well, we believe that Justice can only be achieved when the Law acts with compassion and responds intelligently to the realities of youthful immaturity. Children and young adults deserve respect, protection and compassionate treatment in order to be held appropriately accountable for their actions in a balanced system of justice. Families need support to help raise their children well. Successful legal advocacy for children and young adults requires partnerships between young adults, families, lawyers, local community advocates, trained professionals and system stakeholders. ICJ has a strong legal presence in Jefferson County representing children who are impacted across the educational, health care and juvenile justice systems. Both CLC and ICJ are recognized as experts in the field of juvenile justice and conditions of confinement.

1. Jefferson County Cannot Disregard its Statutory Obligation Under Kentucky Law

Under Kentucky law, Jefferson County has a statutory responsibility to provide for youth in custody pre-disposition. Constitutionally, the position of the Jailer was created as a county position to reflect the county's obligation in this regard. Although counties are permitted to abolish the position—and Jefferson County has—and create a metro corrections system, that system is still responsible for complying with all the laws applicable to local jails, including youth detention centers. KRS 67B.030(2) and KRS 441.005(1) and (3). This includes the duty of the fiscal court to “provide for the incarceration of prisoners arrested in the county or sentenced or held by order of the courts in the county.” KRS 441.025(1).

Separately, KRS 15A.305 directs the Department of Juvenile Justice (“DJJ”) to create a regional system to be built “with available funds.” When a “regional facility” is opened, the statute gives DJJ and the county the authority to contract to allow DJJ to house kids within the region. It does not, however, allow the county to ignore its obligation under the statute by closing down a facility and leaving DJJ responsible for finding an alternative.

2. Closure of JCYC will have Detrimental Impact on Youth and Families

There has been no official Health Impact Assessment completed to determine the actual effect that transporting youth for long distances and detaining them far away from their families and communities would have. However, there is a strong general consensus that closing JCYC and proceeding with a plan to send incarcerated Jefferson County youth to Adair (2 hours, 106 miles away), Boyd (3 hours, 189 miles away) and Warren (2 hours, 131 miles away) Counties would have an extremely negative impact on youth and their families.

Recognizing that “success in the community is often linked to supportive relationships that youth have with family and others,” the Annie E. Casey Foundation formulated a litany of standards for youth detention centers regarding access to their family and support systems. *See AECF Juvenile Detention Facility Assessment Standards*. Families are much less likely to be able to visit with the children in these centers if they are three hours away, especially if the facility only has visiting hours during normal business hours or week days, or if the families lack the resources to travel these far distances. Standards enunciated by the Institution of Judicial Administration/American Bar Association Standards and the John D. and Catherine T. MacArthur Foundation Models for Change, Best Practice Detention Standards also find such interventions as essential for a community that wishes to do more than punish children with incarceration.

The *AECF Juvenile Detention Facility Standards* also address the need for youth to have access to counsel and other advocates about their cases and other issues requiring legal assistance. Beyond these standards, there are serious constitutional concerns with a child being placed so far from his/her attorney. The mandates of *In Re Gault* will not be met if Jefferson County attorneys have to represent kids who are housed hours away. The interference with the right to full and fair hearings and the right to trial would be severely compromised. As an indigent defense system, the Louisville-Jefferson County Public Defender's Office is often stretched to capacity. All indications are that placing this additional burden on the lawyers to only communicate with their clients remotely or to take days away from the office to travel the distance to these facilities will **not** work, nor should it be necessary given the size and resources available in Jefferson County to keep youth there.

The Tentative Agreement references video conferencing as an alternative to in person contact. Court proceedings held by videoconference raise substantial due process questions, particularly where youth are involved. The right of the accused to be present in proceedings against them is an all-encompassing right under the Due Process Clause of the Fourteenth Amendment. Video hearings are impersonal and youth are less likely to be engaged in proceedings that are happening via video. In addition to potential technological difficulties, the video impairs the quality of the attorney's representation by impeding the attorney's access to confidential communications with the child when they are in different locations. The youth's right to be present in person should not be trumped by administrative convenience.

Anytime a child is detained, there is a substantial interference with his/her education. The risk that a child who requires special education will not receive appropriate services is very high. When a child is placed in another county, they have to be unenrolled from their home school, and enrolled in the county where they are being detained. With that comes an array of issues with credit transfers and recordkeeping. These existing hurdles will be even greater if JCYC closes and children are transported hours away. Under the proposed plan, a child may go from JCPS to Adair, and then to Boyd County, amounting to three different school enrollments within a single semester. There is a low likelihood that an Individual Education Program (IEP) for a child with learning disabilities will be fully and lawfully implemented when the child is spending an entire day, or multiple days, going back and forth to court. JCPS would have further incentive to file more charges and see detention as a way to unenroll students with problem behavior. As the school district brings the largest number of complaints against children, there is a high likelihood that the district will recognize and act upon the incentive to seek incarceration of children, only increasing pre-adjudicative days in detention. The plan includes no safeguard against such an increase.

Jefferson County's behavioral and mental health system has developed symbiotically with the Jefferson County Juvenile Court System to meet the needs of youth in the system. Likewise, social services in Jefferson County and community interventions are designed to serve youth who have been initially held or processed at the local detention center. Placing youth hours away from those essential, statutorily required services, will cause significant harm to the population the Commonwealth is obligated to serve. These same resources are in no way available to serve Louisville-Jefferson County youth with the same organizational structure or expertise from locations in the rest of the Commonwealth.

We also cannot ignore the cultural considerations. A large percentage of youth detained in Jefferson County are Black youth. On any given day, the population at JCYC is 90-95% African American youth. Sending youth of color to detention centers in rural areas means they will be housed without sizeable populations of color and staffed with facility personnel who may not be culturally competent.

These youth will not have access to therapeutic services from professionals who have an understanding of the traumas these youth face.

3. Closure of JCYC will create Extreme Logistical Complications

In addition to the negative impact on youth and families, the closing of JCYC as planned would be a logistical nightmare for court officials and law enforcement. Although many rural communities already face this challenge, Jefferson County is substantially different in terms of volume and frequency—there are far more youth in detention in Jefferson County than in other regional facilities, and court in Jefferson County is held *every* weekday. In many rural areas, court is held as little as once a week, or even once a month. Moreover, the number of youth going to detention from those counties are far fewer.

Many situations require that youth be transported separately, including co-defendants or males/females. It would not be unlikely to have multiple vans transporting multiple kids for 4-6 hours *every* day. Those transporting the youth may require that the youth be restrained, with belly shackles for the duration of the trip. There are also statutory time limits for detention hearings that must be adhered to, requiring children to be shipped back and forth for hours at a time, more than once each week to comply with these requirements. There would be no place to house youth during trials. This is especially problematic for youthful offenders who may be facing trials that last for days or even weeks.

4. Alternative Proposal Consistent with Protecting the Rights of Children and Families

As youth advocates, we believe closing juvenile detention centers if DJJ establishes more alternatives to incarceration with supportive interventions, can be a step in the right direction towards accountability for youth behavior. We would be fully supportive of closing the detention facility if, in fact, it would mean less youth are detained. Historically, this has not been the case and there is no evidence this situation would be any different. While detention closures have initially resulted in decreases in detention rates, these benefits gradually fade away. This trend will repeat itself in the instant circumstance, where DJJ plans to place youth in existing facilities which have beds that need to be filled. The Tentative Agreement offers no plan to curb over-charging of youth, nor a strategy to incentivize alternatives to detention for the courts. Despite the geographic size and resources available to the Commonwealth in the Jefferson County area, the Tentative Agreement involves relocating the impacted youth hours from the legal, spiritual, mental health and educational resources targeted to serve their needs. Such an approach will violate the statutory and constitutional rights of youth in Jefferson County.

Instead, we propose the following. If reopened, Audubon could be used as both a YDC and detention facility. Nationally, more states and counties are turning towards a holistic juvenile justice system, wherein all services, offices, courts, and residential housing centers are on a single campus. The focus is more on offering a variety of therapeutic treatment resources rather than merely housing youth. Limiting the beds available for pretrial detention under this scenario would be more effective in permanently curbing the numbers of pretrial detention for youth. For example, the judges could be advised that the Department of Juvenile Justice would permit up to a certain number of beds for pre and post adjudicative detention each month, while permitting an increase in the permissive maximum number should public safety dictate incarceration. This approach would also ensure robust use of current community alternatives and the creation of new reformatory programs, in keeping with the

mandates of Kentucky's Juvenile Code. Finally, we would propose creating a task force that includes youth, families, agency staff, legislators, judges, community groups, and other stakeholders which would identify and generate long-term solutions, including the possibility of a YDC in Jefferson County. National organizations such as the Annie E. Casey Foundation and the Youth Correctional Leaders for Justice have developed resources and policy plans for such long-term strategic solutions. We should use this moment as an opportunity to be innovators in juvenile justice reform and create a model that will serve the youth of Jefferson County.

Sincerely,



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