

GUIDANCE TO JUVENILE COURTS ON CONDUCTING REMOTE HEARINGS DURING THE COVID-19 PANDEMIC

Social distancing and community shutdowns are having a deep impact on our nation's juvenile courts. As a result, many courts have moved to "remote" hearings to handle cases. Depending on the jurisdiction, remote hearings may be via video or may only be telephonic. Some jurisdictions are holding remote hearings only for critical matters affecting youth liberty, such as detention and parole hearings. Other juvenile courts are handling all kinds of hearings remotely.

As a general principle and under normal circumstances, the National Juvenile Defender Center (NJDC) strongly opposes the use of remote hearings in juvenile delinquency proceedings. Remote hearings present serious due process concerns, as they present insurmountable barriers to effective assistance of counsel, harm attorney-client relationships and confidentiality, and lead to worse outcomes for youth.

However, there are times, as with the current COVID-19 crisis, when youth and defense attorneys who are fully informed of the risks and challenges may find it appropriate to consent to waiving the youth's physical presence in court and participate in hearings facilitated by remote technology.

For emergency situations like the COVID-19 pandemic, NJDC recommends youth and defense attorneys limit their consent to participate in, and juvenile courts limit their use of, remote hearings to only proceedings targeted at increasing youth liberty, whether that be release from facilities or programs, or terms of probation or commitment.

Remote Hearings Generally Harm Due Process

Youth are entitled to due process protections under the Fourteenth Amendment, as guaranteed by the U.S. Supreme Court.¹ Every person charged with a crime has a constitutional right to be present at hearings in which their participation may affect the outcome.²

Remote hearings create challenges for the effectiveness of court proceedings, inhibit and harm the attorney-client relationship, hamper effective juvenile defense advocacy, and lead to disparate outcomes. Due to the limitations inherent in remote hearings and youth's still-developing cognition and socioemotional maturity,³

¹ *In re Gault*, 387 U.S. 1 (1967).

² *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987) ("Although the Court has emphasized that this privilege of presence is not guaranteed 'when presence would be useless, or the benefit but a shadow,' due process clearly requires that a defendant be allowed to be present 'to the extent that a fair and just hearing would be thwarted by his absence.' Thus, a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure.") (internal citations omitted).

³ See generally, National Research Council, *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH* 89-118 (Richard J. Bonnie et al. eds., 2013).

the lack of physical presence at hearings makes it more likely “that a fair and just hearing would be thwarted by [the young person’s] absence.”⁴

While the practice of remote hearings can never be justified by concerns of judicial economy, transportation time and costs, or administrative ease, how youth and defense attorneys weigh the advantages and disadvantages during this pandemic will obviously vary—and may well vary in each case. Remote hearing should be permitted only with the consent of the defense after thoughtful weighing of the advantages and disadvantages the client may face.

Considerations

When conducting remote hearings, juvenile courts should consider each of the following questions and put in place measures to limit the due process obstacles remote hearings create. Answering “no” to any of the following questions increases the risk that a remote hearing is creating undue harm to a youth’s due process rights and a defense attorney’s effectiveness.

- Is the purpose of the hearing targeted at youth liberty (i.e., considering potential release from detention or commitment)?
- Is there a confidential means of communication (i.e., a separate phone line) that allows for privileged two-way communication between the defense attorney and their client before, during, and after the hearing?
- Will the court permit breaks in the hearing whenever private attorney-client communication is required?
- Is the youth in a confidential space—meaning there is no other person in the room with them—at the remote location that allows for private attorney-client communications?
- Does the court’s video technology allow the young person to see the other actors who are speaking?
- Has defense counsel been provided sufficient time and access to their client prior to the hearing to explain how the process of a remote hearing will work, answer any questions their client has prior to the hearing, and establish a plan for communicating post-hearing?

NJDC would like to thank our colleagues at Juvenile Law Center for their input on this resource.

⁴ See *Kentucky v. Stincer*, 482 U.S. at 745.

JUVENILE PUBLIC DEFENDER
TRAVIS COUNTY, TEXAS

2201 Post Road, Suite 200
Austin, Texas 78704
Office 512.854.4128
Facsimile 512.854.4148



Juvenile Public Defender:
Kameron D. Johnson*†
Deputy Public Defender:
L. Nora Soliz*

*Board Certified-Juvenile Law
†Board Certified-Criminal Law
Texas Board of Legal Specialization

Writer's email: Kameron.Johnson@traviscountytexas.gov

March 16, 2020

Via Email

The Honorable Rhonda Hurley
P.O. Box 1748
Austin, TX 78767

Chief Juvenile Probation Officer Estela P. Medina
2515 S. Congress
Austin, TX 78704

Dear Judge Hurley and Chief Medina:

On behalf of all juveniles in your custody and the broader juvenile community, I am searching for all possible avenues to enable the release of all youth confined in the Travis County Juvenile detention facility who are eligible for release, with a particular focus on those youth who are particularly young, suffer from disabilities such as asthma and diabetes, or are immunosuppressed, unvaccinated, and therefore at higher risk for contracting and spreading COVID-19.

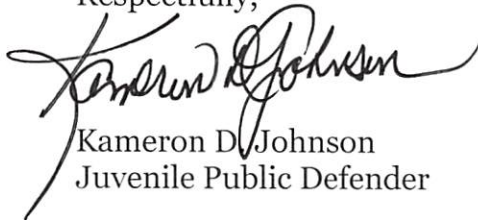
The Juvenile Court is required to not only protect public safety, but to provide for the best interests of the children. Tex. Fam. Code § 51.01. When considering detention for a child, **the presumption is for release unless one of the enumerated reasons for detention is met.** Tex. Fam. Code § 53.02(a). Similarly, significant consideration must be made before separating a child from the child's parents, and when a child is removed from the child's family, the child is to receive the care that should be provided by parents. Tex. Fam. Code § 51.01(5). During the unprecedented COVID-19 pandemic, we know that any confined individual adult or juvenile is at great risk for contracting the virus, or in the case of youth, being carriers of the virus and pose contagion to staff, probation officers, attorneys, multigenerational visitors, and other detainees. While detained, these children are required to receive the care and protection that should be provided by parents, a requirement that is difficult to meet in this unique situation with continuously revolving staff and exposure.

"The child 'requires the guiding hand of counsel at every step in the proceedings against him.'
In re Gault, 387 U.S. 1, 18 (1967)

One measure you could take immediately is to begin assessing all detained youth for release. If they are awaiting placement, please expedite the release of the youth to their placement or to an available children's shelter. If youth are on warrants, please clear the warrants and place a moratorium on non-violent violations, technical violations such as home detention violations, motions to revoke or Directives to Apprehend, and allow youth to appear in court, or by phone, without having to surrender to clear warrants. Several detained youths are also awaiting release to CPS, and efforts should be taken to release as quickly as possible. I urge you to also consider diversion to the Second Chance Program or Deferred Prosecution Unit in lieu of detaining a youth.

Given the public health emergency we are facing, I ask that you exercise your powers as broadly as possible to prevent the detention of youth, and to minimize exposure of multigenerational family members, staff, probation officers, and justice partners to possible contagion during this crisis. We should release these youth now before they become exposed, which would prevent many of them from being able to return to their homes, especially if they live with the elderly or immunocompromised people.

Respectfully,

A handwritten signature in black ink, appearing to read "Kameron D. Johnson". The signature is fluid and cursive, with a large initial "K" and "J".

Kameron D. Johnson
Juvenile Public Defender

Administrative Emergency Order

§
§
§
§
§

In the 98th District Court

Sitting as a Juvenile Court

Travis County, Texas

**Filed In The District Court
of Travis County, Texas**
on 3/16/2020
at 1:26 P. M.
Velva L. Price, District Clerk

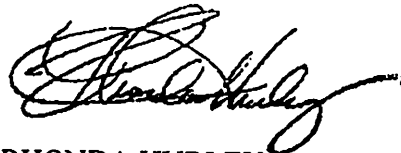
**Order Regarding Court Proceedings
in Response to COVID-19 Emergency**

On this date, the Court sitting as the Juvenile Court enters this Order Regarding Court Proceedings in Response to the COVID-19 Emergency.

The Court finds that temporary changes in the handling of court proceedings are necessary in an effort to comply with the recommendations of the Office of Court Administration as well as the disaster declarations issued by Travis County officials and the Governor of the State of Texas. The Court further finds that the provisions in this order regarding court proceedings are in the best interest of public safety and are hereby ordered and implemented until further notice in an attempt to minimize the risk of exposure to COVID-19:

1. The only in-person hearings to be conducted will be detention hearings and pleas for juveniles currently detained or those entering detention;
2. With advance notice and preparation, telephonic hearings may be conducted for any hearing, if necessary;
3. To the extent possible, attorneys are encouraged to obtain a waiver of detention hearing in the appropriate cases;
4. All bench and jury trials will be continued until further order of the court;
5. For any other emergent matters that should arise during this time, counsel is directed to contact the court by email or phone with all parties noticed and/or participating;
6. Any person who is ill is instructed not to come to court. Call your attorney, probation officer or the court if you are unable to appear due to illness and the appearance will be rescheduled.
7. For any in-person hearing, limit the persons appearing to those who are required to be present for the particular hearing.

SIGNED on March 16, 2020.



RHONDA HURLEY
Judge, 98th District Court
Juvenile Court
Travis County, Texas

File No. D-1-GN-61-121012

Filed In The District Court
of Travis County, Texas
on March 25, 2020
at 11:53 A.M.
In the 98th District Court
Velva L. Price, District Clerk

Administrative Emergency Order §
 §
 §
 §
 §

Sitting as a Juvenile Court

Travis County, Texas

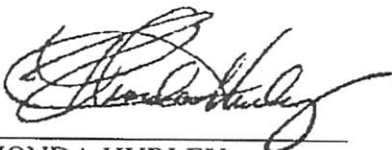
**First Amended Order Regarding Court Proceedings
in Response to COVID-19 Emergency**

On this date, the Court sitting as the Juvenile Court enters this First Amended Order Regarding Court Proceedings in Response to the COVID-19 Public Health Emergency.

The Court finds that temporary changes in the handling of juvenile court proceedings are necessary in an effort to comply with the recommendations of the Office of Court Administration in addition to the disaster declarations issued by Travis County officials and the Governor of the State of Texas. On March 16, 2020, this Court issued its first order modifying court proceedings. On March 24, 2020, the Mayor of the City of Austin and the Travis County Judge issued ‘shelter in place’ orders # 20200324-007 and # 202080467, respectively, giving rise to a need for further changes to court proceedings. The Court finds that the provisions in this order regarding court proceedings are in the best interest of public health and safety, and are hereby ordered and implemented until further notice in an attempt to minimize the risk of exposure to COVID-19:

1. No in-person hearings will be conducted effective this date. All detention hearings for juveniles currently detained or those entering detention will be held using telephonic or video-conferencing through Skype or Zoom;
2. To the extent possible, attorneys are encouraged to obtain a waiver of update detention hearings in the appropriate cases pursuant to the process set forth in Exhibit A;
3. All adjudication, modification, and disposition hearings where placement, commitment, or transfer is requested by the state or any other matter requiring urgent intervention, including Reentry Court hearings for youth placed in the ISC, may be heard via remote hearing to be set in coordination with the court;
4. All bench and jury trials will be continued until further order of the court;
5. For any other emergent matters that should arise during this time, counsel is directed to contact the court by email or phone to address the issues with all parties noticed and/or participating.

SIGNED on March 25, 2020.



RHONDA HURLEY
Judge, 98th District Court
Juvenile Court
Travis County, Texas

EXHIBIT A

Process for obtaining update detention hearing waivers

Detention Hearing Waiver Forms will be available to detention staff at all times and detention staff will be notified of the location of the forms.

When a juvenile is willing to waive an update detention hearing, his/her attorney should promptly notify detention staff. Detention staff will take a waiver form to the child to allow the child to sign the form in the appropriate space.

Staff will ensure that the signed waiver form is then provided via email to the Juvenile Public Defender's office or the private attorney assigned to the case.

That attorney must sign the waiver and promptly submit it to Gloria Gochicoa or the assigned court clerk for filing and notice to the court and all parties.

Administrative Emergency Order

§
§
§
§
§

In the 98th District Court
Sitting as a Juvenile Court
Travis County, Texas

Filed in The District Court
of Travis County, Texas

APR - 8 2020 JM

At 2:33 P.M.
Velva L. Price, District Clerk

**Standing Order Regarding Procedures for Remote Juvenile Court Hearings
During the COVID-19 Public Health Emergency**

On this date, the Court sitting as the Juvenile Court enters this Standing Order Regarding Procedures for Remote Juvenile Court Hearings During the COVID-19 Public Health Emergency.

The Court finds that given temporary changes in the handling of juvenile court proceedings in accordance with the recommendations of the Texas Office of Court Administration, the First and Third Emergency Orders Regarding the COVID-19 State of Disaster issued by the Supreme Court of Texas and the Court of Criminal Appeals of Texas, as well as the disaster declarations issued by Travis County officials and the Governor of the State of Texas, this order concerning procedures for remote juvenile court hearings is necessary and the following procedures are therefore ORDERED. This order is intended to supplement this Court's First Amended Order Regarding Court Proceedings in Response to COVID-19 Emergency, which remains in full force and effect.

- 1. General Procedures for Remote Hearings.** Travis County Juvenile Courts will conduct remote hearings by Zoom video or telephone conference in appropriate cases during the COVID-19 pandemic. Any requests for an in-person hearing during the pandemic will be considered, but are likely to be postponed pursuant to the current Emergency Orders. Matters may also be considered by the Court on submission via email with inclusion of all parties and the probation representative.

These Procedures are in addition to the Texas Rules of Civil Procedure, Texas Rules of Evidence, Travis County Local Rules, and the Court's instructions during the hearing, all of which are applicable in remote hearings. Violations of these Procedures may be punishable by contempt of court.

- 2. Communications with the Court.** All communications regarding scheduling a hearing should be directed to the appropriate clerk for each court;
 - **Joyce Machado for Judge Rhonda Hurley, 98TH District Court;**
 - **Tina Chandler for Associate Judge Ami Larson;**
 - **Rebecca Hampford for Associate Judge Bradley Temple;**
 - **Therese Aguirre for Associate Judge Texanna Davis.**

When requesting a setting you must notify the clerk of your time estimate for the hearing and any request for a court reporter.

3. **Videoconferencing.** The Court will utilize Zoom videoconferencing. It is free to download at <https://zoom.us>, or you can download the app directly to your mobile phone. To participate in the meeting or hearing no account need be created. Please ensure your computer or mobile phone has working internet access, video camera, and microphone or headset with microphone. If you do not have a computer a phone number will be provided for you to participate by phone.
4. **Hearing Link Emailed.** A separate meeting will be created for each hearing. The Court will email the hearing participants an invitation with a link (and possibly a password) to the Zoom hearing. It is the responsibility of the probation officer to ensure that parents of the respondent are provided a copy of the invitation with instructions on how to join the meeting to participate. If the victim wishes to attend the hearing, it is the responsibility of the state's attorney to provide the copy of the hearing invitation with instructions on how to join the meeting. For any contested hearing, it is the responsibility of the attorneys to provide to the witnesses they intend to call notice of how to join the Zoom hearing. Only counsel, the parties, and witnesses for a contested hearing shall be provided the Zoom link and permitted to attend the Zoom hearing. No one shall forward a zoom hearing invitation to anyone unless expressly authorized in this order or permission of the court is requested and granted in advance.
5. **Exhibits.** If you intend to offer any exhibits during the hearing, you must email an exhibit list and the exhibits to all parties and the Court at least 24 hours in advance of the hearing, and you must:
 - Ensure that you pre-mark your exhibits in numerical order notating the appropriate title of 'State' or 'Respondent'
 - Each exhibit must be saved separately in PDF format.
 - The pages of each PDF exhibit must be separately numbered so that the Court can quickly access specific pages of each exhibit.
 - The Court will not consider any exhibits not provided to the Court and other parties at least 24 hours before the hearing. If you fail to follow this requirement, the Court will not consider the exhibits, absent good cause, and the court reporter will not maintain these documents in the record.
6. **Other Materials.** Non-evidentiary materials, including demonstratives, affidavits and summaries of the evidence, etc. and/or case law for the judge's reference should be **emailed to the Court and other parties at least two hours before the hearing.** Regarding court summaries prepared by juvenile probation, the court will not review those prior to any contested adjudication but may review them ahead of a full plea or a plea on adjudication followed by contested disposition.
7. **Test Your Setup.** Prior to the hearing, you should test your internet connection, camera, and microphone with Zoom through a test meeting at <https://zoom.us/test>.
8. **During the Hearing.**

- **Wear Appropriate Attire.** Although the hearing is conducted remotely, the Court expects participants to dress appropriately. Attorneys are expected to wear appropriate business attire while others may wear business casual clothing.
- **Speak One at a Time.** During the hearing, participants must speak one at a time and pause prior to speaking, in case there is any audio/video lag, and so that the court reporter can make a clear record.
- **Use Mute When Not Speaking.** Participants must mute themselves when not speaking in order to avoid any potential background noise.

9. **Public Access to Remote Court Proceedings.** The Court finds that it has authority under numerous federal and state statutes to limit public access to juvenile proceedings, specifically including, but not limited to, Tex. Fam. Code § 54.08(a) that states “the court shall open hearings under this title to the public unless the court, *for good cause shown*, determines that the public should be excluded.”

Nothing in this order shall prohibit any victim or the victim’s family from personally attending and participating in any juvenile hearing, absent exceptions set forth in Tex. Fam. Code § 54.08(b), and subject to the existing orders of the Court and county and federal disaster declarations.

10. **Livestreaming.** All juvenile hearings will be available to the public through livestreaming on YouTube subject to Fam. Code Sec. 54.08. At the beginning of the livestream hearing the court will take up any request raised by counsel (setting out specific concerns) that a finding be made that “the court, for good cause shown, determines that the public should be excluded.” Any party requesting the court close all or part of a hearing to the public shall submit a written request to the court and all parties at least two hours before the start of the hearing. The request shall include the portion (s) of the hearing sought to be closed and specific reasons therefore. Opposing counsel shall file any objections, if any, at least 30 minutes before the start of the hearing.

Depending on the age of the child at the time of the hearing, the court will apply the balancing standards set forth in Tex. Fam. Code subsections (a) and (c). Due to the sensitive and confidential nature of juvenile court proceedings, the court reserves the right to find good cause for these hearings not to be live streamed on the internet given the numerous federal and state statutes and regulations that mandate protection of and confidentiality for juvenile information and records, including protected and confidential images of a juvenile. In addition, the court may consider evidence of whether the live streaming of juvenile proceedings could potentially place the juvenile or the victims in danger. All findings in this regard shall be stated on the record while livestreaming.


11. **Public Posting of dockets.** On days when detention hearings, adjudications, dispositions, modifications or contested hearings or trials are set the dockets shall be posted on the Travis County Juvenile website at <https://www.traviscountytexas.gov/juvenile-court>. by the child’s initials, date and time of the hearing, the type of setting, and the court to which the case is assigned along with that court’s You Tube URL link. Dockets will be posted by 3:00 p.m. on the Thursday preceding the week the cases are set. This shall not apply to any emergency hearing or detentions hearings that are set on short notice and in that event the case will be added to the docket as soon as practical.

12. Attorney Access to Video Recordings of Detention Hearings. Detention hearings conducted by interactive video recording shall be recorded pursuant to Tex. Fam. Code § 54.012. An attorney for the child may obtain a copy of the video recording on payment of the reasonable costs of reproducing the copy by making a written request by the 91st day after the date of the hearing if the alleged offense is a misdemeanor and by the 120th day after the date of the hearing if the alleged request is a felony. The attorney for the child seeking a copy of the video recording of the detention hearing should email the request to Chris Hubner, General Counsel, TCJPD via email at Christian.Hubner@traviscountytexas.gov. Video recordings of detention hearings will be deleted if the attorney for the child does not make a request for a copy of the recording by the 91st/120th day after the date of the hearing.

WARNINGS: VIOLATIONS OF THESE PROCEDURES ARE PUNISHABLE BY CONTEMPT OF COURT.

- **VIDEO OR AUDIO RECORDING OF ALL OR ANY PART OF A HEARING BY ANYONE OTHER THAN THE OFFICIAL COURT REPORTER IS EXPRESSLY PROHIBITED.**
- **ANY PERSON WHO RECEIVES A ZOOM INVITATION IS PROHIBITED FROM DISSEMINATING THE LINK TO ANYONE OTHER THAN THOSE LISTED HERE AND ARE FURTHER PROHIBITED FROM POSTING THE LINK ON ANY SOCIAL MEDIA ACCOUNT OR OTHER PUBLIC FORUM OR WEBSITE.**

SIGNED on April 8th, 2020.



RHONDA HURLEY
Judge, 98th District Court
Juvenile Court
Travis County, Texas

EXHIBIT A

Process for obtaining update detention hearing waivers

Detention Hearing Waiver Forms will be available to detention staff at all times and detention staff will be notified of the location of the forms.

When a juvenile is willing to waive an update detention hearing, his/her attorney should promptly notify detention staff. Detention staff will take a waiver form to the child to allow the child to sign the form in the appropriate space.

Staff will ensure that the signed waiver form is then provided via email to the Juvenile Public Defender's office or the private attorney assigned to the case.

That attorney must sign the waiver and promptly submit it to Gloria Gochicoa or the assigned court clerk for filing and notice to the court and all parties.

Nora Soliz

From: Rhonda Hurley
Sent: Monday, March 16, 2020 2:12 PM
To: Peter Einhorn
Cc: Estela Medina; Chris Hubner; Tim Sulak; Amy Clark Meachum; Texanna Davis; Ami Larson; Bradley Temple; Melissa Douma; Kameron Johnson; Nora Soliz; Gloria Gochicoa; Clive Blackman; Darryl Harrison; Daniel Hoard; John Hathaway
Subject: Juvenile Court COVID-19 Court Order
Attachments: COVID-19 Order.pdf

Peter,

Thank you for your request that we send protocol and procedure information through you. I am the District Judge presiding over the juvenile courts. As for the courts, last Friday, in conjunction with Chief Medina, we decided to conduct no hearings for the next two weeks (subject to extension if circumstances warranted) other than detention and plea hearings for juveniles in custody. We also took steps to release youth from detention who could be safely released under additional conditions. All relevant parties and attorneys connected to these hearings were notified on Friday, including the D.A.'s office and the Juvenile Public Defender's office. Steps have also been taken to allow for hand sanitizer use and social distancing during these hearings. We are currently working on setting up technology, if possible, for telephonic hearings should the need arise. We will continue to monitor and re-assess as conditions change. In the worst case scenario, we will follow the Supreme Court guidelines to modify or suspend deadlines and procedures for all hearings.

The court order attached reflects the above procedures and we delivered the order to the Office of Court Administration and media today. The order is also posted on the front door and other relevant places in the Gardner Betts Juvenile Justice Center. The Juvenile Probation Department though Chief Medina and staff are implementing and coordinating COVID-19 Workplace Protocols and will similarly provide the follow-up requested this week.

Let me know if you have any questions.

Rhonda Hurley
Judge, 98th District Court
Chair, Travis County Juvenile Board

This electronic mail message, including any attachments, may be confidential or privileged under applicable law. This email is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this email, you are notified that any use, dissemination, distribution, copying, disclosure or any other action taken in relation to the content of this email including any attachments is strictly prohibited. If you have received this email in error, please notify the sender immediately and permanently delete the original and any copy of this email, including secure destruction of any printouts.

Kameron Johnson

From: Kameron Johnson
Sent: Friday, May 8, 2020 8:07 AM
To: Scott Ruplinger
Subject: FW: Attorney/client communications

Kameron D. Johnson
Juvenile Public Defender
2201 Post Road, Suite 200
Austin, TX 78704
Office|512-854-4128|Fascimile: 512-854-4148

Board Certified by Texas Board Legal Specialization
Criminal Law | Juvenile Law

CONFIDENTIALITY STATEMENT: The information contained in or attached to this transmission is confidential and may be protected by legal privilege. It is intended only for the addressee and access to the information in this transmission by anyone other than the addressee is not authorized. Any unauthorized review, copying, distribution, disclosure, or use of this information is strictly prohibited and may be unlawful. If you are not the addressee, please notify the sender immediately and properly destroy this transmission without disclosure.

From: Rhonda Hurley <Rhonda.Hurley@traviscountytx.gov>
Sent: Thursday, May 7, 2020 3:54 PM
To: Gregory Freed <Gregory.Freed@traviscountytx.gov>; Nora Soliz <Nora.Soliz@traviscountytx.gov>; Kameron Johnson <Kameron.Johnson@traviscountytx.gov>
Cc: John Hathaway <John.Hathaway@traviscountytx.gov>; Chris Hubner <Christian.Hubner@traviscountytx.gov>; Estela Medina <Estela.Medina@traviscountytx.gov>; Darryl Harrison <Darryl.Harrison@traviscountytx.gov>; Ami Larson <Ami.Larson@traviscountytx.gov>; Bradley Temple <Bradley.Temple@traviscountytx.gov>; Texanna Davis <Texanna.Davis@traviscountytx.gov>
Subject: Attorney/client communications

Mr. Freed,

It is apparent that your office is not interested in attending a meeting to discuss the issues raised in your last email to me. I find it confounding that you find this issue critical enough to file a motion and ask the court for a hearing and a ruling on the matter but are refusing to have a meeting to discuss a solution.

I do want to address the statement you made in your email that over the last 7 weeks you have reached out to numerous people in the department to discuss this issue but had not heard back from anyone. That is simply not true. Judge Hathaway, Nora Soliz and Ruben Castaneda had numerous meetings and conversations about how to have confidential conversations with counsel during court hearings. Judge Hathaway followed up these discussions with a written protocol to memorialize the process that had been discussed and forwarded that to Nora for her review and feedback. Your office never responded to that memo nor followed up with Judge Hathaway in any way. In spite of that, Judge Hathaway took steps to implement the procedure in detention

and even went so far as to purchase, out of his own pocket, headphones for the detention staff to use so that the process could be implemented without delay. In addition, the courts made it clear at the outset that breakout rooms would be available for private conversations during hearings, if needed. After the protocol was sent to your office, all communication came to a stop on the issue until I received your email and motions earlier this week.

As I said earlier, we agree you should be able to have confidential communications with your clients. It was just a matter of the process to be used during this COVID-19 public health emergency. It is notable, however, that your office has not been very concerned about privacy in the past and in fact has been very lax about it. I heard you talking to your client about his/her case all the time down the hall from my office (with a detention officer and other juveniles present) It was also common practice for your office to have phone conferences with your client in the dorm with other people around. Once again, your office's complaints appear to be somewhat disingenuous.

Having said that, we will take immediate steps to address the second issue of out of court confidential meetings/telephone calls and let you know what that process is by Monday at the latest.

Rhonda Hurley
98th District Court

This electronic mail message, including any attachments, may be confidential or privileged under applicable law. This email is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this email, you are notified that any use, dissemination, distribution, copying, disclosure or any other action taken in relation to the content of this email including any attachments is strictly prohibited. If you have received this email in error, please notify the sender immediately and permanently delete the original and any copy of this email, including secure destruction of any printouts.

Gregory Freed

From: Rhonda Hurley
Sent: Wednesday, May 06, 2020 3:47 PM
To: Gregory Freed
Cc: Chris Hubner; Nora Soliz; John Hathaway; Cindii Alvarez; Dorina Vogt; Joyce Machado
Subject: Re: REQUEST FOR CONFERENCE CALL

Mr. Freed,

The attached email was sent to me yesterday morning and I have not had time to respond to you regarding your concerns. I am a bit surprised at the tone of the email as well as your subsequent motions. My understanding was that Nora and Judge Hathaway had achieved an agreeable arrangement on handling attorney/client communication issues during hearings and that they were continuing to discuss ways for you all to also have virtual meetings and/or telephone calls with your clients in private outside of a hearing. Based on this email and the motions you filed this afternoon, obviously the issue has not been resolved, but I have not received any messages or updates from anyone indicating that the discussions have broken down.

In addition, to address your impatience with my lack of response, you just sent this to me yesterday. As you know, I did a transfer hearing on Monday and today I had 5 hearings and 4 meetings so was unable to get back to you until now. In short, I am not sure why all of the recent actions have become necessary when we haven't had a chance to talk yet.

I am happy to have a zoom meeting with you, Nora, Judge Hathaway and Chris Hubner to discuss a solution. I do not disagree that you need to have confidential communications with your clients. I feel like we can resolve this issue amicably and I am not sure why it has come to this. I am available to do a zoom conference on Friday morning if everyone else is available.

Regarding your request for me to hear two DHs. I have set one tomorrow and will set the other one shortly. However, I am not going to take up your motions related to atty/client conversations until such time as it is needed (as in, after we meet to discuss a resolution) and if they need to be set, they will be set separately from the DHs. I will provide you a court reporter for those hearings, if needed. Regarding a reporter for DHs, since the hearing will be recorded on zoom, I will not grant your request for a court reporter for a DH absent a specific articulable reason indicating a need for one.

Let me know your availability for a zoom meeting on Friday morning and I will set it up. In the meantime, I suggest a truce until we talk.

Thank you,

Rhonda Hurley

On May 5, 2020, at 9:46 AM, Gregory Freed <Gregory.Freed@traviscountytx.gov> wrote:

Judge Hurley and Mr. Hubner: Since the beginning of the Covid 19 lockdown, the Juvenile Public Defenders office has not been able to visit their clients in a manner that protects the attorney-client relationship. I currently have several clients in the dorm, one on a determinate sentence, I have not been able to talk to confidentially. Others in my office face the same issue. We have been able to call the dorm and speak with our clients with staff present, which we appreciate and detention staff have been very helpful. However, the office has not been able to prepare cases in the past six weeks due to not being able to talk to the child in privacy without the fear of staff overhearing our conversations and waiving attorney-client privilege. Additionally, to do a full interview takes between one hour and two hours, which can't be done by calling a dorm unit.

The United States Supreme Court has characterized the sixth amendment's guarantee of assistance of counsel in all criminal prosecutions as a right fundamental to liberty and justice. *Powell v. Alabama*, 287 U.S. 45, 67 (1932). The sixth amendment to the United States Constitution provides that "[in all criminal prosecutions, the accused shall enjoy the right to ... have the assistance of counsel for his defense." U.S. CONST. amend. VI. This amendment has long been construed as a guarantee of both access to counsel and the right to effective assistance of counsel. The underlying justification for the right to counsel is the presumed inability of a Respondent to make informed choices about the preparation and conduct of his defense.' Communication between the Respondent and counsel must remain confidential for the right to counsel to have any meaning. *United States v. Levy*, 577 F.2d 200, 209 (3d Cir. 1978). If the government can obtain damaging information from counsel, defendants will not confide in their lawyers. The predictable result would be to undermine the quality of the legal representation guaranteed by the sixth amendment. *Weatherford v. Bursey*, 429 U.S. 545, 563 (1977). *Brewer* informs " whatever else it may mean, the right to counsel granted by the Sixth and Fourteenth Amendments means at least that a person is entitled to the help of a lawyer at or after the time the judicial proceedings have been initiated against him .. ". *Brewer v. Williams*, 430 U.S. 387, 398.

I am hopeful the three of us working together can resolve this issue. For this reason I am requesting a conference call so we can find a solution that works for all of us. Thanks.

This electronic mail message, including any attachments, may be confidential or privileged under applicable law. This email is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this email, you are notified that any use, dissemination, distribution, copying, disclosure or any other

action taken in relation to the content of this email including any attachments is strictly prohibited. If you have received this email in error, please notify the sender immediately and permanently delete the original and any copy of this email, including secure destruction of any printouts.

Kameron Johnson

From: John Hathaway
Sent: Thursday, April 23, 2020 11:33 AM
To: Nora Soliz
Cc: Estela Medina; Darryl Harrison; Gloria Gochicoa; Chris Hubner; Rhonda Hurley; Kameron Johnson; Ruben Castaneda
Subject: FW: Effective Assistance of Counsel Concerns
Attachments: Travis County letter.docx; Soliz_response to 4.20.20 letter to NS.doc; Zoom Remote Court Hearings Procedures draft #7.docx

Nora:

Attached is a letter and a draft procedural document responding to your email below.

I have always found our conversations productive and those yesterday and this past Friday particularly so. I look forward to more.

Thank you.

John

From: Nora Soliz
Sent: Monday, April 20, 2020 2:28 PM
To: John Hathaway <John.Hathaway@traviscountytx.gov>
Cc: Chris Hubner <Christian.Hubner@traviscountytx.gov>; Estela Medina <Estela.Medina@traviscountytx.gov>; Nora Soliz <Nora.Soliz@traviscountytx.gov>; Ruben Castaneda <Ruben.Castaneda@traviscountytx.gov>; Kameron Johnson <Kameron.Johnson@traviscountytx.gov>
Subject: Effective Assistance of Counsel Concerns

Judge Hathaway,

Attached please find a letter regarding JPD's concerns with the current Travis county juvenile probation department's Covid policies and our inability to provide Effective Assistance of Counsel.

We appreciate that this is a situation that developed rapidly and that procedures were implemented quickly, however, we must have a procedure put in place for us to meet with and talk to our clients in private so that we can continue to effectively represent them during this time of remote proceedings/ Covid crisis.

Thank you,

Nora

L. Nora Soliz

Deputy Public Defender
2201 Post Road, Suite 200
Austin, Texas 78704
512- 854-4128
Nora.soliz@traviscountytx.gov

CONFIDENTIALITY STATEMENT: The information contained in or attached to this transmission is confidential and may be protected by legal privilege. It is intended only for the addressee and access to the information in this transmission by anyone other than the addressee is not authorized. Any unauthorized review, copying, distribution, disclosure, or use of this information is strictly prohibited and may be unlawful. If you are not the addressee, please notify the sender immediately and properly destroy this transmission without disclosure.

This electronic mail message, including any attachments, may be confidential or privileged under applicable law. This email is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this email, you are notified that any use, dissemination, distribution, copying, disclosure or any other action taken in relation to the content of this email including any attachments is strictly prohibited. If you have received this email in error, please notify the sender immediately and permanently delete the original and any copy of this email, including secure destruction of any printouts.

JUVENILE PUBLIC DEFENDER TRAVIS COUNTY, TEXAS

2201 Post Road, Suite 200
Austin, Texas 78704
Office 512.854.4128
Facsimile 512.854.4148

Mailing Address

P.O. Box 1748
Austin, Texas 78767-1748



Juvenile Public Defende
Kameron D. Johnson
Deputy Public Defende
L. Nora Soliz

*Board Certified-Juvenile Law
†Board Certified-Criminal Law
Texas Board of Legal Specialization

John Hathaway, Court Legal Mgmt Adm Director
Gardner Betts Juvenile Center

Re: Effective Assistance of Counsel

We were informed by Judge Hurley that she and the other Associate Judges are not willing to modify or incorporate any of the proposals our office suggested at our meeting last week regarding her most recent Standing Order.

Therefore, I would like to make sure I understood what the current Policy is regarding attorney visitation and communication with youth in detention or in the ISC secure Residential program:

Due to the Covid concerns, Travis county Juvenile probation department has put a policy in place that **prohibits any in person visits between attorneys and their clients**. The procedures that are currently in place to allow attorneys to communicate with youth are to put youth on a phone in their dorm unit where staff and sometimes other youth are in the same room and able to listen to youth's side of the conversation.

During a Zoom hearing, when clients and attorneys request to go to a virtual break out room, staff are currently staying in the same room as the juveniles and are able to hear the youth's side of any private/privileged attorney client communication.

IF this is the current policy of the Travis county probation department, and if the Travis county juvenile court judges are going to be conducting these essential hearings via zoom and possible livestream in some cases, we are not able to provide Effective Assistance of Counsel to our clients and we risk waiving privileged communications.

We are requesting that Probation immediately set up a procedure to allow attorneys to have truly private communication with any client we wish to meet with or talk to from (8am-8pm) every day of the week and during any hearing that is being conducted via ZOOM.

As the practice had been pre-Covid, any attorney could go to the detention or ISC facility at any time of the day and request to meet with a client. Staff would promptly bring the client to us where we were allowed to meet privately.

Please let me know if you would like to meet with our office to discuss this in more detail,
Thank you,
Nora

L. Nora Soliz
Deputy Public Defender



TRAVIS COUNTY JUVENILE PROBATION DEPARTMENT

2515 South Congress Avenue ~ Austin Texas 78704
Phone: (512)854-7000 Fax: (512)854-7097

ESTELA P. MEDINA
Chief Juvenile Probation Officer

April 22, 2020

Re: Effective Assistance of Counsel

Dear Ms Soliz:

Thank you for your letter of April 20, 2020, in which you request that attorneys be allowed to have “truly private communication” with their clients 1) during each day of the week and 2) during court hearings via Zoom. This letter addresses the second of your requests.

Even prior to your letter, the Department was already working on such a procedure. This process requires us to balance the safety/security of our youth and staff with your clients’ right to confer privately with their attorneys to protect privileged communications.

I have attached a draft of the procedure we have worked out to date. While this is just a draft still subject to change, I think it is close to what will be its final form. I will provide the finished product to you upon its completion.

I believe this plan achieves a reasonable balance between the youths’ right to consult privately with their attorney and our safety/security interest in protecting youth, staff, and County property. I am available to discuss with you not only this procedure but also how we might implement a similar one to facilitate private attorney-client conversations.

Sincerely,

John Hathaway
Court Legal Management Administrative Director

Kameron Johnson

From: Scott Ruplinger
Sent: Friday, May 8, 2020 8:06 AM
To: Kameron Johnson
Subject: FW: JPD proposals/Questions regarding Hearing Livestreaming

Scott Ruplinger

Assistant Juvenile Public Defender
2201 Post Road, Ste 200
Austin, Texas 78704
512/854-4128 (Office)
512/854-4148 (Fax)
Email: scott.ruplinger@traviscountytx.gov

From: Scott Ruplinger
Sent: Thursday, April 16, 2020 11:58 AM
To: Rhonda Hurley <Rhonda.Hurley@traviscountytx.gov>; Michelle Roche <Michelle.Roche@traviscountytx.gov>
Cc: Nora Soliz <Nora.Soliz@traviscountytx.gov>; Ruben Castaneda <Ruben.Castaneda@traviscountytx.gov>
Subject: JPD proposals/Questions regarding Hearing Livestreaming

Good morning Judge Hurley,

We hope this finds you well. In an attempt to have an efficient and productive meeting this afternoon, we wanted to provide some of our concerns as well as possible solutions with regards to the public livestreaming of our clients hearings. As all parties work through a process that has never been implement before in uncertain times, miscommunication and missteps are to be expected. But, we want to ensure the Court that our sole objective is to protect our clients rights as best we can during the implementation of the new process. Our focus is not to frustrate the Court's intent nor is it meant to be a gamesmanship tactic. In the past we have not had to do formal filings regarding public access to the sensitive information shared at a juvenile hearing as we were present in an open courtroom. To ensure that the information was not being disseminated to any party that would be contrary to the juvenile's interest, all we had to do was look over our shoulder and see who was present. If there was an unknown party that was of concern, we had the opportunity of asking court staff of why the person was present and then make the determination if there was good cause to request the court to close the courtroom. Unfortunately, with the live streaming of hearings on a public website, we can no longer "just look over our shoulder". There is an unknown of who is watching and what their purpose is. The protection of the juvenile's rights become even more vital prior to the public dissemination of sensitive information. That was the sole purpose of filing motions requesting a closed hearing. It is just a necessary part of the process that, fortunately, we have not had to do frequently in the past due to the public's lack of interest in physically attending hearings at Gardner Betts. Additionally, the motions with regards to recorded hearings and not waiving the District Judge, fall in the same category of protecting our clients rights from a legal standpoint if their interest would progress to the appellate level.

With that said, in the interest of discussing possible solutions that would alleviate the need to litigate each and every hearing not only on the merits but also on the process, we would ask the following clarifying questions as well as bring forward the following possible solutions.

After having considered the Standing Order Regarding Procedures for Remote Juvenile Hearing filed April 8, 2020 as well as the OCA guidance and Texas Supreme Court rulings we would like clarification on the following issues.

1-What are considered "Juvenile hearings" for the purpose of livestreaming per the Standing Order? Are juvenile hearings available for livestreaming limited to detention hearings, adjudications, dispositions, and modifications as those

are the hearing schedules that are publicly posted online in advance? (i.e. COPE, SOAR, SNDP, reviews, announcements are not considered for livestreaming)

2-What is the "good cause" that this court would be looking for to close a detention hearing to the public for a child over 14?

3-Is there a planned remedy for when sensitive information is shared on a livestream? (i.e. can there be a "tape delay", is immediate removal of the stream possible?)

Though our position has not changed that we believe good cause to close a hearing to the public can and will be shown on every hearing that is scheduled to be public, we would put forward a couple possible solutions that would allow the Court's obligation as it understands the OCA and Supreme Court guidance to be fulfilled while still substantially protecting the juvenile's interests.

A) The first solution would be a change to the system of how the public accesses the hearings themselves. Previous to COVID-19, the public would have to physically come to Gardner Betts, sign in, and provide their name to court security or court staff upon request. Further, the public would walk past several admonishments regarding the nature of the hearings and the expectation of not recording proceedings. Further, the Judge was in direct control of the courtroom regarding inappropriate behavior and have on several occasions notified members of the public about being held in contempt for violating the courts rules.

This solution would reinstate many of those safeguards. The hearings would be posted online in advance. With the posting would be an email address that the public would send an email requesting that they be able to view the hearing. The public would then get a response email that included the zoom link as well as the admonishments and rules expected by the court with a statement that the viewing of the hearing via the link is an agreement to not record or harass as it would be contempt of court. The zoom hearing would occur as usual with the member of the public having the link, just like all the other parties. Of note, the host of the meeting is able to mute, turn off video, and remove any member of the public from the hearing. We believe this would still allow the public access as the Court is attempting to achieve while still provide those safeguards that the Court has put in place in the physical setting with a limited amount of additional steps.

B) A second option if the Court is not willing to remove the youtube based livestream in its entirety would be to limit the public stream solely to the portions of the hearing that are statutorily required. Pursuant to the Standing Order, only the necessary components of the hearing would be streamed, while the rest of the hearing would occur as it has in the past. On many if not most cases, there is a discussion by professionals and even the juvenile both prior to and after the actual hearing. This has historically occurred via in chambers meetings, bench conferences, emails, and discussions prior to the beginning of the detention hearing or adjudication/disposition as well as after the conclusion of the hearing. Our proposal would be that only the formal portion of the hearing that is legally required be the portion that is publically streamed while the remainder of the hearing occurs before and after the public stream. This would greatly mitigate the amount of personal and sensitive information that is broadcast internationally without greatly limiting the right to counsel advocating on the clients behalf.

Example on an Detention hearing: The portions to be publicly streamed are limited to: this is a detention hearing; if probable cause is found for a new offense; and if the juvenile will remain detained or released. All other portions including

the reading of probable cause, the probation update, JPD argument, and any statements by the juvenile and family are not legally required for the hearing and thus would be part of the hearing but not publicly streamed.

In practice for a detention hearing: Start zoom conference with parties that have the link (attorneys, probation, juvenile, parent). Court informs child of rights. State reads probable cause. Probation gives information to assist court in determination of release or detention. JPD argues release or detention. Follow up questions by the court if

necessary. The Court then goes public with detention hearing livestream. Once live, court states that this is a detention hearing to determine detention or release(54.01(a)). Court states if it finds probable cause for a new offense (54.01(o)). Court makes ruling regarding detention/release(54.01(e)). At that point the public hearing live stream is terminated. Parties can then make an announcement or do a review regarding any outstanding issues (i.e. next court date, discovery issues, conditions of release, assessments necessary, etc)

- C) Finally, regardless of if we can come to an agreement on the first two options, we would like to discuss what would be the bare minimum of blacking out the child and the parents video (removes their image as well as the name associated with the zoom account). Have all parties refer to the child as generically as possible, ideally gender-neutral pronouns during the live stream portion. Immediate deletion of the livestream at the completion of the hearing (noting that average time of hearing completion until link removal has been ~25-30 minutes). Additionally, we would like to discuss a few alternatives to allow privileged communication between attorney and client during the hearings.

Hopefully, this provides some framework of what our position is and why. We are focused on protecting our clients rights through this new process and though we may still file motions to close the court room to the public, we are hoping that these solutions can lead to a more efficient court process on a daily basis.

Thanks,
JPD

Scott Ruplinger
Assistant Juvenile Public Defender
2201 Post Road, Ste 200
Austin, Texas 78704
512/854-4128 (Office)
512/854-4148 (Fax)
Email: scott.ruplinger@traviscountytexas.gov

This electronic mail message, including any attachments, may be confidential or privileged under applicable law. This email is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this email, you are notified that any use, dissemination, distribution, copying, disclosure or any other action taken in relation to the content of this email including any attachments is strictly prohibited. If you have received this email in error, please notify the sender immediately and permanently delete the original and any copy of this email, including secure destruction of any printouts.

Kameron Johnson

From: Scott Ruplinger
Sent: Friday, May 8, 2020 8:06 AM
To: Kameron Johnson
Subject: FW: JPD proposals/Questions regarding Hearing Livestreaming

Scott Ruplinger
Assistant Juvenile Public Defender
2201 Post Road, Ste 200
Austin, Texas 78704
512/854-4128 (Office)
512/854-4148 (Fax)
Email: scott.ruplinger@traviscountytx.gov

From: Scott Ruplinger
Sent: Thursday, April 16, 2020 11:58 AM
To: Rhonda Hurley <Rhonda.Hurley@traviscountytx.gov>; Michelle Roche <Michelle.Roche@traviscountytx.gov>
Cc: Nora Soliz <Nora.Soliz@traviscountytx.gov>; Ruben Castaneda <Ruben.Castaneda@traviscountytx.gov>
Subject: JPD proposals/Questions regarding Hearing Livestreaming

Good morning Judge Hurley,
We hope this finds you well. In an attempt to have an efficient and productive meeting this afternoon, we wanted to provide some of our concerns as well as possible solutions with regards to the public livestreaming of our clients hearings. As all parties work through a process that has never been implement before in uncertain times, miscommunication and missteps are to be expected. But, we want to ensure the Court that our sole objective is to protect our clients rights as best we can during the implementation of the new process. Our focus is not to frustrate the Court's intent nor is it meant to be a gamesmanship tactic. In the past we have not had to do formal filings regarding public access to the sensitive information shared at a juvenile hearing as we were present in an open courtroom. To ensure that the information was not being disseminated to any party that would be contrary to the juvenile's interest, all we had to do was look over our shoulder and see who was present. If there was an unknown party that was of concern, we had the opportunity of asking court staff of why the person was present and then make the determination if there was good cause to request the court to close the courtroom. Unfortunately, with the live streaming of hearings on a public website, we can no longer "just look over our shoulder". There is an unknown of who is watching and what their purpose is. The protection of the juvenile's rights become even more vital prior to the public dissemination of sensitive information. That was the sole purpose of filing motions requesting a closed hearing. It is just a necessary part of the process that, fortunately, we have not had to do frequently in the past due to the public's lack of interest in physically attending hearings at Gardner Betts. Additionally, the motions with regards to recorded hearings and not waiving the District Judge, fall in the same category of protecting our clients rights from a legal standpoint if their interest would progress to the appellate level.

With that said, in the interest of discussing possible solutions that would alleviate the need to litigate each and every hearing not only on the merits but also on the process, we would ask the following clarifying questions as well as bring forward the following possible solutions.

After having considered the Standing Order Regarding Procedures for Remote Juvenile Hearing filed April 8, 2020 as well as the OCA guidance and Texas Supreme Court rulings we would like clarification on the following issues.

1-What are considered "Juvenile hearings" for the purpose of livestreaming per the Standing Order? Are juvenile hearings available for livestreaming limited to detention hearings, adjudications, dispositions, and modifications as those

are the hearing schedules that are publicly posted online in advance? (i.e. COPE, SOAR, SNDP, reviews, announcements are not considered for livestreaming)

2-What is the "good cause" that this court would be looking for to close a detention hearing to the public for a child over 14?

3-Is there a planned remedy for when sensitive information is shared on a livestream? (i.e. can there be a "tape delay", is immediate removal of the stream possible?)

Though our position has not changed that we believe good cause to close a hearing to the public can and will be shown on every hearing that is scheduled to be public, we would put forward a couple possible solutions that would allow the Court's obligation as it understands the OCA and Supreme Court guidance to be fulfilled while still substantially protecting the juvenile's interests.

A) The first solution would be a change to the system of how the public accesses the hearings themselves. Previous to COVID-19, the public would have to physically come to Gardner Betts, sign in, and provide their name to court security or court staff upon request. Further, the public would walk past several admonishments regarding the nature of the hearings and the expectation of not recording proceedings. Further, the Judge was in direct control of the courtroom regarding inappropriate behavior and have on several occasions notified members of the public about being held in contempt for violating the courts rules.

This solution would reinstate many of those safeguards. The hearings would be posted online in advance. With the posting would be an email address that the public would send an email requesting that they be able to view the hearing. The public would then get a response email that included the zoom link as well as the admonishments and rules expected by the court with a statement that the viewing of the hearing via the link is an agreement to not record or harass as it would be contempt of court. The zoom hearing would occur as usual with the member of the public having the link, just like all the other parties. Of note, the host of the meeting is able to mute, turn off video, and remove any member of the public from the hearing. We believe this would still allow the public access as the Court is attempting to achieve while still provide those safeguards that the Court has put in place in the physical setting with a limited amount of additional steps.

B) A second option if the Court is not willing to remove the youtube based livestream in its entirety would be to limit the public stream solely to the portions of the hearing that are statutorily required. Pursuant to the Standing Order, only the necessary components of the hearing would be streamed, while the rest of the hearing would occur as it has in the past. On many if not most cases, there is a discussion by professionals and even the juvenile both prior to and after the actual hearing. This has historically occurred via in chambers meetings, bench conferences, emails, and discussions prior to the beginning of the detention hearing or adjudication/disposition as well as after the conclusion of the hearing. Our proposal would be that only the formal portion of the hearing that is legally required be the portion that is publically streamed while the remainder of the hearing occurs before and after the public stream. This would greatly mitigate the amount of personal and sensitive information that is broadcast internationally without greatly limiting the right to counsel advocating on the clients behalf.

Example on an Detention hearing: The portions to be publicly streamed are limited to: this is a detention hearing; if probable cause if found for a new offense; and if the juvenile will remain detained or released. All other portions including

the reading of probable cause, the probation update, JPD argument, and any statements by the juvenile and family are not legally required for the hearing and thus would be part of the hearing but not publicly streamed.

In practice for a detention hearing: Start zoom conference with parties that have the link (attorneys, probation, juvenile, parent). Court informs child of rights. State reads probable cause. Probation gives information to assist court in determination of release or detention. JPD argues release or detention. Follow up questions by the court if

necessary. The Court then goes public with detention hearing livestream. Once live, court states that this is a detention hearing to determine detention or release(54.01(a)). Court states if it finds probable cause for a new offense (54.01(o)). Court makes ruling regarding detention/release(54.01(e)). At that point the public hearing live stream is terminated. Parties can then make an announcement or do a review regarding any outstanding issues (i.e. next court date, discovery issues, conditions of release, assessments necessary, etc)

- C) Finally, regardless of if we can come to an agreement on the first two options, we would like to discuss what would be the bare minimum of blacking out the child and the parents video (removes their image as well as the name associated with the zoom account). Have all parties refer to the child as generically as possible, ideally gender-neutral pronouns during the live stream portion. Immediate deletion of the livestream at the completion of the hearing (noting that average time of hearing completion until link removal has been ~25-30 minutes). Additionally, we would like to discuss a few alternatives to allow privileged communication between attorney and client during the hearings.

Hopefully, this provides some framework of what our position is and why. We are focused on protecting our clients rights through this new process and though we may still file motions to close the court room to the public, we are hoping that these solutions can lead to a more efficient court process on a daily basis.

Thanks,
JPD

Scott Ruplinger
Assistant Juvenile Public Defender
2201 Post Road, Ste 200
Austin, Texas 78704
512/854-4128 (Office)
512/854-4148 (Fax)
Email: scott.ruplinger@traviscountytx.gov

This electronic mail message, including any attachments, may be confidential or privileged under applicable law. This email is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this email, you are notified that any use, dissemination, distribution, copying, disclosure or any other action taken in relation to the content of this email including any attachments is strictly prohibited. If you have received this email in error, please notify the sender immediately and permanently delete the original and any copy of this email, including secure destruction of any printouts.

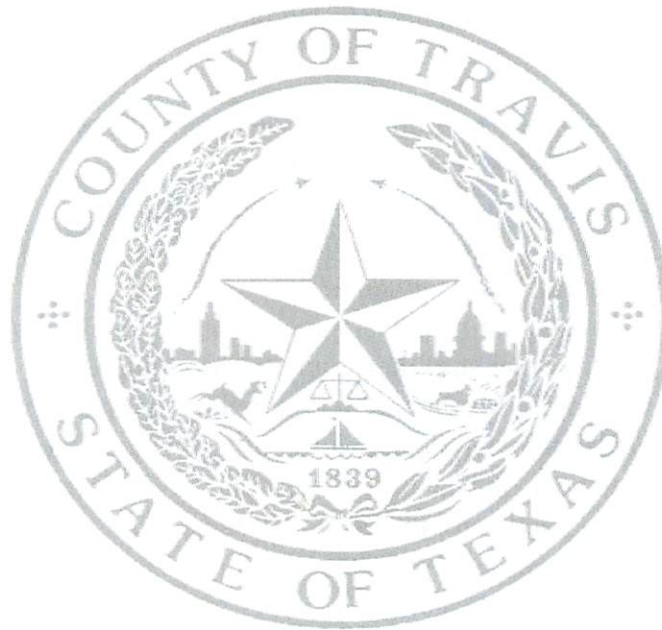
**TRAVIS COUNTY
JUVENILE PUBLIC DEFENDER**

2201 Post Road, Suite 200
Austin, Texas 78704
Office 512.854.4128
Facsimile 512.854.4148

Juvenile Public Defender:
Kameron D. Johnson*†
Deputy Public Defender
L. Nora Soliz*

Mailing Address

P.O. Box 1748
Austin, Texas 78767-1748
*Board Certified-Juvenile Law
†Board Certified-Criminal Law
Texas Board of Legal Specialization



Author's email:

ambrosio.silva@traviscountytexas.gov

April 04, 2020

Chris Hubner
General Counsel, Public Information Officer
Gardner/Betts Juvenile Justice Center
2515 S. Congress Ave.
Austin, TX 78704

RE: COVID-19 Safety Concerns and Questions

Dear Chris:

Thank you for providing our office with a memorandum concerning "COVID-19 Staff Impact and Precautions." Since receiving your memo, I have become privy to the manner in which safety precautions are being carried out with respect to the incarcerated children. The purpose of this missive is to address some questions and concerns regarding the safety of the children who are being held in detention and the residential programs at Gardner/Betts.

Contaminated Staff:

The first issue I would like to address is the staff member who was diagnosed with COVID-19. It is my understanding that staff member hasn't been to work since March 22, 2020. Your memo indicates this infected person did not have "direct contact" with the children. You also indicated

other staff who came into contact with the infected individual were notified and precautions were taken.

- 1) Of the staff members who came into contact with the infected individual, do any of them have direct contact with the children?
- 2) Do any of them have indirect contact with the children?
- 3) Were any of those staff members quarantined after receiving notice they were in contact with the infected individual?
- 4) If they were not quarantined, what precautions were taken to prevent the spread of COVID-19 to the other staff members and the children?
- 5) My understanding is that the infected individual worked at night. Did that individual use the same doors to enter and exit rooms as other staff and the children?
- 6) Did the infected person walk in the same hallways as the children and the other staff?
- 7) Did the infected person use the same restrooms as the children and other people who have contact with the children?

Temperature Taking:

With regard to the safety precautions taken on behalf of the children, I appreciate that medical staff is taking temperatures of the children twice daily. I've been in touch with multiple clients and they confirm that practice is taking place. A couple of my clients indicated the children stay in their respective rooms and the nurse takes their temperature in the day area, one at a time. I was actually speaking on the phone with a client today when the nurse arrived to take the temperature of the children. It sounded like, and I was told, all the children on that particular unit were congregating in the day area and not practicing social distancing (and issue I'll address below) by staying in their rooms. My client put the phone down to visit with the nurse to have their temperature taken. When they returned, I was informed the nurse had gloves on their hands and did not change them out in between taking the temperatures of different children. Additionally, the plastic tubes from the thermometers that are placed in the mouths of the children are placed in a trash can on the unit.

Can you please make sure when the nurse takes the temperature of one child that they:

- 1) Sanitize their hands before taking the temperature of another child, in order to prevent the spreading of any virus. Wearing the same pair of gloves has the same effect of using bare hands that are not washed or sanitized in between procedures. It would be more sanitary to have the nurse not wear gloves and instead wash or sanitize their hands in between dealing with each child. Alternatively, the nurse could change out a clean pair of gloves between each child.
- 2) I would also ask that the nurse wear a mask every time. I had a client tell me the nurse only sometimes wears a mask (but they always wear gloves).
- 3) With regard to the plastic tubes being placed in the trash, perhaps the nurse could take that trash with them when they leave the unit. It is my understanding the children are the ones bagging up and removing the trash from the units, thereby exposing them to everyone else's germs.

Cleaning and Disinfecting:

On the issue of cleaning, you mention in your memo that living areas get cleaned and disinfected twice daily. My clients indicated they all have chores, which include cleaning surfaces that may have been exposed to COVID-19. What I mean by being exposed is that staff members leave the building and return every day, potentially carrying the virus, despite showing no symptoms such as fever. It is my understanding the children are wiping down doorknobs, bathrooms, tables, floors, etc. Perhaps it would be more sanitary to have a cleaning crew perform these duties to avoid exposing the children to possibly contaminated surfaces.

Social Distancing:

My clients have indicated it's been happening for the most part. If social distancing is to be efficacious, it needs to be practiced at all times. Clients have said they play basketball in the gym with no regard to distancing themselves from the others. Additionally, they sit at tables together in the day area and play cards. We are all aware if one child is a carrier, they all have the potential to get COVID-19 by transferring basketballs and playing cards among themselves. Do the staff members retrieve these shared items and provide them to the children? Are the items being disinfected after staff members touch them? Considering there are three shifts of staff members cycling in and out of secure areas, the potential for spreading illnesses, including COVID-19, is increased.

Education:

Lastly, AISD indicated they will begin remote learning/classrooms on Monday, April 06, 2020. Will the children being held in Gardner/Betts be provided an education in line with AISD's plan? Will computers be provided to each child? Please inform me of the educational plan for the children.

Thank you for entertaining this long email, but the safety of our clients is of the utmost priority, in addition to the staff who deal with them. As you may gather, our office's first desire would be to have the children released so they can shelter in their homes with their families to avoid cross-contamination. If our primary request is not or will not be granted, our attention turns to maintaining the safety of the children.

I hope to receive your responses to the above questions and concerns as time is of the essence, considering there were more than 1,000 deaths in the U.S. due to COVID-19 in the last 24 hours. I hope we can work together to avoid preventable infections and deaths. Should you have any questions or wish to discuss any of these matters, please do not hesitate to contact me.

Sincerely,





TRAVIS COUNTY JUVENILE PROBATION DEPARTMENT

2515 South Congress Avenue ~ Austin Texas 78704
Phone: (512)854-7000 Fax: (512)854-7097

ESTELA P. MEDINA
Chief Juvenile Probation Officer

Memorandum

TO: Melissa Douma, Assistant District Attorney
Kameron D. Johnson, Chief Juvenile Public Defender

FROM: Chris Hubner
General Counsel
Public Information Officer

DATE: April 2, 2020

RE: COVID-19 Staff Impact and Precautions

The health and safety of the youth in our care, our employees, and the public is our highest priority.

Therefore, we are notifying you that one of our TCJPD staff has been diagnosed with COVID-19. For privacy reasons, we are unable to disclose the person's identity. However, we can inform you that the staff member works in our secure programs. The staff has not returned to work and is taking the appropriate measures as directed by a health care provider.

The staff member did not have direct contact with the residents. Staff identified as having come into close contact with this individual have been notified and precautions have been taken for their safety and the safety of our other staff, and the youth in our care, as advised by the Austin Public Health Department and our own medical staff.

You are receiving this notice so that you may be aware of the situation. If you have any questions or concerns please contact Chris Hubner, our Public Information Officer, at (512) 854-7109 or Christian.hubner@traviscountytexas.gov.

Our Department, like the County, is following Center for Disease Control and Prevention (CDC) and Austin Public Health Department recommendations and guidelines on social distancing, offering alternative work opportunities, and disinfecting work and living areas. Everyone continues to be screened for temperature prior to entry, and youth continue to be checked twice daily. Living areas will continue to be cleaned and disinfected twice daily as well.

Please rest assured that we will continue to carefully monitor the health of all residents and staff. If any of your clients should come into close contact with an individual who is determined to have COVID-19 or is likely to have been infected with coronavirus, we will notify you and the parents or guardians of the youth immediately.

Thank you on behalf of our Department for your continued commitment to juvenile justice, and your patience and understanding as we work together through this unprecedented time in our community.

Kameron Johnson

From: Ruben Castaneda
Sent: Tuesday, March 31, 2020 10:22 AM
To: Ambrosio Silva; Kameron Johnson; Nora Soliz; Melanie Lister; Melissa Vidal; Gregory Freed; Michelle Galaviz; Sarah Muckleroy; Scott Ruplinger; Scott Constantine
Subject: RE: Detention Hearings

I sent the email below to Gloria Gochicoa earlier today regarding a parent's right to attend a DH (I've included the entire thread). I included Chris Hubner in it. Please feel free to use/copy/modify as you see fit:

Hey Gloria:

Thanks for the reply. When you talk to the judge, please consider section 54.01 of the Family Code, specifically, subsection (d):

(d) A detention hearing may be held without the presence of the child's parents **if the court has been unable to locate them**. If no parent or guardian is present, the court shall appoint counsel or a guardian ad litem for the child, subject to the requirements of Subsection (b-1) (*Emphasis supplied*).

This child's parent has been located, and desires to participate. She is a party to the lawsuit and is entitled to be present (in this case telephonically). Please feel free to contact me or your General Counsel, Mr. Hubner, should you have any additional questions. Gracias.

From: Gloria Gochicoa <Gloria.Gochicoa@traviscountytexas.gov>
Sent: Tuesday, March 31, 2020 9:32 AM
To: Ruben Castaneda <Ruben.Castaneda@traviscountytexas.gov>
Cc: Scott Ruplinger <Scott.Ruplinger@traviscountytexas.gov>; Kathryn Orr <Kathryn.Orr@traviscountytexas.gov>; Enrique Portugal <Enrique.Portugal@traviscountytexas.gov>
Subject: RE: H.D., PID 91977, UDH Set on Wednesday, 04-01-2020

Hello Ruben, sorry for the delay. As you may know, parents haven't been typically a part of the teleconferencing detention hearings. I will follow up with the Judge and get back to you today. Thank you.

From: Ruben Castaneda
Sent: Tuesday, March 31, 2020 9:30 AM
To: Gloria Gochicoa <Gloria.Gochicoa@traviscountytexas.gov>
Cc: Scott Ruplinger <Scott.Ruplinger@traviscountytexas.gov>; Kathryn Orr <Kathryn.Orr@traviscountytexas.gov>; Enrique Portugal <Enrique.Portugal@traviscountytexas.gov>
Subject: FW: H.D., PID 91977, UDH Set on Wednesday, 04-01-2020

Hey Gloria:

I sent you the attached email on Friday, 03-27-20. I have not yet received a response.

The above child's mother would like to participate in her child's detention hearing scheduled tomorrow, 04-01-20. To that end, I would like you to provide the contact information so that the child's mother could phone in at the designated time. Also, as I previously indicated, she will need a Spanish-language interpreter.

I look forward to hearing from you soon. Gracias.

From: Ambrosio Silva <Ambrosio.Silva@traviscountytexas.gov>
Sent: Tuesday, March 31, 2020 10:12 AM
To: Kameron Johnson <Kameron.Johnson@traviscountytexas.gov>; Ruben Castaneda

<Ruben.Castaneda@traviscountytx.gov>; Nora Soliz <Nora.Soliz@traviscountytx.gov>; Melanie Lister <Melanie.Lister@traviscountytx.gov>; Melissa Vidal <Melissa.Vidal@traviscountytx.gov>; Gregory Freed <Gregory.Freed@traviscountytx.gov>; Michelle Galaviz <Michelle.Galaviz@traviscountytx.gov>; Sarah Muckleroy <Sarah.Muckleroy@traviscountytx.gov>; Scott Ruplinger <Scott.Ruplinger@traviscountytx.gov>; Scott Constantine <Scott.Constantine@traviscountytx.gov>

Subject: RE: Detention Hearings

Kameron,

Has someone in charge (Judge Hurley) told Gloria Gochicoa about parents attending the DHs telephonically? Her email invitation to the DHs tomorrow still indicates " PLEASE NOTE – PARENTS WILL NOT BE INCLUDED ON THE CONFERENCE CALLS. The only parties will be the PO, attorneys, the child and the Judge."

Additionally, if I'm able to get an alternative adult (an aunt) to take in my client, how do I get auntie on the call?

From: Kameron Johnson <Kameron.Johnson@traviscountytx.gov>

Sent: Monday, March 30, 2020 4:23 PM

To: Ruben Castaneda <Ruben.Castaneda@traviscountytx.gov>; Ambrosio Silva <Ambrosio.Silva@traviscountytx.gov>; Nora Soliz <Nora.Soliz@traviscountytx.gov>; Melanie Lister <Melanie.Lister@traviscountytx.gov>; Melissa Vidal <Melissa.Vidal@traviscountytx.gov>; Gregory Freed <Gregory.Freed@traviscountytx.gov>; Michelle Galaviz <Michelle.Galaviz@traviscountytx.gov>; Sarah Muckleroy <Sarah.Muckleroy@traviscountytx.gov>; Scott Ruplinger <Scott.Ruplinger@traviscountytx.gov>; Scott Constantine <Scott.Constantine@traviscountytx.gov>

Subject: Fw: Detention Hearings

[Kameron D. Johnson](#)

Juvenile Public Defender

2201 Post Road, Suite 200

Austin, Texas 78704

Office 512.854.4128|Facsimile 512.854.4148

Board Certified| Texas Board of Legal Specialization

Criminal Law

Juvenile Law

CONFIDENTIALITY STATEMENT: The information contained in or attached to this transmission is confidential and may be protected by legal privilege. It is intended only for the addressee and access to the information in this transmission by anyone other than the addressee is not authorized. Any unauthorized review, copying, distribution, disclosure, or use of this information is strictly prohibited and may be unlawful. If you are not the addressee, please notify the sender immediately and properly destroy this transmission without disclosure

From: Kameron Johnson
Sent: Monday, March 30, 2020 4:13 PM
To: Rhonda Hurley
Cc: Nora Soliz
Subject: Re: Detention Hearings

Yes Judge. Thanks for following up.

Kameron D. Johnson

On Mar 30, 2020, at 4:04 PM, Rhonda Hurley <Rhonda.Hurley@traviscountytx.gov> wrote:

I thought we had already agreed to start allowing families to participate this week. Do I need to check with the AJs on this?

On Mar 30, 2020, at 3:26 PM, Kameron Johnson
<Kameron.Johnson@traviscountytx.gov> wrote:

I would like to discuss with you our detention hearings and our excluding families from the conference calls and our using ZOOM. Can we talk after our 3:30 meeting today?

Kameron D. Johnson
Juvenile Public Defender
2201 Post Road, Suite 200
Austin, Texas 78704
Office 512.854.4128|Facsimile 512.854.4148

Board Certified| Texas Board of Legal Specialization
Criminal Law
Juvenile Law

CONFIDENTIALITY STATEMENT: The information contained in or attached to this transmission is confidential and may be protected by legal privilege. It is intended only for the addressee and access to the information in this transmission by anyone other than the addressee is not authorized. Any unauthorized review, copying, distribution, disclosure, or use of this information is strictly prohibited and may be unlawful. If you are not the addressee, please notify the sender immediately and properly destroy this transmission without disclosure

This electronic mail message, including any attachments, may be confidential or privileged under applicable law. This email is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this email, you are notified that any use, dissemination, distribution, copying, disclosure or any other action taken in relation to the content of this email including any attachments is strictly prohibited. If you have received this email in error,