

April 3, 2020

The Hon. Chief Justice Heavican and Court Administrator Corey Steel
1213 State Capitol
1445 K Street / P.O. Box 98910
Lincoln, NE 68509

Dear Chief Justice Heavican and Mr. Steel,

Thank you for your letter dated March 23, 2020. Since the time advocates wrote the initial letter and you responded, the number of COVID-19 cases has gone up dramatically both nationwide and in the State of Nebraska.

On March 18th there were 27 identified COVID-19 cases in Nebraska and today, just two weeks later, the number of cases is nearly 10 times higher with a report of 255 positive cases and 6 deaths. A staff member at the Youth Rehabilitation and Treatment Center in Kearney tested positive. There has also been a deputy Douglas County Attorney who tested positive for the virus. The virus is spreading exponentially, and it is a present danger to our youth and staff, particularly those with underlying medical issues.

The time for leadership during this pandemic to save lives is now. While your letter dated March 23rd referenced Chief Justice Heavican's administrative order dated March 12, 2020, it was not responsive to the Judicial Branch's responsibilities and authority through the Office of Probation Administration ("OPA"). Office of Probation Administration has placement and care responsibility for all youth who following an adjudication are placed on juvenile probation.¹ Further, OPA has the authority to move children to a less restrictive environment if the out of home placement is not in the best interests of the child, and can make an immediate change in placement if a child is in a harmful and dangerous situation.² You stated in your letter that juvenile attorneys should determine if a motion for release should be filed; we will continue to advocate for attorneys to do so. However and likewise, OPA has the statutory responsibility to determine if a child can be safely returned home. We would ask you to respond to the role of juvenile probation in this pandemic, urging you again to take strategic and swift action to return children to their homes with safety plans and supports in place.

We greatly fear that the consequences of inaction will be tragic.

The steps we suggested in our previous letter have not changed. We include them again here, emphasizing the application to YRTC's:

¹ Neb. Rev. Stat. §43-297.01(1)

² Neb. Rev. Stat. §43-297.01(3) & (4)

1. Instructing that judges and probation immediately halt new admissions to juvenile detention and correctional facilities – including commitments to YRTC - and facilitate the removal of youth from juvenile detention and correctional facilities by:

- Examining all pre- and post-adjudication release processes, including those which apply to YRTC discharge, collaborating with other agencies as necessary, and begin employing these as quickly as possible;
- Removing youth who have COVID-19 symptoms; chronic illnesses, such as asthma or diabetes; other serious illnesses; or are in need of medical care;
- Eliminating the use of detention or incarceration for youth unless a determination is made that a youth is a substantial and immediate safety risk to others per state law;
- Children in state custody or in out-of-home care who can return to the community safely should be sent home.

2. While youth are awaiting release, ensure that probation officers work to:

- Provide written and verbal communications to youth and families on COVID-19, facility measures to address the public health crisis, access to medical care, and community-based supports;
- Collaborate with the Office of Juvenile Services to create urgent transition plans which can be stipulated to in discharge hearings;
- Ensure continued access to education;
- Ensure access to legal counsel through confidential visits or teleconferencing;
- Ensure access to family contacts and support networks;
- Guarantee access to unlimited, phone calls and video calls.

3. Create transitional plans for youth released from custody and congregate care to:

- Ensure they have a place to live;
- Meet their basic needs;
- Ensure they receive immediate & adequate medical care, collaborating with the Department of Health and Human Services to include access to Medicaid where possible.

4. **For youth on probation:**

- Eliminate incarceration as an option for technical violations of probation;
- Allow youth to travel and access medical care, stay isolated when necessary, and take care of themselves and their loved ones;
- Eliminate requirements for in-person meetings with their probation officers;
- Make a concerted effort to reduce any extraneous conditions of probation that may increase social contacts;
- Place a moratorium on all requirements to attend and pay for court and Probation-ordered programs, community service and labor.

We continue to also respectfully recommend an emergency electronic convening of the Supreme Court Commission on Children and the Courts to provide multiple perspectives and expertise in crafting and implementing an emergency plan. This is an unprecedented challenge to how our juvenile courts traditionally function.

Thank you again for your time and consideration.

Sincerely,

Juliet Summers, Voices for Children in Nebraska
Danielle Conrad, ACLU of Nebraska
Sarah Helvey, Nebraska Appleseed
Jasmine Harris, RISE Nebraska
Christine Henningsen, juvenile attorney
Dominique Morgan, Black and Pink
Laurie Ponce Lage, Coalition for a Strong Nebraska
Cammy Watkins, Inclusive Communities
Edison McDonald, The Arc of Nebraska
Eric Evans, Disability Rights Nebraska