



March 19, 2020

Linda Penner
 Chair, Board of State and Community Corrections
 2590 Venture Oaks Way
 Sacramento, CA 95833
Sent via electronic mail to: Linda.Penner@bscc.ca.gov

Re: Recommendations for COVID-19 Safety Precautions in Local Detention Facilities

Dear Chair Penner:

On behalf of criminal and juvenile justice advocates, community organizers, directly impacted individuals—many of whom have been incarcerated in local jails and juvenile facilities—and families of individuals currently incarcerated, we urge you to adopt immediately the following measures to protect the health and well-being of our loved ones who are incarcerated or work inside county adult and juvenile detention facilities. Science, current data, and past experiences show that there is greater risk of rapid infectious disease spread within closed, poorly ventilated locked facilities. The consequences of this higher risk are amplified by the fact that health conditions that make diseases like COVID-19 more dangerous—such as asthma, tuberculosis, and heart-related problems—are far more common in the incarcerated population than in the general community.

At this time, the state is relying on strong BSCC leadership to ensure local detention facilities are taking necessary measures to protect the physical health of incarcerated individuals and facility staff while also respecting their due process and human rights. As the main oversight body and technical assistance provider to local facilities, the BSCC has the duty to take strong and decisive protective actions that center the well-being of the youth and adults in detention.

The recommendations below are tied specifically to the BSCC's powers and responsibilities codified in Sections 1311 (juvenile) and 1012 (adult) of Title 15 of the CA Code of Regulations. Pursuant to those sections, local detention facility administrators may temporarily suspend the Title 15 and 24 standards and requirements directly affected by an emergency that threatens the safety of a local facility, incarcerated individuals, staff, or the public—an emergency like the COVID-19 pandemic. Notably, facility administrators must notify the BSCC in writing of any suspension lasting longer than 3 days, and must receive approval from the Board Chair for any suspensions proposed to last longer than 15 days. In essence, the facilities cannot take unilateral actions, and the Chair has the authority to impose parameters on any proposal.

Recommendation 1: Use all BSCC communication tools (including the agency's email listservs, website and social media) to inform the public of any suspensions, subsequent extension proposals submitted by individual county administrators, and any related BSCC actions.

Families are actively trying to learn how their children and relatives are being protected and treated inside county facilities. The BSCC has a responsibility to serve as a central location for up-to-date information. We urge you to regularly provide lists of facilities that have suspended standards and the particular standards affected (and any measures taken to mitigate the effects of suspension if that information is known). It is also important to publicly share the submitted extension proposals. We appreciate that yesterday the BSCC began posting a list of counties that have suspended certain facility standards. The BSCC must use additional communication tools to ensure these updates reach the greatest number of people possible.

Recommendation 2: Develop and provide guidelines that center the health and safety of all who live and work in carceral facilities—based on epidemiologically sound research, national best practices and recommendations developed by advocates including justice-involved individuals¹—for local facilities.

As individual counties, small and large, scramble to develop new protocols and make adjustments to our new reality, the BSCC—as the main technical assistance provider for local counties, expert in applicable standards for local facilities, and research body—can serve as an invaluable resource to local facility administrators.

¹ The Justice Collaborative is one recommended resource developed by advocates and directly impacted individuals and families. For more information, see COVID19 (Coronavirus) Response & Resources: <https://thejusticecollaborative.com/covid19/>.

Recommendation 3: Immediately consult with facilities that have suspended standards to ensure the suspensions are necessary for an effective response and that the facilities have adopted measures to mitigate the potential harms caused by suspensions. We ask you to pay particular attention to the following standards.²

- a. Sections 1354 , Separation, and 1354.5, Room Confinement: Separation and room confinement should remain last resorts as protective measures and should only be used for the shortest amount of time required to reduce the risk of infectious spread and medically recover. (See §1354.5(b)(9)). When used, alternative measures ensuring access to normal privileges (pursuant to §1354(c)) and programming, particularly education, should be implemented.
- b. Sections 1370, Education; 1371, Programs, Recreation and Exercise; 1372, Religious Program; and 1373, Work Program: Facilities should prioritize maintaining access to programs and recreation to the fullest extent possible. Such activities are critical to prevent unnecessary setbacks in educational achievement and to minimize the mental health effects associated with separation, particularly from families, and anxiety specifically triggered by fears of COVID-19.
- c. Sections 1374, Visiting; 1375, Correspondence; and 1376, Telephone Access: Communications with loved ones on the outside is essential to the emotional well-being and positive development of incarcerated people. Facilities should prioritize guaranteeing accessible communication options with families, whether through visitation, telecommunications or mail. Specific measures the BSCC can recommend to facilities include making daily phone and video calls free (noting video calls need not be from contracted telecommunications providers and can be provided through applications like Skype, Google, FaceTime and WhatsApp), and providing free stamps, paper and writing utensils.
- d. Section 1377, Access to Legal Counsel: Legal visits should not be suspended; any suspension raises due process concerns. This pandemic makes access to legal counsel especially important so that attorneys for clients who fall ill can advocate for their release. Video visitation with counsel is not practical because lawyers need to review documents with clients. Rather than suspending visitation with legal counsel, facilities should ensure people in custody have access to sanitation supplies before and after the visit, and should provide instruction on how to avoid the spread of COVID-19 during a visit.

² Please note the standards are identified using section numbers for the Title 15 Minimum Standards for Juvenile Facilities but our recommendations apply to both adult and juvenile facilities.

Recommendation 4: Clarify that BSCC is not recommending counties suspend video visitation and county facilities should still provide access to these vital services.

The BSCC’s recent guidance memos to local law enforcement (*COVID-19 and BSCC Reporting Requirements* and *COVID-19 and BSCC Juvenile Visitation Guidance*) do not recommend counties suspend all visitation rights for confined individuals.³ *COVID-19 and BSCC Reporting Requirements* recommends adult local detention facilities suspend in-person visitation, but does not mention video visitation. Unfortunately, Fresno County Sheriff Margaret Mims recently suspended all in-person visitation and video conferencing at three jail facilities and cited BSCC’s recommendation. The sheriff’s statement falsely claims, “The BSCC has recommended all local adult detention facilities cancel visitation rights due to concerns over the spread of the Coronavirus disease or COVID-19”⁴. BSCC has made no such recommendation to cancel these rights. The agency must publicly affirm that counties should still provide confined individuals and their families with access to video visitation services.

Recommendation 5: Reach out to all county facilities with guidance on specific standards to enhance. We ask you to pay particular attention to the following standards.⁵

- a. Sections 1350, Admittance Procedures; 1410, Management of Communicable Diseases; 1430, Medical Clearance/Intake Health and Screening; and 1432, Health Assessment: Additional screening measures should be implemented and any individuals exhibiting symptoms of COVID-19 should be immediately transferred to a hospital or other medical facility for consultation and/or treatment. Moreover, juvenile hall administrators should adjust their written criteria for detention decisions so that the default is to keep youth in their homes or other community living arrangements.
- b. Section 1433, Requests for Health Care Services: Facilities should adjust their procedures for how individuals request medical care and how staff and medical personnel respond in order to ensure timely responses to concerns of infection or spread, particularly for those individuals who are more vulnerable due to existing medical conditions such as asthma, tuberculosis, and heart-related problems.
- c. Section 1437, Mental Health Services: Circumstances around the COVID-19 pandemic can cause stress, anxiety, fear and depression. Facilities should enhance mental health supports and take other actions, such as ensuring access to communication and minimizing use of isolating measures, to prevent or mitigate negative mental health effects.

³ For these memos, see COVID-19 and BSCC Reporting Requirements: <http://www.bscc.ca.gov/news/covid-19-and-bscc-reporting-requirements/> and COVID-19 and BSCC Juvenile Visitation Guidance: <http://www.bscc.ca.gov/news/covid-19-and-bscc-juvenile-visitation-guidance/>.

⁴ For the full statement, see All Inmate Visits Suspended at Fresno County Jails: <https://www.fresnosheriff.org/media-relations/all-inmate-visits-suspended-at-fresno-county-jails.html>.

⁵ Please note the standards are identified using section numbers for the Title 15 Minimum Standards for Juvenile Facilities but our recommendations apply to both adult and juvenile facilities.

- d. Sections 1483, Clothing, Bedding and Linen Supply; 1486, Personal Hygiene; 1501, Bedding and Linen Exchange; and 1510, Sanitation, Safety and Maintenance: Facilities should plan for more frequent and deeper cleaning of facilities, including dining and recreational areas, clothing, and bedding in all shared and private spaces. Government-approved disinfectants should be used and provided to individuals to clean their personal spaces.⁶

Recommendation 6: Only approve facility suspension proposals for two-week periods.

Given the rapidly changing nature of the COVID-19 pandemic and recommended responses, the BSCC and facilities should regularly revisit suspensions of standards to assess whether they are effective, necessary, and are as narrowly tailored as possible. We are concerned by your recent guidance memo (*COVID-19 and BSCC Reporting Requirements*) that states your intention to approve “any requests to suspend in-person visitation at adult facilities for the duration of the COVID-19 emergency pursuant to section 1012 of Title 15 of the California Code of Regulations.”⁷ This indeterminate blanket approval forgoes BSCC’s responsibility to determine if these suspensions remain necessary.

Recommendation 7: Ensure the BSCC and its staff have sufficient access and methods to monitor fidelity to standards that should be unaffected by the COVID-19 pandemic as well as approved modified standards.

We offer the above recommendations in partnership with your agency to advance our shared goals of protecting the safety and well-being of Californians who live and work inside local county detention facilities. Please do not hesitate to contact Dominique Nong (dnong@childrensdefense.org) or Brian Goldstein (brian@cjcj.org) for any questions, concerns or requests for support.

Sincerely,

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⁶ For a list of disinfectants that meet criteria of the federal Environmental Protection Agency for use against the causes of COVID-19, see the following website: <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>.

⁷ For this memo, see COVID-19 and BSCC Reporting Requirements: <http://www.bscc.ca.gov/news/covid-19-and-bscc-reporting-requirements/>.

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