IN THE COURT OF APPEALS OF MARYLAND

ADMINISTRATIVE ORDER

GUIDING THE RESPONSE OF

THE CIRCUIT COURTS SITTING AS JUVENILE COURTS

TO THE COVID-19 EMERGENCY AS IT RELATES TO THOSE JUVENILES WHO ARE

DETAINED, COMMITTED PENDING PLACEMENT OR IN COMMITMENTS

WHEREAS, Pursuant to the Maryland Constitution, Article IV, § 18, the Chief Judge of the Court of Appeals is granted authority as the administrative head of the Judicial Branch of the State; and

WHEREAS, Chapter 1000 of Title 16 of the Maryland Rules of Practice and Procedure sets forth the emergency powers of the Chief Judge of the Court of Appeals; and

WHEREAS, In instances of emergency conditions, whether natural or otherwise, that significantly disrupt access to or the operations of one or more courts or other judicial facilities of the State or the ability of the Judiciary to operate effectively, the Chief Judge of the Court of Appeals may be required to determine the extent to which court operations or judicial functions shall continue; and

WHEREAS, Due to the outbreak of the novel coronavirus, COVID-19, and consistent with guidance issued by the Centers for Disease Control, an emergency exists that poses a threat of imminent and potentially lethal harm to individuals who have contracted or have come into contact with a person(s) who have contracted COVID-19; and

WHEREAS, The COVID-19 emergency requires further expansion of comprehensive measures to protect the health and safety of Maryland residents including

those juveniles detained, committed pending placement, or committed under the laws of Maryland; and

WHEREAS, COVID-19 poses a risk of transmittal to juvenile respondents residing, staff working, and attorneys visiting clients in Maryland juvenile detention and treatment facilities; and

WHEREAS, The detained, committed pending placement, and committed juvenile populations of Maryland include individuals who, because of underlying medical conditions, are at a heightened risk of severe or fatal outcomes if they contract COVID-19; and

WHEREAS, The Maryland Department of Juvenile Services has confirmed the existence of COVID-19 in Maryland detention and treatment facilities for juveniles; and

WHEREAS, Pursuant to Maryland Rule 11-116, a juvenile court, acting under its own motion, may modify or vacate a prior order of the court where it is in the best interest of the child or the public; and,

WHEREAS, The judges of Maryland's juvenile courts must take into account the unique considerations of the case of each individual before them in considering issues of detention, commitment, and release during the COVID-19 emergency;

WHEREAS, A significant effort is already being undertaken in many jurisdictions to address the circumstances of juveniles detained and committed to placements, the need nevertheless exists to ensure that such efforts continue to be made statewide by the juvenile courts,

NOW, THEREFORE, I, Mary Ellen Barbera, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 of the Maryland Constitution, do hereby order this 13th day of April 2020, and effective immediately, as follows:

(a) Administrative Judges of the Circuit Courts or their designees are encouraged to communicate with juvenile justice system stakeholders to identify detained and committed juveniles for potential release in order to protect the health of at-risk juveniles during the COVID-19 pandemic crisis with careful regard for the safety of victims and communities in general; with respect for the statutory rights of victims; and with due consideration given to public health concerns related to juvenile respondents who may have contracted COVID-19; and

(b) Judges responsible for handling juvenile matters are encouraged, consistent with sections (c) and (d), to limit detention or commitment, unless necessary to protect the safety of that juvenile respondent or the safety of others, in or to Maryland juvenile detention and treatment facilities; and

(c) Judges responsible for handling juvenile matters shall, in addition to considering the statutorily required considerations set forth in Maryland Code, Courts and Judicial Proceedings Article §§ 3-8A-15 and 3-8A-19, relating to the detention or release of juveniles, consider:

(1) whether the juvenile suffers from a pre-existing condition that renders him or her more vulnerable to COVID-19; and

(2) whether the juvenile displays COVID-19 symptoms or tests positive for COVID-19 and whether the facility in which the juvenile is committed or detained is able to address related medical issues or needs; and

(3) whether the juvenile was committed to a facility for a treatment or education program that has now been suspended; and

(4) whether the purpose of the commitment can be achieved under current circumstances; and

(5) whether the Department of Juvenile Services has notified the court of a viable alternative plan for detention or commitment; and

(6) whether the juvenile has family or a placement resource available to meet basic food, housing, and health needs, including any period of quarantine that may be required; and

(7) whether release poses a risk to safety to the juvenile or another, and the extent to which any such risk can be mitigated in the community with conditions or supervision, or with placement in an alternative setting during the COVID-19 emergency; and

(8) whether the risk to the safety of the juvenile or others as mitigated in the community with conditions or supervision or placement in an alternative setting during the COVID-19 emergency outweighs the risk of harm that continued detention of the juvenile poses to the juvenile, to other detained individuals, to staff, and to the community; and

(9) whether release of the detained or committed juvenile during the COVID-19 emergency is in the interest of justice; and

(d) Judges responsible for hearing juvenile matters shall, prior to ordering a juvenile to be detained during the COVID-19 emergency, take the following into consideration, in addition to the factors in (c), and make findings on the record:

(1) whether detention poses serious health risks to the juvenile, other detained individuals, staff, or the community; and

(2) whether any condition of release, including supervision, can mitigate that risk of physical harm to self or others such that the juvenile can be released safely into the community; and

(3) any additional circumstances specific to the juvenile that are warranted in the interest of justice; and

(e) To the extent that a juvenile remains detained, either pending adjudication or pending placement, a review hearing that is consistent with the requirements of Maryland Code, Courts and Judicial Proceedings Article § 3-8A-15 shall be conducted no less often than every 14 days during the pendency of the COVID-19 emergency with findings made on the record as to whether continued detention is appropriate or warranted; and

(f) Judges hearing juvenile matters are to act expeditiously to issue a ruling or schedule a remote hearing on a request by the Department of Juvenile Services or counsel for the juvenile or on the Court's own initiative pursuant to Maryland Rule 11-116 to modify or rescind detention or a commitment in light of considerations related to COVID-19 stated above; and

(g) Consistent with statutory requirements and reflecting the urgency caused by the COVID-19 pandemic, the aforementioned matters shall continue to be addressed on an emergency basis; and

(h) To the extent that this Administrative Order conflicts with extant Administrative Orders, local administrative orders or policies, this Administrative Order shall prevail; and

(i) This Administrative Order will be revised as circumstances warrant.

/s/ Mary Ellen Barbera
Mary Ellen Barbera
Chief Judge
Court of Appeals of Maryland

Filed: April 13, 2020

/s/ Suzanne C. Johnson
Suzanne C. Johnson
Clerk
Court of Appeals of Maryland

Pursuant to Maryland Uniform Electronic Legal Materials Act (§§ 10-1601 et seq. of the State Government Article) this document is authentic.

Suzanne Johnson
2020-04-13 17:39-04:00

Suzanne C. Johnson, Clerk