

Guidance for Juvenile Justice Boards and Children’s Courts under The Juvenile Justice (Care and Protection of Children) Act, 2015, in the context of COVID-19¹

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Enfold Proactive Health Trust

Juvenile Justice Boards have a duty to ensure that “the child’s rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation”.² Additionally, the Supreme Court has passed directions dated 03.04.20 in *In re Contagion of COVID 19 Virus in Children Protection Homes*, Suo Motu Writ Petition (Civil) No.4 of 2020, relevant to Juvenile Justice Boards and Children’s Courts, which are as follows:

“Juvenile Justice Boards (JJB) and Children’s Courts are directed to proactively consider steps that are to be taken in the light of COVID - 19, while conducting their inquiries/inspections. Online or video sessions can be organized. The JJBs/Children’s Courts may consider measures to prevent children residing in Observation Homes (OH), Special Homes (SH) and Places of Safety (PoS) from risk of harm arising out of COVID-19.

- In this regard, JJBs and Children’s Courts are directed to proactively consider whether a child or children should be kept in the CCI itself, **considering the best interest, health and safety concerns**. These may include:
 - Children alleged to be in conflict with law, residing in Observation Homes, JJBs shall consider taking steps to release all children on bail, unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015.
 - Video conferencing or online sittings can be held to prevent contact for speedy disposal of cases.
 - Ensure that counselling services are provided for all children in Observation homes.

It is important to consider that violence, including sexual violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease. JJBs would need to monitor the situation in the Observation Homes on a regular basis.”

In its order, the Hon’ble Supreme Court also requested “the JJC of all the High Courts to not only ensure due compliance of this order but they shall also regularly monitor the implementation of the directions issued hereinabove as frequently as possible and at least once a week.”

We urge High Courts to kindly consider issuing Standard Operating Procedures for Juvenile Justice Boards and Children’s Courts, on the lines similar to the Standard Operating Procedures for the District Judiciary issued on 26 May 2020.

We hereby urge that the following suggestions be considered by the High Court.

¹ Prepared by Swagata Raha and Arlene Manoharan from Enfold, with inputs from Sindhu Naik, Kalpana Purushothaman and Geeta Sajjanshetty - members of Juvenile Justice Boards in Bengaluru Urban and Kalaburgi districts in Karnataka respectively. A previous version included inputs from Bharti Ali, HAQ Centre for Child Rights and Govind Beniwal, Rajasthan.

² Section 8(3)(b), JJ Act, 2015.

A: Guidance for admitting children into the Observation Home (OH), Special Home (SH) or Place of Safety (PoS).

In furtherance of the Supreme Court's directions, JJBs and Children's Courts, as the case may be, may be directed to adopt a case-to-case approach and consider the following before admission of a child into the Observation Home, Special Home or Place of Safety.

1. **Whether admission to /placement in OH/SH/PoS is in the best interest of the child? Each of these elements needs to be considered by the JJB or Children's Court before making a decision to place the child in the OH, PoS, or SH, as the case may be.** Best interest determination would entail a consideration of the child's views, child's identity, preservation of the family environment and maintaining relations, care, protection and safety of the child, situation of vulnerability, and the child's rights to health and education.³
2. As part of such determination, the following aspects need to be specifically assessed while considering the Social Background Report:
 - a) **Safety of the child within their family home or current living space.** Vulnerability of each and every child and the family situation should be assessed to determine whether the family environment is safe for the child, not just with regard to their capacity to prevent a COVID-19 infection, but whether the child is likely to be at risk if the child continues to reside there. The JJB can also ascertain the family situation via video-calls and with the assistance of the CCI staff, Probation Officer, DCPU, or voluntary organisations.
 - b) **Willingness and capacity of family to take custody of the child.** Families must not be forced to take custody of their children. Formal undertaking from willing parents/guardians can be taken through electronic medium with the help of the Child Welfare Police Officers. Consent can be obtained via video conferencing mode and assistance of the concerned District Child Protection Unit (DCPU) can be taken for this purpose. Counselling and other support should be provided to the family in taking care of their child, coping with the situation, legal aid, etc., in light of the pandemic. Assistance of the Department of Psychiatric Social Work at NIMHANS may be sought.
 - c) **Conditions within the CCI.** JJBs and Children's Court must ensure that every OH, SH, and PoS is adhering to the directions of the Supreme Court and the Guidelines issued by relevant Ministries and confirm the quarantine measures that will be taken on admission of a new child in the CCI. For this purpose the JJB and Children's Court, respectively, should ensure compliance with guidelines and SOPs issued by the Ministry of Health and Family Welfare, and State Department of Health.
 - d) **Whether the child has any special needs?** JJBs should consider whether the child has any underlying medical condition or is undergoing any treatment which may be interrupted if the child is placed in a Child Care Institution or whether it can be continued. However, orders for treatment, counselling, referral, assessment, etc., should be made irrespective of whether the child is placed at the CCI or sent home.
4. **Whether the child can be granted bail?** JJBs must consider whether children can be released on bail irrespective of whether they have allegedly committed petty, serious, or heinous offences, "unless there

³ Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14. 29 May 2013, paras 52-79.

are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015.”⁴ Further, seeking of surety may be avoided given the current circumstances and children may be released on a personal undertaking or personal bond without surety. **JJBs should *suo motu* take up and decide on bail of children in conflict with the law, and not wait for a bail application to be filed by any lawyer. Further, production may be done through audio-visual means and necessary instructions should be issued to the police.** JJBs should also consider whether a child can be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any placed with a fit person. A member of the child’s extended family could be recognised as a first person provided documents and other checks on the person’s background, relationship to the child, family, etc. are clear and a written undertaking is given.

5. Whether the case can be disposed of in the first hearing? Rule 10(1), JJ Model Rules, 2016, empowers the JJB to dispose of the case in the first hearing if the child’s being in conflict with the law appears unfounded or if the child is alleged to be involved in petty offences. The JJB could direct the child and /or family for counseling/referral services before case closure. **The JJBs may be directed to consider whether the case can be disposed off on the first hearing and submit the list of such disposed cases in a report to the CJM/CMM and the High Level Committee under Section 16, JJ Act, 2015.**

6. Whether the child is alleged to have committed petty or serious offences?: The JJB should be directed to instruct the police to adhere to Rule 8(1), JJ Model Rules to minimize the apprehension of children alleged to have committed petty or serious offences. Such children should not be placed in the OH, SH or PoS. JJBs may instruct the police to ensure that children being diverted or not being apprehended are connected to counsellors and NGOs attached to the SJPU. Further, apprehension or institutionalization of children in statutory offences may be avoided. For children alleged to have committed a heinous offence, best interest and bail need to be determined and no child should be institutionalized solely on the basis that the offence alleged is heinous.

B. Guidance for releasing children or granting leave of absence from Observation Home, Special Home or Place of Safety

The JJBs and Children’s Courts, as the case may be, may be directed to consider the following factors before a child is released from an Observation Home, Special Home or Place of Safety.

6. Whether release of a child under Section 97, grant of leave of absence under Section 98, or grant of bail under Section 12(1) is in the best interest of the child? Best interest determination would entail a consideration of the child’s views, child’s identity, preservation of the family environment and maintaining relations, care, protection and safety of the child, situation of vulnerability, and the child’s rights to health and education.⁵ As part of such determination, the following aspects need to be specifically assessed while considering the Social Investigation Report:

- a) **Safety of the child within their family home:** Assess vulnerability of each and every child and the family situation to determine whether the family environment is safe for the child, not just with regard to their capacity to prevent a COVID-19 infection, but whether the child is likely to be at physical, moral or psychological risk, (including risk of hunger and starvation, of being trafficked,

⁴ Supreme Court’s order dated 03.04.20.

⁵ Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14. 29 May 2013, paras 52-79.

of being exploited as child labour, of being compelled to marry, of being groomed by gangs for illegal activities, of substance abuse, etc.), if they are released.

- b) **Willingness and capacity of family to take custody of the child:** Families cannot be forced to take custody of the child, especially during the pandemic. They may also need additional support through sponsorship if the child is being handed over to them and JJBs need to identify funds to provide sponsorship to families.
- c) **Conditions within the CCI:** JJBs must ensure that every OH, SH, and PoS is adhering to the directions of the Supreme Court and the Guidelines issued by relevant Ministries and confirm the quarantine measures that will be taken on admission of a new child in the CCI. They must also assess whether the child's continued safety can be assured in the CCI. The Nodal Officer for COVID-19, to be designated in every CCI or the Person in charge of the CCI may perform this role.

7. Whether the case can be terminated? If children alleged to have committed petty offences are currently in the OH and if the inquiry has remained inconclusive even after the extended period, then the JJB should exercise its power under Section 14(4) and terminate the proceedings. **All the JJBs may be directed to prepare a list of all such cases and pass appropriate orders under Section 14(2) or 14(4), as the case may be and submit a report to the High Level Committee under Section 16, JJ Act, 2015, and the High Court Committee on Juvenile Justice. about the action taken on a fortnightly basis.**

8. Prevent continued detention of the child in the OH, SH or PoS: No child should be detained in the OH, SH, or POS for extended periods because of the lockdown. This would constitute a gross violation of their right to life and personal liberty and the principle of institutionalization as a measure of last resort.⁶ Further, no child should be detained in the SH or PoS for a period beyond the term ordered by the JJB or the Children's Court, as the case may be. **All JJBs and Children's Court may be directed to prepare a list of children currently residing in the OH, PoS, or SH and prioritize the release of children who have completed their term or are nearing the completion of their term. A report to the High Level Committee under Section 16, JJ Act, 2015, and the High Court Committee on Juvenile Justice should be submitted on a fortnightly basis.**

9. Whether bail can be granted? JJBs and Children's Courts may be directed to proactively consider bail for children residing in the OH, PoS, or SH, as the case may be. No application should be required for this purpose.

10. Consider challenges during release/grant of bail and identify solutions:

- a) **Transit support:** Families/children are likely to face challenges in movement. JJB must ensure through the CCI staff or DCPU that suitable arrangements are made for curfew passes, escort, hygiene, boarding and lodging during transit (inter or intra-State), transport cost, personal protective equipment such as masks, sanitizers and gloves for the children, escorts, and their family.
- b) **Sponsorship:** JJBs should consider sponsorship as per the provisions of the Karnataka Sponsorship Guidelines, 2020⁷ for every child restored to the family, during the pandemic. Such funds may be routed through the concerned disbursed by the Probation Officer of the District Child Protection Unit (DCPU). **A list of children who have been released and to whom sponsorship has been**

⁶ Section 3(xii), JJ Act, 2015.

⁷ Further guidance for JJBs on procedures to be followed with regard to orders related to Sponsorship shall be provided by the Directorate of Integrated Child Protection Scheme, Government of Karnataka, along with the finalized Sponsorship Guidelines, 2020.

given should be submitted to the High Court Committee on Juvenile Justice should be submitted on a fortnightly basis.

- c) **Documents:** Children being released or discharged should be provided with copies of relevant documents, contact numbers of persons they could call to seek any assistance, etc., and to keep the DCPU informed, so as to prevent any harassment or distress during their journey.
- d) **Orientation:** Children and their families should be provided detailed orientation about COVID-19 and how to keep oneself safe while also preventing risk of infection to others. Additionally, in the event that the child is escorted by an authorized individual/official appointed by DCPU or Childline staff, the JJB should ensure that the police provide necessary permissions and official transport.

C. Guidance for Ensuring Safety of Children with Child Care Institutions

11. JJBs and Children's Courts, as the case may be, **must monitor that every OH, SH, and PoS is adhering to the directions of the Supreme Court and the Guidelines issued by relevant Ministries** and confirm the quarantine measures that will be taken on admission of a new child in the CCI. They may be directed to adhere to the Standard Operating Procedure (SOP) for Infection Prevention & Control in Child Care Institutions⁸. For this purpose, JJBs must conduct inspection while maintaining social distancing or through audio-visual means. Records of such inspections should be documented, while ensuring that confidentiality is maintained.

12. The JJBs and Children's Courts, as the case may be, should be directed to **submit a report to the High Court Committee on Juvenile Justice, on a monthly basis on the CCIs compliance with the Hon'ble Supreme Court's directions and guidelines.**

13. JJBs and Children's Courts, as the case may be, must **ensure that children have access to their family and visits may be permitted** while maintaining social distancing and in keeping with the advisories and guidelines issued by the Ministry of Home Affairs and the Ministry of Health and Family Welfare. CCIs should be instructed to **ensure telephonic contact between children and their family members at least thrice a week, unless contact with the family is not in the best interest of children. The JJB should instruct the concerned staff responsible for facilitation of such contact to submit written updates on a weekly basis through email to the JJB.**

15. JJBs and Children's Courts, as the case may be, should instruct the Persons-in-charge and the DCPUs to facilitate alternatives to in-person visiting, including the use of telephones or video to facilitate interaction between the children and their family members, lawyer, NGOs authorized to work in the CCI and other visitors. **A written report from the Person-in-charge or the DCPU may be sought to assess steps taken in this regard.**

16. JJBs and Children's Courts, as the case may be, should **instruct the Persons-in-charge of CCIs or the Nodal Officer for COVID-19 in the CCI⁹, to inform them about any suspected or confirmed case within the CCI immediately.** However, **no delays in the medical care of the child should be caused only due to procedural formalities.** Such information should be shared with the health authorities as per guidelines issued by the Ministry of Health and Family Welfare or State Government.

⁸ Reference to the finalized Standard Operating Procedures for COVID-19 Infection Prevention and Control in Child Care Institutions, once finalized may be made here.

⁹ As proposed in the draft Standard Operating Procedures for COVID-19 Infection Prevention and Control in Child Care Institutions.

D. Guidelines for Inquiry by JJB

17. JJBs should consider **conducting sittings through video-conferencing or other audio-visual means** to pass interim or final orders, as per the directions of the Supreme Court. Alternatively, sittings in person may be conducted while maintaining social distancing and ensuring adherence to protocols related to COVID-19. The principles of natural justice and privacy and confidentiality should be complied with.

18. **Requirement of filing bail applications, furnishing Bail Bonds or Undertakings, preparation of release warrant by office of JJB and sending it to the CCI should be waived. Merely an order of JJB by email to the Officer in Charge of Child Care Institution releasing the child should be sufficient to release the child.**¹⁰

19. JJBs should **submit a report on the pendency of cases to the CJM or CMM** under Section 16(1) and the High Level Committee under Section 16(2), JJ Act, 2015, as well as a plan to address the pendency due to COVID-19. In this regard, **JJBs should proactively consider termination of proceedings** under Section 14(4), JJ Act, 2015.

20. **Quorum should be ensured** while passing orders under Section 7(3) and 7(4), JJ Act, 2015. **Social Worker Members should be a part of the inquiry process and their views need to be considered before the passing of interim or final orders.**

21. **Social Investigation Reports (SIR) should be considered before passing final orders.** Probation Officers, CCI Staff, or DPCU may be instructed to take the assistance of Childline and voluntary organisations, for the preparation of the SIR.

22. **JJB and Children's Court should ensure that the child is legally represented** during the inquiry and preliminary assessment process and the process under Section 19(1), respectively. **Lawyers should be instructed to inform the children whose cases they are handling, about the next date of hearing in their cases and undertake telephonic coordination with the concerned JJB or Children's Court** in this regard.

23. **Records of proceedings conducted through audio-visual means should be maintained and filed electronically** by the JJB and Children's Court, as the case may be. Confidentiality should be ensured.

24. **JJBs and Children's Court should consider and finalize Individual Care Plans for children, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation,** as may be required, as per Sections 8(3)(h) and 19(2), JJ Act, 2015, respectively.

25. JJBs should adhere to the child-friendly procedures specified in the POCSO Act, 2012 while dealing with child victims.

E. Steps to create an online helpdesk and support system:

¹⁰ Input provided by Adv. Anant Kumar Asthana

26. JJBs should **create an official email ID**, if they do not already have one, and **share it along with their contact details with local police stations, SJPU, CWCs, Childline, CCIs, and district hospitals, as well NGOs/individuals working in the Observation Home, Place of Safety and Special Home.**

27. **No email shall be responded without the Principal Magistrate and two Social Workers first discussing the issue telephonically or by any suitable audio or video mechanism, and effort should be made to form a consensus.** If there is no consensus possible, then the Principal Magistrate's view shall prevail. While Principal Magistrate will have the final power to take a decision, it is necessary to impress on the Principal Magistrates to pay heed to the opinion and views of Social Worker Members of JJB, and if any two of the three have same view, the Principal Magistrate should treat that as a majority view and pass an order in keeping with such majority view.

28. A **weekly duty roster indicating the availability of the Principal Magistrate and Social Worker Members** shall be created and shared with all police stations, SJPU, CJM/CMM, District Judge, District Magistrate, DCPU, CWC, SLISA, and DLSA.

29. **JJBs should work in coordination with the DCPU to proactively identify individuals who could be appointed as case workers,¹¹ fit persons, and facilities** that may be recognized by the JJB as a fit facility for specific purposes related to COVID-19 situations that may arise during the pandemic. Such individuals and facilities could form a **panel of authorized COVID-19 volunteers and fit facilities**, who may be called upon to assist the JJB and the DCPU where required.

30. **JJBs should instruct the Probation Officer to ensure contact with the children restored to their families on a regular basis and provide updates** to the JJB. Assistance of authorised COVID-19 volunteers may be taken by the JJB, who may "assign any task" to such individuals.

F. Monitoring by High Court Juvenile Justice Committee

31. In furtherance of its mandate to frequently monitor the compliance with the Supreme Court's order, the Juvenile Justice Committee of the Hon'ble Karnataka High Court may consider **creating a COVID-19 Juvenile Justice Sub-committee** to assist the JJC with the monitoring of compliance of JJBs, CWCs, and the Department of Women and Child Development (DWCD) with the Supreme Court's directions and the various guidelines issued by the Ministry of Health and Family Welfare, State Department of Health, and the DWCD, comprising the following:

- i. a senior Judicial Officer,
- ii. one representative of the Karnataka State Commission for Protection of Child Rights,
- iii. two representatives of two different credible NGOs working on children's issues and familiar with COVID-19,
- iv. one medical expert familiar with COVID-19.

32. An **exclusive email ID** may be created for the Sub-Committee and information may be invited from the general public about the state of implementation of the JJ Act, 2015 and these guidelines.

¹¹ Rule 2(1)(iii), JJ Model Rules, 2016 defines "case worker" as a representative from a registered voluntary or non-governmental organisation who shall accompany the child to the Board or the Committee and may perform such tasks as may be assigned to him by the Board or the Committee.

33. All JJBs, CWCs, Children's Courts, and CCIs may be instructed to send weekly/fortnightly reports to this Sub-committee on COVID-19, including the state of compliance, challenges faced, and solutions identified.

34. Data about pending cases, stage of inquiry/trial, number of children in CCIs and the offence alleged against them, as well as steps being taken to ensure prevention and control of the spread of COVID-19, family contact, access to rehabilitative services, and restoration measures shall be maintained, and suitable templates may be created for this purpose.

35. Based on the reports from the Sub-Committee, the JJC may consider issuing guidelines or take judicial notice of lapses in implementation.