Covid-19 Response for Youth Involved in Massachusetts’ Legal System

Updated March 25, 2020
Agenda

• Why a focus on Legal System Involved Youth?
• Data of Legal System Involved Youth
• Key Areas of Concern
• State guidance and actions: Courts, Probation, EOHHS, DYS, DCF
• Pending updates: adult corrections, DA’s, Police, DESE
• Advocacy efforts
Lower morbidity and mortality from Covid-19 does **NOT** mean they are not physically at risk:

- Among youth under age 20 in the general population with a confirmed diagnosis, 2%-3% resulted in hospitalizations. The risk of hospitalization and ICU admissions increases for emerging adults.

- Transmission risk even if asymptomatic: In South Korea (high rate of testing), found that 30% of confirmed Covid-19 cases were of young people in their 20’s.
Why Focus on Legal System Involved Youth?

• High rates of mental health needs for youth in juvenile justice system, puts them at higher risk of increased stress and anxiety, especially when separated from their families.

• High rate of foster children in the juvenile justice system.

• Youth held in adult facilities face particularly difficult conditions.
Data on Legal System Involved Youth

In FY2019, there were 5,285 delinquency and 153 youthful offender filings in juvenile court.

<table>
<thead>
<tr>
<th>Juvenile Probation one month census (January 2020):</th>
<th>*Juvenile Probation Level of Risk/Need Supervision (542 cases)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk/Need</td>
<td>Minimum 60%</td>
</tr>
<tr>
<td>Administrative</td>
<td>Medium 23%</td>
</tr>
<tr>
<td>Pretrial</td>
<td>High 16%</td>
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<tr>
<td></td>
<td>542*</td>
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<td></td>
<td>395</td>
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<td>649</td>
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</tbody>
</table>
# Data on Legal System Involved Youth

<table>
<thead>
<tr>
<th>Length of Stay</th>
<th>Bail Decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;30 days</td>
<td>Cash bail 69%</td>
</tr>
<tr>
<td>31-90 days</td>
<td>Release to DCF 21%</td>
</tr>
<tr>
<td>&gt;90 days</td>
<td>No bail 10%</td>
</tr>
</tbody>
</table>

DYS Detention caseload: 211 (one quarter census, CY2019, Q1)
## Data on Legal System Involved Youth

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detention</td>
<td>112</td>
</tr>
<tr>
<td>Committed: Residential/Secure treatment</td>
<td>221</td>
</tr>
<tr>
<td>Committed: Foster care</td>
<td>21</td>
</tr>
<tr>
<td>Committed: Living at home</td>
<td>&gt;200</td>
</tr>
</tbody>
</table>
Data on Legal System Involved Youth

Dually-Involved Youth

• $\approx 40\%$ of youth in detention have an open DCF case (care and protection; voluntary; or CRA). The number drops for committed youth and they are exclusively care and protection cases.

Child welfare factors increasing risk of juvenile and criminal justice involvement:

• Removal from the home
• Multiple placements (MA has highest rate in the US)
• Aging out of foster care without a permanent family
Data on Legal System Involved Youth

Child Welfare

In FY2019, there were 8,809 children under age 18 and 1,519 aged 18 or over in DCF out of home placement:

• 4,087 (40%) have a plan to reunify or remain with their birth families
• 1,447 (14%) are on track to age out of foster care with no permanent family

Out-of-home placements:

• Non-kin foster homes: 2,070 (20%)
• Group homes/congregate care: 1,904 (18%)
Key Areas of Concern

• Reduce the number of youth, including emerging adults, who are incarcerated in order to protect them from likely exposure in custodial settings

• Release youth in pre-trial detention and those within a few months’ of release from commitment and adults correctional facilities who can safely return to the home of their families and/or caretakers

• Ensure that youth have an appropriate level of community-based supports upon release.
Key Areas of Concern

• Tailor community-supervision upon release that is tailored to a young person’s level of risk and need, including minimal supervision to youth presenting a low level or risk.

• Reduce probation or parole conditions that would bring youth back into the system

• For those who cannot be released: ensure connection to family, education, treatment, and prevention from Covid-19 exposure
Key Areas of Concern

• Protect due process rights, including the right to trial, in as efficient a manner as possible and no delays due to court standing orders aimed at maintaining social distancing.

• Education on public health recommendations for youth and their families to reduce transmission risk

• Identify best practices to be shared across agencies or jurisdictions
State Agency
Guidance and Actions

as of March 25, 2020
State Guidance (not exhaustive list)

- Court Standing Orders
- Probation Protocols
- EOHHS
  - Department of Youth Services
  - Department of Children and Families
- Congregate Care (DCF and DYS)
- Foster Families (DCF and DYS)
- EEC Background Check
“We ration justice for precisely the same reason that we ration food in hard times -- to focus our limited judicial resources on avoiding serious and immediate harm and to make sure that we and our justice system survive to see a better time.”

Chief Justice Ralph Gants,
Letter to the Bar
All courts will be closed except to conduct emergency hearings

• Emergency hearings by videoconference or telephone:
  • Care & Protection 72 hour hearings
  • Delinquency/Youthful Offender arraignments and 58A (dangerousness) hearings

• Non emergency matters reports and petitions can be filed by fax or email, but cases shall be continue until after May 4th:
  • Delinquency/Youthful Offender probable cause hearings and summons arraignments
  • CRA, adoption and Care & Protection matters
Other Court Standing Orders

The SJC issued an order limiting the imposition of GPS monitoring as a condition of release unless there is a compelling public safety reason:

• Rationale: requiring a probation officer to be in physical proximity to the person they are affixing it to is a health risk.
• The order made exceptions in 5 types of offenses where the charges qualify as a compelling public safety reason
Offenses qualifying as “compelling public safety reason”:

1. a sexually violent offense or a sex offense involving a child
2. assault or assault and battery on a family or household member
3. strangulation or suffocation
4. violation of an abuse prevention order or protection order issued by another jurisdiction;
5. stalking
Probation Services

61,000 adult and youth individuals on probation

Goals:

• Prioritize action to identifiable risk of harm
• Minimize detention demands due to Violations of Probation or surrender
• Find alternatives to service conditions rather than enforce to reduce noncompliance
• Support individuals on probation
Probation Services

- “In field” supervision by staff suspended and moved to administrative supervision (telephone and collateral contacts)
- In person supervision limited to emergency purposes (GPS monitoring limited)
- MPS authorized to made Violation of Probation enforcement decisions on all but new arrests. Staff directed to limit VOP’s to imminent threat to others. Staff must confer with supervisors regarding issuing VOP’s due to other concerns.
Probation Services

- Not meeting conditions due to diminished access to services is not a violation.
- Limited drug testing via a vendor (Trial Court order stopped drug testing by Probation Officers)
- Social and financial hardship due to pandemic: shifting contact to supports
- Public health: report symptomatic individuals to local public health authority
Due Process/Expediting Release

• Worked with CPCS to develop guidance to move youth-attorney visitation to telephone. Attorney visits are allowed with screening protocols. Working on enhanced confidentiality of attorney-client telephone calls.

• Developed protocols on Overnight Arrests for DYS regional coordinator to connect attorney and prosecutor with child’s information to expedite court hearings.

• DYS General Counsel facilitates the meeting of bail conditions: family payment of bail, or coordinating with DCF when child’s condition of release is “release to DCF”.

Department of Youth Services
Family Engagement

- Average of 677 family visits per month due to strategic expansion of family engagement. All in-person visitation (except attorneys) is temporarily suspended.
- DYS is rolling out iPads for youth to visit with family and for court hearings
Discharge Planning

• Case-by-case evaluation of expediting Grants of Conditional Liberty for youth within 30 days of release into the community. Currently contemplating expanding to 60 days.

  Statutory limitations on early release for youth serving mandatory minimum sentences.

• Defense attorneys and prosecutors are negotiating case by case on conditions of release in light of SJC limits on release on GPS monitoring. Challenge: youth with a history of default or running away.
Programming and Services

• In-person education is temporarily suspended. Students enrolled in online (post-secondary) classes are continuing.

• developing educational enrichment activities during school closures. *(ongoing)*

• working with DESE on provision of Special Education Services. *(in progress)*

• Recreational consultants are developing activities for youth incorporating social distancing

• Medical and clinical services are maintained (in person)
Programming and Services

Over 200 committed youth are in community supervision.

• Caseworkers use electronic or telephone “visits” and are accessible to youth and families by telephone

• Regional offices are open with skeletal staff for walk-ins

• Suicide watch policy is in effect, with protocols by medical staff
Department of Youth Services

Public Health Protocols

• Physical facilities: Issued guidance around enhanced cleaning every three hours
• Suspected virus cases in staff: remain home
• Suspected virus cases in youth: youth quarantined in open living units and door is kept closed to allow them to recover (unless there is concern for self-harm) with dedicated staff supervision
• Rooming: each youth has their own room
Department of Youth Services

Public Health Protocols

• All staff and any visitor entering a DYS facility with screening questions and taking temperature. *(in progress)*

• Education of youth and families on social distancing and other public health protocols. *(in progress)*
EOHHS Guidance

EOHHS Priorities (in order)

1. “Keeping people alive”: health care and personal protective equipment

2. Congregate care for children, adults and persons with disabilities that operate 24/7. This includes DCF and DYS non-profit providers.

3. Community-based services that are necessary to prevent entry in congregate care programs, including family support and stabilization services.

10% increase in contracts to cover increased staffing costs and purchase of equipment
Family Support and Stabilization

- Designated as essential staff to continue to operate in State of Emergency
- Evaluate each family’s risk level to prioritize highest level of service to families deemed to have the highest risk
- Guidance to shift in-home visits to telephonic or FaceTime adding suggested topics of conversation related to social distancing and Covid-19 health needs
- Public health protocols if in-home visits are deemed necessary
Early implications or concerns:

- Family-Child visitations limited or suspended
- Impact of court case delays on case progress in light of federal timelines towards termination of parental rights
- Delays to youth returning home due to barriers to family visitation or parental ability to comply with conditions of reunification
- Case closures of transition age youth or ending placements
EEC Background Checks

- EEC is expediting process with background checks with a 48-72 hour turn around to allow staffing of DYS and DCF provider agencies.
- They will do CORI/SORI/DCF background check but not fingerprints. A full background check will be done for hired staff after the emergency. Guidance does not address use of juvenile records.
- Will allow flexibility for staff who are licensed for one program to move to another program, including child care providers, without repeating the BRC.
- No written change to regulations on mandatory exclusions.
Pending Updates

- DESE
- District Attorneys
- Municipal Police
- Emerging adults (Courts, Adult Corrections)
Extraordinary relief due to public health pandemic:

1. Limit the number of people taken into custody, including by ordering the trial courts to weigh the threat of COVID-19 in jails and prisons when assessing the need for pretrial detention.

2. Reduce the number of people held pretrial who do not pose a risk to public safety.

3. Release people serving sentences in prisons and jails who are either vulnerable to COVID-19, near the end of their sentence, eligible for parole (including medical parole), or who do not pose a threat to the public.
Release of individuals who pose no physical threat to the community:

• Charged with or serving time for simple possession of controlled substances
• Detained because they cannot afford bail under $10,000
• over the age of 50
• Medically vulnerable, as classified by the CDC
• Incarcerated as the result of technical parole or probation violations
An Act regarding Decarceration and COVID-19 (HD4963)

- Qualify for medical parole
- Incarcerated due to warrants for failure to pay fines and fees
- Within six months of their release date