Covid-19 Response for Youth Involved in MA’s Legal System: Stakeholder Update #2

April 9, 2020
Agenda

Part 1: Public Health Context
• Prevalence of Covid-19 cases
• Racial Disparities in a Pandemic
• Guidance on Life-Saving Care Decisions

Part 2: State Agency Guidance and Responses
• Reducing Entry into the Legal System
• Reducing Incarceration
• Services, Programming and Conditions
Prevalence of Covid-19 Cases
## Confirmed Cases in Massachusetts

<table>
<thead>
<tr>
<th>Age</th>
<th>Number of Confirmed Cases (as of 4/8/2020)</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤19 years of age</td>
<td>363</td>
</tr>
<tr>
<td>20-29 years of age</td>
<td>2195</td>
</tr>
<tr>
<td>30-39 years of age</td>
<td>2603</td>
</tr>
<tr>
<td>40-49 years of age</td>
<td>2649</td>
</tr>
<tr>
<td>50-59 years of age</td>
<td>3204</td>
</tr>
<tr>
<td>60-69 years of age</td>
<td>2398</td>
</tr>
<tr>
<td>70-79 years of age</td>
<td>1529</td>
</tr>
<tr>
<td>&gt;80 years of age</td>
<td>1847</td>
</tr>
</tbody>
</table>
# Massachusetts “Hot Spots”

<table>
<thead>
<tr>
<th></th>
<th>Confirmed Covid-19 Cases per 10,000 residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chelsea</td>
<td>79</td>
</tr>
<tr>
<td>Lawrence</td>
<td>47</td>
</tr>
<tr>
<td>Brockton</td>
<td>45</td>
</tr>
<tr>
<td>Hyde Park (Boston)</td>
<td>30</td>
</tr>
</tbody>
</table>
### Covid-19 Prevalence Among Incarcerated Individuals

<table>
<thead>
<tr>
<th></th>
<th>Confirmed Covid-19 Cases</th>
<th>Covid-19 Deaths</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Incarcerated Individuals</td>
<td>Staff</td>
</tr>
<tr>
<td>Department of Youth Services</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Department of Corrections</td>
<td>24</td>
<td>15</td>
</tr>
<tr>
<td>Middlesex HOC</td>
<td>7</td>
<td>21</td>
</tr>
<tr>
<td>Bristol HOC</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Hampden HOC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Essex HOC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plymouth HOC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norfolk HOC</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Reported by news media as of April 2, 2020
Covid-19 Prevalence Among Incarcerated Individuals

**Infection rate among state prisoners is 2.6 times higher than general population**

*April 7, 2020: COVID-19 in Massachusetts Prisons*

**Infection rate among DOC employees is 1.5 times higher than general population**

*April 7, 2020: COVID-19 in DOC Employees*

Prisoners’ Legal Services analysis
Racial Disparities in a Pandemic

“When White America catches a cold, Black America gets pneumonia.”

- attributed to Malcolm X
African Americans are over-represented in Covid-19 Cases and Deaths

**Municipalities Reporting by Race**

Chicago
- % of Population: 30%
- % confirmed cases: 52%
- % Covid-19 deaths: 68%

Milwaukee County
- % of Population: 28%
- % confirmed cases: 45%
- % Covid-19 deaths: 71%

Washington, DC
- % of Population: 33%
- % confirmed cases: 29%
- % Covid-19 deaths: 59%
African Americans are over-represented in Covid-19 Cases and Deaths

**States Reporting by Race**

<table>
<thead>
<tr>
<th>States</th>
<th>% of Population</th>
<th>% confirmed cases</th>
<th>% Covid-19 deaths</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illinois</td>
<td>15%</td>
<td>28%</td>
<td>43%</td>
</tr>
<tr>
<td>Michigan</td>
<td>14%</td>
<td>33%</td>
<td>40%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>21%</td>
<td>38%</td>
<td>31%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>33%</td>
<td>70%</td>
<td></td>
</tr>
</tbody>
</table>
Massachusetts DPH began reporting Covid-19 Race and Ethnicity Data April 8

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>Overall population</th>
<th>Covid-19 Confirmed Cases</th>
<th>Covid-19 Deaths</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hispanic</td>
<td>12%</td>
<td>7% (1162)</td>
<td>3% (14)</td>
</tr>
<tr>
<td>Non-Hispanic White</td>
<td>71%</td>
<td>16% (2751)</td>
<td>23% (98)</td>
</tr>
<tr>
<td>Non-Hispanic Black/African American</td>
<td>9%</td>
<td>5% (889)</td>
<td>2% (7)</td>
</tr>
<tr>
<td>Non-Hispanic Asian</td>
<td>7%</td>
<td>1% (235)</td>
<td>1% (6)</td>
</tr>
<tr>
<td>Non-Hispanic Other</td>
<td></td>
<td>3% (506)</td>
<td>2% (8)</td>
</tr>
<tr>
<td>Unknown/Missing</td>
<td></td>
<td>67% (11,247)</td>
<td>69% (300)</td>
</tr>
</tbody>
</table>

Analysis of 30% of Covid-19 cases overall with race/ethnicity data

* Of the data available, Black and Hispanic confirmed Covid-19 cases are both two times what you would expect from their population.
Effects of Racial Disparities in a Health Crisis: Zip Code Matters

• Majority of black COVID-19 patients who died had underlying health conditions including respiratory problems, high blood pressure, diabetes or both.

• Higher rates of underlying health conditions linked to decades of inequitable access to health care and economic opportunity Black and Latinx compared to white people.

• Initial indications are that doctors are less likely to refer African-Americans for testing when they visit a clinic with symptoms of Covid-19, putting patients whose symptoms deteriorate rapidly at risk of worse outcomes.
COVID-19 rate (unadjusted for age)

- Lower than rest of Boston
- Similar to rest of Boston
- Higher than rest of Boston

Boston
Rate = 18.1 cases per 10,000 residents
n = 1,233 cases

Boston Public Health Commission: Data above as of April 2. N = 2287 as of April 7
Unequal Pandemic Impact Driven by Structural Racism

• High levels of stress-mediated wear and tear known as “weathering,” like exposure to toxins, lack of sleep and racial discrimination, can cause a kind of accelerated aging.

• Suspected undercounting of prevalence among Latinx population due to data limitations.

• Fear of negative impact of “public charge” rule or sharing of immigration status has led to testing, treatment and hospital-avoidance for immigrants with symptoms.
Social Distancing as a Privilege

Economic disparities shape people’s experiences of pandemic
- Adequate access to grocery stores or healthy food
- Safe, walkable streets
- Working multiple low-paying jobs to make ends meet
- Blue-collar jobs don’t allow for working from home
- Using public transportation is unavoidable
Chat Box Interactive Question:

Please take 1 minute to respond in your chat box to the following question:

Given your personal and professional role, what can you do (or what are you already doing) to reduce the impact of structural racism on the life and death outcomes of Covid-19?
Take away: Race Equity

• We still need better data disaggregated by race and ethnicity.

• There is an opportunity for all organizations to express its equity-focused values in the Covid-19 response. CfJJ encourages the affirmative and active use of a race equity lens in our collective response.
Racial Disparities in a Pandemic: Sources

- Departments of Public Health of municipalities and states
- The Atlantic, *What the Racial Data Show*
- The Washington Post, ‘*Those numbers take your breath away*: Covid-19 is hitting Chicago’s black neighborhoods much harder than others, officials say
- The Washington Post, *Covid-19 is ravaging black communities. A Milwaukee neighborhood is figuring out how to fight back*
- Boston Globe, *Chelsea, city of the working Latino immigrant, emerges as a COVID-19 hotspot*
- Rubix Life Sciences, *Health Data in the COVID-19 Crisis: How racial equity is widening for patients to gain access to treatment*
Prioritizing Life-Saving Care
Medical Ethicist Guidance on Life-Saving Care Decisions

Goal: Maximize Life Years Not Number of Lives

Voluntary guidance for hospitals

Factors to prioritize for patients 18+:
• Likelihood of survival with ICU admission
• Serious co-morbid illness that limits life expectancy
• Pregnancy
• Health care workers “heightened priority”
Factors to prioritize patients under age 18 years:
• Prospect of short-term survival
• Acute severity of current medical condition
• Underlying medical diseases that may hinder recovery
Secondary Factors (if there’s a tie):

• Age (in descending priority):
  • 1<sup>st</sup>: age 0-17;
  • 2<sup>nd</sup>: age 18-49;
  • 3<sup>rd</sup>: age 50-65;
  • 4<sup>th</sup>: age 65-80;
  • 5<sup>th</sup>: age > 80

• a lottery (i.e. random allocation)
• existence of a non-survivable medical condition
“race, disability, gender, sexual orientation, gender identity, ethnicity, ability to pay, socioeconomic status, perceived social worth, perceived quality of life, immigration status, incarceration status, homelessness or past or future use of resources, are irrelevant and not to be considered by providers making allocation decisions.”
Medical Ethicist Guidance on Life-Saving Care Decisions

Jon Santiago
@lamJonSantiago

400+ years of enslavement, disenfranchisement, and imprisonment for poor people of color has created health inequity. Now you want me to save the ventilator for the “less sick”? No, sir. That’s the definition of structural racism & we ain’t about that.1/x

Who gets a ventilator? New gut-wrenching state guidelines issued on rationing e...
The guidance suggests assigning patients a priority score that gives preference to healthier patients who have a greater chance of surviving, as well as medical ...

bostonglobe.com
State Agency Guidance and Actions

as of April 9, 2020
State Guidance and Actions

Reducing entries into the legal system

• Law Enforcement

Reducing individuals in locked facilities

• DYS Guidance
• SJC Lawsuit
• Courts

Services, programming and conditions during the emergency

• DYS
• DOC/HOCs
• DESE
• DCF
Reducing Entry into Legal System
Police Response

- No statewide guidance
- Limit exposure to personnel
- Arrests as last resort; court summons preferred process
- Juvenile arrests are way down; including calls from group homes
- Arrests mostly for domestic violence (or violations of restraining orders) to physically remove a person
Reducing Incarceration
Reducing *Detained Youth in Secure Facilities*

Juvenile Court allowed hearings on bail and violations of probation for detained youth (March 25th).

- DYS making accommodations for confidentiality, including private conversations between youth-attorney.
- DYS coordinate a youth's release with parents, attorney, DYS and/or probation to bring youth to the necessary location to have GPS monitors attached; to get bail posted; or for release to DCF.
Grants of Conditional Liberty (GCL): community-based supervision for youth committed to the custody of DYS. GCL does not change the youth's sentencing and length of commitment to DYS.

• Youth within 100 days of their projected GCL date can be considered for earlier community-based supervision (*increased from 30 days*)
Reducing *Committed* Youth in Secure Facilities

- DYS set criteria:
  - Youth as living arrangements with family or other living situations approved by DYS
  - Youth is making or has made progress on their treatment plan, and the treatment team identifies them as good candidates to return to the community
- Attorney representation available to assist youth through GCL process
- DYS issued case worker guidance on level of community based supervision based on risk assessment level
SJC Lawsuit: Reducing Incarceration

CPCS/MACDL vs. Chief of the Trial Court

Emergency relief for individuals incarcerated during the Covid-19 state of emergency, seeking to reduce the number of individuals incarcerated in correctional facilities where there is a high risk of exposure to and transmission of the Covid-19 virus.

Ruling applies to Juvenile Court
SJC Ruling: New Arrests and Violations of Probation

The SJC required the courts to consider additional factors in imposing bail and/or revocations due to violation of probation:

• Whether the individual may contract or transmit Covid-19 if detained

• Whether the individual is over age 60 or suffers from a pre-existing condition designated by the CDC as highly vulnerable to Covid-19
SJC Ruling: Reducing Pre-Trial Detention or Violation of Probation

• All detained individuals are entitled to an expedited hearing on a motion to reconsider bail.
• The ruling sets criteria for individuals to be further entitled to a rebuttable presumption of release on personal recognizance. Burden on prosecutor to establish that the individual’s release will result in unreasonable danger to the community or the individual is a high risk of flight.
Individuals who are charged with certain offenses or are detained pre-trial under the dangerousness (58A) statute, would be eligible for reconsideration but burden on defendant to prove they are not a safety or flight risk.
The authority to revise or revoke a sentence already being served rests in the Executive branch (Department of Corrections and the Parole Board) and not with the Courts, except:

- a change or revocation of their sentence if they are incarcerated within the first 60 days of the sentence
- a delay in the imposition of the sentence if they have a pending appeal of a conviction or a sentence
- a new trial under Mass. R. Crim. P. 30
The SJC urged the parole board to expedite release of 300 previously approved individuals, as well as to expedite hearings on other incarcerated individuals who are eligible for parole.

- SJC ordered daily reporting for DOC and HOC’s:
  - Daily count of over-all incarcerated population
  - Number of covid-19 tests and positive results for prisoners, staff and contractors
  - Number of individuals released under this ruling
  - Daily census of pre-trial detainees (HOC’s only)
Services, Programming and Conditions during Emergency
Youth in State Custody: Juvenile and Adult Criminal Legal System

- Public Health considerations
  - Physical distancing in locked facilities
  - Quarantine, lockdown, solitary
  - Sanitation and hygiene
  - Medical and clinical services

- Programming
  - Family engagement (visits as one aspect)
  - Education and Recreation
  - Retaliation

- Transparency
Department of Youth Services: Public Health Considerations

• Medical and clinical services (ongoing)
  • Contracts with local hospitals (Children’s Hospital of Boston, UMass Medical, etc.)
• Conditions of confinement: private rooms, no double-bunking (standard practice)
• Sanitation and Hygiene: access to hygiene products, private showers (standard practice)
• Protocols on positive Covid-19 cases (pending discussion with DYS)
Family engagement:
  • *In-person visits suspended and replaced with virtual visits (maximum of one hour per day)*
  • *On-going communication with family on youth’s treatment plan*

Education in residential settings *(to be discussed)*

Recreational activities planned with consultants to factor in physical distancing *(ongoing)*

Attorney-client access *(ongoing)*

No solitary confinement; suicide watch policy unchanged
Challenges for Detained Youth:

- DYS is only authorized to provide education and emergency services for detained youth
- Delays in court cases of detained youth held during court closures means no access to clinical and community-based programming
- High rate of detained youth (≈60%) held on dangerousness statute
Department of Corrections: Public Health Considerations

• Medical and clinical services (on-going):
  • Contracts with private for-profit medical providers
  • Reports of close proximity in medical units and for medical services

• Conditions of confinement:
  • Double-bunks, communal bathroom facilities
  • Restrictive housing (solitary) involves two correctional officers per prisoner
Sanitation and Hygiene

- *DPH inspections documented violations of crowding regulations (pre-pandemic)*
- *Soap and hand sanitizer “available” but limits on access*

Protocols on positive Covid-19 cases: entire facility enters lock down
Department of Corrections: Programming

• Family communications:
  • Visits suspended
  • 30 minutes of free calls/2x per week (may have been reduced to 20 minutes in some facilities)
• Education in residential settings (suspended)
• Facility-wide lock downs
• Attorney-client access (on-going); limits on identifying sentenced clients eligible for relief under SJC ruling
County Houses of Corrections: Public Health Considerations

“Six feet apart is practically impossible in any correctional setting, in any jail, in any prison, in any state, in any county anywhere” – Bristol County HOC, Response to SJC

- Medical and clinical services (on-going):
  - Contracts with private for-profit medical providers*
  - Hampden County contracts with local community health centers

- Conditions of confinement (varies by county):
  - Middlesex County detained population down by 15% (100 released)
  - Bunks or cots in close proximity

*WBUR four-part series “Dying on the Sheriff’s Watch”
County Houses of Corrections: Public Health Considerations

- Protocols on positive Covid-19 cases (*varies by county*)
  - *Hampden County*: newly admitted individuals are held together for a two-week quarantine (*risk of transmission*)
  - *Private medical contractors incentivized to reduce emergency room visits and hospitalizations*
County Houses of Corrections: Programming

- Family visits *(suspended)*
- Education in residential settings *(suspended)*:
  - *Hampshire County: group educational programming or else they would face discipline* (as of March 24)
- Attorney-client access *(on-going)*; limits on identifying sentenced clients eligible for relief under SJC ruling
- Recreation *(varies by county)*
  - *Suspension of programming = increase in recreation hall usage*
Youth in Adult Corrections: Challenges

Needs of young people in adult facilities likely to be overlooked due to perception that they are less vulnerable

Very limited engagement with family and access to programming and services in lock down conditions, with increased risk of mental health harm

Very limited to no data on impact on young people in the adult system
Public Health Case to Raise the Age for 18- to 20-year-olds

Raise the Age is already a harm reduction strategy:

Juvenile Court and DYS are not perfect, but they provide developmentally appropriate responses to adolescent and emerging adult behavior, when compared to adult court and DOC/HOC. Raising the age now, during the Covid-19 crisis, only highlights the need to respond in a developmentally appropriate manner.
Public Health Case to Raise the Age for 18- to 20-year-olds

DYS Primary Focus during Pandemic: Health, Safety and Treatment/Rehabilitation

DYS continues meaningful family engagement during Covid-19 crisis for the young people in its custody. Contrast daily hour long phone calls with family members vs two 30 minute calls per week at DOC.

DYS guidance on clinical and supports in residential facilities, in community-based supervision, and with youth who aged out provides public health modifications to their decades-old model.
Education in Institutional Settings

Department of Youth Services:
• General K-12 Education: contract with Collaborative for Educational Services
• Special K-12 Education: DESE’s Special Education in Institutional Settings (SEIS)

County Houses of Corrections:
• Special K-12 Education: DESE’s Special Education in Institutional Settings
Department of Elementary and Secondary Education

- March 15th – Executive Order closing schools through April 7th
- March 25th – school closure extended to May 4th

Guidance for extended school closures:
- Remote learning (not exclusively online learning)
- Half the length of the regular school day
- Focus on reinforcing skills rather than new materials
- Move grading to “credit/no credit”
Federal guidance:

• School districts are required to provide special education and services during national emergency
• Flexibility in what can be offered
• Awaiting federal guidance on district’s compensatory services obligations and guidance on special education in institutional settings
DESE/Special Education

Massachusetts guidance:
• Models developed at the district level
• Regular communication with families
• Challenges: racial equity; homelessness; language access; students with severe disabilities; access to devices/internet

Know Your Rights: Education, Special Education, and COVID-19 School Closures - EdLaw Project

https://www.youthadvocacyfoundation.org/resources-2
Department of Youth Services
General and Special Education

• March 15\textsuperscript{th} – in-person education suspended (statewide school closures)
• March 23\textsuperscript{rd} – enrichment packets in hard copy
• March 30\textsuperscript{th} – remote educational enrichment “soft launch” of online Google Classroom in six facilities

Planning for remote enrichment:
• Teacher training with instructional coaches and technology coaches
• General education, special education, literacy specialists daily discussion on planning, access and skills
Department of Youth Services Special Education

• Working closely with DESE/SEIS in planning infrastructure for remote learning (*no set timeline*)
• Family engagement and informed and needs to be “re-envisioned”
• Provision of services, in addition to education, in remote setting
Challenges for remote learning:

- Youth access to classrooms and internet
- Program staffing
- Guidance by DYS staff due to absence of on-site teachers
County Houses of Corrections
Special Education

- Offered by DESE/SEIS
- Typical year: education programming varies by county; coordinated with HOC education director; individuals have to self-identify in group settings as needing special education services
- State of Emergency: initially, some HOC’s allowed education directors to accept enrichment packets developed by SEIS. Now even HOC education staff are not allowed, and no education access inside HOCs.
- Restricted internet access and online platforms in some HOCs before emergency
Department of Children and Families

- Covid-19 Guidance published online April 7th.
- Guidance:
  - Caseworker family contact based on level or risk identified on Risk Assessment tool
  - Congregate Care
  - Family Support Services
  - Letter for Foster Parent
  - Family-child visitation
Impact of Juvenile Court Closures on DCF cases

- Emergency removals (72 hour hearings) and care and protection filings are continuing
- Reports that DCF is unable to conduct home studies to approve kinship or pre-adoptive placements
- Federal guidance requires states to continue with legal processes, many of which are suspended by the Juvenile Court order: 6 month foster care reviews, and 12 month judicial review, findings of reasonable efforts.
Impact of Emergency on DCF-involved youth and families

- Limited communication with families and young people
- Family-child visitation severely restricted, if not suspended
- Reassessing and prioritizing “least restrictive setting” for youth:
  - Increasing efforts for keeping families intact
  - Decreasing congregate care placements through reunification, placement with kin
- Impact of court closures on legal processes for youth permanency
- Impact of barriers to services on parents’ meeting requirements towards reunification
Department of Children and Families

Challenges of Emergency on Transition Age Youth

- Communication on health protocols or illness
- Aging out during the emergency
- Placement changes and school enrollment
- Meeting basic needs in independent living
- Federal financial assistance out of reach: based on prior year’s tax return
- Limits on communication: lack of devices or minutes/data
- Some providers of mental health services not accepting new patients
Contact

sanafadel@cfjj.org
617.338.1050

www.cfjj.org/covid19-and-jj