Archive of Stakeholder Calls

YOUTH JUSTICE IN A PANDEMIC

LEGAL SYSTEM RESPONSE AND ADVOCACY

CFJJ.ORG/COVID19-JJ
Agenda

Part 1: COVID-19 Prevalence in MA

Part 2: The Lives behind the Numbers – Parents’ Perspectives
Agenda

Part 3: State Actions and Responses

• Juvenile Court Standing Orders
• Department of Youth Services
• Probation
• Department of Children and Families
• Committee for Public Counsel Services
Part 4: State Advocacy

• Raise the Age (support)
• Decarceration during Pandemic (support)
• Expanding Pre-Trial Detention (oppose)

Part 5: Legal Actions

• Federal Lawsuit
• SJC Lawsuits
## Confirmed Cases in Massachusetts

<table>
<thead>
<tr>
<th>As of 5/17/2020</th>
<th>Total Confirmed COVID-19 Patients</th>
<th>Confirmed Cases per 100,000 residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤19 years of age</td>
<td>3,431</td>
<td>214</td>
</tr>
<tr>
<td>20-29 years of age</td>
<td>11,037</td>
<td>1,066</td>
</tr>
<tr>
<td>30-39 years of age</td>
<td>12,725</td>
<td>1,402</td>
</tr>
<tr>
<td>40-49 years of age</td>
<td>12,380</td>
<td>1,453</td>
</tr>
<tr>
<td>50-59 years of age</td>
<td>13,887</td>
<td>1,430</td>
</tr>
<tr>
<td>60-69 years of age</td>
<td>11,419</td>
<td>1,380</td>
</tr>
<tr>
<td>70-79 years of age</td>
<td>8,018</td>
<td>1,670</td>
</tr>
<tr>
<td>80+ years of age</td>
<td>12,860</td>
<td>4,413</td>
</tr>
</tbody>
</table>
COVID-19 does not discriminate, society does

Massachusetts’ worst hit communities are Black- and Latinx-majority communities:

• communities with the lowest average income in Massachusetts
• communities with highest number of people in households
• where a disproportionate number of “essential workers”.

These “essential workers” are putting their lives at risk every day fueling Massachusetts’ economy, yet a high rate of whom are paid below a living wage.
Massachusetts “Hot Spots”

<table>
<thead>
<tr>
<th>As of 5/13/2020</th>
<th>Total Confirmed COVID-19 Patients</th>
<th>Confirmed Cases per 100,000 residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chelsea</td>
<td>2,412</td>
<td>6,404</td>
</tr>
<tr>
<td>Brockton</td>
<td>3,429</td>
<td>3,490</td>
</tr>
<tr>
<td>Everett</td>
<td>1,366</td>
<td>2,814</td>
</tr>
<tr>
<td>Lynn</td>
<td>2,834</td>
<td>2,809</td>
</tr>
<tr>
<td>Lawrence</td>
<td>2,382</td>
<td>2,701</td>
</tr>
<tr>
<td>Revere</td>
<td>1,403</td>
<td>2,303</td>
</tr>
<tr>
<td>Boston*</td>
<td>11,551</td>
<td>1,662</td>
</tr>
</tbody>
</table>

*Boston has highest number of people testing positive COVID-19, and ranks 18th in the state per capita.
COVID-19 Prevalence By Race

Racial Inequities in Rates of MA COVID-19 Cases

Hispanic/Latinx rate is >3x that of White rate.

Black/African American rate is >2.5x that of White rate.

Analysis by Massachusetts Public Health Association, April 22, 2020
Census: All County Houses of Correction

SJC-12926 Special Master Weekly Report, May 11, 2020
COVID-19 Prevalence: MA Department of Correction (Testing and Positives)

Prior to 4/6/2020: ACLUM Data Tracker, Commonwealth Magazine, MassLive WBUR, WGBH
COVID-19 Prevalence: All County Houses of Correction (Testing & Positives)

Prior to 4/6/2020: ACLUM Data Tracker, Commonwealth Magazine, MassLive Middlesex Sheriff’s Office, WBUR, WGBH
COVID-19 Prevalence: Department of Youth Services

Department of Youth Services Residential and Secure (only)
Confirmed COVID-19 Cases

MA Department of Youth Services
DYS Testing Protocol

• No wholesale testing, but have option for broad testing of staff and youth in facilities
• Relies on DPH guidance on testing and Medical Directors of contracted (hospital-based) health care providers and DYS health services staff
• New intakes: 14 day quarantine (detained youth may not serve full quarantine if released)
• Positive test: testing of all close contacts (with consent), including review of contacts via video archives
DYS Quarantine and Medical Isolation

• Quarantine: for symptomatic youth or those in close contact with a COVID-19 positive youth or staff. Spend a lot of time in their rooms, wear mask if they come out. Some ability to access common area if the program is in quarantine. When only one child in the unit is in quarantine, they spend bulk of the day in his room.

• Certain policies not superseded during quarantine: ex. suicide risk, resulting in modification of quarantine or isolation protocols (not closing doors, and staff observation at all times).
Meri Viano
Associate Director
Parent/Professional Advocacy League
Impact of Family Peer Support for Justice Involved Families

• Family peer support is an effective service for families
• Inequity in the experience of families of color, especially African American families

Because no one asks parents what they like or don't like about telehealth

Parent/Professional Advocacy League created a poll.

Posted by Milla Paumo
2. May at 18.32 · 🌍

Has telehealth been a good option for your family to access services during the pandemic?

79% Yes, it works well

21% No, several problems

76 votes
Because no one asks parents what they like or don't like about telehealth

Survey closes May 31st:

For Parents:
https://www.surveymonkey.com/r/DVB6RLK

For Youth (ages 14-30):
https://www.surveymonkey.com/r/DJLGNWT
Part 3: State Agency Guidance and Actions

as of May 18, 2020
Leon Smith
CfJJ Executive Director
Protocols governing delinquency and Youthful Offender motions filed as a result of \textit{CPCS/MACDL v. Chief Justice of the Trial Court, SJC-12926}

• \textit{Rebuttable presumption} of release for youth detained pre-trial or due to violations of probation

• Youth held pretrial under the dangerousness statute (MGL c. 276 §58A) or charged with an enumerated list of violent or serious offenses may seek release but are not entitled to a \textit{rebuttable presumption} of release

• Adjudicated and sentenced youth have limited options to seek relief that fall within the authority of the judiciary
Juvenile Court Standing Order 6-20

All courts will be closed, through June 1st except to conduct emergency hearings, which can be conducted by videoconference or telephone or electronic filings.

Did not significantly change what are considered “emergency matters”:

- **Care & Protection**: 72 hour emergency child removal hearings
- **Delinquency/Youthful Offender**: arraignments, dangerousness (58A) hearings, and motions for detained youth including bail reconsiderations
- **Child Requiring Assistance (CRA)**: Runaway child petition filed by a parent
Juvenile Court Standing Order 6-20

Allows conduct of non-emergency matters “where it is practicable in view of skeletal court staffing, technological constraints and the need to prioritize emergency matters” based on the discretion of the First Justice of the county’s Juvenile Court

- Care & Protection: permanency hearings, transition planning, court investigations, Guardian Ad Litem
- Delinquency/Youthful Offender: probable cause hearings, summons arraignments and tenders of plea
- CRA: School based CRA’s continued until September 1st; other CRA’s where a child is in temporary DCF custody may proceed
- Adoption and Guardianships
- Motions for funds: for social workers, investigations or assessments to move cases forward during the closure
Court Other Considerations

- Delinquency: Jury trials continued until September
- Care & Protection: Impact on reunification timelines and termination of parental rights under federal law (AFSA)
- CRA: schools closed through the end of the academic year, some youth lacking access to education and school-filed CRA cases are postponed until September
- Pros and cons of long term use of virtual (telephone and video) proceedings
Court Re-Opening

Upcoming guidance from the SJC on re-opening:

• staggered scheduling
• re-configuring of buildings for social distancing
• access to PPE’s
• physical entry while maintaining public access (juvenile proceedings not open to the public)
Delinquency Caseload:

- 526* on community supervision
- 420 on administrative supervision
- 689** on pretrial conditions of release
- Violations of probation: 37 youth (pre-pandemic average: 60 per month)
- 152 youth on GPS monitoring
Juvenile Probation: Caseloads as of March 2020

* Community supervision (526 youth):
  • 55% on minimal supervision
  • 25% on moderate supervision
  • 19% on maximum supervision

** pretrial supervision at three-year high (from Jan 2017):
  • Lowest: September 2018: 435 youth
  • Highest: March 2020: 689 youth

MA Probation Services Public Tableau https://public.tableau.com/profile/mpsresearchdept
Juvenile Probation: Caseloads as of March 2020

Care & Protection Caseload:
• 9,668 petitions
• 14,834 children
• Typical C&P trends: drop in 51A’s mirrors drop during summer vacation (school closure)

Child Requiring Assistance Caseload:
• 2,867 children
• Typical CRA trends follow school calendar: highest rate April and May at end of school year; drops in July and August and picks up in October and November
Juvenile Probation

• Pre-pandemic reforms – graduated response – reduced Violations of Probation and level of supervision
• No community visits, no home visits, no drug testing
• Contact with youth and “collaterals” by telephone
• No truancy cases (school closures and court standing order)
• Conditions of probation:
  • Community based programs vary in transitioning to remote service delivery
  • MPS taking stock of services and considering adjustments to make accommodations
  • Youth congregating (violating social distancing guidelines) rising as a concern

MA Probation Services Public Tableau https://public.tableau.com/profile/mpsresearchdept
Sealing and Expungement:

• Records staff re-deployed first couple of weeks of court closures, but are back processing petitions

• Increase in petitions due to criminal background restrictions of federal COVID-19 payroll protection program (administered by US Small Business Administration)
• Crisis reporting: no public data yet, except drop in 51A, mostly filed by schools (“similar to rate during the summer break”). Reporting from other mandated reporters (ex. medical reporters, child care, law enforcement), have not dropped.
• Significant drop in parent and sibling visitation
• OCA convening workgroup on technology procurement for youth in state custody
• No moratorium on case closures: area offices asked to slow down case closures (200 cases, or 5%, fewer than last year). Use of fair hearing process to slow down case decisions.
Emergency placements for COVID+ and quarantined youth:

- Executive Order allowing flexibility in EEC’s licensing to expedite approval for temporary emergency placements due to exposure or diagnosis (April 16th)
- Four programs open to youth in DCF congregate care (capacity for 21 youth):
  - Home for Little Wanderers
  - Justice Resource Institute (internal referrals)
  - Wayside
  - Stetson School
- DCF seeking sites and management for quarantining youth and for youth not in congregate care
Department of Children and Families

- Transition age youth experiencing homelessness:
  - Youth aging out: flexibility in federal law
  - Youth losing placements when violating social distancing guidance
Proposed Executive Order on behalf of transition age youth:

- Place a moratorium on discharging any young adult from extended foster care during this crisis, retroactive to March 10, 2020
- Suspend any requirements for extended care related to participation in school, higher education and training, program participation, and treatment.
- Require DCF to provide expedited processes for young adults to re-enter care that allow their immediate needs to be met.
- Work with DCF and the legislature to secure additional dedicated funds for DCF to increase support to current and former foster youth to meet their immediate basic needs during the crisis.
Committee for Public Counsel Services

Ziyad Hopkins
YAD COVID 19 Task Force

Cristina Freitas
Freitas & Freitas, LLP
CAFL COVID-19 Response Team

Debbie Freitas

Erin O’Sullivan
Senior Counsel
The EdLaw Project
Part 4: State Advocacy Efforts
An Act to Promote Public Safety and Better Outcomes for Young Adults

Ending the automatic prosecution of teens as adult by gradually shifting 18- to 20-year-olds into the juvenile justice system. (H.3420/S.825)
# Public Health Case to Raise the Age for 18- to 20-year-olds

<table>
<thead>
<tr>
<th>Focus during pandemic</th>
<th>Department of Youth Services</th>
<th>Department of Corrections</th>
<th>County Houses of Corrections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mission continues to be public safety through developmentally-appropriate rehabilitation and treatment</td>
<td>Social distancing and/or isolation. Primary focus continues to be punishment</td>
<td>Social distancing and/or isolation. Primary focus continues to be punishment</td>
<td></td>
</tr>
</tbody>
</table>

| Focus on youth | Exclusive focus on public health protections for youth | Youth likely to be overlooked due to perception that they are less vulnerable to COVID-19. | Youth likely to be overlooked due to perception that they are less vulnerable to COVID-19. |
### Public Health Case to Raise the Age for 18- to 20-year-olds

<table>
<thead>
<tr>
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<th>Department of Youth Services</th>
<th>Department of Corrections</th>
<th>County Houses of Corrections</th>
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</thead>
<tbody>
<tr>
<td><strong>Social distancing</strong></td>
<td>As a Health and Human Services agency, DYS has several treatment modalities ranging from secure locked facilities to community-based supervision, no double-bunking.</td>
<td>Double-bunking and dorm-style units*</td>
<td>Double-bunking and dorm-style units*</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Access to Education</strong></td>
<td>Transition education to virtual Google Classroom (or educational packets), planning for summer school and introducing new materials. Online post-secondary education continues.</td>
<td>Education services and suspended</td>
<td>Education services suspended</td>
</tr>
</tbody>
</table>

*25% reductions in individuals incarcerated in Middlesex County jail, since mid-March, resulted in closures of four dorm-style units.
## Public Health Case to Raise the Age for 18- to 20-year-olds

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<thead>
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<th>Department of Youth Services</th>
<th>Department of Corrections</th>
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<tbody>
<tr>
<td><strong>Connection to family</strong></td>
<td>In-person visits suspended and replaced with virtual visits (maximum of one hour per day)</td>
<td>In-person visits suspended, two free 20-minute phone calls per week</td>
<td>In-person visits suspended. Telephone access varies by facility</td>
</tr>
<tr>
<td></td>
<td>through DYS issued devices. Family continue to be engaged in treatment planning</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Access to rehabilitative programming</strong></td>
<td>Clinical services in secure facilities and case management community-based continues.</td>
<td>Programming suspended</td>
<td>Programming suspended</td>
</tr>
</tbody>
</table>
## Public Health Case to Raise the Age for 18- to 20-year-olds

<table>
<thead>
<tr>
<th>Isolation and quarantine</th>
<th>Department of Youth Services</th>
<th>Department of Corrections</th>
<th>County Houses of Corrections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarantine for new intakes, medical isolation for COVID+ youth, contact tracing</td>
<td>Lock down and isolation; reports of mental health crises</td>
<td>Lock down and isolation</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Using authority for community-based supervision as a public health tool</th>
<th>Voluntarily at declaration of emergency</th>
<th>As a result of SJC case</th>
<th>As a result of SJC case</th>
</tr>
</thead>
</table>

| Transparency in policy changes | Posted and publicly availability | Only what is required by SJC case; no data on youth | Only what is required by SJC case*; no data on youth |

*Middlesex Sheriff’s Office voluntarily publishing regular updates on website
An Act to Promote Public Safety and Better Outcomes for Young Adults (H.3420/S.825)

RaisetheAgeMA.org

Judiciary Committee, extension order July 31st
Decarceration due to COVID-19 H.4652

Targeted release of pre-trial and sentenced individuals in prisons and jails to allow those facilities to practice safe physical distancing for individuals who remain incarcerated and for the staff and contractors in these facilities.
(1) sets certain criteria to allow individuals who can safely serve their confinement at home or other community-based setting to mitigate the spread of COVID-19 in these facilities;

(2) requires these facilities to immediately address long-standing problems in sanitary conditions to improve hygiene in these facilities; and

(3) removes barriers for incarcerated individuals to contact their families through free phone calls and emails during this public health emergency.
Decarceration due to COVID-19 H.4652

- Judiciary Committee
- June 30th committee reporting deadline
- Recommendation: Support
Expanding Pre-Trial Detentions

Governor Baker filed H.66 to expand authority of prosecutors to hold defendants pretrial under the Dangerousness Statute (MGL.c 276 §58A):

• Expands list of charges eligible for pre-trial detention and length of time held in detention
• The list of charges does not distinguish the developmental behavior of youth
• Removes due process protections on appropriate use of dangerousness hearings
Expanding Pre-Trial Detentions

- Expanding power of prosecutor to hold defendants pre-trial overrules judicial decisions on detention and reverses gains in the juvenile system (Juvenile Detention Alternatives Initiative)

- Judiciary Committee
- July 31st committee reporting deadline
- Recommendation: Oppose
Part 5: Legal Actions
March 20th, MLRI and PLS letter on behalf of immigrants in ICE custody held in New England county jails:

- Bristol County, MA
- Franklin County, MA
- Plymouth County, MA
- Wyatt Detention Facility, RI
- Strafford County, NH
Immigration Detention

March 27th, Lawyers for Civil Rights files federal lawsuit on behalf of immigrants detained by Bristol County Sheriff: *Savino v. Bristol County Sheriff Hodgson:*

- Federal ruling
- Release of detained immigrants
- Mandated testing
Oren Nimni
Staff Attorney
Lawyers for Civil Rights
SJC Lawsuit: Reducing Incarceration

CPCS/MACDL vs. Chief of the Trial Court

Emergency relief for pre-trial and sentenced 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.
April 3rd ruling provided relief to pre-trial defendants, but ruled that there is limited judicial authority on sentenced individuals. *(subject of Juvenile Court Standing Order 5-20 mentioned earlier)*

April 29th, SJC re-affirmed its limited authority to provide relief to sentence individuals.
April 17th, Prisoners Legal Services files a lawsuit against MA Department of Corrections on behalf of sentenced individuals and those civilly committed to addiction treatment
Legal claim: DOC’s failure to release incarcerated individuals whose age or underlying medical conditions make them at risk of death or serious illness due to COVID-19 as well as those who have been civilly committed to a correction facility for alcohol or substance-use disorders is a violation of the 8th amendment prohibiting cruel and unusual punishment.

DOC infection rate: 39%
SJC Lawsuit: Foster v. Commissioner Mici (SJC-12935)

Administration’s Response:

• Governor Baker: Judicial order to exercise clemency is a violation of separation of powers clause

• DOC Commissioner Mici: DOC is successfully managing the coronavirus outbreak and there is no need to further reduce prison population
Stay Informed

www.cffjj.org/covid19-and-jj