

A Call to Action as a Response to COVID-19:
Moving Toward a More Compassionate, Supportive, and
Less Adversarial Approach to Serving Youth and Families

The adult male in the bright orange jumpsuit was brought into the courtroom, shackled and hand-cuffed, cold, followed by a youth, his son, also handcuffed and shackled and wearing a worn, oversized one piece garment that was faded beige in color. They were there for a detention hearing for the child, and the father was brought in from the jail to participate as much as his own restricted situation would allow. That is one of the many stark images and memories I have from more than two decades in a juvenile and adult criminal justice career. That lasting impact was the first of many in a career leading toward finding a true balance and solution between punishment and rehabilitation, support and accountability, risk and responsibility, as well as individual and collective safety and security. Just as the system expects youth and families to change, there is a great need for continued advocacy for system change and for improving our professional accountability.

I was given the opportunity to further reflect on these principles when working on a recent project titled “Judicial Confinement and Release Decisions: Protecting Youth and Communities During the Pandemic and Beyond.” The aim of the project is to identify consequences for youth outcomes of judicial decisions and to protect youth confined in justice facilities from COVID-19 health risks. This work included pre-trial detention decisions as well as decisions involving longer-term, residential placement or transfer to criminal court. Critical aspects of this work involved the implications of these decisions for racial/ethnic inequality, and the resources/services needed to improve outcomes. With funding from the W.T. Grant Foundation, the National Council of Juvenile and Family Court Judges and its research division, the National Center for Juvenile Justice, collaborated with Drexel University researchers on the project. The Drexel team synthesized available research on risk assessment/reduction and judicial decision making to seek ways to safely reduce youth confinement during the pandemic and beyond. Our team has been working to engage judges and other key stakeholders and to disseminate the suggested strategy far and wide. Many of the important recommendations from this work are listed below.

Recommendations

1. **The way we currently see risk needs to change.** COVID-19 reinforced what many of us in the field already knew: detention and placement pose a risk to youth, and did so even before the pandemic. We need to acknowledge the collateral consequences that youth face even from a short stay in detention, which affect youth long beyond what the effects of COVID-19 might.¹

¹ The Annie E. Casey Foundation. (2018). Kids Deserve Better: Why Juvenile Detention Reform Matters. Retrieved from <https://www.aecf.org/blog/kids-deserve-better-why-juvenile-detention-reform-matters>

2. **When assessing youth risks and needs, use the Risk-Need-Responsivity Model.**² In conjunction with thinking about risks of harm to the youth, jurisdictions should accurately assess the youth's risk of reoffending and the youth's criminogenic needs. Services should be matched to these needs and be a service that is engaging and that the youth positively responds to. The significance of this model is to keep the decision making process as structured and consistent as possible. Researchers suggested decision-makers ask the question "risk of what?" (re-arrest, re-adjudication, violent offending?) to better understand particular risk assessment instruments. Researchers advocated for less focus on the current offense.³
3. **Address implicit bias and racial and ethnic disproportionality.** It is no secret that throughout the juvenile justice system youth of color are over-represented --- they are detained, placed, and transferred at higher rates than white youth.⁴ Each jurisdiction is responsible for implementing the most effective, validated tool with fidelity, free from racial and other bias. Moreover, to address this bias and disproportionality, systems need to provide the substantial, ongoing training needed to maximize the success of using those tools in an effective decision making process that leads to less detention and placement overall and less youth of color being confined.
4. **Address the needs of special populations.** Aside from disproportionality, the focus of the work should take into serious consideration how to better serve special populations such as LGBTQ⁵, and other youth experiencing housing insecurity or in child welfare. According to the research, youth involved in both delinquency and child welfare systems "engaged in delinquency at an earlier age and were more likely to recidivate (i.e., be re-arrested) than non-crossover youth. Additionally, crossover youth had higher risk factor scores (i.e., greater levels of risk factors)".⁶
5. **Holding the system accountable: a professional responsibility.** Serving the public takes on a whole new meaning when we include ourselves, as professionals, in the process. Individual professionals and entities in the system need to be held accountable. One of the concepts that evolved out of the project was how the adults in the system are

² Andrews, D. A., & Bonta, J. (2010). Rehabilitating criminal justice policy and practice. Source. Psychology, Public Policy, and Law, Vol 16(1), Feb 2010, 39–55.

³ Goldstein, N, Heilbrun, K., 2020, Research Synthesis - "Judicial Confinement and Release Decisions: Protecting Youth and Communities During the Pandemic and Beyond" (unpublished).

⁴ The Sentencing Project. (2017). Fact Sheet: Black Disparities in Youth Incarceration. Retrieved from <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>; The Annie E. Casey Foundation (2021). Youth Detention Survey During COVID-19. Retrieved from <https://www.aecf.org/work/juvenile-justice/jdai/youth-detention-survey-during-covid-19>; Statistical Briefing Book. Retrieved from https://www.ojjdp.gov/ojstatbb/special_topics/faqs_fairness.asp.

⁵ Kerith J. Conron and Bianca D.M. Wilson, "LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems: A Research Agenda," (Los Angeles: The Williams Institute, 2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-YOC-Social-Services-Jul-2019.pdf>. Vidal, et al., 2017.

⁶ Lee, S.-Y., & Villagrana, M. (2015). Differences in risk and protective factors between crossover and non-crossover youth in juvenile justice. Children and Youth Services Review, 58, 18-27.

responsible for generating creative opportunities to keep youth and families together and in the community. Sometimes we put the onus on the individual and families from whom we require accountability, but that is only part of the solution. Judges and other professionals have an obligation and responsibility to make sure every available option for this compassionate, supportive, and community-based approach is provided, including reducing detention and other placements, and addressing disparities, and resource gaps or barriers in the community.⁷

6. **Learning from COVID-19 to inform post-pandemic protocols.** A major takeaway from the project was the recognition of the major influence and effect that the global pandemic has had on the juvenile detention and placement process and facilities. The project proposal highlighted an “open window for change” in the recognition of the impact in how the system operated during the pandemic and how it should positively influence the process going forward. Even though the numbers in juvenile detention went down initially due to COVID-19, they eventually started to rise again.⁸ The fact that detention numbers went down is proof that the system can make the hard changes to reduce confinement as we move out of the pandemic and beyond. Confinement has major adverse effects on youth and families, and COVID-19 only exacerbated those negative consequences. The normal practice before the pandemic was not working well which tells us that the system does not need to go back to the way things were. We are at a pivotal point in challenging the status quo on juvenile detention, placement, and transfer, especially around enhancing equity and reducing the adverse effects of racial and ethnic disproportionality. This is a great time to make or reconsider some changes and reduce our reliance on confinement and other harsh sanctions.

In reflecting on this ground-breaking project and research on juvenile confinement and release, I cannot go back and remove that image of the father and son in shackles because it was a reality, and it has stuck with me for a reason. As a professional in the system, I can either write it off, ignore or avoid it, or allow it to inform my decision making and work in the system in the coming years. The primary challenge for decades has been to find a way to move the work and funding from the deep end to the front end, leading toward a more truly just system. The research on juvenile detention and placement decision making supports this ongoing deep dive into that process including ways to find evidence-based alternatives for removing and detaining youth. We, as professionals, are responsible for creating generative and holistic opportunities for people to maintain hope and find success. We are also to be held accountable for moving this process toward a more compassionate, supportive, and less adversarial system that prioritizes prevention, diversion, and early intervention over detention, placement, and

⁷ Another significant project recently that has informed my perspective in the field is a collaboration between NCJFCJ and the State Justice Institute that focuses on Targeted Resource Mapping and Action Planning: <https://www.ncjfcj.org/opioids-and-the-courts-toolkit/>

⁸ The Annie E. Casey Foundation. (2021). As Pandemic Eases, Youth Detention Population Creeps Up. Retrieved from <https://www.aecf.org/blog/as-pandemic-eases-youth-detention-population-creeps-up>

incarceration. Striving to find the balance in the tension between providing opportunities for support and success, along with the compassionate accountability, will continue to be the challenge in years to come. More support will most likely lead to the need for less confinement. Just like the past work has informed my current and future vision, as a system, we must allow the previous decades to enhance the coming years. Not learning from the past to enhance the future as professionals in a system makes us not much different than a resistant individual in the system that is unaware or unwilling to change. Modifying human behavior must move increasingly to a more intrinsic desire for change while providing the support for that change.

This change in individuals is most likely one of the most monumental challenges aside from changing a system that is often unresponsive and not working well enough. This project involving juvenile confinement and release in the time of COVID-19 highlights even more the notion that the “risk of releasing a youth no longer outweighs the risk of holding, presenting an open window for policy and practice change.” Therefore, enough research is in, for now, and we must know it in theory and apply it in effective and efficient practice. The question is will we have the political, economic, and systemic will to make it happen?

Project Resources:

- Court Leader's Advantage Podcast 3/13/2021 Episode: Juvenile Detention Decision Making & COVID: <https://www.youtube.com/watch?v=MhBLgREvknE>
- Checklist for Juvenile Confinement Decisions During and After COVID-19: <https://www.ncjfcj.org/publications/checklist-for-juvenile-confinement-decisions-during-and-after-covid-19/>