

YOUTH PROBATION IN THE TIME OF COVID-19

Author(s): Emily Mooney and Nila Bala

R Street Institute (2020)

Stable URL: <https://www.jstor.org/stable/resrep25816>

Accessed: 27-02-2023 22:29 UTC

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



R Street Institute is collaborating with JSTOR to digitize, preserve and extend access to this content.

JSTOR



Free markets. Real solutions.

R STREET POLICY STUDY NO. 198

June 2020

YOUTH PROBATION IN THE TIME OF COVID-19

By Emily Mooney and Nila Bala

INTRODUCTION

Termed the “workhorse of the juvenile justice system,” probation is the result of more than half of youth delinquency cases.¹ And, as government and correctional leaders have reduced incarcerated populations to curb the spread of the deadly COVID-19 pandemic, its importance within the youth justice system has only grown. Such a development is hardly surprising, as the close-quarters living conditions associated with continued incarceration has disastrous effects: As of June 24, 2020, 658 youth and 771 staff in juvenile facilities had tested positive for COVID-19.²

This rate of infection is even more concerning given that symptomatic youth can easily pass the virus to correctional officers who then return home to their communities. Meanwhile, preventing infection from asymptomatic youth and personnel is proving to be an even greater challenge. For example, during an outbreak in Virginia’s Bon Air Juvenile

CONTENTS

Introduction	1
Shrinking the Juvenile Justice System	2
Policy Recommendations	3
Focus on diversion, decarceration and early termination	3
Permanently suspend fines and fees for juveniles	4
Appropriately balance virtual and in-person resources	5
Better navigate complex family needs and dynamics	7
Build capacity for collaboration	9
Conclusion	10
About the Authors	10

Correctional Center, the large majority of youth who tested positive showed no symptoms.³ On top of this, the collateral harms of measures meant to prevent infection, including 23 hours a day of medical isolation and halts to in-person visitation and programming, further undermine the efficacy of incarceration during this time, and exalt the need for effective community alternatives.

As of May, at least ten states had publicly announced state-wide efforts to reduce their youth population behind bars, while numerous counties and cities were working to do so at the local level.⁴ Yet, such changes do not occur in a vacuum, as many youth who would otherwise have been incarcerated are now likely on some form of supervision while they await adjudication or serve their sentences.

Overall, the dramatic reduction in incarcerated youth is a move to be celebrated: detention is one of the most drastic exercises of State control, and for many low- and medium-risk youth, detention can be more detrimental than helpful.⁵ Yet, probation is not a panacea and can bring its own disadvantages. For example, the practice has historically resulted in cookie cutter conditions that focus more on compliance than youth success. It has also been over-prescribed as a sanction. In some cases, it serves more as a pathway toward deeper system involvement rather than as a conduit to a productive, happy life in the community. In fact, many of the youth behind bars today are there for technical (non-

3. Mallory Noe-Payne, “Virginia Juvenile Correctional Facility Overwhelmed by Coronavirus,” *NPR*, April 20, 2020. <https://www.npr.org/sections/coronavirus-live-updates/2020/04/20/838790229/virginia-juvenile-correctional-facility-overwhelmed-by-coronavirus>.

4. Eli Hager, “Solitary, Brawls, No Teachers: Coronavirus Makes Juvenile Jails Look Like Adult Prisons,” *The Marshall Project*, May 12, 2020. <https://www.themarshallproject.org/2020/05/12/solitary-brawls-no-teachers-coronavirus-makes-juvenile-jails-look-like-adult-prisons>.

5. Barry Holman and Jason Ziedenberg, “The Dangers of Detention,” *Justice Policy Institute*, Nov. 28, 2006, p. 4. <http://www.justicepolicy.org/research/1978>.

1. “Juvenile Probation,” Office of Juvenile Justice and Delinquency Prevention, 2018. <https://www.ojjdp.gov/ojstatbb/probation/overview.html>.

2. Josh Rovner, “COVID-19 in Juvenile Facilities,” *The Sentencing Project*, June 24, 2020. <https://www.sentencingproject.org/publications/covid-19-in-juvenile-facilities>.

criminal) violations of probation rather than new offenses.⁶ Given such disutility and the fact that most youth will naturally grow out of risk-seeking behaviors as they mature, policymakers must exercise additional prudence when dealing with youth on probation, especially during the current pandemic.⁷

Indeed, concerns about contagion have already required a substantial shift from normal probation protocols and will continue to do so as we prepare for a possible new wave of cases in the fall. However, this challenge also presents us with a unique opportunity to examine probation policies and outcomes ever more closely, and to reorient the youth justice system's goals. Some short-term policy changes may be beneficial in the long run as more permanent changes, while others should be strictly reserved and relied upon in future crisis scenarios. Accordingly, this paper examines a few ways youth probation practices have shifted in response to the pandemic, and articulates the need for both short-term and long-term policy changes to preserve public health and safety.

SHRINKING THE JUVENILE JUSTICE SYSTEM

Because social distancing during incarceration is nearly impossible and contact between youth and justice practitioners brings great public health risk, jurisdictions have rightly refocused on both public safety and health as the primary criteria for youth involvement in the justice system. As a result of this shift, police have begun issuing summonses and citations instead of arrests whenever possible.⁸ Additionally, many court cases are being put on hold, with exceptions made in cases wherein a child is waiting in detention.⁹ In places like California, new intake to state juvenile justice facilities was temporarily halted under statewide orders in March (since then, Gov. Newsom has announced the state juvenile justice system's disbandment).¹⁰ And thousands of young people already held in correctional facilities have been (and continue to be) released across the county. These

actions have placed additional pressure on cities and counties to come up with creative solutions to handle typically incarcerated youth populations.

Indeed, jurisdictions are proactively working to respond to new complaints of youth misbehavior without relying on incarceration. Anecdotally, youth in out-of-home placements appear to be acting out more often, due to increased anxiety associated with the pandemic. However, according to Mary Geelan, System Change & Community Initiatives Manager of Multnomah County in Oregon, this is somewhat to be expected: "One of hardest things about being in an out-of-home placement is not seeing family and not knowing that they're okay."¹¹ But, rather than moving a child deeper into the justice system, probation offices are smartly trying to provide these children with extra supports, including increased phone calls and communication with therapists to quell anxiety.¹² They have also worked harder to move youth with difficult behavior back home or to other placement settings.¹³ Given the public health threat of the pandemic, practitioners have been more empowered to work with other child welfare agencies and providers to do this successfully, hopefully paving the way for a continued reduction in local incarceration after the pandemic.

Following this trend, probation systems have also sought to reduce the flow of kids from probation to incarceration and to be more flexible in how they respond to technical violations. Technical violations are breaches of probation that do not equate to new criminal offenses in and of themselves. To begin with, many jurisdictions are amending probation conditions to ensure that goals are adaptive to the realities of the pandemic. For instance, instead of requiring youth to perform community service, probation officers may now require them to perform extra chores at home.¹⁴ Moreover, mandated and frequent face-to-face check-ins are being replaced by virtual communication.¹⁵ And, in places like Hennepin County, Minnesota, fines and fees associated with community supervision have been temporarily suspended to prevent a further burden on families during these difficult economic times.¹⁶

In cases wherein technical violations do occur, leaders are removing incarceration as an available response. For example, an executive order by Michigan Gov. Gretchen

6. Wendy Sawyer, "Youth Confinement: The Whole Pie 2019," Prison Policy Initiative, Dec. 19, 2019. <https://www.prisonpolicy.org/blog/2019/12/19/youth-pie-2019>.

7. National Institute of Justice, "From Juvenile Delinquency to Young Adult Offending," Office of Justice Programs, March 11, 2014. <https://www.nij.gov/topics/crime/Pages/delinquency-to-adult-offending.aspx> - noteReferrer2.

8. "Police Responses to Covid-19," CSG Justice Center, last updated May 21, 2020. <https://www.brennancenter.org/our-work/research-reports/police-responses-covid-19>.

9. "All Things Considered," NPR, March 24, 2020. <https://www.npr.org/2020/03/24/820957265/in-many-places-the-coronavirus-is-putting-the-criminal-justice-system-on-hold>.

10. While intake to state facilities was temporarily placed on hold, the order specified that individuals should continue to be held in local facilities until it resumes. See: Executive Order N-36-20, State of California, March 24, 2020, p. 2. <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.24.20-EO-N-36-20.pdf>. See also, David Muhammad, "California's Closure of DJJ is Victory with Significant Challenges," Juvenile Justice Information Exchange, May 19, 2020. <https://jjiie.org/2020/05/19/californias-closure-of-djj-is-victory-with-significant-challenges>.

11. Author interview with Mary Geelan, System Change & Community Initiatives Manager, Multnomah County, Oregon (by telephone), April 10, 2020.

12. Ibid.

13. Author interview with Tracey Freeman, Senior Manager of Probation and Accountability Services, Multnomah County, Oregon (by telephone), April 10, 2020.

14. Ibid.

15. Ibid. Note: This trend was articulated by every department with which we spoke.

16. Author interview with Beth Holger, Chief Executive Officer, The Link (by telephone), April 24, 2020.

Whitmer temporarily suspended any out-of-home placements for technical violations of probation.¹⁷ Likewise, states like Utah and New York have worked to limit youth confinement for breaking supervision conditions.¹⁸

Practically speaking, this has necessitated more creative problem-solving by probation personnel. According to Demecia Wilson, Chief Probation Officer of Lucas County, Ohio's Juvenile Court, if a youth on house arrest leaves without permission, for example, a probation officer might alter their probation plan and facilitate a case review so they can work to address what is promoting the behavior rather than giving them a technical violation.¹⁹ If the behavior continues, the office would be prompted to rethink its policy around what house arrest entails, and would brainstorm other ways to intervene and promote compliance without turning to violations or incarceration for matters that do not threaten public safety.

So far, all of this has been to great effect: According to the Annie E. Casey Foundation's (AECF) recent survey of youth justice agencies in over 30 states, the number of youth detained in secure facilities dropped by a third between March 1, 2020 and May 1, 2020.²⁰ Much of this decline could be attributed to the 52 percent drop in admissions during this time and an uptick in detention releases in March (due to COVID).²¹ States already focused on reducing their detained youth populations would likely see smaller temporary drops in their youth population. Even so, temporary reductions in incarcerated youth can soon give way to permanent change, particularly as states face large budget shortfalls. For instance, in Maryland, the now significantly smaller incarcerated youth population was an accelerating force in the decision of the state Department of Juvenile Services to close two youth facilities.²²

POLICY RECOMMENDATIONS

Given the current focus on decarceration and smarter, more efficacious juvenile justice mechanisms, the following sec-

tions offer policy solutions to help achieve these goals in both the short-term context of the pandemic and beyond.

Focus on diversion, decarceration and early termination

Diversion—To stem the tide of youth into correctional facilities, jurisdictions regularly meet and coordinate with other local agencies and community partners to divert youth away from incarceration. For example, Multnomah County's legacy as a Juvenile Detention Alternatives Initiative (JDAI) site meant that they already had strong relationships with other child-serving systems (such as child welfare, education and mental health services) and community based organizations. Having everyone at the table allowed the court system to collaboratively reduce new detention admissions while proactively responding to the concerns of other practitioners.²³ Rather than occurring only as part of crisis management, these common-sense efforts should be the norm, as strong partnerships are vital to any successful, sustainable decarceration endeavor, and allow all actors to leverage their unique knowledge to improve youth and community outcomes.

Decarceration—Further, jurisdictions that have been slow to decarcerate should do all they can to accelerate the process. While overall trends have been positive, individual jurisdictions have varied greatly on their rates of release, a phenomenon that Marsha Levick of the Juvenile Law Center has called "justice by geography" to indicate that disparities in the system are often caused merely by where one lives.²⁴ While the overwhelming majority of agencies in AECF's survey saw their youth detention populations decrease, almost a third of responding jurisdictions reported either that they had stayed the same or increased.²⁵ The juvenile justice system's individualized approach, which is focused on treating each child and their circumstances as unique, has led many jurisdictions to resist wholesale approaches in favor of individualized determinations.²⁶ However, when this is the case, some courts have been slow to release youth, potentially undermining the goal of preventing outbreaks in juvenile facilities. Even in places where individualized hearings have

17. Executive Order No. 2020-29 (8), Governor Gretchen Whitmer, State of Michigan, 2020. https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523422--,00_.html.

18. Dana Shoenberg, "Lessons From Juvenile Justice Reforms Could Help Reduce Pandemic's Impact on Confined Youth," Pew Charitable Trusts, May 5, 2020. <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/05/05/lessons-from-juvenile-justice-reforms-could-help-reduce-pandemics-impact-on-confined-youth>.

19. Author interview with Demecia Wilson, Chief Probation Officer of Lucas County, Ohio Juvenile Court (by telephone), April 24, 2020.

20. Annie E. Casey Foundation, "Survey: 52% Drop in Admissions to Youth Detention Matches Reduction Over 13 Years," June 3, 2020. <https://www.aecf.org/blog/survey-52-drop-in-admissions-to-youth-detention-in-two-months-matches-reduc>.

21. Ibid.

22. Pamela Wood, "Maryland to close two juvenile detention centers," *Baltimore Sun*, May 29, 2020. <https://www.baltimoresun.com/politics/bs-md-pol-jvenile-closures-20200529-gst5buq5ufa5jlvbdhnto5pu-story.htm>.

23. Freeman interview; Geelan interview.

24. Kristine Phillips, "Isolated and scared: The plight of juveniles locked up during the coronavirus pandemic," *USA Today*, April 28, 2020. <https://www.usatoday.com/story/news/politics/2020/04/27/coronavirus-juveniles-risk-covid-19-spreads-facilities/3000637001>.

25. Annie E. Casey Foundation. <https://www.aecf.org/blog/survey-52-drop-in-admissions-to-youth-detention-in-two-months-matches-reduc>.

26. Ibid. See also, Phillip Jackson, "Maryland's highest court rejects plea to release juveniles amid coronavirus threat, hints major announcement is coming 'shortly,'" *Baltimore Sun*, April 10, 2020. <https://www.baltimoresun.com/coronavirus/bs-md-youth-test-positive-juvenile-detention-center-20200410-2r5c2lvhwzsznkeic3siemz5i-story.html>; Matt Miller, "Pa. Supreme Court rejects plea to order comprehensive release of juvenile criminal offenders over coronavirus," *Pennsylvania Real Time News*, April 7, 2020. <https://www.pennlive.com/news/2020/04/pa-supreme-court-rejects-plea-to-order-comprehensive-release-of-juvenile-criminal-offenders-over-coronavirus.html>.

occurred, they have not led to consistent standards around what constitutes a public safety risk across jurisdictions. As a result, children in some facilities remain incarcerated despite the fact that they are in for probation violations, and one youth in Los Angeles remained incarcerated even after his probation officer's request for an early release.²⁷

Localities can work to address the first of these problems by refocusing existing resources and conducting regular virtual hearings to assess the appropriateness of youth detention in these cases. To reduce disparities in which youth continue to be detained or committed, states and localities should publish clear criteria—specific to the circumstances of the pandemic—upon which court officials or facility administrators should base their release decisions. For example, Maryland Court of Appeals Chief Judge Ellen Barbera ordered judges presiding over juvenile cases to consider factors such as: any relevant pre-existing health conditions; positive tests or symptoms of COVID-19; a juvenile facility's capacity to meet medical needs; whether or not the reason for commitment (for example, participation in an educational program) can still be upheld during present circumstances; and whether a young person could be safely released given certain conditions of supervision.²⁸

Further, as incarceration and release decisions are made, jurisdictions should regularly collect and analyze data to ensure decisions are grounded in clear public safety rationales and that they do not cause racial and ethnic disparities. Fortunately, AECF's survey data suggests that population reduction efforts are reducing, rather than widening, existing racial and ethnic disparities at the point of detention.²⁹ Jurisdictions can also reduce juvenile justice populations by eliminating incarceration as a response to technical violations, while adapting probation conditions to be responsive to current circumstances and focused on promoting long-term success and desistance from crime.

Early termination of probation—In order to lighten existing caseloads, jurisdictions should also explore early termination from supervision or diversion from probation (and the juvenile justice system) altogether. Places like Los Angeles County have already begun to invest heavily in new diversion infrastructures, and under Pierce County's "Opportunity-based Probation" model, youth who make significant progress on their case plan have the chance to earn time off their

probation sentence.³⁰ Given the potential disastrous public health effects of incarceration or any social interaction at the moment, other localities would be wise to do the same.

Permanently suspend fines and fees for juveniles

Covid-19 has caused a recession, the economic impacts of which will be borne predominantly by youth and families working in the service, hospitality and leisure, construction, government and retail industries, and those with low-paying jobs that cannot be completed remotely.³¹ Across the nation, this has meant disproportionate losses for those in Black and Latino families, as these racial and ethnic groups are more likely to work in these industries.³² Moreover, even with a slight uptick in overall employment in May, the jobless rate among Black teenagers, in particular, increased by several percentage points to 34.9 percent.³³

In the midst of this crisis, contending with fines and fees should not be something a family has to worry about. Even before the pandemic, many families were forced to choose between basic necessities, such as rent and food, and paying court fines and fees, since many young people involved in the youth justice system are indigent.³⁴ Worse, these debts can cause rifts in families, which are often already dealing with financial difficulties because of shelter-in-place orders and job losses. In the past, guardians have reported relinquishing custody of their children because debts became too high, and young people have stated that court-ordered debt has caused friction in their relationships with their parents.³⁵

30. See, e.g., Liz Kroboth et al., "Advancing Racial Equity in Youth Diversion: A Framework Informed by Los Angeles County," Human Impact Partners, June 2019. https://humanimpact.org/wp-content/uploads/2019/06/HIP_EvaluateYouthDiversion_2019.06.03.pdf; "Pierce County Juvenile Court, Alameda County Juvenile Justice Forum, April 2019. http://www.resourcesforplanningandcaring.com/probation/documents/ProbationSupervision_KatePearson1.22.19.pdf; Annie E. Casey Foundation, "Transforming Youth Probation," 2018, p. 32. <https://www.aecf.org/resources/transforming-juvenile-probation>.

31. Bureau of Labor Statistics, "The Employment Situation—May 2020," U.S. Dept. of Labor, June 5, 2020, p. 3. <https://www.bls.gov/news.release/pdf/empst.pdf>.

32. See, e.g., Eli Rosenberg, "An undercurrent of the protests: African Americans are struggling more economically from this pandemic," The Washington Post, June 1, 2020. <https://www.washingtonpost.com/business/2020/06/01/coronavirus-impact-black-communities-protests/>; Patricia Cohen and Ben Casselman, "Minority Workers Who Lagged in a Boom Are Hit Hard in a Bust," The New York Times, June 6, 2020. <https://www.nytimes.com/2020/06/06/business/economy/jobs-report-minorities.html>.

33. Nathan Bomey, "Unemployment: What improved, what didn't in Friday's jobs report," USA Today, June 5, 2020. <https://www.usatoday.com/story/money/2020/06/05/jobs-report-unemployment-rate-may-economy-coronavirus/3153981001>.

34. See, e.g., Office for Civil Rights, "Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles" U.S. Dept. of Justice, 2017, pp. 1-2. <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.

35. See, e.g., Stephanie Campos-Bui et al., "Making Families Pay: The Harmful, Unlawful, and Costly Practice of Charging Juvenile Administrative Fees in California," UC Berkeley Public Law Research Paper, April 5, 2017. <http://wclp.org/wp-content/uploads/2017/03/State-Juvenile-Fees-Report.pdf>.

27. Phillips. <https://www.usatoday.com/story/news/politics/2020/04/27/coronavirus-juveniles-risk-covid-19-spreads-facilities/300637001>.

28. Mary Ellen Barbera, "Guiding the Response of the Circuit Courts sitting as juvenile courts to the COVID-19 Emergency As it Relates to those Juvenile who are detained, committed pending placement or in commitments," Maryland Court of Appeals, April 13, 2020. <https://mdcourts.gov/sites/default/files/admin-orders/20200413guiding-responseofcircuitcourtssittingasjuvenilecourts.pdf>.

29. Annie E Casey Foundation. <https://www.aecf.org/blog/survey-52-drop-in-admissions-to-youth-detention-in-two-months-matches-reduc>.

Moreover, when both parents and children are being asked to stay at home, adding more sources of stress runs contrary to the goals of probation. Even in non-pandemic times, juvenile fines and fees do not promote public safety or rehabilitation. An inability to pay can cause young people to be forced deeper into the system, as probation is extended merely because of unpaid fines and fees or worst of all, young people are placed back in detention. This is, in effect, the equivalent of debtor's prison—a practice that was formally abolished for adults in the nineteenth century—and was later declared unconstitutional.³⁶ By increasing the barriers to successful reentry, fines and fees might actually make re-offense more likely.³⁷ While some jurisdictions might be inclined to recoup lost revenue due to COVID-19 through fines and fees, they should resist such an attempt, since many court-ordered obligations (even in pre-pandemic times) go unfulfilled due to an inability to pay.³⁸

While permanently suspending fines and fees for juveniles would be considered the gold standard, jurisdictions should at least suspend fines and fees payments and associated interest for the duration of the pandemic and throughout the period of economic recovery. In some jurisdictions—particularly those in which probation is run by private companies—probation officers are asked to collect fines and fees and enforce penalties, which interferes with their primary responsibility to help youth succeed and remain crime-free. For these reasons, this practice should also be ended. Moreover, youth should not have their supervision extended or be subject to detention due to the inability to satisfy court-ordered debt. Jurisdictions should not issue warrants for arrest based on outstanding debt, since the goal—especially now—is to avoid detaining young people, except when absolutely necessary for public safety reasons.

Appropriately balance virtual and in-person resources

Prior to the pandemic, supervision relied upon many conditions that were required to occur in-person, including visits with probation agents, school attendance, attendance at mental health counseling appointments, drug treatment and testing, and other community support. Presently, almost all in-person services have moved to virtual platforms, with probation agents checking in with youth and their families over

the phone or through video calls. At least some agencies have moved electronic kiosk reporting (where individuals typically have to travel and check-in to a stationary electronic kiosk) to phone and video reporting. For those cases where individuals do need to be seen in person, agents are having youth come outside their homes to do “curbside check-ins,” so that the young people can be observed, while social distancing requirements are respected.

Some agencies are using electronic monitoring for cases that would otherwise typically require detention. Others are resisting its use entirely, fearing ‘net widening,’ which are changes that can result in more young people being controlled by the criminal justice system.³⁹ Court hearings in some jurisdictions have also moved to virtual platforms, though the number overall appears to have reduced since all but the most urgent matters have been continued until after the crisis is abated.

Further, for the most part, probation agents are working remotely from home, with a few individuals still going into the office to complete essential work, occasionally in shifts, to further promote social distancing. In agencies with unionized probation employees, this change to remote work often required quick collaboration and negotiation with union officials.⁴⁰

Departments have varied in their level of preparedness for remote work. Some agencies already encouraged the use of technology with staff and youth pre-COVID, while others quickly mobilized to ensure computers and phones were set up and able to support secure video conferencing. According to Ana Bermúdez, Commissioner for the New York City Department of Probation (NYC DOP), office closures have required staff to be more mobile, which she believes is a good thing: “Probation is not a desk job.”⁴¹ In NYC DOP’s juvenile division, they had already started a “remove the desk” campaign to encourage agents to meet youth in their homes and communities. In some jurisdictions, moving to virtual services has actually meant that probation officers have been able to check-in with youth *more* frequently, since it is easier to pick up the phone than to do in-person visits.

But this is not to say that connecting with young people virtually has been easy, as they are some of the least likely to already have the equipment they need.⁴² Additionally, while some school districts have provided a computer or tablet for distance learning, others have not been able to provide more

36. See, e.g., Eli Hager, “Debtors’ Prisons, Then and Now: FAQ,” The Marshall Project, Feb. 24, 2015. <https://www.themarshallproject.org/2015/02/24/debtors-prisons-then-and-now-faq>.

37. See, e.g., Alex R. Piquero and Wesley G. Jennings, “Justice System Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders,” *Youth Violence and Juvenile Justice* 15:3 (2017). <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-criminology-study.pdf>.

38. Tom Jackman, “Guest post: Court fines and fees shouldn’t be used to recover lost revenue from pandemic,” *The Washington Post*, May 12, 2020 <https://www.washingtonpost.com/crime-law/2020/05/12/guest-post-court-fines-fees-shouldnt-be-used-recover-lost-revenue-pandemic>.

39. See, e.g., Author interview with Ana Bermudez, Commissioner, New York City Department of Probation (by telephone), April 20, 2020; and Geelan interview.

40. Bermúdez interview.

41. Ibid.

42. Ibid.

than one computer per home, making it difficult for families with multiple children.⁴³

In addition to check-ins, other services ordered as part of probation like mental health and drug treatment are also being delivered virtually, although there are some valid concerns about the effectiveness of these services when patients are not met in-person. For example, Beth Holger, CEO of The Link in Minneapolis, Minnesota, which manages emergency shelter, housing and front-line services for youth experiencing homelessness, sex trafficking and/or involvement in the juvenile justice and child welfare systems, explained that most youth, particularly those with significant mental health issues, are have difficulty accessing online services.⁴⁴ Many are also reporting difficulty in building relationships with people they do not know through online platforms and note that they often become distracted by the many other pressing issues they have going on while trying to be present in virtual meetings.⁴⁵ She also expressed that younger youth (those in the 13-15 age group, for example) need in-person, adult support for a variety of needs.⁴⁶

The funding and bandwidth of those who are now faced with providing services in a new way to more individuals is another concern facing practitioners. According to a number of sites, the technology infrastructure needed to safely deliver services to youth (like laptops and wi-fi) is also lacking.⁴⁷

Unfortunately, there are few safe alternatives to virtual treatment at the present moment. And, anxiety among youth has gone up, necessitating more mental health services. For example, one recent study found that people under 25 are the most severely affected by anxiety and depression related to being isolated and fearful of contracting the virus.⁴⁸ For those coping with drug-related issues, isolation can be very difficult as in-person recovery meetings can be a vital resource.⁴⁹ Encouragingly, research has demonstrated that progress in treatment, especially for less-severe forms of mental illness, can still be made online and over the phone.⁵⁰ In fact, some limited studies have found telemedicine to be as effective as

in-person care for drug addiction in adults, which is promising.⁵¹ On a related note, in-person drug testing on probation during the pandemic has varied widely. In some jurisdictions, few changes have been made, while others have reduced requirements, spaced out drug testing more, or moved to using “sweat patches,” which adhere to a person’s skin like a band-aid and detect drugs in perspiration.⁵²

Education has also moved to exclusively remote options for all youth, including those in the general population. But young people in the justice system are disproportionately impacted by this change, as they are far more likely to already face challenges in school. For example, the U.S. Department of Education has estimated that generally anywhere between 30 to 60 percent of incarcerated youth have a disability, with some estimating up to 85 percent.⁵³ Other studies have made similar findings.⁵⁴

Virtual school can be extremely difficult, if not impossible, for students with disabilities on individualized education programs (IEPs), as they rely on hands-on, one-on-one instruction, aided by specialists.⁵⁵ While specialized services have moved online when possible, some school districts have struggled to connect special education staff with students.⁵⁶ Additionally, many young people on probation have a fractured relationship with the educational system; for some, their justice involvement occurred because of problems at school, a path that has been popularly coined the “school to prison” pipeline. However, even if youth do not have a disability or a negative relationship with the school, probation officers are finding that even something as simple as a faulty

43. Ibid.

44. Holger Interview.

45. Ibid.

46. Ibid.

47. Wilson interview; Freeman interview.

48. “Mental Health Concerns Growing As COVID-19 Pandemic Spreads And Intensifies,” Mental Health America, April 16, 2020. <https://mhanational.org/mental-health-concerns-growing-covid-19-pandemic-spreads-and-intensifies>.

49. Diana Dubbs, “Commentary: Isolation could be deadly for those in substance-abuse recovery,” *Community News*, May 6, 2020. <https://communitynews.org/2020/05/06/isolation-could-be-deadly-for-those-in-substance-abuse-recovery>.

50. Gerhard Andersson, “Internet-Delivered Psychological Treatments,” *Annual Review of Clinical Psychology* 12 (2016), pp. 157–79. <https://www.annualreviews.org/doi/pdf/10.1146/annurev-clinpsy-021815-093006>.

51. Phil Galewitz, “Coronavirus Crisis Spurs Access To Online Treatment For Opioid Addiction,” *NPR*, April 20, 2020. <https://www.npr.org/sections/health-shots/2020/04/20/837120101/coronavirus-crisis-spurs-access-to-online-treatment-for-opioid-addiction>.

52. Elizabeth Brico, “Coronavirus Raises Questions on How to Meet Court-Ordered Obligations,” *The Appeal*, March 27, 2020. <https://theappeal.org/coronavirus-raises-questions-of-how-to-meet-court-ordered-obligations>.

53. See, e.g., W.N. Read, “Youth with Special Education Needs in Justice Settings,” *NDTAC Fact Sheet*, 2014. https://neglected-delinquent.ed.gov/sites/default/files/NDTAC_Special_Ed_FS_508.pdf; Office of Special Education and Rehabilitative Services, “Supporting Youth with Disabilities in Juvenile Corrections,” U.S. Dept. of Education, 2017. <https://sites.ed.gov/osers/2017/05/supporting-youth-with-disabilities-in-juvenile-corrections>.

54. Aleksis Kincaid, “Prevalence of Youth with Disabilities in the Juvenile Justice System,” PhD Dissertation, University of Minnesota, June 2017, pp. 15-18. https://conservancy.umn.edu/bitstream/handle/11299/190546/Kincaid_umn_0130E_18289.pdf?sequence=1.

55. Faith Hill, “The Pandemic is a Crisis for Students with Special Needs,” *The Atlantic*, April 18, 2020. <https://www.theatlantic.com/education/archive/2020/04/special-education-goes-remote-covid-19-pandemic/610231>.

56. See, e.g., Avi Wolfman-Arent, “Special education during coronavirus: What should parents tolerate, demand,” *The Notebook*, April 20, 2020. <https://thenotebook.org/articles/2020/04/20/special-education-during-coronavirus-what-should-parents-tolerate-demand>; Kamie Stephen, “Special needs teaching online brings special challenges,” *Star-Herald*, May 6, 2020. https://www.starherald.com/news/local_news/special-needs-teaching-online-brings-special-challenges/article_2b6b4397-01f0-57c6-a15f-317ebbacdcf.html; Courtney Vaughn and Max Egner, “For students with special needs, distance learning may not cut it,” *Columbia County Spotlight*, May 6, 2020. https://pamplinmedia.com/scs/83-news/465747-377267-for-students-with-special-needs-distance-learning-may-not-cut-it?wallit_nosession=1.

or absent internet connection can still prevent education from occurring.⁵⁷ Some jurisdictions are working already to address this.⁵⁸ Nevertheless, remote education has been challenging for many youth, but justice-involved youth may be hit particularly hard by school closures and online education. Given the importance of educational achievement both to children's future success in the workforce and to desistance from crime, localities and probation departments should work to support this transition as best they can.⁵⁹

One point of optimism is that young people are particularly savvy and able to take advantage of online means of socializing, learning and connecting compared to older adults.⁶⁰ And while COVID-19 has posed unprecedented challenges to the system, the following policy changes should be adopted both to help make youth better off in general, and to better prepare for future crises.

Build virtual infrastructure and balance with in-person needs—An eventual return to in-person contact is vital, as the research is clear that nothing can replace in-person social contact, and extended isolation can have negative effects on health.⁶¹ Technology-mediated relationships can create a distancing effect, and research suggests that increased psychological distance can lead to dehumanized decision-making.⁶² Research also suggests that mediated communication (for example, through video) is less engaging in physical, cognitive and emotional ways, as compared to in-person communication.⁶³ Thus, when risks to staff and youth have reduced, in-person contact should resume.

However, technology is also allowing for easier communication between young people and their probation agents or counselors by removing the time and resource challenges associated with in-person visits. For youth who would otherwise be on intensive probation with multiple in-person requirements a week, virtual meetings may be able to sub-

stitute for some of those meetings and would therefore be a positive way to mitigate otherwise onerous requirements that often are the root cause of technical violations on probation. Additionally, to create more flexibility in the role of probation officers, union contracts specifying in-person work should be adjusted to allow for more flexibility.

On top of this, leaders in probation would be smart to support greater institutional investments to incorporate tech features that make their work more effective, and young people's lives easier. Innovative probation departments have also realized that, to the extent they can help youth with acquiring devices and wi-fi connections in their home to facilitate probation services (as well as educational services), those youth will be far better off since public spaces like libraries are closed. To this end, in Multnomah County, Oregon, a local cable company offered to provide two months of free wireless connection for students in an effort to bring the internet into the homes of young people who cannot afford it.⁶⁴ These changes will be useful in potential future crises, but also support probation efforts more generally, particularly when transportation is a challenge.

At the same time, we must be careful that technology, despite its convenience, does not replace in-person services. For example, court hearings, including probation hearings, have moved to video during this time; a reasonable change given the public health risks that currently plague in-person gatherings. But, some locations have enjoyed the convenience so much that they are considering extending video hearings and visitation beyond the pandemic.⁶⁵ Overall, this tendency should be resisted, as due process interests suggest that defense attorneys should not have to choose between being in the same location as their client to be able to communicate with them and provide adequate counsel or being in the courtroom where they have greater access to judges, clerks, prosecutors, and the court file—but not their client. Additional research is needed on the potential dehumanizing effects of video conferencing in the justice system, as well as how youth and staff are coping with utilizing virtual platforms.⁶⁶

Better navigate complex family needs and dynamics

With schools closed and many families ordered to stay-at-home, the environment and context of youth probation has shifted dramatically. Policymakers would be wise to take this

57. Wilson interview.

58. Ibid.

59. See, e.g., Development Services Group, Inc., "Youths with Intellectual and Developmental Disabilities in the Juvenile Justice System (Literature review)," Office of Juvenile Justice and Delinquency Prevention, 2017. <https://www.ojjdp.gov/mpg/litrev/juvs/Intellectual-Developmental-Disabilities.pdf>.

60. Emily A. Vogels, "This is how different American generations are using the internet during COVID-19," World Economic Forum, May 7, 2020. <https://www.weforum.org/agenda/2020/05/coronavirus-covid19-united-states-america-internet-online-generations>.

61. Deevon Rahming, "The impacts social isolation has on the immune system," KARE11, May 6, 2020. <https://www.kare11.com/article/news/health/coronavirus/the-impacts-social-isolation-has-on-the-immune-system/89-9b0efa7f-a327-43b3-b661-189d164bb052>.

62. See, e.g., Min Kyung Lee et al., "Making Decisions From a Distance: The Impact of Technological Mediation on Riskiness and Dehumanization," *Proceedings of the ACM Conference on Computer-Supported Cooperative Work* (2015). https://www.researchgate.net/publication/268812146_Making_Decisions_From_a_Distance_The_Impact_of_Technological_Mediation_on_Riskiness_and_Dehumanization.

63. Ibid.

64. Freeman interview.

65. Anthony Celestine, Assistant Director of Calcasieu Parish office of Juvenile Justice Services, "Collaboration During COVID: Supporting Youth and Staff," *Annie E. Casey Foundation Webinar*, May 6, 2020.

66. Recent research on video platforms suggest they could aid racial bias in the court system. See, e.g., Samantha Bielen et al., *National Bureau of Economic Research Working Paper No. 25355*, (revised) May 2019. <https://www.nber.org/papers/w25355>.

shift into account and to focus more of their resources, both in the present and in the future, on supporting youth and families holistically.

For starters, baseline youth and parent interactions have increased, providing a natural opportunity for either positive bonding or for further friction. By nature of their developmental stage, adolescents already struggle to practice self-control.⁶⁷ They are particularly responsive to short-term incentives and rewards and, as a result of this and a general lack of experience, often fail to assess and make decisions in light of the long-term consequences of their actions.⁶⁸ Young people's reduced susceptibility to coronavirus may lead them to further discount the harm of socializing during the pandemic and cause increased pushback on guardians due to frustration with local mandates. At the same time, the near-absolute ending of all in-person activities means young people have fewer positive points of engagement and social outlets in their lives. In light of this, adolescents generally, and youth in the juvenile justice system specifically, are likely to struggle to adjust to this new world of sustained restricted movement and interactions, which may incite conflict between youth on probation and their guardians. Indeed, we have already seen much news coverage of how the pandemic has engendered new sources of tension between youth and parents in the general population.⁶⁹ And some jurisdictions have seen an increase in domestic violence incidents involving child misbehavior.⁷⁰

To make matters more complicated, many justice-involved youth already face challenging environments at home and have a history of child welfare involvement. A recent study estimated that approximately 45 percent of youth who received their first delinquency court petition in Cook County, Illinois, for example, were dual-system involved, as were 70 percent of youth in New York City during the time studied.⁷¹ For some of the children released from detention or out-of-home placements, returning home may simply not be a safe or prudent option. Additionally, if youth were removed from their household due to a familial conflict they initiated, their parents may not want to take them back.

Localities must face the challenge of finding these youth a place to stay while also working to rebuild family connections, as appropriate. Often, local youth shelters are called on to provide a home and place of supervision for young people with unstable homes. Yet, this has brought its own set of challenges: With social distancing requirements in place and new tensions at home, many shelters are seeing a demand for their services rise while space and supply runs low.⁷² Some residential providers are under-staffed amidst the pandemic and are deciding not to take new clients, although their in-house shelter providers are still taking children.⁷³ And, in Hennepin County, Minnesota, policymakers and youth service providers are working together to open additional emergency shelter bed space that allows for the appropriate space to isolate youth who test positive for COVID-19.⁷⁴ However, successful responses to these circumstances depend heavily on multi-agency and community collaboration.

Moreover, even in the many cases in which young people have positive relationships with family members, the pandemic may bring circumstances that engender new familial struggles. Parents and legal guardians may be adjusting to teleworking while parenting one or multiple children. Under- or unemployment may also result in increased financial distress and a struggle to meet basic needs. And parental social disconnection and anxiety may further complicate family dynamics.⁷⁵ In some cases, family members are essential workers, increasing the fear and potential threat of infection for all household members and probation staff, while also leading to reduced supervision of youth at home.

Fortunately, some probation offices and community partners are stepping up to the plate. In Lucas County, Ohio, some probation officers have been delivering and leaving food on the porch for their struggling families.⁷⁶ And, in New York City, some personnel, such as those previously in charge of writing pre-sentencing reports, have been redeployed to new projects such as conducting wellness calls to families.⁷⁷ In Multnomah County, rent assistance has been provided for families with youth on probation, when needed.⁷⁸ And, in Hennepin County, The Link has seen more youth needing emergency shelter, especially after traditional business hours, due to the closure of many other systems and services

67. Richard Bonnie et al., "Reforming Juvenile Justice: A Developmental Approach," National Research Council, 2013, pp. 91-95. http://www.nijn.org/uploads/digital-library/Reforming_JuvJustice_NationalAcademySciences.pdf.

68. Ibid., pp. 93-95.

69. Melissa Hart, "Even the mellowest teens are raging against the pandemic quarantine. Here's how to help them cope," *The Washington Post*, April 23, 2020. <https://www.washingtonpost.com/lifestyle/2020/04/23/even-mellowest-teens-are-raging-against-quarantine-heres-how-help-them-cope>.

70. Wilson interview; Bermúdez interview.

71. Denise C. Herz and Carly B. Dierkhising, "OJJDP Dual System Youth Design Study: Summary of Findings and Recommendations for Pursuing a National Estimate of Dual System Youth," Office of Justice Programs, March 2019, p. 56. <https://www.ncjrs.gov/pdffiles1/ojjdp/grants/252717.pdf>.

72. Emma Gibson, "Pandemic increases need for youth emergency shelter," *Arizona Public Media*, May 1, 2020. <https://news.azpm.org/p/news-splash/2020/5/1/171570-pandemic-increases-need-for-youth-emergency-shelter>.

73. Freeman interview.

74. Holger interview.

75. University of Tennessee at Knoxville, "Managing anxiety and parenting during a pandemic," *Medical Xpress*, April 21, 2020. <https://medicalxpress.com/news/2020-04-anxiety-parenting-pandemic.html>.

76. Wilson interview.

77. Bermúdez interview.

78. Freeman interview.

during the pandemic and reduced bed space at other youth shelters because of local social distancing guidance.⁷⁹

While handling new family dynamics and home environments has put further pressure on probation services, it is also bringing to light the need for more holistic, family-oriented services—changes that would be beneficial past the pandemic. For example, before COVID-19, some probation officers may not have fully understood the level of conflict within some of their probationers' homes. After all, it is typical for kids to spend less time with their parents as they enter their teenage years.⁸⁰ But now, probation officers have a unique opportunity to understand familial environments and problem-solve with families. Scholarly research suggests this is likely to promote better youth outcomes, as parental support and knowledge has been associated with reductions in technical violations and delinquency.⁸¹

Probation agents' increased focus and creativity around meeting children and families' needs for food, shelter and engagement has proven them to be more than just a person ensuring that kids on probation do not re-offend. Demecia Wilson explains: "Kids know that there are people looking out for them, helping them get their needs met."⁸² This increased assistance may help better align probation's reality with youth expectations of what probation should be, something research suggests can improve youth's responsiveness to probation.⁸³ Moreover, probation departments can use these deepened connections and trust to educate parents and guardians on the legal system, as a recent study has identified a clear legal knowledge gap, particularly among Black mothers with sons arrested multiple times, which precludes parents from fully advocating for their children.⁸⁴

For probation departments already focused on family involvement in a child's case plan, this was an easier transition. Once again, Multnomah County proves to be a positive example. Their juvenile court counselors (JCCs) already partner with families to help the entire family and the justice-involved youth build their strengths, receive services and change behavior under a "Functional Family Probation"

(FFP) model.⁸⁵ During the pandemic, JCCs have been able to leverage their relationships with parents to strategize how to respond when youth disobey public health orders or how to quench newfound anxiety and meet basic needs.⁸⁶ While still focused on holding youth accountable and preventing future crime, JCCs meet this goal by functioning as youth advocates and family coaches.

Prioritize holistic, family support for youth on probation—Shelter-in-home restrictions are beginning to change. Life in many communities is slowly returning to normal, meaning youth and families will have more freedom of movement and socialization in the months ahead. And the environment in which probation occurs will change as well. In any event, probation's recent shift to focus on serving youth and families holistically should continue. Youth and families still need to learn the "soft skills" of desistance: conflict resolution and communication. And parents still provide a critical resource and potential ally in ensuring youth make progress toward their probation goals and develop their strengths. School will be out of session this summer, creating a greater need for positive youth engagement ideas and opportunities. And there is still uncertainty in some school districts around whether or not schools will reopen for in-person classes in the fall. Moreover, with the economy in tatters and unemployment reaching 13.3 percent, many families will continue to struggle financially; and youth employment opportunities will be dim.⁸⁷ It is likely that some difficult family dynamics and circumstances will continue long past when official stay-at-home orders are lifted. For these reasons, both in the short and long term, policymakers and practitioners should build greater capacity for family-focused interventions, and work to continue high engagement with and service delivery to both young people and their families.

Build capacity for collaboration

Of course, probation offices are not equipped to, nor should they be called to, serve families holistically without outside support. As mentioned, many justice-involved youth already have contact with other social service agencies, including the child welfare system. This indicates a clear need for a collaborative partnership when responding to youth misbehavior, finding youth a place to stay, and determining a young person and/or family's case plan to avoid duplicative services or contradicting conditions between agencies. Likewise, local public assistance agencies, food banks and area nonprofits can play a vital role in alleviating families' financial distress.

79. Holger interview.

80. Bermudez interview.

81. See, e.g., Sarah Vidal and Jennifer Woolard, "Youth Perceptions of Parental Support and Parental Knowledge as Moderators of the Association Between Youth-Probation Officer Relationship and Probation Non-Compliance," *Journal of Youth and Adolescence* 46:7 (2017). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4838555>.

82. Wilson interview.

83. Adam Fine et al., "Juveniles' Beliefs About and Perceptions of Probation Predict Technical Violations and Delinquency," *Psychology, Public Policy, and Law* 25:2 (2019), p. 120. <https://psycnet.apa.org/buy/2019-22929-004>.

84. C. Cavanagh et al., "Lesson learned? Mother's legal knowledge and juvenile rearrests," *Law and Human Behavior* 44:2 (2020), pp. 164-65. <https://psycnet.apa.org/record/2020-17956-001>.

85. "Youth on Probation," Multnomah County, 2020. <https://multco.us/dcj-juvenile/youth-probation>.

86. Freeman interview.

87. U.S. Bureau of Labor Statistics, "Labor Force Statistics from the Current Population Survey," U.S. Dept. of Labor, June 16, 2020. <https://data.bls.gov/timeseries/LNS14000000>.

And, the resources available through school systems, including technology, can be used simultaneously for justice system purposes.

But collaboration should not happen only at the individual level. There is plenty of opportunity for broader interagency partnerships around shared system goals and funding priorities. For example, agencies that have contracts with the same health providers, shelters and/or community programs can and should work collaboratively to ensure the financial stability of these providers throughout and following the pandemic. This will be especially necessary given the economic downturn and shrinking state and local budgets. Present contracts and those going forward can be written to allow for more nimble funding that will provide for direct client services during times of crisis. After all, it is paramount that local continuums of care are not permanently damaged during a pandemic or other emergency.

Fortunately, many jurisdictions already have a history of partnering with outside agencies and community actors to promote public safety and youth accountability in the community. Over 150 sites have participated in Annie E. Casey's Juvenile Detention Alternatives Initiative with great success. In the years following their participation, sites surveyed in 2016 reported an average 49 percent reduction in annual youth detention admissions and 57 percent drop in total youth commitments.⁸⁸ At the same time, juvenile referrals to the justice system at JDAI sites decreased by 47 percent and felony petitions dropped by 39 percent.⁸⁹ These jurisdictions have been able to rely on these partnerships to act quickly during the pandemic; others should follow their model of collaboration.

CONCLUSION

COVID-19 has turned life as we know it on its head. Today, social contact could be potentially lethal. Asymptomatic carriers, the lack of a vaccine and unreliable testing have made the criminal justice system's traditional reliance on in-person communication and supervision nearly impossible. In response, correctional and court administrators have rightly worked to empty and limit movement into youth detention and correctional facilities. Probation departments and service providers have shifted to teleworking and virtual communication with young people, as much as possible. And, supervising officers have worked to more holistically support young people and their families by addressing practical, emotional and more traditionally criminogenic needs. Local agencies have worked together to be more innovative

in accomplishing community goals of public health and public safety.

In the process, some policymakers have reoriented their views around probation. Working from home and the use of online communication tools has resulted in time savings for both probation officers and the young people they supervise, creating more capacity for frequent and substantive engagement. Likewise, focusing more holistically on serving the needs of young people and their families has empowered probation officers to strengthen their collaboration and communication with parents and young people, and to focus more on long-term planning and individual progress rather than rote compliance. While the utility of some of these changes will only be known with more time, we believe these lessons will retain their importance in the years to come.

ABOUT THE AUTHORS

Emily Mooney is a resident criminal justice policy fellow at the R Street Institute, where she predominantly conducts research and writes on topics regarding the juvenile justice system, corrections, reentry and policing. Prior to joining R Street, she conducted policy research and analysis on the impact of maternal incarceration for the National Criminal Justice Association and the Louisiana Commission on Law Enforcement and provided research support for Prison Fellowship's juvenile justice advocacy efforts.

Nila Bala is the associate director of criminal justice policy and a senior fellow at the R Street Institute, where she helps to lead criminal justice policy areas generally, and also specifically develops policy to advance reforms in juvenile and economic justice. Previously, she was a public defender in Santa Clara, California and Baltimore City. Earlier in her career, Nila clerked for Judge Keith P. Ellison of the U.S. District Court for the Southern District of Texas.

88. "Insights from the Annual Results Report Indicators Through 2016," Pew Charitable Trusts, 2017, p. 3. <https://www.aecf.org/m/resource/aecf-jdaiat25-2017.pdf#page=5>.

89. Ibid., p. 5.