



FAIR AND JUST PROSECUTION

Promoting justice through leadership and innovation

ISSUES AT A GLANCE

COVID-19 and the Criminal Justice System: Youth Justice Issues, Challenges, and Recommended Reforms

Fair and Just Prosecution (FJP) brings together recently elected district attorneys¹ as part of a network of like-minded leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutive leaders to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. In furtherance of those efforts, FJP's "Issues at a Glance" briefs provide district attorneys with information and insights about a variety of critical and timely topics. These papers give an overview of the issue, key background information, ideas on where and how this issue arises, and specific recommendations to consider. They are intended to be succinct and to provide district attorneys with enough information to evaluate whether they want to pursue further action within their office. For each topic, Fair and Just Prosecution has additional supporting materials, including model policies and guidelines, key academic papers, and other research. If your office wants to learn more about this topic, we encourage you to contact us.

SUMMARY

This FJP "Issues at a Glance" brief is part of a series examining unfolding criminal justice system responses to mitigate the public health crisis created by the novel coronavirus (COVID-19).² This brief focuses specifically on issues that are unique to the youth justice setting. In particular, this brief examines the medical risks that COVID-19 poses for children; the harmful impact of measures being taken in youth facilities in response to the current pandemic, such as discontinuation of in-person family visits and rehabilitative programming; and other ways in which COVID-19 is impacting people involved with the youth justice system. The brief then discusses steps criminal justice leaders can and should take to protect young people and the broader community amid COVID-19, spotlighting actions taken by prosecutors and other officials in the first months of the crisis. Given both the medical and socio-emotional consequences of ongoing incarceration during the pandemic, the fact that most incarcerated children do not

¹ The terms "district attorney," "DA," or "elected prosecutor" are used generally to refer to any chief local prosecutor, including State's Attorneys, Prosecuting Attorneys, and Attorneys General with local jurisdiction.

² The issue briefs in this series, including the first brief, *COVID-19 and the Criminal Justice System: Reducing and Avoiding Incarceration During a Pandemic*, are available at: <https://fairandjustprosecution.org/covid-19/crisis-and-solutions/>.

"What we want young people to know is that the community cares about them, that we are investing our resources, our time and our efforts to giving them the best possible chance for success."

— PRINCE GEORGE'S COUNTY (MD) STATE'S ATTORNEY AISHA BRAVEBOY

present a serious risk to the safety of others, and the fact that the youth justice system is intended to be a rehabilitative-focused system, there is a particular need to work quickly to vastly reduce the number of young people in carceral settings.

BACKGROUND

I. The Spread of COVID-19 in Youth Facilities

Like adult jails and prisons, the design of youth justice facilities often makes social distancing challenging if not impossible.³ Some detention centers have dormitory-style rooms with dozens of children sleeping in close proximity to each other,⁴ and even in facilities in which youth have private rooms, they typically share bathrooms, cafeterias, and other common spaces. There is often substantial churn through these facilities, with young people entering and departing regularly, as well as staff who go back and forth between facilities and the community on a daily basis. In some facilities, medical care is woefully inadequate,⁵ and generally, medical providers and medical units in these facilities do not have the capacity to appropriately handle a COVID-19 outbreak.

It is not surprising, therefore, that COVID-19 has quickly exploded into a serious problem in this context. Even as some communities begin to reopen after months of lockdown, the crisis remains acute and growing in carceral settings. Jails and prisons are now the top ten COVID-19 hot spots in the nation.⁶ And as of July 24, 2020, at least 1,310 youth and 1,550 staff had confirmed COVID-19 diagnoses in youth justice facilities across 40 states, the District of Columbia, and Puerto Rico;⁷ these numbers are undoubtedly undercounts, as insufficient testing means that there are likely many undetected cases.⁸ Even these numbers, however, illustrate the rapid growth of COVID-19 in youth justice settings: On March 24, only 1 youth and 5 staff had been diagnosed, and on April 24, only 140 youth and 301 staff members had been diagnosed,⁹ meaning that there was a 6.5-fold increase in cases in three months and a 477-fold increase in four months.

II. Health Impacts of COVID-19 in Youth Facilities

While children generally experience less serious COVID-19 symptoms than adults, approximately 6% of children with confirmed COVID-19 diagnoses require hospitalization.¹⁰ Severe complications,

³ *Id.*; Fair and Just Prosecution (2020), *COVID-19 and Mass Incarceration: Crisis at a Glance*, <https://fairandjustprosecution.org/wp-content/uploads/2020/04/Crisis-At-a-Glance-FINAL-4-16-20.pdf>.

⁴ Boyer, T. (2020), *California Advocates Urge Release of Youth in Facilities Before They're Exposed to Coronavirus*, Juvenile Justice Information Exchange, <https://jje.org/2020/04/16/california-advocates-urge-release-of-youth-in-facilities-before-theyre-exposed-to-coronavirus/>.

⁵ See, e.g., Burch, A.D.S. and Miller, C.M. (2017), *Cause of death: 'Lack of empathy.' Medical neglect in Florida's juvenile justice*, Miami Herald, <https://www.miamiherald.com/news/special-reports/florida-prisons/article177887231.html>.

⁶ The New York Times (2020), *Hundreds of thousands of cases traced to clusters*, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#clusters>.

⁷ Rovner, J. (2020), *COVID-19 in Juvenile Facilities*, The Sentencing Project, <https://www.sentencingproject.org/publications/covid-19-in-juvenile-facilities/>.

⁸ Aspinwall, C. and Neff, J. (2020), *These Prisons Are Doing Mass Testing For COVID-19—And Finding Mass Infections*, The Marshall Project, <https://www.themarshallproject.org/2020/04/24/these-prisons-are-doing-mass-testing-for-covid-19-and-finding-mass-infections>.

⁹ Rovner, *supra* note 7.

¹⁰ Centers for Disease Control and Prevention (CDC) (2020), *Information for Pediatric Healthcare Providers*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/pediatric-hcp.html>.

such as multi-organ failure, septic shock, and acute respiratory distress syndrome, have been seen in children of all ages.¹¹ Some have also presented with a new syndrome that has similarities to Kawasaki disease, though the new syndrome is more severe and has been seen among teenagers (whereas Kawasaki disease almost exclusively impacts young children).¹² Though still rare, several COVID-19 related deaths have been reported among teenagers.¹³ Furthermore, youth in the justice system are at higher risk for COVID-19 complications than young people on average, as those with justice system involvement have higher rates of underlying conditions, such as asthma,¹⁴ that may increase the risk of severe illness from COVID-19.¹⁵ Moreover, many young people in detention facilities undoubtedly have underlying conditions that have not been identified; for example, one study of more than 10,000 New York City adolescents concluded that more than 20% had undiagnosed asthma.¹⁶

Notably, scientists are only just beginning to study the long-term impacts of COVID-19.¹⁷ They have already identified potential lasting harm to the brain, lungs, heart, kidneys, pancreas, gastrointestinal tract, and liver.¹⁸ COVID-19 may also trigger ongoing conditions such as chronic fatigue syndrome,¹⁹ diabetes,²⁰ and infertility.²¹ Moreover, even those who appear to be asymptomatic can be at risk for long-term complications from COVID-19, which can cause “silent damage” internally.²² It is not yet known how this may impact children’s long-term health.

In addition to the risks COVID-19 presents for incarcerated children, unnecessarily keeping large numbers of young people in custody puts people who work in these facilities and the broader

¹¹ *Id.*

¹² Ducharme, J. (2020), *The Hunt to Understand COVID-19’s Connection to Kawasaki Disease*, TIME, <https://time.com/5842902/covid-19-kawasaki-disease/>.

¹³ Fernandes, M. (2020), *Why children are not immune to Covid-19*, BBC Future, <https://www.bbc.com/future/article/20200330-coronavirus-are-children-immune-to-covid-19>.

¹⁴ Winkelman, T.N.A., et al. (2017), *Health Conditions and Racial Differences Among Justice-Involved Adolescents, 2009 to 2014, Adversity Among Children and Youth*, 17(7), 723-731, [https://www.academicpedsjnl.net/article/S1876-2859\(17\)30103-1/fulltext](https://www.academicpedsjnl.net/article/S1876-2859(17)30103-1/fulltext).

¹⁵ CDC, *Information for Pediatric Healthcare Providers*, *supra* note 10.

¹⁶ Bruzzese, J, et al. (2019), *Individual and Neighborhood Factors Associated with Undiagnosed Asthma in a Large Cohort of Urban Adolescents*, *Journal of Urban Health*, 96, 252–261, <https://link.springer.com/article/10.1007/s11524-018-00340-2?rel=0>.

¹⁷ National Heart, Lung, and Blood Institute (2020), *Looking forward: Understanding the long-term effects of COVID-19*, <https://www.nhlbi.nih.gov/news/2020/looking-forward-understanding-long-term-effects-covid-19>.

¹⁸ Cormier, Z. (2020), *How Covid-19 can damage the brain*, BBC Future, <https://www.bbc.com/future/article/20200622-the-long-term-effects-of-covid-19-infection>; Coronado, L. (2020), *Scientists Uncover Long Term Effects of COVID-19, Virus Attacks Vital Organs*, NBC San Diego, <https://www.nbcsandiego.com/news/local/scientists-uncover-long-term-effects-of-covid-19-virus-attacks-vital-organs/2358577/>.

¹⁹ Vastag, B. and Mazur, B. (2020), *Researchers warn covid-19 could cause debilitating long-term illness in some patients*, The Washington Post, https://www.washingtonpost.com/health/could-covid-19-cause-long-term-chronic-fatigue-and-illness-in-some-patients/2020/05/29/bcd5edb2-a02c-11ea-b5c9-570a91917d8d_story.html.

²⁰ Rubino, F. et al. (2020), *New-Onset Diabetes in Covid-19*, *The New England Journal of Medicine*, <https://www.nejm.org/doi/full/10.1056/NEJMc2018688>.

²¹ Abobaker, A. and Raba, A.A. (2020), *Does COVID-19 affect male fertility?*, *World Journal of Urology*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7171435/>.

²² Coronado, *supra* note 18.

community in danger as well. Several facility staff members have died as a result of COVID-19.²³ And as with adult jails and prisons, when staff leave the facility, they go home to families, go grocery shopping, and in other ways contribute to community spread. As such, a COVID-19 outbreak within a youth facility can undermine broader community efforts to contain the virus.

III. Socio-Emotional Impact of COVID-19 and of Measures Taken in Youth Justice Facilities to Reduce its Spread

In addition to the direct health impacts of COVID-19, the pandemic has also been recognized by the Centers for Disease Control and Prevention (CDC) and other experts as a significant mental health stressor for adolescents, many of whom are concerned about their health or the health of their loved ones, distressed by the disruption of school and other daily routines, and/or struggling to cope with social isolation.²⁴ This impact is almost certainly heightened for young people who are incarcerated, who already faced extremely high rates of trauma and post-traumatic stress disorder (PTSD) prior to the pandemic,²⁵ which renders people more vulnerable to COVID-19-related stress.²⁶ In addition, being away from their families; cut off from news sources; uncertain about their court cases, most of which have been delayed; and having very little ability to control aspects of their own lives, all contribute to increased anxiety for youth in these settings.²⁷

A. Isolation from Family and Loved Ones

Many of the measures that have been adopted in youth facilities in order to reduce the spread of COVID-19 further exacerbate the socio-emotional toll of the pandemic. In-person family visits have been suspended in every state, leaving young people feeling even more isolated and anxious about the health of the people they care about.²⁸ Parents have also expressed concern that they have been given little information about what is being done to protect their children in these

²³ See, e.g. Grench, E. (2020), *COVID Kills Staffer at Juvenile Center Where Youth Are Being Sent for Safety*, The City, <https://thecity.nyc/2020/04/covid-staff-death-rocks-juvenile-center-for-virus-free-youth.html>; Jackman, T. (2020), *D.C. juvenile corrections officer who died of covid-19 was committed to youth at home and at work, family and colleagues say*, The Washington Post, https://www.washingtonpost.com/local/public-safety/dc-juvenile-corrections-officer-who-died-of-covid-19-was-committed-to-youth-at-home-and-at-work-family-and-colleagues-say/2020/04/02/251d3a2e-751c-11ea-85cb-8670579b863d_story.html.

²⁴ CDC (2020), *Coronavirus Disease 2019 (COVID-19): Coping with Stress*, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/managing-stress-anxiety.html>; Golberstein, E., Wen, H., and Miller, B.F. (2020), *Coronavirus Disease 2019 (COVID-19) and Mental Health for Children and Adolescents*, JAMA Pediatrics, <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2764730>; Liang, L. et al. (2020), *The Effect of COVID-19 on Youth Mental Health*, The Psychiatric Quarterly, 1-12, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7173777/>; Leos, C. (2020), *What we learned from teens in the first month after Covid-19 school closures began*, Real Talk, <https://myhealthed.org/blog/2020/4/20/what-we-learned-from-teens-in-the-first-month-after-covid-19-school-closures-began>.

²⁵ Fair and Just Prosecution (2017), *Juvenile Justice and Young Adult Issues: Promoting Trauma-Informed Practices*, 2-3, <https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.TraumaPractices.9.25.pdf>.

²⁶ CDC, *Coping with Stress*, *supra* note 24.

²⁷ Hager, E. (2020), *"I Want to See my Child." Juvenile Lockups Cut Visits Over COVID-19 Fears*, The Marshall Project, <https://www.themarshallproject.org/2020/03/23/i-want-to-see-my-child-juvenile-lockups-cut-visits-over-covid-19-fears>.

²⁸ *Id.*

facilities.²⁹ While many facilities have attempted to replace in-person visitation by increasing video and telephone calls, family members do not always have access to the technology needed for video visitation and in some cases these calls are prohibitively expensive. Moreover, families and children report that neither of these alternatives provide the same level of comfort and stability, especially in a time of crisis, as in-person visits.³⁰ This sentiment is echoed by the American Academy of Pediatrics, which has established that “[c]hildren who suffer trauma are more likely to develop PTSD if they are not with their parents – or are separated from their parents – immediately after the event.”³¹

B. Suspension of Educational and Rehabilitative Programs

Even though the primary purpose of the youth justice system is intended to be rehabilitative, facilities across the country have cancelled many, if not all, of their rehabilitative offerings. While there is a pronounced lack of comprehensive nationwide information about these facilities’ practices in response to the pandemic, in many, school has been cancelled.³² Though students may receive packets of work to complete, they typically lack access to internet-based instruction and resources that may be available to their peers in the community. This disruption in education is particularly harmful for incarcerated youth, as many (estimates vary between 30 and 80 percent) have disabilities that impact their learning.³³ Students with Individualized Education Plans have reported that they are not receiving any individualized help and find it difficult to understand the work they have been assigned.³⁴

Furthermore, the people who normally provide crucial support and programming, such as case managers, volunteers, and clergy members, are no longer coming to facilities, leaving vulnerable young people to manage this emotionally-challenging time on their own, and making rehabilitative and therapeutic opportunities unavailable.³⁵

²⁹ Kingkade, T. (2020), ‘I’m scared for my child’: Coronavirus hits Louisiana juvenile detention centers, NBC News, <https://www.nbcnews.com/news/us-news/i-m-scared-my-child-coronavirus-hits-louisiana-juvenile-detention-n1182756>; Phillips, K. (2020), *Isolated and scared: The plight of juveniles locked up during the coronavirus pandemic*, USA Today, <https://www.usatoday.com/story/news/politics/2020/04/27/coronavirus-juveniles-risk-covid-19-spreads-facilities/3000637001/>.

³⁰ Hager, *supra* note 27.

³¹ Stafford, B., Schonfeld, D., and Keselman, L. (2009), *The Emotional Impact of Disasters on Children and Families*, in *Pediatric Education in Disasters Manual* (Berman, S., ed.), American Academy of Pediatrics, 289, https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Children-and-Disasters/Documents/peds-full-eng_2012.pdf.

³² See, e.g. Kingkade, *supra* note 29; Declarations of J.B., L.H., L.S., and R.P., IN RE: J.B., L.H., L.S., R.P. (2020), https://c026acbc-bc5d-4cef-8584-0a0bde77d83b.filesusr.com/ugd/868471_e7ee35309c104ca69fe85442ab619f05.pdf; Phillips, *supra* note 29.

³³ Read, N. W. (2014), *NDTAC Fact Sheet: Youth with Special Education Needs in Justice Settings*, National Evaluation and Technical Assistance Center for Children and Youth Who Are Neglected, Delinquent, or At-Risk (NDTAC), https://neglected-delinquent.ed.gov/sites/default/files/NDTAC_Special_Ed_FS_508.pdf.

³⁴ Declarations of J.B. and L.S., *supra* note 32.

³⁵ See, e.g. Kingkade, T., *supra* note 29; Phillips, *supra* note 29; Fili, S. (2020), ‘Fight the virus from getting in’: Douglas County Youth Center feeling COVID-19 impacts, KETV 7 ABC Omaha, <https://www.ketv.com/article/fight-the-virus-from-getting-in-douglas-county-youth-center-feeling-covid-19-impacts/32281403>.

“Let us allow this public health emergency to be a rallying cry as we redress the health disparity that has defined our country since its founding.”

— SUFFOLK COUNTY (BOSTON, MA) DISTRICT ATTORNEY RACHAEL ROLLINS

C. Use of Solitary Confinement

Even more disturbingly, some facilities have been keeping youth in conditions akin to solitary confinement. For example, young people in the Harris County, Texas juvenile detention center have been confined to their rooms for 22 ½ to 23 ½ hours per day.³⁶ Youth at Bon Air Juvenile Correctional Center in Virginia have been locked in their cells for 23 hours a day, with little to no human interaction.³⁷

Solitary confinement, particularly of young people, has been condemned by numerous experts and organizations, including the American Academy of Child and Adolescent Psychiatry³⁸ and the American Psychological Association (APA).³⁹ The United Nations has found that solitary confinement of children can be considered a form of torture.⁴⁰ The APA explains:

While solitary confinement is harmful to adult prisoners, it can have especially devastating consequences to youth whose developmental immaturity leaves them more vulnerable to adverse reactions to prolonged isolation. These effects may be exacerbated for children with disabilities or histories of trauma or abuse. Furthermore, solitary confinement among youth is associated with increased risk of self-mutilation, post-traumatic stress disorder, anxiety, depression, paranoia, aggression, and cardiovascular problems. And similarly, rates of suicide are markedly higher for youth when they are placed in solitary confinement.⁴¹

D. Staffing Shortages

COVID-19 has also caused staff shortages within facilities, resulting in volatile and unsafe conditions for staff and youth. Staff have, in some cases, been forced to work 12-hour or longer shifts without overtime pay, creating high stress levels. In some cases, probation officers have been brought into facilities to fill in for absent staff, despite lacking sufficient training on how to work with young people in secure settings. This has led to out-of-control situations and runaway attempts, as well as excessive and inappropriate disciplinary measures such as the use of lockdowns and pepper spray.⁴²

³⁶ A lawsuit filed by public defenders alleged that residents were confined to their rooms for 23 ½ hours per day, while the facility responded that youth were allowed outside of their rooms for 1 ½ hours per day, which would mean 22 ½ hours per day confined to their rooms. Banks, G. (2020), *Reports: Children are in 23½ hour-a-day lockup at Harris County juvenile facility amid COVID-19*, Houston Chronicle, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Reports-Children-are-in-23-hour-a-day-lockup-15187249.php>.

³⁷ Phillips, *supra* note 29.

³⁸ American Academy of Child and Adolescent Psychiatry (2012), *Solitary Confinement of Juvenile Offenders*, https://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx.

³⁹ American Psychological Association (APA) (2017), *Letter to Senator Cory Booker in Support of the Maintaining Dignity and Eliminating Unnecessary Restrictive Confinement of Youths (MERCY) Act of 2017*, <https://www.apa.org/advocacy/criminal-justice/juvenile-solitary-confinement.pdf>.

⁴⁰ Méndez, J.E. (2011), *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, United Nations, <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

⁴¹ APA, *supra* note 39 (internal citations omitted).

⁴² Lane, E. and LaRose, G. (2020), *'There was no control,' says Bridge City youth prison guard about riot*, WDSU News, <https://www.wdsu.com/article/there-was-no-control-says-bridge-city-youth-prison-guard-on-riot/32259043>; see also, *Class Action Complaint for Declaratory and Injunctive Relief and Petition for writ Of Habeas Corpus, J.H. et al. v. John Bel Edwards et al.* (2020), 31, <https://jlc.org/sites/default/files/attachments/2020-05/D1%202020.5.14%20Complaint.pdf> (outlining the effect of staff shortages on the young people held at Office of Juvenile Justice facilities in Louisiana).

IV. The Impact of COVID-19 on Justice-System-Involved Young People in the Community

Even for those who are not incarcerated, justice system involvement can be particularly harmful for young people in the context of COVID-19. For example, if youth on community supervision are required to meet in person at a probation office, this will expose them (and others in their household) to increased risk of contracting COVID-19 both at the office and, for those who rely on public transportation, during the course of their travel to and from these appointments.

Technical violations of probation are also typically a major driver of incarceration,⁴³ and challenges associated with the pandemic may make it more difficult for young people to comply with certain probation requirements. For example, a teenager with disabilities was incarcerated in Michigan for violating her probation when she failed to complete schoolwork as she struggled to adjust to the challenges of online learning without the supports required by her Individualized Education Plan.⁴⁴

Even prior to the pandemic, fines and fees caused substantial harm to young people and their families and contributed to disparities in case outcomes between those who could afford to pay and those who could not;⁴⁵ this burden is now heightened for the many families who have lost income as a result of COVID-19.⁴⁶ In addition, some jurisdictions are turning to ankle monitors or other technology as a substitute for incarceration or traditional probation supervision during the pandemic.⁴⁷ However, electronic monitoring can also increase the risk that young people will be brought deeper into the system based on very minor violations, and often adds additional financial pressure, as families are frequently required to pay the costs of the technology.⁴⁸

REDUCING POPULATIONS IN YOUTH FACILITIES TO MITIGATE THE HARMS OF COVID-19

The top priority for addressing the COVID-19 threat in the youth justice system should be releasing as many young people from youth facilities as possible. More than 70% of young people in these facilities are there for status offenses, technical violations, or non-violent crimes,⁴⁹ and do not present a risk to public safety. Even prior to the pandemic, evidence suggested that a large number of these young people were locked up unnecessarily and would have achieved

⁴³ Sawyer, W. (2019), *Youth Confinement: The Whole Pie 2019*, Prison Policy Initiative, <https://www.prisonpolicy.org/reports/youth2019.html>.

⁴⁴ Cohen, J. (2020), *A Teenager Didn't Do Her Online Schoolwork. So a Judge Sent Her to Juvenile Detention.*, ProPublica, <https://www.propublica.org/article/a-teenager-didnt-do-her-online-schoolwork-so-a-judge-sent-her-to-juvenile-detention>.

⁴⁵ Feierman, J., et al. (2016), *Debtors' Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, Fines and Fees Justice Center, <https://finesandfeesjusticecenter.org/articles/debtors-prison-kids-fines-fees-juvenile-justice/>.

⁴⁶ Juvenile Law Center (2020), *Advocacy Groups Issue Call for Nationwide Moratorium on Fees and Fines Imposed on Youth and Families in Juvenile System Amid COVID-19 Crisis*, <https://jlc.org/news/advocacy-groups-issue-call-nationwide-moratorium-fees-and-fines-imposed-youth-and-families>.

⁴⁷ See, e.g., Watson, T. (2020), *COVID-19 Limits Juvenile Lock Up*, Wyoming Public Media, <https://www.wyomingpublicmedia.org/post/covid-19-limits-juvenile-lock#stream/0>.

⁴⁸ Crump, C. (2019), *Tracking the Trackers: An Examination of Electronic Monitoring of Youth in Practice*, UC Davis Law Review, 53(2), 795-837, https://lawreview.law.ucdavis.edu/issues/53/2/articles/files/53-2_Crump.pdf.

⁴⁹ Sickmund, M., et al. (2019) *Detailed Offense Profile by Placement Status for United States, 2017*, Easy Access to the Census of Juveniles in Residential Placement, National Center for Juvenile Justice, https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/Offense_Adj.asp.

better outcomes through community-based programming.⁵⁰ In fact, jurisdictions such as New York City and Washington, D.C. that massively reduced youth justice populations in recent years simultaneously saw large drops in youth crime.⁵¹ Under current circumstances, continuing to incarcerate young people creates substantial risk to both their physical and mental health. This is particularly unjustifiable for those who do not present a public safety risk, given that little to no rehabilitative services are taking place in many facilities at this time.

Experts from a range of fields, including physicians,⁵² current and former leaders of youth correctional agencies across the country,⁵³ and UNICEF,⁵⁴ have similarly called for the release of incarcerated children in light of COVID-19. Some jurisdictions have made significant progress on this front. **Maryland** released approximately 200 young people, reducing the population in state youth detention facilities by nearly one-third.⁵⁵ **North Carolina** reduced its daily youth detention population by 25% between the beginning of March and mid-April, and also reduced the population in its long-term facilities for children who have been adjudicated delinquent by 9% during that period.⁵⁶ A survey conducted by the Annie E. Casey Foundation found that in the jurisdictions involved in its Juvenile Detention Alternatives Initiative (JDAI) (a non-random group of communities in 30 states that represent about one-tenth of U.S. counties), detention populations dropped by 32% from March 1 through May 1, while new admissions fell by 52% during that

⁵⁰ Aizer, A. and Doyle, J.J. (2015), Juvenile Incarceration, *Human Capital and Future Crime: Evidence from Randomly-Assigned Judges*, Quarterly Journal of Economics, 130(2), 759–803, https://www.researchgate.net/publication/272413343_Juvenile_Incarceration_Human_Capital_and_Future_Crime_Evidence_from_Randomly-Assigned_Judges; McCarthy, P., Schiraldi, V., and Shark, M. (2016), *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, New Thinking in Community Corrections Bulletin. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/ntcc_the_future_of_youth_justice.pdf.

⁵¹ Weissman, M., Ananthakrishnan, V., and Schiraldi, V. (2019), *Moving Beyond Youth Prisons: Lessons from New York City's Implementation of Close to Home*, Columbia University Justice Lab, https://justicelab.columbia.edu/sites/default/files/content/Moving%20Beyond%20Youth%20Prisons%20-%2020C2H_0.pdf; Ryan, L. and Schindler, M. (2011), *Notorious to Notable: The Crucial Role of the Philanthropic Community in Transforming the Juvenile Justice System in Washington, D.C.*, <https://dyrs.dc.gov/sites/default/files/dc/sites/dyrs/publication/attachments/Notorious%20to%20Notable.pdf>.

⁵² Physicians for Criminal Justice Reform (2020), *Open Letter: COVID-19 Risks for Detained and Incarcerated Youth*, <https://pfcjreform.org/covid-19-risks-for-detained-and-incarcerated-youth/>.

⁵³ Youth Correctional Leaders for Justice (2020), *Recommendations for Youth Justice Systems During the COVID-19 Emergency*, <https://yclj.org/covid19statement>.

⁵⁴ Fore, H. (2020), *Children in detention are at heightened risk of contracting COVID-19 and should be released*, UNICEF, <https://www.unicef.org/press-releases/children-detention-are-heightened-risk-contracting-covid-19-and-should-be-released?fbclid=IwAR1JtrfT0K9M52tKpF0EGsiQlynQt41kyEKE-u1algV0YlhSYgN0ooYG3Q4>.

⁵⁵ Broadwater, L. (2020), *Maryland releases about 200 juveniles from detention centers amid coronavirus pandemic*, Baltimore Sun, <https://www.baltimoresun.com/coronavirus/bs-md-pol-juvenile-release-coronavirus-20200427-4mjlk5pawnbpnafusvm7a7b7g4-story.html>.

⁵⁶ Kees, D. (2020), *State Juvenile Justice Officials Reduce Juveniles Held in Custody, Institute Operational Changes in Response to Coronavirus*, North Carolina Department of Public Safety, <https://www.ncdps.gov/blog/2020/04/14/state-juvenile-justice-officials-reduce-juveniles-held-custody-institute-operational>.

“If we can safely keep kids in the community with COVID, why can’t we do it without COVID? We might reconsider how we use detention, and maybe do it better.”

— LOUDOUN COUNTY (VA) COMMONWEALTH’S ATTORNEY BUTA BIBERAJ

period.⁵⁷ Some localities have made even larger strides proportionately. Only four residents remain at the **Cowlitz County Youth Services Center (Washington State)** compared to an average daily population of 18-20 prior to the pandemic,⁵⁸ and the **Porter County Juvenile Detention Center (Indiana)** brought its population from an average of 13 young people down to two.⁵⁹ Plus, six youth prisons and detention facilities in five states have been permanently shuttered or temporarily closed during the pandemic.⁶⁰

Nonetheless, far too many young people still remain behind bars. Moreover, after a surge in releases early in the pandemic, progress has stalled, and the incarcerated youth population actually grew in May. And Black children have been released at a slower rate than white children, resulting in even greater racial disparities in youth incarceration rates than existed prior to the pandemic.⁶¹

While the pandemic has intensified efforts to decarcerate young people, the need to close youth prisons and instead focus on more effective community-based interventions long predates COVID-19 and will outlast the pandemic. As a new report, [Can we eliminate the youth prison? \(And what should we replace it with?\)](#), makes clear, youth prisons cause immense harm to young people, make our communities less safe, and are plagued by tremendous racial disparities that have been increasing.⁶² Moreover, as laid out in a second new report, [Sticker Shock 2020: The Cost of Youth Incarceration](#), the financial cost of these outdated institutions is staggering and growing rapidly. The average cost to incarcerate a young person for one year is \$214,620, a 44 percent increase from 2014 – and several states spend more than \$500,000 per incarcerated child per year.⁶³ These massive sums could do far more to promote public safety if they were instead invested in communities and prevention, including in non-carceral youth justice programs like the ones that have been successfully implemented in New York City and Washington, D.C. (as discussed above).

Recognizing this starting point, and the need to build on the lessons learned both prior to and during the COVID-19 crisis, over 30 elected prosecutors and over 40 youth correctional administrators recently issued a [joint statement](#), calling for the closure of youth prisons.⁶⁴ These criminal justice leaders unequivocally stated: “As professionals charged with promoting the

⁵⁷ The Annie E. Casey Foundation (2020), *COVID-19 Juvenile Justice Survey: Youth Detention Admissions Fell by More Than Half in Two Months*, <https://www.aecf.org/blog/covid-19-juvenile-justice-survey-youth-detention-admissions-fell-by-more-th/>.

⁵⁸ Cowlitz County (2020), *Cowlitz County Youth Services Update*, <https://wa-cowlitzcounty.civicplus.com/CivicAlerts.aspx?AID=405>.

⁵⁹ Kasarda, B. (2020), *County juvenile center nearly cleared out to dodge COVID-19*, NWI Times, https://www.nwitimes.com/news/local/county-juvenile-center-nearly-cleared-out-to-dodge-covid-19/article_2217d979-d6bf-538b-9f94-899e554b3b5c.html.

⁶⁰ Youth First (2020), *Youth Prison and Juvenile Detention Facility Closures During Covid19*, <https://www.nokidsinprison.org/youth-prison-juvenile-detention-facility-closures-during-covid19>.

⁶¹ The Annie E. Casey Foundation (2020), *Youth Detention Admissions Remain Low, But Releases Stall Despite COVID-19*, <https://www.aecf.org/blog/youth-detention-admissions-remain-low-but-releases-stall-despite-covid-19/>.

⁶² Schiraldi, V. (2020), *Can we eliminate the youth prison? (And what should we replace it with?)*, <https://squareonejustice.org/paper/can-we-eliminate-the-youth-prison-and-what-should-we-replace-it-with-by-vincent-schiraldi-june-2020/>.

⁶³ Justice Policy Institute (2020), *Sticker Shock 2020: The Cost of Youth Incarceration*, http://www.justicepolicy.org/uploads/justicepolicy/documents/Sticker_Shock_2020.pdf.

⁶⁴ Joint Statement by Fair and Just Prosecution and Youth Correctional Leaders for Justice on Closing Youth Prisons (2020), <https://fairandjustprosecution.org/wp-content/uploads/2020/07/Joint-Statement-on-Youth-Prisons-FINAL.pdf>.

public's safety and well-being, rehabilitating young people and seeking justice, the time has come for us to speak out and oppose the continued operation of these facilities."⁶⁵

THE PROSECUTOR'S ROLE IN ADDRESSING COVID-19 IN THE YOUTH JUSTICE SYSTEM

As part of their mission to promote safe and healthy communities, prosecutors have a responsibility to protect young people in the justice system, as well as the general public, from avoidable harm due to COVID-19. Consistent with this duty, some elected prosecutors (as noted in the examples below) have taken steps to help bring kids home to their families and communities, prevent new young people from entering incarceration, and protect those who are not able to be released:

- **San Francisco District Attorney Chesa Boudin** worked with others in the justice system to cut the population at San Francisco's Youth Guidance Center by 50 percent.⁶⁶
- **Washington, D.C. Attorney General Karl Racine** worked with the court and police to obtain an order limiting the circumstances under which a young person can be taken into custody to those in which the youth presents a risk of harm to themselves or others.⁶⁷
- **Eight Commonwealth's Attorneys from Virginia** (including Parisa Dehghani-Tafti, Arlington County and City of Falls Church; Stephanie Morales, Portsmouth; Buta Biberaj, Loudoun County; James Hingeley, Albemarle County; Steve Descano, Fairfax County; and Joseph Platania, City of Charlottesville) jointly submitted a letter to the Virginia Secretary of Public Safety and Homeland Security urging him to "take immediate action to ensure that the Department of Juvenile Justice, local detention centers and each facility holding incarcerated young people in the Commonwealth take every reasonable precaution to keep all youth and the staff that care for them safe and healthy while protecting their human rights."⁶⁸ The letter includes a range of specific recommendations aimed at greatly reducing the number of incarcerated children in the state and addressing the needs of both those who are released and those who remain in custody.

⁶⁵ *Id.*

⁶⁶ Boyer, T. (2020), *Around U.S., Advocates Call For Emptying Juvenile Facilities Over COVID-19*, Juvenile Justice Information Exchange, <https://jjie.org/2020/04/06/around-u-s-advocates-call-for-emptying-juvenile-facilities-over-covid-19/>.

⁶⁷ Superior Court of the District of Columbia (2020), *Administrative Order 20-07: Authority for MPD to Release Juveniles Who Have Been Arrested on Juvenile Custody Orders for Failure to Appear and Abscondances*, <https://www.dccourts.gov/sites/default/files/2020-03/20-07-Authority-for-MPD-to-Release-Juveniles.pdf>.

⁶⁸ Letter to Secretary Brian Moran (2020), <http://www.riseforyouth.org/wp-content/uploads/2020/04/Commonwealths-Attorneys-Letter-of-Support-for-Release-of-Youth-During-Pandemic.pdf>.

"We're making these changes to encourage other jurisdictions around the country to join us in recognizing that, as so many public health officials have demanded, we must reduce the jail and detention populations right now. Public health depends on it, and public safety in fact depends on it."

— SAN FRANCISCO (CA) DISTRICT ATTORNEY CHESA BOUDIN

RECOMMENDATIONS

District Attorneys are in a powerful position to reduce the harm of COVID-19 to youth in the justice system and their communities. They can have a direct impact, by instructing line prosecutors in their office to exercise discretion to keep young people out of the justice system and out of custody, and can also use their voices as elected justice system leaders to push other system players to take action.

Many of the recommendations below are similar to recommendations made in FJP's recent issue brief, [*COVID-19 and the Criminal Justice System: Reducing and Avoiding Incarceration During a Pandemic*](#), where they are developed in more detail. Elected prosecutors should:

- 1. Reduce the number of young people entering the youth justice system and coming into custody.**
 - Work with law enforcement and the courts to limit arrests to only serious charges that directly impact public safety.
 - Use prosecutorial discretion to limit new charges.
 - Recommend release on recognizance for all cases, absent clear evidence that release would present a serious danger to the physical safety of others.
 - Where appropriate, and with consent, delay prosecution of cases unless the young person is in custody.
 - Do not seek detention for technical violations of probation or aftercare/parole.
- 2. Promote release for young people who are currently incarcerated.**
 - Require line prosecutors to seek pretrial release for most youth already held pretrial.
 - Advocate that relevant decision-makers, such as youth correctional agencies and governors, release youth with low- or medium-risk profiles and provide them with appropriate treatment within the community. For jurisdictions that do not employ a risk-needs-responsivity framework, encourage the release of broad categories of young people who are held post-disposition, such as children who are medically vulnerable, those incarcerated for low-level crimes or crimes that do not impact public safety, and those that already have scheduled release dates within six months.
 - Urge individualized consideration of remaining cases to identify additional young people who could be sent home safely.
 - Work with other stakeholders to ensure that young people are returning to a safe environment with appropriate supports in place, including health insurance and treatment referrals.
- 3. Support healthy and rehabilitative conditions for youth who remain in custody.**
 - Encourage youth correctional agencies to ensure strong connections with families through in-person visits if they can be accomplished safely, or free and unlimited phone and video calls and emails, as well as making sure that staff provide regular updates to families about their child and the situation at the facility.
 - Ensure that young people are able to have free, unlimited, and confidential communication with counsel.
 - Press for the continuation of schools if possible, and, at a minimum, that youth are provided

with alternate educational opportunities accessible to each young person taking into account any disabilities.

- Encourage correctional facilities to provide mental and physical health resources as well as other positive activities.
- Push facilities to take appropriate measures to prevent the spread of COVID-19, such as providing quality medical care, maintaining physical distance, providing sanitation supplies and personal protective equipment, ensuring that facilities are disinfected regularly, and conducting testing of all individuals.⁶⁹ Robust testing is particularly important in the youth justice context given that young people are particularly likely to be asymptomatic but contagious. ***In no case, however, should young people be held in conditions akin to solitary confinement.***

4. Advocate for measures to address the impact of COVID-19 for justice-system-involved young people in the community.

- Seek the elimination of fines and fees, early discharge for youth who have been doing well on probation or aftercare, alternatives to requirements that young people go in person to probation offices, and restrictions on electronic monitoring to avoid unnecessary harm.
- Urge policymakers to provide additional resources for programming to serve as alternatives to detention and to provide adequate aftercare programming for young people being returned to the community.

CONCLUSION

Across the country, jurisdictions have undertaken drastic measures to flatten the curve of COVID-19. Failure to take similarly strong steps within the youth justice system both undermines those efforts and threatens the physical and mental health of some of our society's most vulnerable children.

These concerns are dire. There is no time to delay – waiting even a few days can be the difference between getting young people out of a facility before anyone there is infected versus the much greater challenge of responding amid widespread transmission within a facility. It is imperative that DAs, along with other leaders, act now to protect the health and safety of young people who are incarcerated, as well as the entire community.

⁶⁹ New Jersey, for example, has committed to testing all youth in the state's Juvenile Justice Commission facilities. Insider NJ (2020), *NJISJ: Following Advocacy from Civil Rights and Youth Justice Advocates, Attorney General Grewal Announces All NJ Kids in JJC Facilities Will be Tested for COVID-19*, <https://www.insidernj.com/press-release/njisj-following-advocacy-civil-rights-youth-justice-advocates-attorney-general-grewal-announces-nj-kids-jjc-facilities-will-tested-covid-19/>.

FOR MORE INFORMATION: Contact FJP at info@fairandjustprosecution.org

