

COVID-19

IN THE MICHIGAN YOUTH JUSTICE SYSTEM

CRISIS, RESPONSE & OPPORTUNITY



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THE CRISIS

The rise in the number of COVID-19 cases in Michigan has highlighted public health concerns for youth in detention centers and residential placements. Congregate living facilities are inherently high-risk environments for viral spread, and three juvenile facilities have already reported confirmed COVID-19 cases. Young people are housed closely together in pods, units or dormitory-style housing, precisely the kind of conditions that have raised concerns about nursing homes and prisons, and led to the closure of universities all over the country.

Youth and facility staff in confined settings face challenges in keeping themselves safe by engaging in the proactive measures recommended by the Centers for Disease Control and Prevention (CDC), such as social distancing, frequently washing hands, or staying in sanitized spaces, while still being able to participate in daily activities that require movement within the facilities (mealtimes, educational programming, etc.). Youth with pre-existing conditions such as asthma, diabetes, or another chronic or serious illness that put them at a higher risk for contracting the virus are particularly vulnerable.

Many juvenile facilities have canceled in-person family visitation due to the highly contagious nature of COVID-19, which may exacerbate mental health disorders that are common in the youth justice system. A 2014 study by the University of Michigan Child and Adolescent Data Lab found that “75% of juvenile detainees (in Michigan) met the diagnostic threshold for at least one mental health disorder,” with 33% reporting a major depressive episode, and 10% meeting the criteria for post-traumatic stress disorder.

There are twenty-five juvenile detention facilities in Michigan operated by counties or courts for local youth, or youth from other counties through reciprocity agreements. These centers detain young people who are considered a risk to public safety or to themselves, have a history of not showing for court hearings, are awaiting a court hearing, were given a



sanction for violation of a court order, or are awaiting placement in a residential facility. In addition, the state operates two secure residential facilities, and contracts with twenty-one private facilities, primarily for longer-term treatment and removal from the community.

Michigan's juvenile justice system, and its court system, are decentralized, which means that decisions about a youth's case are made by the local circuit or probate court. Unlike the adult system, youth are not “convicted” and given a sentence. The youth justice system is based on a treatment and rehabilitation model, rather than punishment. In 2018 the State Court Administrative Office reported approximately 10,000 youth were under court supervision for delinquency and Michigan State Police records indicate that 92% of youth arrests were for non-violent charges.

Michigan does not have a centralized system to collect and report juvenile justice data. There is no single source of information about how many youth are confined in detention centers and residential facilities, their demographic data, the reasons for their confinement, or their length of stay. As a result, statewide information about the number and profile of Michigan youth who have contracted COVID-19, or who have been released in response to the crisis, is unavailable.

THE RESPONSE

The Michigan Center for Youth Justice (MCYJ) in collaboration with the Center for Behavioral Health and Justice at Wayne State University (CBHJ) surveyed juvenile court and facility staff to better understand the measures taken by juvenile justice professionals in response to the COVID-19 outbreak, and the impact of the orders/guidance issued by the governor and Michigan Supreme Court. This report highlights the best and most creative practices used by Michigan's juvenile justice system, and offers specific recommendations for continuing the reduction of youth housed in detention centers and residential facilities after the COVID-19 pandemic subsides. Unless given permission to identify practices shared by specific juvenile courts, all survey results are included anonymously.

MICHIGAN SUPREME COURT

In late March 2020, the State Court Administrative Office (SCAO) issued memoranda to judges, court administrators, and probate registers, asking courts to "consider taking steps to reduce the population of juvenile justice facilities to further efforts to protect public health." This was followed by a request to "identify youth placed in detention/residential facilities and request a risk/needs assessment from the facility to determine which youth can be safely returned home." If a release is deemed appropriate and uncontested by the supervising judge, the prosecutor and the youth's attorney, then SCAO offered guidance for how courts could "order de-escalation and release with whatever conditions it determines is appropriate." If there is any objection, SCAO asked that a remote hearing be conducted as soon as possible.

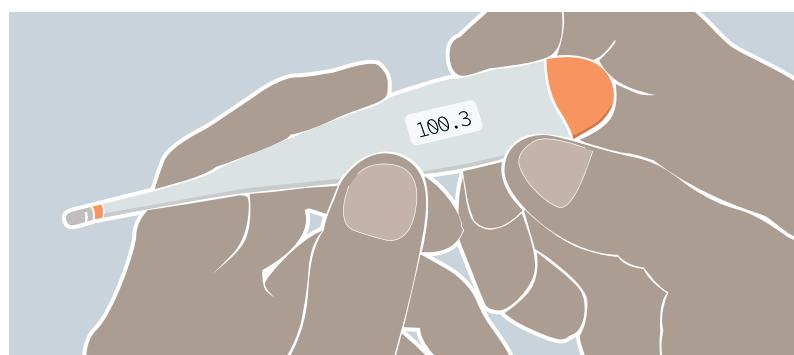
The April 7, 2020 "Michigan Trial Courts Virtual Courtroom Standards and Guidelines" authorized judicial officers to conduct remote proceedings and set standards and guidelines, while highlighting best practices. The standards and guidelines include: upholding a defendant's and victim's constitutional right to be present; enabling confidential communication between a defendant and their counsel; allowing submission of exhibits and electronic signatures, creating a record of proceedings, maintaining the decorum of the court, and public and press access

to open proceedings. Although public access is currently required by statute, current guidelines allow for recorded hearings to be posted on YouTube.

GOVERNOR WHITMER

Governor Gretchen Whitmer issued numerous executive orders related to COVID-19, several of which have a direct impact on youth in juvenile detention and residential facilities.

The governor imposed restrictions on visitors to juvenile justice facilities, and requested that facilities make their best efforts to facilitate visitations by phone or other electronic communication platforms, consistent with normal visitation policies. In addition she ordered juvenile justice facilities to perform a health evaluation of all staff and visitors who seek to enter a facility, and deny entry to anyone who has a fever and/or symptoms of a respiratory infection, or has had contact with someone with a confirmed diagnosis of COVID-19 in the last 14 days.



Governor Whitmer also "strongly encouraged" additional actions to safely reduce the number of youth in congregate care facilities. She could not order these actions because most youth in Michigan's juvenile justice system are under the jurisdiction of county-based juvenile courts. Her encouragement includes reducing the number of confined youth by eliminating any form of facility placement unless a youth is determined to be a substantial and immediate safety risk to others, and by suspending out-of-home confinement for

technical violations of probation. For youth who remain in facilities, she recommends separating youth who have COVID-19 symptoms, communicating with youth regarding COVID-19, access to medical care, and community-based support, and facilitating no-cost access to family, education, and legal counsel through electronic means. Finally, she recommends that any requirements for in-person meetings with probation officers be temporarily suspended.

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

The MDHHS Children's Services Agency followed the recommendations from the governor with an on-going series of communication issuances, to public and private providers and their case management staff, which reflect and strengthen the governor's recommendations. The MDHHS guidelines prohibit recommending placement of youth in detention or residential facilities for technical violations and require any recommendation for placement in residential or detention facilities to be based on risk assessment demonstrating that the youth is a substantial and immediate safety risk to others. In addition, the policy guidance requires that case managers, residential and detention staff review cases for appropriateness of early release and make such recommendations to the court.

LOCAL COURTS AND DETENTION CENTER SURVEYS

Thirteen non-identified juvenile courts and detention centers from rural, urban and suburban counties responded to the MCYJ/CBHQ survey request at the beginning of April 2020. An additional three courts went on record to describe their new and modified protocols for reducing confinement, keeping youth safe, and preventing the spread of COVID-19. The results, which only represent a point-in-time snapshot, show that early in the pandemic the courts and detention centers surveyed had already employed multiple strategies to protect the health and wellbeing of youth under their supervision.

Reduction of youth in detention centers: Most of the juvenile courts who responded reported a reduction of youth in detention centers. This was accomplished through modifications to detention screenings, a change in admissions criteria to only accept youth who are the greatest risk to public safety, and suspending admissions from other counties who were renting beds in their facilities. One court suspended new detention admissions altogether. Another was unable to stop a new admission because they lacked other options, such as a specialized foster care placement or supervised independent living for a youth who could not be released to his home. Some youth were selected for step-down, which allows for electronic monitoring in the community. Generally, courts are considering the availability of services for youth in their communities; are carefully reviewing the cases of youth with nonviolent offenses for release to community-based probation and other services; and are utilizing video conferencing for hearings.

The Family Division of the 20th Circuit Court (Ottawa County) reviewed and analyzed each young person for risk, seriousness of the offense, and public safety. As a result, they have successfully reduced the number of youth in detention by releasing young people that were detained for probation or law violations.

The Family Division of the 38th Circuit Court (Monroe County), is limiting the number of youth in their detention center by halting new admissions. When asked about their tactics to promote safety during the pandemic, their administrator, Melissa Strong, stated "We have not had any new admissions... and will not take youth unless they have committed a significant crime." This ensures that all youth who must remain in the facility have plenty of space for distancing, and each youth has their own living space.

The Family Division of the Berrien County Trial Court has significantly reduced the number of youth in their detention center. By reviewing risk assessments, treatment progress, and re-entry plans, Berrien County has reduced their facility to under 50% capacity.

Reduction of youth in residential facilities: Most of the rural communities surveyed had few youth in residential facilities prior to the pandemic, and expected them to remain confined. Two courts had no youth in residential care. Three urban/suburban courts reported reductions, including one that released three youth who had completed the majority of their treatment milestones, with assessments in progress for the remaining fifteen youth. Another court reported an increased use of alternative options for residential placement for youth, including step-down of appropriate youth into aftercare services.

The Family Division of the Berrien County Trial Court

Trial Court utilized teleconference meetings with residential facility treatment staff to identify youth who tested negative for COVID-19 and were within 90 days of release. Community reentry was accelerated for five youth based on risk levels, their progress in treatment and their needs for supervision and aftercare services.

Protections for youth who remain in facilities:

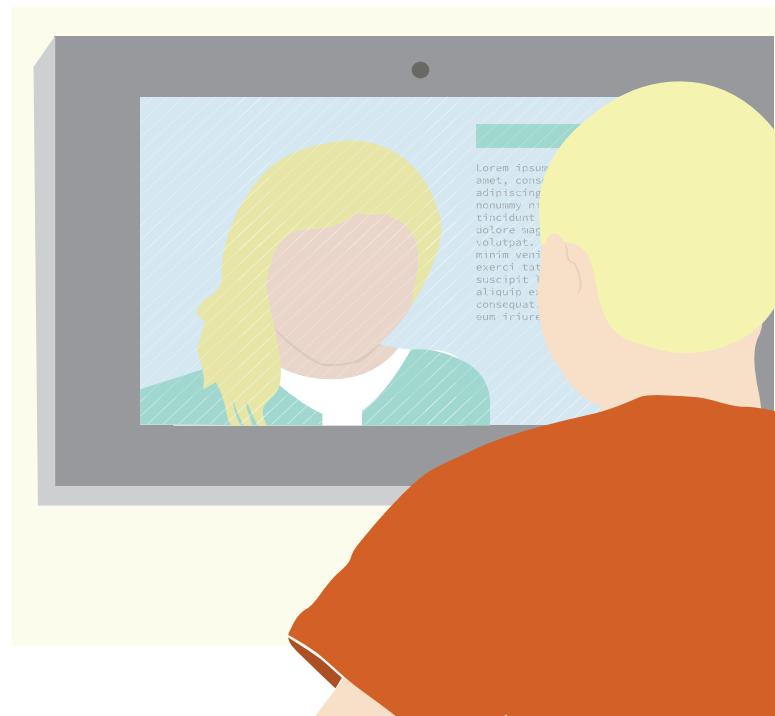
The quick reduction in detention placements by most of the courts surveyed allowed for better social distancing in facilities. Survey respondents also reported that measures have been taken to increase staff and youth safety in detention by intensifying cleaning and sanitation procedures; suspending in-person visitation; reducing the number of staff present (while staying in compliance with licensing regulations); and implementing regular health screenings.

Facilities are responding differently to the presence of symptomatic youth. Some are employing medical isolation of youth when deemed necessary; one survey respondent reported that they are releasing those youth to their family and providing medical support as needed. Facilities are employing social distancing measures when they are able, and increasing the use of electronic communications (phone, video conferencing, etc.).

Alternative visitation options for youth and their families: Courts are taking varied approaches to visitation in response to increased safety concerns and the governor's executive orders. Of the respondents

In Ottawa and Berrien County Detention Centers, family visits have been moved to an online video format to comply with CDC distancing guidelines. Ottawa was already using videoconferencing to connect out-of-county youth with family and court officials. Both counties are now using video conferencing for telehealth and therapeutic interventions and to provide youth with positive social activities during the pandemic.

surveyed, most are employing alternative visitation options for youth and their families, including the use of videoconferencing, and have increased the frequency of free phone calls.



Availability of healthcare resources inside and outside facilities: The presence of health resources varies by court (and county). One court reported a full-time, on-site nurse available to youth in their detention center; another utilizes an on-call physician and a visiting nurse. One court is actively working with their health department to create protocols around the presence of COVID-19; another stated that community resource information is being provided to youth and families by probation officers.

Educational, recreational, and treatment programming: Four of the courts reported continuing to provide educational programming using online technology; one reported continuing all programming, *except* education, based on their interpretation of the governor's order about schools. Numerous courts are continuing to provide treatment, such as mental health therapy, through videoconferencing.

Community supervision and treatment services: Electronic communications are being employed by several of the courts to allow for the continuation of court-related supervision and services in the community. One court moved solely to video and phone conferencing for reporting; others have increased communications with higher-risk youth as well as their families, in some cases on a daily basis, or have provided youth and families with probation staff cell phone information to increase accessibility. Another court suspended or relaxed probation-related community service, drug screens, and payment requirements. Two courts are using remote technology to connect youth with telehealth, individual therapy and/or therapeutic group counseling. There are some concerns about the capacity to do reentry planning and the community's ability to support successful reintegration due to school closures.

The Family Division of the 38th Circuit Court

(*Monroe County*) is allowing probation officers to meet with the youth they supervise, while practicing social distancing, through remote meetings using video software such as Zoom, Facetime, and Skype. Youth can also access court-ordered community treatment via telehealth.

The Berrien County family court administrator recognized there are struggles with releasing kids quickly.

"Not only are kids coming back into the community; one of the natural support systems they would have is getting reconnected to school. Now having to face reality that they're not going to be able to go to school. [School] is a protective factor for kids."

THE OPPORTUNITIES

The juvenile court and facility staff we surveyed responded to the COVID-19 pandemic by prioritizing the safety and well-being of the young people under court jurisdiction. The emergency need to reduce the spread of the virus resulted in a significant decrease of court-supervised youth housed in their detention centers and residential facilities. Many of the responding juvenile courts continued existing policies aimed at limiting the number of youth removed from home. Others created innovative practices for deciding whether or not youth housed in detention centers and/or residential facilities could be safely released, and halted new admissions unless a youth was determined to be an immediate and substantial risk to public safety. New protocols for accelerating discharge were established, and juvenile court and facility staff reported making concerted efforts to ensure that youth who remained in congregate care continued to receive high-level treatment and educational programming while maintaining regular communication with their families using new and/or already existing technological resources.

Many of the temporary changes created in response to the COVID-19 pandemic may prove permanently beneficial to juvenile courts, detention centers, and residential facilities. These quickly implemented reforms raise important questions about how to continue best practices in the future. If we are able to safely defer a larger proportion of juveniles from detention due to COVID 19, might we be able to continue to defer larger numbers from detention in the future? If youth can be safely and effectively served in the community now, can we divert more young people to such services in the future?

Research demonstrates that youth served in the community have improved outcomes compared to youth served in a juvenile justice facility. The cost savings resulting from fewer youth in out-of-home placements may motivate communities to make permanent the policies and/or practices implemented during this time, and change how determinations for out-of-home placements are made in the future. This crisis has demonstrated the resiliency of our courts and their openness to developing new options for serving youth and their families.

RECOMMENDATIONS

MCYJ/CBHJ recommends continuation of the following protocols and strategies used to reduce the number of confined youth during COVID-19, to maintain reductions after the pandemic ends.

1 Reduce admissions to juvenile detention centers; reduce length of stay.

>> Utilize objective and validated risk and needs screening/assessment tools to determine the need for detention and to identify any required community supports. Do not admit youth into a juvenile detention center unless they pose an immediate and significant public safety or flight risk.

>> Before detaining a youth for technical violations of probation, require supervisory consultation and approval; use community-based, graduated sanctions/rewards and restorative justice approaches instead.



>> Explore using “step-down” measures, such as GPS-enabled tethers and tracking using mobile phones, Facetime, Google calls and other mobile monitoring, in order to release youth from detention who require more intensive supervision in the community, but still do not pose an immediate/significant safety risk.

>> Expand the use of alternatives to secure placements, such as specialized foster care homes, and supervised independent living, that provide a community-based, home-like environment for youth who require out-of-home placement.

2

Utilize technological resources to communicate with youth/families, legal counsel and the courts; provide expanded treatment options to youth in facilities and in community-based settings.

>> Implement regular video conferencing to enhance communications between families and confined youth in all courts (particularly helpful for out-county youth housed in rented detention beds or placed in secure placements far from home), and to increase family participation in facility treatment programming.

>> Use telehealth options to provide mental and physical health care and to address identified treatment gaps in community-based services, especially in under-resourced rural communities,



in particular to provide specialized mental health treatment and psychiatric consultation. Rural courts have previously identified an urgent need to expand community-based treatment options as an alternative to detention. The expansion of remote technology in response to COVID-19 provides an opportunity to expand their access to treatment providers outside of driving distance.

>> Assist community-based youth and their families in obtaining technology enablers, such as mobile phones or tablets, to close the digital divide and enable them to participate in virtual treatment and services by expanding Child Care Fund reimbursement eligibility.

>> Improve confidentiality of youth proceedings, in person and when held remotely.

3

Ensure consistent reentry planning for all youth released from detention/residential facilities.

>> Establish a written reentry plan, normally within six months pre-release, but as soon as possible during the pandemic.

>> Continuously review resident's progress to allow for early release.

>> Use evidence-based assessments tools to identify the critical aftercare services that will be needed based upon a youth's unique risk and need profile.

>> If not already doing so, ensure that youth have their basic needs met for housing, food and medical care upon release from facilities, including a 30-day supply of any prescribed medications.

>> Coordinate with community-based service providers, including Community Mental Health agencies, family-serving agencies, and local school districts, to seamlessly deliver aftercare services.

4

Implement statewide data reporting/analysis to better track youth in placements and to determine if changes implemented pursuant to COVID-19 have an impact on juvenile justice outcomes.

>> Establish statewide juvenile justice data policies, procedures, and a centralized data repository in which every county participates, so that it is possible to analyze and report on aggregate information for youth progressing through the juvenile justice system. Analyze data both in community and out-of-home placements, to measure outcomes for system efficacy.

>> Ensure that every county has the capacity and infrastructure to collect and analyze data in a way that promotes outcome-driven decision-making and targeted investments of limited resources.

NEXT STEPS

Additional research is needed to assess the long-term impact of the changes made to the juvenile justice system to reduce the spread of the COVID-19 virus. Was there a decrease in public safety following the accelerated release of youth from detention centers and residential placements into the community? An evaluation of outcomes for youth released from congregate care during this period--comparing youth released as part of a COVID-19 response with a comparative group of youth who were released using previous procedures--could inform juvenile courts in how they determine the need for detention/residential facilities for youth who do not pose a significant safety risk. Finally, by examining the reduction in Child Care Fund expenditures for institutional care as a result of additional youth releases, juvenile justice stakeholders at both the state and local levels will be able to evaluate the cost savings that could be reinvested to expand the statewide community-based continuum of care for court-supervised youth.

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