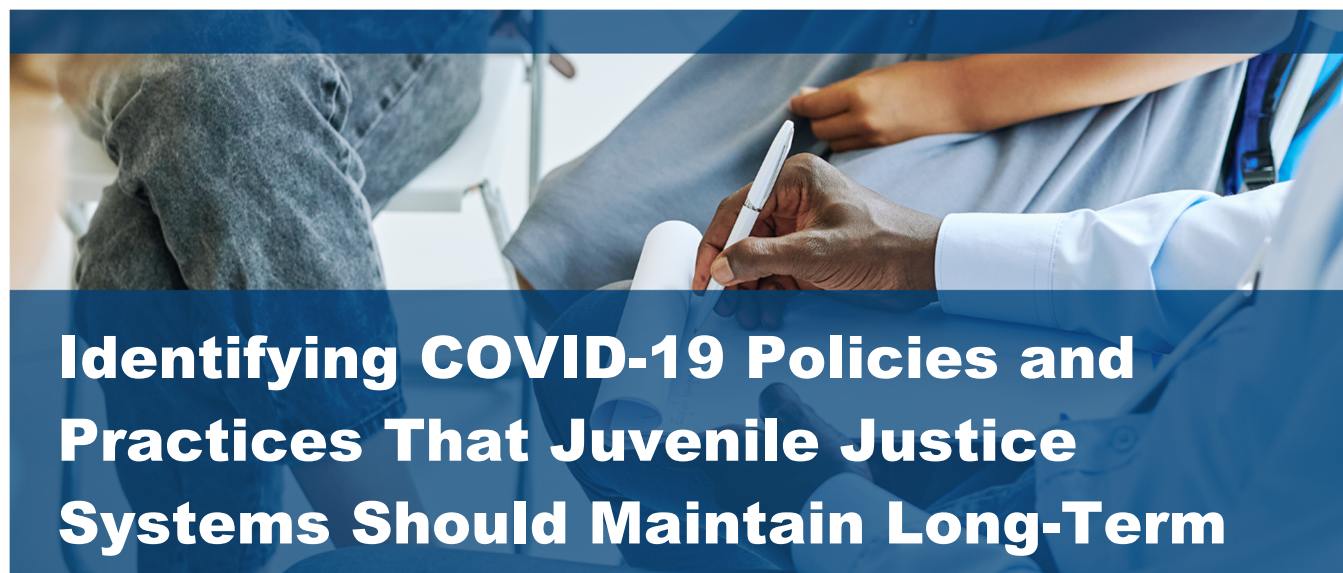




MAY 2023

LISTENING SESSION 2: Juvenile Defenders¹



Identifying COVID-19 Policies and Practices That Juvenile Justice Systems Should Maintain Long-Term

Introduction

This report—focused on juvenile defenders—is the second in a series describing findings from listening sessions with juvenile justice practitioners about the effects of the COVID-19 pandemic on the juvenile justice system.

The COVID-19 pandemic **dramatically interrupted** the full spectrum of juvenile justice system activities, processes, and structures in the United States, from intakes to reentry. Across the country, juvenile justice practitioners responded to this public health crisis by implementing emergency policies to **mitigate** disease spread and maintain programming to the extent possible given public health orders and staff absenteeism. As the upheaval created by the pandemic subsides and the country **“returns to normal,”** the juvenile justice field will benefit from a comprehensive assessment of the policies implemented and changed during the pandemic, with a specific eye toward what worked well, what did not, and the root causes for successes and challenges. It is clear that juvenile justice practice will not fully return to its pre-pandemic status, and in many cases will **integrate changes** in policy and practice brought about by the pandemic. Because decisions about the COVID-19 response have typically been made at the state level, aggregating

¹ This project was supported by Award No. 15PNIJ-21-GG-03267-RESS awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect those of the Department of Justice.

and analyzing information across states and across practitioners within the juvenile justice continuum is a difficult but important undertaking.

Our 2021 National Institute of Justice (NIJ)-funded project—Juvenile Justice Responses to the COVID-19 Pandemic—involves several research activities, including listening sessions, a systematic literature review, policy scan, and case studies.

THROUGH THESE RESEARCH ACTIVITIES, WE AIMED TO ANSWER THREE QUESTIONS:

1.

How have juvenile justice systems **responded** to the COVID-19 pandemic?

1A

How have juvenile justice systems changed policies related to **transfers between and releases from** juvenile residential place facilities?

2.

How are different policy responses associated with **youth and public safety outcomes** (e.g., educational attainment, mental and physical wellbeing, recidivism, intakes, releases)?

3.

For policies associated with positive outcomes for youth or improved public safety, **what resources are needed** to sustain these policy changes in the long term?

Our team conducted **listening sessions** with a broad range of juvenile justice system practitioners to learn from their experiences during the pandemic and **to identify policies and practices** that juvenile justice systems can and should maintain in the long term (even as COVID-19 is now endemic). The goal of these listening sessions was to discuss policies and practices related to juvenile intakes, transfers, and early releases from juvenile residential placement facilities, as well as those intended to protect public safety and ensure the safety, health, appropriate supervision, and long-term success of youth. We also asked practitioners to identify possible best practices for rapidly responding to similar threats that may emerge in the future—such as other public health emergencies and natural disasters—to ensure juvenile justice systems have an experience-based guide that reflects important lessons learned for making difficult but effective decisions in emergency situations.

Setting, Participants, and Focus

Our **second listening session** took place in May 2023 with **juvenile defenders** (i.e., defense attorneys who specialize in assisting juvenile clients). In total, there were four participants, including defenders from New York,

Florida, New Jersey, and Delaware. During the pandemic, these individuals had to adapt to rapidly changing circumstances across their respective locations because of safety and health considerations, public health guidance, and political factors within each jurisdiction.

The focus of this session was to assess how defenders responded to the pandemic; to determine how these changes related to changes in defender practices; to establish how the pandemic and defender practices may have affected case outcomes, including public safety; and to identify ongoing challenges and innovations, as well as assess which changes have been retained.



The meeting was co-facilitated by Dr. Kristan Russell, Gene Siegel, and Marly Zeigler from the National Center for Juvenile Justice (NCJJ).

Findings

POLICY CHANGES DURING THE PANDEMIC

Implementing practice changes without policy changes

Practice changes during the pandemic were often in response to **rapidly changing circumstances** involving health and safety considerations. Public health guidance at the local, state, and federal levels often shifted and was sometimes inconsistent. Political circumstances linked to these shifting conditions within each of the four jurisdictions also played important roles that affected system responses. As such, jurisdictions frequently had to implement ongoing practice changes to adapt to the changing environment without formalized policy guidance.

Use of remote and virtual technologies

Responses suggest defenders view the use of technology as both positive and negative. On the one hand, participants acknowledged that virtual modes of communication with youth were beneficial for certain hearing stages and system phases, including interactions between counsel and their young clients and particularly early in the pandemic. However, participants also emphasized the challenges posed by remote technology that may have adversely impacted defender practices and youth and family outcomes, especially during more complex system stages (e.g., contested adjudications or trials). Some respondents preferred to conduct more complex hearings in-person rather than remotely to ensure due process and a high-quality court process. Some participants also noted that although there may be benefits to remote proceedings, not everyone has access to or the knowledge and

training to use the technology. These responses highlighted **fairness and equity concerns** that must be considered when making decisions about using and retaining virtual options.

Early release policies

Defenders discussed challenges and issues surrounding early release of their clients from secure custody. This was an important issue, particularly during the early phases of the pandemic, as different jurisdictions and facilities grappled with health and safety concerns. In at least one jurisdiction, stakeholders in the juvenile justice system came together to discuss and decide which detained youth could be released from secure custody. The issues surrounding early release decisions are complex and raise numerous questions, including a core question of whether early release standards used during the pandemic can be maintained post-pandemic. Local stakeholders were faced with this dilemma, with some respondents wondering whether the criteria used to make decisions about releasing youth in March 2020 can still be used to make present-day decisions. One participant mentioned that they know other defenders who are presently using this argument in discussions about release decisions.

“If some youth can be released during the pandemic, why should they be held in secure confinement in the first place?”

Participants also noted their desire to have more data on key criteria and factors in early release decisions in order to identify potential biases and to better understand the impacts of these decisions on public safety and other youth outcomes. Public defenders expanded on this data gap, noting that decisions were sometimes not merit-based, but were instead based on factors outside of a young person’s control, such as whether they had a stable family home to return to if released. They also expressed concern that decisions were influenced by biases, including perceptions of “more stable homes” skewing toward white or more affluent families. Furthermore, participants noted that data on released youth outcomes would help them understand the impacts these decisions have on public safety and other outcomes (e.g., educational, mental health and treatment, community and family engagement, etc.).

The pandemic required court actors to quickly make decisions to keep young people safe, but this quick decision-making often accompanied a lack of documentation and transparency. This parallels findings from our policy scan, which found that although 28 states made some formal effort to release youth during the pandemic, 33 states had no publicly available information pertaining to such efforts (and 6 states had policies that varied at local levels). Relatedly, respondents in this session emphasized the impact of jurisdictional political climates on the messaging, priorities, and guidance received during the pandemic. For example, one participant expressed uncertainty regarding how early release decisions were made across the state, and the role that differing political climates may have played.

Visitation

Participants offered mixed views on the impacts of the switch to virtual visitation in facilities during the pandemic. More specifically, they emphasized the benefits for parents who did not have to miss work to visit their children and explained that this also helped some parents who had other children at home to better manage complex circumstances. However, some participants mentioned equity issues in terms of different access to technology, with some clients lacking the means to have or use cell phones or other remote resources. In other cases, cell phones and other devices may have been confiscated as evidence prior to youth arriving at the facility, leaving them with

few options for interaction with family (especially in facilities that did not provide youth with phones, tablets, or other devices).

IMPACT OF THE PANDEMIC

Understaffing and loss of staff

As with other stakeholder listening sessions, **staffing issues continue to adversely impact the juvenile justice system** in a variety of ways, in and out of facilities. Participants noted that staff illnesses, including contracting COVID-19, created challenges for maintaining normal routines for system-involved youth and that understaffing made it difficult for youth to receive services. One participant mentioned long waiting lists specifically for mental health services, resulting in some attorneys relying on school systems—as opposed to the juvenile justice system—to connect youth with needed services as quickly as possible. Relatedly, all participants emphasized that staffing shortages for service providers have not improved post-pandemic and that loss of staff and other factors contribute to unwanted competition for limited treatment opportunities that youth, particularly those with mental health issues, desperately need.

Trauma impacts

Across the board, participants discussed wanting more data to better understand the potential trauma youth experienced during and after the most serious phases of the pandemic. This data can shed light on the **long-term impacts of pandemic-related trauma experienced by system-involved youth**. Participants noted that youth may be particularly affected by housing instability, decreased school enrollment, social isolation, and other trauma-related indicators exacerbated by the pandemic.

Decreased parent supervision

In discussions about youths' risk for involvement in the juvenile justice system, participants stated that parents who work essential or non-remote jobs faced unique challenges in providing adequate supervision to their children during the pandemic. More specifically, these parents had few options for supervising their children during COVID-19-related lockdowns and mandated remote learning. These larger societal changes also led to unprecedented periods of social isolation and lack of opportunities for community activities and social engagement. As researched over the years by NCJJ and others, youth who are not adequately supervised by adults and/or who are not constructively engaged in community activities are more likely to experience a range of negative encounters with their peers and/or law enforcement (Puzzanchera et al., 2022). Participants who participated in this listening session were acutely aware of these challenges and how they were exacerbated by the pandemic.

Conclusions

To better understand the nature and effects of these policy changes, the NIJ-funded Juvenile Justice Responses to the COVID-19 Pandemic project is undertaking a range of research activities, including a systematic literature review, a policy scan, case studies, and listening sessions. During our second listening session, we spoke with juvenile defenders (i.e., defense attorneys who specialize in assisting juvenile clients). These attorneys, charged with representing a young person's best interest, had to quickly adapt to policy and program changes throughout the juvenile justice system during the pandemic. Taken at face value, many of these changes may benefit juvenile justice-

involved youth, including implementing virtual visitation, allowing early releases, and committing to fewer new intakes into juvenile detention. However, as made clear by listening session participants, the reality and repercussions of these policy changes are far more nuanced, especially in relation to individuals' unequal access to internet technology. Furthermore, it is clear that the pandemic has exerted noticeable effects on juvenile justice staffing, youth trauma, and parental supervision, though there is presently little data to fully understand or draw conclusions about these issues. Ultimately, the most prominent theme emerging from this listening session is one we have also seen echoed throughout our other discussions with juvenile justice practitioners: pandemic-related policy changes have the potential to support young people and promote public safety, but they must be implemented fairly, equitably, and transparently. Improved data collection will also allow us to better understand the ongoing effects of these policy changes and make appropriate determinations about which policies should be continued in the future.

Citations

Puzzanchera, C., Hockenberry, S., & Sickmund, M. (2022). Youth and the juvenile justice system: 2022 national report. *National Center for Juvenile Justice, Pittsburgh, PA.*