

## **Youth Correctional Leaders for Justice Response to OJJDP COVID-19 Guidance**

As professionals who lead or have led youth correctional agencies, the Youth Correctional Leaders for Justice (YCLJ) advocate for the end of the failed youth prison model. To protect public health during the COVID-19 pandemic, we have been encouraging jurisdictions to rapidly release youth from these facilities and to stop admissions. Around the country, we have seen systems act creatively and collaboratively to help young people return safely home.

Unfortunately, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) guidance on COVID-19 response for juvenile detention and correctional facilities does not acknowledge the good work being done around the country in order to foster replication. The statement is largely unsupported by, and sometimes contrary to, facts. OJJDP is essentially arguing that youth incarceration benefits public safety and provides a healthy and rehabilitative environment for young people. A wealth of research and our personal experience contradict both of those assertions. OJJDP cautions against early release for youth, in part on the grounds that families need access to supports and resources to help their children thrive. No young person should be incarcerated because their family is poor or in some other kind of distress. We wholeheartedly agree that good discharge planning and aftercare are essential, but OJJDP should be developing ways to facilitate those good things rather than using their absence as an excuse for the continued incarceration of youth during an outbreak of infectious disease.

We urge OJJDP to rethink its guidance, particularly where it makes substantial errors that could lead to local systems making choices that harm youth and communities:

1. **Youth prisons do not promote public safety**, though much of the guidance makes a public safety argument for keeping young people incarcerated. In fact, youth prisons harm public safety by increasing the chances that a young person will commit new offenses after their release. Though states report their data individually, an analysis determined that 70 to 80 percent of incarcerated youth are rearrested in 2-3 years.<sup>1</sup> Several studies have found evidence that incarceration in itself contributes to recidivism.<sup>2</sup>

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<sup>1</sup> Mendel, R.A. (2011). *No Place for Kids: The Case for Reducing Juvenile Incarceration*. Baltimore, MD: Annie E. Casey Foundation.

<sup>2</sup> Aos, S., Lieb, R., Mayfield, J., Miller, M., and Pennucci, A. (2004). *The Costs and Benefits of Prevention and Early Intervention Programs for Youth*. Tacoma, WA: The Washington Institute on Public Policy.

Baglivio, M.T. (2009). "The assessment of risk to recidivate among a juvenile offending population." *Journal of Criminal Justice* 37: 596-697.

Greenwood, P.W., Model, K., Rydell, C.P., and Chiesa, J. (1996). *Diverting Children From a Life of Crime: Measuring the Costs and Benefits*. (Revised Edition). Santa Monica, CA: Rand.

Lipsey, M. (1992). "The effect of treatment of juvenile delinquents: Results from a meta-analysis." In F. Loesel, D. Bender, and Bliesener (Eds.), *Psychology and the Law: International Perspectives* (pp. 131-143). Berlin, NY: Walter de Gruyter.

2. **Longer sentences do not have a public safety benefit.** The guidance warns against “potential dangers posed by accelerated release schedules.” Various studies have looked for a relationship between length of stay and recidivism. Some found no relation; others actually found that longer duration incarceration was associated with more subsequent offending.<sup>3</sup>
3. **The vast majority of youth benefit from community-based interventions and are harmed by incarceration.** The guidance describes youth in detention or correctional facilities as “typically high-risk and high need.” Significant numbers of incarcerated youth are facing technical violations of parole, which can be as simple as missing a meeting, public order offenses, and status offenses, behaviors like skipping school that are not actual crimes.<sup>4</sup> Furthermore, high-risk and high-need youth can benefit from community-based programs. In an evaluation of the Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors (RECLAIM Ohio) Program, designed to keep youth in the community after contact with the law, youth of all risk levels benefitted. High-risk youth who were diverted into RECLAIM Ohio were significantly less likely to experience a new juvenile commitment than peers who were incarcerated.<sup>5</sup>
4. **Services provided in a facility can be provided in the community.** OJJDP cautions that youth may need behavioral or mental health services provided within a detention center or prison. Health care, and virtually any other service, can be provided in a youth’s home and community – and less expensively than in an institution. The record of youth prisons in delivering services is poor. A study of 1,300 youth incarcerated for serious offenses found that few received mental health treatment while confined.<sup>6</sup>
5. **Good discharge planning and provision of aftercare services are essential.** In this YCLJ and OJJDP agree. However, the guidance finds that if these services are not readily available, then jurisdictions are justified in prolonging a youth’s incarceration. In fact, good discharge planning often points out untapped resources. By closely examining a youth’s individual needs and the family and community’s resources, it is often possible to construct an excellent reentry strategy. Where additional supports are needed, it behooves authorities to find ways to provide

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<sup>3</sup> Pew Charitable Trusts. (April, 2015). *Re-examining Juvenile Incarceration: High cost, poor outcomes spark shift to alternatives*.

<sup>4</sup> Sawyer, W. (December 19, 2019). *Youth Confinement: The Whole Pie 2019*. (December 19, 2019). Prison Policy Initiative.

<sup>5</sup> Latessa, E. et. al. (April 30, 2014). *Evaluation of Ohio’s RECLAIM Programs*. University of Cincinnati.

<sup>6</sup> Schubert, C.A., and Mulvey, E.P. (2014). *Behavioral Health Problems, Treatment, and Outcomes in Serious Youthful Offenders*. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

them – particularly since doing so is almost always more beneficial and less expensive than incarceration.

6. **It is a matter of equity and justice to ensure that services are available in all communities.** Communities of color and communities with economic disadvantage have historically experienced disinvestment. Juvenile justice systems should not compound that injustice by refusing to return youth to less resourced families and neighborhoods. Instead, they should invest in those communities. OJJDP should be taking the lead by offering more funding that would accelerate this process.
7. **Facilities are badly designed to encourage safe practices that limit infection.** Contrary to what the guidance states, detention centers and prisons present tremendous danger for the spread of infection through the use of common sleeping, recreation, dining and bathroom areas. Youth often do not have continuous access to washing stations, and hand sanitizer is often banned because of its alcohol content. Ventilation is commonly poor. The American Academy of Pediatrics has called upon authorities to respond to COVID-19 by releasing youth wherever it is safe to do so.<sup>7</sup>
8. **COVID presents special risks to system-involved youth.** Incarcerated groups disproportionately come from communities hardest hit by COVID-19, including Black, Latinx and low-income families. System-involved youth are generally in poorer health than their peers, making a potential infection especially dangerous for them.<sup>8</sup>
9. **Many facilities are not equipped to serve seriously ill youth or large numbers of youth in need of health care.** The guidance makes an unsupportable assertion praising the availability of health care in these places. The quality and availability of health care in youth prisons and detention centers have been the subject of multiple lawsuits.<sup>9</sup>
10. **Outbreaks of COVID in youth facilities have been serious.** The guidance dismissed positive cases (229 youth and 352 staff, some of whom have died, as of early May, 2020) as “relatively small” and representing only a few individuals on average in each state. This reference to data from The Sentencing Project’s numbers is misleading without the caveat that the number is likely an undercounting due to lack of testing and reporting, and it is reasonable to presume the actual number of infections is higher. Having

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<sup>7</sup> American Academy of Pediatrics. “Responding to the Needs of Youth in the Juvenile Justice System During the COVID-19 Pandemic.” Accessed June 9, 2020.

<sup>8</sup> Winkelman, T. et. al. (March 12, 2017). “Health Conditions and Racial Differences Among Justice-Involved Adolescents, 2009-20014.” *Academic Pediatrics: Adversity Among Children and Youth*. 17:7. DOI:<https://doi.org/10.1016/j.acap.2017.03.003>

<sup>9</sup> Mendel.

hundreds of infected youth and staff should inspire serious concern. After testing a third of the youth at a single facility in April, Virginia announced that 25 were positive.<sup>10</sup> These pockets of high infection pose a risk in facilities and in communities to which staff return daily. OJJDP should be investigating those large spreads and sharing information so that other jurisdictions can prevent them.

**11. Procedures used to control infection can harm youth.** In youth detention centers and prisons, visits with family, school, volunteer programs and other positive activities have been suspended because of COVID. Youth are spending more time in isolation, long acknowledged to be harmful for them. Youth prisons have always strained children's connections to family and other sources of support. This is especially true now. As incarceration is even more intensely harmful and institutions are offering little to no rehabilitative programming, the urgency to come up with smart ways to return youth to their homes is overwhelming.

**12. COVID is no reason to return to the failures of the past.** This century has been marked by vast improvements to the juvenile justice system. The US has made progress toward interventions that are more rehabilitative, developmentally appropriate and family-centered. It is rejecting the punitive model that relied heavily on incarceration. Youth, families and communities have all benefitted. Youth incarceration has dropped by more than half since 2000 – and youth crime has dropped as well, as evidenced by a 60 percent drop in the juvenile arrest rate during the same period.<sup>11</sup>

The guidance is particularly disturbing because it ignores the lessons of the past two decades and seems to hold out incarceration as an effective tool to protect communities and youth alike. It is neither. We know that youth incarceration profoundly harms children; that youth who come into conflict with the law can almost always be managed safely in the community; that this is a better strategy to limit youth crime; that it leads to progress in academics, work, relationships and other key components of success; that youth will be safer; that community solutions save money; and that keeping youth home promotes equity.

Youth of color are incarcerated at much higher rates than white youth, though research suggests that they engage in similar behavior.<sup>12</sup> At a time when Americans are intensely working to address racism in our society, it is essential that the country work toward closing youth prisons and detention centers, egregious sources of inequity. OJJDP should be expanding resources to states and communities in order to make these closures possible.

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<sup>10</sup> Noe-Payne, M. (April 20, 2020). "Virginia Correctional Facility Overwhelmed by Coronavirus." National Public Radio.

<sup>11</sup> Federal Bureau of Investigation. (2000) Crime in the United States 2000, Section IV: Persons Arrested. Washington, D.C.: Federal Bureau of Investigations.

<sup>12</sup> Centers for Disease Control and Prevention. (2017) Youth Risk Behavior Survey: Data Summary and Trends Report 2010-2017. Atlanta: Centers for Disease Control.