

Delinquency: Addressing Backlog and New Filings

A Pandemic Resource from NCSC



July 22, 2020 | Version #1.2

What Is Case Management in Delinquency Cases?

Swift justice is vital for young people who come into contact with the justice system. According to the study of adolescent brain development, young people respond better to consequences that occur soon after the behavior than when a significant amount of time passes between the act and the consequence. Additionally, the more time youth wait for a hearing, the longer they are without a connection to supportive and rehabilitative services.

Not all youth who come to the attention of the juvenile court need to have a formal hearing; in fact, research shows that diversion from formal involvement can be an effective pathway for first-time offenders¹.

Diversion can occur pre-petition or post-petition, and the juvenile court does not always have the decision-making power to divert pre-petition. In some states, diversion is the responsibility of the prosecutor, and in others, it is the responsibility of juvenile court intake officers²; or a combination of the two, depending on the offense.

Usually, eligibility for diversion is based on static criminogenic risk factors, such as offense, age, and court history. Some states use a standardized screening tool or risk assessment at intake to determine eligibility for diversion, while other states reserve the standardized assessment to inform the disposition³. Either way, the standardized assessment should be validated to the population to confirm that the tool predicts what it intends to predict (i.e., subsequent offending)⁴.

¹ Schwalbe, C. S., Gearing, R. E., MacKenzie, M. J., Brewer, K. B., & Ibrahim, R. (2012). A meta-analysis of experimental studies of diversion programs for juvenile offenders. *Clinical Psychology Review*, 32(1), 26-33.

² Juvenile Justice Geography, Policy, Practice & Statistics. Online. Available: <http://www.jjgps.org/juvenile-court#intake-diversion?year=2016>. Developed by the National Center for Juvenile Justice (NCJJ), with funding from the John D. and Catherine T. MacArthur Foundation.

³ Wachter, A. (2015). Statewide Risk Assessment in Juvenile Probation. JJGPS StateScan. Pittsburgh, PA: National Center for Juvenile Justice.

⁴ Vincent, G.M., Guy, L.S., & Grisso, T. (2012). Risk Assessment in Juvenile Justice: A Guidebook for Implementation. MacArthur Foundation, Models for Change: Systems Reform in Juvenile Justice.

Caseflow management in juvenile delinquency cases beyond disposition takes the approach that a judge must hear only cases where decisions need to be made. As long as effective processes and programs are in place to address the criminogenic needs of the youth, many statutorily required hearings, including probation reviews, can be paper hearings.

Managing Juvenile Delinquency Cases Moving Forward

Continue to Use Virtual Hearings

In the COVID era, many juvenile courts swiftly and adeptly transitioned to online hearings. Research on the effectiveness of such hearings is emerging, but anecdotally, courts report more parents attending virtual hearings and also increased youth participation. As juvenile courts resume full operations, many plan to continue virtual hearings, acknowledging their cost- and time-saving power. Courts may select certain hearings to be virtual, such as detention hearings that must be completed within a short timeframe, or situations where a virtual hearing will suffice, such as non-contested hearings where a party wants to be on the record. A hybrid hearing, where some parties appear in person, and others appear virtually, is also an option for attorneys, youth, or family members who are unable to attend in-person.

JUDGE SCOTT GARDNER OF THE TWENTY-SECOND JUDICIAL DISTRICT COURT OF LOUISIANA DESCRIBED A HYBRID MODEL MOVING FORWARD WHERE VIRTUAL HEARINGS WILL CONTINUE FOR DETENTION HEARINGS THAT MUST BE HELD WITHIN 72 HOURS AS WELL AS POST-ADJUDICATION HEARINGS FOR YOUTH WHO ARE IN SECURE OR NON-SECURE PLACEMENTS. THESE HEARINGS ARE USUALLY THE FIRST TO OCCUR ON THE DELINQUENCY DOCKET, FOLLOWED BY THE LIVE DOCKET. ALL DOCKETS ARE STAFFED 24 HOURS AHEAD OF TIME SO THAT PARTIES KNOW WHAT TO EXPECT IN THE HEARING. IF THERE ARE ATTORNEYS, PARENTS, OR YOUNG PEOPLE WHOSE HEALTH PUTS THEM AT RISK, THEY MAY REQUEST TO APPEAR VIRTUALLY. JUDGE GARDNER'S DISTRICT COVERS 1044 SQUARE MILES, AND SOME FAMILIES MUST DRIVE 40+ MILES OR SPEND MOST OF THE DAY EN ROUTE TO OR IN COURT FOR A BRIEF HEARING. WITH VIRTUAL HEARINGS, JUDGE GARDNER SAYS, "WE CAN GET THEM IN IN 10 MINUTES AND SAVE THEM MONEY."

In Addition to Holding Virtual Detention Hearings, Consider Alternatives to Detention Whenever Possible

Many studies have shown that detention can negatively impact a young person's mental health, impede educational success, and increase the likelihood of reoffending⁵. Now, the pandemic has brought to light yet another danger to youth in detention – the risk of contagion. While virtual hearings serve to protect youth and court staff by limiting their exposure, refraining from detaining youth in the first place reduces their risk further. As the Center for Children's Law and Policy has stated, "Unless youth pose an immediate and

⁵ Holman, B., & Ziedenberg, J. The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities. Justice Policy Institute.

substantial risk to public safety, alternatives to out-of-home placements, including placement at home with terms and conditions, should be the default response⁶.

In King County, Washington, which includes Seattle, mentors who are from the youth's cultural and physical community help support youth in the home as an alternative to detention. According to Judge Judith Ramseyer of King County Superior Court, "Returning a youth home, even with marginal supervision, can be more successful if there is a mentor in the community to connect and spend time with the youth." The [Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative \(JDAI\)](#) provides guidance and technical assistance to jurisdictions looking to reduce the use of detention and the number of youth who enter the front end of the juvenile justice system.

Keep Cases Moving with Motions

When first adapting to COVID, many courts prioritized some hearing types while postponing others. As a result, many cases stagnated; some youth were on supervision or even in out-of-home placement longer than necessary. This could have been avoided, as there are many opportunities to move cases by paper motions. In Utah's Third Judicial District, Judge James Michie encourages attorneys to keep cases moving by filing motions for actions such as trial home placements, reduction of community service hours, and closing probation. If the motion is stipulated to by all parties, Judge Michie signs the order immediately.

In addition to moving a case through motions, Judge Michie and his staff ensure that every single case has a date for a next hearing set – whether a paper review or a hearing. His mantra, "No case should remain stagnant because it can't come to court." As courts resume operations, this strategy stands as a method for moving cases, reducing the backlog, and supporting swift justice for young people.

Modernized Probation Departments Have the Knowledge, Skills, and Tools Necessary to Effectively Support Behavior Change

The power of these tools relies on the probation officer's ability to use them to develop individualized case plans that address dynamic risk factors and support positive behavior change through skill-building. When probation officers are well-trained, courts can rely on them to develop and monitor individualized case plans, leaving most probation review hearings able to be done on paper.

Reconsider whether in-person case reviews are necessary for youth who are making progress on their case plans. The connection between a judge and the youth can be a powerful change agent; however, there are other ways for a judge to reward the youth for

⁶ Center for Children's Law and Policy Statement on Urgent Action Needed by Youth Justice Professionals in the Wake of the COVID-19 Pandemic, available: <https://mailchi.mp/cclp.org/the-law-enforcement-leadership-for-equity-initiative-2732261>

a job well done besides holding a hearing. For example, during the pandemic, some courts experimented with sending incentives in the mail while holding virtual hearings. Community partnerships, such as opportunities to participate in rec leagues or to connect with mentors, can also be leveraged as incentives.

Similarly, courts should support a range of responses to non-compliance besides secure detention and that do not require a court appearance, such as increased frequency of check-ins with a probation officer or pro-social activities.

Allegheny County (PA) Juvenile Probation Assistant Chief Shawn Forbes described a swift transition to delivering services virtually. The department continued to complete the YLS (Youth Level of Service) assessment to determine risk level remotely, and probation officers were able to continue to use promising practices, like EPICS (Effective Practices in Community Supervision), through the creative use of Zoom, FaceTime, and other communication technologies. The department was able to increase face-to-face contacts during the pandemic via technology and creatively did “drive-thru” visits with high-risk youth in the community to instigate socially distant conversations. Assistant Chief Forbes is optimistic about how well online programming has gone during the pandemic and stated, “This is going to change the way we do business forever.”

Ensure That Youth Can Make Progress on Case Plans Even When the Situation Shifts

The pandemic introduced an environment where previously reasonable requirements became unattainable. It is essential to support a range of programming to facilitate effective case flow management. Programming may include virtual adaptations to ensure that youth do not become more involved in the justice system than necessary and that cases do not remain open because a youth is unable to satisfy obligations. Thinking creatively about how to address the priorities on a youth's individualized case plan and how to incentivize behavioral change can help keep cases progressing, even when existing programs or practices are inaccessible.

Now is an excellent time to strengthen community partnerships and meaningfully involve families. When community service options became unavailable due to COVID, judges were forced to decide whether supervision would be extended or whether the obligation would be waived. Some judges expanded their standards and accepted focused projects at home with parental oversight, attendance at counseling, or completed educational tasks as community service hours. When drug testing was suspended, some courts relied on parents when appropriate, dropping the testing kit off in the mailbox. To prepare for instances when in-person interaction is not available, courts should collaborate with

community partners to support transitioning programming online or other creative pro-social opportunities for youth. The COVID era opened up brand new doors to virtual volunteering opportunities⁷, and the court could learn from and leverage this movement to expand community service opportunities for youth on supervision.

Serious Consideration Should Be Given to Eliminating Court Fines and Fees for Youth

Many families are experiencing financial stress due to the pandemic, making it difficult to meet daily needs, let alone pay court fines and fees. While advocates have called for a national moratorium on fines and fees due to the pandemic, research conducted long before COVID-19 demonstrated that monetary penalties are detrimental to youth and families and exacerbate racial disparities.⁸ Supervision should not be extended because a youth or their family has not been able to pay court fines and fees. Several courts across the country, including Nevada and Orleans Parish, Louisiana, have successfully eliminated detention and supervision fees.⁹ The [Juvenile Law Center](#) offers many examples and resources for how to do so.

⁷ See <https://www.pointsoflight.org/virtual-volunteering-opportunities/>

⁸ Feierman, J., Goldstein, N., Haney-Caron, E., & Columbo, J.F. (2016). [Debtors' Prison for Kids. The High Cost of Fines and Fees in the Juvenile Justice System](#). Juvenile Law Center.

⁹ <https://debtorsprison.jlc.org/#!/map>