

Post-Adjudication Residential Placement Decision

Preparation: Suggested considerations prior to determining a post-adjudication residential placement decision

Balance risk of youth contracting COVID-19 while in post-adjudication residential placement with risk to community safety if released.¹ Consider not only risk of infection while in placement,² but also the impact on facility housing, programming, and operations due to COVID-19.³ Whenever feasible, emphasize use of community-based risk reduction strategies.

Remember:

- The post-adjudication residential placement decision should be a *dynamic decision that is influenced by*: a youth's level of risk to community safety;⁴ the youth's risk-relevant needs;⁵ the youth's protective factors;⁶ and the supports, interventions, and/or services that can be provided in the community to address a youth's risk-relevant needs⁷ so that youth can be safely released.
- To the extent possible under law, *avoid using current offense* to determine restriction severity, given lack of predictive value⁸ and potential biases in arrest and charging⁹.

Consider:

- How has COVID-19 impacted conditions of confinement? Have there been adjustments to programming and operations? Have programming and operations been adversely affected?¹⁰
- What *outcome* does the instrument assess? Risk of general reoffending? Violent reoffending? Rearrest?
- Does the risk assessment instrument assess *your* outcome of concern?
 - If it does not, does the risk assessment under- or over-estimate the type of risk about which you are concerned (i.e. if the instrument assesses risk of general reoffending, but you are concerned primarily about the youth's risk of violence to the community, the identified risk-level will over-estimate the youth's risk of violence¹¹)?

Recognize:

- Many forms of *bias* can exist in juvenile justice contexts including, but not limited to, bias related to race¹², ethnicity¹³, gender¹⁴, LGBTQ+ identity¹⁵, native language¹⁶, age¹⁷, special education status¹⁸, parent characteristics¹⁹, family income-level²⁰, and neighborhood²¹.
- Biases in appraised risk level²², biases in identified needs, and disparities in service availability can contribute to biases in decision making. *To help reduce bias* in placement decisions:
 - At each decision point, consider how bias built into risk factors (e.g., arrest, police contact), scoring (un)reliability, or throughout the justice system may impact the decision
 - Avoid making decisions that *increase* restrictions beyond what the appraised risk level would justify.
 - When placement is necessary, provide the explicit reason(s) for placing the youth.
 - Consider whether the youth's protective factors and/or existing family or community supports can reduce risk and meet a youth's needs
 - When community-based services are not readily available to address risk-relevant, criminogenic needs, consider an alternative set of services/supports/interventions (e.g., telehealth)
 - Risk-relevant, criminogenic needs are needs that relate specifically to the likelihood of future offending²³
 - Avoid placing a youth solely because relevant services are not available in their community
 - Instruct the relevant actor(s) (e.g., probation officer, service provider) to identify community-based, client-centered, risk-reduction services prior to all disposition and review hearings to inform your decision making and to continue seeking these community-based services after decisions to confine

ENDNOTES AND CITATIONS

1. U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, OJJDP COVID-19 GUIDANCE: STATE JUVENILE DETENTION AND CORRECTIONAL FACILITIES 1-2 (2020), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/OJJDP-COVID-19-Guidance-for-States.pdf> (advising states that are adjusting detention and release practices because of COVID-19 to consider: 1) youths' level of supervision; 2) youths' access to health services in the community; and 3) youths' in-home structure and stressors in the community). Several states have enacted changes to their residential placement policies in the wake of COVID-19, including: limiting or ceasing the intake/transfer of youth into state prisons and correctional institutions, allowing judicial proceedings to occur remotely, eliminating juvenile justice detention or placement for youth except for those who are a substantial and immediate safety risk to others, and administering risk assessment measures over the phone with stipulations about the use of electronic monitoring and homebound detention. COALITION FOR JUVENILE JUSTICE, STATE COVID RESPONSES (2020), <https://docs.google.com/spreadsheets/d/1-znXRVL5eQ91euSu7bJ8kBlh8xa0ihCGmfgB9Zuc6eA> (detailing state policies regarding juvenile justice and correctional facilities during COVID-19).
2. JOSH ROVNER, THE SENTENCING PROJECT, YOUTH JUSTICE UNDER THE CORONAVIRUS: LINKING PUBLIC HEALTH PROTECTIONS WITH THE MOVEMENT FOR YOUTH DECARCERATION 9-12 (2020), <https://www.sentencingproject.org/wp-content/uploads/2020/09/Youth-Justice-Under-the-Coronavirus.pdf> (discussing high rates of COVID-19 infection in youth institutions). Additionally, recommendations for responding to pandemics in residential youth placements set forth previously by the Office of Juvenile Justice and Delinquency Prevention include: only admitting youth presenting the greatest danger to the community or those at highest risk of escaping the jurisdiction of the local detention center at the time of the pandemic; accepting no admissions during a disease outbreak; quarantining (without using solitary confinement) and observing youth who demonstrate symptoms of the disease; transferring to a medical facility, as appropriate, for lower-risk youth testing positive for the disease; and training staff replacements given the expectation that staff will be absent from work due to the disease. ERIC H. HOLDER, ET AL., U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, EMERGENCY PLANNING FOR JUVENILE JUSTICE RESIDENTIAL FACILITIES 32 (2011), <https://www.ncjrs.gov/pdffiles1/ojjdp/234936.pdf>.
3. See ROVNER, *supra* note 2, at 19-20 (discussing limits to visitation, disrupted programming, isolation, and understaffing due to COVID-19). Additionally, for example, in Maine, juvenile community reintegration is a regularly used program during normal operations; however, the Department of Corrections has enhanced efforts and resources associated with the program in response to COVID-19, conducting ongoing reviews and streamlining reintegration processes. The Department's goal is to identify youth to be released as soon as possible for community reintegration consideration. Juvenile Services staff are considering the following factors when reviewing appropriateness for community reintegration: severity of the youth's offense history, stability of home environment, length of time incarcerated, progress in facility treatment, community and family support available in the community, treatment and programming available in the community, and length of time left until the youth's maximum release date. STATE OF MAINE, DEPARTMENT OF CORRECTIONS, STATEMENT FROM RANDALL A. LIBERTY, COMMISSIONER DEPARTMENT OF CORRECTIONS 2 (2020), <https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/3.27.20%20Statement%20from%20Commisioner%20Liberty.pdf>. Additionally, the Juvenile Justice Section of the North Carolina Department of Public Safety has adjusted operations in its juvenile facilities to bring facility populations as low as possible, which includes (1) suspending visitation, volunteer activities, and entry of non-essential volunteers, contractors, and vendors; (2) placing newly admitted youth to detention or placement in a 14-day quarantine until cleared by medical provider; (3) screening youth for fever and respiratory illness prior to transfer; (4) hiring additional healthcare workers to manage COVID-19 response plans; (4) conducting court hearings via teleconference; and (5) using alternatives to detention (e.g., electronic monitoring, home confinement, community-based programs, rescinding outstanding bench warrants for confinement) for youth with non-violent charges who are awaiting adjudication or trial within juvenile court. These efforts resulted in a 25% reduction in the confined juvenile population in North Carolina between March and April 2020. See Diana Kees, *State Juvenile Justice Officials Reduce Juveniles Held in Custody, Institute Operational Changes in Response to Coronavirus*, N.C. DEP'T. OF PUB. SAFETY BLOG (Apr. 14, 2020, 4:04 PM), <https://www.ncdps.gov/blog/2020/04/14/state-juvenile-justice-officials-reduce-juveniles-held-custody-institute-operational>.

ENDNOTES AND CITATIONS (cont.)

4. Research shows that youth have better outcomes when placement decisions are made based upon overall risk level as assessed via an evidence-based risk approach, such as with a reliable and valid risk assessment. Risk assessment can indicate areas of need more common among delinquent youth so that resources can be planned accordingly. Risk assessment tools consider three main types of factors that enhance risk of recidivism (i.e., risk factors and criminogenic needs) and reduce risk (i.e., protective factors). A risk factor is a factor associated with an increased likelihood of delinquency or violence and is related to a person's behavior, thoughts, disposition, or life circumstances. Risk factors consist of static factors, or those unlikely to change (e.g., history of violence, history of supervision failures), and dynamic factors, or those that are potentially changeable (e.g., substance use, delinquent peers, poor parenting practices). GINA M. VINCENT, ET AL., NAT'L YOUTH SCREENING & ASSESSMENT PROJECT, RISK ASSESSMENT IN JUVENILE JUSTICE: A GUIDEBOOK FOR IMPLEMENTATION 5, 31, 48 (2012), https://njjn.org/uploads/digital-library/Risk_Assessment_in_Juvenile_Justice_A_Guidebook_for_Implementation.pdf
5. Criminogenic needs are those dynamic factors that directly influence an individual's risk of recidivism and, if targeted properly, should reduce their risk of reoffense. VINCENT ET AL., *supra* note 4, at 62, 70.
6. Protective factors are factors that reduce the potential harmful influence of risk factors and include such things as prosocial involvement and healthy social supports. VINCENT ET AL., *supra* note 4, at 31, 74.
7. VINCENT ET AL., *supra* note 4, at 62 ("Dose of services and interventions should be matched to risk level and criminogenic needs of the youth."). See also, Gina Vincent et al., *Does risk assessment make a difference? Results of implementing the SAVRY in juvenile probation*, 30 BEHAVIORAL SCIENCES & THE LAW 397, 400 (2012).
8. Using seriousness of the charged offense as a proxy for likelihood of reoffending is unfortunate, inaccurate, and probably fairly common. It is unfortunate because racial bias may be associated with arrest and charging decisions. It is inaccurate because all specialized risk (and risk-need) measures rely on a range of risk and protective factors to create a more stable and generalizable estimate of the likelihood of a future target behavior, whereas using solely the current (alleged) offense fails to incorporate a broad range of influences. It is also empirically inaccurate, as none of the risk assessment measures reviewed use current offense by itself as a risk factor, and **studies indicate that current offense is not—in itself—associated with outcomes such as failure to appear or reoffending in the short- or longer-term**. See Michael T Baglivio, et al., *Risk Assessment Trajectories of Youth During Juvenile Justice Residential Placement: Examining Risk, Promotive, and "Buffer" Scores*, 44 CRIM. JUST. & BEHAV. 360 (2017) (finding that dynamic risk factors were more essential than criminal history in predicting and distinguishing youths' trajectories and likelihood of recidivism following placement). See also Eva Mulder, et al., *Risk Factors for Overall Recidivism and Severity of Recidivism in Serious Juvenile Offenders*, 55 INT'L J. OFFENDER THERAPY & COMPARATIVE CRIMINOLOGY 118 (2011) (finding that both static and dynamic risk factors, beyond criminal history and offense type, together predict severity of recidivism within a group of youth with serious offense histories).
9. See generally, JOSHUA ROVNER, THE SENTENCING PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS (2016), <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/> (finding that juvenile arrest rates have fallen 34% between 2003 and 2013 across major offense categories). However, Black youth were 2.3 times more likely than White youth to be arrested during this time period for a range of offenses despite few group differences found between White and Black youth across the most common arrest categories.
10. See COALITION FOR JUVENILE JUSTICE, *supra* note 1; ROVNER, *supra* note 2, at 19.
11. Risk assessment measures differ on the type of reoffending they predict (e.g., general reoffending, violent reoffending, sexual reoffending). If, for example, a youth is rated as high risk for general reoffending, the youth would not necessarily also be at high risk for violence, as the rates of general reoffending are significantly higher than those of violence. See, e.g., Sascha Hein, et al., *Violent offending among juveniles: A 7-year longitudinal study of recidivism, desistance, and associations with mental health*, 41 LAW & HUM. BEHAV. 273, 276 (2017). However, some research has indicated that violence risk assessment measures (e.g., the SAVRY) can differentiate and predict both violent and nonviolent recidivism. See, e.g., Kathryn Lawing, et al., *Use of structured professional judgment by probation officers to assess risk for recidivism in adolescent offenders*, 29 LAW & HUM. BEHAV. 652, 659 (2017) (finding that, as administered by trained juvenile probation officers, the SAVRY predicts both violent and general reoffending at similar rates over a 12-month time period among 505 adjudicated adolescents).

ENDNOTES AND CITATIONS (cont.)

12. For a longer discussion on bias throughout juvenile case processing, see JUVENILE CRIME JUVENILE JUSTICE PANEL ON JUVENILE CRIME: PREVENTION, TREATMENT, AND CONTROL 243 (Joan McCord, et al. eds., 2001) [hereinafter JUVENILE CRIME JUVENILE JUSTICE] (“Readily observable characteristics, like race, sex, and juveniles’ demeanor, have a substantial influence on the ways in which police officers behave.”).
13. See generally, Michael J. Leiber & Rebecca L. Fix, *Reflections on the impact of race and ethnicity on juvenile court outcomes and efforts*, 44, AM. J. CRIM. JUST. 581, 585 (2019) (finding that between 2005 and 2015 Hispanic youth were placed in correctional facilities at a rate 1.4 times to that of White youth).
14. See generally, Erin M. Espinosa, et al. *Youth pathways to placement: The influence of gender, mental health need and trauma on confinement in the juvenile justice system*, 42 J YOUTH ADOLESCENCE, 1824, 1832 (2013) (finding that current offense, a violation of probation, and past traumatic experiences place girls at significantly greater likelihood of placement in a secure, out-of-home facility than boys).
15. See, e.g., KATAYOON MAJD, ET AL., HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS 3 (2009), http://nclrights.org/wp-content/uploads/2014/06/hidden_injustice.pdf; SHANNAN WILBUR, LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN THE JUVENILE JUSTICE SYSTEM 11 (2015), <https://www.aecf.org/resources/lesbian-gay-bisexual-and-transgender-youth-in-the-juvenile-justice-system/>.
16. ELEANOR HINTON HOYTT, ET AL., ANNIE E. CASEY FOUNDATION, REDUCING RACIAL DISPARITIES IN JUVENILE DETENTION 47-48 (2003), <https://www.aecf.org/resources/reducing-racial-disparities-in-juvenile-detention>. In the late 1990s, the Santa Cruz County [CA] Probation Department examined its own policies, procedures, and programs to reduce the disproportionate minority contact of Latino youth in their care. Santa Cruz found that the lack of Spanish-speaking intake and case management staff made it challenging to release Latino youth home to families as well as access diversionary programming, resulting in Latino youth opting for more traditional court processing, including detention.
17. See, e.g., Michael Evangelist, et al., *Disparities at adjudication in the juvenile justice system: An examination of race, gender, and age*, 41 SOC WORK RES, 1, 5 (2017) (finding that, within a large sample of youth with formal petitions to a midwestern juvenile court over a five-year period, the likelihood of being formally adjudicated delinquent increased with age through approximately ages 14 and 15).
18. Decades of research reveal a high prevalence of youth with intellectual and developmental disabilities within the juvenile justice system with justice-involved youth three times more likely to have a disability than youth in the general population. However, the juvenile justice system does not always accurately identify children with intellectual and developmental disabilities or provide adequate special education services to such youth, if needed. See, e.g., Shantel D. Crosby, et al. *An ecological examination of the factors that impact well-being among developmentally-disabled youth in the juvenile justice system*, 68 JUV FAM CT J, 5, 6 (2017); DEVELOPMENT SERVICE GROUP, INC., YOUTHS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES IN THE JUVENILE JUSTICE SYSTEM (2017) <https://www.ojdp.gov/mpg/litreviews/Intellectual-Developmental-Disabilities.pdf>
19. See, e.g., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, YOUTH’S CHARACTERISTICS AND BACKGROUNDS: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT, 6 (2010), (“At the time they were taken into custody, more youth were living with one parent (45 percent) than with two parents (30 percent), and one-fourth of youth (25 percent) were not living with any parent.”).
20. MORIAH TAYLOR, ET AL., NATIONAL CENTER FOR JUVENILE JUSTICE, MAPPING DECISION POINTS FROM SCHOOL-BASED INCIDENTS TO EXCLUSIONARY DISCIPLINE, ARREST AND REFERRAL TO THE JUVENILE JUSTICE SYSTEM, 4 (2020). <https://www.ncjrs.gov/pdffiles1/nij/grants/254625.pdf>. The National Center for Juvenile Justice recently examined factors impacting judicial decisions that lead from a school-based incident to exclusionary discipline, an arrest, and/or referral to juvenile court using court and school records from four school districts. Researchers found that a greater than average number of students from lower socioeconomic backgrounds were referred to juvenile court following a school-based incident.
21. Considerations should also be made depending on the area in which the youth lives and/or will return following placement. For example, youth residing in non-metro, small, rural counties and areas are more likely to report experiencing juvenile detention or prison or jail than those in larger counties-making it challenging for youth to obtain employment and have stable housing. See, e.g., M.H. MORTON, ET AL., MISSED OPPORTUNITIES: YOUTH HOMELESSNESS IN RURAL AMERICA, 8-9, (2018), <https://www.chapinhall.org/wp-content/uploads/Youth-Homelessness-in-Rural-America.pdf>.

ENDNOTES AND CITATIONS (cont.)

22. The risk and need measures with the strongest empirical support include the OYAS, SAVRY, VRS-YV, and YLS/CMI. An alternative that has been implemented in four states is the YASI, which includes a screening component, a full risk and need assessment component, and a services component linked to appraised risk and needs. Risk and need assessment should be gender-informed, as there are some distinctive needs by gender, but generally risk assessment works fairly well across genders using the major instruments. However, bias in decision making and case processing is likely for gender (comparing girls and boys); in addition, bias in services availability is likely seen by race and ethnicity. To compensate for gender and racial/ethnic bias in these areas, it is important to make decision makers aware of the potential for bias, use a standardized and empirically supported risk and needs measure, and assertively pursue the availability and delivery of risk-relevant services in the community across race and gender. On race, *see, e.g.*, Richard Berk, *Accuracy and fairness for juvenile justice risk assessments*, 16 J EMPIRICAL LEGAL STUDS, 175, 179 (2019); Christina A. Campbell, et al., *Validation of the Ohio Youth Assessment System Dispositional Tool (OYAS-DIS): An Examination of Race and Gender Differences*, 18 YOUTH VIOLENCE AND JUVENILE JUSTICE, 196, 205 (2019); Matthew DeMichele, et al., *What Do Criminal Justice Professionals Think about Risk Assessment at Pretrial*, 83 FED. PROBATION, 32, 37(2019). On gender, *see, e.g.*, Craig S Schwalbe, *A meta-analysis of juvenile justice risk assessment instruments: Predictive validity by gender*, 35 CRIM JUST & BEHAV 1367, 1377 (2008); Francine T. SHERMAN, ET AL., MAKING DETENTION REFORM WORK FOR GIRLS 27(2013) <https://www.aecf.org/resources/making-detention-reform-work-for-girls/>. For issues of LGBTQ+ identity, *see generally, e.g.*, WILBUR, *supra* note 15. <https://www.aecf.org/resources/lesbian-gay-bisexual-and-transgender-youth-in-the-juvenile-justice-system/>.
23. For example, research has shown that risk assessment tools that include the “Central Eight” factors (i.e., criminal history, education/employment, family, substance abuse, leisure, peer relations, attitudes/orientation, and personality/behavior) produce more accurate risk appraisals and offer valuable information into youths’ needs for intervention. *See, generally*, ANTHONY W FLORES, ET AL., CASE CLASSIFICATION FOR JUVENILE CORRECTIONS: AN ASSESSMENT OF THE YOUTH LEVEL OF SERVICE/CASE MANAGEMENT INVENTORY (YLS/CMI), EXECUTIVE SUMMARY (2004) <https://www.ncjrs.gov/pdffiles1/nij/grants/204005.pdf>; EDWARD J LATESSA ET AL., WHAT WORKS (AND DOESN’T) IN REDUCING RECIDIVISM (2020); Andrew McGrath & Anthony P Thompson, *The relative predictive validity of the static and dynamic domain scores in risk-need assessment of juvenile offenders*, 39 CRIM JUST & BEHAV 250, 259 (2012).