

Juvenile Justice Data and Policy Board
Meeting Minutes
September 19th, 2019

Members and Designees in Attendance:

- Fabiola White (Massachusetts Probation Service)
- Maria Mossaides (OCA)
- Kevin Kennedy (Chiefs of Police)
- Naoka Carey (CfJJ)
- Sana Fadel (CfJJ)
- Laura Alfring (CPCS)
- Dr. Nancy Connolly (DMH)
- Peter Forbes (DYS)
- Rep. Carolyn Dykema
- Rep. Tim Whalen
- Daria Afshar (Senator Patrick O'Connor's Office)
- Cristina Tedstone (DCF)

Other Attendees:

- Melissa Threadgill (OCA)
- Crissy Goldman (OCA)
- Lindsay Morgia (OCA)
- Other members of the public

Meeting Commenced: 2:10pm

Approval of Minutes from June 12th Meeting

The minutes were not approved because there was not a quorum at the point this came up on the agenda. The June minutes will be voted on in November.

Fall Workplan Overview

Ms. Threadgill began the meeting by welcoming everyone, including new members from Sen. Patrick O'Connor's office and the Probation department. She then said that we would start with a big picture overview of the three reports that are due by the end of this calendar year:

1. Early Impacts of Criminal Justice Reform Act: the Arrest Working Group, School Resource Officer Working Group and Data Subcommittee all will be contributing pieces of this report. This meeting will include updates from each group and we will review a draft of this report in November.
2. Community-Based Interventions: this group has been studying juvenile diversion and other community-based interventions in the Commonwealth. We have an initial set of findings and big picture recommendations that we will present today. The Subcommittee will finalize the recommendations in October and review the report in November.

3. Childhood Trauma Task Force: We will submit this report in December. We will review highlights and findings in November.

Ms. Threadgill reviewed the timeline with the board and said that we would try to get drafts of the reports out at least one week in advance of the next meeting.

Data Trends Presentation

Ms. Threadgill began with an overview of the data, noting that we received some of this data within the last week or two. Below is the list of data that we currently have:

- Overnight arrests (DYS)
- Applications for complaint (MassCourts)
- Delinquency filings (MassCourts)
- Detention (DYS)
- Probation caseloads (MassCourts)
- DYS commitments (DYS)

We are still waiting on arrest data from EOPSS and data on arraignments from MassCourts.

For all data, we are looking at data from FY18 (the year before the bill went into effect) and FY19 (the year after the bill went into effect.)

Overnight Arrests (ONA)

Ms. Threadgill shared that from FY18 to FY19, overnight arrests were down 44%. The decrease is similar across seriousness levels for the offense. If the decrease was the result of just the bill, we would expect to see a bigger impact on misdemeanors.

Ms. Threadgill presented ONA admissions by race/ethnicity, specifically black, white, and Hispanic Youth, as the other groups were small. White youth saw the biggest decrease by -67%, followed by black youth at -53% and Hispanic youth at -47%.

Applications for Complaint

Criminal complaints have decreased by 25% from FY18 to FY19. While we do not have the data broken down by misdemeanors and felonies, we do have offense type. The largest decreases were complaints for school disturbances (-68%), alcohol (-55%), and property offenses (-29%).

Delinquency Filings

Delinquency filings follow the same pattern as applications for complaint. They have decreased by 33% from FY18 to FY19, with the largest decreases in alcohol, school disturbance, and property offenses.

The data we received listed race/ethnicity as white and non-white. There was a larger decrease in the number of applications and filings for white youth compared to non-white youth.

Detention Admissions

Detention admissions have decreased by 28%. Admissions for misdemeanors are down by 35%. The trends follow an overall pattern in the decrease in the use of detention. Grid 2 saw a significant decrease of 35%.

Probation Caseload

The probation data contained one month snapshots, so these data points represent the caseloads in July of each year. The caseload decreased by 24% from July 2018 to July 2019. The largest decrease was in administrative cases at -46%.

First-Time Commitments

First-time commitments to DYS are down by 17%, primarily due to a drop in grid level 1 offenses. When looking at the data by race/ethnicity, there is a significant difference between white, black, and Hispanic youth. First-time commitments are down 46% for white youth, 12% for black youth, and increased 5% for Hispanic youth.

Ms. Carey asked about the analysis around disparities, and if there were any factors at work that may be contributing to the differences. Ms. Threadgill said that she would love to look at race and grid level to learn more. Commissioner Forbes said that it may take a couple of years to see differences in commitment data. Ms. Threadgill noted that the data was presented as an overview. Ms. Mossaides said that we tend to have more questions after our first look at new data.

Ms. Carey expressed concern that every time we make a change, it tends to benefit white youth the most, and the differences are dramatic. Commissioner Forbes said that in terms of the ONA data, DYS was working with the police association about a previous law regarding 12 and 13 year olds, and that work is in progress. Ms. Mossaides said that the legislation happened after a series of other efforts. Ms. Threadgill thanked the agencies for getting the data together.

Working Group Report-Outs

Ms. Threadgill said that neither the arrest nor the SRO working groups had finished their work, but she wanted to provide an update on where the groups are in the process. Group members did not always start with the same understanding of the facts, so the findings presented today represent a lot of work.

Arrest Working Group

Ms. Threadgill reviewed the purpose of the Arrest Working Group. At the last meeting, the JJPAD decided to establish a temporary working group to work on the issues raised by the Chiefs of Police Association, including the impact of:

- Raising the lower age of juvenile court jurisdiction to 12
- Changes regarding “first offense” lower-level misdemeanors
- Decriminalization of certain school-based offenses
- Revisions to juvenile arrest procedures

The goal was to develop consensus recommendations, or, failing that, document findings, potential options, and arguments for/against those options. Ms. Threadgill thanked the group members and contributors for their work.

The first issue is what, if anything, should the state do if a child under 12 commits a serious crime? The group’s findings are as follows:

- This is a very rare situation: only a few dozen children under 12 were arrested annual before the law change, and very few for serious charges
- There are numerous state/local entities that may intervene or already be involved in the youth’s life depending on the circumstances
- However, there is no statute requiring a state entity to intervene and provide services (if necessary) that covers all circumstances
- There is also no legal authority for a state entity to compel a child/family to participate in an evaluation or treatment plan.

All of the members agree that:

- Youth under 12 should not be held criminally responsible
- Needed services for this population are under-resourced, particularly accessible, timely behavioral health services, case management, and family engagement support
- Failure to meet the treatment needs of at-risk youth is both damaging to that youth and a potential future public safety risk

Points of disagreement are whether or not there needs to be a legal structure requiring a government entity to monitor these cases, provide services, and compel evaluation and treatment as needed.

Potential options discussed so far include:

- Amending Chapter 119 (Protection and Care of Children) to give DCF responsibility and authority to monitor, with court oversight, treatment plans for youth under 12 who have committed a serious criminal act
- Amending Children Requiring Assistance statute to allow law enforcement to file CRA petition for youth under 12 who have committed a serious criminal act
- No statutory changes

Ms. Alfring asked if the group discussed how enforcement would work. Ms. Threadgill said that the group had not discussed the details. Another member pointed out that DCF defines abuse and neglect as maltreatment by a caretaker; a youth on youth incident would not be screened in. The exception is CSEC youth because the legislature changed the law and mandated DCF to

screen them in and offer services. Otherwise, youth on youth cases tend to be DA referrals. DCF may see neglect in some of these cases, but neglect is not clearly defined. For child-on-child cases, there is funding for five pilots out of the CACs. Once those pilots are complete, we will have a better sense of the need. Do we ask DCF to take on a category of kids not in their jurisdiction, plus add a legal framework? Chief Kennedy said that through a care and protection or CRA, the court would have oversight.

Ms. Carey said that issues of criminal responsibility are complementary to other issues, and asked if we should wait for the pilot findings. Ms. Threadgill said that at this point, she doubts we will get consensus, but we do have a list of findings, options, and pros/cons of each. Ms. Carey said that if we present options before the data comes in from the pilot, we might have a different perspective on the best choice.

Ms. Afshar asked if there would be any opportunity to reopen discussion on these issues. Ms. Threadgill said there is an open invitation to anyone on the Board who would like to participate in the conversation through the Working Group. We will report back to the full board in November, where there will be an opportunity to accept/reject what is offered.

The second issue is if a legislative change is needed to add clarity to the recent law change regarding first-time, low-level misdemeanors. The group findings are:

- There were differing interpretations of this section of the law and its impact on law enforcement's authority to make an arrest for low-level misdemeanors.
- The August 2019 Wallace v. Commonwealth SJC decision clarified the law; the practical impact is that parties now agree that police officers have the authority to arrest for low-level misdemeanors
- Wallace v. Commonwealth created a complicated process for proving a "first offense" in court
- More time is needed to better understand what impact the case will have in practice

Ms. Threadgill said that she can provide a copy of the court case if anyone is interested. For now, all members agree that no additional statutory changes are needed, but that the Board should continue to follow the issue and reconvene the working group in the future if necessary.

Commission Forbes asked for clarification on what constitutes a first offense. Ms. Threadgill said that the SJC created a process to "prove" first offense. Ms. Goldman said that there is a process for dealing with multiple offenses, and if a youth is arrested on a misdemeanor, the info can go into MassCourts so there will be some record of it. Chief Kennedy said the first offense has to be proven beyond a reasonable doubt. He created a flowchart to help explain the process and said that he would share it with the group.

Ms. Mossaides said that the SJC tried to devise some way of tracking first offense in MassCourts but not in the CARI system. Chief Kennedy said that the information would not be in probation, either. Ms. Threadgill said that the main takeaway is that this is new problems may emerge, and if they do, we can bring them back to the discussion. Chief Kennedy said the court acknowledged the intention of the legislature. Ms. Fadel said the purpose is to prevent young people from coming into the system, so the interpretation should be to benefit young people.

The third issue the Arrest Working Group addressed is whether or not school resource officers (SROs) have the legal authority to intervene to de-escalate a situation before it becomes violent in a school setting - even if a youth has not committed an arrestable offense? If not, should they?

The group findings are:

- Case law says police, acting as “community caretakers” have “...authority to take reasonable protective measures whenever public safety is threatened by acts that are dangerous, even if not expressly unlawful.”
- The group is not aware of any case law that specified this applies to SROs in a school setting, however.
- The new statute says that MOUs between law enforcement and schools shall state that “SROs shall not use police powers to address traditional school discipline issues, including non-violent disruptive behavior.”
- The new statute also decriminalizes certain nonviolent conduct if it takes place at school, including “disturbing an assembly” and “disorderly conduct”
- Some law enforcement have interpreted this to mean that SROs are not able to intervene unless/until a situation becomes violent, even if it appears that a student is on the verge of becoming violent
- Other working group members believe that SROs do have the authority to intervene in these situations under current law

Ms. Threadgill said that there is no consensus on whether or not law enforcement have clear authority to intervene to de-escalate a situation before it becomes violent in a school setting if a youth has not committed an arrestable offense. There is also no consensus on whether or not there is a need for clarifying language. The group is working on developing a draft clarifying language, although some members believe it is not needed or advisable.

Ms. Threadgill said that this is complicated because of the lack of consensus. Ms. Carey asked if we were using intervene and arrest interchangeably; we are not. Chief Kennedy said that it is better if these situations are handled by the school, but if SROs want to intervene and remove a child from a situation in a community caretaker role, many officers are not comfortable putting hands on someone without authority to do so. School administrators sometimes look to SROs for help in these situations.

Ms. Carey asked if there was disagreement about the value of police having authority. Chief Kennedy said there was some, as if the police have more authority, it could lead to more arrests. Ms. Threadgill said that some think police have the authority but don't want them to have it, or vice versa. Ms. Goldman said that there is disagreement about whether police intervention is de-escalating. Ms. Mossaides said that she assumes the types of incidents we are discussing are not the same as those that are reportable to DESE. Ms. Carey expressed concern that this could be a workaround for restraints. Chief Kennedy said that for incidents on the edge of violence, there is a natural tension, and schools look to SROs for help. Commission Forbes said that restraints are subject to 51As, and it is really important to be clear who can and cannot put their hands on a child and make sure they get proper training.

Ms. Threadgill said that another option the group may pursue is to write down different options and give them to the legislature for consideration. Ms. Mossaides said that we can ask schools to track these incidents. Who does the restraint should not determine if a report gets filed. Ms. Mossaides will check on this.

The last issue the group worked on was juvenile bail, which has two parts. The first part asks for youth who have been arrested and brought to the station, should the Officer-in-Charge have the authority to decide whether to release them or admit them to bail, or should all decisions on bail/release be made by a Bail Magistrate? The group findings were:

- An Officer-in-Charge is not, by nature, a neutral party in the way a Bail Magistrate would be
- The law change has caused some confusion in the field regarding whether or not a Bail Magistrate should (or can) be called at all
- If a Bail Magistrate is called, they can charge a \$40 fee for their services
- If a youth is released on personal recognizance and cannot afford the fee, they cannot be detained.

All working group members agree that the statute should be amended to give the bail magistrate the sole authority to determine bail/release for youth who have been arrested and brought to the station, rather than the Officer-in-Charge. The group also agrees that the Commonwealth should eliminate the \$40 bail magistrate fee for juveniles. The group recognizes that bail magistrates are performing a service and that the state cannot require them to perform this service without compensation, but how to operationalize this recommendation requires more discussion, likely with a larger/different group of stakeholders.

The second part of this issue is what should be done with youth who cannot go home following an arrest, but also cannot legally be held by DYS or the police. The group findings are:

- Situations regularly occur where a youth has been arrested and is cleared for release, but their parents/guardians will not or cannot pick them up or be located
- Law enforcement legally have up to six hours following an arrest to either transport a youth to juvenile court, release to a parent/guardian, or transfer the youth to the Overnight Arrest program run by DYS
- DYS cannot legally hold a youth under 14 or a youth who has been released on their own personal recognizance in an ONA program
- Law enforcement could file a 51A if a parent will not/cannot accept the child back at their home
- Although DCF makes an effort to prioritize time-sensitive cases like these, they may not be able to respond within the 6 hour window
- DCF funds after-hours emergency placement options, but those are currently only available for youth who have run away, not those who have been arrested for delinquency offenses and are eligible to be released but need a safe place to go

All members agree that the legal requirements and response timeline policies governing the actions of all three entities - law enforcement, DYS, and DCF - are in conflict, producing a gap where there is no clear place for the youth to go. The group is currently investigating whether DCF after hours emergency placements could be made available to this population of youth.

Ms. Tedstone provided some additional information about the history of after hours placements. Originally called alternative lock-up, it was developed in 2009 to address CHINS youth before CHINS reform. It is due for re-procurement. It was for specific types of youth, including those with status offenses or those involved with low-level crimes, but it doesn't really fit all situations DCF encounters in the overnight hours.

Commissioner Forbes said that funding for alternative lock-up has eroded over the past 5-6 years. Ms. Tedstone said that it was not being utilized and is now reserved for runaways who may or may not have a CRA. Ms. Mossaides asked if these beds were in groups homes, and Ms. Tedstone said that they are. Ms. Mossaides asked if they were 1:4 ratio homes, but Ms. Tedstone was not sure. She said that the placements used are designed for specific groups. For youth who commit serious criminal offenses, there could be a safety risk at these placements.

Ms. Threadgill said that the Arrest Working Group will meet again in early October, and the goal is to finalize report back to the full committee in time for the November meeting. If anyone would like to participate or share additional feedback, they should contact Ms. Threadgill.

SRO Working Group

The purpose of the SRO Working Group is to assess implementation of school-based reforms, including:

- The development of memoranda of understanding (MOUs) and standard operating procedures (SOPs) for School Resource Officers in compliance with new law
- The development of new required training for SROs
- Tracking of data on school-based arrests and referrals

If necessary, the group will develop recommendations for additional changes. Ms. Threadgill thanked the members of the group for their work thus far.

Right now, there is a survey in the field for police chiefs regarding MOU and SOP development. We are also hoping to survey school districts. The early results suggest that there is less than 100% compliance with the law. Chief Kennedy said that he mentioned the survey at a conference the day before, which should help increase the response rate.

The Municipal Police Training Committee is currently working on developing an SRO curriculum. Ms. Threadgill shared that she attended a recent meeting, and the group plans on meeting again in October. Finally, the group has found that no state agency has been tasked with supporting/overseeing implementation of school reforms. The working group will develop a list of new statutory mandates that lack an oversight component.

Subcommittee Report-Outs

The Community-Based Interventions (CBI) subcommittee's mandate is to study and report on key focus areas, including:

- Quality and accessibility of youth justice system diversion programs

- Community-based services provided to youth under supervision of juvenile court or DYS
- Overlap between the juvenile justice system and the mental health care system

The subcommittee is also tasked with making recommendations for juvenile justice system changes.

Ms. Threadgill reviewed the process that the CBI subcommittee has gone through to develop its findings and early recommendations:

- Conducted a review of national research on diversion
- Heard presentations on the use of diversion in MA (Police, DA, Judicial)
- Conducted a survey of JJ Practitioners across state on their perceptions of availability and gaps in community-based interventions
- Partnered with JDAI to conduct youth & family surveys (in field)
- Conducted a review of statewide diversion infrastructure & eligibility models used in other states
- Conducted a review of current MA state budget funding for community-based interventions
- Conducted a review of diversion and service funding models in other states

Ms. Threadgill said that the group has reached general agreement about their findings and enough agreement on recommendations to give the full board a sense of direction. The findings are as follows:

1. Diversion Works: Diverting youth from formal processing by the juvenile justice system is an effective intervention strategy for many youth.

2. Increasing Use of Diversion in MA: Juvenile justice decision-makers across the Commonwealth are increasingly aware of the importance of diversion, and more and more decision-makers are establishing diversion practice. Ms. Threadgill shared that more police departments are launching diversion programs, all 10 DA's offices now have diversion, judges are now permitted to do diversion, and anecdotally we know some clerks are doing diversion as well.

3. Wide Variation Across State: There is a wide variation in diversion practices across the state:

1. Eligibility criteria/standards: Ms. Threadgill shared that eligibility criteria range from 1st-time, low-level offenders to those with felonies/multiple court appearances.
2. Use of evidence-based practices: Some programs are using validated decision-making tools, while others are less formal
3. Level of intensity of diversion conditions: Two youth may face the same charges but have different conditions for their diversion programs based on a variety of factors

4. No Data: We do not currently collect the data that would be needed to fully understand or assess our current diversion system(s)

5. Systemic Inequities: The current structure of our diversion system likely contributes to systemic inequities

- Lack of consistency, standardization or universal adoption of evidence-based models à strong potential for inequitable treatment (demographic and geographic)
- Despite data system limitations, we see significant racial/ethnicity disparities in system at early decision points

6. Gaps in Community-Based Interventions: JJ practitioners believe there are distinct gaps in the availability of community-based interventions for justice-involved youth by:

- Services types
- Special populations
- County to county variation

Commissioner Forbes asked if Glenn Daly from EOHHS has been involved, which he has. Commissioner Forbes said that he has information on funding from Shannon grants and other legislatively appropriated services. This information can help bridge the gap for communities who may think they do not have certain resources, even though they are available.

7. More Infrastructure Needed: More infrastructure support is needed to effectively connect at-risk youth w/ services that do exist earlier & overcome barriers:

- Case Management
- Service Tracking & Coordination
- Transportation
- Youth/Family Engagement

Ms. Carey asked if the issues with youth and family engagement were that they get there and then disengage, or if they are not engaged from the start. Ms. Threadgill said that the answer is a “yes, and...” as some families reported wanting a particular service but receiving something different instead. Ms. Mossaides pointed out that the Central, Southeastern, and Western regions of the state have fewer services, and the services that they do have are further apart from one another. Commissioner Forbes said that it would be good to have a baseline so that we may be strategic about investment.

Before sharing the draft recommendations, Ms. Threadgill told the group that the subcommittee knows the devil is in the details. However, there isn’t enough time to work out all of the details before the report is due, and the subcommittee believes that it is important to get the ideas out before the start of the budget process. The subcommittee has decided to start broad and then do deeper dives. The three general recommendation categories are:

- Statewide diversion coordinator program
- Use of data
- Improving availability and accessibility of community-based interventions

Ms. Threadgill said that the big recommendation is the creation of a statewide diversion coordination program. The purpose of the program is to:

- Improve communication and coordination of diversion work by creating Diversion Coordinator positions across the state

- Improve quality and consistency of diversion work by developing common infrastructure, policies and procedures that Diversion Coordinators follow
- Test and refine concept by starting with a three-site pilot

Reviewing a draft flowchart, Ms. Threadgill said that all potential decision-makers, including police, DAs, and judges, would have the option to make a referral to the coordinator. The coordinator would conduct a risk/needs assessments and then decide on the appropriate level of intervention. There is a lot to work out and define, such as the differences between a light touch/higher touch diversion agreement, but the flowchart represents a conceptual model.

Use of data recommendations include:

- The Diversion Coordinator should track a variety of data to support coordination, program management and evaluation, and the program should make regular public reports
- Data from diversion program should not be a part of a youth's official court record or be used against youth in future case

Finally, improving the availability and accessibility of community-based interventions includes:

- Developing diversion grant program to fill local gaps in services for moderate-to-high risk youth being diverted from system
 - Ms. Threadgill shared that the budget analysis showed that there is a lot of funding for services for low-risk youth. JDAI recently issued an RFR for a county-based grant program, which was very successful. The process showed that there are people in the community who can identify needs, so we should be asking them what they would do to divert more moderate/high risk youth
- Prioritizing expanding evidence-based treatment services for high-risk adolescents as part of ongoing Behavioral Health Initiative
 - This is regarding the EOHHS redesign of behavioral health programs. We want to ensure that justice-involved youth are not forgotten in this process
- Launching working group focused specifically on transportation barriers for youth/family seeking to obtain services

Ms. Carey asked if we had reached out to providers regarding transportation, which we have not done yet. She also suggested that we look into larger states who may have models on transportation.

Rep. Dykema asked about the Hampden County dually-involved youth model. Ms. Threadgill said that, as an example, if a community wanted to adopt the Hampden County model, they could apply for funding to do so under Recommendation #6.

Ms. Mossaides said that in the short-term, the OCA will ask for funding for the pilot sites. However, the question of "where is home?" for programs and projects is relevant on many issues. Ms. Carey said that this information is usually in earlier incarnations of bills, but gets lost in the process. She asked if Glenn's office might be a place to consider. Commissioner Forbes said that they had the front-end for Family Resource Centers, which were a total value add. This

is different, as there is existing ownership of programs through police departments, DAs and the court system, so it is tougher one to think through.

Ms. Carey asked if the FRCs are more established now. Ms. Mossaides said that they did a procurement for a certain range of services. If it becomes more of a focal place, like a comprehensive service center, it will be a longer-term project that requires fundamental rethinking of the FRC function. Ms. Carey said that there is a tension between what advocates wanted and what FRCs became. Ms. Mossaides said that she was not surprised by the results of the initial report, which said that many families without court involvement were using the FRCs. She sees it as an indication of original need.

Ms. Threadgill said that in terms of next steps, the CBI subcommittee will present broad recommendations this fall to allow for consideration of recommendations as part of FY2021 budget process. The CBI subcommittee will continue to refine ideas over the winter/spring, including:

- Pressure testing ideas with JDAI County Committees
- Holding focus groups with youth & families
- Additional focus groups/conversations with other constituencies as needed
- Inviting public feedback

The next full JJPAD meeting will be on November 21st at 10AM. Ms. Threadgill thanked the members for their participation.

Meeting Adjourned: 4:00PM