

Juvenile Justice Policy and Data Board

Community Based Interventions
Subcommittee Meeting

September 27, 2023

Agenda

1. Welcome and Introductions
2. Approval of July Meeting Minutes
3. OCA Announcements
4. CPCS/YAD Presentation on the Juvenile pretrial phase in Massachusetts
5. OCA presentation on the key themes heard in juvenile pretrial phase interviews to date
6. Discussion & next steps

OCA Announcements

1. Legislative hearings yesterday (9/26)

- ✓ CRA Bill
- ✓ Diversion expansion bill

2. Massachusetts Youth Diversion Program

- ✓ Impact report anticipated release date
- ✓ Expansion to two more counties

CPCS/YAD Presentation: The Juvenile Court Pretrial Process

Arraignment

- Prosecution formally charges the youth with the alleged offenses
 - within 15 days of Application for Complaint
 - unless the juvenile has been referred to diversion
- If they haven't already been assigned an attorney, they are assigned one at this stage.
 - Parents/guardians are also summoned
- Youth are arraigned as either a "Delinquent Child" or indicted as a "Youthful Offender"
 - Youthful offender cases are indicted by a grand jury (group of 23 adults)

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Practice Considerations:

- Attorney assignment
- Parental involvement
- Educational consideration
- Youthful offender considerations
- *Wallace, W. (2019)*
- *Humberto, H. (2013)*

58A Hearings

- At an arraignment, prosecution can motion for a 58A hearing:
 - immediately,
 - or ask for a 3-day continuance.
 - Defense can also ask for a continuance up to 7 days.
 - If a continuance is granted, youth are detained in the interim.
- [Ch. 276 Sec. 58A](#): “...an order of pretrial detention or release on conditions for a **felony** offense that has as an element of the offense the **use, attempted use or threatened use of physical force** against the person of another or any other felony that, by its nature, involves a **substantial risk that physical force against the person** of another may result...”
- General conditions of release are set forth in the 58A statute (*more on this next time*)
- If a youth is held on a 58A, they can only be held in detention up to 120 days.

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- General conditions of release are set forth in the 58A statute (*more on this next time*)
- If a youth is held on a 58A, they can only be held in detention up to 180 days.

Practice Considerations:

- Continuance considerations & judicial discretion
- Coming in on a summons vs. arrests
- “Tolling time”

Determining Bail

- Prosecution can also motion for bail or pretrial conditions of release
- When determining bail (non 58A), [Ch. 276 Sec. 58](#)
 - “...shall admit such person to bail on his **personal recognizance** without surety unless [the court] determines, in the exercise of his discretion, that such a release will not reasonably assure the **appearance of the person before the court.**”
 - “Except in cases where the person is determined to pose a danger to the safety of any other person or the community under section 58A, **bail shall be set in an amount no higher than what would reasonably assure the appearance of the person before the court** after taking into account the person's financial resources;...
 - ... a higher than affordable bail may be set if neither alternative nonfinancial conditions nor a bail amount which the person could likely afford would adequately assure the person's appearance before the court”

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Practice Considerations:

- Personal recognizance
- *Brangan* (2017)

Determining Flight Risk

When determining the assurance of returning to court [the court should} “... take into account:

1. the nature/circumstances of the offense charged,
2. the potential penalty the person faces,
3. the person's family ties,
4. financial resources & financial ability to give bail,
5. employment record
6. history of mental illness,
7. [defendants] reputation and the length of residence in the community,
8. his record of convictions, if any,
9. any illegal drug distribution or present drug dependency,
10. any flight to avoid prosecution or fraudulent use of an alias or false identification,
11. any failure to appear at any court proceeding to answer to an offense,
12. whether the person is on bail pending adjudication of a prior charge,
13. whether the acts alleged involve abuse ...
14. whether the person has any history of orders issued against him pursuant to the aforesaid sections,
15. whether [the defendant] is on probation, parole, or other release pending completion of sentence for any conviction, and
16. whether [the defendant] is on release pending sentence or appeal for any conviction.”

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Practice Considerations:

- Assessments
- Considerations for youth (e.g., family, school, community connection, previous record of showing up)

Determining Pretrial Conditions of Release

[Ch. 276 Sec. 87](#): When determining pretrial conditions of release,

- “...juvenile court may place on probation in the care of its probation officer any person before it charged with an offense or a crime for such time and upon such conditions as it deems proper, **with the defendant's consent...**”
- Any conditions to provide “assurance of returning to court”
- Special conditions (*more on this next time*)

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- Special conditions (*more on this next time*)

Practice Considerations:

- Youth’s consent of special conditions
- *Norman* (2020)
- Most frequently used conditions (e.g., curfew) & GPS

Pretrial Proceedings

- Following arraignment, youth officially have a delinquency record
- Youth have pretrial status hearings every 30 days (if in custody, every 15 days)
- Youth can be brought back into court for the following reasons at any point:
 - Picking up a new charge that results in a detention/revocation hearing
 - Motions for changes to PTCOR (e.g., GPS exclusion zone changes)
 - Motions for bail relief/review (e.g., good behavior/progress in detention)
- Trial date is ultimately set
- Time standards between filing of complaint/indictment to adjudication/disposition
 - Bench trial: 6 months (180 days)
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Practice Considerations:

- Discovery & filing motions
- Revocation hearings
- Setting a trial date (e.g., pandemic and time standards)

Pretrial Court Process Summary

- Laws guiding this process include:
 - [Ch. 276 Sec. 58](#): outlines bail determinations and assuring youth return to court
 - [Ch. 276 Sec. 58A](#): outlines what should be considered dangerous
 - [Ch. 276 Sec. 87](#): outlines special conditions of release that youth consent to
- Recent relevant case law includes:
 - *Wallace, W*: first-offense determinations
 - *Humberto, H*: lack of probable cause
 - *Brangan*: consider financial resources in setting bail
 - *Norman*: setting pretrial conditions of release
- There are practical considerations when thinking about youth in the pretrial phase:
 - Parental involvement/reliance on adults for finances, transportation, etc.
 - School
 - Developmentally appropriate conditions
- Continuances, motions, discovery, revocations, status hearings, etc. all contribute to a youth's case processing time, but are all important factors for due process and public safety considerations.



**Any questions on
the court process?**

Key themes heard in juvenile justice pretrial phase interviews to date

Research Questions

1. How can we improve pretrial success rates and reduce the need for detention?

2. What practices can help us improve long-term outcomes for kids *and* protect public safety?

3. What do victims want during this phase?



4. Can any of these youth be diverted & served in the community?

5. What community-based interventions/supports need to exist in order to divert?

Pretrial Phase: Research Process

Goal

- Make recommendations to improve our system's pretrial phase
- Identify cohorts of youth that may benefit from being served in the community vs. detention
- Make recommendations to improve pre-trial community-based supports for youth

Methodologies

- Data analysis (DYS/Juvenile Court/Probation)
- Interviews/surveys of attorneys, judges, probation officers, and caseworkers
- National landscape review in what other states are doing re: pretrial detention vs. probation; bail; conditions

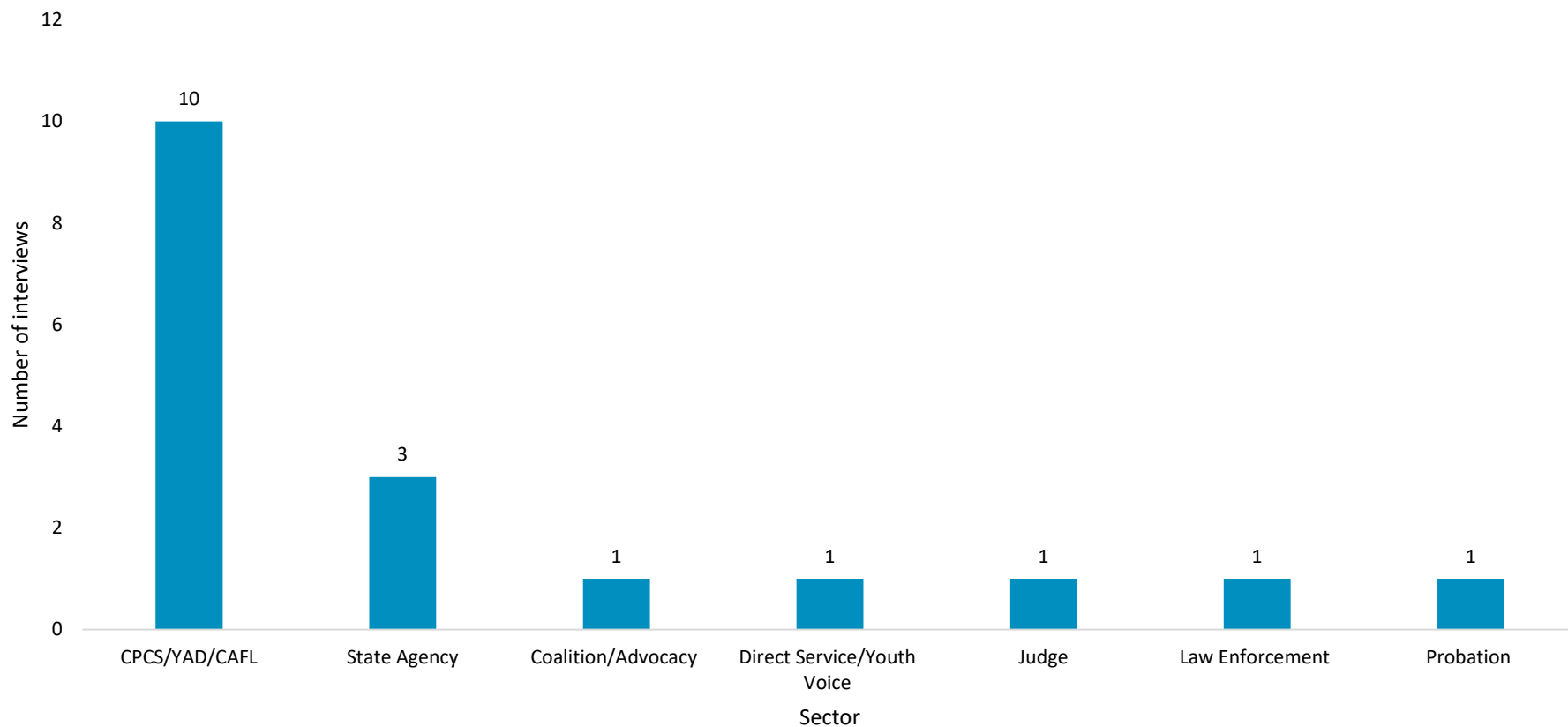
Interview topics include:

- Data shows that detention admissions have been declining for some time, and recently, a growing number of admissions are for youth **held without bail**.
- Youth held without bail as a result of a **58A hearing** accounts for some, but not most detention admissions.
- Rather, the majority of youth held without bail are held **as a result of violating their pretrial probation conditions or bail conditions of release**.

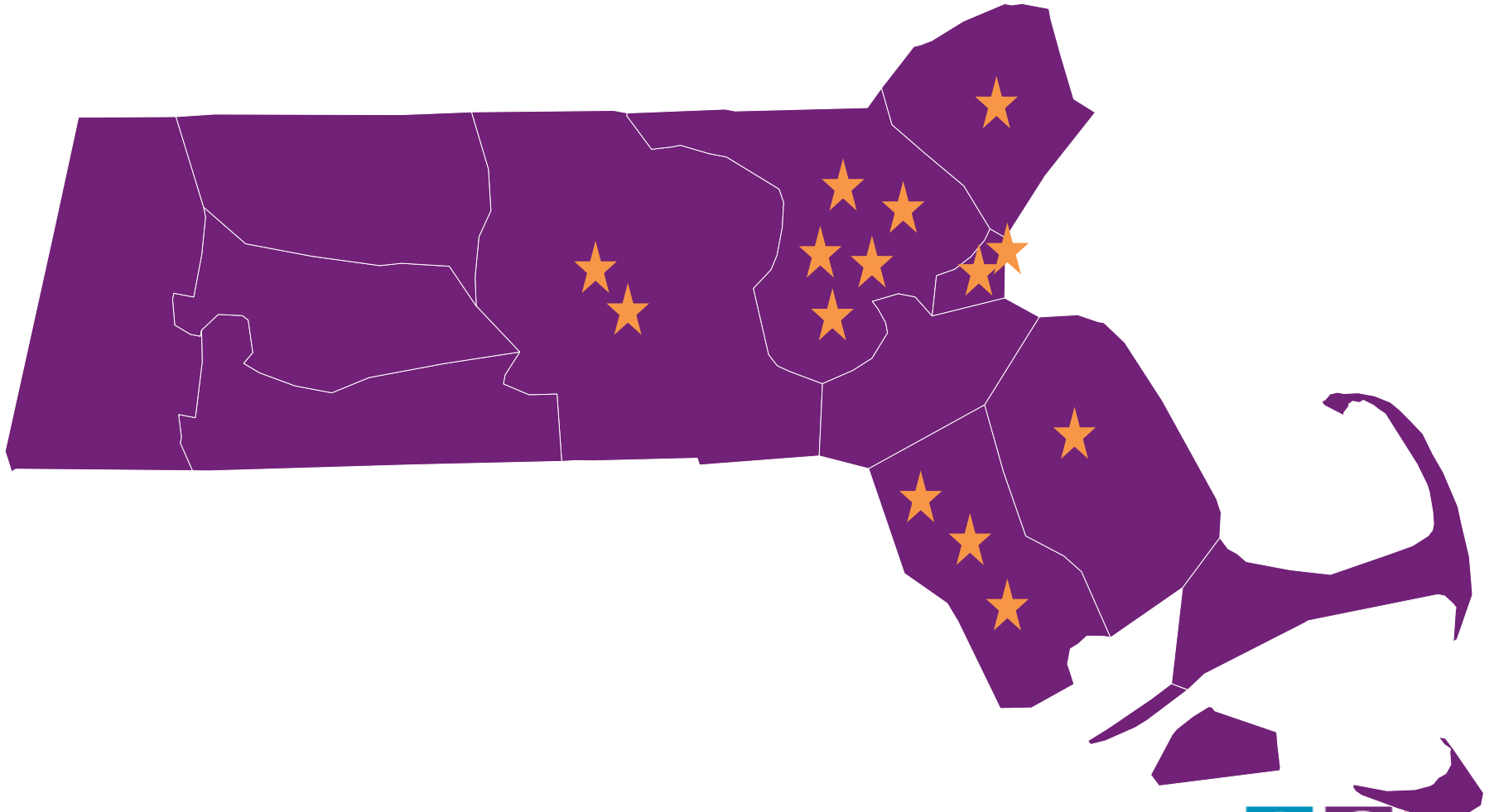


Who we've spoken to so far

Interviews conducted
(as of 9/27/2023)



Who we've spoken to so far



Key Themes (So far)

1. There is variance in what can/should be achieved during this phase

2. Many people think there needs to be more consistency in condition setting at this stage

3. Many feel that GPS is not being used appropriately

4. Likelihood of an FTA is not cited as a reason bail is being set

5. There is disagreement on how dangerousness is determined

Key theme #1:

There is variance in what can/should be achieved during this phase

e.g., supports through the court/probation (i.e., service-oriented COR like therapy)

vs.

optional supports through the community (i.e., warm handoffs to CBOs)

e.g., showing up to court (i.e., avoid FTAs)

"To connect youth to community-based services ...and keep them out of detention"

"The court is not a service provider, and people are trying to solve complex social issues in court."

"Conditions of release should not be issued, unless it has to do with the youth appearing in court."

Key Theme #2: Many people think there needs to be more consistency in condition setting at this stage

- Differences in how conditions are decided (e.g., judges checking all the condition boxes on the probation form vs. tailoring conditions to facts of case)
- Differences in how defense should advocate for/against certain conditions

"I would get a client on arraignment who was released on conditions (drug screen, no social media, attend school daily without incident), but the conditions were not related to the alleged offense and often times lead to detention."

Key Theme #3: Many feel that GPS is not being used appropriately.

- Many people stated GPS is:
 - Overused as an unintended consequence of decarceration
 - Used as a way to start a youth's punishment early
- Interviewees cited the harmful impact of GPS (esp. when coupled with home confinement) & the fact that it may not be developmentally appropriate
- Taking up court resources

"We have been arguing against detention for all youth and the over correction is that now all kids are just getting GPS."

Key Theme #4: Likelihood of an FTA is not cited as a reason bail is being set

- Holding youth on bail is often explained as a way to keep kids in a secure setting for other reasons largely to do with their own safety
 - “Crossover”
 - e.g. CSEC, Gangs
- Concerns about the impact on poorer families
- Research supporting the fact that most kids show up to court regardless
 - Unknown use of JPAAST tool

“Often, I see girls held on lower-level offenses for CSEC concerns.”

Key Theme #5: There is disagreement on how dangerousness is determined

- Any offense with a firearm
 - Difference: possession vs. discharged
- An “event random or violent in nature”
- Many interviewees said the court needs to look at the whole child and circumstances *beyond* the charge to determine dangerousness
- Many interviewees said continuances should only happen if the state is bringing/needs live witnesses

“It should not be offense based; you have to take into the account the facts of the case / the context.”

Discussion Questions



- Do any of these themes surprise you?
- Do you agree/disagree with any themes?
- What other *juvenile court pretrial process* information do you need to see in order to answer our research questions?

Who we need input from still...

- Diversity in jurisdiction (i.e., Western Mass)
- Diversity in professional role (i.e., non-defense counsel)
- Victim voice
- Youth voice

What's next

Goal

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- Data analysis (DYS/Juvenile Court/Probation)
- Interviews/surveys of attorneys, judges, probation officers, and caseworkers
- National landscape review in what other states are doing re: pretrial detention vs. probation; bail; conditions
- Speaking with youth

Next steps



Next Meeting:

Thursday November 30, 2023

1-2:30pm

(All meetings are virtual; Zoom information is in each calendar invitation)



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