



CHECKLIST FOR **Juvenile Confinement* Decisions** DURING AND AFTER COVID-19

The following checklist is a tool to help juvenile justice professionals responsible for placing youth in confinement to examine the criteria for confinement. Considerations of risks of confinement to youth—contracting COVID-19 or other communicable diseases, trauma, poor-long term outcomes—and risks to public safety are set forth with steps to use data, criminogenic risk assessments, and alternatives to confinement to guide decision-making. The goal of this checklist is to help practitioners use confinement sparingly and for the shortest amount of time consistent with both youth and public safety.

GENERAL CONSIDERATIONS

- Review your county's/jurisdiction's current COVID-19 data and prevention/response plan; develop and implement plans that are specific to your facility and to the decision-making approaches that reflect the data and are consistent with those plans.
 - Partner with your local county health department to continually monitor the severity of COVID-19 spread and case numbers in your community and how your facility should operate to maximize the safety of youth and staff. This should include regular updates and briefings between health officials and facility administrators.
 - Invite local public health officials to tour and approve your facility's compliance with local public health orders.
 - Implement and continuously improve your facility's COVID-19 safety protocols. These protocols should include:
 - Procedures for youth intake, housing, assessment, and treatment while in the facility
 - An adequate area in the facility to process new youth that can allow for social distancing but that does not include isolation, except when it is occasionally medically necessary
 - Adequate staff to monitor all youth while socially distanced
 - Reduced population to allow physical space for social distancing
 - Adequate personal protective equipment for all staff and residents
 - Hygienic practices (frequent hand washing/sanitizing, sanitizing surfaces, etc.)
 - Regular testing of staff and residents for COVID-19, especially at entry and exit
 - Verify COVID-19 vaccination status at intake, if possible, provide vaccinations onsite

* In this document, "confinement" refers to a youth being held in a facility pre-adjudication or being placed out-of-home post-adjudication as part of their disposition.

- Written protocol for what to do if a staff member or youth tests positive for COVID-19
 - An adequate, designated area to quarantine youth who may have been exposed to a youth or staff member who has tested positive for COVID-19, while avoiding the use of isolation
 - A detailed plan, developed in collaboration with the county health department, for how and when to gradually return to normal operations
 - Rescind outstanding bench warrants issued for non-violent offenses and release youth from detention or placement as quickly as possible, when appropriate
- Use risk-needs assessments as part of the confinement decision-making process. Before using an assessment, be sure to determine what the risk assessment is measuring (short-term risk of violent reoffending, long-term risk of general reoffending, risk of failing to appear at court, etc.) and whether the type of risk assessed aligns with the type of risk relevant to the decision in question.
 - Consider risk-relevant factors; these are factors that relate specifically to your outcome of concern. Examples of such outcomes include risk of rearrest for *any* offense prior to the first court hearing; risk of rearrest for a *serious* offense (or other specific offense of concern, like violent offending); and risk of failing to appear at that hearing.¹
 - Decision makers should consider the youth’s experiences, trauma history, health² and service needs, and the impact of confinement on access to services, supports, visitation, and other social interactions.
- Based on the youth’s risk score (low, medium, high), the following should serve as starting points for how to proceed:
 - If the score is low, release the youth to the community with little intervention. It can be counterproductive to give youth services they do not need.³ Use needs assessments and discussions with the youth and family to understand how youth may respond to services (i.e., responsivity) and to determine what services/supports, if any, a youth may need.
 - If the score is medium, release the youth to a confinement alternative with risk-reduction supports. Examples include day reporting centers, after school programs, and seeing a behavioral specialist.
 - If the score is high, consider releasing the youth to a confinement alternative with risk-reduction supports. There may be some youth who must be confined (e.g., based on type of charge, previous history, threat of harm to self), but many youth can be in the community with appropriate and sufficient community supports and

confinement alternatives, especially if youth responsivity is high. Keep in mind that risk level can be changed by improving situational influences.

- Make sure decision makers are trained sufficiently in the risk assessment (i.e., in the tool used, risk measures being used, and appropriate application of results) and prepared to prevent external influences (e.g., public perceptions) from motivating the detention/confinement decision.
- Be creative when developing and administering services to moderate- and high-risk youth, especially during a pandemic. It may take more energy and thoughtfulness to engage these youth in services (should include emotional engagement and making sure it is feasible for youth to participate in services).
- If the decision maker decides to override the recommended decision associated with the risk assessment level identified above, the decision maker should be required to document the reason for override and track how often overrides occur. If the decision maker has a supervisor, the supervisor should approve each override. If the decision maker does not have a supervisor, all of the decision maker's overrides should be reviewed by another individual on a regularly scheduled basis. Overrides should be rare.
- If a risk/needs assessment tool is not used, take steps to adopt one; be sure to only consider risk/needs assessment tools that are (a) validated for the population for which they are to be used⁴ and (b) not centered around current offense, given lack of predictive value of current offense and potential biases in arrest and charging.⁵
- Create and sustain a dynamic confinement decision-making process so that youth in pre- and post-adjudication confinement are continually reassessed and are not confined longer than necessary. Put services in place as soon as possible to permit a youth's release and return to the community.⁶
- Ensure use of services that can engage youth (both emotionally and ensuring it's feasible for youth to participate) during pandemic conditions. This can include using existing technology to provide needed services and supervision and/or prioritizing the role of the family/ interested-adults in providing home-based support.
- Take steps to ensure that all youth are assessed and given access to services equitably.
 - Avoid confining a youth solely because relevant supports/services are not available in their community.
 - Work to address bias through training. Many forms of bias exist in juvenile justice contexts including, but not limited to, bias related to race, ethnicity, gender, LGBTQ+ identity, native language, age, special education status, parent characteristics, family income-level, and neighborhood.⁷ Judges should organize bias training annually for themselves, judges in their jurisdiction, and stakeholders.⁸ This responsibility can

be shared with stakeholders by requesting that they coordinate the specifics of the training (i.e., dates and times, calendar invitations, and other particulars).

- Biases in appraised risk level⁹ and disparities in availability of alternatives to confinement can contribute to biases in decision making. To help reduce bias in confinement decisions:
 - Confinement in the least restrictive setting should be the highest priority. Incarceration of youth can have harmful consequences, as demonstrated by research.
 - Decision makers should reflect on their own biases and how to address them.¹⁰
 - Evaluate your jurisdiction's risk-needs assessment tool(s) for racial bias by reviewing domains and items, cut-off scores, and type of risk assessed; continuously train staff how bias may exist in the tool(s) and how to use them in a way that mitigates bias.¹¹
 - At each decision point, consider how bias is built into risk factors (e.g., history of arrest, association with negative peers), scoring (un)reliability, and justice system processing (e.g., police contact) and how that bias may impact identified risk level and the confinement decision.
 - Avoid making decisions that increase restrictions beyond what the appraised risk level indicates, and focus on matching services to needs.
 - When confinement is necessary, provide the explicit reason(s) for confining the youth.
 - Consider whether the youth's protective factors and/or existing family or community supports can reduce risk areas of concern.
 - When community-based alternatives to confinement are not readily available to address risk-relevant factors, consider an alternative set of supports/services (e.g., remote services). Develop services so there are appropriate risk-relevant services available to all genders and races/ethnicities in the community.
 - Identify community-based, client-centered, risk-reduction supports/services prior to decision making; continue to seek/develop alternatives to confinement after a decision to confine.
 - Some youth (disproportionately those of color) are removed from the mainstream school setting. Make sure that your stakeholders understand the educational rights of youth, and partner with schools to rapidly re-enroll youth into school for pro-social opportunities that will allow for release.

- Use pre-adjudication diversion as a way to limit the number of youth formally processed into the juvenile justice system.
 - Pre-adjudication diversion can be used at many different decision-making points and can occur at school, when a youth comes into contact with law enforcement,¹² at the prosecutorial level, during probation/intake, during court hearings and at other stages of case processing. In order to reduce contact between the youth and the system, collaborate with school and law enforcement personnel to develop agreements about diverting youth without prior delinquency findings and youth alleged to have committed a misdemeanor or nonviolent offense; diversion of youth prevents them from being confined and/or from having to go before a judge.¹³
- Identify and use a distinct assessment tool for appraising youth appropriateness for detention. In making pre-adjudicatory detention decisions, consider using an assessment tool created specifically for juvenile probation officers and/or judges that is designed to assess the risk of rearrest prior to adjudication and/or failure to appear at the next scheduled court hearing. Such a tool should be developed and validated specifically for this purpose. Examples include those from Pennsylvania (Pennsylvania Detention Risk Assessment Instrument, or PaDRAI) and Montana (Montana Pre-Adjudicatory Detention Risk Assessment Instrument, or DRAI).
 - Consider the reliability, validity, and equity of existing Detention Risk Assessment Instruments, versus the efficiency and cost of developing such a measure. Jurisdictions should consider if existing detention risk assessment instruments are appropriate to adapt for use locally prior to developing an entirely new instrument.
- *Consider the spread of COVID-19 in your community and your facility.* This is an especially important consideration for pre-adjudication confinement because of the flow of youth in and out of the facility. Youth can expose those at the facility to COVID-19 if they are already infected, or they can become exposed if they come into contact with someone at the facility and then expose their families or community when released.

- Use a risk/needs assessment instrument designed for post-adjudication to decide what interventions, if any, would be appropriate for the youth being assessed, based on the Risk-Need-Responsivity Model (RNR).¹⁴
 - Be aware of the specific risks measured by the risk assessment tool. It may assess more than one. Such risk may include:
 - Risk of reoffending in general (OYAS, SAVRY, VRS/YV, and YLS/CMI have strongest empirical support; the PACT and YASI are also popular tools)¹⁵
 - Risk of reoffending for same offense
 - Risk of violent reoffending (SAVRY and the YLS/CMI have the most empirical support. Remember that “high risk” and “very high risk” refer to the likelihood of the outcome and not the seriousness of the outcome, and this likelihood isn’t the raw probability of an event. It means that “high risk” has a higher likelihood than “low risk.” Also, outcomes involving very serious violent offending (e.g., murder, armed robbery, aggravated battery) are not frequent enough to allow a prediction that would be accurate because of the “rare events” problem, meaning that any prediction of this kind of outcome would have a high percentage of false positive errors.)¹⁶
 - Risk of rearrest over a specific time frame
 - Other types of risks (e.g., sexual offending)
 - Be aware of whether the tool is also measuring youth protective factors¹⁷
- Match services to youth needs, and creatively engage youth.
 - Lower risk youth may need little to no supervision, while youth with higher risks and needs may benefit from more intensive services like Multisystemic Therapy (MST). It is also recommended that services involve a family approach that uses a broad definition of family (e.g., inclusion of a supportive relative or adult). Some of these services include MST, Multidimensional Family Therapy, Functional Family Therapy, and Treatment Foster Care Oregon Adolescents.¹⁸
 - For youth placed on probation, do not revoke a youth’s probation for missing appointments or other technical violations, which may lead to longer placements. Use evidence-based services that are centered around the individual youth. Creatively working to engage youth should be a systemic priority.
- Use assessment tools that measure youth responsivity and protective factors. If these tools are already implemented, use youth responsivity and protective factors to plan personalized services and supports.
 - If these tools have not yet been implemented, start assessing responsivity and protective factors as early as possible in system involvement.

- Use community-based risk reduction strategies available to youth that can serve as confinement alternatives, ensuring that the youth assignment to services is indicated by their risks and needs.
 - Consider confinement only for youth identified as high risk while continually seeking to identify new or non-traditional supports and/or alternatives to confinement programming. Confinement decisions should be *dynamic* and consistently reassessed.
 - Implement supports immediately (*upon release is very important*). In order to have supports available upon release, begin planning for release when a youth enters placement post-adjudication.
- Consistently reevaluate youths' access to and use of alternatives to confinement to prevent youth from being detained or placed and to ensure they are in confinement for as little time as possible. This approach will also help probation officers, service providers, and others involved in a youth's case stay up-to-date on what services and confinement alternatives are available and what youth populations they are targeted to serve.
- Address potential barriers to accessing these supports. Ensure that justice practitioners are continually supporting access to confinement alternatives by identifying and addressing barriers and reinforcing services and supporting engagement.
 - If practitioners are not assigned to addressing barriers, assign someone to this role so that they can support youth in the community, or find out if someone in the community is already working to address service barriers in the community (non-profits or other groups).
- If youth on probation commit a technical violation, avoid confinement as a response whenever possible. Instead, use constructive problem solving and interventions to strategically address the reasons for technical violations and use incentives to promote positive behaviors.¹⁹

1 Steinhart, D., Annie E. Casey Foundation, *Juvenile Detention Risk Assessment: A Practice Guide to Juvenile Detention Reform*, 19-10 (2006). Retrieved from <https://www.aecf.org/resources/a-practice-guide-to-juvenile-detention-reform-1/>

2 In all cases, a youth who has a pre-existing condition should be treated differently than an otherwise physically healthy youth.

3 Wilson, H. A., & Hoge, R. D. (2013). The effect of youth diversion programs on recidivism: A meta-analytic review. *Criminal Justice and Behavior*, 40(5), 51-63; Petrosino, A., Turpin-Petrosino, C., & Guckenburg, S. (2010). Formal system processing of juveniles: Effects on delinquency. *Campbell Systematic Reviews*, 1. Retrieved April 20, 2018, from <https://www.campbellcollaboration.org/>.

4 Vincent, G. M., L. S. Guy, and T. Grisso. 2012. *Risk Assessment in Juvenile Justice: A Guidebook for Implementation*. Chicago: John D. and Catherine T. MacArthur Foundation.

5 Baglivio, M.T., Wolff, K.T., Piquero, A.R., Howell, J.C., & Greenwald, M.A. (2017). Risk assessment trajectories of youth during juvenile justice residential placement: Examining risk, promotive, and "buffer" scores, *Criminal Justice and Behavior*, 44, 360; Mulder, E. Brand, E., Bullens, R., & van Marle,

H. (2011). Risk factors for overall recidivism and severity of recidivism in serious juvenile offenders, *International Journal of Offender Therapy and Comparative Criminology*, 55(1), 118-135; Rovner, J. (2016). The Sentencing Project. Racial Disparities In Youth Commitments and Arrests, <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/>

6 Services should not be dependent on Wardship/formal court jurisdiction. Services should be stand-alone eligible and be available to the youth and family if the case is dismissed.

7 Institute of Medicine 2001. *Juvenile Crime, Juvenile Justice*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/9747>; Leiber, M.J. & Fix, R. (2019). Reflections on the impact of race and ethnicity on juvenile court outcomes and efforts, *American Journal of Criminal Justice*, 44, 581-608; Espinosa, E.M., Sorenson, J.R., & Lopez, M.A. (2013). Youth pathways to placement: The influence of gender, mental health need and trauma on confinement in the juvenile justice system, *Journal of Youth Adolescence*, 42(12), 1824-1836; Majd, K., Marksamer, J., & Reyes, C. (2009). Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth In Juvenile Courts, <http://>

- nclrights.org/wp-content/uploads/2014/06/hidden_injustice.pdf; Wilbur, S. 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/>; Hoytt, E.H., Schiraldi, V., Smith, B., & Ziedenberg, J. (2003). Annie E. Casey Foundation, Reducing racial disparities in juvenile detention, 47-48; Evangelist, M., Ryan, J.P., Victor, B.G., Moore, A., & Berron, P.E. (2017). Disparities at adjudication in the juvenile justice system: An examination of race, gender, and age, *Social Work Research*, 41(4), 199-212; Crosby, S. D., Algood, C.L., Sayles, B., & Cabbage, J. (2017). An ecological examination of the factors that impact well-being among developmentally-disabled youth in the juvenile justice system, *Juvenile and Family Court Journal*, 68(2), 5-18, doi: 10.1111/jfcj.12091; Development Service Group, Inc. (2017). Youths with Intellectual and Developmental Disabilities in the Juvenile Justice System. Retrieved from <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/intellectual-developmental-disabilities.pdf>; Office of Juvenile Justice and Delinquency Prevention (2010). *Youth's Characteristics and Backgrounds: Findings from the Survey of Youth in Residential Placement*, 6. Retrieved from <https://www.ncjrs.gov/pdffiles/ojjdp/227730.pdf>; Taylor, M. et al. (2020). National Center for Juvenile Justice, *Mapping Decision Points from School-Based Incidents to Exclusionary Discipline, Arrest and Referral to the Juvenile Justice System*, 4. <https://www.ncjrs.gov/pdffiles/nij/grants/254625.pdf>; Morton, M.H., Dworsky, A., Samuels, G.M., & Patel, S. (2018). *Missed Opportunities: youth Homelessness in Rural America*, 8-9, <https://www.chapinhall.org/wp-content/uploads/Youth-Homelessness-in-Rural-America.pdf>
- 8 For more information about how to address bias in your jurisdiction refer to *Addressing Bias in Delinquency and Child Welfare Systems: Eliminating Racial and Ethnic Disparities in Juvenile and Family Courts is Critical to Creating a Fair and Equitable System of Justice for All Youth*. <https://njdc.info/wp-content/uploads/2018/07/Addressing-Bias-Bench-Card-1.pdf>
- 9 Steinhart, D., Annie E. Casey Foundation, *Juvenile Detention Risk Assessment: A Practice Guide to Juvenile Detention Reform*, 19-10 (2006). Retrieved from <https://www.aecf.org/resources/a-practice-guide-to-juvenile-detention-reform-1/>
- 10 Start by taking this implicit bias test created by Project Implicit <https://implicit.harvard.edu/implicit/takeatest.html>; Here is a website that gives the basics about bias and talks about how to address bias <https://www.learningforjustice.org/professional-development/test-yourself-for-hidden-bias>
- 11 St. John, V., Murphy, K., & Liberman, A. (2020). Recommendations for addressing racial bias in risk and needs assessment in the juvenile justice system. *Child Trends*. <https://www.childtrends.org/publications/recommendations-for-addressing-racial-bias-in-risk-and-needs-assessment-in-the-juvenile-justice-system>
- 12 Encourage youth probation department to communicate with Law Enforcement Agencies about which kids will not be accepted for intake at your custodial facility, i.e. low risk youth, non-violent felonies, youth whose parents can pick them up at the scene, etc.
- 13 Models for Change Initiative in Pennsylvania (2010). *Guide to Developing Pre-Adjudication Diversion Policy and Practice in Pennsylvania*. Retrieved from https://www.pccd.pa.gov/Juvenile-Justice/Documents/Pre-Adjudication_Diversion_Policy_Guide.pdf
- 14 Risk-Need-Responsivity (RNR) is a model that focuses on assessing the risk of an individual, assessing their needs based on eight criminogenic needs, and their ability to respond to treatment (responsivity). Treatment should be centered around the following domains: family, education/vocation, substance use, thinking/behavior/decision-making/problem-solving, peers, leisure time, and trauma. For more information see Andrews, D. A., & Bonta, J. (2010). Rehabilitating criminal justice policy and practice. Source. *Psychology, Public Policy, and Law*, Vol 16(1), Feb 2010, 39-55.
- 15 Some jurisdictions may also be interested in the YASI because it offers risk screening, fuller risk and needs evaluation, and a case supervision plan. Childs, K. K., Ryals Jr, J., Frick, P. J., Lawing, K., Phillippi, S. W., & Deprato, D. K. (2013). Examining the validity of the Structured Assessment of Violence Risk in Youth (SAVRY) for predicting probation outcomes among adjudicated juvenile offenders. *Behavioral sciences & the law*, 31(2), 256-270; Pusch, N., & Holtfreter, K. (2018). Gender and risk assessment in juvenile offenders: A meta-analysis. *Criminal justice and behavior*, 45(1), 56-81; Stockdale, K. C., Olver, M. E., & Wong, S. C. (2014). The validity and reliability of the Violence Risk Scale-Youth Version in a diverse sample of violent young offenders. *Criminal justice and behavior*, 41(1), 114-138; Vincent, G. M., Guy, L. S., Gershenson, B. G., & McCabe, P. (2012). Does risk assessment make a difference? Results of implementing the SAVRY in juvenile probation. *Behavioral sciences & the law*, 30(4), 384-405.
- 16 Childs, K. K., Ryals Jr, J., Frick, P. J., Lawing, K., Phillippi, S. W., & Deprato, D. K. (2013). Examining the validity of the Structured Assessment of Violence Risk in Youth (SAVRY) for predicting probation outcomes among adjudicated juvenile offenders. *Behavioral sciences & the law*, 31(2), 256-270; Lawing, K., Childs, K. K., Frick, P. J., & Vincent, G. (2017). Use of structured professional judgment by probation officers to assess risk for recidivism in adolescent offenders. *Psychological assessment*, 29(6), 652; Olver, M. E., Stockdale, K. C., & Wormith, J. S. (2009). Risk assessment with young offenders: A meta-analysis of three assessment measures. *Criminal justice and behavior*, 36(4), 329-353. <https://youth.gov/youth-topics/juvenile-justice/risk-and-protective-factors>
- 17 Hartnett, D., Carr, A., Hamilton, E., & O'Reilly, G. (2017). The effectiveness of functional family therapy for adolescent behavioral and substance misuse problems: A meta-analysis. *Family Process*, 56(3), 607-619; Tan, J. X., & Fajardo, M. L. R. (2017). Efficacy of multisystemic therapy in youths aged 10-17 with severe antisocial behaviour and emotional disorders: systematic review. *London journal of primary care*, 9(6), 95-103; van der Pol, T. M., Hoeve, M., Noom, M. J., Stams, G. J. J., Doreleijers, T. A., van Domburgh, L., & Vermeiren, R. R. (2017). Research Review: The effectiveness of multidimensional family therapy in treating adolescents with multiple behavior problems—a meta-analysis. *Journal of Child Psychology and Psychiatry*, 58(5), 532-545; Vidal, S., Steeger, C. M., Caron, C., Lasher, L., & Connell, C. M. (2017). Placement and delinquency outcomes among system-involved youth referred to multisystemic therapy: A propensity score matching analysis. *Administration and Policy in Mental Health and Mental Health Services Research*, 44(6), 853-866; Weisman, C. B., & Montgomery, P. (2019). Functional Family Therapy (FFT) for behavior disordered youth aged 10-18: An overview of reviews. *Research on Social Work Practice*, 29(3), 333-346.
- 19 Wodahl, E.J., Garland, B., Culhane, S.E., & McCarthy, W.P. (2011). Utilizing Behavioral Interventions to Improve Supervision Outcomes. *Criminal Justice and Behavior*, 38, 386.