

# THE VALUE OF JUSTICE-INVOLVED YOUTH: ACCOUNTABILITY THROUGH TECHNOLOGY-DRIVEN POLICIES AND PRACTICES

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*Abstract: The United States juvenile justice system has primary oversight of youth who come into contact with legal authorities. This system is purposefully distinct from the adult system given the presumption of youths' reduced culpability for delinquent behavior and increased potential for rehabilitation. Some juvenile court policies and practices are supportive of youth while others may drive youth further into the juvenile justice system. Today, we are at a point in which we can—and should—use information technology to accrue data to unpack the impact of these policies and practices on and across youth. Moreover, technology-driven policies and practices such as electronic monitoring may be detrimental to the well-being of youth, whereas others such as video conferencing could be more widely used to benefit youth. While juvenile courts hold youth accountable for their behavior, courts also need to be accountable to youth by employing data-informed policies and practices that advance the health and well-being of youth.*

KEY WORDS: Juvenile justice, technology, policies, practices, youth, accountability

## I. INTRODUCTION

How are juvenile justice-involved youth held accountable for their behavior? How are juvenile courts accountable for assuring the potential of justice-involved youth to succeed and prosper as they enter adulthood? These questions assume dual accountability and responsibility in the treatment, advancement, and success of juvenile offenders living in the United States. Today, we are at a point where we can utilize information technology to assist youth in being accountable for their behavior and to evaluate the policies and practices of the U.S. juvenile justice system to assure that they are in the best interest of the child. In particular, assessing emerging technologies such as electronic monitoring is critical as they have great potential to facilitate rehabilitation and well-being, yet immense potential to trap youth in a terrifying and relentless maze of the juvenile justice system. The juvenile justice system has primary oversight of youth who come in contact with legal authorities. The system works with numerous stakeholders (for instance, families, schools, social services, faith-based organizations) to supervise, monitor, and assist youth. Some youth become involved with the juvenile justice system

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due to delinquent acts—actions that if committed by an adult, such as vandalism or selling drugs, would be considered a crime. Others come into contact with the system for status offenses—actions that are illegal only because of a youth’s age, such as underage drinking or running away from home.

There are many root causes of juvenile justice involvement including structural issues of racism and poverty, problems within the family, and individual-level factors including issues with mental health. Fortunately, arrests of juveniles in the United States have trended downward since 2009. Yet, the number of youth arrested remains high, with an estimated 728,280 juvenile arrests in 2018.<sup>1</sup> Given this, there is a need to examine how youth are held accountable for their behavior, how juvenile court policies and practices impact justice-involved youth, and how emerging technologies impact justice involvement and the overall well-being of justice-involved youth.

Justice-involved youth or “minors” are held accountable by juvenile courts for their delinquent behavior and status offenses. In the United States youth are considered to be minors when they are under the age of eighteen years. In certain circumstances, such as alcohol consumption, the term “minor” is used for a person up to the age of twenty-one; while in some states social services for minors are available for youth beyond the age of eighteen years. Given the legal status of minors, parents of justice-involved youth can also be held accountable for their children’s behavior. Some juvenile court policies and practices, such as restitution and community service, have merit in holding youth accountable for their offenses. Others, such as court-related fines and fees can be excessively punitive—pushing youth and their families further into the juvenile justice system. Technology-driven practices—such as electronic monitoring—may be expedient in holding youth accountable, but may not be in the best interest of the child. Insofar as they are accountable to youth, juvenile courts need evidence-based policies and practices. Local, state, and federal agencies, along with academic researchers, youth advocacy groups, and others collect a wide range of data on juvenile delinquency and important issues related to juvenile justice. Still, scientific data on a number of juvenile court policies and practices, including curfew laws, the use of electronic monitoring, and access to court hearings, is needed to illuminate overall effectiveness and disparities in effectiveness across youth.

To fully assess youth and juvenile court accountability, one must consider the distinct purpose of the juvenile justice system—a court purposefully distinct from the adult criminal justice system. Thus, Section II below offers

<sup>1</sup> U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, “Arrests of Juveniles in 2018 Reached the Lowest Level in Nearly 4 Decades,” Washington, DC (2019). [https://www.ojjdp.gov/ojstatbb/snapshots/DataSnapshot\\_UCR2018.pdf](https://www.ojjdp.gov/ojstatbb/snapshots/DataSnapshot_UCR2018.pdf)

a brief history of the U.S. juvenile justice system, followed by discussion in Section III of youth and juvenile court accountability policies and practices.

## II. HISTORY OF JUVENILE JUSTICE IN THE UNITED STATES

The U.S. Juvenile Court has primary oversight of youth offenders. Juvenile courts in the United States were created over a century ago to recognize that children should be treated differently than adults. The origin of a systematized legal course for minors can be traced back to the Illinois Act of 1899.<sup>2,3</sup> This Act created the first U.S. Juvenile Court in Chicago, Illinois. The Act and its subsequent model of juvenile justice posits that minors' capacity for criminal action and criminal responsibility is different than that of adults. The spirit of this legal reform changed the role of the court and judge from one of punitive social control to a rehabilitative social welfare model.<sup>4</sup> The judge, assisted by social welfare workers, was to meet each child's individualized needs. This ideology of nuanced levels of criminal responsibility focused less on the discreet criminal offense and more intently on the background of the offender, as well as the youth's capacity for rehabilitation. In essence, juveniles were viewed as being more amenable to rehabilitation compared to adults.<sup>5</sup> Largely this concept still holds true today.<sup>6,7</sup>

Contrary to the spirit of the Illinois Act of 1899, during the first few decades of the 1900s juvenile courts engaged in punitive practices. In part, this was due to a lack of rehabilitation and treatment options for juveniles—and particularly for African American youth. As a result, youth in the juvenile justice system were treated more like adults.<sup>8</sup> Many youth, and a disproportionate number of African American youth, were sent to adult jails and prisons during this time. As reported by<sup>9</sup> the United States Bureau

<sup>2</sup> Shay Bilchik, "Juvenile Justice: A Century of Change," 1999 National Report Series—Juvenile Justice Bulletin. U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention: Washington, DC, December 1999. [https://www.ncjrs.gov/html/ojjdp/9912\\_2/juv1.html](https://www.ncjrs.gov/html/ojjdp/9912_2/juv1.html)

<sup>3</sup> Rebecca House, "Seen But Not Heard: Using Judicial Waiver to Save the Juvenile Justice System and Our Kids," *The University of Toledo Law Review* 45, no.1 (2013): 149–79.

<sup>4</sup> House, "Seen But Not Heard."

<sup>5</sup> Sacha M. Coupet, "What To Do with the Sheep in Wolf's Clothing: The Role of Rhetoric and Reality about Youth Offenders in the Constructive Dismantling of the Juvenile Justice System," *University of Pennsylvania Law Review* 148 (2000): 1303–1346.

<sup>6</sup> Sally Stevens, "History of Juvenile Justice in the United States: The Need for Ongoing Research," *Drug Court Review: Findings from the National Cross-Site Evaluation of Juvenile Drug Courts and Reclaiming Futures* 10, no.1 (2016): 1-5.

<sup>7</sup> Sally Stevens and Tamara Sargus, "Well-Being of Justice-Involved Youth in Arizona." *Making Action Possible in Southern Arizona, White paper #15, Eller College of Management, University of Arizona, Tucson, AZ, 2020, [www.mapazdashboard.arizona.edu](http://www.mapazdashboard.arizona.edu)*

<sup>8</sup> Chaz Arnett, "Virtual Shackles: Electronic Surveillance and the Adultification of Juvenile Courts," *Journal of Criminal Law and Criminology* 108, no. 3 (2018): 399–454.

<sup>9</sup> Arnett, "Virtual Shackles."

of Census of 1910, 72 percent of committed African American youth and 35 percent of committed White youth were held in adult correctional facilities. Race disparities with regard to how juveniles were treated were pronounced—a problem that continues to exist today.

In the 1950s, youth were perceived to be “out of control.” Juvenile crime rates had increased, as did the number of juvenile court cases. In part, youth crime was thought to be due to the rise of the middle class, leisure time afforded to teenagers, and pop-culture.<sup>10</sup> Concerns emerged regarding juvenile courts’ abilities to rehabilitate youth. The length of time and number of juveniles who were institutionalized, as well as the overall lack of rehabilitative effectiveness, were underscored.<sup>11</sup> In spite of these concerns and debates over the merits of punitive approaches versus progressive ones (such as, prevention and rehabilitation), federal legislation supported progressive approaches and juvenile courts remained focused on prevention and rehabilitation.<sup>12</sup>

Support for justice-involved youth further increased in the 1960s—particularly with regard to policy change. In 1967, in a case originating in Arizona, the U.S. Supreme Court recognized a youth’s right to due process and the assistance of legal counsel—a right afforded to adults charged with a crime. The Court’s opinion was that juveniles facing adjudication were, like adults, entitled to certain procedural safeguards under the Due Process Clause of the Fourteenth Amendment.<sup>13</sup> In 1968, Congress passed the Juvenile Delinquency Prevention and Control Act, which provided assistance to states and local governments, and for training juvenile justice personnel. To receive funding states needed to designate a lead agency to oversee delinquency prevention and control programs. Despite congressional efforts, juvenile arrests for violent crimes increased by 216 percent between 1960 and 1974.<sup>14</sup> In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act that tied grant funding to the deinstitutionalization of status offenders and the separation of juvenile offenders from adult offenders.<sup>15</sup> While most states continued to institutionalize juvenile offenders, some

<sup>10</sup> Jason Barnosky, “The Violent Years: Responses to Juvenile Crime in the 1950s,” *Polity* 38, no. 3 (2006): 314–44. The University of Chicago Press on behalf of the Northeastern Political Science Association, Chicago, IL, <https://www.jstor.org/stable/pdf/3877070>

<sup>11</sup> Bilchik, “Juvenile Justice.” [https://www.ncjrs.gov/html/ojjdp/9912\\_2/juv1.html](https://www.ncjrs.gov/html/ojjdp/9912_2/juv1.html)

<sup>12</sup> Jason Barnosky, “The Violent Years.” <https://www.jstor.org/stable/pdf/3877070>

<sup>13</sup> Amanda J. Powell, Amy Borrer, Tim Curry, Mary Ann Scali, and Hillele Simpson, “Arizona Bringing Gault Home: An Assessment of Access to and Quality of Juvenile Defense Council,” National Juvenile Defender Center, Washington DC, 2018. <https://njdc.info/wp-content/uploads/2018/09/Arizona-Assessment-NJDC.pdf>

<sup>14</sup> Congressional Research Service, “Juvenile Justice: Overview of Legislative History and Funding Trends,” Washington, DC, 2007. <https://www.everycrsreport.com/reports/RS22070.html>

<sup>15</sup> Bilchik, “Juvenile Justice: A Century of Change.”

states (for example, Massachusetts, Missouri, Vermont, Utah) decreased juvenile incarceration by upwards of 90 percent.<sup>16</sup>

As with most social movements, pendulums swing.<sup>17</sup> During the 1980s, the juvenile justice system was criticized for being ineffective and costly. This criticism dovetailed with the public's unfounded perception that violent juvenile crime was on the rise and the system was too lenient.<sup>18</sup> This period, colloquially known as "get tough on crime," resulted in more punitive consequences for juvenile offenders, causing a movement away from rehabilitation and toward punishment. There was a lack of support for programs that address root causes of juvenile delinquency, including access to mental health services. This "tough on crime" trend accelerated in the 1990s contributing to tougher laws (for instance, mandatory sentencing) and incarceration for minor offenses, which resulted in greater numbers of juveniles being confined in overcrowded juvenile detention facilities and more youth being sent to adult prisons and jails.<sup>19</sup>

Concurrent with the peak in juvenile arrests in the 1990s, juvenile courts began to move away from punishment as an accountability practice and embraced practices thought to better facilitate youth becoming responsible members of society. Some juvenile courts incorporated the Balanced Approach—an approach that highlights community protection and youth accountability with an emphasis on youth becoming responsible members of society.<sup>20</sup> Similarly, the Restorative Justice approach also has a focus on youth accountability and includes giving voice to—and promoting dialogue with—individuals and/or communities that have been harmed. Again, the intent is rehabilitative through accountability.<sup>21</sup> Contributing to the shift from punishment with high use of incarceration to rehabilitation within community settings were findings from studies on brain development showing that youth are developmentally different from adults. The malleability and rapid growth of the adolescent brain is thought to offer substantial potential for rehabilitation.<sup>22, 23</sup>

<sup>16</sup> James Austin, Kelly Dedel Johnson, and Marie Gregoriou, "Juveniles in Adult Prisons and Jails: A National Assessment," Institute on Crime, Justice and Correction, George Washington University and the National Council on Crime and Delinquency, Washington, DC, 2000. <https://www.ncjrs.gov/pdffiles1/bja/182503-1.pdf>

<sup>17</sup> Stevens, "History of Juvenile Justice in the United States."

<sup>18</sup> Coupet, "What To Do with the Sheep in Wolf's Clothing."

<sup>19</sup> Center on Juvenile and Criminal Justice, "Juvenile Justice History," San Francisco, CA, 2016. <http://www.cjcj.org/education1/juvenile-justice-history.html>

<sup>20</sup> Thomas J. Charron, Roger Floren, Delores Heredia Ward, and Debra Whitcomb, "Measuring What Really Matters in Juvenile Justice," American Prosecutors Research Institute, Alexandria, VA, 2006. <http://ibarji.org/docs/bazemore.pdf>

<sup>21</sup> Rebecca Dillard, Tarkington J. Newman, and Melissa Kim, "Promoting Youth Competence through Balanced and Restorative Justice: A Community-based PYD Approach," *Journal of Youth Development* 14, no. 4, (2019): 14–35.

<sup>22</sup> House, "Seen But Not Heard."

<sup>23</sup> Mark Soler, Dana Shoenberg, and Marc Schindler, "Juvenile Justice: Lessons for a New Era," *Georgetown Journal on Poverty Law and Policy* XVI (2009): 483–501.

In spite of these more rehabilitative approaches and scientific evidence regarding the adolescent brain, some juvenile court-related policies and practices still do not align with the unique mission of juvenile courts—having the potential to negatively impact justice-involved youth and their families' current and future well-being. These negative impacts are broad and include reduced economic stability and advancement, diminished physical and mental health, and abated social and family well-being.<sup>24</sup> Questions arise as to why juvenile courts do not amend policies and practices that are not in the best interest of youth.

Negative impacts on youth and their families are particularly troubling given that most youth involved in juvenile courts engaged in non-felony offenses. In 2018, the most commonly committed juvenile crimes in the United States included simple assault, followed by drug violations, larceny-theft, and obstruction of justice.<sup>25</sup> Data from Arizona show that in Fiscal Year 2019 only 10 percent of males and 4.7 percent of females were referred to juvenile court for a felony offense against persons; and only 8.4 percent of males and 3.4 percent of females were referred for a felony offense against property. Data on other felony acts are combined with misdemeanors (for example, drugs, felony and misdemeanor). Overall, however, only 36.2 percent of referrals were for some type of felony offense, with 43 percent for misdemeanor offenses, 3.9 percent for violations of probation and ordinances, 11.2 percent for status offenses, and 5.7 percent for other offenses.<sup>26</sup> Thus, over half of youth referrals in Arizona are for non-felony delinquency offenses, with the most frequent offenses involving property, public order, illegal drugs, as well as status offenses—with the most common status offenses being running away, truancy, curfew violation, and incorrigibility.

### III. HOLDING YOUTH ACCOUNTABLE

While the number of delinquency cases processed by U.S. juvenile courts decreased by 55 percent between 2005 and 2018, the number of youth involved in the juvenile justice system remains high. In 2018, juvenile courts handled approximately 744,500 delinquency cases and 97,800 status offense cases.<sup>27</sup> In Arizona, Fiscal Year 2019 data indicates that 2 percent of juveniles ages eight to seventeen living in Arizona were referred to juvenile court—a

<sup>24</sup> Stevens and Sargus, "Well-Being of Justice-Involved Youth in Arizona."

<sup>25</sup> Sarah Hockenberry and Charles Puzzanchera, "Juvenile Court Statistics, 2018," National Center for Juvenile Justice, Pittsburgh, PA. 2020. <https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/juvenile-court-statistics-2018.pdf>

<sup>26</sup> Joseph F. Kelroy, Amy K. Stuart, Charles S. Bursleson, and Angela J. Rhudy, "Arizona's Juvenile Court Counts: Statewide Statistical Information FY 2019," Arizona Supreme Court, Phoenix, AZ, 2020.

<https://www.azcourts.gov/Portals/29/JJSD%20Publication%20Reports/Juveniles%20Processed/AZJUVCrCountsFY19.pdf?ver=2020-03-03-151703-823>

<sup>27</sup> Hockenberry and Puzzanchera, "Juvenile Court Statistics, 2018."

relatively high percent. Fortunately, however, five-year trend data (2015–2019) indicates substantial decreases in the number of referrals (37,441 to 28,491), youths referred (25,467 to 19,976), petitions filed (15,076 to 11,986), and the number of juveniles petitioned (8,954 to 7,158). As these numbers indicate, many youth had more than one referral to juvenile court and more than one petitioned filed.<sup>28</sup>

Adjudicated youth are youth found to be responsible for committing a delinquent act. Questions with regard to how juvenile courts can best hold adjudicated youth accountable continues to be debated. Today, most argue against incarceration as a form of holding youth accountable. Over the past two decades, with the pendulum swinging in the direction of rehabilitation, most U.S. states have made substantial progress in reducing the number of youth subjected to incarceration. Between 2000 and 2019 the number of youth confined dropped by 60 percent.<sup>29</sup> Yet, in 2019, on any given day, approximately 32,170 youth in the United States were confined to detention centers, long-term secure facilities, or adult prisons and jails. An additional 16,081 were in residential treatment, group homes, or shelters/centers/camps. In Arizona, the Fiscal Year 2019 data indicates that 3,466 juveniles were detained in detention centers either temporarily or for a longer period of time. Arizona's five-year trend data (2015–2019) indicates a decrease in detainment from 5,211 to 3,466.<sup>30</sup> In spite of these high numbers, policy makers, counselors, educators, and others agree that youth incarceration generally does more harm than good. Research indicates that confining youth can increase recidivism and extend involvement in the juvenile justice system.<sup>31</sup> Thus, more justice-involved youth now live in the community with a varying degree of accountability stipulations and surveillance—including electronic monitoring (EM), which has been purported by some to be a “virtual shackle.”<sup>32</sup>

Accountability, as specified in the Balanced and Restorative Justice approaches, requires offenders to take responsibility for their behavior and the harm they inflicted on their victim and community, engage in actions to repair that harm, and acknowledge that better choices could have avoided their behavior.<sup>33</sup> These approaches steer away from punishment as a consequence for delinquent behavior and embrace a rehabilitative social welfare model—a model thought to be in line with the purpose of the first U.S. juvenile court and the Illinois Act of 1899. More recently, juvenile courts, community programs, centers, institutes, and others have developed

<sup>28</sup> Kelroy, Stuart, Burlison, and Rhudy, “Arizona’s Juvenile Court Counts.”

<sup>29</sup> Wendy Sawyer, “Youth Confinement: The Whole Pie 2019,” Prison Policy Institute, Los Angeles, CA, 2019. <https://www.prisonpolicy.org/reports/youth2019.html>

<sup>30</sup> Kelroy, Stuart, Burlison, and Rhudy, “Arizona’s Juvenile Court Counts.”

<sup>31</sup> Justice Policy Institute, “Sticker Shock: Calculating the Full Price Tag for Youth Incarceration,” Washington, DC, 2014. <http://www.justicepolicy.org/research/8477>

<sup>32</sup> Arnett, “Virtual Shackles.”

<sup>33</sup> Charron, Floren, Ward, and Whitcomb, “Measuring What *Really* Matters in Juvenile Justice.”



approaches and have researched juvenile-justice related issues, programs, and practices, illuminating concerns and specifically highlighting best practice approaches.<sup>34</sup> However, still today there are methods of “being accountable,” “taking responsibility,” and “actions to repair harm” that can be punitive—particularly for some youth.

In current practice, youth accountability includes (1) accountability to victims and communities through monetary restitution and community service, (2) payment of juvenile court-related fines and fees, and (3) abiding by court driven requirements and restrictions which are frequently monitored through EM surveillance technology. These accountability practices, I argue, can be problematic and are in need of a deeper critique.

#### *A. Restitution and community service*

Restitution refers to a juvenile’s court order to compensate victims for expenses due to the juvenile’s delinquent act. Compensation can either be through cash payments and/or symbolic payments through community service work. All fifty states have statutes providing for juvenile restitution.<sup>35</sup> Restitution orders do not expire. Juvenile courts have the power to collect money from the youth and, if not paid when the youth becomes an adult, the judgment can be transferred to another court (for example, adult civil court) to enforce collection—thus following the youth into their adulthood. In some states, parents of juveniles can also be held accountable to pay their child’s restitution if the youth is unable or unwilling to pay. Moreover, if multiple youth are ordered to pay restitution for a jointly committed offense, some court jurisdictions can require that all youth pay restitution prior to any one youth given credit. While the intent of restitution is to hold youth accountable and provide victim reparation, it can undermine rehabilitation and drive the youth further into the juvenile justice system and potentially the adult court system as well.

Restitution can provide financial benefits for victims and communities, as well as contribute to a victim’s psychological well-being.<sup>36</sup> It may also have some rehabilitative merits for the youth such as engendering the belief that they have “made things right.” Contrariwise, restitution is a form of punishment that unequally affects youth and families living in poverty or low-income households. In one study, 76 percent of respondents reported that restitution requirements drove them deeper into the juvenile justice system, led to more court visits, debt, drivers license issues, and family stress and

<sup>34</sup> Sally Stevens, Josephine D. Korchmaros, and Alison Greene, “Findings from the National Cross-Site Evaluation of Juvenile Drug Courts and Reclaiming Futures,” *Drug Court Review X*, no. 1 (2016).

<sup>35</sup> Jessica Feierman, Naomi Goldstein, Emily Haney-Caron, and Jaymes Fairfax Columbo, “Debtors’ Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System,” Juvenile Law Center, Philadelphia, PA, 2016. <http://debtorsprison.jlc.org/documents/jlc-debtors-prison.pdf>

<sup>36</sup> Feierman, Goldstein, Haney-Caron, and Columbo, “Debtors’ Prison for Kids?”



strain.<sup>37</sup> Youth and families living in poverty often have a tough choice between paying restitution or putting food on the table.<sup>38</sup>

Community service can be a part of juvenile restitution and generally involves unpaid labor meant to benefit communities. Examples of such labor include graffiti abatement, litter clean-up, and volunteering at various community-based programs. There are programs that pay youth a minimum wage for community service, which goes toward paying their restitution. However, these programs often have monetary limits that do not always cover the amount due. Community service has benefits for youth including an increased sense of social responsibility and the learning of new skills. It also has drawbacks including time commitment, transportation challenges, and safety concerns. Youth who live in rural communities may not be able to participate due to accessibility to service sites, while youth living in poverty may not be able to afford transportation. Additionally, youth who need to use public transportation in or across unsafe communities may find travel terrifying and opt to forgo this order of the court.

There is a lack of scientific data on youth and families required to pay restitution, how much is assessed, and who is able to pay. There is also a lack of data on how victims of juvenile delinquent acts view restitution. While at times the victim may be the “state” or the “community at large,” frequently the victim is a person, business, or group. In these cases, do victims support restitution requirements when it places undue burden and stress on youth and their families? Do they value having restitution orders that follow youth into adulthood? Given that restitution is, in part, compensation or restoration for the victim, the viewpoint of victims on the potential for restitution to have a negative impact on youth is critical and may be informative about whether to keep or amend restitution statutes.

### *B. Fines and fees*

In many states, youth and their families are accountable to juvenile court for a number of fines and fees such as administrative service charges, psychological testing, drug testing, probation and detention fees, EM charges, and attorney’s fees. Moreover, nineteen states and U.S. territories have statutes or court rules that allow the use of bail with juvenile court-involved youth and another twenty-eight do not authorize nor prohibit the use of bail in juvenile court by statute or court rule. For states that allow juvenile bail, the same restrictions and requirements as adult bail apply.<sup>39</sup>

Costs associated with fines and fees are often established at the local level, and even though many are discretionary under state law, they are

<sup>37</sup> *Ibid.*

<sup>38</sup> Stevens and Sargus, “Well-Being of Justice-Involved Youth in Arizona.”

<sup>39</sup> National Juvenile Defender Center, “A Right to Liberty: Reforming Juvenile Money Bail,” Washington, DC, 2019. [https://njdc.info/wp-content/uploads/2019/NJDC\\_Right\\_to\\_Liberty.pdf](https://njdc.info/wp-content/uploads/2019/NJDC_Right_to_Liberty.pdf)

frequently imposed. Many youth do not have a way to pay given that some are not old enough to work or work full time. Attending school is oftentimes a mandate of the court, so quitting school to work may not an option. Some state laws ascertain that youth or their families may be incarcerated for failure to pay, while in other states youth can be held in contempt of court, have their probation revoked, have opportunities for diversion programs taken away, and both youth and parents can have their drivers licenses suspended.<sup>40</sup> It is difficult to comprehend how these court-related fines and fees contribute to youth rehabilitation and fairness across socioeconomic family profiles.

In Arizona, youth are accountable to the court for a number of assessed fines and fees. For example, a probation monetary assessment for a child adjudicated to be incorrigible can be up to \$150; a DUI traffic fine ranges between \$250 to \$500; a fine for criminal damage by drawing or inscribing on any public or private building structure or surface without an owner's permission is \$300 to \$1,000; and attorney's fees can be up to \$400.<sup>41</sup> Some youth and their families decide to opt out of having an attorney to avoid the attorney fee, or they simply admit to the allegations. In addition, in some Arizona counties additional fees are tagged on to youth and families who are unable to pay and need to be put on payment plans. These fines and fees keep court-involved youth and families tethered to the juvenile justice system. Like unpaid restitution, unpaid fines and fees can be turned over to an adult court with a civil judgment sometimes resulting in the garnishing of earned wages. Moreover, paying one's fines and fees is necessary to complete juvenile probation successfully—a requirement to apply for the expungement or destruction of one's juvenile records.

One report estimates that 90 to 99 percent of Arizona's youth and families involved in delinquency cases meet indigence standards, placing heavy burden on impoverished families.<sup>42</sup> The finances of the youth's family are assessed and families are considered indigent if they have difficulty paying for basic needs and are unable to pay for an attorney. Findings from the interviews conducted with court personnel highlight the burdensome monetary and time-related costs associated with court-imposed fines and fees.<sup>43</sup> Oftentimes families are faced with the difficult decision of paying bills or paying court-related fines and fees. While interviewees indicated that fee waivers or reductions are possible, one juvenile court administrator noted that in their county "most youth are assigned a contract attorney and rarely does a public defender ever address fees." A juvenile public defender in another Arizona county agreed and indicated that "contract attorneys do not see this [fee waiver/reduction] as part of their job." Other interviewees noted that the likelihood of a fee reduction or waiver was dependent on the

<sup>40</sup> Feierman, Goldstein, Haney-Caron, and Columbo, "Debtors' Prison for Kids?"

<sup>41</sup> Stevens and Sargus, "Well-Being of Justice-Involved Youth in Arizona."

<sup>42</sup> Powell, Borrer, Curry, Scali, and Simpson, "Arizona Bringing Guilt Home."

<sup>43</sup> Stevens and Sargus, "Well-Being of Justice-Involved Youth in Arizona."

judge and that inconsistencies in rulings exist between judges and across youth. Others stated that many family members do not have time off from work or home duties nor the resources (such as transportation and childcare) to go to court to provide information to apply for waivers and/or reduction in fees. Moreover, language barriers along with fear and mistrust of the system also keep families from pursuing waivers and/or fee reductions. When asked what changes could be made to mitigate these burdens, most interviewees indicated that fines and fees should be completely eliminated.

The qualitative interviews with juvenile court personnel (for instance, clerk's office personnel and probation officers) also revealed a lack of quantitative data on fines and fees. Data analysis regarding youth and family-level fines and fees was not possible given that information on which youth and families were assessed fines and fees and which youth and families paid or did not pay their fines and fees was not available. Interviewees noted that probation officers often assist families with reduction or waiver requests, but this information is not tracked. Thus, data on how many youth and families were granted a reduction or waiver for juvenile court fines and fees was not known. The lack of information technology efforts to track this information is concerning.

In some states, including Arizona, youth and their families must pay restitution charges as well as all fines and fees to be able have their juvenile records expunged or destroyed. Arizona is one of the seven U.S. states with open juvenile record laws—meaning that anyone can access a youth's juvenile record. Potential employers, educational programs, and even housing rental companies and landlords, can access this information and can, and have, denied youth opportunities based on their juvenile record.<sup>44</sup> In 2019, a policy change in Arizona improved this punitive statute, including allowing for automatic expungement for status offenders. However, additional policy change is needed to lesson eligibility requirements, including consideration of automatically sealing youths' juvenile and law enforcement records when they are discharged from court supervision—which for some may be when they are eighteen years of age. Moreover, there is a need to educate legal and service professionals along with youth and families on this policy change and how to apply for record expungement/destruction.

Arizona state-level and county-level data on the number of applications for juvenile record expungement and record destruction and the number of juvenile records expunged/destroyed was not made available to the researchers by the Arizona Office of the Court or juvenile courts within each of Arizona's fifteen counties.<sup>45</sup> It appears that these data are not concisely collected or tracked and/or are difficult to retrieve. Local, state, and/or federal funding for information technology activities to

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

track this information within and across U.S. states and court jurisdictions is needed to gain a deeper understanding of how many youth, and which youth, are impacted by open record laws and record expungement/destruction policies.

### *C. Surveillance through electronic monitoring technology*

Electronic monitoring (EM) encompasses a number of systems and components such as wrist and ankle bracelets, field monitoring devices, alcohol and drug testing, global positioning system (GPS), and voice verification systems.<sup>46</sup> Juveniles assigned to EM are typically confined to home and approved locations (for instance, school and work) and wear a wrist or ankle bracelet operated through radio or GPS monitoring to track their movements. If youth move out of range or there is a deviation in their approved schedule of movement, the device alerts a central monitoring system. Some contend that this is digital incarceration and certainly undermines the rehabilitative purpose of the juvenile justice system.

EM is used pre-adjudication (youth awaiting court appearance) and post-adjudication (youth found delinquent). Some argue that the use of EM pre-adjudication is unjust—that this does not abide by the presumption that one is innocent prior to adjudication. The presumption of innocence supported by language articulated in the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution, should be considered in mandating a youth to EM.

Court personnel, counseling staff, youth advocates, and others maintain that there are both advantages and disadvantages for both the court and the youth of using EM. For juvenile courts the primary advantage of EM is cost savings, when the alternative is detention. For youth, advantages include being able to go to school, work, and other approved activities and being able to stay at home with family. Disadvantages for courts can include an increase in personnel time for responding to EM violations, along with an upturn in court appearances for youth who violate court mandates. For youth, disadvantages include financial costs (such as EM fees, cell/landline phone costs, and equipment damage charges), false positive signals (due to equipment failure, lost signal, or a phone or EM device not being charged), additional court appearances, along with elevated stress and psychological impacts, stigma and discrimination, and surveillance anxiety.<sup>47</sup> If presented with a choice between detention and home confinement with EM, most teens would choose EM—but one must question whether EM is the best alternative. Given the potentially harmful impacts of EM on youth, questions arise about whether the use of EM technology is truly in line with

<sup>46</sup> Developmental Services Group, Inc., "Home Confinement and Electronic Monitoring: Literature Review," Office of Juvenile Justice and Delinquency Prevention, Washington, DC, 2014. [https://www.ojjdp.gov/mpg/litreviews/Home\\_Confinement\\_EM.pdf](https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf)

<sup>47</sup> Arnett, "Virtual Shackles."

juvenile court's rehabilitative mission and if and for whom it may do more harm than good.

1. Elevated stress and psychological impact of EM. Complying with court mandates is stressful, particularly for youth who have multiple restrictions and compliance mandates. Noncompliance on any one restriction or order may incur additional costs or may result in youth being sent to detention. Teens are particularly social beings, and interaction with peers is a critical component of adolescent development. Healthy adolescent development includes peer group interaction, exploration, and trying new things. The high level of self-discipline youth must have to obey "stay at home orders" and miss interacting with peers is arduous. Consider too that the adolescent brain, and in particular the prefrontal cortex that controls reasoning and impulse, is not yet mature, making restrictions in movement challenging. Thus, the use of EM is not only in conflict with social aspects of human development but with brain maturation factors as well.<sup>48</sup> For youth living in stressful home environments (for example, domestic violence, family rejection due to identifying as LGBTQ, and so on) such confinement may exacerbate stress, anxiety, and depression. While juvenile courts generally provide mental health counseling, presumably including mental health issues exacerbated by EM, what remains unknown is the extent of the psychological impact that EM has on youth.

2. Stigma associated with EM. Wearing an EM device implies that the youth is dishonest, bad, or even dangerous. Some youth are proud of their EM device as it can provide a right-of-passage, give proof to their bravado, and increase "street cred" within their community or peer group. Over time, some of these youth begin to loathe wearing their EM device as they become aware of its negative impacts—including stigmas associated with being a youth mandated to EM. Employers may decline to hire youth wearing an EM device given their mistrust and even fear of the youth. Other employers may not be willing to hire a youth on EM due to concerns regarding customer perception and/or the need for court approval for changes in movement or work schedule, limiting work schedule flexibility. Employers, community service coordinators, teachers, and others may discriminate against youth assigned to EM. At the very least, wearing an EM device provokes implicit and explicit bias.<sup>49</sup> Youth perceive this stigma and may internalize shame associated with stigma. Internalized stigma is associated with reduced self-acceptance and self-worth.

3. Surveillance anxiety related to EM. EM using GPS is the most common form of surveillance for tracking location and other data. Some EM devices are also set up to monitor blood alcohol levels using Secure Continuous

<sup>48</sup> Ibid.

<sup>49</sup> David Wilson, Charlotte Gill, Ajima Olaghere, and Dave McClure, "Juvenile Curfew Effect on Criminal Behavior and Victimization," Campbell Collaboration, Oslo, Norway, 2016. <https://campbellcollaboration.org/better-evidence/juvenile-curfew-effects-on-behaviour.html>

Remote Alcohol Monitoring, which analyzes perspiration to monitor blood alcohol content at set intervals (for example, hourly) or breathalyzer monitors to estimate blood alcohol content. It may also be possible to monitor phone or text conversations, website visitation, and other data. Youth report that having this level of surveillance causes considerable stress. As technology advances, the use of an actual monitoring device is being replaced with cell phone applications—which may be less expensive and less visible to the public, consequently lessening associated stigmas, but also heightening concerns over additional surveillance capabilities (such as face recognition) and privacy rights.

Elevated stress, stigma, and anxiety are not aligned with rehabilitation—rather they are harms caused by EM technology used to hold youth accountable—with some youth and families more negatively affected. For youth and families with limited language comprehension, understanding how the EM device works and understanding the conditions set by the court can be difficult. Noncompliance in these cases may be unintentional. People of color may feel an enhanced sense of surveillance anxiety given a history of heightened policing in the communities in which they live. The surveillance of African Americans has been ongoing from slavery to the present—the surveillance tools may be different but the reality is the same.<sup>50</sup> Additionally, costs associated with EM can be steep. In some jurisdictions, EM costs can be as high as 10 dollars per day, plus set-up fees, and costs for phones and phone lines. This is financially burdensome, and in some circumstances not feasible for low-income families.

#### IV. HOLDING JUVENILE COURTS ACCOUNTABLE

In keeping with the unique mission of the Juvenile Court in the United States, juvenile courts should ensure that their policies and practices are driven by a framework of rehabilitation. While some policies and practices currently in place support youths' potential to succeed and prosper, many do not. In holding juvenile courts accountable to their rehabilitative mission, youth organizations, legal scholars, research institutes, youth and family advocacy groups, and juvenile court personnel have fought, with some success, to change policies and practices thought to be detrimental to the immediate and long-term well-being of justice-involved youth. Still, needed change and advances loom large with regard to both policy and practice. Additional information technology efforts will promote intelligent decision-making.

<sup>50</sup> Simone Brown, *Dark Matters* (Durham, NC: Duke University Press, 2015). <https://www.dukeupress.edu/dark-matters>

### A. *Juvenile court policies*

In many U.S. states, juvenile justice jurisdictions retain policies that are detrimental to youth and their families and do not support the success and advancement of youth. Primary among these are open juvenile record laws and record expungement, court related costs, and curfew laws.

1. Open juvenile records laws and record expungement. Many U.S. states do not maintain strict confidentiality of juvenile records, and some have statutes that allow records of adjudication to be disclosed to law enforcement, schools, employers, landlords, and others. Many youth and adults are denied jobs, housing, and higher education opportunities due to the stigma of having been involved in juvenile court proceedings. While exceptions are appropriate for public safety purposes, allowing the public access to juvenile records can cause direct harm to the individual with regard to economic and educational opportunities, ability to live in safe housing, and having the opportunity to be gainfully employed with access to health insurance.<sup>51</sup>

Given limited record expungement opportunities, the status quo results in juvenile dispositions appearing on background checks for employers (including the military), landlords, and even colleges and universities.<sup>52</sup> Moreover, there is a common misconception that juvenile records are confidential, which contributes to justice-involved youth and their families not understanding the need for the expungement or destruction of juvenile records. Most states do not keep track of when or how juvenile records are accessed. When states make records available online or to the public, they also do not keep track of who gains access to juvenile record information. One study found that 66 percent of colleges collect record information, 33 percent consider misdemeanor offenses negatively, and 20 percent deny admissions based on the offense.<sup>53</sup> The protection of juvenile records needs to be strengthened—particularly given that the majority of youth in the juvenile justice system have committed nonviolent offenses.

Arizona is one of just seven states that deem all juvenile delinquency records available to the public.<sup>54</sup> Fortunately, in 2018, an Arizona working group—the Juvenile Adjudication Set Aside Workgroup—was formed to address Arizona’s open juvenile court record laws. This Workgroup reviewed the burdensome legislation and proposed new legislation to restructure procedures and requirements for setting aside adjudications and for juvenile record destruction. New legislation, Arizona House Bill 2055, was enacted on August 27, 2019. This legislation provides for youth-

<sup>51</sup> Stevens and Sargus, “Well-Being of Justice-Involved Youth in Arizona.”

<sup>52</sup> Riya Saha Shah, Lauren Fine, and Jamie Gullen, “Juvenile Records: A National Review of State Laws on Confidentiality, Sealing, and Expungement,” Juvenile Law Center, Philadelphia, PA. 2014. <https://jlc.org/resources/juvenile-records-national-review-state-laws-confidentiality-sealing-and-expungement>

<sup>53</sup> Riya Saha Shah and Jean Strout, “Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records,” Juvenile Law Center, Philadelphia, PA. 2016. <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf>

<sup>54</sup> *Ibid.*



affirming changes, including automatic sealing of juvenile records that are classified as “diversion”—low-level juvenile offenses such as status offenses. HB 2055 removes numerous requirements and adds helpful requirements along with clarifying responsibilities. In addition, the Workgroup streamlined court procedures. Youth must still apply separately for record expungement or record destruction in each Arizona county in which they were court-involved, but the Workgroup developed simplified forms to be used across all fifteen Arizona counties, along with instructions for completing the forms. While the new legislation does not go far enough, Arizona juvenile courts are now more accountable to the well-being and success of justice-involved youth.

2. Court-related costs. Court-related costs include (a) fines and fees, (b) restitution, and (c) bail bonds. These costs can be problematic for youth and families.

(a) Fines and fees. Nearly every state imposes fines and fees. As noted earlier, fines and fees are routinely imposed in juvenile court in excess of a youth or their family’s ability to pay. While youth may request to be placed on a payment plan, such requests may also incur a fee. Bankruptcy may be an option for families if the court does not consider the fees to be domestic support. In some states, such as California, the state legislators authorize counties to charge juvenile administrative fees, ostensibly to help pay for oversight and care of youth. However, the small revenue generated has often gone toward expenses related to the collection of such fees and not to the oversight and care of youth. Given this, some counties and courts have repealed or suspended juvenile fee assessment and collection,<sup>55</sup> with California eliminating most fines and fees.<sup>56</sup> These data driven and compassionate decisions indicate that some juvenile courts are holding themselves accountable to enact policies that are in the best interest of justice-involved youth.

The U.S. Department of Justice addressed the nation’s juvenile courts in 2017 noting that “Families burdened by these obligations may face a difficult choice, either paying juvenile justice debts or paying for food, clothing, shelter, or other necessities. The costs of fines/fees may foreclose educational opportunities for system involved youth and their families.” A national report released on juvenile fines and fees states that “the inability to pay pushes the youth further into the juvenile justice system and increases the family’s economic distress.”<sup>57</sup>

<sup>55</sup> Stephanie Campos-Bui, Jeffrey Selbin, Hamza Jaka, Tim Kline, Ahmed Lavalais, Alynia Phillips, Abby Ridley-Kerr, “Making Families Pay: The Harmful, Unlawful, and Costly Practice of Charging Juvenile Administrative Fees in California,” University of California, Policy Advocacy Clinic, Berkeley, CA, 2017. <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Making-Families-Pay.pdf>

<sup>56</sup> Maureen Washburn, “SB 190 Becomes Law, Ending Harmful, Unlawful, and Costly Juvenile Justice Fees,” Center on Juvenile and Criminal Law, San Francisco, CA. 2017. <http://www.cjcl.org/news/11780>

<sup>57</sup> Feierman, Goldstein, Haney-Caron, and Columbo, “Debtors’ Prison for Kids?”

In Arizona, unpaid fines and fees may keep youth from successfully completing juvenile probation. Without a “successful” or, in some cases, “neutral” designation, youth are often denied their request for record expungement or record destruction. Additionally, unpaid fines and fees can turn into a civil judgment, which can then follow the youth into adulthood—sometimes resulting in the garnishing of earned wages.<sup>58</sup>

(b) Restitution. All states have restitution obligations, and for the most part, for good reason. Victims should be compensated for expenses due to the juvenile’s delinquent act. It is the implementation of some restitution mandates that should be changed to achieve fairness. Courts could work more closely with victims concerning insurance policies to reduce restitution when insurance covers losses and/or expenses. And, if more than one youth is adjudicated for a delinquent act and assigned restitution, each should be held separately accountable. Youth who pay their restitution should not be deemed unsuccessful simply because the other youth involved did not pay their restitution.

(c) Bail. Very little has been written on state laws governing bail in delinquency proceedings, and even less is known about how such laws are put into practice at the local level or how cash bail affects youth and their families in the juvenile system. Forty-seven states and U.S. territories have statutes or court rules that allow the use of bail with juvenile court-involved youth or that neither authorize nor prohibit the use of bail in juvenile court by statute or court rule.<sup>59</sup> Reform efforts must examine and address how state laws governing bail for minors have been put into practice and how those practices impact youth and their families. In Arizona, data regarding state revenue from juvenile bail is reported jointly with bail revenue from adults involved in Arizona’s Superior Court. There is a need for improved information technology that provides greater transparency in the amount that is generated separately through Arizona’s juvenile courts.

3. Curfew laws. Curfew laws restrict youth from being in community after certain hours. Exempt activities can include youth traveling home from a job or when in the presence of a parent or guardian. Penalties for violating curfew laws range from a verbal warning to a fine or community service. For youth on EM, punishment can be severe, including being held in detention. Research on juvenile curfew in the United States to prevent juvenile offending and victimization is mixed, although a report on the twelve most rigorous studies indicates that juvenile curfews are ineffective in reducing crime and victimization.<sup>60</sup> Yet most U.S. cities continue to have juvenile curfew statutes. Youth living in unsafe home situations may leave home after curfew to get away from violence or abuse. Youth living on the street reside in unsafe spaces. They may run from police due to curfew statutes

<sup>58</sup> Stevens and Sargus, “Well-Being of Justice-Involved Youth in Arizona.”

<sup>59</sup> National Juvenile Defender Center, “A Right to Liberty.”

<sup>60</sup> Wilson, Gill, Olaghere, and McClure, “Juvenile Curfew Effect on Criminal Behavior and Victimization.”

instead of seeking help from them. Youth in ethnic minority neighborhoods are more likely to be stopped and cited for curfew violations, in part because these neighborhoods have greater police presence, in part because youth in these neighborhoods are more likely to be on-foot versus in a vehicle and thus to be more visible, and, finally, because of implicit bias toward youth of color. Fortunately, cities such as Austin, Texas have eliminated juvenile curfew laws, resulting in a more supportive environment for youth and reducing inequities between youth. Even in states with strict curfew laws, some communities have implemented supportive alternatives in which youth can access services any time of night or day.<sup>61</sup>

### *B. Juvenile court practices*

The juvenile justice system must be held accountable to provide a rehabilitative-focused and safe system for youth. Primary among court practices that have evidence of causing harm or that lack an evidence-base include secure custody, electronic monitoring, courtroom shackling of youth, stigma-imbued language, inequities in court access, and a lack of data collection, analysis, and transparency.

1. Secure custody. Concern with regard to the level of rehabilitative care provided to youth residing in secure custody has been a question for some time. Research indicates that recidivism for first time violent offenders is 2.12 times greater for youth assigned to probation camps (a therapeutic correctional facility), and 1.28 times greater for youth assigned to group homes (a semi-restrictive community-based facility).<sup>62</sup> Thus, data indicating the downward use of secure facilities for juvenile offenders is good news. Still, concern exists given that close to 20 percent of justice-involved youth who reside in secure custody have not been adjudicated for an accused offense, and close to 20 percent of adjudicated youth who are confined are held for status offenses, technical violations of probation, and other low-level behaviors.<sup>63</sup>

Some jurisdictions have closed their detention facilities and transformed them into supportive centers for youth providing pro-social activities, school tutoring, crisis counseling, referrals to community-based agencies, overnight respite housing, and 24/7 emergency care. When a secure facility is needed, other jurisdictions provide secure custody through a contractual

<sup>61</sup> Stevens and Sargus, "Well-Being of Justice-Involved Youth in Arizona."

<sup>62</sup> Joseph P. Ryan, Laura S. Abrams, and Hui Huang, "First-Time Violent Offenders: Probation, Placement, and Recidivism," *Social Work Research* 38, no.1 (2014): 6–18.

<sup>63</sup> Campaign for Youth Justice, Coalition for Juvenile Justice, and the National Juvenile Justice Network, "ACT 4 Juvenile Justice: Statement Regarding Youth Justice Providers: For Use During COVID-19 Social Distancing Measures," Washington, DC, March 2020. <http://www.act4jj.org/sites/default/files/resource-files/Covid%2019%20Statment%20Updated%20April%201.pdf>

arrangement. Currently, outcome data is being collected to understand how this transformation impacts youth.<sup>64</sup>

2. Electronic monitoring (EM). As discussed earlier, EM is a practice used to hold youth accountable—a practice that may cause financial hardship and emotional harm. EM is a practice that was first used by adult courts and adopted by juvenile courts without consideration of its potential impact on youth. The limited information that is available on the impact of EM on youth indicates that it has few, if any, rehabilitative elements. Rather, EM appears to be a net widener—bringing more youth into the system and/or driving youth deeper into a relentless maze within the juvenile justice system.

Considering the developmental stage of adolescence, a time in which peer interaction is critical, EM may inhibit natural maturation processes and cause psychological harm. Biological changes in adolescents heighten the pleasure of social company while social isolation can increase psychological distress. With the onset for mental health disorders typically occurring during adolescence, social isolation may further increase risk for mental health issues.<sup>65</sup> The challenges observed due to COVID-19 “stay at home” orders—for teens and adults as well—provide insight into what youth subjected to EM face. At best, it is difficult to comply with such orders, and at worst, such orders may increase the risk of committing violent crimes. Further, social isolation has also been shown to increase mental health difficulties and risky behaviors.<sup>66</sup> Alternatives to EM could include additional contact and oversight with supportive adults assigned by the court. This team might include a family member willing to take on the responsibility coupled with the youth’s probation officer.

Being accountable to youth, juvenile courts need to ask more questions and seek answers with regard to the impact of EM on youth. Do youth for whom EM is stipulated have elevated levels of stress and mental health difficulties? Does EM have physical effects on youth such as high blood pressure, sleep difficulties, difficulty concentrating? Which youth experience stigma and discrimination and do these become internalized? Does EM create barriers to being meaningfully engaged in one’s school, work, faith-based organization, or community activities? Does incidence of domestic violence and household stress increase in homes after youth are placed on EM? What is the recidivism and success rate associated with EM? Additionally, are there disparities across demographics and offenses of youth ordered to EM surveillance?

3. Courtroom shackling of youth. The use of shackles on juveniles when appearing in juvenile court is a means of protecting the people in the court

<sup>64</sup> Stevens and Sargus, “Well-Being of Justice-Involved Youth in Arizona.”

<sup>65</sup> Leah Lessard and Hannah Schacter, “Why the Coronavirus Crisis Hits Teenagers Particularly Hard: Developmental Scientists Explain,” *Education Week*, 2020. <https://www.edweek.org/ew/articles/2020/04/16/why-the-coronavirus-crisis-hits-teenagers-particularly.html>

<sup>66</sup> *Ibid.*

and preventing attempts to escape. Shackling policies and practices that are not based on assessed need for protection of the youth and/or others should be amended. Shackling can be physically painful, can have negative psychological effects including shame, humiliation, trauma, and alienation, and can reinforce low self-worth.<sup>67</sup> Youth who come from abusive homes may be re-traumatized. Fortunately, lawmakers have advocated to limit the use of shackles, and juvenile courts have substantially reduced their use, but the practice still remains. When shackling is assessed to be unnecessary and yet still used in the courtroom, the practice is not rehabilitative—rather it is a form of punishment.

4. Stigma-imbued language. Stigma is a “mark of shame or discredit” and is usually based on assumptions about the individual. Many youth involved in the juvenile justice system experience stigma asserted by others at their schools, within their communities, and even by their family members. This can be particularly true for youth wearing EM devices. Youth may internalize this stigma, absorbing negative messages about themselves, and coming to believe those messages—impacting how they view themselves and how they expect to be treated by others.

Stigma emanates from a number of sources, including language. Words can be stigmatizing.<sup>68</sup> Words labeling justice-involved youth and their behavior can be demeaning. Examples include “offender,” “criminal,” “probationer,” “delinquent,” “incorrigible,” “deviant,” “runaway.” Many terms come from adult criminal justice system such “probation” or “probation officer.” In the adult system a probation officer is someone who conducts assessment, provides resources, and monitors the individual’s progress to prevent them from committing new crimes. With juvenile justice focused on rehabilitation, a change in terminology from probation officer to “youth advocate,” “sponsor,” “life coach,” “mentor” would emphasize the support that many probation officers already provide and should provide to youth. Having a consistent and supportive relationship—characterized by connectedness, responsiveness, caring, and effective communication is important to becoming a responsible adult.<sup>69</sup> Many youth lack such a relationship—a role that juvenile probation officers could more often assume.

5. Inequities in court access and technology. Access to court and court resources, including attorneys, is critical to youth success. Rurally located

<sup>67</sup> Benjamin Chambers and Annie Balck, “Because Kids Are Different: Five Opportunities for Reforming the Juvenile Justice System,” National Institute of Corrections. #029627: Washington, DC, 2014. <https://nicic.gov/because-kids-are-different-five-opportunities-reforming-juvenile-justice-system>

<sup>68</sup> Janet Zwick, Hannah Appleseth, and Stephen Arndt, “Stigma: How It Affects the Substance Use Disorder Patient” *Substance Abuse Treatment, Prevention, and Policy* 15, no. 50 (2020): 1–4. <https://doi.org/10.1186/s13011-020-00288-0>

<sup>69</sup> Rebecca Dillard, Tarkington J. Newman, and Melissa Kim, “Promoting Youth Competence through Balanced and Restorative Justice: A Community-Based PYD Approach,” *Journal of Youth Development* 14, no. 4 (2019): 14–35.

youth may have difficulty getting to court hearings or appointments. Data from one study shows some evidence that youth living in zip codes close to the juvenile court were more successful than youth living far from the court—particularly youth living in rural areas.<sup>70</sup> Some juvenile courts have implemented video-conferencing for various hearings and meetings. While outcome data on use of this technology is limited, the practice holds promise for working with youth and families. Implementing virtual courts particularly in rural areas may assist youth in not only attending their court hearings but also connecting with their probation officer or other supportive adults.

As illuminated by the COVID-19 pandemic, not all youth have access to technology and thus have challenges attending school virtually. Similarly, rurally-located youth as well as youth living in poverty, low-income households, or who are homeless need access to technology. Courts should consider providing mobile devices and teaming with schools and community-based agencies to provide a private space with internet access for court-involved youth to attend court hearings, receive guidance from probation officers, attend meetings, and participate in supportive groups and tele-services.

6. Information technology: Data collection, analysis, and transparency. Local juvenile courts, state- and national-level agencies, advocacy groups, and others collect and analyze a substantial amount of data. This is an important accountability practice as it illuminates the number and profile of youth involved in the juvenile justice system, types and frequencies of offenses committed, trends across time, and other important information. This data also provides some evidence for what might prevent youth from becoming involved in the juvenile justice system and what policies and practices assist justice-involved youth in their rehabilitation and pathway to success.

Additional data collection, data analysis, and transparency in data findings are called for. Like many U.S. states, in Arizona, the Administrative Office of the Courts collects a large amount of data and publishes a considerable amount of statistics about court-involved youth, including five-year-trend data. These reports are very helpful. Still, in reviewing available data in Arizona, researchers found that data was either lacking or unavailable with regard to (1) fines and fees, (2) restitution, (3) victim's views on restitution, (4) number of youth who as adults have a civil judgment due to unpaid fines, fees, and restitution, (5) who completes community service and barriers to completion, (6) the number of applications for record expungement or destruction and how many are granted, and (7) electronic monitoring in relationship to successful completion of probation and its impact on well-being.<sup>71</sup>

<sup>70</sup> Stevens and Sargus, "Well-Being of Justice-Involved Youth in Arizona."

<sup>71</sup> *Ibid.*

Information technology allows for the sharing of data between courts and other governmental agencies and between courts and social service providers. While firewalls need to be positioned so that agency-specific data remain confidential, data sharing can improve collaboration in the best interest of youth. Arizona's Administrative Office of the Courts has led such an effort—Crossover Youth Practice Model—to identify youth data that can and should be shared between agencies for the benefit of the child. Such efforts are important in moving the field forward.

Others have advocated for an increase in data collection, analysis, and transparency. For example, the National Juvenile Defender Center<sup>72</sup> recommended that data be available with regard to access to legal council and other defender advocacy issues. And the Justice Policy Institute<sup>73</sup> recommended the tracking of positive outcomes, including youths' successful transition to adulthood, to inform what programs and strategies assist youth in their success. Many innovative approaches have been implemented such as teen courts, alternatives to arrest programs, family-centered interventions, and mentoring, job training, creative arts, and teen leadership programs. The level of evidence for these (and other) innovations varies considerably. Insofar as they are accountable to justice-involved youth, juvenile courts need to collect, analyze, and use data to inform policy and practice.

## V. CONCLUSION

If we truly value youth who are involved in the juvenile justice system, a closer examination of juvenile court policies and practices is needed to assess the level of congruence with the rehabilitative mission of the court and the spirit of the Illinois Act of 1899—that children should be treated differently from adults and the ideology of nuanced levels of criminal responsibility and youth capacity for rehabilitation.

Research shows that adolescents are different than their adult counterpart in the ways in which youth make and respond to situations. They are less able to consider long-term consequences of their behavior, less able to self-regulate in emotionally pressing situations, and more sensitive to peer pressure and immediate rewards. Moreover, the adolescent brain is especially sensitive to its environment—an important consideration for rehabilitative efforts.<sup>74</sup>

U.S. juvenile courts hold youth (and their families) accountable for delinquent acts through a number of policies and practices. Some, like restitution when applied fairly, have merit. Others, such as assessing fines and fees can be unreasonably punitive and keep low-income youth and their families

<sup>72</sup> Powell, Borrer, Curry, Scali, and Simpson, "Arizona Bringing Gault Home."

<sup>73</sup> Justice Policy Institute, "Sticker Shock: Calculating the Full Price Tag for Youth Incarceration," Washington, DC, 2014. <http://www.justicepolicy.org/research/8477>

<sup>74</sup> Chambers and Balck, "Because Kids Are Different."



tethered to the juvenile justice system, extending sometimes well into the adult criminal and civil justice system.

Research indicates that some juvenile justice policies and practices have negative effects on youth, including effects on their physical and mental health, and on recidivism rates. Open juvenile records laws are one such policy while assessing court-related fines and fees and holding youth in secure custody are two such practices. Other policies and practices have some evidence of keeping youth from being successful, including curfew laws and courtroom shackling. And, still other policies and practices are in need of research, such as bail bond statutes, victim views on restitution, opportunities for community service, and stigma-generating practices including language. Moreover, research is clearly called for on the use of technology and its impact on the success of youth in the juvenile justice system. This includes research on electronic monitoring (EM) along with virtual courts, and youth access to technology.

EM keeps youth out of secure facilities—a positive for both juvenile courts and youth. Still, there appear to be drawbacks to using this technology. Further research is needed to illuminate how the use of EM technology affects youth psychologically and developmentally. Technology has promise to facilitate well-being as illustrated by positive outcomes from telehealth research. It may be that EM can also be used safely and effectively with justice-involved youth. Knowing how, when, and for whom EM contributes to youth well-being and their successful entry into adulthood would further the accountability of juvenile courts to the youth under their supervision.

Virtual courts using video technology have been embraced by some states and courts, although others have resisted virtual court hearings and appearances. With the onset of COVID-19 the use of video conferencing and other virtual communication platforms have expanded at a rapid pace. Concerns regarding the use of such technology include potential obstacles to effective council, privacy issues, court transparency, and accountability. For rurally located youth, video conferencing may be particularly advantageous and help to reduce missed court appointments. Access to a mobile device and Internet connection remains critical; thus courts should provide technology for youth to be able to attend court hearings, sessions with their attorney, and other meetings as needed. Even when courts reopen, video conferencing may be a better option for some youth. Research pre-post COVID-19 on virtual courts and the use of telephonic and video conferencing is needed to better understand how this technology impacts youth compliance with court orders, recidivism rates, user satisfaction (for example, youth, families, court personnel) and other issues.

A data-driven juvenile justice system is essential in the treatment of—and accountability to—youth involved in the juvenile justice system. Juvenile courts along with federal, state, and local government and community-based agencies already collect a wealth of information. Additional data

collection on issues that inform whether court-related policies and practices facilitate youth success or are barriers to success is needed. Additionally, for data already collected, we need to move beyond the aggregate to disentangle what is working and for whom. Which youth and families pay their fines and fees? How many and for which youth are their juvenile cases continued in adult courts? How many applications for record expungement are submitted and how many are granted? And, data analysis is crucial for unpacking inequities across the system with regard to gender, race, ethnicity, socioeconomic status, and geographical location. Transparency of this data is imperative—allowing juvenile court personnel and others to review and confer on policies and practices that support and value our juvenile justice-involved youth.

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