



Juvenile Justice Policy and Data Board

# Improving Access to Diversion and Community-Based Interventions for Justice- Involved Youth

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A Report of the Massachusetts Juvenile Justice  
Policy and Data (JJPAD) Board

NOVEMBER 2019

<https://www.mass.gov/juvenile-justice-policy-and-data-board>



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## Members of the JJPAD Board

Member Name	Affiliation/Appointing Organization
Maria Mossaides, Chair	Office of the Child Advocate
Representative Carolyn Dykema	House of Representatives (Speaker of the House)
Representative Timothy Whelan	House of Representatives (Minority Leader)
Senator Joseph Boncore	State Senate (Senate President)
Senator Patrick O'Connor	State Senate (Minority Leader)
Deputy Court Administrator Thomas Capasso*	Juvenile Court
Commissioner Edward Dolan*	Massachusetts Probation Service
Commissioner Peter Forbes*	Department of Youth Services
Assistant Commissioner Rebecca Brink*	Department of Children and Families
Deputy General Counsel Cristina Tedstone*	
Assistant Commissioner Nancy Connolly, Psy.D.*	Department of Mental Health
Associate Commissioner Lindsey Tucker*	Department of Public Health
General Counsel Katherine Lipper*	Executive Office of Education
Barbara Kaban	Committee for Public Counsel Services
<i>No Appointment Made</i> <sup>1</sup>	Massachusetts District Attorney Association
Ruth Budelmann	Juvenile Justice Advisory Committee
Naoka Carey	Citizens for Juvenile Justice
Tammy Mello	Children's League of Massachusetts
Police Chief Kevin Kennedy	Massachusetts Chiefs of Police Association
Dawn Christie	Parent of child who has been subject to juvenile court jurisdiction (2)
<i>No Appointment Made</i>	Individual with experience or expertise related to design and implementation of state administrative data systems
<p>* Members with an asterisk next to their name abstained from voting on this report. Representatives from agencies within the Executive Office of Health and Human Services and the Executive Office of Education abstain from voting on commission reports making recommendations related to budget appropriations.</p>	

<sup>1</sup>Michael Glennon of the Suffolk County District Attorney's Office has participated in the work of the JJPAD Subcommittees as an interim MDAA representative during the period over which this report was compiled.

## Members of the JJPAD Community-Based Interventions Subcommittee

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This report is the product of the efforts of the JJPAD CBI Subcommittee:

<b>Member Name</b>	<b>Affiliation</b>
Maria Mossaides, Chair	Office of the Child Advocate
Thomas Capasso	Juvenile Court
Colleen O'Donnell Kimberly Lawrence	Massachusetts Probation Service
Nokuthula Sibanda	Department of Youth Services
Rebecca Brink Gretchen Carleton	Department of Children and Families
Nancy Connolly	Department of Mental Health
Brian Jenney	Department of Public Health
Marlies Spanjaard	Committee for Public Counsel Services
Michael Glennon	Suffolk County District Attorney's Office
Sana Fadel	Citizens for Juvenile Justice
Barbara Wilson	Children's League of Massachusetts
Dawn Christie	Parent representative
Kevin Kennedy	Massachusetts Chiefs of Police Association
Melissa Threadgill (Staff)	Office of the Child Advocate
Lindsay Morgia (Staff)	Office of the Child Advocate

## Guide to Acronyms

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Acronym	Definition
CBI	Community-based intervention
CPCS	Committee for Public Counsel Services (Public Defenders)
DCF	Department of Children and Families
DESE	Department of Elementary and Secondary Education
DMH	Department of Mental Health
DPH	Department of Public Health
DYS	Department of Youth Services
EOE	Executive Office of Education
EOHHS	Executive Office of Health & Human Services
EOPSS	Executive Office of Public Safety & Security
JJPAD	Juvenile Justice Policy and Data Board
JDAI	Juvenile Detention Alternatives Initiative
MDAA	Massachusetts District Attorney Association

## EXECUTIVE SUMMARY

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The Massachusetts [Juvenile Justice Policy and Data \(JJPAD\) Board](#) is charged by the Legislature with evaluating juvenile justice system policies and procedures and making recommendations to improve outcomes. The JJPAD Board is chaired by the Child Advocate and comprised of members representing a broad spectrum of stakeholders involved in the juvenile justice system.

The Legislature asked the JJPAD Board to study and report on the following topics:

- The quality and accessibility of diversion programs available to juveniles
- The system of community-based services for children and juveniles who are under the supervision, care or custody of the Department of Youth Services or the Juvenile Court
- The gaps in services identified by the committee with respect to children and young adults involved in the juvenile justice system

The JJPAD Board held its first meeting in December 2018, and created a Community-Based Interventions (CBI) Subcommittee to focus on the above topics. Over the past eleven months, the CBI Subcommittee has:

- Reviewed national research on the use of diversion
- Heard presentations from members of law enforcement, district attorneys, the Juvenile Court, the Massachusetts Probation Service, and a restorative justice organization on the use of juvenile diversion in various parts of the Commonwealth
- Conducted surveys and interviews with juvenile justice practitioners across the state as well as justice-involved youth on their perceptions of the availability/gaps in community-based services and barriers to connecting youth with these services
- Researched and reviewed statewide diversion infrastructure eligibility models, as well as diversion and service funding models, used in other states
- Reviewed current Massachusetts state budget funding for community-based interventions

The following findings and recommendations are the result of the JJPAD Board's first year of work.

## FINDINGS

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### **1. Diverting Youth from Formal Processing by the Juvenile Justice System Can Be an Effective Intervention Strategy for Many Youth**

The JJPAD Board finds that diverting youth from the juvenile justice system can be an effective strategy for many youth – improving life outcomes for youth, preserving and protecting public safety, and reducing court processing costs for the Commonwealth.

Research shows that many adolescents will engage in risky/unlawful behavior at some point, and that this is, in fact, normal adolescent behavior.<sup>2</sup> Most youth “offending” does not result in contact with law enforcement at all, however, **and eventually most youth mature and grow out of this behavior without any state intervention.**

A very small percentage, however, will go on to re-offend as adults, although this risk can be mitigated if they receive the right supervision and support. Use of diversion can improve public safety by helping make this percentage even smaller. **Rigorous research has found that youth who have participated in diversion programs are less likely to reoffend than youth who are formally processed through the juvenile court.**<sup>3</sup>

Diversion programs are most effective when they set diversion conditions based on a youth’s risk of re-offense and their specific needs:

- **Low-risk youth who are diverted should be offered low-intensity diversion options**, such as being released with a warning. Studies have shown that the odds of re-arrest and delinquent behavior can actually increase for low-risk youth if they are placed in more formal diversion programs or in secure confinement.<sup>4</sup>
- **Higher-risk youth who are diverted should be offered higher intensity diversion options**, which may include more services and more oversight. Existing research suggests that formal diversion programs are most effective and save states more money when they are targeted towards higher-risk populations of youth, focus specifically on the individual needs of the young person that are driving delinquent behavior, and match the young person to the intervention that is responsible to their needs.<sup>5</sup> For example, a young person might get involved in a fight because of bullying, a trauma history, family conflict, or a substance use problem, each of which would require a different response and, potentially, a different program

To determine a youth’s risk of re-offense, diversion program practitioners should use validated risk assessment tools. These tools should be trauma-informed and closely monitored for disparate racial and/or ethnic impact.

**Effective diversion programs should also include evidence-based interventions that evaluate and respond to the individual needs of the youth.** Programs that use cognitive-behavioral practices and family-focused approaches have been shown to reduce recidivism and improve other outcomes for higher-risk youth.<sup>6</sup>

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<sup>2</sup> Kann, L., McManus, T., & Harris, W. (2018). *Youth risk behavior surveillance– United States. Surveillance Series*, (67). Centers for Disease Control and Prevention. Retrieved from <https://www.cdc.gov/healthyouth/data/yrbs/results.htm>

<sup>3</sup> Wilson, H., & Hoge, R. (2012). *The effect of youth diversion programs on recidivism: A meta-analytic review. Criminal Justice and Behavior*, (40) p. 497–518. International Association for Correctional and Forensic Psychology. Retrieved from [http://users.soc.umn.edu/~uggen/Wilson\\_CJB\\_13.pdf](http://users.soc.umn.edu/~uggen/Wilson_CJB_13.pdf)

<sup>4</sup> Schlesinger, T. (2018). *Decriminalizing racialized youth through juvenile diversion. Future of Children*, 28(1), p. 59-81. Retrieved from [https://www.researchgate.net/publication/318875971\\_Decriminalizing\\_Racialized\\_Youth\\_through\\_Juvenile\\_Diversion](https://www.researchgate.net/publication/318875971_Decriminalizing_Racialized_Youth_through_Juvenile_Diversion)

<sup>5</sup> Ibid.

<sup>6</sup> Seigle, E., Walsh, N., & Weber, J. (2014). *Core principles for reducing recidivism and improving other outcomes for youth in the juvenile justice system*. Council of State Governments. Retrieved from <https://csgjusticecenter.org/wp-content/uploads/2014/07/Core-Principles-for-Reducing-Recidivism-and-Improving-Other-Outcomes-for-Youth-in-the-Juvenile-Justice-System.pdf>

## **2. Juvenile Justice Decision-Makers Across the Commonwealth are Increasingly Aware of the Importance of Diversion, and More and More Decision-Makers are Establishing Diversion Practices**

In recent years, juvenile justice decisions-makers across the Commonwealth have become increasingly aware of the benefits of diversion and have expanded their use of diversion as an alternative to court involvement.

As detailed in the full Report, **the JJPAD Board finds clear evidence that more and more justice system decision-makers in police departments, court clerk offices, district attorney's offices and the judiciary across the Commonwealth have been offering diversion alternatives.**

Use of the juvenile justice system at every contact point for which we have available data is down. Just in the past three years, for example, applications for complaint have dropped by 38%, and delinquency filings have dropped by 45%.

Some portion of this decline can likely be attributed to increased use of diversion at all levels. An Act Relative to Criminal Justice Reform, passed by the Legislature in 2018, included several provisions designed to increase the use of diversion, including giving judges the opportunity to offer pre-arraignment diversion.

## **3. There is Wide Variation in Diversion Policies and Practices Across the State and an Opportunity to Improve Outcomes by Adopting Evidence-Based Practices**

**There are no statewide standards or guidelines in Massachusetts regarding the use of diversion, and no entity that provides oversight for diversion practices.**

There is also no state entity that provides technical assistance or funding to support the adoption of best practices or use of evidence-based treatment services. As a result, local decision-makers have developed their own diversion policies, programs and practices, funded from their own discretionary budgets and any outside grant funding support they can obtain.

The JJPAD Board has found considerable variability in local diversion policies and practices across both decision-maker type and town/county/region. These variations include:

- Eligibility criteria
- Adoption of evidence-based practices
- Involvement of counsel
- Intensity of diversion conditions and availability of services

**The JJPAD Board finds that there is an opportunity to improve outcomes through increased adoption of evidence-based practices among diversion programs in the Commonwealth.**

## 4. We Do Not Currently Collect the Data That Would Be Needed to Fully Understand or Assess Our Current Diversion System(s)

There are significant gaps in the availability of data on our juvenile justice system, which impedes our ability to make data-informed decisions about policy and practice. The most significant of these gaps is data on the use of diversion.

As described in the JJPAD Board’s June 2019 Report, “Improving Access to Massachusetts Juvenile Justice System Data,”<sup>7</sup> we currently do not have the data needed to answer basic questions about how diversion is used and if it is being used equitably. We also lack data on diversion program characteristics across the Commonwealth, as well as data that would allow us to evaluate the quality or outcomes of different diversion programs.

**The JJPAD Board finds that expanding the collection, analysis and dissemination of data on the use of diversion in Massachusetts is necessary to ensure equitable application of diversion policies and help improve diversion program quality.** This should be prioritized in any policy or practice reforms.

## 5. The Current Structure of Our Diversion System Likely Contributes to Systemic Inequalities

**At every decision point for which we have data, Black and Hispanic youth are more likely to be advanced through the justice system – rather than being diverted – than white youth.**<sup>8</sup> These disparities are particularly high at early decision points – including the decision to take a youth into custody rather than issuing a summons, to issue a delinquency complaint, or to arraign a youth – and an analysis of the data shows the disparities cannot entirely be attributed to other factors, such as charge type or criminal history.

Another source of disparity is geographic: youth in different parts of the state are treated differently due to regional variations in policy and procedures. This is sometimes referred to as “justice by geography” – the notion that the zip code a youth is arrested in will substantially impact whether and how they proceed through the justice system.

**The JJPAD Board finds that the absence of standardized, consistent and clear guidelines and inconsistent adoption of evidence-based diversion models likely contributes to the systemic demographic and geographic inequities we find present in our system.**

Despite decades of effort, systemic disparities continue to exist – and, therefore, reducing disparities must be a core consideration and priority in the development of any reform initiatives.

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<sup>7</sup> See: <https://www.mass.gov/media/2019191/download>

<sup>8</sup> Commonwealth of Massachusetts Disproportionate Minority Contact Statewide Assessment Report, (2018). Retrieved from <https://www.mass.gov/doc/disproportionate-minority-contact>

## **6. Although Massachusetts Devotes Significant Funding to Behavioral Health and Youth Services, Juvenile Justice System Practitioners See Distinct Gaps in Availability of Community-Based Interventions for Justice-Involved Youth**

Massachusetts devotes significant funding – approximately half a billion dollars a year in FY2020 – to community-based services that are targeted at the needs of higher-risk youth and/or could be accessed in connection with a diversion program. These include youth violence prevention programming, behavioral health services, targeted employment programming, and positive youth development programming.

**Despite this funding, juvenile justice system practitioners see distinct gaps in the availability of community-based interventions that are appropriate for, and responsive to the needs of, justice-involved youth.**

In the spring of 2019, the JJPAD Board conducted a survey of individuals who refer justice-involved youth to community-based services (a mix of police, district attorneys, public defenders, juvenile court judges and clinicians, probation staff and school personnel from all 15 counties in Massachusetts), as well as a survey of system-involved youth. These survey results provide a valuable on-the-ground perspective, although there are limitations that should be acknowledged. In particular, survey respondents were not a representative sample, and the results may be influenced by who did – and did not – choose to respond. There may also be times that a practitioner’s perception that a service is not available is incorrect due to outdated information.

However, even with those caveats, the JJPAD Board believes it is helpful to present some of the key findings from the survey, as the perceptions of service availability/gaps (whether or not those perceptions are wholly accurate) can drive decision-making and referrals and help us better understand the frustrations that on-the-ground practitioners can experience when trying to connect youth with community-based services.

In particular, the majority of surveyed juvenile justice system practitioners believe the following are under-resourced in their community:

- Outpatient/community-based substance use disorder treatment
- Outpatient/community-based individual mental health treatment
- Vocational training/employment support

In partnership with JDAI, the JJPAD Board also surveyed system-involved youth. Youth survey respondents also listed “jobs and professional development training” as the service that was most under-resourced in their community.

Seventy-eight percent of practitioner survey respondents identified program capacity and waitlists to be a substantial barrier to connecting youth with appropriate services, and 52% identified a lack of programming that meet youth’s specific needs.

A majority of practitioner survey respondents said that there are gaps in the availability of appropriate services in their community for:

- Youth who are homeless
- Youth with co-occurring disorders
- Youth with a history of sexual offending or sexually inappropriate behavior, and
- Youth with serious mental illness

In follow-up interviews, practitioner respondents expressed worries about a small segment of youth who demonstrated severe mental illness or significant trauma histories. These youth were felt to lack options, as most programs lack the resources to adequately support these clients or may decline to provide services out of safety and liability concerns. Interviewees expressed concern that out-of-community placement (such as detention) was often the only option remaining for this segment of high-risk children, even if they could be better served by the right community-based program, were one available.

## **7. More Infrastructure Support is Needed to Effectively Overcome Barriers and Connect Youth with Services that Do Exist**

Connecting justice-involved youth with appropriate services is not a simple task, even if those services are readily available. This is a job typically done by a case manager or program coordinator. **Currently, there is no dedicated source of state funding for diversion service coordination.**

There are numerous state actors who play a role in connecting youth with services – including staff at Family Resource Centers, attorneys and social workers through CPCS (the state public defender agency), and case managers hired by some police departments and district attorneys’ offices. However, these services are either not consistently available across the state or are not provided at the earliest stages of the process.

As a result, practitioners on the ground note that higher-need youth are sometimes processed through the traditional justice system instead of being diverted, so that Probation or the Department of Youth Services can provide case management services.

Even if there is sufficient case management staff, juvenile justice system practitioners note numerous challenges in making service connections, including:

- Keeping track of available community services
- Transportation
- Family/youth engagement

Transportation and family engagement were also the top two barriers to accessing community-based services listed by youth survey respondents.

**The JJPAD Board finds that the state could likely increase the use of diversion – as well as the likelihood that diversion will be successful – by providing more infrastructure support for diversion-related case coordination and services.** This support could include funding diversion case coordinator staff and providing targeted support to help overcome common barriers, such as service availability tracking and transportation.

## RECOMMENDATIONS

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The JJPAD Board believes there are steps the Commonwealth should take to:

- Increase the number of youth who are diverted from the juvenile justice system
- Improve the quality and consistency of juvenile diversion programs
- Assure access to counsel for all youth in a timely and appropriate manner so that they have assistance in participating in the process of determining whether diversion is appropriate and in identifying a diversion program
- Reduce racial, ethnic, and geographic disparities in the use of diversion
- Better connect justice-involved youth and their families with appropriate community-based interventions
- Increase our ability to track and evaluate the use of diversion in Massachusetts, with the goal of continuous improvement

Without more detailed information, the JJPAD Board can only guess what percentage of youth who are currently processed through the criminal justice system could be successfully diverted instead. **However, based on available data on court disposition rates and probation caseloads, it seems likely that significantly more youth – potentially, thousands each year – could be successfully diverted.**

A portion of these youth would likely be considered low-risk/low-need and could therefore be successfully diverted with minimal conditions and no need for additional services. But **another portion of these youth will have more significant needs – and one possible explanation for why they are not currently being diverted is that existing diversion programs lack the capacity to properly serve these youth.** The following recommendations are designed to address these challenges.

### 1. Improve Communication and Coordination of Diversion Work by Creating Diversion Coordinator Positions Across the State

The JJPAD Board recommends that, to increase the number of youth who can be successfully diverted from the juvenile justice system, the state should create and fund regional Diversion Coordinator positions, who would be responsible for the following tasks:

- Accepting referrals from all diversion decision-makers (police, court clerks, district attorneys, judges)
- Administering an evidence-based risk and needs assessment
- Developing a diversion agreement based on the results of that assessment as well as conversation with the youth, their family, and the youth's attorney
- As appropriate, connecting youth and their families with community-based services and advocacy support
- Monitoring diversion cases to ensure diversion conditions are completed
- Reporting on gaps in services or unmet service needs in the communities in which they work
- Communicating with community-based service providers as appropriate
- For youth with higher needs, or those involved with numerous state agencies, providing case coordination services and convening a local multi-disciplinary review team (MDRT) as needed

- Tracking and reporting aggregate data on diversion

## **2. Improve Quality and Consistency of Diversion Work by Developing Common Infrastructure, Policies and Procedures that Diversion Coordinators Follow**

The JJPAD Board recommends that the Commonwealth take steps to increase the quality and consistency of diversion programs across the Commonwealth. The state can do this by developing common infrastructure, policies and procedures that local Diversion Coordinators would use to guide their diversion work, including:

- Referral tracking
- A common risk/need assessment tool
- Diversion agreement and case management policies and procedures
- Partnerships with state partners and community providers
- Central database
- Data sharing policies and agreements

In making this recommendation, the JJPAD Board is cognizant that, up until very recently, there has been little to no statewide support, funding, or statutory guidance for local diversion programs, and that local actors have developed programs of their own volition. The JJPAD Board proposes that new infrastructure, policies and procedures be developed in consultation with local actors, with the goal of supporting, rather than supplanting, local efforts.

## **3. Test and Refine Statewide Diversion Coordination Program Concept by Starting with a Three-Site Learning Lab**

There are numerous ways a Statewide Diversion Coordination Program could be operationalized, and it is not immediately clear to the JJPAD Board which would be the most effective. To test different models and provide an opportunity to refine the program concept and operations on a smaller scale before going statewide, the JJPAD Board recommends beginning with a three-site learning lab.

The learning lab sites should encompass a mix of urban, suburban, and rural areas. Different Diversion Coordination models that could be tested include:

- Co-location at a Family Resource Center (FRC)
- Partnership with Local Law Enforcement or District Attorney's Office
- Partnership with Community Providers

## **4. The Diversion Coordinator Should Track a Variety of Data to Support Coordination, Program Management and Evaluation, and the Program Should Make Regular Public Reports**

We currently lack the data that is needed to fully understand or evaluate the use of diversion in Massachusetts. To address this challenge, the JJPAD Board recommends the state ensure that Diversion

Coordinators track a variety of data to support coordination, program management, and ongoing evaluation and report it at least annually to the Office of the Child Advocate.

## **5. Information from Diversion Programs Should Not Be a Part of a Youth's Court Record or Be Used Against Youth in Future Legal Matters**

To ensure that youth and their families participate fully in the diversion program, the JJPAD Board recommends that the diversion program guidelines clearly state that any information collected in the diversion process cannot be included in a youth's official court record or used against the youth in future legal matters, within the boundaries of state and federal law. This should not preclude providing information to a potential diversion referrer regarding a youth's history of successful or unsuccessful diversion attempts.

## **6. Develop Diversion Grant Program to Fill Local Gaps in Services for Youth with More Substantial Needs Being Diverted from System**

To help increase the availability of evidence-based, community services for youth with more substantial needs, the JJPAD Board recommends that the state allocate funding for a diversion service grant program with the following features:

- Encourages local practitioners or organizations to apply for funding to fill gaps in services available for youth with more substantial needs being diverted from the justice system
- Requires funds to be allocated toward service types with a base of research support
- Prioritizes applications submitted by, or with support from, a team of local stakeholders
- Takes into consideration geographic needs and equity

## **7. Prioritize Expanding Evidence-Based Treatment Services for Justice-Involved Adolescents as Part of Ongoing Behavioral Health Initiative**

The JJPAD Board recommends that the ongoing efforts to expand/re-design behavioral health services in Massachusetts should prioritize increasing the availability of the following:

- Community-based behavioral health services demonstrated to improve outcomes for higher-risk/justice-involved adolescents, such as Multi-Systemic Therapy, Multidimensional Family Therapy, or Functional Family Therapy
- Treatment services designed for special populations of youth, including youth who are homeless and youth with a history of sexual offending, trauma, co-occurring disorders or a serious mental illness, as well as services that specifically address racial trauma
- Services available for non-English speakers

## **8. Launch Working Group Focused Specifically on Transportation Barriers for Youth/Families Seeking to Obtain Services**

A consistent theme in the feedback the JJPAD Board has received through surveys, interviews and conversation with practitioners as well as youth and families is the challenge of transportation.

The JJPAD Board recognizes that this is a significant barrier to success, and also that it is not an area of expertise for current JJPAD Board or CBI Subcommittee members. Therefore, the JJPAD Board recommends that the Office of the Child Advocate convene a Working Group specifically focused on the issue of transportation for justice-involved youth being served in the community, inviting participants outside the JJPAD with expertise in creative transportation solutions, particularly in areas without public transport.

## **NEXT STEPS:**

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The findings and recommendations above have been developed with the input of a variety of juvenile justice system stakeholders and discussed at length at the CBI Subcommittee meetings. However, the JJPAD Board recognizes that further conversation with a wider array of stakeholders is needed, and that many of the recommendations above need to be further fleshed out and refined.

To that end, over the next year the JJPAD Board commits to the following ongoing work:

- Holding meetings and focus groups with more practitioners as well as youth and family who have experience with the justice system to solicit feedback on the above findings and recommendations.
- Discussing and developing recommendations on a range of additional programmatic details and decisions that need to be made, including how a learning lab program should be structured, how the program can best incorporate evidence-based practices such as using a risk/need assessment tool to guide the development of diversion condition, how to address information sharing in this role and how to ensure programmatic decisions help address, rather than exacerbate, systemic disparities (e.g. racial/ethnic disparities; disparities based on socio-economic status).
- Gathering additional information on the relationship between schools, educational issues, behavioral issues, school discipline and diversion programs, and making recommendations for how diversion programs can effectively partner with schools and educational advocates to support positive outcomes for at-risk and justice-involved youth.

## INTRODUCTION

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In April 2018, the Massachusetts Legislature passed, and Governor Charlie Baker signed into law, “[An Act Relative to Criminal Justice Reform.](#)” That legislation created the Massachusetts [Juvenile Justice Policy and Data \(JJPAD\) Board](#), which is charged with evaluating juvenile justice system policies and procedures and making recommendations to improve outcomes. The JJPAD Board is chaired by the Child Advocate and comprised of members representing a broad spectrum of stakeholders involved in the juvenile justice system.

In An Act Relative to Criminal Justice Reform, the Legislature asked the JJPAD Board to study and report on the following topics<sup>9</sup>:

- The quality and accessibility of diversion programs available to juveniles
- The system of community-based services for children and juveniles who are under the supervision, care or custody of the Department of Youth Services or the Juvenile Court;
- The gaps in services identified by the committee with respect to children and young adults involved in the juvenile justice system

Further, the Legislature asked the JJPAD Board to regularly recommend statutory changes concerning the juvenile justice system to:

- Improve public safety
- Promote the best interests of children and young adults who are under the jurisdiction, supervision, care or custody of the juvenile court, DYS or DCF
- Improve transparency and accountability with respect to state-funded services for children and young adults in the juvenile justice system
- Promote public welfare and public safety outcomes related to the juvenile justice system

The JJPAD Board held its first meeting in December 2018, and created a Community-Based Interventions (CBI) Subcommittee to focus on the above topics. In preparation for this report, over the past eleven months, the CBI Subcommittee has:

- Reviewed national research on the use of diversion
- Heard presentations from members of law enforcement, district attorneys, the Juvenile Court, the Massachusetts Probation Service, and a restorative justice organization on the use of juvenile diversion in various parts of the Commonwealth
- Conducted surveys and interviews with juvenile justice practitioners across the state as well as justice-involved youth on their perceptions of the availability/gaps in community-based services as well as barriers to connecting youth with these services<sup>10</sup>

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<sup>9</sup> See M.G.L. Chapter 119, Section 89: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section89>

<sup>10</sup> The CBI Subcommittee also intended to conduct a survey of parents of justice-involved youth to gain their perspective on service gaps and barriers. Due to a variety of logistical challenges, this survey could not be completed in time for this report. Although several members of the Board – including the representative to the Board who is a parent of a child who has been subject to Juvenile Court jurisdiction and advocacy organizations that work with parents – have participated in the subcommittee and shared their perspectives and the

- Researched and reviewed statewide diversion infrastructure eligibility models, as well as diversion and service funding models, used in other states
- Reviewed current Massachusetts state budget funding for community-based interventions

The JJPAD Board acknowledges the contributions and support of the following groups and individuals who contributed in significant ways to the research process:

- Josh Weber and Jacob Agus-Kleinman from the Council of State Governments (CSG), who presented to the CBI Subcommittee on national diversion research and best practices and helped answer the group’s research- and practice-related questions throughout the process.
- Tessa Upin of the Crime & Justice Institute at Community Resource for Justice, who joined the CBI Subcommittee’s meeting on diversion policies in other states and answered Subcommittee member questions about how certain policies worked in practice on the ground.
- Alexis Yohros of Northeastern University, who served as a summer Juvenile Justice Research Fellow with the OCA thanks to the support of the Rappaport Foundation, and provided significant policy research and survey analysis support.
- Robin Marks and Catherine Marks of the Harvard Kennedy School, who served as research consultants for the OCA at the beginning of this process, including conducting in-depth interviews with stakeholders, developing the survey draft, and identifying common stakeholder themes and concerns that helped inform the Subcommittee’s ongoing research plan.

**Juvenile Justice Practitioner Survey**

In the spring of 2019, the JJPAD Board surveyed a variety of local juvenile justice system practitioners across the Commonwealth who make referrals to community-based interventions for youth who are involved with, or at high risk of becoming involved with, the juvenile justice system. The 153 respondents who took the online survey included a mix of police, district attorneys, public defenders, juvenile court judges and clinicians, probation staff and school personnel from all 15 counties in Massachusetts.

The survey asked respondents questions about service availability in their community, including what services they are aware of, what services they make referrals to, and what services they believe are under-resourced. It also asked respondents about service availability and gaps for particular special populations of youth (e.g. youth who are homeless, LGBTQ youth, youth with serious mental illnesses), as well as common barriers to connecting youth with services (e.g. transportation, waitlists).

Information from this survey was used to inform the JJPAD Board’s findings and is referenced throughout this report.

While the survey results provide a valuable on-the-ground perspective, there are limitations that should be acknowledged. In particular, survey respondents were not a representative sample, and the results may be influenced by who did – and did not – choose to respond.

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perspectives of parents they work with, the JJPAD Board acknowledges this is a gap in the report. The Board will continue to work to identify effective ways of incorporating the perspective of parents in the group’s work.

## BACKGROUND

This report is about community-based interventions for youth who are involved with the justice system or at high risk of becoming involved, with a particular focus on juvenile diversion. In this section, the JJPAD Board provides background information for readers who may be less familiar with the juvenile justice system or community-based interventions.

### What are community-based interventions?

Community-based interventions, or CBIs, are methods of addressing problematic (and potentially unlawful) youth behavior in the community (as opposed to out-of-home placement in a secure facility.)

We know from theories of child development that adolescence is a time for taking risks and testing limits. Behavior that adults may consider “problematic” or “concerning” is in many cases normal adolescent behavior. Eventually, most youth mature and grow out of risky/antisocial behavior – and will do so without intervention.

A very small percentage, however, will go on to re-offend as adults, although this risk can be mitigated if they receive the right supervision and support. Many more youth may age out of antisocial behavior regardless, but would still benefit from community-based services – such as educational support, mentoring, or mental health treatment – to help them reach their full potential.

Massachusetts has a rich network of community service and health care organizations, many of which may intervene in a youth’s life without involving a government entity. There are also a variety of state and local government entities that may intervene under certain circumstances, including schools, DCF, law enforcement, Probation, or other juvenile justice practitioners. These stakeholders may provide the youth and/or their families with services and support themselves, or they may refer them to community-based service providers. Some stakeholders work with youth on a completely voluntary basis, while others may have legal authority and leverage to mandate youth participation in services, with consequences for non-compliance.

Regardless of method or approach, the general goals of every CBI are the same:

- Promote positive life outcomes for youth, such as educational attainment, physical and mental health, and family stability
- Reduce re-occurrences of risky/unlawful behaviors

#### **Risky/Unlawful Behavior is Common Amongst Adolescents**

From the 2017 national Youth Risk Behavior Survey, the percent of high school students who report:

- Ever drinking alcohol: 60.4%
- Ever using an e-vape: 42.2%
- Ever using marijuana: 35.6%
- Being in a physical fight: 23.6%
- Carrying a weapon: 15.7%

Source: Kann, L., McManus, T., & Harris, W. (2018). *Youth risk behavior surveillance– United States. Surveillance Series*, (67). Centers for Disease Control and Prevention. Retrieved from <https://www.cdc.gov/healthyyouth/data/yrbs/results.htm>

## What is diversion, and what does it look like in practice?

Diversion can be defined as any program that “allows youth who commit offenses to be directed away from more formal juvenile justice system involvement.”<sup>11</sup> The goals of diversion are to address the youth’s behaviors, reduce recidivism, and connect youth to services when needed.<sup>12</sup>

In general, diversion programs can be divided into two categories:

- **Informal diversion** can include any measure that turns youth away from the system, such as a police officer letting a youth go with a warning or a judge deciding to dismiss a case prior to arraignment. It may also include an agreement with a youth that they will take a specific action to atone for their behavior, such as writing an apology letter or performing community service.
- **Formal diversion** typically takes the form of a specific, structured program with eligibility and completion requirements.

The type of diversion used depends on multiple factors, including but not limited to the needs of the youth, the seriousness of the offense, the point of contact in the justice system, and the resources available in the community. Informal diversion is often offered at arrest. Formal diversion commonly occurs after charges are filed, but before a formal arraignment.<sup>13</sup>

## How does diversion work in Massachusetts?

Massachusetts has no formalized, statewide system for diverting youth who have committed unlawful behavior and come to the attention of law enforcement out of the juvenile justice system or to community-based services.

Rather, youth diversion in Massachusetts occurs via a piecemeal system, in which four separate decision-makers – police, court clerks, district attorneys, and judges – may apply formal and informal diversion practices at various points, from initial contact with police to arraignment, with almost no statutory guidance with regards to eligibility, diversion conditions, oversight, compliance, stakeholder engagement, record-keeping or privacy concerns.<sup>14</sup>

Examples of how various decision-makers report using diversion in Massachusetts are detailed in this report.

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<sup>11</sup> Diversion programs. (2017). *Model Programs Guide: Literature review*. Washington, D.C. Office of Juvenile Justice and Delinquency Prevention. Retrieved from [https://www.ojjdp.gov/mpg/litreviews/Diversion\\_Programs.pdf](https://www.ojjdp.gov/mpg/litreviews/Diversion_Programs.pdf)

<sup>12</sup> *ibid.*

<sup>13</sup> Farn, A. (2018). Improving outcomes for justice-involved youth through evidence-based decision making and diversion. Washington, D.C. Center for Juvenile Justice Reform. Retrieved from <https://cjjr.georgetown.edu/wp-content/uploads/2018/07/Improving-Youth-Outcomes-at-Referral.pdf>

<sup>14</sup> The April 2018 Criminal Justice Reform Bill formally gave judges the authority to divert youth pre-arraignment and delineated a list of charges that a judge could divert. There is no statutory guidance for law enforcement, court clerks or district attorneys regarding diversion.

## How often are youth in Massachusetts diverted?

As detailed in the JJPAD Board’s June 2019 Report, “Improving Access to Massachusetts Juvenile Justice System Data,”<sup>15</sup> there are significant gaps in the availability of data on our juvenile justice system. The most significant of these gaps is data on the use of diversion.

No decision-maker currently tracks or reports on the number or percentage of youth they divert each year. The best we can do is make a very rough estimate by comparing data from a variety of court processing points.

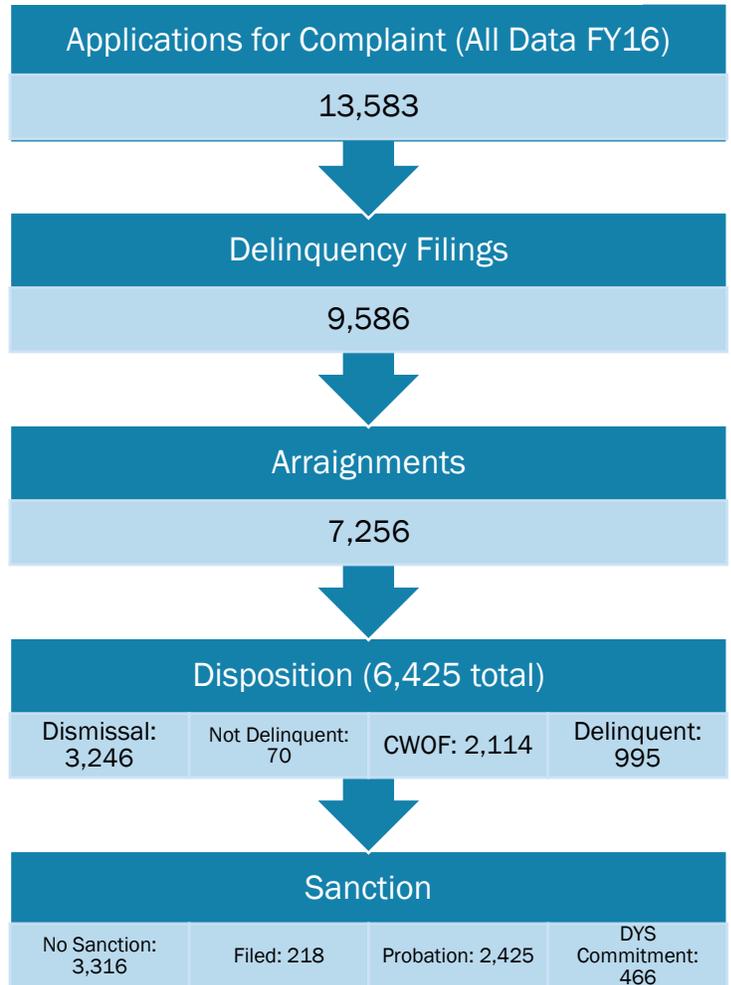
The most recent year for which complete data at each process point is available is Fiscal Year 2016. In that year, there were 13,583 referrals (delinquency complaint applications) made to the Juvenile Court. Of those, a decision was made to issue a delinquency petition (delinquency filing) in 9,586 cases. An arraignment was held for 7,256 of those cases.<sup>16</sup>

Every youth who is formally arraigned will have a juvenile court record. For the purposes of this report, decisions post-arraignment do not qualify as “diversion.” That said, of the 7,256 arraignments that were held, approximately half were subsequently dismissed, and another 29% were Continued Without a Finding.<sup>17</sup> Only 995 – 14% – resulted in a delinquency finding.

How many youth, then, were diverted pre-arraignment?

- **Family/school/community diversion:** First, it is important to note that we know that risky and unlawful behavior is common among adolescents, as demonstrated in Figure 1, above, yet most

Figure 1: Massachusetts Juvenile Justice Process



<sup>15</sup> See: [Improving Access to Massachusetts Juvenile Justice System Data](https://www.mass.gov/files/documents/2019/06/25/JJPAD%20Board%20June%202019%20Data%20Report%20-%20Final%20Submitted%20to%20Legislature.pdf)  
<https://www.mass.gov/files/documents/2019/06/25/JJPAD%20Board%20June%202019%20Data%20Report%20-%20Final%20Submitted%20to%20Legislature.pdf>

<sup>16</sup> Commonwealth of Massachusetts Disproportionate Minority Contact Statewide Assessment Report, (2018). Retrieved from <https://www.mass.gov/doc/disproportionate-minority-contact>

<sup>17</sup> A case that is Continued Without a Finding (CWOFF) is one in which the individual “admits to sufficient facts” to support a guilty finding, but an official finding is not entered. Instead, the youth is given a set of conditions to meet – which will likely include a period of probation. If those conditions are met, the CWOFF will be closed; if not, the youth may face a probation violation hearing during which the court may revoke the CWOFF and impose a finding of guilt. (Probation currently uses an administrative hearing policy with a graduated response incentive matrix to address non-criminal probation violations before they are referred to the court.) A CWOFF still appears on a youth’s record.

never come to the attention of the juvenile justice system. If the behavior is even noticed by an adult, most youth are “diverted” – by parents, by community members, by school systems – before law enforcement is involved at all.

- **Law enforcement diversion:** It is impossible to tell from currently available data how many youth are informally or formally diverted by law enforcement, as this takes place before an application for complaint is filed with the court.
- **Clerk magistrate and district attorney diversion:** Of the 13,583 applications for complaint made, only 7,256 – or 53% – resulted in an arraignment. **Of the remaining 6,327 complaints in FY16, some were likely dropped for lack of probable cause, while others were likely formally or informally diverted by either a clerk magistrate or a district attorney.**<sup>18</sup>

Data on the number of arraignments held is only available through FY16. It is worth noting, however, that the numbers of applications for complaint and delinquency filings have dropped dramatically (38% and 45%, respectively) from FY16 to FY19. This is likely partially driven by a decade-plus long drop in juvenile arrest rates (both nationally and in Massachusetts), and also partially by increased use of diversion earlier in the process. An Act Relative to Criminal Justice Reform, passed by the Legislature in 2018, included several provisions designed to increase the use of diversion, including giving judges the opportunity to offer pre-arraignment diversion.

## FINDINGS

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### 1. Diverting Youth from Formal Processing by the Juvenile Justice System Can Be an Effective Intervention Strategy

The JJPAD Board finds that diverting youth from the juvenile justice system can be an effective strategy – improving life outcomes for youth, preserving and protecting public safety, and reducing court processing costs for the Commonwealth.

As noted in the Background Section, limit testing is normal, developmentally appropriate adolescent behavior. Most youth “offending” does not result in contact with law enforcement at all, and most youth will outgrow risky/unlawful behavior without any state intervention. The majority of youth who are arrested once will not be arrested a second time; the percentage of youth who are arrested multiple times is very small.<sup>19</sup>

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<sup>18</sup> Clerk magistrates are responsible for determining if there is probable cause that a youth committed the alleged offense and then deciding whether or not to file a delinquency charge. Interviews with practitioners in the field reveal that different courts use different filing procedures. In some courts, a district attorney makes a determination whether or not to divert a youth before a delinquency file is created; in other courts the decision is made between filing and arraignment. As a result, it is impossible to determine, with currently available data, how many cases were officially diverted, and by which actor.

<sup>19</sup> Models for Change (2011). [Juvenile diversion guidebook](http://www.modelsforchange.net/publications/301). John D. and Catherine T. MacArthur Foundation. Retrieved from <http://www.modelsforchange.net/publications/301>

Diversion can help make this percentage even smaller. **Rigorous research has found that youth who have participated in diversion programs are less likely to reoffend than youth who are formally processed through the juvenile court:**

- One meta-analysis of 45 studies showed that diversion was more effective in reducing recidivism than traditional court processing.<sup>20</sup>
- Another meta-analysis of 19 studies specific to police-based diversion showed that youth were less likely to reoffend when they received diversion. The studies included in the analysis pertained specifically to low-risk youth.<sup>21</sup>

We also know that contact with the juvenile justice system can increase a youth’s likelihood for other negative outcomes, such as academic failure.<sup>22</sup> Diverting youth from the system decreases the likelihood that youth will experience these negative outcomes.

The juvenile court is designed with healthy development as its primary goal, and so it can be difficult to understand why court involvement can lead to youth being more likely – rather than less likely – to reoffend.

Researchers have theorized that labeling a young person as juvenile justice-involved in of itself may be harmful to youth and increase the likelihood of future delinquency. There are two strands of labeling theory. The first is that youth internalize their status as a “juvenile delinquent”, which then becomes self-fulfilling. The second is that others around the youth, for example, educators and peers, might see or treat a youth differently based on their system involvement, which can increase their likelihood of future offending. Both strands emphasize that diversion prevents labeling through further system processing by taking youth out of the system as early as possible.<sup>23</sup> Court involvement also takes time – including, sometimes, time out of school – which can

**What is Risk?**

Risk in the context of this report is defined as the likelihood that a youth will reoffend. This is typically determined using a validated risk assessment tool.

**Low Risk:** there is a low chance the youth will reoffend. Low-risk is not the same as no-risk; a small percentage of youth who are considered low-risk will re-offend.

**High Risk:** there is a higher chance that the youth will reoffend. High risk is also not a guarantee; a youth who is considered high-risk may never commit another criminal offense.

**Moderate:** Moderate risk youth do not clearly fit into the other two categories; they occupy the range between “low” and “high”.

<sup>20</sup> Wilson, H., & Hoge, R. (2012). The effect of youth diversion programs on recidivism: A meta-analytic review *Criminal Justice and Behavior*, (40) p. 497–518. International Association for Correctional and Forensic Psychology. Retrieved from [http://users.soc.umn.edu/~uggen/Wilson\\_CJB\\_13.pdf](http://users.soc.umn.edu/~uggen/Wilson_CJB_13.pdf)

<sup>21</sup> Wilson, D., Brennan, I, Olaghere, A. (2018). Police- initiated diversion for youth to prevent future delinquent behavior. Campbell Collaboration. Retrieved from [https://campbellcollaboration.org/media/k2/attachments/0287\\_CJCG\\_Wilson\\_Youth\\_diversion\\_PLS\\_EN.pdf](https://campbellcollaboration.org/media/k2/attachments/0287_CJCG_Wilson_Youth_diversion_PLS_EN.pdf)

<sup>22</sup> Youth Involved with the Juvenile Justice System (n.d.). Youth.gov. Retrieved from <https://youth.gov/youth-topics/juvenile-justice/youth-involved-juvenile-justice-system>

<sup>23</sup> Liberman, A.M., Kirk, D., & Kim, K. (2014). Labeling effects of first juvenile arrests: Secondary deviance and secondary sanctioning. *Criminology* (52)3, p. 345-370. Retrieved from <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9125.12039>

pull youth away from other positive supports in their life. The time parents and other family members have to spend in court can create financial burdens, challenges with child care, and other stressors.

### **When is diversion most effective?**

Diversion will not be effective for all youth. For a variety of reasons – including protecting public safety – some youth will need a more significant level of supervision than can be provided in a diversion program.

Still, both national research and the on-the-ground experiences of juvenile justice practitioners in Massachusetts show that many youth – including higher risk/need youth – can benefit from a properly structured diversion program.

Diversion programs are most effective when they follow the Risk-Need-Responsivity model, which is a framework that has been successfully applied across the juvenile justice system, nationally and in Massachusetts. A meta-analysis that included over 300 studies found that using **the risk/needs/responsivity (RNR) model decreased recidivism and increased prosocial behavior in youth.**<sup>24</sup> The RNR model is based on three principles:

- 1) **Risk principle:** the level of services a youth receives should be based on the level of risk a youth possesses.
- 2) **Need principle:** treatment should focus on the youth's dynamic risk factors, also known as *criminogenic needs*.
- 3) **Responsivity principle:** the mode and strategy for service delivery should be matched to the youth's individual needs and circumstances.<sup>25</sup>

Research tells us that **low-risk youth who are diverted should be offered low-intensity diversion options**, such as being released with a warning. Studies have shown that the odds of re-arrest and delinquent behavior can actually increase for low-risk youth if they are placed in more formal diversion programs or in secure confinement.<sup>26</sup>

**Moderate to high risk youth who are diverted should be offered higher intensity diversion options.** Existing research suggests that diversion programs are most effective and save states more money when they are targeted towards higher-risk populations of youth, focus specifically on the individual needs of the young person that are driving delinquent behavior, and match the young person to the intervention that is responsive to their needs.<sup>27</sup> For example, a young person might get involved in a fight because of

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<sup>24</sup> Dowden, C. & Andrews, D.A. (2000). *Effective correctional treatment and violent re-offending: A meta-analysis*. *Canadian Journal of Criminology. Revue canadienne de criminologie* 42(4), p. 449-467. Retrieved from [https://www.researchgate.net/publication/285905441\\_Effective\\_correctional\\_treatment\\_and\\_violent\\_reoffending\\_A\\_meta-analysis](https://www.researchgate.net/publication/285905441_Effective_correctional_treatment_and_violent_reoffending_A_meta-analysis)

<sup>25</sup> Vincent, G., Sullivan, C.J., Sullivan, C., Guy, L., Latessa, E., Tyson, J., & Adams, B. (2018). *Studying drivers of risk and needs assessment instrument implementation in juvenile justice*. *Juvenile Justice Bulletin*. Office of Juvenile Justice and Delinquency Prevention. Retrieved from <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/251809.pdf>

<sup>26</sup> Schlesinger, T. (2018). *Decriminalizing racialized youth through juvenile diversion*. *Future of Children*, 28(1), p. 59-81. Retrieved from [https://www.researchgate.net/publication/318875971\\_Decriminalizing\\_Racialized\\_Youth\\_through\\_Juvenile\\_Diversion](https://www.researchgate.net/publication/318875971_Decriminalizing_Racialized_Youth_through_Juvenile_Diversion)

<sup>27</sup> Ibid.

bullying, a trauma history, family conflict, or a substance use problem, each of which would require a different response, and potentially, a different program.

To determine a youth’s risk level, **diversion program practitioners should use validated risk assessment tools**. These tools are useful because:

- They are more likely to predict a youth’s likelihood of reoffending compared to relying only on professional judgement.
- They can help reduce the risk of implicit bias, though they are not sufficient by themselves to combat all system inequities.

Practitioners should use tools that are culturally competent, trauma-informed, closely monitored for disparate racial and/or ethnic impact, and targeted at the population that they serve.<sup>28</sup>

Finally, whenever possible, **diversion programs should include evidence-based interventions that evaluate and respond to the individual needs of the youth**.

Programs that use cognitive-behavioral practices and family-focused approaches have been shown to reduce recidivism and improve other outcomes for higher-risk youth.<sup>29</sup> As an example, a program in Ohio that diverted youth from detention to evidence-based, community treatment programs such as Multi-systemic Family Therapy improved behavioral health outcomes for their justice-involved youth.<sup>30</sup>

**Net Widening: A Potential Unintended Consequence of Increasing the Availability of Diversion**

Although research strongly supports the use of diversion as an effective intervention strategy, there is a potential downside to creating diversion programs: “If you build it, they will come.” Without careful implementation, some youth who might otherwise have been given a warning (and, more likely than not, aged out of unlawful behavior with no additional intervention) will be placed in a formal diversion program instead.

Placing lower-risk youth in a formal diversion program is typically done out of a desire to help a youth. However, as described in Finding 1, research shows doing so can actually be actively harmful, making it more likely that they will ultimately be referred to the court and increasing their odds of re-arrest.

To avoid these unintended consequences, any time a diversion program is implemented, it is critically important that steps are taken to ensure it targeted toward youth who otherwise would have been formally processed by the court.

**2. Juvenile Justice Decision-Makers Across the Commonwealth are Increasingly Aware of the Importance of Diversion, and More and More Decision-Makers are Establishing Diversion Practices**

In recent years, juvenile justice decisions-makers across the Commonwealth – from law enforcement to

<sup>28</sup> Seigle, E., Walsh, N., & Weber, J. (2014). Core principles for reducing recidivism and improving other outcomes for youth in the juvenile justice system. Council of State Governments. Retrieved from <https://csgjusticecenter.org/wp-content/uploads/2014/07/Core-Principles-for-Reducing-Recidivism-and-Improving-Other-Outcomes-for-Youth-in-the-Juvenile-Justice-System.pdf>

<sup>29</sup> Ibid.

<sup>30</sup> Kretschmar, J.M., Butcher, F., Flannery, D.J., Singer, M.I. (2014). Diverting juvenile justice involved youth with behavioral health issues from detention: Preliminary findings from Ohio’s Behavioral Health Juvenile Justice Initiative. *Criminal Justice Policy Review*, p. 1-24. Retrieved from <http://www.ncjfcj.org/sites/default/files/Criminal%20Justice%20Policy%20Review-2014-Kretschmar-0887403414560885.pdf>

District Attorneys to judges – have become increasingly aware of the benefits of diversion and have expanded their use of diversion as an alternative to court involvement.

As noted in the Background section, use of the juvenile justice system at every contact point for which we have available data is down: just in the past three years, for example, applications for complaint have dropped 38%, and delinquency filings have dropped by 45%. Some portion of this can likely be attributed to increased use of diversion at all levels. An Act Relative to Criminal Justice Reform, passed by the Legislature in 2018, included several provisions designed to increase the use of diversion, including giving judges the opportunity to offer pre-arraignment diversion.

There are no statewide guidelines on the use of diversion, nor is there an entity tasked with overseeing the implementation of diversion programs. Gathering information on the use of diversion across the state – among hundreds of police departments, dozens of courts and ten District Attorney offices – is, therefore, a difficult undertaking. However, **the JJPAD Board finds clear evidence that more and more justice system decision-makers have been offering diversion alternatives:**

**Police Diversion:** Historically, police departments have practiced “informal diversion” any time an officer issued a warning rather than making an arrest or filing a criminal complaint with the courts. In recent years, however, some police departments have begun to also develop more formal diversion programs (alone or in partnership with the county District Attorney’s office and/or local community service providers).

**Spotlight on Safety Net, Cambridge**

The Safety Net program in Cambridge is a partnership between the Cambridge Police Department, Cambridge Public Schools, the local Department of Human Services – Youth Programs, and the Cambridge Health Alliance. This partnership began in 2008 with the goal of reducing youth arrests and increasing youth access to mental/behavioral health treatments. In this model, police officers receive special training to serve as Youth Resource Officers (YROs). YROs provide case management services to eligible youth, which “affords the officer the opportunity to act in a preventative manner...rather than solely in an enforcement capacity.”

In addition to training on child development and the effects of trauma, YROs are also trained to use the Youth Level of Service – Case Management Inventory (YLS-CMI) tool to guide decisions about services (Barrett et. al., 2019). Youth who are eligible for diversion are:

- 18 years old or younger
- A resident of Cambridge
- Have committed an arrestable offense that is not a major felony
- Voluntarily agree to participate, as well as their families
- Have not previously failed to complete the Safety Net program

Youth who received diversion were more likely to use outpatient mental health services than their counterparts who did not receive diversion. The program also reduced likelihood of second offense at six, 12, and 18 months after the initial offense.

Source: Barrett et al. (2019) “Do Diverted Kids Stay Out of Trouble? *Journal of Applied Juvenile Justice Services*. Retrieved from: <http://npjis.org/iajis/wp-content/uploads/2019/02/Do-Diverted-Kids-Barrett-Final.pdf>

Janopaul-Naylor et al. (2019). “Promising Approaches to Police-Mental Health Partnerships to Improve Service Utilization for At-Risk Youth.” *Translational Issues in Psychological Science*. Retrieved from: <https://psycnet.apa.org/doiLanding?doi=10.1037%2Ftps0000196>

A survey of police departments by Citizens for Juvenile Justice and the Massachusetts Chiefs of Police Association found that, of the 95 police departments that responded to the survey, 24% had a formal diversion program established, and another 37% used informal diversion.<sup>31</sup>

See Appendix A for additional details on police diversion in Massachusetts.

**Clerk Magistrate Diversion:** Clerk magistrates are responsible for determining if there is probable cause that a youth committed the alleged offense and then deciding whether or not to file a delinquency charge. Data on clerk magistrate operations is not publicly available, nor are there publicly available policies in place that provide guidance on how these decisions are to be made. However, juvenile justice system practitioners note that, in their on-the-ground experience, magistrates frequently informally dismiss lower-level complaints and divert youth via a combination of written/verbal apologies, community services and/or essays.

**District Attorney Diversion:** Just as police have historically practiced informal diversion by issuing a warning instead of making an arrest, District Attorneys have also informally diverted youth by exercising their authority to decline to prosecute a charge. Over time, however, some District Attorney offices have developed more formal juvenile diversion programs, which may include dedicated staffing, standard policies, partnerships with local service providers, and/or the use of evidence-based tools to inform decision-making and case planning.

As of 2019, all 10 District Attorney Offices report using some form of juvenile diversion. See Appendix A for additional details on prosecutor-led diversion in Massachusetts.

**Judicial Diversion:** Judicial diversion was created as an option by the April 2018 Criminal Justice Reform law, and as a result is still relatively new. The Juvenile Court has provided judges with guidelines on what is allowed under law, and judges have a significant amount of discretion within those guidelines as to whether and how to use diversion (e.g. who is offered diversion, what the diversion conditions are).<sup>32</sup>

Data on the use of judicial diversion is not available. However, a survey of juvenile defense attorneys across the state found that defense attorneys had observed judges in most counties offering diversion in some situations.<sup>33</sup>

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<sup>31</sup> *Seizing an Early Opportunity* (2018). Citizens for Juvenile Justice. Retrieved from <https://www.cfjj.org/seizing-opportunity>

<sup>32</sup> For more information on *Massachusetts Juvenile Court Diversion Guidelines* see: <https://www.mass.gov/files/documents/2019/06/03/Judicial%20Diversion%20Flow%20Chart%20and%20Process%20Description%20-%20May%202019%20JJPAD%20CBI%20Subcommittee%20Meeting.pdf>

<sup>33</sup> The OCA and CPCS surveyed defense attorneys across the state in April 2019.

### Spotlight on Restorative Justice in Middlesex County

Restorative justice is an approach that focuses on repairing harm that has been done to victims and communities, creating an option where victims have the opportunity to address those who have harmed them and identify what could be done to repair the harm, while offenders have the chance to better understand the impact of their actions and make meaningful amends. Referral to a restorative justice program can be a form of diversion.

In Massachusetts, there are several organizations that help provide a structure for restorative justice to take place in partnership with the justice system, including Communities for Restorative Justice (C4RJ). C4RJ partners with police departments in 24 cities and towns as well as the Middlesex and Suffolk District Attorney's Offices. These partners refer cases to C4RJ, which engages with victims and accused youth on a voluntary basis to develop a plan of repair that addresses the needs of the parties and the community without further court involvement. A national study on restorative justice programs found that restorative justice can lead to lower recidivism rates, increased victim and offender satisfaction with the process, and higher rates of completed restitution.

Source: Success Data. (n.d.). Communities for Restorative Justice. Retrieved from <https://www.c4rj.org/what-is-restorative-justice/success-data>

### 3. There is Wide Variation in Diversion Policies and Practices Across the State, and an Opportunity to Improve Outcomes by Adopting Evidence-Based Practices

“Diversion,” as detailed in the Background section, can be an imprecise phrase, encompassing everything from a warning from a law enforcement officer to a formal program with clear conditions and case management. **There are no statewide standards or guidelines in Massachusetts regarding the use of diversion, and no entity that provides oversight for diversion practices.** There is also no state entity that provides technical assistance or funding to support the adoption of best practices or use of evidence-based treatment services. As a result, local decision-makers have developed their own diversion policies, programs and practices, funded from their own discretionary budgets and any outside support they can get through grant funding.

It is no surprise, then, that the JJPAD Board has found considerable variability in local diversion policies and practices across both decision-maker type and town/county/region. These variations include:

**Eligibility Criteria:** Decision-makers have adopted different criteria for whether or not a youth is eligible for diversion. In some regions, decision-makers will only offer diversion if it is the youth’s first offense, while others will offer diversion for repeat/subsequent offenses. Similarly, some regions will only offer diversion for very low-level charges (e.g. shoplifting), while others will offer diversion for more serious charges, including felonies. As result, whether or not a youth will be offered diversion for a given offense can vary dramatically depending on the town or county the youth lives in.

It is also unclear from the JJPAD Board’s research if all diversion programs have written eligibility guidelines, or if decisions are made on a case-by-case basis in some locations.

**Adoption of Evidence-Based Practices:**

Although many decision-makers have been employing diversion of some sort for many years, it is only relatively recently that significant amounts of research on the impact of diversion and the characteristics of effective diversion policies and programs has been undertaken. Our understanding of “what works” when it comes to diversion continues to be refined over time, but as explained in Finding 1, certain key findings about the use of the “Risk-Need-Responsivity” (RNR) model in developing effective diversion practices have emerged. These include the use of a validated, evidence-based risk and need assessment tool to guide the development of diversion plans and the importance of appropriate “dosage” when developing diversion conditions (not “over-intervening” with lower-risk youth; providing sufficient services and support to higher-risk youth).

**Do Risk-Need Assessment Tools Work? A Case Study from the Massachusetts Probation Service**

When the Massachusetts Probation Service juvenile division began using a validated risk-need tool (the OYAS) to assess the risk level of youth placed on probation in 2016, the agency discovered that many of the youth that they had previously decided needed “Maximum” supervision were actually low-risk. This meant that they were “over-supervising” many youth – which research tells us can increase these youth’s likelihood of re-offending in the future.

As a result of this information, Juvenile Probation staff modified their practice to better focus staff time on higher-risk cases. At the same time, as a result of this and other agency initiatives, Probation is seeing decreases in the number of youth who commit a new criminal offenses while on Probation. In other words, by adopting an evidence-based risk-needs assessment tool and other reforms, Probation has been able to achieve better outcomes for youth with a more effective use of resources.

**The JJPAD Board finds that although the research support for the application of the RNR model in setting diversion policies is strong, most diversion programs in the Commonwealth do not follow these principles.**

Most notably, most diversion programs have not adopted an evidence-based risk and need assessment or screening tool to help guide diversion conditions or help determine the appropriate intensity of intervention.<sup>34</sup> The JJPAD Board’s survey of juvenile justice system practitioners found that while most (79%) respondents believe that a youth’s risk level is an important factor to consider when making a

<sup>34</sup> It is important to note that adopting a risk/need assessment tool takes both financial resources and an upfront investment of staff time: tools may be proprietary and the rights to use them need to be purchased; staff need to be trained on effectively implementing the tools; data systems need to be built to properly capture information and allow for long-term evaluation and quality control. Local law enforcement and District Attorney offices that have adopted evidence-based tools have done so out of their own budgets; there is no statewide funding that supports this work.

referral decision, only 46% of respondents use a validated instrument to determine what that risk level is. In general, validated risk and need assessment tools are used more broadly later in the juvenile justice process (e.g. post-disposition) and less often at the point when decisions about diversion are being made.

**Involvement of Counsel:** There are different practices across the state regarding the involvement of a youth's attorney in the diversion processes. A youth who participates in police-led diversion is unlikely to have an attorney, as this occurs before a complaint has been filed in court. Some District Attorney offices actively involve a youth's attorney in the diversion processes, while others do not. An attorney is more likely to be involved in judicial diversion, because that process occurs in a court room.

Involving counsel can help identify disabilities or trauma histories that may be impacting a young person's behavior. Attorneys can also help young people and their families better understand and participate effectively in the diversion processes and any resulting services, help youth and families find and access resources and services, and bring other stakeholders (e.g. schools, other state agencies) to the table to meet the young person's needs. There is also evidence that involving counsel can help the youth and their family experience the process as fair, decreasing the likelihood of recidivism.<sup>35</sup>

Involving counsel in diversion processes can also add challenges. It can add time delays in developing and finalizing a diversion agreement – particularly in situations where appointed counsel is stretched thin – which can have the unintended effect of prolonging the amount of time before a youth's case is closed and they can move on with their lives. Some defense attorneys may have concerns about a youth participating in a diversion assessment process or admitting to a behavior, as is often required if a youth is to participate in a restorative justice process. Ultimately, defense attorneys and prosecutors work in legal system that is, by design, adversarial; this can complicate attempts to work collaboratively together in a diversion process. Successfully integrating a youth's attorney into a diversion process requires careful planning, effective communication, and cooperation among all players.

**Intensity of Diversion Conditions and Availability of Services:** Given the lack of statewide standards or widespread adoption of evidence-based tools, there is also significant variation in the types and intensity of diversion conditions that are set for similarly situated youth.

Because most programs are not using a validated tool to assess risk and need levels, it is very likely that some lower-risk youth are receiving too intense of an intervention (too many conditions; too much oversight; too long a program), while other youth may not be receiving a sufficient dosage of service to meet their needs, increasing the likelihood that they will re-offend. This means that many diversion programs are likely not achieving the best possible outcomes.

There is also considerable regional variation in the availability of services. In some cases, decision-makers may want to refer higher-needs youth to a certain type of program but be unable to do so because that program does not exist or wait lists are too long. More information on service gaps is included in Finding 6 and 7.

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<sup>35</sup> Wallace, D., Papachristos, A., Meares, T., & Fagan, J. (2015). Desistance and legitimacy: The impact of offender notification meetings on recidivism among high risk offenders. *Justice Quarterly* (33)7, p. 1237-1264 Retrieved from <https://www.tandfonline.com/doi/abs/10.1080/07418825.2015.1081262>

The JJPAD Board’s finding that there is an opportunity to improve outcomes through increased adoption of evidence-based practices among diversion programs in the Commonwealth is not intended as a critique of the many dedicated public servants who have launched and managed these programs over the years. Indeed, the JJPAD Board applauds the many local actors who have devoted resources and time to developing diversion programs, some of which have been in place for well over a decade and many of which have received little fanfare or notice. Instead, the Board’s finding is an acknowledgement that there has, thus far, been limited state support for local-level diversion programs – and that, as with all public services, there is always room for improvement, especially as our research-informed understanding of “what works” in juvenile diversion grows.

**Spotlight on Suffolk County District Attorney’s Office  
 Juvenile Alternative Resolution (JAR) Program**

In 2017, the Suffolk County District Attorney’s Office implemented a formal diversion program for youth who are at a higher risk of recidivism and have significant needs. They also vastly expanded the number of cases that are informally diverted.

Participation in JAR is voluntary, and completion of JAR results in no court involvement and no criminal record.

**Risk-Based Program Placement:** All cases that come before the DA’s office are screened with the OYAS-DIV, an evidence-based tool to assess risk of recidivism. Low risk youth are informally diverted with minimal conditions, while higher risk youth are placed in the formal JAR program. The only cases that are ineligible for diversion are cases involving firearms, serious bodily injury to a victim, or sexual assault.

**Needs Assessment:** The JAR program staff use the YLS/CMI, an evidence-based assessment tool, along with conversations with the youth, their family, and the youth’s attorney, to identify the youth’s specific needs, match them to appropriate community programming, and develop the diversion agreement.

**Community Services:** The youth spends several months to a year working with the community program under the remote supervision of the DA’s office. When the youth completes their diversion agreement, the case is dismissed.

**Results:** Roughly 45% of all cases in participating courts are informally diverted, while an additional 20% are placed in JAR. The overall number of cases diverted since this program was implemented has more than doubled.

**4. We Do Not Currently Collect the Data That Would Be Needed to Fully Understand or Assess Our Current Diversion System(s)**

As detailed in the JJPAD Board’s June 2019 Report, “Improving Access to Massachusetts Juvenile Justice

System Data,”<sup>36</sup> **there are significant gaps in the availability of data on our juvenile justice system, which impedes our ability to make data-informed decisions about policy and practice. The most significant of these gaps is data on the use of diversion.**

Four separate decision-makers – police, court clerks, district attorneys, and judges – have the authority to divert youth. Although some of these decision-makers collect data on the youth they choose to divert, almost none of them make this data publicly available.<sup>37</sup> The JJPAD Board is not aware of any that collect the data in such a way that would allow a comparison of the population of youth who are diverted to the population of youth who are processed through the traditional court system, so that we could identify any disparities in the use of diversion or track differences in outcomes between youth who are and are not diverted.

**Who is Diverted, and When?** We currently do not have the data needed to answer any of the following basic questions about how diversion is used and if it is being used equitably:

- What types of cases (e.g. charge type, criminal history) are diverted, and how does that differ across the Commonwealth?
- At what process point(s) are youth being diverted, and by which decision-makers?
- Are youth diverted at different rates in different towns or counties?
- Are youth of different genders or races/ethnicities diverted at similar rates, holding case characteristics (i.e. charge type and criminal history) constant?
- Are there any other youth characteristics – e.g. DCF involvement, socioeconomic status – that impact their likelihood of being diverted?

**What are the Characteristics of Diversion Programs?** We also lack data on diversion program characteristics across the Commonwealth. For example, we lack data on:

- The types and intensity of diversion conditions that are set for youth
- What services youth are connected with
- How long diversion programs last
- How all of this differs by region or for different demographic groups

**Which Diversion Programs are Most Effective?** Finally, we lack data that would allow us to evaluate the quality or outcomes of different diversion programs. As noted in Finding 1, the national research is clear that diversion is an effective intervention strategy for many youth. The national research is also clear, however, that the *quality* of the diversion program can have a substantial impact on outcomes. Unfortunately, we do not have data that would allow us to assess the quality of various diversion programs, including:

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<sup>36</sup> See: [Improving Access to Massachusetts Juvenile Justice System Data](https://www.mass.gov/files/documents/2019/06/25/JJPAD%20Board%20June%202019%20Data%20Report%20-%20Final%20Submitted%20to%20Legislature.pdf)  
<https://www.mass.gov/files/documents/2019/06/25/JJPAD%20Board%20June%202019%20Data%20Report%20-%20Final%20Submitted%20to%20Legislature.pdf>

<sup>37</sup> For an example of a District Attorney’s office that publicly provides some diversion data, see [Middlesex DA’s website](https://www.middlesexda.com/transparency-through-data/pages/calendar-year-2018).  
<https://www.middlesexda.com/transparency-through-data/pages/calendar-year-2018>

- If and how a validated risk and need assessment tool is used to develop diversion conditions in various programs
- Whether youth are matched to evidence-based services that meet their particular needs
- What percentage of youth successfully complete the diversion program
- Whether or not youth placed in the diversion program re-offend at higher or lower rates and/or have other positive life outcomes (e.g. educational attainment) at higher or lower rates than youth who are processed through the traditional court system
- How youth outcomes differ by diversion program type (e.g. informal vs formal diversion; use of particular evidence-based practices)

As a result of the lack of diversion-specific data in Massachusetts, the JJPAD Board has had to make inferences from the broad, process-point data that is available (as detailed in Background, above), as well as rely on other sources of information to inform our recommendations, including national research on use of diversion and effective diversion practices, anecdotal reports, and survey data on use of diversion and community-based interventions in Massachusetts.

Accordingly, **the JJPAD Board finds that expanding the collection, analysis and dissemination of data on the use of diversion in Massachusetts is necessary to ensure equitable application of diversion policies and help improve diversion program quality.** This should be prioritized in any policy or practice reforms.

## 5. The Current Structure of Our Diversion System Likely Contributes to Systemic Inequalities

A central principle of our justice system is fairness and equitable treatment: the concept that youth who come into contact with our justice system should be treated fairly and equitably regardless of their race, ethnicity, gender, socioeconomic status, disability, sexual orientation or gender identity.

Unfortunately, decades of research demonstrate that – both nationally and here in Massachusetts – we too often fall short of that goal, particularly when it comes to fair treatment regardless of race and ethnicity.

Many stakeholders across the system have launched numerous efforts to try and eliminate these disparities – including the passage of national federal requirements to address Disproportionate Minority Contact (DMC)<sup>38</sup> through the Juvenile Justice Delinquency and Prevention Act in the 1980s, the launch of the Juvenile Detention Alternatives Initiative (JDAI) in Massachusetts in 2007, and recent initiatives by the Trial Court, CPCS, Probation and the Department of Youth Services to train staff on the impact of implicit racial bias on decision-making. However, **the JJPAD Board finds that despite these efforts, systemic disparities continue to exist – and, therefore, that reducing disparities must be a core consideration and priority in the development of any reform initiatives.**

### **Racial and Ethnic Disparities in Massachusetts' Juvenile Justice System**

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<sup>38</sup> “Disproportionate Minority Contact”, or DMC, is a term used in the juvenile justice field which means that racial/ethnic minority youth (particularly Black, Hispanic/Latinx and Native American youth) are involved in the juvenile justice system at rates that are both higher than white youth and also above what would be expected based on a given racial/ethnic group’s population.

As noted in Finding 4, there are significant limitations in the availability of juvenile justice data. Still, what data we do have shows significant and persistent racial and ethnic disparities in our juvenile justice system. **At every decision point for which we have data, we can see that Black and Hispanic/Latinx youth are more likely to be advanced through the justice system – rather than being diverted – than white youth.** These disparities are particularly high at early decision points that diversion could impact— including the decision to take a youth into custody rather than issuing a summons, to issue a delinquency complaint, or to arraign a youth.

In 2018, the Massachusetts Trial Court conducted an assessment to determine if and to what extent disproportionate minority contact exists in the Massachusetts juvenile justice system.<sup>39</sup> The results of the analysis, which looked at Juvenile Court data from FY2016, showed racial and ethnic disparities occurring at numerous decision points, including:

- Referrals coming to the Juvenile Court
- The decision to issue a complaint
- The decision to hold an arraignment event
- The decision to detain the defendant at arraignment
- Initial disposition decision
- Initial sanction decision

This indicates that there is disparity found in the population of youth who were referred to the Juvenile Court, and that this disparity compounded as it progressed through each subsequent decision point.<sup>40</sup>

The tables below show two things:

- **The proportion of youth of each race** (black, white, other and not reported) and each ethnicity (Hispanic, Non-Hispanic, not reported) at a certain stage of the process who are advanced to the next stage of the justice system. For example, the table shows that a delinquency petition is issued for 78.7% of black youth referred to the court, compared to 70.9% of white youth.
- **The “Relative Rate Index” (RRI) at decision point.** The RRI compares the rate of activity at each stage of the process for youth of color compared to white youth. The RRI provides a consistent framework for measuring rates of justice system contact for youth of color relative to the rates experienced by white youth. For example, the table below shows that black youth are 3.31 times more likely to be referred to the court by an arrest rather than a court summons compared to a white youth.

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<sup>39</sup> Commonwealth of Massachusetts Disproportionate Minority Contact Statewide Assessment Report, (2018) Retrieved from <https://www.mass.gov/doc/disproportionate-minority-contact>

<sup>40</sup> It should be noted that there are some limitations to the study, as detailed in the report, including most notably a high rate of cases for which a youth’s race and/or ethnicity was listed as “Not Reported/Not Known.”

Race/ Ethnicity	Proportion of court referrals by arrest rather than summons	RRI at referral	Proportion of petitions issued	RRI at petition	Proportion of arraignments held	RRI at arraignment
Black	61%	3.31	78.7%	1.11	81.4%	1.18
White	47.1%	1.00	70.9%	1.00	76.8%	1.00
Other	54%	N/A	70.1%	1.01	78%	1.06
Not Reported	47.1%	N/A	66%	.93	72.3%	.86
Hispanic	63.9%	2.56	84.9%	1.20	85.2%	1.33
Non- Hispanic	53.7%	.54	75.4%	1.06	81.4%	1.13
Un-reported	43%	N/A	63%	.89	68.9%	.79

One theory that is frequently suggested as an explanation for the racial and ethnic disparities we see in our juvenile justice system is that youth of color may be committing more serious offenses and/or have a more extensive history of prior justice system contact. In other words, the theory is that youth of color may, on average, be less likely to be diverted because they are presenting with more serious charges and/or criminal history.

The Trial Court study included a logistic regression analysis that can help us test this theory. Logistic regression is a statistical method that allows us to assess the individual effect of specific independent variables, such as race or ethnicity, on each decision point, holding other factors (including offense severity, offense type, and number of prior juvenile charges) constant. Put more simply, this type of analysis can help us understand if the differences we see are due to differences in characteristics rather than differential treatment. When controlling for race and ethnicity in the logistic regression, there was racial disparity found in two of the four stages that were analyzed, and ethnic disparity found in three of the four stages analyzed.

The analysis found that, controlling for all other independent variables:

- Black youth were 1.526 times more likely to have a delinquency petition issued than white youth
- Hispanic defendants were 2.46 times more likely to have a delinquency petition issued than defendants with an unreported ethnicity

Taken together, we can see from this data that racial and ethnic disparities exist in our system, that they are particularly evident at early decision points, and **that they cannot be entirely attributed to other factors, such as charge type or criminal history.**

### **Geographic Disparities**

Another potential source of disparity is geographic: the idea that youth in different parts of the state are treated differently due to regional variations in policy and procedures. This is sometimes referred to as “justice by geography” – the notion that the zip code a youth is arrested in will substantially impact whether and how they proceed through the justice system.

As described in Finding 3, we know that there are already strong regional variations in the use of diversion. The impact of this variation can be seen in the Trial Court’s 2018 DMC study. That study found that court region was associated with the likelihood that a delinquency petition would be issued, even when controlling for all other independent variables. In other words, all other things being equal, a youth arrested in Region 1 is significantly more likely to have a petition issued than if they were arrested in Region 2.<sup>41</sup>

**Other Disparities**

Data on other potential areas of disparities – including disparities for LGBTQ youth, youth with a disability, and youth with child welfare involvement– is more limited. National data suggests that LGBTQ youth and youth with an intellectual or developmental disability are overrepresented in our juvenile justice system, and there’s no particular reason to think that wouldn’t also be the case in Massachusetts.<sup>42,43</sup>

Similarly, we know that both nationally and here in Massachusetts, a large proportion of the youth who are detained with, or committed to, DYS had involvement with DCF either prior to or during their involvement with DYS.<sup>44</sup> Although data on child welfare involvement is not available for points earlier in the juvenile justice process, it is reasonable to infer from the available data that disparities exist at each contact point.

**Addressing Disparities**

This report is not an exhaustive study of disparities in our juvenile justice system, nor does it seek to lay blame on specific practitioners or policies or suggest that any particular reform would be a panacea for the challenges we face. The pervasiveness and long history of systemic disparities mean that every single decision-maker has a role to play in tackling these disparities, and that efforts on numerous fronts are needed.

Situations where there is a high degree of ambiguity, unclear guidelines for decision-making, and/or broad discretion may lead to implicit biases guiding decisions, resulting in more racially biased outcomes.

**Addressing Disparities in Utah  
 Juvenile Justice Reforms**

In 2017, Utah state lawmakers reviewed data indicating inequitable diversion practices (both geographic and based on the race/ethnicity of the youth). This and other findings led to the adoption and implementation of a standardized statewide system for diverting youth from the juvenile court beginning in FY18.

Initial data from Utah indicates substantial improvement in remediating Utah’s geographic disparities and modest improvement in racial/ethnic disparities.

See: Utah’s Juvenile Justice Annual Report at [https://justice.utah.gov/Juvenile/HB239/Annual%20Reports/FY\\_2018\\_HB\\_239\\_Annual\\_Report.html#executive-summary](https://justice.utah.gov/Juvenile/HB239/Annual%20Reports/FY_2018_HB_239_Annual_Report.html#executive-summary)

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<sup>41</sup> The court study did not provide definitions for “Region 1” or “Region 2.”  
<sup>42</sup> Lesbian, gay, bisexual and transgender youth in the juvenile justice system. (2015) *A Guide to Juvenile Justice Reform*. Annie. E. Casey Foundation. Retrieved from <https://www.aecf.org/blog/new-practice-guide-lgbt-youth-in-the-juvenile-justice-system/>  
<sup>43</sup> Youths with intellectual and developmental disabilities in the juvenile justice system (2017). *Model Programs Guide: Literature review*. Washington, D.C. Office of Juvenile Justice and Delinquency Prevention. Retrieved from <https://www.ojjdp.gov/mpg/litreviews/Intellectual-Developmental-Disabilities.pdf>  
<sup>44</sup> Report of the Subcommittee on Dual-Status Youth. (2017). Retrieved from <http://www.carolyndykema.com/wp-content/uploads/2017/07/Report-of-the-Subcommittee-on-Dual-Status-Youth-July-2017.pdf>

On the other hand, evidence suggests that consistent, clear, and objective protocols for decision-making, as well as the use of validated, evidence-based tools to help guide decision-making, can help reduce racial bias, if designed and implemented correctly.<sup>454647</sup>

As described in more detail in Finding 3, all of these factors are present in our current diversion system(s) in Massachusetts:

**Discretion:** Numerous stakeholders – law enforcement, court clerks, prosecutors and judges – have broad discretion to make decisions regarding diversion.

**Ambiguity/Unclear Guidelines:** There is significant variation with regards to the existence, clarity and/or specificity of diversion guidelines. In some cases, individual organizations (e.g. a police department or DA office) have developed internal policies regarding diversion that guide staff members in making decisions.<sup>48</sup> In other cases, written guidelines do not exist. Regardless, the lack of statewide, statutory guidance on diversion means that there is significant regional variation in practice, even if there is less variation within a region.

**Use of Objective Decision-Making Tools:** Although some organizations have begun to use evidence-based assessment tools to guide diversion decision-making, the use of these tools pre-arraignment is not widespread in Massachusetts.

The JJPAD Board finds that **the lack of standardized, consistent and clear guidelines or universal adoption of evidence-based diversion models likely contributes to the systemic demographic and geographic inequities** detailed above.

This is not a blanket indictment of discretion; indeed, our justice system is built on individual actors assessing the facts and context of a situation and using their discretion – within the bounds of law – to make decisions. No law, policy or guideline can cover the nuance of every situation, and so the proper use of discretion is vital to achieving the ultimate goal of justice for all.

It's also important to note that some of the individuals with diversion decision-making powers are directly elected by the people, while others are appointed by and/or report to elected officials, and regional variation in policy and practice may at least partially be attributed to regional differences in electorate preferences.

The aim, then, is to develop policies that properly balance respect for the preferences of various electorates and the benefits of discretion with the need to uphold constitutional rights to equal protection

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<sup>45</sup>Kroboth, L., Boparai, S.P., & Heller, J. (2019). [Advancing racial equity in youth diversion: An evaluation framework informed by Los Angeles County](https://humanimpact.org/wp-content/uploads/2019/06/HIP_EvaluateYouthDiversion_2019.06.03.pdf). Human Impact Partners. Retrieved from [https://humanimpact.org/wp-content/uploads/2019/06/HIP\\_EvaluateYouthDiversion\\_2019.06.03.pdf](https://humanimpact.org/wp-content/uploads/2019/06/HIP_EvaluateYouthDiversion_2019.06.03.pdf)

<sup>46</sup>Farn, A. (2018). [Improving outcomes for justice-involved youth through evidence-based decision making and diversion](https://cjr.georgetown.edu/wp-content/uploads/2018/07/Improving-Youth-Outcomes-at-Referral.pdf). Washington, D.C Center for Juvenile Justice Reform. Retrieved from <https://cjr.georgetown.edu/wp-content/uploads/2018/07/Improving-Youth-Outcomes-at-Referral.pdf>

<sup>47</sup> Models for Change. (2011). Juvenile diversion guidebook. MacArthur Foundation. Retrieved from: <http://www.modelsforchange.net/publications/301>

<sup>48</sup> These policies are not publicly available and so the JJPAD Board is unable to assess the extent to which the policies are clear and unambiguous.

for all individuals. The JJPAD Board acknowledges this is an age-old challenge that cuts across many policy areas – and, yet, still one worth tackling.

## 6. Although Massachusetts Devotes Significant Funding to Behavioral Health and Youth Services, Juvenile Justice System Practitioners See Distinct Gaps in Availability of Community-Based Interventions for Justice-Involved Youth

Massachusetts devotes significant funding – approximately half a billion dollars a year in FY2020 – to community-based services that are targeted at the needs of higher-risk youth and/or could be accessed in connection with a diversion program, including:

- **Youth Violence Prevention:** Funds specifically focused on preventing/intervening to stop youth violence
- **Targeted Employment Programming:** Funding for programs specifically designed to connect high-risk youth with employment & vocational training
- **Behavioral Health Services:** Funding for substance use, behavioral health and/or mental health services for youth
- **Positive Youth Development Programming:** Funding for programs that support positive youth development, such as funding for mentoring and after-school programming

The JJPAD Board’s 2019 survey of individuals who refer justice-involved youth to community-based services (a mix of police, district attorneys, public defenders, juvenile court judges and clinicians, probation staff and school personnel from all 15 counties in Massachusetts) found, however, that **practitioners in the field see distinct gaps in the availability of community-based interventions that are appropriate for, and responsive to the needs of, justice-involved youth.**

A majority of surveyed juvenile justice system practitioners believe the following are under-resourced in their community:

- Outpatient/community-based substance use disorder treatment
- Outpatient/community-based individual mental health treatment
- Vocational training/employment support

Youth respondents also listed “jobs and professional development training” as the service that was most under-resourced in their community.

Seventy-eight percent of practitioner survey respondents identified program capacity and waitlists to be a substantial barrier to connecting youth with appropriate services, and 52% identified a lack of programming that meet youth’s specific needs.

This was confirmed in stakeholder interviews:

- Practitioners commonly cited finding a program that was the right fit for each child as a challenge.

- Many respondents expressed concern about the **quality of available programming** and a **lack of evidence-based rehabilitation options for higher-risk/need youth in particular**. Some respondents also expressed concern about the lack of variety of services provided by community-based interventions, noting that a one-size-fits-all approach to juvenile rehabilitation is not appropriate, especially for youth who have a history of trauma, abuse, or mental health needs.
- Interviewees believed that higher-intensity interventions that involved frequent contact with youth over extended periods of time – such as behavioral health treatment, long-term (12+ months) mentoring, and rigorous educational programming – were generally more effective for intervening with higher-risk youth, which is in alignment with national research on effective community-based interventions. These interventions were thought by interviewees to be relatively scarce, however, and concentrated in resource-rich areas like Boston and Cambridge.
- Interviewees also echoed the national research on what interventions are most appropriate for lower-risk youth, believing that these youth overall require fewer supports and benefit from a “soft touch” or “hands-off” approach. These low-intensity programs with shorter participation durations or fewer points of contact, such as sports leagues or mandatory service hours, were thought to be plentiful by interviewees, although some noted that program fees can be a barrier.

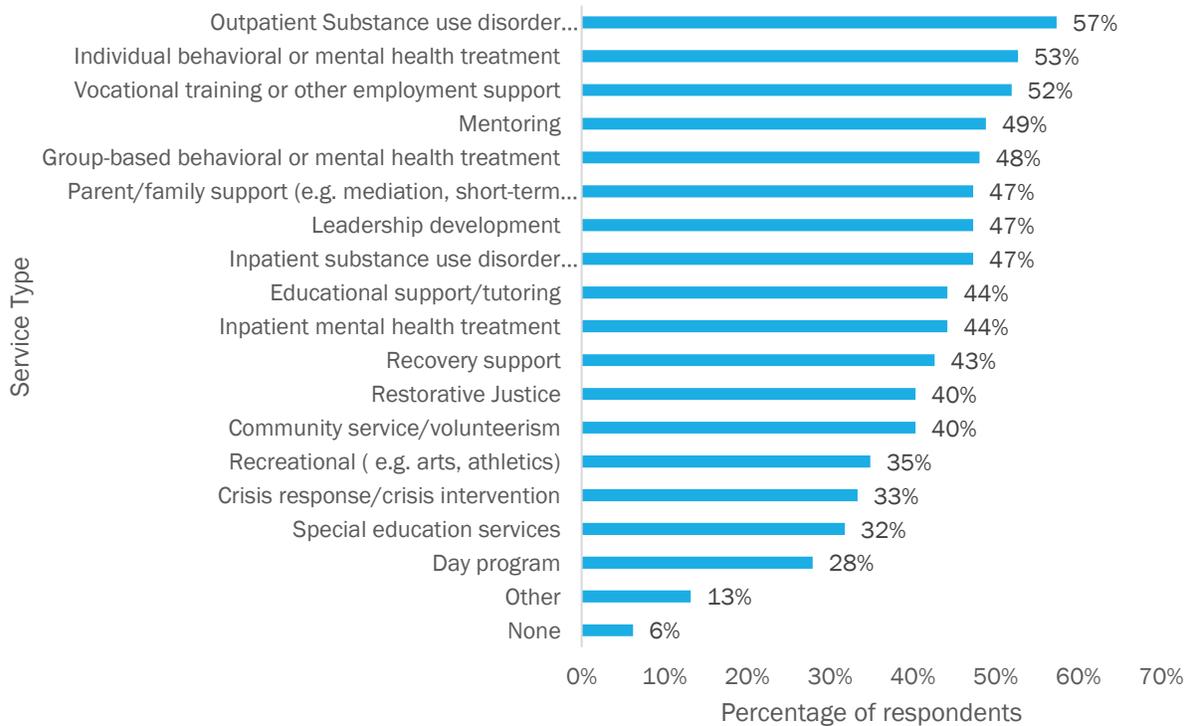
#### Juvenile Justice System Practitioner and Youth Surveys: Caveats

The CBI Subcommittee’s survey results provide valuable information from the perspective of practitioners in the field as well as system-involved youth, but there are limitations that should be acknowledged. In particular, survey respondents were not a representative sample, and the results may be influenced by who did – and did not – choose to respond. There may also be times that a practitioner’s perception that a service is not available is incorrect due to outdated information. (Indeed, as described in more detail in Finding 7, we find that that perceptions about service availability can vary greatly even within a given community.)

Ultimately, the findings in this section should be properly interpreted as the perceptions of a subset of juvenile justice practitioners who responded to the survey. However, even with those caveats, the JJPAD Board believes it is helpful to present some of the key findings from the survey, as the perceptions of service availability/gaps (whether or not those perceptions are wholly accurate) can drive decision-making and referrals and help us understand the frustrations that on-the-ground practitioners can experience when trying to connect youth with community-based services.

In partnership with the Juvenile Detentions Alternative Initiative (JDAI), the CBI Subcommittee also surveyed system-involved youth. This survey shares many of the limitations noted above, along with a relatively small sample size and a concentration of respondents in the Boston and Lowell area, which is not representative of the state as a whole. With these caveats noted, key findings from that effort will be described in this section as well.

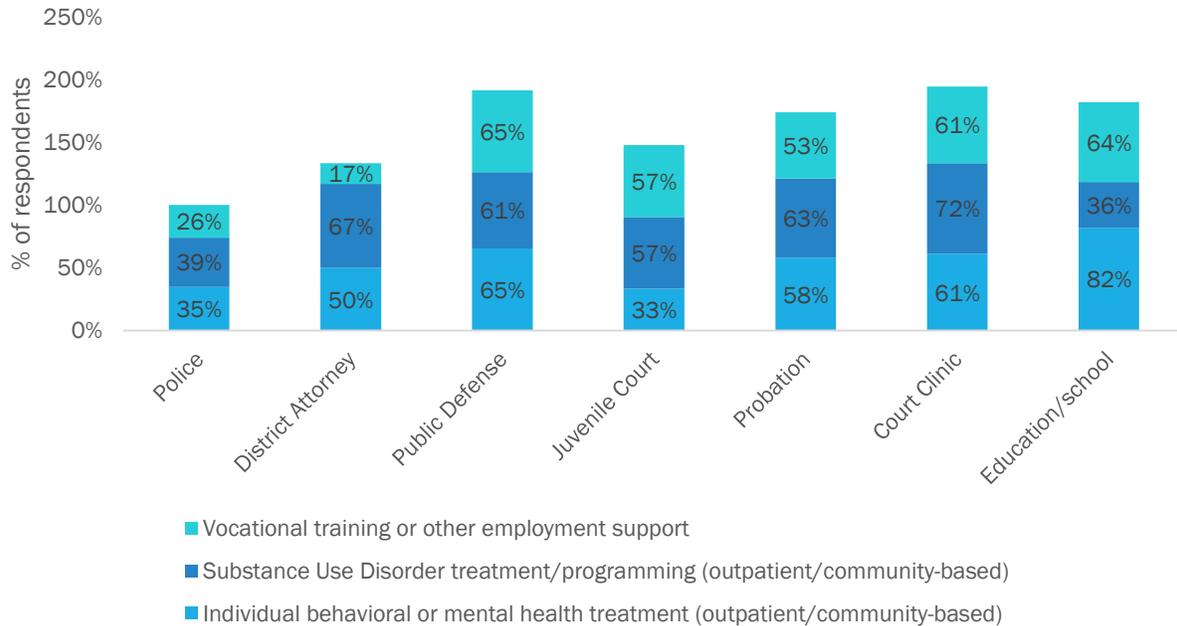
## Service Type is Under-Resourced (n=129 respondents)



County level breakdowns of the survey data show that some services are thought to be more under-resourced in some counties in comparison to others. For example, while 78% of respondents in Berkshire and 87% of respondents in Essex responded that individual behavioral or mental health treatment is under-resourced, only 7% of respondents in Plymouth and 20% in Dukes found this service to be under-resourced.

Some of the county-level variation may be explained by variations in the composition of individuals who responded for each county, as some system actors are more likely to identify service gaps than others. For example, while more than half of respondents identifying as public defense, Juvenile Court, probation, court clinic, and education/schools believe that vocational training or other employment support is under-sourced or under-served, only 26% of respondents identifying as police and 17% of those representing district attorneys believe this service is under-resourced.

### Service Type is Under-Resourced: Most Common Types by Organizations (n=121 respondents)



Respondents were also asked about gaps in service availability for particular populations. This question was asked to help the JJPAD Board better understand whether there are certain populations that are currently being under-served.

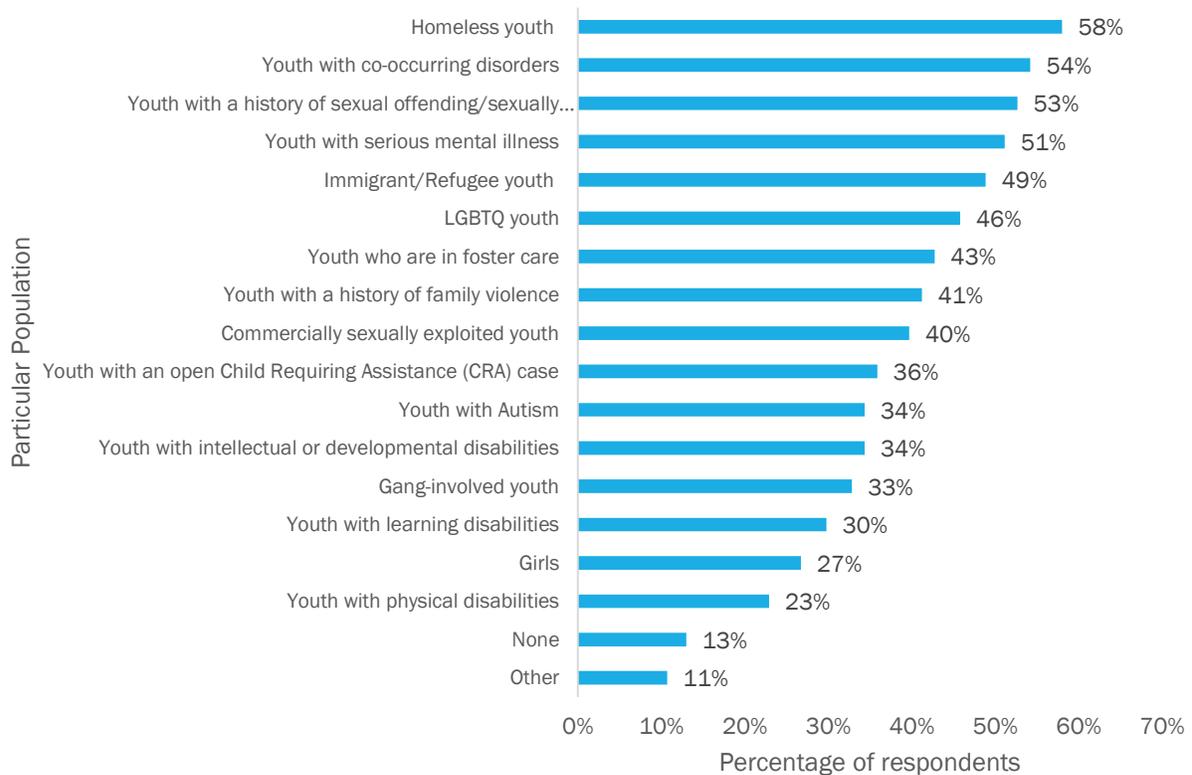
A majority of practitioner survey respondents said that there are gaps in service availability for:

- Youth who are homeless
- Youth with co-occurring disorders
- Youth with a history of sexual offending or sexually inappropriate behavior
- Youth with serious mental illness.

Responses to this question were less variable across counties.

In follow-up interviews, practitioner respondents expressed worries about a small segment of youth who demonstrated severe mental illness or significant trauma histories. These youth were felt to lack options, as most programs lack the resources to adequately support these clients or may decline to provide services out of safety and liability concerns. Interviewees expressed concern that out-of-community placement (including detention) was often the only option remaining for this segment of high-risk children, even if they could be better served by the right community-based program, were one available.

## Gaps in Service Availability for Particular Populations (n=131 respondents)



## 7. More Infrastructure Support is Needed to Effectively Connect Youth with Services that Do Exist and Overcome Barriers

Connecting justice-involved youth with appropriate services is not a simple task, even if those services are readily available. This is a job typically done by a case manager or program coordinator. When best practices are followed, and if resources allow, the process includes:

- Interviewing the youth, their family, and, when appropriate, other system actors involved in the youth's life (e.g. DCF, community service providers)
- Administering a validated risk and needs assessment tool – which can take 30 to 45 minutes, or longer in some cases – to help identify the youth's specific needs
- Developing a case plan based on the results of the assessment as well as conversations with the youth and their family
- Contacting service providers to confirm program appropriateness and availability
- Helping the youth and their family navigate any barriers to receiving services, such as program costs or transportation
- Keeping in contact with community service providers about a youth's progress, and providing on-going case coordination and monitoring, as needed and appropriate

- Following up with youth, their families, and as needed the referring decision-maker (e.g. a district attorney) if a youth is not meeting diversion conditions

In the survey as well as follow-up interviews, juvenile justice system practitioners note numerous challenges in making these service connections, however:

**Service Tracking:** Keeping track of the constantly changing array of services available in local communities is a time-intensive struggle for many practitioners. Stakeholders who routinely refer youth to community-based interventions typically formed their own catalogs of trusted providers gathered over years of relationship building, compiled in paper files or homegrown spreadsheets. This wealth of information can be lost when there is staff turnover.

Indeed, one result from the practitioner survey was that there are gaps in referrer awareness of services that exist in their community. In any given county, some referrers who answered the survey said they know about and make referrals to a particular treatment program in that county, while other referrers who took the survey said those services are needed but they weren't aware of them existing in that same county. This gap in knowledge likely speaks to the fact that it can be difficult and time-consuming for referrers to keep track of what programs are currently open in their county and what services they provide at any given time, given the lack of central coordination of this information at a county or state level.

It can also be near impossible for practitioners to determine which programs are effective. Interviewees noted that given the piecemeal nature of diversion programming across the state, there is no metric by which programs are evaluated nor any strict definition as to what types of interventions qualify as “diversion.” Similarly, there is no independent source that provides information on program effectiveness or youth outcomes over time.

**Transportation:** Seventy-six percent of practitioner survey respondents cited “transportation” as a significant barrier to connecting youth with appropriate services – including 100% of respondents who identified themselves as district attorneys or public defenders.

Although transportation was listed as a barrier by the majority of respondents in most counties, that sentiment is perhaps unsurprisingly strongest in more rural counties, including 100% of respondents from Berkshire and Franklin counties.

Transportation was the number one barrier to accessing community-based services listed by youth survey respondents.

**Family/Youth Engagement:** A majority of practitioner survey respondents also cited family engagement (62%) and youth willingness to participate in services (52%) as substantial barriers. Family engagement was the second most significant barrier listed by youth survey respondents.

Practitioners note that although these barriers can frequently be overcome through consistent outreach and effective communication, it can be a time-consuming process. When resources are short and staff time is limited, staff may be less likely to spend time on extended communication/outreach to youth and families – which can, in turn, result in less engaged youth/family and poorer outcomes.

Despite the benefits that providing effective case managers/coordinators can have in terms of connecting youth with appropriate services and helping youth and families overcome barriers, resources to support case coordination and service navigation for justice-involved youth are limited, particularly at the front end of the system. Currently, **there is no dedicated source of state funding for diversion service coordination** and only a small amount of funding – just over \$1 million dollars in FY 2020 – for state grant programs and budget earmarks dedicated toward diversion programs.

Staff at Family Resource Centers (FRCs) may help connect justice-involved youth and families with needed services, but the JJPAD Board is not aware of any FRCs that do this work in partnership with an established diversion program. Some police departments and district attorneys have hired staff to provide case management services for diverted youth out of their operational budgets, but these staff are often stretched thin. The Youth Advocacy Division of CPCS, the state's public defense agency, has social workers that can help connect youth to services, but this work is not done consistently in connection with diversion programs. In counties where access to counsel is prioritized, it is far more likely that a lawyer/social worker team from the Youth Advocacy Division will be involved and will assist with identifying and accessing community-based programming. The Juvenile Court is not funded to provide any case management or services for youth pre-arraignment, and Probation does not supervise youth who have been diverted.

As a result, practitioners on the ground note that higher-need youth are sometimes processed through the traditional justice system instead of being diverted, so that Probation or the Department of Youth Services can provide case management services.

**The JJPAD Board finds, then, that the state could likely increase the use of diversion – as well as the likelihood that diversion will be successful – by providing more infrastructure support for diversion-related case coordination and services.** This support could include funding diversion case coordinator staff and providing targeted support to help overcome common barriers, such as service availability tracking and transportation.

## RECOMMENDATIONS

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Based on the above findings, which come after nearly a year of research, meetings, and conversation, the JJPAD Board believes there are steps the Commonwealth should take to:

- Increase the number of youth who are diverted from the juvenile justice system
- Improve the quality and consistency of juvenile diversion programs
- Assure access to counsel for all youth in a timely and appropriate manner so that they have assistance in participating in the process of determining whether diversion is appropriate and in identifying a diversion program
- Reduce racial, ethnic, and geographic disparities in the use of diversion
- Better connect justice-involved youth and their families with appropriate community-based interventions
- Increase our ability to track and evaluate the use of diversion in Massachusetts, with the goal of continuous improvement

To inform the development of these recommendations, the CBI Subcommittee studied a variety of policies and programs that have been implemented in states across the country, as well as various programs currently operating in Massachusetts. More details on the various out-of-state models the Subcommittee examined are included in Appendix B and C.

The recommendations contained below are broad, and they include provisions that in some cases would require statutory changes and/or state funding to support. The JJPAD Board recognizes that, to implement these recommendations, numerous additional decisions would need to be made – including which state agency(ies) should be charged with implementing the new functions, and how much funding would be required to do so.

**The JJPAD Board submits these broad recommendations to the Legislature now, both to fulfill our requirement to report annually to the Legislature and with hope that the recommendations may be considered as part of the FY2021 budget process.**

The JJPAD Board and the CBI Subcommittee also commit, in the coming year, to continuing to study and develop more complete recommendations that address the many additional questions about how these recommendations should be operationalized. More details on this are included in Next Steps, below.

### **How Many More Youth Could Be Diverted in Massachusetts?**

Without much more detailed information, the JJPAD Board can only guess at what percentage of youth who are currently processed through the criminal justice system could successfully be diverted instead.

However, there are two data points that may shed some light:

- **Disposition Data:** First, looking at the data from FY2016 described in the Background section, of the 7,256 youth arraigned in FY16, only 996 – or 14% – were found delinquent. Forty-five percent of the youth arraigned had their case dismissed, while another 29% were given a Continuance Without a Finding (CWO). A case that is given a CWO is one in which the individual “admits to sufficient facts” to support a guilty finding, but an official finding is not entered. Instead, the youth is given a set of

conditions to meet, which typically include a period of probation. If those conditions are met, the CWO is closed. A CWO still appears on a youth’s record, albeit as a CWO rather than a finding of delinquency.

A well-run and sufficiently resourced diversion program could serve many of these youth. Although some youth whose case might otherwise be dismissed or given a CWO may decide to proceed with the court process, others may prefer to resolve the case pre-arrest rather than have an arrest on their record or risk being found delinquent. Similarly, in some situations decision-makers (District Attorneys and judges) may decide they would prefer to proceed with a CWO rather than diversion. However, if diversion could be structured with the appropriate supports, oversight and communication to decision-makers, many may become more comfortable offering diversion instead of a CWO.

**No Good Options: A Case Study of a Youth Who Wasn’t Diverted**

Practitioners on the ground frequently share stories about cases where they felt they had no good options. This is one of those stories, as told from that practitioner’s perspective.

In summer 2019, a youth was involved in an altercation at a DCF STARR group home. She was taken to a hospital for mental health concerns, but did not meet the “level of care” criteria. She was summoned to court and charged with Assault & Battery on a police officer. The youth had an open Child Requiring Assistance Case, with DCF involvement, and was also receiving DMH services. Although there was no history of Care and Protection cases with the family, the youth had a history of trauma, as did her mother.

The youth was not going to counseling regularly, nor was she taking her prescribed medication. The family was overwhelmed and felt as though the youth was out of control. The youth was voluntarily committed to a mental health inpatient program.

The DA’s office held the case, and the youth was on a diversion track. But the DA’s office was receiving conflicting reports from the youth’s DCF case worker, their DMH case worker, and the youth’s therapist. No one could agree on the best course of action or how to best interact with the struggling family. After the youth’s behavior began to escalate, including picking up new charges and continuing to be non-compliant with treatment, the DA’s office felt the case was beyond what they could handle in their diversion program, and moved to arrest the youth.

- **Probation Supervision Data:** Second, in any given month, the Probation department is supervising approximately 1000 youth who have been found delinquent or given a CWO – 500 on a Risk/Need case load, and 500 on an administrative case load. Of those on Risk/Need, approximately 300 are assessed as needing minimal supervision (low risk).<sup>49</sup> The national research discussed in Finding 1 indicates that many if not all of these low-risk youth could be successfully diverted

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<sup>49</sup> Monthly Report of Probation Activity: Juvenile Court Department Trends. (n.d.). Retrieved from <https://public.tableau.com/profile/mpsresearchdept#!/vizhome/JuvenileCourtProbationDepartment/TrendsDashboard>.

“Administrative” status encompasses a larger set of circumstances, including youth who are already in DYS custody as well as youth for whom the judge has determined that only administrative supervision is necessary. Although the Probation Department is unable to provide a further breakdown of the Administrative caseload, it seems likely that at least a portion of the approximately 500 youth on administrative in a given month could also be diverted.

Whichever way you look at the data, **it seems likely that significantly more youth – potentially, thousands a year – could successfully be diverted, with all the benefits to the youth and the Commonwealth outlined in Finding 1, above.** Given the geographic disparities discussed in Finding 5, as well as some regional variations in offending patterns, some regions may have a higher proportion of additional youth that could be diverted than others.

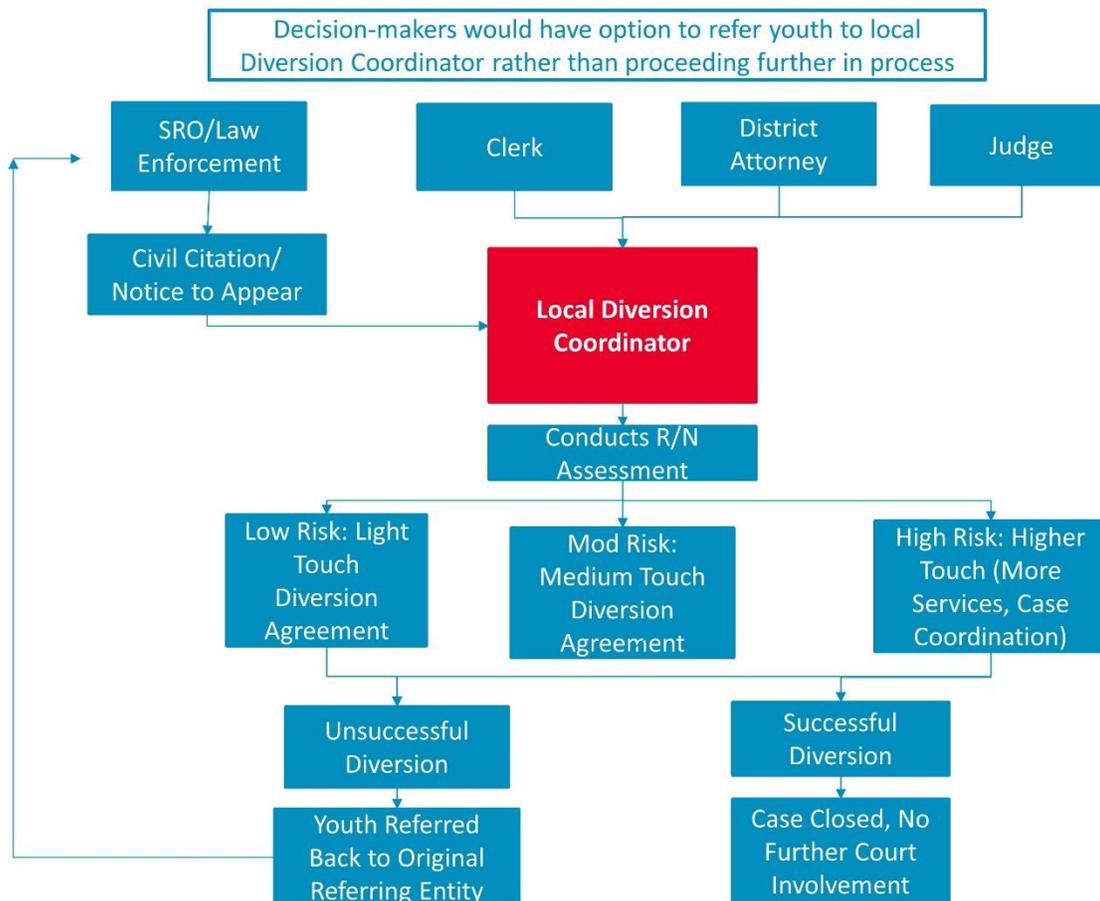
A portion of these youth would likely be considered low-risk/low-need and so could successfully be diverted with minimal conditions and no need for additional services. **But another portion of these youth will have more significant needs – and one possible explanation for why they are not currently being diverted is that existing diversion programs lack the capacity to properly serve these youth.**

In some cases, programs lack the case management capacity, particularly case managers with enough time to interface with numerous other state agencies (e.g. DCF, DMH) that may also be involved in the youth and their family’s life. In other cases, community-based services that could effectively serve youth with more significant needs are under-resourced or non-existent. The following recommendations are designed to address these challenges.

## **Recommendation #1: Improve Communication and Coordination of Diversion Work by Creating Diversion Coordinator Positions Across the State**

The JJPAD Board recommends that, to increase the number of youth who can be successfully diverted from the juvenile justice system, additional staff support for diversion coordination be provided across the Commonwealth. This can be provided by **funding regional Diversion Coordinator positions.** These positions would be filled by individuals with a background and training in social work and would be responsible for the following tasks:

- Accepting referrals from all diversion decision-makers (police, court clerks, district attorneys, judges)
- Administering an evidence-based risk and needs assessment
- Developing a diversion agreement based on the results of that assessment as well as conversation with the youth, their family, and their attorney
- As appropriate, connecting youth and their family with community-based services and advocacy support
- Monitoring diversion cases to ensure diversion conditions are completed
- Reporting on gaps in services or unmet service needs in the communities in which they work
- Communicating with community-based service providers as appropriate
- For youth with higher needs, or those involved with numerous state agencies, providing case coordination services and convening a local multi-disciplinary review team (MDRT) as needed
- Tracking and reporting aggregate data on diversion



## Recommendation #2: Improve Quality and Consistency of Diversion Work by Developing Common Infrastructure, Policies and Procedures that Diversion Coordinators Follow

The JJPAD Board recommends that the state take steps to increase the quality and consistency of diversion programs across the Commonwealth. The state can do this by **developing common infrastructure, policies and procedures that Diversion Coordinators would use to guide their diversion work**, including:

- Referral Tracking:** A mechanism for making and tracking referrals from local decision-makers to Diversion Coordinators would need to be developed. For example, states like Delaware<sup>50</sup> and Florida<sup>51</sup> have developed a “civil citation” process, which gives law enforcement a tool for referring a youth to a diversion program. Rather than arresting the youth, a police officer has the

<sup>50</sup> For more information on Delaware’s Juvenile Civil Citation Program see: <https://kids.delaware.gov/pdfs/yrs-civil-citation-brochure.pdf>

<sup>51</sup> For more information on Florida’s Civil Citation & Similar Prearrest Diversion see: <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-and-similar-prearrest-diversion-basics.pptx?sfvrsn=2>

option to give a youth and their family a civil citation, which includes a notice to appear at a Diversion Coordinator office within a set period of time for an assessment. The Diversion Coordinator is also notified, so they know to expect the youth and can follow up if they don't show up within the allotted time.

- **A Common Risk/Need Assessment Tool:** The state would need to choose one risk and need assessment tool to use, train Diversion Coordinators on using the tool, and develop a mechanism for tracking risk/need data to allow for future validation of the instrument.
- **Diversion Agreement and Case Management Policies and Procedures:** To ensure that diversion agreements and conditions follow the best available research, the state should develop policies regarding diversion agreements. These policies should include guidelines on how to develop evidence-based diversion conditions using the risk/need assessment tool, case management standards, and guidelines on when diversion should be considered successful and complete, and when a report should be made to the original referrer that diversion was unsuccessful. It should also include protocols for how – and how often – diversion coordinators should communicate with diversion referrers about the status of the case.
- **Partnerships with State Partners and Community Providers:** Many successful diversion programs include partnerships with other state agencies and local schools as well as local community providers to provide services as part of a diversion plan. The state would need to develop processes for setting up and maintaining these partnerships, as well as determining how these services should be paid for.
- **Central Database:** Diversion coordinators would need a central database to track youth participation in diversion, conditions, and diversion outcomes. This would both help with case management and allow for ongoing program evaluation and improvement.
- **Data Sharing Policies and Agreements:** The need to protect the confidentiality of sensitive juvenile information is an important consideration. However, there may be times when different state agencies need to communicate about a case, and times when information may need to be shared from a provider to the Diversion Coordinator. The state would need to develop policies and agreements on data and information sharing that balance the case management needs with the need to protect private juvenile information.

In making this recommendation, the JJPAD Board is cognizant that, up until very recently, there has been little to no statewide support, funding, or statutory guidance for local diversion programs, and that local actors have developed programs of their own volition. The JJPAD Board proposes that new infrastructure, policies and procedures be developed in consultation with local actors, with the goal of supporting, rather than supplanting, local efforts.

### **Recommendation #3: Test and Refine Statewide Diversion Coordination Program Concept by Starting with a Three-Site Learning Lab**

There are numerous ways a Statewide Diversion Coordination Program could be operationalized, and it is not immediately clear to the JJPAD Board which would be the most effective. To test different models and

provide an opportunity to refine the program concept and operations on a smaller scale before going statewide, the **JJPAD Board recommends beginning with a three-site learning lab.**

The learning lab sites should encompass a mix of urban, suburban, and rural areas. Different Diversion Coordination models that could be tested include:

- **Co-Location at a Family Resource Center (FRC):** A Diversion Coordinator could be located at an FRC. The FRC would not necessarily need to run the program; instead, the Diversion Coordinator could be co-located at the FRC, sharing office space and providing a one-stop shop for families to receive a variety of services. (Note that the FRCs have limited budgets and any expansion of their work or staff would require additional funding.) An example of how this model could work in practice is the Mental Health Advocacy for Kids (MHAP) program, which embeds an attorney who provides families with support accessing mental health and special education services at several FRCs across the state. The MHAP program is run by Health Law Advocates, a non-profit, with funding support from state agencies as well as a variety of foundations and other donors.<sup>52</sup> A Diversion Coordinator could be similarly embedded at an FRC.
- **Partnership with Local Law Enforcement or District Attorney's Office:** Some law enforcement agencies and district attorney offices already have one or more diversion program coordinators on staff. The state could partner with a willing office or offices to enhance the existing diversion work and provide resources to support expansion. In this scenario, the state might, for example, provide a District Attorney with funding, staff training, access to a risk/needs assessment tool, and database support. The DA's office would, in turn, agree to work with the state on the development and implementation of evidence-based program guidelines and share relevant program data.
- **Partnership with Community Providers:** In some states, a local community provider is funded to provide diversion coordination services. This is another model the state could consider, particularly if there is area that lacks a convenient FRC or willing partner agency.

## **9. Recommendation #4: The Diversion Coordinator Should Track a Variety of Data to Support Coordination, Program Management and Evaluation, and the Program Should Make Regular Public Reports**

As detailed in Finding 4, above, we currently lack the data that is needed to fully understand or evaluate the use of diversion in Massachusetts. To address this challenge, **the JJPAD Board recommends the state ensure that Diversion Coordinators track a variety of data – as detailed in Finding 4, to support coordination, program management, and ongoing evaluation.**

This data should be reported at least annually to the Office of the Child Advocate, following the procedure for other juvenile justice system data reporting outlined in the JJPAD Board's June 2019 Data Report.

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<sup>52</sup> For more information, see: <https://www.healthlawadvocates.org/initiatives/mhapforkids>

## **Recommendation #5: Information from a Diversion Program Should Not Be a Part of a Youth’s Court Record or Be Used Against Youth in Future Legal Matters**

From the initial screening and assessment through exit from the program, a significant amount of information is gathered during the diversion process. Some of this information will be sensitive, and potentially incriminating if the youth were eventually to be prosecuted.

To ensure that youth and their families participate fully in the diversion program, **the JJPAD Board recommends that the diversion program guidelines clearly state that any information collected in the diversion process cannot be included in a youth’s official court record or used against the youth in future legal matters, except as in accordance with state and federal law.** This should not preclude providing information to a potential diversion referrer regarding a youth’s history of successful or unsuccessful diversion attempts. This recommendation is in alignment with best practices followed by many diversion programs across the country.<sup>53</sup>

## **Recommendation #6: Develop a Diversion Grant Program to Fill Local Gaps in Services for Youth with More Substantial Needs Being Diverted from System**

Local practitioners are often the best-informed about what services are available or missing in their communities, as they are the ones that struggle on a day-to-day basis to connect youth with appropriate services. Further, different communities may have different needs, and different service gaps, as was demonstrated in the responses to the JJPAD Board’s practitioner survey.

To help increase the availability of evidence-based, community services for youth with more substantial needs, the JJPAD Board recommends that the state allocate funding for a **diversion service grant program** with the following features:

- Encourages local practitioners or organizations to apply for funding to **fill gaps in services available for youth with more substantial needs being diverted** from the justice system
- Requires funds to be **allocated toward services with a base of research support.** (This would not necessarily require research/evaluation results supporting a specific organization’s program; instead, applicants would be need to show that the types of services they provide have been demonstrated to be effective with this population of youth.)
- Prioritizes applications submitted by, or with support from, **a team of local stakeholders**
- Takes into consideration **geographic needs and equity**

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<sup>53</sup> Models for Change (2011). [Juvenile diversion guidebook](http://www.modelsforchange.net/publications/301). John D. and Catherine T. MacArthur Foundation. Retrieved from <http://www.modelsforchange.net/publications/301>

## **Recommendation #7: Prioritize Expanding Evidence-Based Treatment Services for Justice-Involved Adolescents as Part of Ongoing Behavioral Health Initiative**

The Executive Office of Health and Human Services is currently engaged in an ongoing Behavioral Health Initiative that seeks to address challenges and gaps in our current ambulatory (outpatient) behavioral health system. This is a large-scale effort, and the JJPAD Board does not seek to duplicate the important work being done by EOHHS and its partners.

There is considerable overlap, however, with the aims of the Behavioral Health Initiative and the challenges the JJPAD Board has identified with regards to the availability and accessibility of community-based interventions for justice-involved youth.

Accordingly, **the JJPAD Board recommends that the ongoing efforts to expand/re-design behavioral health services in Massachusetts should prioritize increasing the availability of the following:**

- Community-based behavioral health services demonstrated to improve outcomes for higher-risk/justice-involved adolescents, such as Multi-Systemic Therapy, Multidimensional Family Therapy, or Functional Family Therapy.
- Treatment services designed for special populations of youth, including youth who are homeless and youth with a history of sexual offending, trauma, co-occurring disorders or a serious mental illness, as well as services that specifically address racial trauma.
- Services available for non-English speakers.

## **Recommendation #8: Launch Working Group Focused Specifically on Transportation Barriers for Youth/Families Seeking to Obtain Services**

A consistent theme in the feedback the JJPAD Board has received through surveys, interviews and conversation with practitioners as well as youth and families is the challenge of transportation. Families struggle to transport youth to all of the various appointments they may have with diversion coordinators, justice system officials (courts, DAs, defense attorneys), therapists, and community service providers – either because they don't have access to a car, or because the meetings take place when family members are at work.

This is a particular struggle in areas without any form of public transit, but stakeholders across the state – including in the Greater Boston area – raise it as an issue.

The JJPAD Board recognizes that this is a significant barrier to success, and also that it is not an area of expertise for current JJPAD or CBI Subcommittee members. Therefore, **the JJPAD Board recommends that the Office of the Child Advocate convene a Working Group specifically focused on the issue of transportation for justice-involved youth being served in the community.** In launching this work, the JJPAD Board recommends that the OCA:

- Invite participants outside the JJPAD with expertise in creative transportation solutions, particularly in areas without public transport
- Study programs launched in other states, including ride-share voucher programs
- Make further recommendations for addressing this critical barrier to the success of community-based services

## NEXT STEPS:

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As noted in the Recommendations section, this report is a first step.

The findings and recommendations above have been developed with the input of a variety of juvenile justice system stakeholders and discussed at length at the CBI Subcommittee meetings. However, the JJPAD Board recognizes that further conversation with a wider array of stakeholders is needed, and that many of the recommendations above need to be further fleshed out and refined.

To that end, over the next year the JJPAD Board commits to the following ongoing work:

- Holding meetings and focus groups to solicit feedback on the above findings and recommendations with:
  - Local JDAI County Committees (which include a variety of practitioner representatives)
  - Youth & families who have experience with the justice system
  - Other constituencies as needed
- Discussing and developing recommendations on a range of additional programmatic details and decisions that need to be made, including how a learning lab program should be structured, how the program can best incorporate evidence-based practices such as using a risk/need assessment tool to guide the development of diversion conditions, how to address information sharing, and how to ensure programmatic decisions help address, rather than exacerbate, systemic disparities (e.g. racial/ethnic disparities; disparities based on socio-economic status).
- Gathering additional information on the relationship between schools, educational issues, behavioral issues, school discipline and diversion programs, and making recommendations for how diversion programs can effectively partner with schools and educational advocates to support positive outcomes for at-risk and justice-involved youth.

## Appendix A: Summary of Police and District Attorney Diversion in Massachusetts

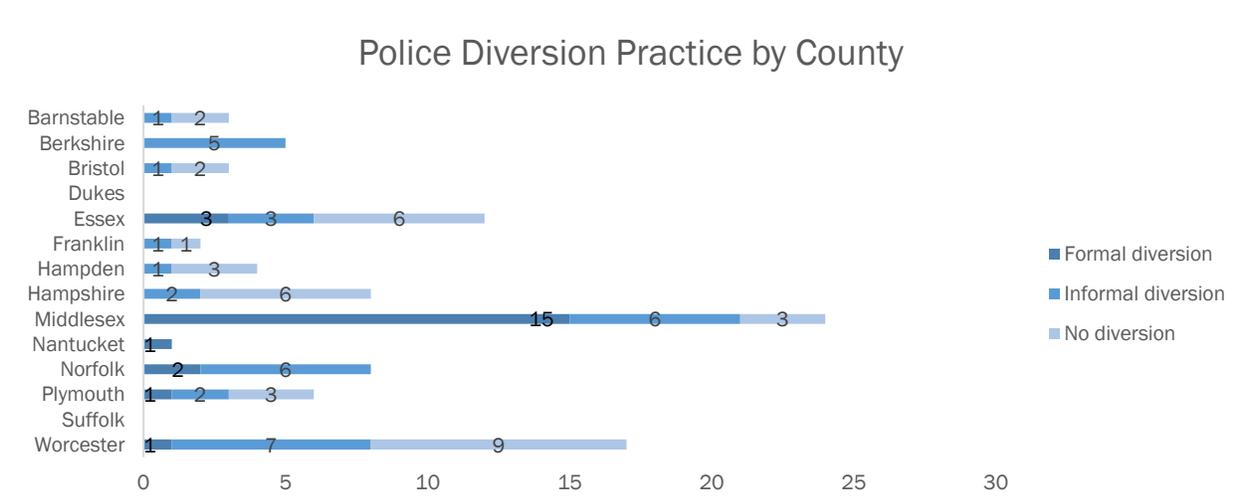
There are no statewide guidelines on the use of diversion, nor any agency charged with tracking the various diversion policies and programs in place across the state. Four separate decision-makers – police, court clerks, district attorneys, and judges – have an opportunity to decide whether to move a youth forward in the justice process or divert the youth from further system processing.

There are 351 police departments, 10 District Attorney offices, and 41 Juvenile Court judges, each of which may have its own diversion policies and procedures. Examining the practices of each was beyond the capacity of the CBI Subcommittee, but the group did gather information from a variety of sources – including previously conducted studies, invited presentations from law enforcement, district attorney offices and the Juvenile Court, survey data and review of information published on the official websites of various diversion decision makers – to better understand the current landscape. In most cases, the Subcommittee did not have access to written policies.

The results of this study are summarized in Finding 2 and 3 of the body of this report. In this Appendix, the JJPAD Board includes additional information with regards to police and District Attorney diversion practices. (Pre-arraignment judicial diversion is newly allowed under law as of July 2018, and as a result there is limited information available regarding the use of that option.)

### Police Diversion

In 2018, Citizens for Juvenile Justice (CFJJ) and the Massachusetts Chiefs of Police Association released a report on police diversion based on the results of an online survey the groups sent to all police departments in the state.<sup>54</sup> Ninety-five of the 351 police departments responded, representing 12 out of 14 counties and serving 29% of the state population.



<sup>54</sup> Seizing an Early Opportunity (2018). Citizens for Juvenile Justice. Retrieved from <https://www.cfjj.org/seizing-opportunity>

**Key findings from the report included:**

- 1) There is wide variation in youth diversion practices at the police level:
  - 24% of respondents offer formal diversion
  - 37% respondents offer informal diversion
  - 38% of respondents offer no police diversion
  
- 2) Larger towns in Massachusetts are more likely to offer formal police diversion, and more affluent towns are more likely to offer police diversion of any kind (informal or formal).
  
- 3) There is no universal understanding of what diversion is at the police level:
  - Approximately 50% of departments view a “warning” as diversion; the remainder do not
  - Most police diversion programs do not have written diversion policies or standard operating procedures
  
- 4) There is wide variation regarding which youth are deemed eligible for police-level diversion:  
 In some departments, specific types of offenses are automatically considered open for diversion, while others make the determination on a case-by-case basis.

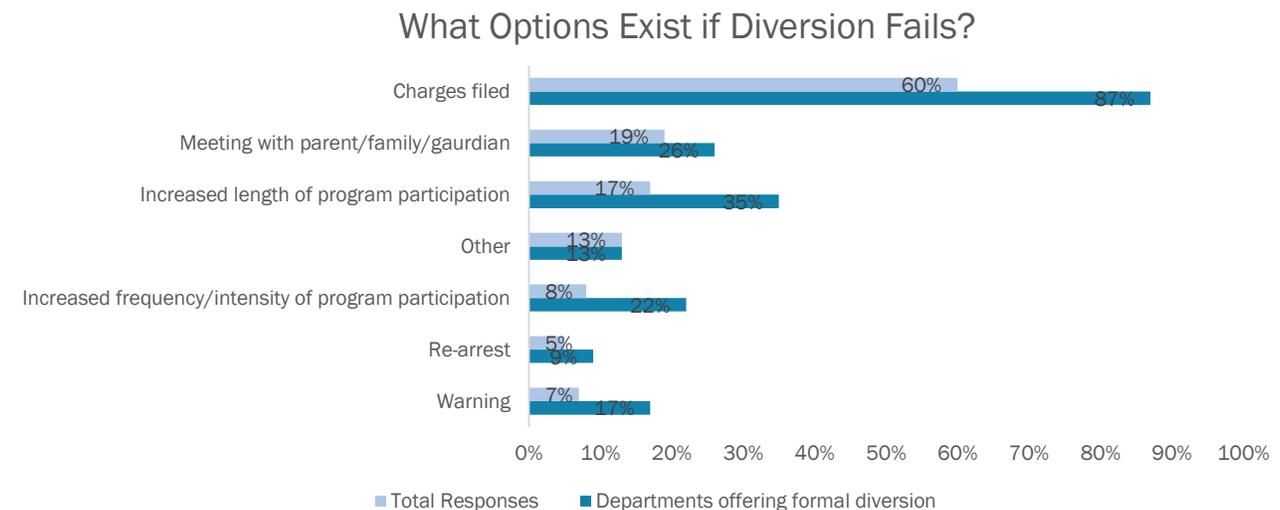
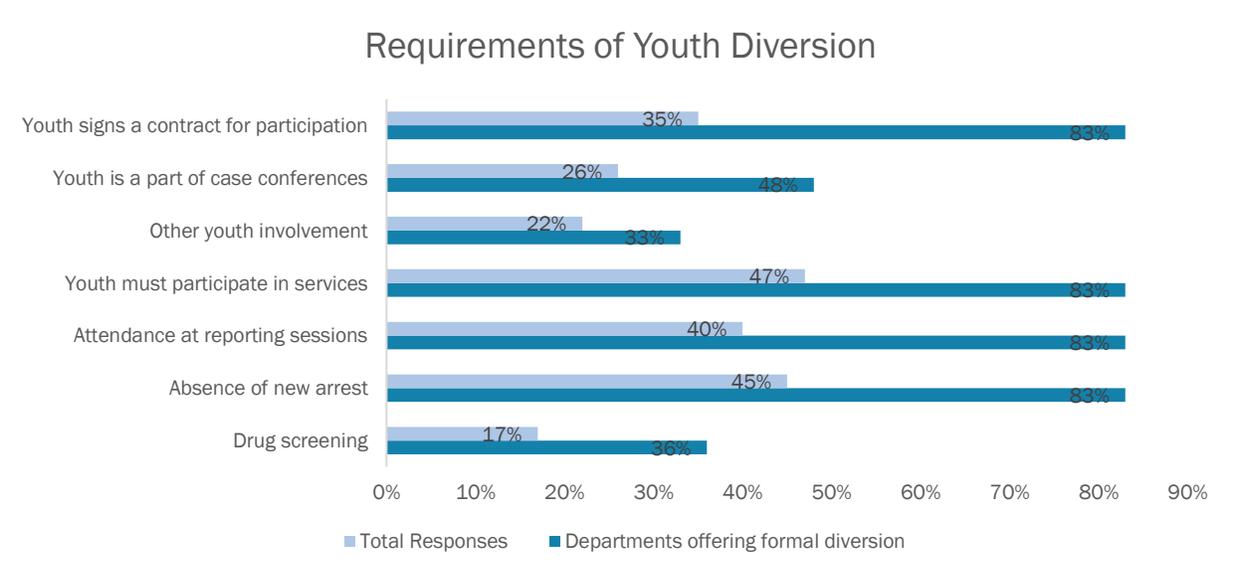
Are there specific types of offenses that are automatically considered open for diversion? Check all that apply.	Responses	
	N	Percent
School-based offense automatically considered open for diversion	42	44%
Other offense automatically considered open for diversion; please specify	25	26%
Non-violent drug crime automatically considered open for diversion	31	33%
Status offense automatically considered open for diversion	47	49%
Public order automatically considered open for diversion	37	39%
Property offense automatically considered open for diversion	28	29%

- Departments also report using a variety of eligibility requirements:

What are the eligibility requirements for youth to be considered for diversion?	Responses	
	N	Percent
Youth accepts responsibility	52	55%
Family agrees	52	55%
Criminal history, first offense	51	54%
Responding officer judgment call	39	41%
Youth with apparent or identified mental or behavioral health needs	38	40%

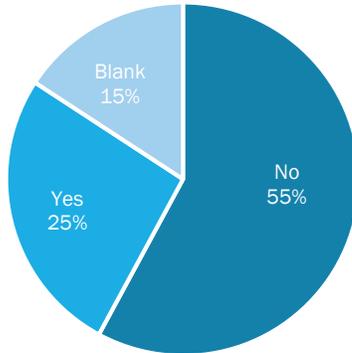
Age	30	32%
Other Circumstances	21	22%

5) There is also wide variation among programs with regards to youth diversion requirements and what options exist if diversion initially fails:

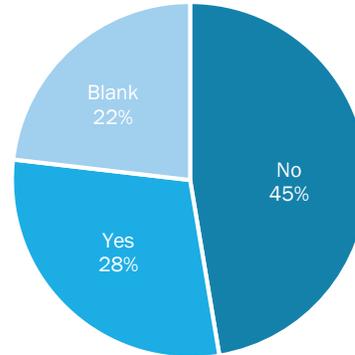


6) Finally, there are differing processes with regards to involvement of defense counsel in the diversion process:

Is responding officer aware that counsel from CPCS is available to advise on diversion process?



Youth and/or caregivers routinely offered attorney counsel on diversion process?



### District Attorney Diversion

As of 2019, all 10 District Attorney offices in Massachusetts offer some form of pre-arraignment diversion.<sup>55</sup> Based on conversations with staff from numerous District Attorney offices, it is clear to the Subcommittee that District Attorney offices recognize the value of diversion, consider it a key part of their approach to juvenile delinquency, and have made good-faith efforts to structure programs to be maximally beneficial to both youth and the greater community.

Although the Subcommittee is unable to report on the specific practices of each of the 10 offices, key observations based on available information about diversion policies and practices include:

1. There is wide variation in diversion eligibility criteria offered by each District Attorney office:
  - Some offices will offer diversion for all but the most serious charges<sup>56</sup>, while other offices restrict diversion to lower-level offenses.
  - Some offices will only offer diversion for a first offense, while others will offer diversion to youth with a prior record.
2. There is also wide variation with regards to how diversion conditions and interventions are set. Numerous diversion conditions are used across offices, including community service, apology letters, educational programming, drug and alcohol screenings, restitution and participation in more intensive services such as behavioral health or substance use treatment. Although all offices report

<sup>55</sup> The CBI Subcommittee was unfortunately unable to collect universal information regarding current diversion practices from all 10 District Attorney offices; the following summary is based on a 2015 "[Juvenile Diversion Assessment Study](https://static1.squarespace.com/static/58ea378e414fb5fae5ba06c7/t/593709d2197aeac077e3f2f9/1496779220634/MADiversion_FinalReport_2015+01+14-FINAL.PDF)" (funded by the Massachusetts Juvenile Justice Advisory Committee in coordination with the Executive Office of Public Safety and Security) and supplemented with more current information provided by some individual District Attorney offices. See: [https://static1.squarespace.com/static/58ea378e414fb5fae5ba06c7/t/593709d2197aeac077e3f2f9/1496779220634/MADiversion\\_FinalReport\\_2015+01+14-FINAL.PDF](https://static1.squarespace.com/static/58ea378e414fb5fae5ba06c7/t/593709d2197aeac077e3f2f9/1496779220634/MADiversion_FinalReport_2015+01+14-FINAL.PDF)

<sup>56</sup>The Suffolk County District Attorney's office, for example, offers diversion for all charges except charges involving a firearm, serious bodily injury to a victim, or sexual assault.

that diversion conditions are individualized for each youth, in most cases it is unclear to the Subcommittee how each program determines which conditions to set for each youth.

- A few offices report using evidence-based screening and assessment tools, including a risk/need tool such as the YLM/CMI and/or screening tools for depression, alcohol or drug use, to inform diversion conditions/interventions.
- Some also report referring youth to a community-based provider for a behavioral health assessment, either as a mandatory condition of diversion for all cases or on a case-by-case basis.

3. There is variation with regards to which other stakeholders are involved in the diversion process:

- Most offices involve the clerk magistrate, the school (if relevant), and the victim (if any) in their process
- Some offices also involve law enforcement, probation, or the Department of Children and Families, if relevant
- A smaller number report involving a defense attorney or community providers in the diversion process

4. Finally, most offices share a similar approach to addressing situations where a youth fails to comply with diversion conditions. Most will attempt to work with a youth who is not in compliance before filing charges, and all offices look at every case individually, reserving termination as a last resort. Some offices report that they will continue to work with a youth on diversion even if they commit a new offense, but most consider that grounds for termination.

## Appendix B: Examples of Diversion Policy Models from Other States

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The CBI Subcommittee studied a variety of statewide approaches to diversion adopted in other states, including:

- Statewide use of screening and assessment tools for justice-involved youth at the point of diversion
- State policies regarding diversion eligibility, mandatory diversion, and referral processes
- Statewide processes for coordinating diversion cases as well as the diversion-related activities of various actors (police, district attorneys, judiciary).

Information was primarily gathered from internet research – including statutory reviews, reports issued by state oversight councils as well as technical assistance organizations, and explanatory information and documents hosted on state agency websites – as well as interviews with those involved with implementing the reforms when possible.

While the Subcommittee has attempted to use the most recent reports/information available to ensure this information is current and accurate, there may be times when a state policy or process has changed, but that information was not updated on a state’s website.

### **Diversion Policy Models**

The CBI Subcommittee studied a variety of approaches that different states have adopted, including:

#### **Civil Citation/Pre-Arrest Diversion Programs (FL, DE, SD)**

In a civil citation program, law enforcement is given the option of issuing a citation to a youth with a “notice to appear” at an assessment center or community provider rather than arresting the youth or giving them a summons to a court hearing.

The assessment center or provider administers an assessment and develops a diversion plan for the youth. They also provide ongoing monitoring of the diversion plan. Referrals to, and outcomes of, the civil citation program are tracked statewide, but this information does not appear as part of the youth’s court record.

States have set criteria with regards to which offenses can be given a civil citation, and in some cases states have specified that civil citation *must* be used for certain offenses.

Florida	Delaware	South Dakota
<ul style="list-style-type: none"> <li>• Misdemeanors only by statute</li> <li>• County discretion on eligible offenses and other criteria</li> <li>• Youth referred to Juvenile Assessment Centers</li> </ul>	<ul style="list-style-type: none"> <li>• Misdemeanors with no previous referral in last 18 months or for same offense</li> <li>• Voluntary participation from law enforcement</li> <li>• State-run hotline for eligibility checks</li> <li>• Eligible youth referred to community provider who develops &amp; monitors diversion plan</li> </ul>	<ul style="list-style-type: none"> <li>• Specific misdemeanors (petty theft, property damage, underage drinking, truancy)</li> <li>• Mandatory use of citation for these cases</li> <li>• Treated like traffic ticket (notice to appear)</li> </ul>

### Mandatory/Presumptive Diversion (UT, KY, KS, SD)

Some states have opted to mandate that pre-arraignment diversion is offered to all youth who meet certain eligibility requirements. These eligibility requirements vary by state, but may include certain charge types, criminal histories, or risk assessment scores.

South Dakota	Utah	Kentucky	Kansas
<ul style="list-style-type: none"> <li>• <b>Charge:</b> Non-violent misdemeanors and CHINS violations</li> <li>• <b>History:</b> No prior adjudications, no diversion within the last 12 months</li> <li>• <b>Presumptive:</b> DA can seek to override based on "good cause"; triggers judicial hearing</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Risk:</b> Low or moderate on risk assessment</li> <li>• <b>History:</b> No more than 3 prior adjudications or unsuccessful diversion attempts</li> <li>• <b>Charge:</b> Misdemeanor, infraction, or status offense <ul style="list-style-type: none"> <li>• Certain sexual offenses are exempt</li> <li>• Certain Class A misdemeanors exempt if youth is moderate risk</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Mandatory:</b></li> <li>• <b>History:</b> First offense- no prior adjudications or diversion</li> <li>• <b>Charge:</b> Misdemeanors</li> <li>• <b>Presumptive:</b> (DA can object)</li> <li>• <b>History:</b> Up to three times for nonfelony or up to 1 time for felony</li> <li>• <b>Charge:</b> Sexual offenses &amp; use of deadly weapon excluded</li> </ul>	<ul style="list-style-type: none"> <li>• <b>History:</b> No prior adjudications</li> <li>• <b>Charge:</b> Misdemeanor</li> </ul>

### State Assessment/Receiving Centers (FL, KY, KS)

Some states operated 24/7 Assessment or Receiving centers. These centers receive youth from law enforcement post-arrest and/or are connected to a civil citation program (as described above) and receive youth via referral.

Staff at these centers conduct evidence-based screenings/assessments and assess a youth's eligibility for diversion. Depending on the state, the center may also perform other functions, including determining

if a youth should be detained until arraignment, performing ongoing case management, and making referrals to services.

### **Multi-Disciplinary Review Teams (MDRT) (KY, CT)**

MDRTs are community-based, multi-stakeholder teams that confer on cases and develop diversion plans. They can also serve as a local service coordination entity. Stakeholders at an MDRT can include prosecution, defense, law enforcement, probation, DCF, schools, other relevant state agency representatives and community-based providers. Many states run multi-disciplinary review teams in a variety of settings; Kentucky and Connecticut are just two examples.

There are a variety of locally run MDRTs in Massachusetts as well, such as the Hampden County Dually-Involved Youth MDRT.

### **State Case Studies**

**Utah:** In 2017, Utah passed legislation<sup>57</sup> to standardize the use of diversion across the state by enacting the following reforms:

**Mandatory Diversion for Lower-Level Offenses:** The Utah legislation created statewide criteria for the use of the state’s diversion process, called a “non-judicial adjustment” (NJA). NJAs occur after arrest and before or after prosecutorial review, depending on the circumstances. The law requires NJAs to be offered to youth referred for misdemeanors, infractions or status offenses with no more than three prior adjudications or unsuccessful NJA attempts (which some exceptions, detailed below.)

NJAs are agreements made between probation officers, justice-involved youth, and their parents/guardians. They are overseen by the probation department and can take the form of mandatory community-service, restorative justice, apology letters, or evidence-based community programming.

#### **Eligibility & Process:**

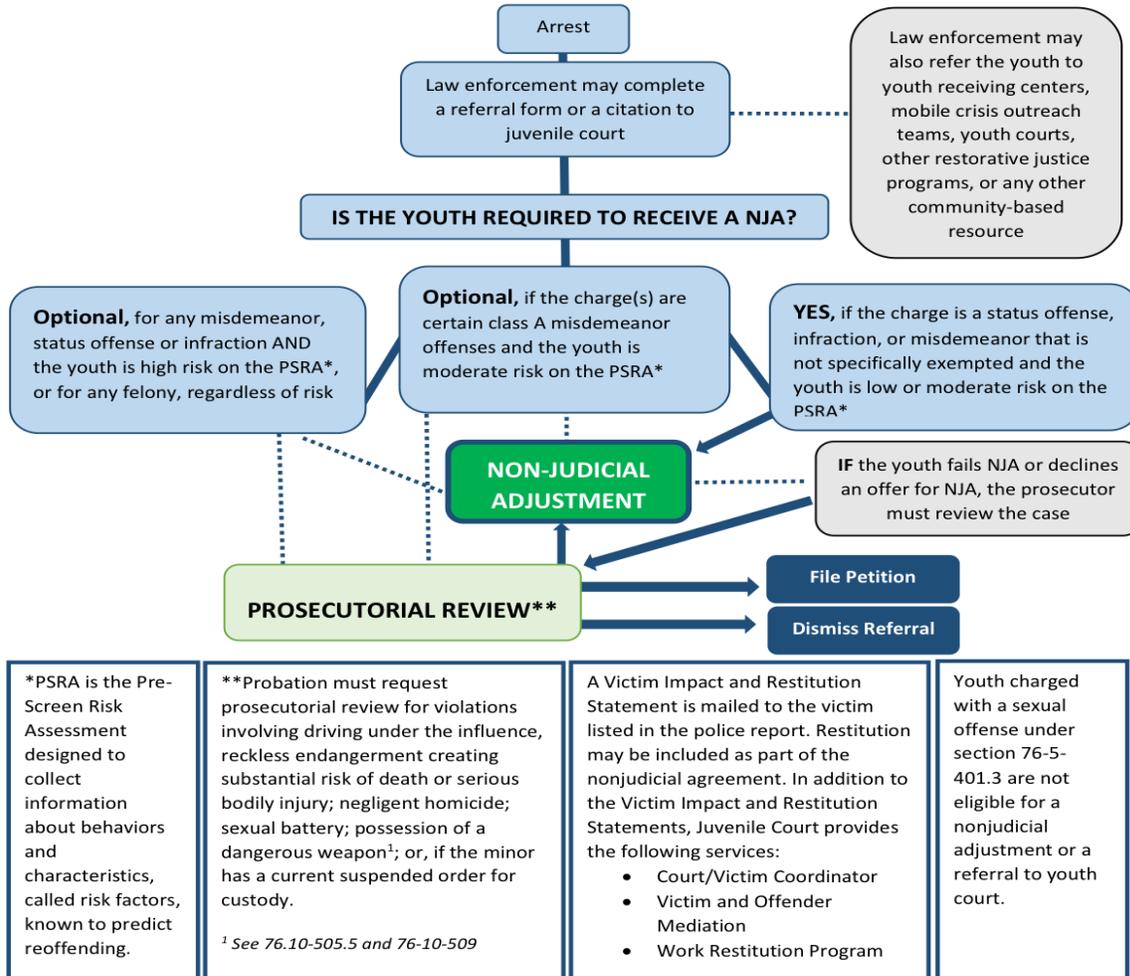
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<sup>57</sup>HB 239, 2017 (Utah, 2017). See: <https://justice.utah.gov/Juvenile/hb239.html>



Utah Nonjudicial Adjustment Process

"Nonjudicial adjustment"(NJA) is pre-court diversion in which a youth may avoid a charge in court by signing an agreement with probation and completing its requirements. The youth's parent/guardian must also sign the agreement. The legislative definition of NJA and the process are outlined in Utah statute 78A-6-602.



Updated 3/28/2018

**Screening & Assessment:** All youth referred to the juvenile court are screened using the “PRSA”, a brief risk and needs tool validated on Utah’s population. This tool, which is administered by Probation as a part of intake, is designed to screen minors in the preliminary stages of juvenile justice system involvement and to determine if additional assessment is needed. If needed, a more in-depth assessment (the PRA) is conducted. The information from these tools is used to inform decisions about NJAs.<sup>58</sup>

<sup>58</sup> According to an implementation report from the Utah Oversight Council, in FY18 over 80% of youth received a PRSA. The same report states that “all” youth now receive the PRSA; it’s unclear if the remaining 20% did not receive a PRSA or if this is a data quality issue.

**Case Coordination:** Juvenile Probation officers oversee NJA case coordination.

**Coordination/Tracking:** The Utah Commission on Criminal and Juvenile Justice (CCJJ) has an oversight role, and collects data on the following:

- Petitions (similar to Applications for Complaint)
- Non-judicial Adjustments
- Intake data (risk level, offense type, location, race/ethnicity)

**Results:** Utah has published data through FY2018 – the first year of implementation of the new law.<sup>59</sup> Highlights include:

- 55% of referrals to the Juvenile Court resulted in an NJA offer in FY2018, up from an average of 22% from the three preceding years.
- Preliminary data suggest that most youth who were low risk to reoffend and were referred for a Misdemeanor or Status Offense received an NJA in FY2018.
- The percent of youth who received an NJA referral increased for all racial and ethnic groups in FY2018; however, some groups tended to receive NJAs at higher rates than others.

**South Dakota:** In 2015, South Dakota passed legislation<sup>60</sup> making the following reforms:

**Presumptive diversion for many lower-level offenses:** Youth who are charged with nonviolent misdemeanors or CHINS violations<sup>61</sup> who have no previous adjudications and no diversions over the past year are presumptively diverted from formal court processing. For good cause, the state’s attorney may file a petition explaining why diversion is not appropriate and seeking to bypass it. The youth offender may challenge this petition in court. If the court finds no good cause to bypass, it may divert the youth over the prosecutor’s objection.

**Citation process for lower-level offenses:** Low-level violations – such as petty theft, intentional damage to property, and underage drinking – are treated as cited violations, handled similarly to a traffic ticket.

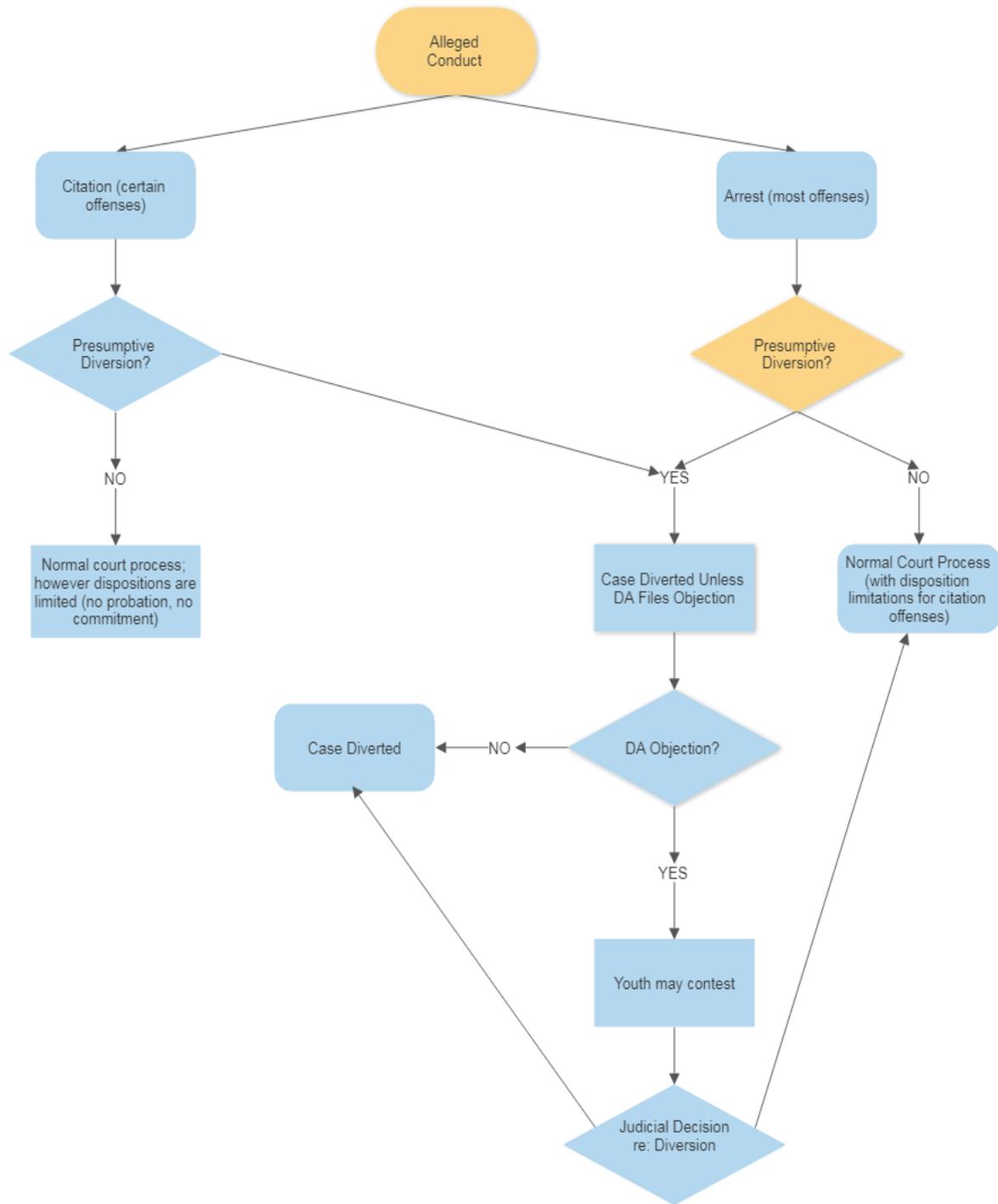
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<sup>59</sup> See: [https://justice.utah.gov/Juvenile/HB239/Annual%20Reports/FY\\_2018\\_HB\\_239\\_Annual\\_Report.html#nonjudicial-adjustments](https://justice.utah.gov/Juvenile/HB239/Annual%20Reports/FY_2018_HB_239_Annual_Report.html#nonjudicial-adjustments)

<sup>60</sup> S.B. 73, Nineteenth Session, 2015. (South Dakota, 2015). See: <http://jjri.sd.gov/docs/An%20Act%20to%20Improve%20Public%20Safety%20Regarding%20Juvenile%20Justice.pdf>

<sup>61</sup> Equivalent to CRA in Massachusetts

**Diversion Process<sup>62</sup>:**



<sup>62</sup> Process map created by OCA based on interpretation of the SD statute.

**Eligibility:**

- Presumptive Diversion:
  - No prior adjudications
  - No diversion within the last twelve months
  - Offense is a status offense or constitutes a misdemeanor
  - Alleged conduct did not involve the use of violence or force
- Citation Process
  - Petty theft, intentional damage to property, underage drinking, and truancy are treated as cited violations
- District Attorney's retain the authority to divert in cases *beyond* what is required by the presumptive diversion and citation statutes.

**Screening & Assessment:** There is no established statewide screening or assessment process for diversion decisions.

**Case Coordination:** Case coordination is handled at the county level.

**Data Coordination/Tracking:** Reporting on Use of Presumptive Diversion and Citations: The state's Judicial System is required to report semiannually to an oversight council on the following:

- The number of children eligible for presumptive diversion
- The number and percent of children for which a DA objects to diversion and the court agrees the cases should proceed under the normal process
- The number of children summoned to court for a juvenile cited violation
- The number of cited children who are then presumptively diverted
- The number of cited children petitioned (case proceeds without diversion)

Reporting on County Use of Diversion: Counties participating in the financial incentive program report data on each referral to the Department of Corrections and the Oversight Council semi-annually using a standardized data collection worksheet<sup>63</sup>, which includes:

- Diversion Program Name & Provider
- Youth age, sex, race and ethnicity
- Referral offense
- Completion date and type (successful or unsuccessful)

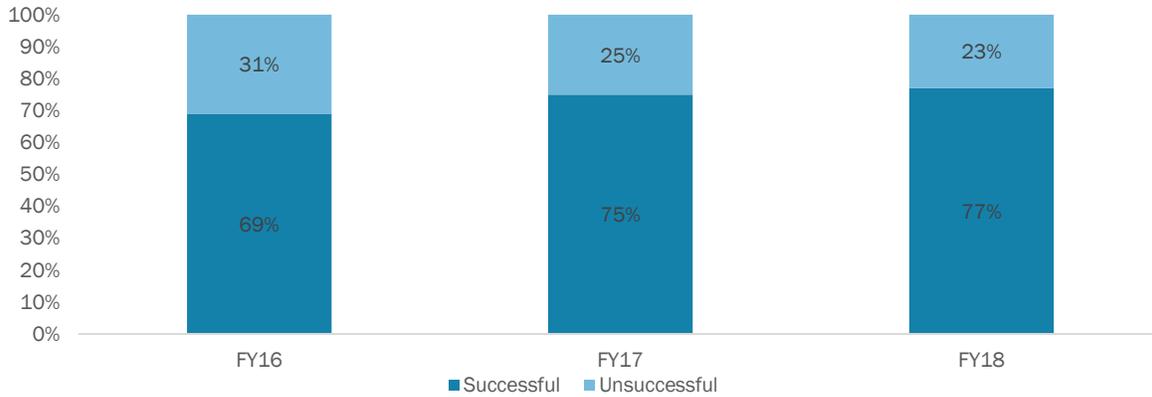
**Results:** According to a report published by the Crime & Justice Institute, which worked with the South Dakota Oversight Council and provided technical assistance, use of diversion was rare in many parts of the state pre-reform.<sup>64</sup> (Of note, data on diversion was not collected prior to FY16 so no baseline exists.) Since the law was implemented, 4,826 youth have participated in community-based diversion programs, with 77% successfully completing programming in FY18, as noted in the chart below:

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<sup>63</sup> See: <https://doc.sd.gov/documents/Copy%20of%20JJRIDiversionLog2018.xlsx>

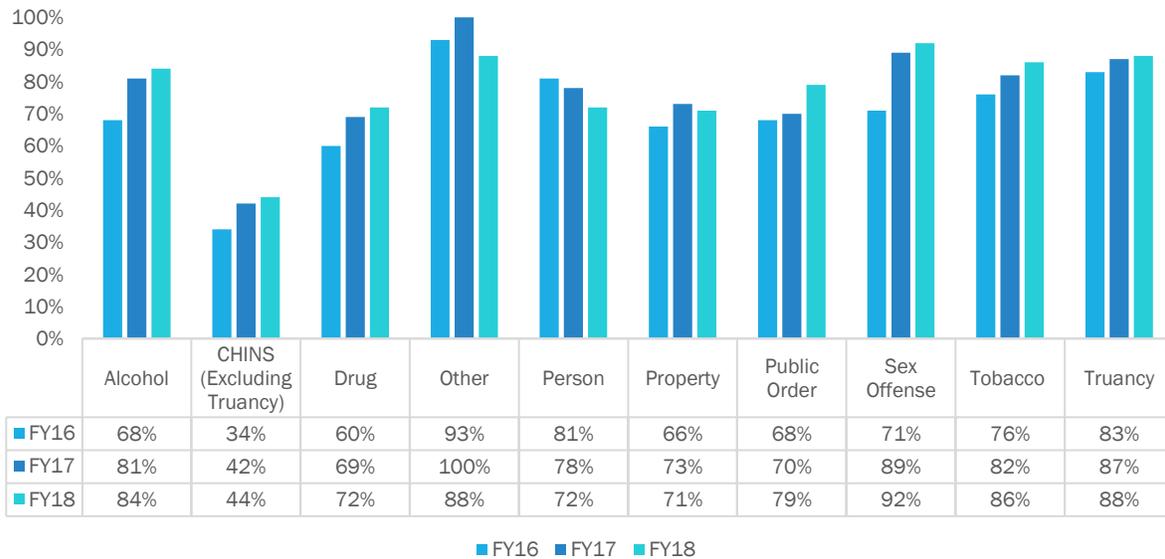
<sup>64</sup> See: <https://doc.sd.gov/documents/CJImplementingComprehensiveJuvenileJusticeImprovementMarch2019.pdf>

South Dakota Successful Diversions Increased FY16-18



In their Third Report of the South Dakota Juvenile Justice Oversight Council, South Dakota reports an increase in successful diversions for almost every case type each year since implementation in FY16.<sup>65</sup>

Percent of Successful Diversion Completions



**Kentucky:** In 2014, Kentucky passed legislation<sup>66</sup> making the following reforms:

**Enhanced Pre-Court Diversion Process:** Youth charged with low-level offenses are given an assessment by a Court Designated Worker (CDW) and, if appropriate, referred to diversion services before the case is

<sup>65</sup> See: [https://boardsandcommissions.sd.gov/bcuploads/PublicDocs/2018%20JJPSIA%20\(1-12%20Proof\).pdf](https://boardsandcommissions.sd.gov/bcuploads/PublicDocs/2018%20JJPSIA%20(1-12%20Proof).pdf)

<sup>66</sup> SB 200, 2014. (Kentucky, 2014). See: <https://legiscan.com/KY/comments/SB200/2014>

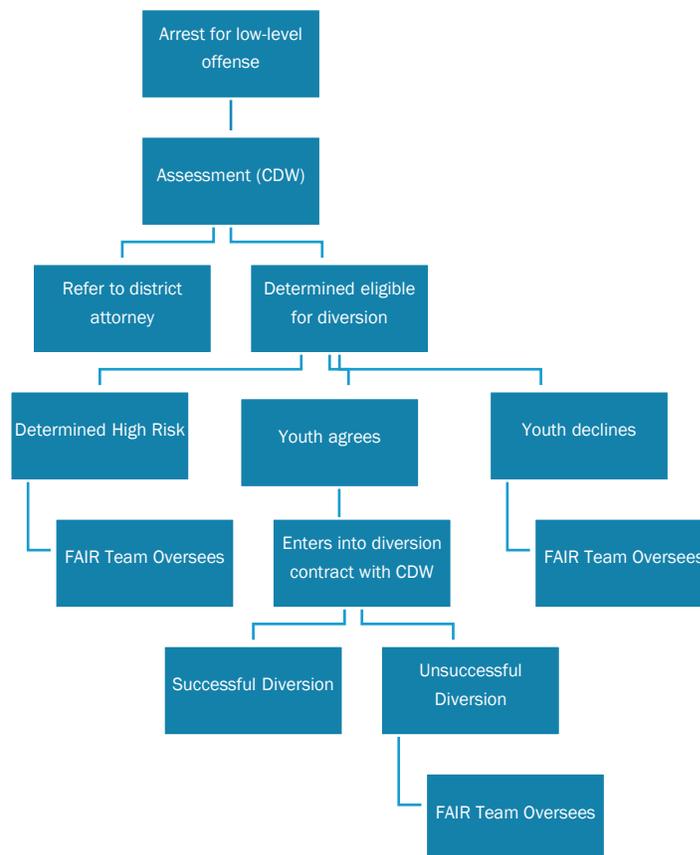
referred to the District Attorney’s office.

**Mandatory Pre-Court Diversion:** Youth are required to be offered pre-court diversion for first misdemeanor offenses (when they have no prior adjudications or diversion attempts).

**Multi-Disciplinary Teams:** Each county has an established Family, Accountability, Intervention, and Response (FAIR) team, which provides oversight of and assistance to all cases. FAIR teams include legal, education, social service, mental health professionals, and representatives of agencies that provide services to juvenile-justice involved youth .

The team reviews decisions on assessments and service referrals, provides more intensive oversight of “high risk” youth, assists with barriers, responds to failure to comply with services by youth or family, and makes decisions to terminate the diversion for lack of completion

**Process<sup>67</sup>:**



**Eligibility:**

- **Mandatory Diversion:** Youth with no prior adjudications or diversion who are alleged to have committed a misdemeanor *must* be offered pre-court diversion and the district attorney cannot override that decision.

<sup>67</sup> Process map created by OCA based on review of KY statute and supporting documents.

- **Permissive Diversion:** Per statute, youth may be offered diversion up to three times for non-felony complaints and once for a felony complaint that does not include a sexual offense or use of a deadly weapon. Court policy states that CDWs shall offer diversion to any youth who is eligible for permissive diversion unless the district attorney objects.

**Screening/Assessment:** Screening/assessment is done by a Court Designated Worker (CDW) after youth are arrested

- The Court Designated Worker Program, established in 1986, is under the direction of the Department of Juvenile Services of the Administrative Office of the Courts
- Each of Kentucky's 120 counties have the services of a CDW, available 24 hours a day, seven days a week
- CDW's are responsible for processing all public and status complaints on children under age 18, assisting law enforcement in custody process, conducting investigations and interviews, and developing and supervise diversion agreements
- By law, CDWs are required to use evidence-based screening and assessment tools.

**Case Coordination:** Diversion cases are coordinated by the CDWs with oversight from the FAIR teams.

**Data Coordination/Tracking:** To measure the impact of the improvements, SB 200 established an oversight council, as well as requirements for data and reporting. Data collected includes:

- Number and type of complaints received by each CDW
- Outcome of each complaint
- Terms of diversion
- Whether child successfully completed diversion within one year following completion
- Demographic data (age, race, ethnicity, gender)
- Recidivism

**Results:** The Kentucky 2017 CDW Annual Report includes the following<sup>68</sup>:

- 14,820 delinquency complaints were filed in 2017.
- Of these, 7295 (49%) delinquency complaints were handled by diversion agreements in 2017
- 92% of these diversions were completed successfully
- Of youth who were diverted in CY2014:
  - 61% of successful diversion cases had no further complaints by the end of CY2017
  - 41% of unsuccessful diversion cases had no further complaints by the end of CY 2017

**Connecticut:** Connecticut employs a community-based diversion process – called a “Juvenile Review Board” or JRB – for youth who may otherwise be referred to the Juvenile Court for minor violations of the law. There are numerous JRBs across the state.

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<sup>68</sup> See: <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>

A JRB consists of a group of local professionals – including police, social workers, school officials, juvenile court officials, clergy, community members – who meet regularly to offer children and families a positive alternative to the juvenile justice system. The JRB aims to coordinate a system of community supports from existing programs.

There is no specific enabling statute establishing the JRB, but the JRB model has been in existence in CT for over 50 years.<sup>69</sup> As a result, although there are some consistent components across JRBs, each JRB program is unique to the community it serves.

The state also funds an array of evidence-based family interventions (e.g. MST, FFT, BSFT, MDFT) through their Court Support Services division as well as their Department of Children and Families.

**Eligibility & Referrals:** Police, schools, parents and the court system. can all make referrals to a JRB. In delinquency matters, the police investigate a crime and then decide whether to referral the case to the local JRB or to refer the case directly to the Juvenile Court.

The Juvenile Court may also decide to divert a case to the JRB.

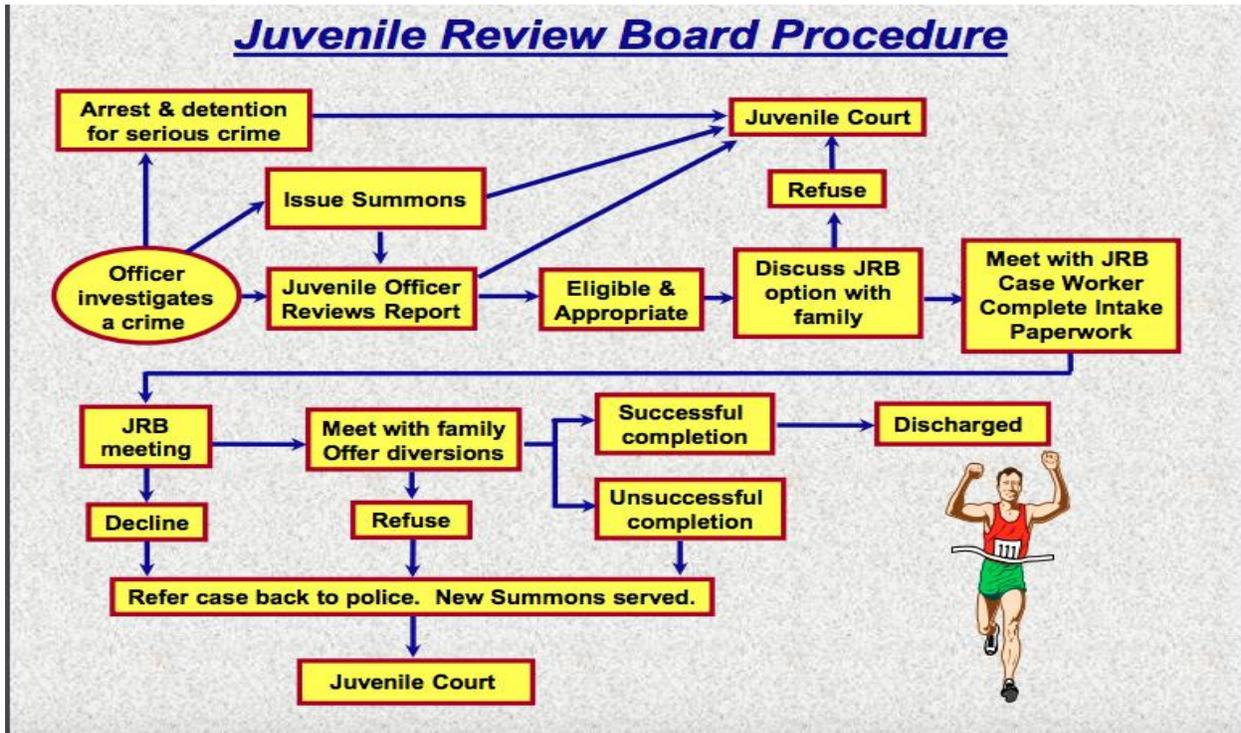
For school-related matters, the school must exhaust all available options to resolve the matter before referring a case to the JRB.

JRBs will review reports and determine if the case is eligible/appropriate for diversion. The JRB can refer a case back to the Juvenile Court if it determines diversion is not appropriate.

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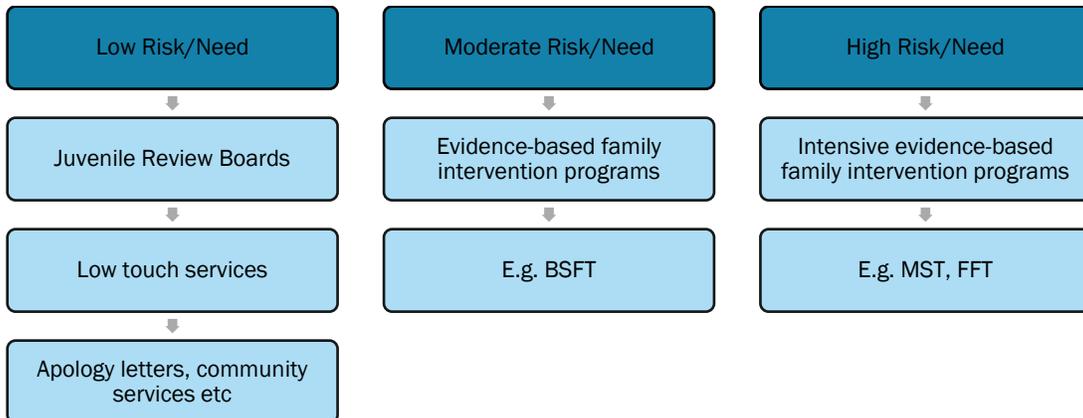
<sup>69</sup> The closest statutory basis for the JRB model is found in the CT General Statutes §10-19m, which establishes the Youth Service Board (YSB) as a coordinating unit of community-based services and for evaluation, planning, and coordination of such services. The YSB provides oversight to the JRB.

Process:



**Screening & Assessment:** Only youth who are referred to a JRB receive an assessment. JRB Case Managers are responsible for interviewing youth and identifying risk and needs. This may be done through a validated, evidence-based screening instrument and/or guided interview process, as decided by individual counties/judicial districts.

- If youth are not appropriate for a JRB process due to a higher level of risk/need, they instead may be connected with an array of state-funded evidence-based services:



**Case Coordination:** JRB Case Managers provide case coordination throughout the process.

**Data Coordination/Tracking:** All JRBs are required to gather specific data on JRB cases through the use of a data collection tool, as well as submission of completed JRB questionnaires (given at case closing for youth and parent/guardian). Data collected includes:

- Demographic information (age, gender, race, ethnicity, location, DCF involvement)
- Arrest date and reason
- Services provided
- Program completion and outcome (successful/non-successful)
- Participant satisfaction with process and outcomes

**Kansas:** In 2016, Kansas passed legislation<sup>70</sup> making the following reforms:

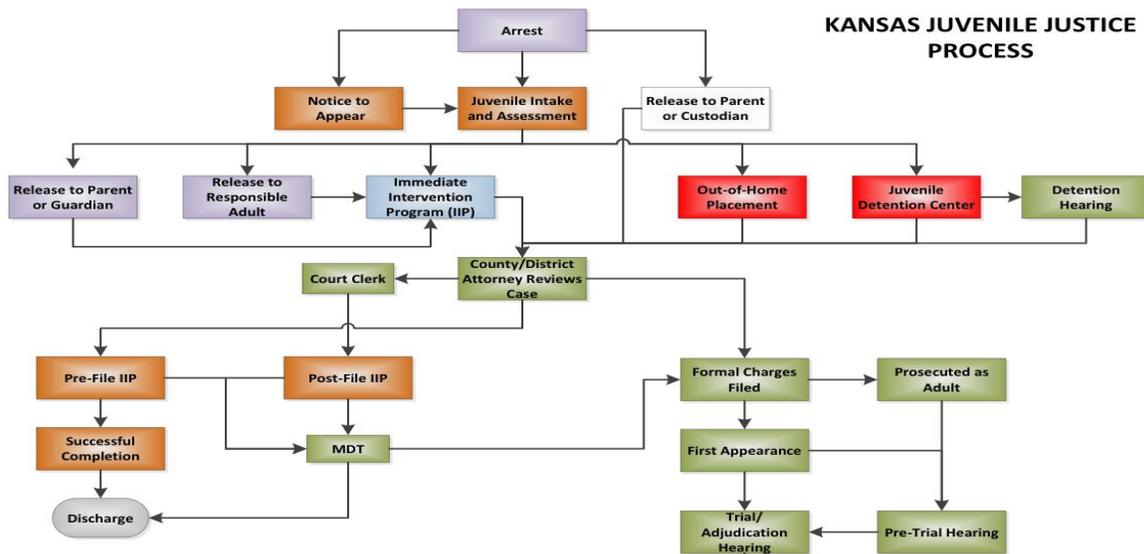
**Mandatory Diversion:** Kansas's law requires that youth charged with a misdemeanor who have no prior adjudications be offered a short diversion process. This reform builds off an existing statewide 24/7 juvenile intake and assessment process.

**Process:** At the point of contact, law enforcement have the option of releasing the youth to a guardian, issuing a Notice to Appear, or taking the youth directly to a Juvenile Intake and Assessment System (JIAS) center.

- Any juvenile referred to immediate intervention by JIAS work together with court services, community corrections, and any other entity designated as a part of the written agreement to develop an immediate intervention plan
- Plan may be supervised or unsupervised

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<sup>70</sup> SB 367, 2016. (Kansas, 2016). See: <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/06/kansas-2016-juvenile-justice-reform>



**Eligibility** All youth who have been charged with a first-time misdemeanor must be referred for diversion, called the Intermediate Intervention Program (IIP). Youth with a prior adjudication may also be referred.

- IIP can be either pre-file or post-file
- Pre-file is determined by the District Attorney
- Post-File is determined by one of a few system players (e.g. DA, Judge, Court Clerk)

**Screening/Assessment:** JIAS is the second point of contact, after the police. Their role is to conduct assessments and make recommendations regarding immediate placement (if necessary) as well as intermediate interventions.

- JIAS operate in all 31 judicial districts throughout Kansas, 24/7.
- JIAS staff also coordinate court appearances for youth placed outside their home and make referrals to appropriate services within the community
- JIAS is funded through block grants from the state/Department of Corrections that each county/judicial district gets each year
- When youth go to JIAS (either at arrest or Notice to Appear appointment) they have a number of assessments, including the Detention Risk Assessment (to determine if they need to be detained pre-trial), MAYSI, and supplemental screeners that vary by jurisdiction
- In the future, they hope to implement YLS/SV screener for IIP specifically to better refer youth to services and not “over-program” certain youth

**Case Coordination:** Diversion case coordination is managed by the JIAS staff.

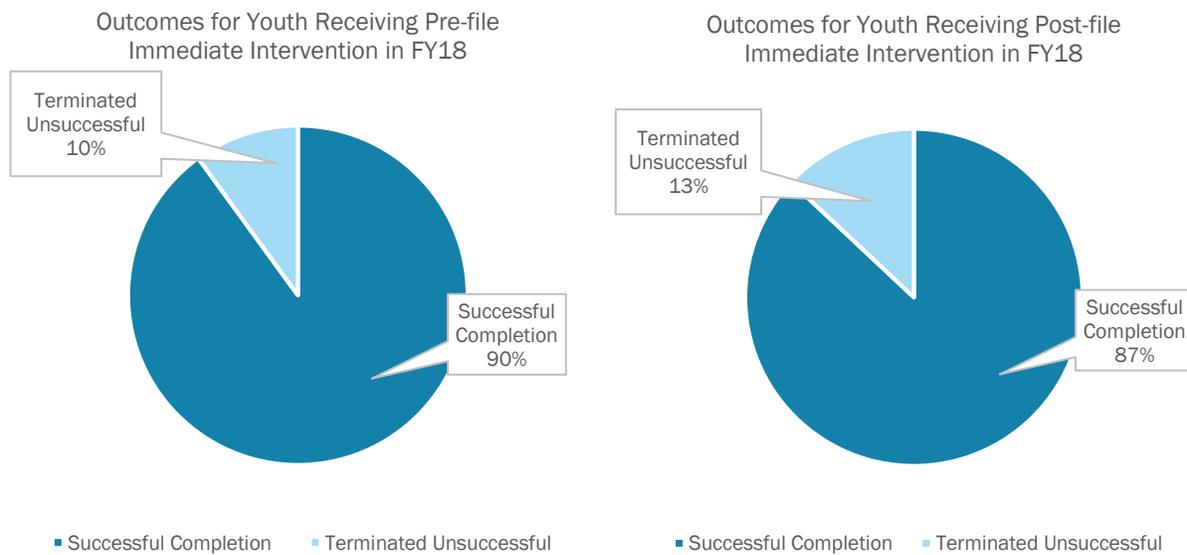
**Data Coordination/Tracking:** The Department of Corrections, judicial branch, and Department of Children and Families are all in the process of upgrading to new systems

- Current data systems are outdated – some information is being tracked on spreadsheets that get mailed monthly and are manually collated

- Planning for a basic data collection system that includes demographic and IIP case information
- Key stakeholders within the Department for Children and Families, the Office of Judicial Administration, and the Department of Corrections have begun the process of creating a Memorandum of Understanding (MOU) in order to be able to share key data in safe, confidential ways.
- Even with these limitations, the state is able to report on the number of youth who receive a pre- or post-file intermediate intervention, and whether the intervention was successful or unsuccessful.

**Results:** According to a report published by the Crime & Justice Institute, which worked with the Kansas Oversight Council and provided technical assistance to the state, “Prior to SB 367, the use of diversion for juveniles to prevent deeper involvement with the juvenile justice system was inconsistent across Kansas. Some counties diverted youth before charges were filed, some after, some did both, and some had no diversion.”<sup>71</sup>

In FY2018, the first year the state tracked data on the use of IIPs, 3,266 youth received a pre- or post-file IIP, and the early results have been positive:

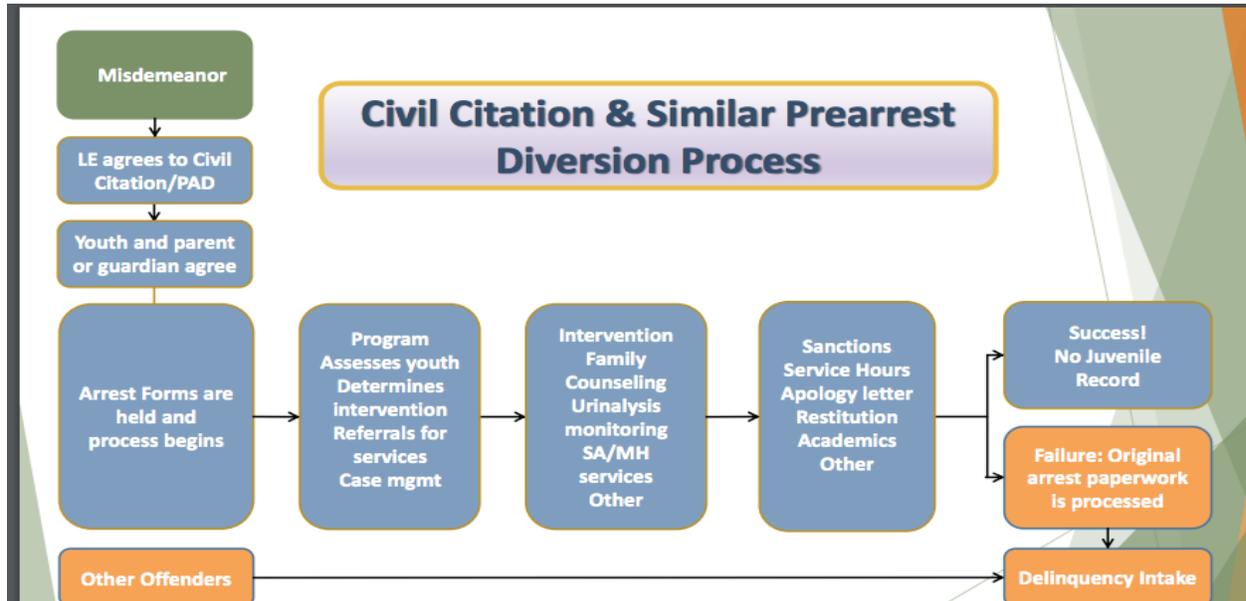


**Florida:** The Florida Department of Juvenile Justice Civil Citation and Similar Prearrest Diversion Initiative (CC/PAD) addresses a youth’s behavior at his/her first encounter with the juvenile justice system and provides an alternative to arrest.

<sup>71</sup> See: <https://www.crj.org/publication/implementing-comprehensive-juvenile-justice-system-improvement-kansas/>

This is a voluntary program: counties/municipalities are not required to participate. Eligibility criteria and program requirements are set by a CC/PAD team (district attorney, public defender, court clerk, law enforcement) in each county.

**Process:**



CC/PAD works through diversion programs existing in a community, such as those already operated by sheriffs, state attorneys, or teen courts. Youth can also be diverted to CC/PAD through the community, and state attorneys can decide to refer youth to a diversion or civil citation program.

**Screening/Assessment:** All youth who are arrested in Florida are processed at a Juvenile Assessment Center (JAC)

- Law enforcement can either bring a youth directly to a JAC, or issue a citation to direct a youth to report to a JAC within a specified amount of time.
- The assessment centers have been in place in FL for over 20 years and are available in almost all judicial circuits (if not available, youth are processed at nearest circuit)
  - The centers are funded by the state Department of Juvenile Justice, and are either state-run or contracted out to a provider, depending on the judicial circuit.
    - Open 24/7
    - Some also have on-site counseling services
    - Staffing varies throughout the state
- Assessments conducted include the Prevention Assessment Tool (PAT), the GAIN-Q and the Biopsychosocial assessment
- Helps to guide CC/PAD conditions

**Data Coordination/ Tracking:** Whenever a youth is arrested, the data is entered in the Juvenile Justice

Information System. The Florida Department of Juvenile Justice collects and publishes a wide array of data on the CC/PAD program, including<sup>72</sup>:

- Number of eligible youths
- Number admitted to CC/PAD program
- Number arrested
- Demographic and location data

### **Delaware:**

In 2015, Delaware implemented the Juvenile Justice Citation program<sup>73</sup>, a voluntary statewide civil alternative to formal arrest and criminal prosecution of youth under 18 who commit certain low-level offenses. Participation in the civil certain program does not preclude a youth from participating in a diversion program offered by a District Attorney following a subsequent arrest.

**Eligibility<sup>74</sup>:** Eligible misdemeanor offenses include disorderly conduct, loitering, shoplifting, alcohol consumption, criminal trespass, possession of marijuana. Recent amendment to statute permits second referral to the program where the first referral occurred more than 18 months ago and was not a referral for the same offense.

**Process:** Referral is made by law enforcement, typically school resource officers, in place of an arrest. The state Department of Services for Children, Youth and their Families (DSCYF) runs a hotline law enforcement can call to determine if a youth is eligible.

If youth is eligible and both youth and parent consent, participating youth are required to contact pre-assigned community provider to complete an assessment. The youth will no longer be eligible if he/she scores higher than moderate on risk assessment. Youth must complete five hours of community service, community impact statement, and work toward reducing potential future contact with juvenile justice system. It is a 90-day, “low touch” program.

**Screening & Assessment** Pre-assigned community provider completes assessment of referred youth to identify risk and needs

- Complete Pre-Screen Positive Achievement Change Tool (PACT) Assessment and other evaluations recommended based on PACT results
- No screening is conducted prior to referral

**Case Coordination:** The state DSCYF staff and coordinates the Juvenile Civil Citation program.

**Data Collection/Tracking:** Police fill out forms and upload to the statewide data system. The Civil Citation Coordinator and the Quality Assurance Unit of the Division of Youth and Rehabilitative Services is mandated by law to collect and analyze the civil citation program data.

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<sup>72</sup> See: [www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/civil-citation-and-other-alternatives-to-arrest/cc-dashboard](http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/civil-citation-and-other-alternatives-to-arrest/cc-dashboard)

<sup>73</sup> HB 405, 148<sup>TH</sup> General Assembly. (Delaware, 2015) See: <https://kids.delaware.gov/pdfs/yrs-jcc-hb405.pdf>

<sup>74</sup> HB 8, 149<sup>TH</sup> General Assembly, (Delaware, 2016). See: <https://kids.delaware.gov/pdfs/yrs-juvenile-civil-citation-hb8.pdf>

## Appendix C: Examples of Diversion Funding Models from Other States

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The CBI Subcommittee studied a variety of approaches several states have taken with regards to:

- State funding to support local diversion programs and/or expand community-based interventions
- Private/public partnerships to expand community-based services

Information was primarily gathered from internet research – including statutory reviews, reports issued by state oversight councils, as well as technical assistance organizations, and explanatory information and documents hosted on state agency websites – as well as interviews with those involved with implementing the reforms when possible.

While we have attempted to use the most recent reports/information available to ensure this information is current and accurate, there may be times when a state policy or process has changed, but that information was not posted on the state’s website.

The primary questions the Subcommittee sought to answer were:

- Where does the funding for diversion and other community-based interventions for justice-involved youth come from? (Source)
- How is funding distributed? (Method)
- How is funding used? (Allocation)

### Funding Sources

Funding to support expansion of community-based interventions for justice-involved youth comes from a variety of sources:

**Justice Reinvestment:** Many of the states that have made significant recent investments in community-based interventions for justice-involved youth have done so as a result of participation in the Justice Reinvestment Initiative (JRI)<sup>75</sup>. Through this process, savings derived from reductions in the use of secure commitment for youth is re-allocated toward community-based services.

- Kentucky:
  - Savings from reductions in populations at secure facilities following reform legislation are reinvested in community-based services.
  - By statute, 25% of savings go to grants to community-based programming (\$1 mil in 2018).
- Kansas:

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<sup>75</sup> Justice Reinvestment is a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism. For more information, <https://csgjusticecenter.org/jri>

- Kansas started with a \$2 million upfront investment to expand evidence-based programming for delinquent youth combined with reforms to reduce out-of-home placement.
- The KS legislation requires that 100% of savings from reduction in use of secure detention fund local evidence-based alternatives to out-of-home placement.
- **South Dakota:**
  - South Dakota began with upfront investment of \$2.9 million, combined with reforms to reduce out-of-home placement.
  - The state continues to allocate funding for community-based services, but the connection between savings and investment is conceptual rather than direct/formula-based.

### **Dedicated Fees:**

- **California:**
  - Since 2001 (via the Juvenile Justice Crime Prevention Act), the state has collected funds from a state vehicle license fee
  - Approximately \$115 million each year is allocated for programs to prevent and reduce youth crime

### **General Fund Allocations:**

- **California:**
  - Starting in 2018-2019, California has also invested \$37.3 million from the state General Fund in diversion programming.
- **Connecticut:**
  - A 2002 report found that recidivism rates among justice-involved youth in contracted programs (mostly congregate care) were significantly higher than that of matched sample with no programming
  - As a result of this report, the state closed poorly-performing programs and began to fund a new set of evidence-based programs
  - The state has also dramatically decreased detention/commitment populations in that same period.
  - Connecticut also leverages federal Medicaid funds for evidence-based community treatment programming

## **Method of Distribution**

States have used a variety of methods to distribute funding for diversion programming and other community-based services:

**State-Procured Services:** In Connecticut, South Dakota and Kansas, the state specifically funds certain evidence-based services (e.g. Functional Family Therapy, Multisystem Therapy) for target populations across the state.

**Formula Allocation:** In California, each county gets a set amount based on population. Some counties then chose to issue some or all of the funding based on a competitive grant process (e.g. Los Angeles). Kansas also allocates some funding to counties via a set formula.

**Competitive Grant:** In Kansas and Kentucky, counties, organizations or regions submit proposals, and the funding is distributed by a competitive grant process. Some funding in California is also awarded via a competitive grant process.

## Funding Allocation

### Connecticut

- As described in Appendix B, Connecticut funds an array of evidence-based family interventions (e.g. MST, FFT, BSFT, MDFT) through their Court Support Services division and their Department of Children and Families.
- The state also provides funding for case management staff (e.g. JRB staff, Clinical Coordinators, Case Review Teams)
- Youth are connected with appropriate programming based on rigorous (and state-funded) screening & assessment process based on Risk-Need-Responsivity Principles

### California – JJCPA

Each year, California distributes approximately \$115 million per year to 56 counties on a population-based formula under the JJCPA Act to fund “delinquency prevention and crime control.”

Examples of funded programs include:

- Community policing, SROs & probation service
- Public housing
- Park services
- MH Screening/Treatment
- After school programming
- Community-based Art Programs

Los Angeles County receives \$27 million each year, which primarily goes to

- Enhanced Mental Health Services for justice-involved youth
- Enhanced Services to High-Risk/High Need Youth
- Enhanced School- and Community Based Services

LA County also funds an Office of Youth Diversion and Development (\$3 mil per year), which Provides for intensive youth case management services and is implementing a pre-booking youth diversion program.

Finally, LA county funds a Public-private partnership with community foundations (\$3.2 million).

- Community foundations will set up grant process for distributing funding to grassroots and emerging community-based organizations
- Goal is faster distribution of funds and increasing access for smaller organizations
- LA County is prioritizing youth and family voice in distribution of funds

## California - Youth Reinvestment Grant (YRG) Program<sup>76</sup>.

- In 2018, California added \$37.3 million to the state budget for a Youth Reinvestment Grant Program, which is awarded through a competitive grant process for programs in “underserved communities with high rates of juvenile arrests and high rates of racial and ethnic disparities within those juvenile arrests.
- This funding is specifically dedicated to trauma-informed, community-based diversion interventions.
- Each city or county decides on a “lead public agency” responsible for organizing local groups to implement the grant program. The lead agency receives 10% of the funds to support grant administration, and must award the remaining 90% to community based organizations (CBOs). ”
- CBOs that receive funds must provide diversion and alternative-sanction programs, academic-and vocational-education services, mentoring, behavioral health services, and mental health services

## Kentucky

- The decrease in the number of juveniles in state care generated \$4 million in savings. By law, 25% of that must be being reinvested in community supervision and other services that can help reduce recidivism.
- In 2018, state officials announced that up to \$1 million from those savings will go toward an incentive fund, which awards competitive grants to local judicial districts to create community-based services, treatment programs or alternatives to out-of-home placement.

## Kansas

- Kansas has used a portion of its savings following justice reinvestment to develop statewide contracts to provide programming for justice-involved youth (~\$2.5 mil/ year)
  - Functional Family Therapy (FTT), Sex Offender Assessment and Treatment, Moral Reconciliation Therapy (MRT), and regional/pilot projects for a Youth Advocate Program (YAP) and Aggression Replacement Training (ART)
- Kansas also allocates funding to counties via formula to support locally-identified needs. (~3.2mil/year)
  - Examples include: Hiring case management staff and family engagement specialists; transportation

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<sup>76</sup> Established in the 2018 Budget Act (Senate Bill 840, Chapter 29, Statutes of 2018) and the related trailer bill (Assembly Bill 1812, Chapter 36, Statutes of 2018).

## South Dakota

- South Dakota allocated \$4.3 million in FY17 from the reinvestment fund to expand evidence-based community services statewide
- Programs include:
  - Functional Family Therapy – available statewide
  - Aggression Replacement Therapy – 6 locations
  - Moral Recognition Therapy – 8 locations + telehealth
- Services are available for justice-involved and ‘at risk’ youth via referral from state agencies, schools, parents or community programs



# Commonwealth of Massachusetts

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