

Office of the Child Advocate
Juvenile Justice Policy and Data Board
Community Based Interventions Subcommittee
Thursday September 10, 2020
2pm – 3:30PM
Meeting held virtually

Subcommittee Members or Designees Present:

Brian Jenney (DPH)
Karin Orr (DMH)
Mike Glennon (Suffolk DA's Office)
Nicole Robbins (Suffolk DA's Office)
Migdalia Nalls (CPCS)
Leon Smith (CFJJ)
Dawn Christie (Parent Representative)
Chief Kevin Kennedy (Chiefs of Police)
Kimberly Lawrence (Probation)
Josh Dohan (CPCS)

Other Attendees:

Melissa Threadgill (OCA)
Kristi Polizzano (OCA)
Alix Rivière (OCA)
Jasmine Jackson (CJI)
Leila Khelfaoui (CJI)
Kathleen Bitetti (SAO)
Naomi Bledsoe (Northwestern district DA's office)
Elizabeth Mulcahey (Northwestern District DA's office)
Brian House (Berkshire DA's office)
Matt Pecoraro (Judge Baker Center)
Members of the public

Meeting Commenced: 2:02pm

Welcome and Introductions:

Ms. Threadgill welcomed the attendees to the Community Based Interventions (CBI) subcommittee virtual meeting. She introduced all the individuals in the WebEx video conference and individuals on the phone introduced themselves.

Approval of Minutes from July Meeting:

Ms. Threadgill held a formal vote on the approval of the previous Community Based Interventions meeting minutes. Mr. Dohan abstained since he was not at that meeting.

The meeting minutes for July were approved.

Meeting Agenda:

The meeting will be focused on reviewing and editing the draft Model Program Guide based on members' edits and feedback.

Review of Model Program Guide:

The group began by discussing the Massachusetts Youth Diversion Program flowchart on page 7. Members discussed the implications of adding lawyers/public counsel before the box "Referrers send notice to the Diversion Coordinator." Considerations raised included:

- Ways in which having access to an attorney could help the youth and their family better understand their options and feel like they have an independent advocate in the process
- Ways in which including defense attorneys in the process could improve the functioning of the overall system, including reducing net-widening by identifying cases for which probably cause to charge the youth may not exist, and improving equity by ensuring that all youth have access to counsel regardless of their family's financial means
- Ways in which including defense attorneys could create undesired outcomes, including concerns about youth being labeled as "defendants" at this early stage of the process,

increased costs to the state to pay for the provision of attorneys, logistical concerns and lengthening the time frame of the diversion process.

Following the discussion, Ms. Threadgill summarized the group's discussion regarding the insertion of legal counsel early in the diversion process, highlighting concerns about logistics, time frame, and the role of youth/family in that process. She explained the OCA will work on that question, reach out to members of this subcommittee and circle back to this topic at the October meeting.

Mr. Smith asked if it would be possible for the document to have an explicit statement on how diversion is a solution to reduce youth contact with the juvenile justice system overall, but also to promote racial equity in the system. The group discussed to the R-Street report "Promoting Equity with Youth Diversion" that Mr. Leon sent subcommittee members. Ms. Threadgill suggested they expand the section on racial equity in the Model Program Guide before the next meeting in October.

Next, Ms. Lawrence reiterated her concerns regarding the risk/need screening, arguing that youth in Diversion would receive more supervision than those on Probation. She added that moderate and high-risk youth should be referred to Probation. Ms. Threadgill noted that the group had decided the Diversion Program would accept any youth within legal limits and defer to the referrers regarding eligibility. Ms. Threadgill also noted that the OCA would add more explicit references to statutory limits for diversion in the document.

Moving on to the rest of the Program Guide, Ms. Threadgill asked the group if they had any edits to make for Chapter 1. One member expressed doubt about the following sentence on page 8: "the current structure of Massachusetts' diversion systems lacks standardization and likely contributes to systemic inequalities." Ms. Threadgill explained that these were the findings of the JJPAD Board for its 2019 report and that this section of the report was just listing the findings previously made by the group. Mr. Dohan expressed his concerns regarding the section on positive youth development and asked if it could be incorporated into the key concepts section. He would like for the document to clearly state that the point of Diversion is to promote healthy development. The group agreed that Positive Youth Development could be more prominently featured in the Key Concepts.

Next, Ms. Threadgill asked if the group had any edits to make on Chapter 2. One member made note that, on page 16, the sentence: “This may include adjusting programming to accommodate different learning abilities, assisting youth with transportation options to attend treatments, and providing youth with mental health services” could more accurately end with “connecting them with mental health services.” Mr. Jenney added that the phrase “behavioral health services” would be better as it would also include substance use services.

Next, the group discussed the following sentence in section 2.1: “Youth with higher needs, complex cases, or whose unmet needs might be driving delinquent behavior are also ideal candidates.” Members agreed that the last part of the sentence (underlined here for clarity) should be replaced with “may also be appropriate candidates.” Regarding section 2.2. “Access to Counsel,” Ms. Nalls reiterated her preference for the document to clearly state that legal counsel go over the agreement forms with the youth before signing anything.

Next, Ms. Threadgill asked the group if there was statutory support for ensuring that information a youth provides during a Diversion process wouldn’t be held against them in court later? Members were of the opinion that the 2018 Criminal Justice Reform bill ensured that whatever was said in this process could not be used against the youth. One member noted in the comment box of the virtual meeting that 276B Section 4 ensures confidentiality. Members agreed that it would be good to have the statutory references explicitly stated in the document.

Regarding the section “Prior History,” some members had concerns about the information youth would be sharing with the Diversion Coordinator, especially concerning prior history with state agencies. Ms. Threadgill explained that the Working Group convened this summer to discuss this had updated the chapter on Information Sharing (later in the document), but might not have updated the “Prior History” section. She informed the group that OCA will update this section accordingly.

Ms. Threadgill then asked members to speak about anything they thought could be controversial in the guide, as it would help the group think about the timeline of this subcommittee’s work. Ms. Mulcahy noted her concern with the eligibility piece and how it could violate the Victim Rights statutes. As illustrated in the chart on page 7, if the clerk refers the case out without the District Attorney being able to contact the victim and get their input, victims would not be part of

the decision making process. The group discussed the role played by law enforcement in contacting the victim of the alleged crime. Ms. Threadgill noted that the goal of the Diversion Program is not to change any of the processes that are currently in place, and that the document should make that clear. The group discussed the possible addition of a mechanism for notifying victims of the outcomes of the Diversion Program.

Closing Comments:

Ms. Threadgill explained that the OCA will integrate the group's recommendations before sending members an updated version with track changes. The OCA will also reach out to some members of this subcommittee to discuss specific questions highlighted during the meeting. She added that the OCA would appreciate members' feedback in advance of the next meeting. The next meeting will be held on October 19, 2020 from 2-4pm.

Meeting adjourned: 3:29pm