

DIVERSION



KEY TAKEAWAYS

Diversion of low-risk youth accused of delinquency out of the juvenile justice system is an essential aspect of juvenile case processing that should be utilized more comprehensively and equitably in Maryland. Diversion is defined by the Department of Juvenile Services (“DJS”) as “a program or practice where the primary goal is to reduce the occurrence of juvenile crime by diverting a youth from the traditional juvenile justice system and providing an alternative to formal processing.”¹

One of the most important benefits of juvenile diversion is reducing recidivism by keeping low-risk youth away from the stigma of the juvenile justice system.² Additional benefits of juvenile diversion include:

- Preventing association with delinquent peers;
- Holding youth accountable for their actions;
- Providing proportionate responses to delinquent behavior;
- Providing youth with opportunities to connect with services in the community;
- Reducing court caseloads, detentions, and out-of-home placements;
- Reducing justice system costs and preserving resources for youth who pose a greater public safety risk or have greater needs for services; and
- Improved relations between youth, community, and the police.³

While youth diversion has a number of benefits, if implemented incorrectly, it can be harmful and lead to negative outcomes. Researchers have warned against the net-widening effects of youth diversion, which is when a diversion program brings in youth who would not otherwise have been supervised, and whose behavior would have been addressed in school and by parents and community members.⁴ Studies of certain diversion programs have identified high percentages of youth who would not have otherwise been part of the juvenile justice system, meaning that the programs were missing their target population.⁵ An additional frequent problem is when diversion programs are applied inequitably, and youth of color have less access to programs than white youth.⁶

WHAT WORKS

- **Warn, counsel, and release the vast majority of young people in contact with the system as the first opportunity for diversion.**⁷

Research suggests that most youth who come into contact with the juvenile justice system do not need any intervention in order to avoid further contacts, and unnecessary interventions may in fact be harmful to youth development.⁸ A 2013 study found that youth assessed as low-risk who were referred to intervention programs had a higher rate of recidivism than youth who received only a warning.⁹ More intensive diversion models including therapeutic services and an “individualized service plan” should be reserved for high needs case.¹⁰

- **Prevent net-widening and referral of youth who are not charged.**
Researchers have warned against the net-widening effects of youth diversion, which is when a diversion program brings in youth who would not otherwise have been supervised, and whose behavior would have been addressed in school and by parents and community members.¹¹
- **Avoid formal system involvement for youth charged with misdemeanors.**¹²
Alternatives to probation and formal system involvement are more effective interventions for youth who have not been accused of serious or violent offenses.
- **Expand and define eligibility criteria for diversion using evidence-based instruments.**
Diversion programs should have specific written criteria that define eligibility for program entry. The criteria should be based on research evidence as to what is effective in reducing youth delinquency.¹³
- **Identify community-based groups to oversee diversion instead of arms of the justice system.**¹⁴
Community-based groups are most responsive to the needs of low-risk youth in the justice system and should be given oversight of diversion. Youth in diversion programs should not be placed in “probation-lite” programs that overburden court agencies, but should rather be served by community-based organizations with evidence-based programming.¹⁵
- **Use Restorative Justice Practices**¹⁶
Family conferences, victim conferences, and mediations, such as that offer by Restorative Response Baltimore, are a cost-effective and evidence-based alternative to court involvement.
- **Do not use court-imposed sanctions as a consequence for failure to complete a diversion agreement.**¹⁷
Absent subsequent offending, court intervention is not necessary. Most youth grow out of delinquent behavior without re-arrest, and formal processing can increase the risk of future offending.
- **Ensure racial and ethnic equity and cultural responsiveness of diversion policies, practices, and programs.**¹⁸



DJS statistics identify significant racial disparities in the current use of diversion, as youth of color, youth of color in 2018 were nearly twice as likely to have their cases referred to juvenile court intake, 50% more likely to have their cases petitioned, and 30% less likely to be referred to diversion.

Diversion programs must be designed and implemented so as to reduce these disparities, and adequate records must be kept to ensure that they decrease and do not exacerbate disparities.

- **Diversion program must protect youth privacy and limit information use.** Best practices in diversion require privacy and confidentiality protections that define whether admission of the offense is a pre-requisite to participation, whether youth can consult legal counsel prior to accepting diversion, that prevent the future use of incriminating statements made by youth during a program, that guarantee therapist-patient confidentiality, and that limit the sharing of information by service providers.¹⁹ Such protections must be written into policy and shared with youth before they make the decision to participate.

WHAT MARYLAND HAS

The Department of Juvenile Services reported that 60% of cases referred in FY2019 were either diverted or resolved without a formal petition. However, data suggests significant room for expansion of diversion, as less than half of petitioned cases were for a “person-to-person” or violent offense.²⁰ Further, DJS reported disturbing racial disparities in the use of diversion. Statewide, youth of color were nearly twice as likely to have their cases referred to juvenile court intake, 50% more likely to have their cases petitioned, and **30% less likely to be referred to diversion.**²¹ Baltimore City performs significantly worse than the rest of the state in the use of diversion: only 22% of youth are diverted or resolved without a formal petition, whereas youth of color are nearly 5x as likely to be referred to juvenile court intake.

RECOMMENDATIONS

1. Eliminate “status offenses” “violations” and “Child in Need of Supervision” from the “Juvenile Causes” section of the Maryland Code.

Maryland should remove these provisions from the code and replace it with language clarifying that if young people engage in these non-criminal behaviors, they could be referred to social service agencies, community-based organizations, schools, or local management boards. However, it should also clarify that the reasons cannot result in a citation, complaint, or referral to court.



2. Codify COMAR 13A.08.01.15 in state law.

Narrow the definition of “delinquent act” in Md. Code Ann., Cts. & Jud. Proc. § 3-8A-01(l) by clarifying that it excludes common minor school misbehavior (i.e., disturbing school activities or being involved in a fight at school) from the juvenile justice system.

3. Revise the definition of “delinquent act” to exclude children age 13 and under, or to create a strong presumption that behaviors of young children are not criminal in nature.

4. Standardize and expand the use of informal adjustments by the Department of Juvenile Services.

a. Amend Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10 to require – at a minimum – informal adjustment of all first and second-time referrals for misdemeanor and non-violent felonies to the Maryland Department of Juvenile Services.

b. Amend Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10 to eliminate the requirement of victim consent for an informal adjustment to proceed. Victim consent is not required to divert adults from the adult criminal justice system, and it should not be allowed to force youth into a system that is likely to leave them – and public safety – worse off than if they were diverted to a community-based program.

c. Amend Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10 to eliminate the requirement that DJS forward all complaints alleging felonies to the State’s Attorney for review for approval for intake adjustment. Non-violent felonies should be exempt from this requirement.

d. Give judges explicit authority to return a case that has been petitioned back to intake for informal adjustment by adding that authority to Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10 (previously introduced in the 2020 legislative session as HB 842, which passed the House unanimously 138-0).

e. Create explicitly statutory framework for the use of citations for misdemeanor offenses and allow for police citations to be resolved through police diversion or complaint to DJS.

5. Standardize and expand options for community-based diversion prior to a referral to DJS.



- a. Require the Attorney General to issue a directive similar to that issued by New Jersey's Attorney General that standardizes use of diversion by law enforcement agencies. State law should also require the Maryland Police and Correctional Training Commissions to a new model diversion policy aligned with that directive.
- b. Create a program similar to California's Youth Reinvestment Grant Program to provide resources to community-based organizations and localities to develop pre-arrest and post-arrest but pre-referral diversion programs. As part of the program, require counties to identify at least one pre-arrest or post-arrest diversion option.
- c. Add an incentive structure similar to that of South Dakota's S.B. 73 that would provide funding to localities that refer youth to community-based diversion options instead of forwarding their cases for handling by the DJS.
- d. Require DJS to collect, publicly publish, and evaluate access to, use of, and effectiveness of diversion programs.

Quick Reference: 16 Steps for Planning a Diversion Program

A. Purpose

- 1) **Objectives:** The main purpose(s) for developing a diversion program will need to be identified.
 - What will be the primary objectives of the diversion program?
 - In your community, what stakeholders from the juvenile justice public/private youth services systems will be involved to provide input and support in shaping the development of your diversion program?
- 2) **Referral Decision Points:** There are various points within the juvenile justice processing continuum where youth can be targeted for diversion.
 - At what point or points will referral decisions be made?
 - Who, within the processing spectrum, will be responsible for making the decision to divert youth?
- 3) **Extent of Intervention:** The diversion program must consider the kind and degree of intervention it will have in the youth's life.
 - What degree of intervention(s) will the program utilize?
 - Will the program provide the youth with a written contract (either formal or informal)?

B. Oversight

- 4) **Operations:** It is necessary to determine who will have primary responsibility for implementing and operating the diversion program and what the level of community oversight will be.
 - What agency or entity will establish and maintain the program policies, provide staffing, and take responsibility for program outcomes?
 - Will an advisory board or panel be developed to oversee the development of policies and procedures for the diversion program?
 - How will the engagement and buy-in of stakeholders be obtained?
- 5) **Funding:** Jurisdictions developing or implementing a diversion program must determine how the program will be funded and sustained for both the short and the long run.
 - How will the diversion program be funded?
 - Are secure funding streams currently in place that can help to sustain the program in the future?
 - Has the possibility of using other local, state, or federal resources to help support the diversion program or key aspects of the program been explored?

C. Intake Criteria

- 6) **Referral and Eligibility:** A diversion program will need to establish criteria that specify who is eligible for entry into the diversion program.
 - What youth will be eligible for diversion?
 - What offenses will be accepted for diversion? Are there any offenses that might make a youth ineligible and will there be options for discretion?
 - Are there any offenses that might make a youth ineligible and will there be options for discretion?

Quick Reference: 16 Steps for Planning a Diversion Program *continued*

7) Screening and Assessment: Diversion programs may utilize evidence-based screening and assessment tools to assess risk, needs, and behavioral or mental health problems.

- Will any screening and/or assessment methods/tools be used to determine a youth's eligibility, and if so, how will these tools be chosen and who will administer them?
- For what purposes will screening and assessment be used?
- Are there any protocols in place to deal with the sensitive nature of information collected and how, if at all, it can be shared among child-serving agencies?

D. Operation Policies

8) Participant Requirements: It is important to determine the conditions and responsibilities youth will have to follow in order to ensure meaningful program participation.

- What obligations and conditions will the program require for the youth's participation and successful completion?
- How will requirements focus on youths' strengths, address behavioral health needs, satisfy victim concerns, and involve community efforts?

9) Services: The diversion program will need to consider what services, if any, will be provided to the youth by the program or through referral to community-based services, as well as how those services will be administered.

- What services will be provided for the youth while participating in the diversion program?
- Will the diversion program need to perform an inventory of community services, and if so, who will be responsible for this effort?
- Will the diversion program encourage or require the youth's family to participate in services?
- Are there any agreements in place or Memoranda of Understanding (MOU) among the program and community service providers that will better facilitate services to the youth?

10) Incentives: Incentives should be employed by a diversion program in order to motivate youth and caretakers to meet the terms of the diversion program and to ensure successful program completion.

- Will the diversion program use any incentives to motivate youth and/or caretakers throughout the diversion process? If so, what forms of incentives will be used?
- Is the use of incentives economically feasible for the diversion program and what funding source will support incentives?
- Will the court agree to dropping charges against the youth or expunging records once the youth successfully completes the terms of diversion?

11) Consequences of Failure to Comply: Consequences must be specified for youth since some may have trouble fulfilling the terms of their diversion, either by failing to comply with the program's requirements or by declining to participate altogether.

- Will there be any negative consequences for youth who fail to comply with the diversion program's requirements? If so, what will these sanctions be?
- Will the youth ultimately be formally processed for failing to comply with diversion?

Quick Reference: 16 Steps for Planning a Diversion Program *continued*

12) Program Completion/Exit Criteria: Criteria must be established that will define when a youth has successfully completed the terms of their diversion and is ready to exit the program.

- How will the diversion program monitor a youth's success or failure during program participation?
- How will successful program completion be defined, and will there be established exit criteria?

E. Legal Protections

13) Information Use: The diversion program will need to consider what procedures and protocols should be in place that will establish how sensitive information is collected and will be kept confidential.

- What will be the conditions/guidelines for the use of information obtained during the youth's participation in the diversion program?
- How will policies concerning the collection and use of information be clearly established and conveyed to youth and caretakers prior to participation in diversion?

14) Legal Counsel: In the absence of a state statute or local policies, the program should have established guidelines for the role of counsel.

- What role will defense counsel play? Are there local policy provisions in place or statutory guidelines that establish the role of counsel?
- Will the diversion program make counsel available to youth and family?

F. Quality

15) Program Integrity: It is important to carefully attend to the diversion program's development and maintenance to ensure continued quality and program fidelity.

- Are there clear policies and procedures that will be put into manual form for program personnel to maintain program quality and fidelity?
- How will training be developed and delivered for diversion program personnel?
- How will information be collected and in what formats?
- Will the program conduct a process evaluation?

16) Outcome Evaluation: To ensure the diversion program is meeting its objectives and goals, a record-keeping and data collection system should be in place to assist in providing periodic evaluations.

- What kind of record keeping and data collection will be used to provide periodic evaluations of the diversion program and monitor achievement of goals and objectives?
- What youth and program outcomes will be used to measure success?

¹ Department of Juvenile Services, *Data Resource Guide 2018*, p. viii.

² Models for Change Juvenile Diversion Workgroup, *Juvenile Diversion Guidebook* at 11 (2011), <http://www.modelsforchange.net/publications/301>

³ Farrel, Betsinger, & Hammond. *Best Practices in Youth Diversion: Literature Review for the Baltimore City Youth Diversion Committee*. Univ of Md. School of Social Work (Aug 2018), <https://theinstitute.umaryland.edu/media/ssw/institute/md-center-documents/Youth-Diversion-Literature-Review.pdf>

⁴ Daniel Mears et. al, *Juvenile Court and Contemporary Diversion: Helpful, Harmful, or Both?*, *Criminology and Public Policy* 15(3):1–29 (2016).

⁵ Farrel at 3; Models for Change at 13.

⁶ Farrel at 4;

⁷ Farrel at 4-5.

⁸ Annie E. Casey Foundation, *Transforming Juvenile Probation: A Vision for Getting it Right* at 26 (2018).

⁹ Holly Wilson & Robert Hodge, The effect of youth diversion programs on recidivism: A meta-analytic review. *Criminal Justice and Behavior*, 40 (5) (2013).

¹⁰ Annie E. Casey Foundation at 26 (2018).

¹¹ Daniel Mears et. al, Juvenile Court and Contemporary Diversion: Helpful, Harmful, or Both?, *Criminology and Public Policy* 15(3):1–29 (2016).

¹² Farrel at 5.

¹³ Models for Change at 34.

¹⁴ Farrel at 5.

¹⁵ Annie E. Casey Foundation at 23.

¹⁶ Farrel at 5.

¹⁷ Id.

¹⁸ Id.

¹⁹ Models for Change at 52-55.

²⁰ Department of Juvenile Services, *Data Resource Guide 2018*, p. 23.

²¹ Department of Juvenile Services, *Data Resource Guide 2018*, p. 233.

²² Models for Change Juvenile Diversion Workgroup, *Juvenile Diversion Guidebook* at 19-21 (2011), <http://www.modelsforchange.net/publications/301>