



# Youth Justice and Diversion in Maryland: Issue Brief and Joint Recommendations

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## Why Diversion Matters

Maryland legal system contains many laws that unnecessarily bring young people, and disproportionately youth of color, to the attention of the justice system.<sup>1</sup> Most often, this is for behaviors that are either typical adolescent behaviors or a reflection of how we have marginalized large segments of Maryland's youth. Most young people's contact with the system results from someone labeling typical adolescent behavior, or behavior stemming from trauma, abuse, neglect, or poverty, as "criminal" conduct – instead of seeing that behavior as an indicator of a need for support to help that young person thrive. Referring youth to the justice system for these behaviors is ineffective, harmful, and a poor use of scarce financial resources.

Studies show that formal interventions by the juvenile justice system do more harm than good for a large percentage of youth.<sup>2</sup> Compared to system intervention, diversion generally decreases a young person's likelihood of re-arrest. For example, a 2013 study found that low-risk youth placed in diversion programs **reoffended 45% less often** than similar youth who were formally processed or who received restrictive sanctions.<sup>3</sup> In another study, among young people in the National Longitudinal Survey of Youth who were arrested during their high school years, **those who were formally processed in court proved far more likely to drop out of school** than those who were not formally processed. Even after controlling for a wide variety of

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<sup>1</sup> Maryland Department of Juvenile Services, Data Resource Guide: Fiscal Year 2019, pg. 22 (December 2019), available at [https://djs.maryland.gov/Documents/DRG/Data\\_Resource\\_Guide\\_FY2018\\_full\\_book.pdf](https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2018_full_book.pdf) (showing that youth of color are 2.56 times more likely than white youth to be referred to juvenile court/intake).

<sup>2</sup> Wilson, H. A., & Hoge, R. D. (2013). The effect of youth diversion programs on recidivism: A meta-analytic review. *Criminal Justice and Behavior*, 40(5), 497–518. <https://doi.org/10.1177/0093854812451089>

<sup>3</sup> *Id.* at 8.



demographic, socioeconomic, academic and behavioral factors, **formal processing in juvenile court sharply reduced the likelihood that young people would graduate from high school.**<sup>4</sup>

Similarly, a 2018 report by the Center for Juvenile Justice Reform at Georgetown University and the Council of State Governments Justice Center concluded that youth who are not arrested or are diverted from court are less likely to be rearrested and more likely to succeed in and complete school than peers who are formally adjudicated in the juvenile justice system.<sup>5</sup> Longitudinal studies and brain science research corroborate these findings, demonstrating that the majority of young people age out of delinquent behavior, with or without system intervention.<sup>6</sup>

In spite of increased use of diversion in Maryland, and other jurisdictions in recent years, disparities for youth of color persist.<sup>7</sup> As the W. Haywood Burns Institute for Justice, Fairness, and Equity noted in a recently released report: “The long-term consequences of youthful misbehavior for youth of color are numerous and oftentimes, extreme. Most young people are allowed to grow out of these behaviors without getting entangled in the justice system. However, youth of color are more likely to be arrested, prosecuted, sentenced, and incarcerated for these behaviors than are their White peers . . . .”<sup>8</sup> Thus, there is an urgent need for jurisdictions to expand diversion efforts with a focus on racial and ethnic equity and an explicit goal of using diversion as a tool to reduce racial and ethnic disparities.

## What’s Happening in Maryland Now?

In Fiscal Year 2019, **81% of referrals to the Maryland Department of Juvenile Services were for status offenses, citations, ordinance violations, and misdemeanor offenses.**<sup>9</sup> Research has told us time and time again that diverting these youth away from arrest and court involvement gets better public safety outcomes and better results for the young people themselves.

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<sup>4</sup> Sweeten, G. (2006). Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement. *Justice Quarterly*. 23(4). Retrieved from [www.masslegalservices.org/system/files/library/H.S.ed\\_and\\_arrest\\_-\\_ct\\_involvement\\_study\\_by\\_Sweeten.pdf](http://www.masslegalservices.org/system/files/library/H.S.ed_and_arrest_-_ct_involvement_study_by_Sweeten.pdf)

<sup>5</sup> Josh Weber et al., *Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes 4* (2018) (citing National Research Council, *Reforming Juvenile Justice: A Developmental Approach* (2013)).

<sup>6</sup> *Id.* at 4-5.

<sup>7</sup> W. Haywood Burns Institute, *Stemming the Rising Tide: Racial & Ethnic Disparities in Youth Incarceration and Strategies for Change* (May 2016).

<sup>8</sup> *Id.*

<sup>9</sup> Maryland Department of Juvenile Services, *Data Resource Guide: Fiscal Year 2019*, pg. 22 (December 2019), available at [https://djs.maryland.gov/Documents/DRG/Data\\_Resource\\_Guide\\_FY2019\\_.pdf](https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2019_.pdf)



Maryland's reliance on expensive and ineffective referrals to the youth justice system is a result of several issues:

- Maryland law defines “delinquent act” as “an act which would be a crime if committed by an adult.” By defining “delinquent act” so broadly, as any act that would be a crime if committed by an adult, Maryland law makes it possible to label a huge array of normal adolescent behavior as a “delinquent acts.” These include behaviors that almost all of us have engaged in, including fights at school (mutual affray or second-degree assault), shoplifting (misdemeanor theft), and talking back to law enforcement (disturbing the peace/disorderly conduct). Many other states exclude these kinds of incidents from the jurisdiction of the youth justice system, handling them as municipal violations or diverting them altogether.
- Maryland law also allows cases to be filed in court for “Child[ren] in Need of Supervision” or CINS. This includes youth skipping school, who are “disobedient” at home, who run away from home, or who have “committed an offense applicable only to children” (known as “status offenses” because they are behaviors that are treated as offenses only because of a young person’s age (e.g., being under 18 years old). Youth can also be cited and referred to the Maryland Department of Juvenile Services for “violations” that are not defined as “delinquent acts” but are behaviors that still can result in court and juvenile justice involvement. “Violations” include underage use or possession of tobacco or alcohol, possessing or using a fake ID, and use or possession of small amounts of marijuana, among other behaviors. Many of these behaviors are part of normal adolescent development (and again, behaviors that many adults engaged in while adolescents), but children and youth can end up in court, placed under the supervision of the justice system, or removed from their homes. Even if a young person does need some help or support, it does not have to be through the justice system. The Maryland Department of Juvenile Services reported that **over 2,400 youth were reported to DJS with CINS referrals or citations as their most serious alleged offense in Fiscal Year 2019, which was 13% of all referrals to DJS.**<sup>1011</sup>
- There is no clear guidance in Maryland law requiring or informing law enforcement’s use of diversion, such as warning and releasing youth to parents or legal guardians or referring youth to a community-based program. **While some jurisdictions in Maryland have developed diversion programs for law enforcement, such as Baltimore County’s JOINS program, not every young person lives in a place that offers an option for this type of diversion.** The Maryland Police and Correctional Training

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<sup>10</sup> *Id.* at 22.

<sup>11</sup> *Id.* at 22.



Commissions did release [Model Policies](#), last updated in 2007, that suggest that in cases involving minor offenses, law enforcement officers should “consider releasing the juvenile [] to the custody of a parent or legal guardian at the scene of the incident before transporting the juvenile to a police facility and formally processing the juvenile.” However, the Model Policies do not provide guidance on when a law enforcement officer should consider diversion.

- The Maryland Department of Juvenile Services has the authority to handle cases informally in certain situations. State’s Attorneys also have the authority to decline to prosecute cases or to refer them back to DJS for informal adjustment. However, **there is no requirement that youth be diverted under certain circumstances**. In addition, without clear criteria requiring diversion, officials will use their discretion to make decisions — discretion that can lead to disparate outcomes for youth of color. Indeed, Maryland’s own data show that **youth of color are statistically significantly less likely to be diverted than white youth**.<sup>12</sup>
- Moreover, DJS must obtain the permission of the State’s Attorney if considering diversion for misdemeanor referrals involving a handgun, felony referrals, and referrals for crimes of violence. **Additionally, under Maryland law, victims must consent to diversion for youth to be eligible, even though victim consent is not required for diversion in the adult criminal justice system**. Maryland’s own data shows that diversion works – and gets better public safety outcomes. For example, a 2019 report found that the one-year recidivism rate for youth who were informally handled by having their cases closed at intake or put on pre-court supervision had respective recidivism rates of 7% and 9%,<sup>13</sup> compared to a 15% recidivism rate for youth who had their cases formally processed by a State’s Attorney.<sup>14</sup>
- Finally, Maryland does not include a minimum age for the definition of “delinquent act” or delinquent child,” meaning that very young children can be labeled as delinquent and referred to court. For example, in Fiscal Year 2019, 1,882 complaints were referred to DJS intake for youth age 12 and under, **with 83% of the most serious charges in those**

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<sup>12</sup>*Id.* at 230.

<sup>13</sup> Recidivism is defined as a new sustained offense within a period. Maryland Department of Juvenile Services, “Alternatives to Detention and Informal Case Processing Performance Report,” Maryland Department of Juvenile Services, pg. ii (December 2019), available at <https://bit.ly/3n2Aqu8>.

<sup>14</sup>*Id.*



**referrals being misdemeanors.** Black youth represented two-thirds (65.8%) of youth age 12 and under referred to DJS.<sup>15</sup>

## What Have Other States Done to Get Better Outcomes?

The following are three examples of reforms in other jurisdictions that successfully aligned diversion laws, policies, and practices with research and best practices.

### Kentucky

As part of a comprehensive youth justice reform package in Kentucky in 2014 known as [Senate Bill 200](#), the state made major changes to increase the use of diversion. These changes included:

- Requiring the Administrative Office of the Courts and county attorneys to offer all youth referred to intake on first-time misdemeanor complaints an opportunity to be diverted from court.
- Strictly limiting county attorneys' authority to override diversion decisions for youth meeting the criteria for a mandatory diversion offer.
- Making diversion possible for youth referred to intake on third misdemeanors and first-time felonies not involving sexual offenses or deadly weapons.
- Establishing multidisciplinary teams in each judicial district to help youth with high needs and those not progressing toward diversion completion to finish diversion requirements successfully.

A [September 2020 evaluation](#) of Kentucky's diversion efforts completed by the Urban Institute found that as **more youth were diverted from formal court involvement after reform, Kentucky maintained its high diversion success rates (nearly 9 out of 10 youth completed diversion) and had no statistically significant change in recidivism** in any eligible complaint category, which included first, second and third-time misdemeanors, status offenses and many first-time felony offenses. Urban observed increases in diversion for all youth – that is, for boys

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<sup>15</sup> Maryland Department of Juvenile Services, Data Resource Guide: Fiscal Year 2019, pgs. 26-27 (December 2019), available at [https://djs.maryland.gov/Documents/DRG/Data\\_Resource\\_Guide\\_FY2019\\_.pdf](https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2019_.pdf).



and girls, white youth and youth of color, and youth charged with a wide range of complaints. Though racial and ethnic disparities remain significant, particularly for Black youth, Urban found that policy reforms began to narrow the gap between white and Black youth in some areas.

## Utah

As part of comprehensive youth justice reform enacted in 2017 in [H.B. 239](#), Utah expanded its use of diversion. Specifically, Utah:

- **Removed low-level, school-based offenses from juvenile court jurisdiction altogether**, requiring that low-level offenses—e.g., truancy, the lowest-level misdemeanors, and infractions such as disruption, and disorderly conduct—committed on school grounds during operating hours be handled without court intervention.
- **Standardizing and expand pre-court diversion by establishing statewide criteria for nonjudicial adjustments** and requiring that intake officials offer all youth referred for infractions, status offenses, or misdemeanors the option of nonjudicial adjustments unless the youth has more than three prior adjudications or has been unsuccessful in four or more previous nonjudicial adjustments.
- **Expanding authorization and funding for community-based alternatives to court processing** by requiring a statewide increase in the availability of interventions that enable law enforcement and school staff to respond effectively to youth without formally involving the justice system.

The Pew Charitable Trusts, which assisted with reform efforts, has [noted that](#) even as of July 2018, Utah reported \$18.9 million in reinvestment and reallocation of current resources into service expansion in the community. Moreover, rates of diversion from court through nonjudicial adjustment rose substantially. Between fiscal 2016 and 2018, the share of court referrals that resulted in a nonjudicial adjustment increased 224 percent, reaching 55 percent of all referrals in fiscal 2018.

## South Dakota

Similar to Kentucky and Utah, South Dakota's 2015 comprehensive bipartisan youth justice reform legislation, [S.B. 73](#), standardized and increased the use of diversion in several ways, including:



- **Providing fiscal incentives to counties that expand the use of diversion** by requiring the state’s youth justice agency to award funding to counties based on the number of youth who successfully complete diversion. The incentive is set at \$250 per youth diverted unless the total requests exceed the agency’s annual budget for diversion, in which case the incentives are prorated.
- **Making diversion the presumptive (default) response for many lower-level offenses.** New criteria compel diversion from formal court processing for youth charged with nonviolent misdemeanors or status offenses who have no previous adjudications and no diversions over the past year. 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 has the ability to divert the youth over the prosecutor’s objection.
- **Create a citation process for lower-level offenses.** A new procedure for certain delinquency and status offenses addresses low-level violations, such as petty theft, with citations – similar to those given for adult municipal violations such as traffic tickets— while maintaining the protections of confidentiality offered by the juvenile system.

## California

There are many models of how states have created structures to fund community-based diversion services, including the creation of dedicated grant programs for prevention and diversion services. For example, California law established the [Youth Reinvestment Grant Program](#) in its [2018 Budget Act](#) and a related trailer bill, [Assembly Bill 1812](#). The Youth Reinvestment Grant Program targets underserved communities by making funding available to divert youth from initial or subsequent contact with the juvenile justice system using approaches that are evidence-based, culturally relevant, trauma-informed, and developmentally appropriate. Grantees include community-based organizations and local governments, although local government agencies must pass through 90 percent of awarded funds to community-based organizations who will deliver diversion services.

## New Jersey

In 2008, New Jersey’s Attorney General promulgated [state standards](#) for the use of diversion by law enforcement, including what are known as “stationhouse adjustments.” The Attorney General’s standards were designed to promote the use of diversion by law enforcement in lieu of an arrest, as well as after taking a young person into custody. The directive provides that “every law enforcement agency with patrol jurisdiction shall implement stationhouse adjustment procedures which conform to the Attorney General Guidelines for Stationhouse Adjustments of Juvenile Delinquency Offenses.” One of the primary stated purpose of the guidelines was to



“promote equality within the justice system by providing equivalent access to police diversionary programs regardless of domicile.”

## Recommendations

The following recommendations were created to align Maryland’s approach to diversion with research and best practices.

- 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. Narrow the definition of “delinquent act” in Maryland to focus on public safety, not minor misbehavior.** The definition of “delinquent act” in Md. Code Ann., Cts. & Jud. Proc. § 3-8A-01(I) should clarify that it excludes common minor misbehavior (i.e., disturbing school activities or being involved in a fight at school) from the jurisdiction of the juvenile justice system, as has been done in Utah. This could be accomplished by excluding specific behaviors from the definition of “delinquent act,” or by adding language directing the Department of Juvenile Services to implement a developmentally appropriate framework for determining when such behaviors do not qualify as “delinquent acts.” While these behaviors would no longer fall within the definition of “delinquent act,” youth could still be referred to social service agencies, community-based organizations, schools or local management boards.
- 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.** This could also be accomplished by adding language creating a presumption against children age 13 and under having engaged in a “delinquent act” and giving the Department of Juvenile Services authority for making determinations when any exceptions to the presumptions should occur. Again, while those behaviors would no longer fall within the definition of “delinquent act,” youth could still be referred to social service agencies, community-based organizations, schools or local management boards.





#### 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. Maryland law should explicitly allow 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 in lieu of formal youth justice system involvement.

## For More Information

**The Maryland Youth Justice Coalition (MYJC)** is a group of passionate advocates dedicated to creating a more fair and equitable youth criminal legal system where youth are given opportunities and options. MYJC aims to improve the lives of all system-impacted youth through legislative and policy advocacy. MYJC is made up of organizations and individuals, including directly impacted and youthful representatives, who share an equitable vision for the future of the youth criminal legal system and who are dedicated to supporting evidence-based, culturally competent solutions vetted by directly impacted individuals and communities. For more information, contact Ashley DeVaughn ([adevaughn@acy.org](mailto:adevaughn@acy.org)) or Hannah Breakstone ([hbreakstone@acy.org](mailto:hbreakstone@acy.org)) at Maryland Advocates for Children and Youth.

**The People's Commission to Decriminalize Maryland** was established for the express purpose to reduce the disparate impact of the justice system on youth and adults who have been historically targeted and marginalized by local and state criminal and juvenile laws based on their race, gender, disability, or socioeconomic status. Established in 2019 with support and participation from almost three dozen Maryland-based advocacy organizations, coalitions and impacted individuals, the People's Commission has been developing recommendations for the 2021 legislative session that will identify laws that need to be reformed or eliminated in five policy areas: drugs, homelessness, poverty, sex work and, youth justice. For more information, contact Jason Szanyi ([jszanyi@cclp.org](mailto:jszanyi@cclp.org)) or Tiana Davis ([tdavis@cclp.org](mailto:tdavis@cclp.org)) at the Center for Children's Law and Policy or visit [www.decrimmaryland.org](http://www.decrimmaryland.org).