

LESS CRIME FOR LESS MONEY

Why Massachusetts should reduce unnecessary and harmful court processing for children and teens

At age 15, David was arrested for driving a scooter without a license, charged in court and found delinquent. Already struggling in school, David spent the next two years in and out of detention, the system's response to his failure to attend school regularly. After weeks out of school, he fell even further behind and was held back this fall. His case will remain open until he turns 18. The maximum penalty for an adult committing the same offense would have been a fine.

Massachusetts is often recognized as a leader in developing innovative approaches to rehabilitating young people.¹ But while our juvenile system is a model in some areas — policies for LGBTQ youth in custody, limits on the use of “solitary” confinement, and access to specialized counsel — in other areas our laws and practices are not keeping up with a growing body of research on what works for children and adolescents who get in trouble.

One notable example is our poorly funded, fragmented, and inconsistent approach to keeping low-risk youth out of court. Unlike most states, Massachusetts does not currently provide funding for or require juvenile diversion of any kind. Instead, police, district attorneys, and court personnel offer a discretionary and disparate array of programs and practices, with no requirements to follow best practices or track what they do. The result is that children across the Commonwealth receive starkly different opportunities to avoid court involvement depending on where they live. Given the lack of statutory mandate or other support, efforts to offer these programs, which are voluntary and paid for out of existing funds, are laudable. However, it is critical to assess whether the programs we pay for are offered fairly or are effective.

Our current approach is not just inconsistent, it doesn't work: far too many low-level cases are still reaching our courts that could be better addressed with community alternatives. Research is clear that saddling youth with an arrest or court record, or removing them from their homes, actually increases recidivism rates.² Yet Massachusetts currently uses our Juvenile Courts to address many

KEY FINDINGS

Unnecessary prosecution and incarceration harms young people, undermines public safety, and costs Massachusetts tens of millions of dollars annually.

Most cases in the Massachusetts Juvenile Courts are minor and pose little safety risk to the community.

Diversion is more effective than formal system processing in reducing future delinquency.

Diversion programs are less costly than formal system processing and provide a wealth of other benefits to young people and communities.

Massachusetts taxpayers spend roughly \$50 million each year to confine youth with low-level offenses.

instances of low-level adolescent misbehavior. Taxpayers spend roughly \$50 million each year to have youth with low-level offenses detained or committed to the Department of Youth Services.³ This money could be far more effectively spent on community-based diversion programs that hold youth accountable without the cost or negative public safety consequences of court processing. **A more comprehensive, evidence-driven, fair system for “diverting” low-level cases from Juvenile Court prior to arraignment is long-overdue.**

Diversion programs produce less crime and better outcomes for less money

Research has found that the first time a young person is arrested doubles their risk of dropping out of high school, even when controlling for socioeconomic, educational and family characteristics.⁴ If a young person’s case is processed in court, the risk of drop-out skyrockets to between a five and eightfold increase.⁵ Court processing also increases the risk of further delinquency when compared to diversion from formal processing.⁶ A comprehensive systemic meta-analysis found that,

*[There is] no evidence that formally moving juveniles through the juvenile justice system has a crime control effect. In fact, all analyses showed an average main effect that was negative: i.e., **processing increased delinquency**. ... A moderating analysis examining the type of diversionary alternative indicated that processing was not as effective as “doing nothing” (i.e., diversion without services) and was even more negative when [compared to] diversion [] coupled with some type of service or intervention (i.e., diversion with services).⁷*

Effective diversion programs can hold youth accountable and direct them to services, treatment, and opportunities for community involvement while avoiding the creation of a court (or arrest) record. Diversion programs are less costly than formal system processing and the benefits for individuals and communities are significant. Researchers conducting cost-benefit analyses of six leading diversion program models found that every \$1 spent on diversion produced benefits of \$10.60 - \$25.60 for the community.⁸ A similar comprehensive national review comparing the effectiveness of diversion programs to traditional court processing concluded: **“Even if the diversion program were more expensive than system processing... the crime reduction benefit associated with the diversion program would likely persuade any cost-benefit analysis to favor the implementation of diversion programs.”⁹**

Low-Level Misbehavior is Normal for Teens, But Most Teens Are Never Sent to Court For It

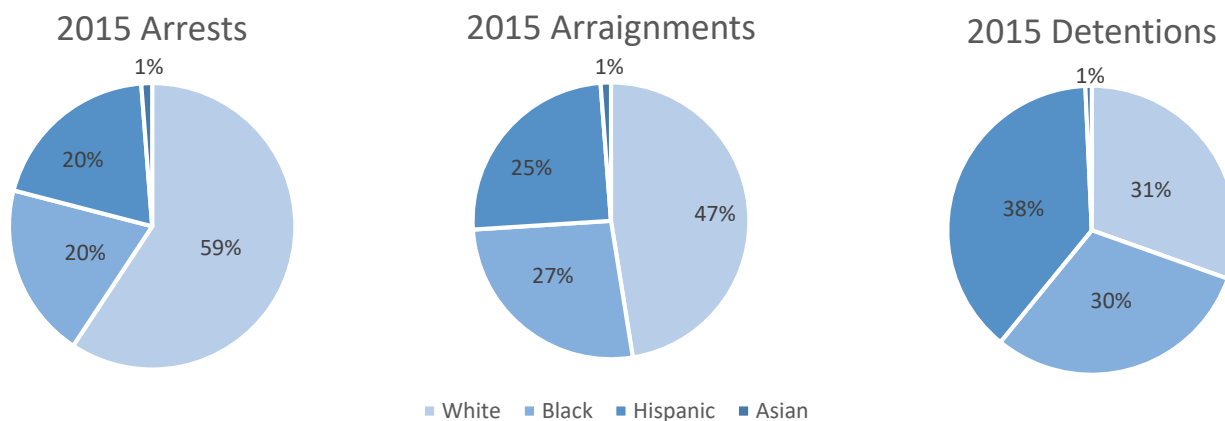
National and state data indicates that well over half of the adolescents in Massachusetts engage in behavior that is potentially chargeable at some point during their teen years, including activities such as minor fights, experimental drug use, petty theft, and consensual sexual contact with peers.^{10,11} The teen brain is not fully developed until the mid-twenties, and the impulsivity,

emotionality, and limited ability to consider future consequences that is the hallmark of adolescence also makes low-level criminal misbehavior normative.¹² Research shows that the majority of young people who engage in criminal behavior commit one or two crimes and then commit no more.¹³ While this behavior must be addressed, families with financial resources are often afforded alternatives to arrest or court to help youth get on the right track. Those who *are* arrested or sent to court tend to be youth who live in poorer, more heavily policed cities, towns and school districts, youth of color, and children in the child welfare system.

Youth of Color Are Disproportionately Burdened by our Unfair System

Research indicates that youth of color are just as likely to act out or misbehave as teenagers. Our current system, however, results in far more youth of color being processed in court and detained out of their homes. While youth of color make up less than half of youth who are arrested, they are arraigned and detained at far higher rates than white teens in Massachusetts. By ensuring that all youth in every county have an equal opportunity to avoid formal system processing, we can also help to reduce racial and ethnic disparities in our system.

Figure 1:



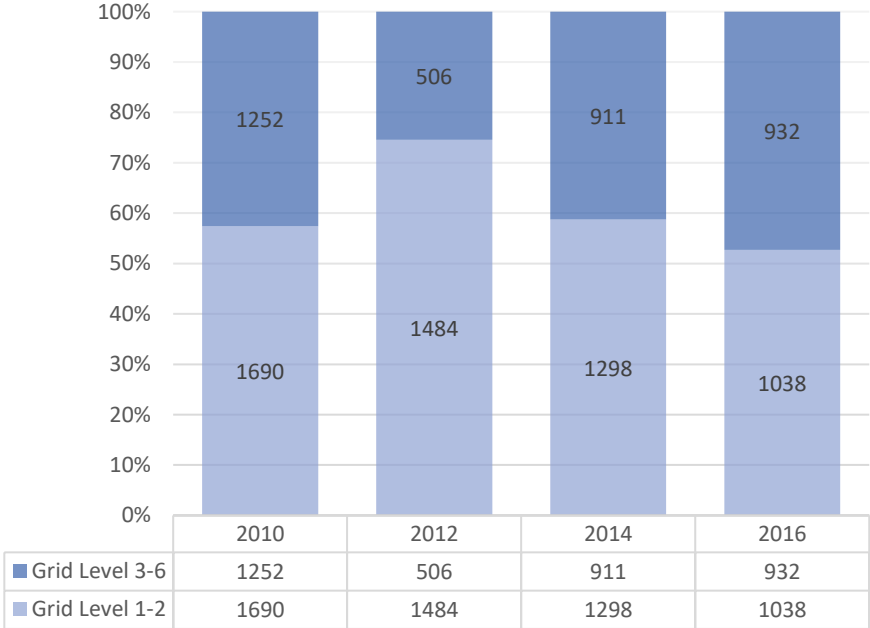
The Majority of Cases in Massachusetts' Juvenile Courts are Low-level

Kids these days are actually better behaved, at least as far as criminal activity goes. Juvenile arrests in Massachusetts are down dramatically from their peak in the mid-1990s, dropping in half between 2008 and 2014. The Juvenile Court *delinquency* caseload has declined along with arrests, even accounting for the addition of seventeen year olds into the juvenile system in 2013.¹⁴

The vast majority of cases that end up in the Juvenile Court today involve low-level offenses, things like disorderly conduct, theft, or minor fights that could be addressed through restitution or restorative approaches. Serious or chronic offenders who are eligible to be indicted as “youthful offenders”¹⁵ are exceptionally rare: in FY2015 these cases made up only 2% of youth arraigned in Juvenile Court.¹⁶

Few young people charged in Juvenile Court are ever found delinquent¹⁷ let alone “committed” to the Department of Youth Services (DYS).¹⁸ However, **a troublingly large number of these youth, who pose almost no risk to the safety of the community, are “detained” once they become involved with the courts, often because of a technical violation of probation (breaking curfew or not attending school “without incident”) or because a judge is worried they won’t appear at a future court hearing.** Over half of youth confined in detention have a misdemeanor as their most serious offense, a percentage that has actually increased over time.¹⁹ DYS tracks the “Grid Level” of offenses for which youth are detained, with Grid Level 1 and 2 cases being the least serious (disorderly conduct, trespass, OUIs, or minor fights). Data from the Massachusetts JDAI initiative has consistently found that these low-level cases make up over half, and in some years and some counties as much as three-quarters, of the detention caseload.²⁰

Figure 2: LOW-LEVEL CASES IN DETENTION



A concerning number of these low-level cases come from our child welfare system or our schools. Roughly 40% of children in detention have a *current* case with DCF.²¹ **In 2012, Massachusetts detained 162 youth whose most serious offense was “disturbing public assembly” or “disorderly conduct,” costing taxpayers roughly \$1.2 million.**²² These students are disproportionately students of color and those with disabilities.²³

Court processing alone is harmful for children, but out of home confinement is even more damaging, disconnecting kids from school and positive activities like sports, disrupting bonds with parents and siblings, and exposing children to traumatic experiences like shackling and strip-searching.²⁴ Research has found that confinement actually tends to *increase* recidivism for all but the most serious offenders.^{25,26}

Massachusetts has fallen behind other states in adopting best practices

Massachusetts does not currently provide funding for or require juvenile diversion of any kind. Police may informally divert youth without sending them to court, but while a few departments have developed model diversion programs, practices differ dramatically across the state. Similarly, nearly all District Attorneys in Massachusetts offer pre-arraignment diversion programs, but there are no requirements that these programs are offered to all youth equitably, nor is there oversight to evaluate if the programs are research-based, effective or appropriate for the population of youth they seek to serve. For example, imposing substance abuse treatment on low-level offenders has been shown to increase recidivism and substance use,²⁷ yet some programs compel diverted youth to participate in treatment regardless of their clinical need.

Given the lack of statutory mandate, the police and DAs' efforts to offer these programs, voluntary and paid for out of existing funds, are laudable. Many are also adopting promising practices. The Middlesex District Attorney's office, for example, works with police departments and community partners to promote restorative justice alternatives to formal system processing.²⁸ In several counties, the DAs offices report that they track demographic data on which youth are offered services (e.g. by race/ethnicity, gender, age, etc.), as well as aggregate outcomes for the program;²⁹ this data is generally not made public, however.

It is critical to assess whether the programs we pay for are effective and fair. The lack of consistency among counties heightens concern over disparities, with reports of suburban youth from wealthier communities receiving more frequent diversion opportunities than youth of color or those living in lower income communities. A 2015 study conducted by ICF International, an independent research agency commissioned by the state Juvenile Justice Advisory Committee, assessed current DA juvenile diversion policies and practices in Massachusetts (*see Appendix for excerpts of the study*). The assessment found that while DAs agreed on the need to prevent youth from unnecessarily entering the system, their programs routinely lacked any system for evaluation or accountability and varied tremendously in structure, eligibility, decision processes, and services. ICF recommended the following reforms be adopted:

- Use standardized screening and assessment tools early on to measure risk factors and identify youth needs.
- Collect data to measure program performance and assess youth outcomes.
- Recruit trained diversion staff to work with youth and provide in-depth case management.
- Enhance interagency collaboration and stakeholder involvement at all stages of diversion.

Massachusetts' Diversion System

No dedicated funding for programs offered by police and district attorneys

Inconsistent standards and practices between counties, resulting in "justice by geography"

No requirement to use evidence-driven programs or to evaluate effectiveness

No data on whether diversion is working or is offered fairly to all youth

No organized system for offering community alternatives to court processing

In addition to the above-noted concerns, police, DAs, families, and counsel for children all report that many children face challenges completing the conditions for existing programs, often because of issues that have no bearing on a child's willingness to be held accountable or make amends for any harm that was done.

Young people may "fail" diversion because they can't complete a requirement for therapy because their parents lose insurance coverage to pay for it. Or a county may offer a shoplifting diversion program, but only to youth who can afford the fee to participate in the program. Lack of transportation, lack of support from family members (or lack of any family member to advocate for them if they

are in DCF custody), and lack of appropriate services in the community are all very real barriers for young people. For this reason it is critical that we evaluate not just which youth are offered these opportunities, but how we can improve these programs, and build the right continuum of services in our communities, to ensure that every child in every community has the chance to avoid a formal court record for minor adolescent mistakes.



Models from Massachusetts and Other States

In Massachusetts, several jurisdictions have developed programs that can serve as models for effective police or district attorney diversion, both here and nationally. In the Cambridge "Safety Net" program, police partner with behavioral health professionals and work in collaboration with service providers to identify youth and families in need of support, and to provide services and case management, all without ever formally arresting a young person. In Suffolk County, the District Attorney's office is now developing a formalized pre-arraignment program that will use validated, evidence-based risk and needs assessment tools to screen young people who would otherwise be charged, utilizing a multidisciplinary team approach that may provide mental health services, mentorship, educational support and restorative justice programs. The program is being designed with evaluation and accountability in mind, and will track whether opportunities are offered fairly to youth of different races and ethnicities, as well as how young people do in the program.

While these programs are promising, they still reflect a lack of consistency between counties and jurisdictions, leading to unfair disparities between how youth in different counties and towns are treated. Many other states have a much more rational, and consistent, system. Nearly every state makes some form of diversion available to juveniles, and most set forth this requirement in their state statutes.³⁰ Alabama, California, Connecticut, Georgia, Idaho, Illinois, Indiana, Montana, New Jersey, New Hampshire, New York, Pennsylvania, Tennessee and West Virginia all authorize probation or other court officers to assess cases pre-arraignment to determine if it will be more beneficial to refer youth to a program rather than continue formal court processing.³¹ In Kentucky, a pre-court diversion process utilizes a risk assessment tool³² to screen youth who have committed minor offenses and have minimal history with the juvenile justice system before a case ever reaches the County Attorney; instead, a court designated worker refers eligible youth to services.³³ A similar system in New York, with Probation screening out low-level cases, results in nearly 40% of the caseload being diverted prior to arraignment.³⁴ In Florida, police who stop youth for minor offenses are authorized to offer them community service and counseling instead of referring them to court, and youth who are charged can be diverted into programs offering evidence-based family therapy programs as an alternative to incarceration.³⁵ And in Oregon, there are “Juvenile Reception Centers” for youth picked up by police to divert them from formal system processing. By adopting these kinds of statewide programs, Massachusetts could help dramatically reduce the current inequities in our system, while also decreasing the number of low-level cases that make it into our courts.

Can there be too much diversion?

“Net widening” refers to an unintentional increase in the number of youth who contact the juvenile justice system because of the introduction of programs designed to reduce system involvement. A program designed to divert youth with shoplifting charges to community-based supervision, for example, may actually result in more teens being referred to court because of the belief that they will not face serious consequences if they are sent to court.

Research suggests that *without careful implementation*, some youth who are referred to diversion programs will be youth who would not have been processed by the system if these programs were not in place. Engaging youth who would not have been formally prosecuted is not benign: youth who fail to comply with all components of their diversion program may now be exposed to formal court processing. More supervision can actually increase the likelihood of a future arrest. Indeed, research suggests that for many low-risk teenagers, no or very minimal supervision is the best way to prevent recidivism.

Effective diversion programs only target youth who would otherwise have been formally processed in juvenile court, youth who research suggests will actually benefit from a program. Effective diversion also avoids subjecting all youth to interventions

Recommendations

Unnecessary prosecution and incarceration harms young people, undermines public safety, and costs Massachusetts tens of millions of dollars annually. So what can we do instead? In light of the research and the costs associated with system processing, Massachusetts should work to adopt the following reforms:

Create a statewide model for pre-arraignment diversion based on best practices

Unlike many states, Massachusetts has no statute establishing a formal, pre-arraignment or pre-courthouse diversion system for teens, and diversion by police, district attorneys, and court personnel currently occurs on an *ad hoc* basis with little to no dedicated funding. Decision makers rarely use evidence-based tools to guide their discretion, and there is virtually no accountability for whether these opportunities are offered to youth fairly or are effective.

Massachusetts should draw upon best practice research and engage system and community stakeholders – including youth and parents who are most impacted by the system – to develop consistent diversion opportunities across the Commonwealth, and should provide the funding needed to ensure that these programs exist in all communities, for all young people.

Programs should have dedicated staff, including social workers or “advocates” to help ensure that kids are able to surmount barriers such as transportation, costs, or access to services.

Use Validated Screening Tools to Reduce Unnecessary System Contact

The use of validated screening tools and other structured decision making tools can “increase the uniformity of juvenile justice practice,” help limit implicit bias³⁶ that results in inaccurate judgments, and “increase the overall rate of sound decisions.”³⁷ By reducing unnecessary system penetration, these tools can also help target resources toward the youth who are most in need of services.

Indeed, the Council for State Governments (CSG)’s primary core principle for juvenile recidivism

Model Diversion Programs

- Avoid the creation of a court (or arrest) record
- Have clear goals to define success and a program based on research about what works
- Match programs to existing community needs
- Have clear, fairly applied eligibility criteria
- Clearly set forth expectations, consequences, and terms of participation
- Avoid making derivative use of statements made during diversion programs or using a young person’s failure to complete diversion against them
- Ensure knowing & voluntary waiver of any rights, and explain to youth their right not to participate
- Allow for families to engage, without punishing kids with non-engaged parents
- Have dedicated staff and oversight:
 - Clear accountability and management structure to ensure program integrity
 - Community advisory board or other feedback mechanism
 - Address and minimize any institutional conflicts or incentives that may run counter to program goals
- Measure outcomes to evaluate success and fairness in intake and outcomes

reduction is to use validated risk and needs assessments to determine allocations of supervision and resources.³⁸ While many counties use the presenting offense as the basis for whether to divert a case (e.g. diverting thefts based on the amount stolen), this practice is contrary to research and ineffective, with the result that many children who could be served without court involvement end up in the system. Massachusetts should require or incentivize jurisdictions to use tools that are actually demonstrated to promote positive public safety and youth outcomes.

Give the Court Authority to Divert Prior to Arraignment

Massachusetts should join states across the country in allowing courts to screen and divert juvenile cases prior to arraignment. Given the problems associated with exposure to the justice system, a consistent screening by Probation officers for diversion eligibility prior to arraignment would ensure that all youth have an equal opportunity to avoid the damaging consequences of unnecessary contact with the system. Massachusetts Juvenile Court judges currently have authority to terminate a case that lacks probable cause prior to arraignment. Given the broad, rehabilitative



mandate of Chapter 119, it should also be within the authority of a Judge to dismiss or stay a case in order to provide a child with the opportunity to participate in diversion such as a community-based restorative justice or substance abuse program, instead of being burdened with a record or processed in court.

Require counties to collect data on diversion, and provide oversight and coordination to ensure consistent results

Massachusetts currently collects almost no data documenting which young people are offered or participating in either formal or informal diversion programs by police, district attorneys, or clerk magistrates. ICF International's 2015 analysis of Massachusetts' Juvenile Diversion Practices identified the persistent need for "collection of systematic and comprehensive data related to court-involved youth and diversion programming in order to more effectively measure program performance and assess youth outcomes."³⁹ A comprehensive and systematic data collection procedure would allow offices to compare results and identify strengths and weaknesses.

Conclusion

Far too many low-level cases of adolescent misbehavior are being handled by the Massachusetts Juvenile Courts. Not only is our current system unfair – with children in certain counties and children of color less likely to benefit from informal or formal diversion opportunities, and more likely to be removed from their homes when they enter the court – it is ineffective. Research indicates that Massachusetts can get far better results for young people and for public safety if we provide for a more systematic, consistent response that serves kids in their communities and avoids court processing entirely. By investing in research-based responses to youth crime, and ensuring that these opportunities reach all youth across the Commonwealth, we can potentially save tens of millions of dollars, while keeping more young people on the right track.

¹ The Massachusetts juvenile justice system is designed in recognition of the fact that youth who commit offenses should receive developmentally appropriate care. “[T]he care, custody and discipline of the children brought before the [juvenile] court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance.” M.G.L. ch. 119 §53.

² Richard J. Bonnie et al. (eds.). *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH*. National Research Council of the National Academies (2013) (hereinafter “*Reforming Juvenile Justice*”).

³ Based on data received from DYS by CfJJ, the most serious offense committed by roughly half of the youth who are detained is a misdemeanor. DYS also tracks the youth who are detained or confined based on the “Grid” level of offense, with 1 being the least serious offenses (disorderly conduct, shoplifting), Level 2 being slightly more serious (OUIs, tagging, minor fights), and Level 6 being the most serious (murder, rape, firearms trafficking). As reflected in Figure 2 on page 4, in FY2016, approximately half of youth who were released from detention had, as their most serious offense, a Grid Level 1 or 2 offense. Separate data received from DYS indicates that in FY2016, 1/3 of those who are committed had the same offense profile. CfJJ calculated the total cost of staff or hardware secure detention for Grid Levels 1-2 at approximately \$13.6 million (\$26,115,929 x 52%). CfJJ calculated the total cost of out of home or residential placements for committed youth with Grid Level 1-2 offenses at approximately \$38.6 million (\$116,912,262 x 33%)(CfJJ was unable to secure data to determine if youth with this offense profile have similar or different lengths of stay once committed to DYS). The resulting estimated cost of out of home confinement for low-level offenders in FY16 was \$52.2 million.

⁴ Gary Sweeten. *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*. 23 JUSTICE QUARTERLY 4 (Dec. 2006). Available at http://www.masslegalservices.org/system/files/library/H.S.ed_and_arrest_ct_involvement_study_by_Sweeten.pdf

⁵ Ibid.

⁶ Anthony Petrosino, Carolyn Turpin-Petrosino, and Sarah Guckenburg. *Formal System Processing of Juveniles: Effects on Delinquency*. No. 9 of CRIME PREVENTION RESEARCH REVIEW (2013), Washington, D.C.: U.S. Department of Justice, Office of Community Oriented Policing Services. Available at <http://www.ric-zai-inc.com/Publications/cops-w0692-pub.pdf>; see also Anthony Petrosino, Carolyn Turpin-Petrosino, and Sarah Guckenburg. *Formal System Processing of Juveniles: Effects on Delinquency*. 1 Campbell Systematic Reviews (2010). Available at <https://www.campbellcollaboration.org/library/formal-system-processing-of-juveniles-effects-on-delinquency-a-systematic-review.html>

⁷ Ibid.

⁸ *Reforming Juvenile Justice*.

⁹ Petrosino, Turpin-Petrosino, Guckenburg.

¹⁰ *Reforming Juvenile Justice* at 60.

¹¹ Massachusetts Department of Public Health Data and Department of Elementary and Secondary Education, *Health and Risk Behaviors of Massachusetts Youth* (2013). Available at <http://www.doe.mass.edu/cnp/hprograms/yrbs/2013report.pdf>

¹² Vera Institute. *It Takes a Village: Diversion Resources for Police and Families*. (Sept 2016). Available at www.vera.org/it-takes-a-village.

¹³ More than half the youth who come into juvenile courts across the nation never return, and two-thirds of adolescents with an arrest record are never arrested as adults. *Reforming Juvenile Justice*, 151.

¹⁴ The Juvenile Court also handle CRA and Care & Protection cases, which have increased in recent years.

¹⁵ A “youthful offender” is a child between the ages of 14 - 18 who is subject to an adult or juvenile sentence because of a weapons charge, threatening to cause “serious bodily injury,” or being previously committed to DYS (M.G.L. ch. 119 §52)

- ¹⁶ *Juvenile Court Statistics FY2015*, available at <http://www.mass.gov/courts/docs/courts-and-judges/courts/juvenile-court/2015-stats.pdf>. In FY2015, there were 216 Youthful Offender cases indicted and 10,293 Delinquency cases filed.
- ¹⁷ Massachusetts does not keep consistent data on the number of youth adjudicated delinquent. In 2009, when this data was available, less than 12% of the cases arraigned resulted in an adjudication, but over 30% of the youth who were arraigned spent time in detention.
- ¹⁸ In 2015, only 14% of youth who were arraigned were committed to DYS, but over 46% of arraigned youth were detained at some point. See *Massachusetts JDAI: Decision-Specific Relative Rate Index (RRI) Dashboard* available at https://public.tableau.com/shared/SPFJD7C2W?:display_count=yes&:showVizHome=no.
- ¹⁹ *Ibid.* See also Citizens for Juvenile Justice. *Unlocking Potential: Addressing the Overuse of Juvenile Detention in Massachusetts*, (March 2014). Available at <http://www.cfjj.org/pdf/Unlocking%20Potential%20-March%202014-DIGITAL.pdf>
- ²⁰ Massachusetts JDAI State of the Initiative report (October 2015). On file with CfJJ.
- ²¹ A study of a much larger sample of youth committed to DYS from 2000–2012 found 72% had involvement with DCF either prior to or during their DYS involvement. See CfJJ’s report, *Missed Opportunities*: available at www.cfjj.org/missedopportunities.php.
- ²² Analysis of DYS data by CfJJ.
- ²³ CfJJ, *Unlocking Potential*, supra note 19.
- ²⁴ *Ibid.*
- ²⁵ Pew Charitable Trusts. *Re-Examining Juvenile Incarceration: High cost, poor outcomes spark shift to alternatives*. (2015). Available at <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>.
- ²⁶ Models for Change, *Research on Pathways to Desistance: December 2012 Update*. Available at http://www.pathwaysstudy.pitt.edu/documents/MfC_RPD_2012_final.pdf
- ²⁷ Edward J. Latessa et al. *Evaluation of Ohio’s Reclaim Programs*. (April 2014), 51. Available at <http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=JtVZ6JcbUc4%3D&tabid=131&mid=764>.
- ²⁸ ICF International. *Massachusetts Juvenile Diversion Assessment Study*, 26. (January 2015) (hereinafter “MA Diversion Assessment Study”). Copies available on CfJJ’s website at www.cfjj.org/pdf/MADiversion_FinalReport_2015.pdf.
- ²⁹ MA Diversion Assessment Study, supra note 28.
- ³⁰ Models for Change. *Juvenile Diversion Guidebook*. (2011). Available at <http://www.modelsforchange.net/publications/301>
- ³¹ *Id.* at *Appendix E: 50 State Statutory Review*.
- ³² Kentucky Department of Justice. *Screening and Assessment Tools*. (2015). Available at <http://djj.ky.gov/Documents/Screening%20and%20Assessment%20Tools.pdf>
- ³³ Pew Charitable Trusts. *Kentucky’s 2014 Juvenile Justice Reform* (July 2014). Available at <http://www.pewtrusts.org/~media/assets/2014/07/psppkyjuvenilejusticereformbriefjuly2014.pdf>
- ³⁴ See New York State Juvenile Justice Advisory Group annual reports available at <http://www.criminaljustice.ny.gov/crimnet/pubs.htm>.
- ³⁵ National Campaign to Reform State Juvenile Justice Systems. *The Fourth Wave: Juvenile Justice Reforms for the Twenty-First Century*. (December 2013), 29. Available at <http://www.modelsforchange.net/publications/530>
- ³⁶ “Implicit bias is the bias in judgment and/or behavior that results from subtle cognitive processes (e.g., implicit attitudes and implicit stereotypes) that often operate at a level below conscious awareness and without intentional control.” National Center for State Courts. *Helping Courts Address Implicit Bias*. (2012). Available at www.ncsc.org/IBFAQs
- ³⁷ *Reforming Juvenile Justice*, 149-150.
- ³⁸ Elizabeth Seigle, Nastassia Walsh, and Josh Weber, “Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in the Juvenile Justice System.” (2014). New York: Council of State Governments Justice Center. Available at <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>, Page 7
- ³⁹ MA Diversion Assessment Study, supra note 28.

APPENDIX

Massachusetts Juvenile Assessment Study [excerpts] Executive Summary and Data Collection Tables

Full report available at http://cfjj.org/pdf/MADiversion_FinalReport_2015.pdf



Massachusetts Juvenile Diversion Assessment Study

Massachusetts Juvenile Diversion Assessment Study

Emily Niedzwiecki

Seri Irazola, Ph.D.

Caitlin Churchill

Michael Field

January, 2015

ICF International

9300 Lee Highway
Fairfax, VA 22031-1207

•
100 Cambridge Park Drive, Suite 501
Cambridge, MA 02140

This project was supported by grant number 2011-JF-FX-0047 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs to the Massachusetts Executive Office of Public Safety and Security, Office of Grants and Research. The opinions, findings, conclusions, and recommendations expressed in this report are those of the author(s) and do not necessarily reflect the views of the Commonwealth of Massachusetts or the Office of Justice Programs.

Executive Summary

On behalf of the Massachusetts Juvenile Justice Advisory Committee (JJAC), in collaboration with the Executive Office of Public Safety and Security (EOPSS), ICF International (ICF) conducted an assessment of District Attorneys' (DAs') offices' pretrial juvenile diversion practices across the Commonwealth. Findings from this assessment are intended to provide a snapshot of DAs' juvenile diversion practices in Massachusetts and make recommendations regarding the enhancement and wider use of promising diversion practices. The purpose of the assessment is also to provide DAs, their staff, and other juvenile justice stakeholders with a better understanding of the state of practice in order to make informed decisions regarding their diversion programs.

Methodology

In order to gain a better understanding of DAs' pretrial juvenile diversion practices, this assessment included three primary tasks: (1) Background Review, (2) Literature Review, and (3) Key Informant Interviews. This assessment is largely descriptive in nature and is meant to provide an initial look at DA-based pretrial juvenile diversion in Massachusetts.

To inform the development of the interview protocol and reduce burden on interview participants, researchers first conducted a background review of public data sources to collect information on jurisdictional characteristics (e.g., population demographics, youth demographics), crime statistics, juvenile court statistics, school statistics, youth initiatives, and existing diversion programming within the community. In conjunction with the background review, the research team conducted a literature review that addressed juvenile justice trends in the United States, juvenile diversion philosophies, model diversion programs and strategies, and background information on juvenile justice in Massachusetts.

Finally, the research team conducted semi-structured telephone interviews with staff within each of the 11 DAs' offices who were most knowledgeable regarding juvenile diversion programs and practices within their office. The interviews were designed to collect detailed information on diversion programs and practices, including: key program elements (e.g., target population, eligibility criteria, and decision-making and referral protocols); services provided as part of the diversion program; perceived challenges and limitations; and offices' data collection practices. Over a two-month period, the research team conducted interviews with 14 participants, representing all 11 DAs' offices, which generally included DAs, Assistant District Attorneys (ADAs), diversion program staff, juvenile unit staff and attorneys, and other special programs staff.

Scan of Practice Findings

Key Informant Interviews

As the core element of the scan of practice, the key informant interviews provide an in-depth understanding of DA-based pretrial juvenile diversion programs and practices across the Commonwealth. Of the 11 participating DAs' offices, 10 indicated that their office uses diversion for juvenile defendants in some capacity (informal or formal) and one office specified that they do not use diversion.

In regards to diversion program operation and structure, eight of the offices reported operating their program through the DA's office budget, while three offices receive state and/or federal funding, and two offices receive other funding (e.g., other non-government grants). Seven of the offices reported that their program uses dedicated diversion staff,¹ such as diversion case managers, program specialists, or other juvenile justice staff, to run the program. Seven offices indicated that they rely on formal written policies and procedures to guide the operation of their program. For the three offices that do not employ formal written policies, two indicated that they use less formal standards and guidelines for making diversion decisions.

All offices reported routinely using diversion prior to arraignment; however, four offices indicated that diversion may also occur during the pre-complaint stage in cases where youth are referred directly by law enforcement or a clerk magistrate to the DA's office. In addition, three offices reported that, while not as common, diversion may also be used post-arraignment on a case-by-case basis. The most common diversion eligibility criteria include offense type, age, and criminal history, while many offices also consider whether or not youth accept responsibility for the offense and their willingness to cooperate and successfully complete diversion.

Once youth are referred to the program, offices employ similar intake and decision-making processes. In a typical case, youth are summoned into court, giving ADAs and diversion staff an opportunity to review the case (e.g., police report, background check) prior to the court hearing. In most instances, respondents reported conducting the initial meeting/intake with youth and their parent/guardian just prior to the arraignment hearing. In a typical diversion intake meeting, DA diversion staff sit down with youth and their parent/guardian to discuss the conditions of diversion; assess the needs of the youth and their family; develop an individualized diversion plan; and sign a diversion contract. Two offices use a screening tool as part of the intake process, while three offices refer youth to a community-based provider for a counseling assessment.

Although ADAs within the juvenile courts are typically responsible for making the final diversion decision, the decision to divert youth was described by many offices as a collaborative process among key agencies and stakeholders. Stakeholders most commonly involved in the diversion process (e.g., making referrals, providing input) include: youth and their families, clerk magistrates, school personnel (e.g., school administrators, school resource officers), victims, law enforcement, probation, Department of Children and Families (DCF) case workers, defense representatives, and police prosecutors.

Eight of the offices use a diversion contract to formalize the agreement between youth and their office. Many of the diversion contracts include information related to: program requirements (e.g., youth will not commit other offenses); any specific conditions for the case; program length; and conditions for termination of diversion. Seven offices also reported that under the terms of their diversion contract, any information youth disclose to personnel during their participation in the program cannot be used as evidence against them should their case be adjudicated. Those offices that do not include such a provision in their contract or do not have a diversion contract, also noted the importance of abiding by these standards of practice.

¹ DA staff, such as case workers and diversion specialists, whose primary role within their office is to oversee juvenile diversion programming, including identifying eligible youth, conducting diversion intake procedures, collaborating with key stakeholders, providing support and planning assistance for diverted youth, and monitoring youth compliance with diversion conditions.

Most diversion programs last between three to six months, with three offices reporting that their program length varies depending on the case. Although most interview respondents indicated that diversion plans are unique to each youth, the most common conditions used include: community service; essays or apology letters; educational programming; counseling; referrals to special diversion programs (e.g., youth court),² restitution; abiding by school and home rules, and accepting responsibility. A few offices also use drug and alcohol screenings as conditions of their diversion program. Many offices reported affording youth some leeway when they fail to comply with diversion conditions, although all offices indicated that obtaining a new offense typically results in an automatic termination from the diversion program. Despite this, many offices reported handling program termination decisions on a case-by-case basis, usually expressing program termination as a last resort.

Within the one DA's office that does not use diversion for juvenile defendants, diversion is being practiced in the jurisdiction through a coordinated effort between law enforcement and the courts. Although practices vary across the jurisdiction, in a typical diversion case, the police chief and clerk magistrate will collectively decide to put certain low-level cases on hold for six months to one year. During that time youth are required to stay out of trouble and participate in some form of community programming, such as community service. This informal approach to juvenile diversion has allowed law enforcement and the courts to take a more active role in diverting youth from any formal court processing.

Across all 11 DAs' offices, the most common data consistently collected on court-involved youth includes gender, age, residence information (e.g., city/town, zip code), and criminal history. Just about half of the offices collect data on personal or family history (e.g., prior involvement with social services), school history, such as discipline and attendance records, and victim information (e.g., race of victim). In regards to other demographic data, only four offices collect information on language (e.g., languages other than English spoken in the home). None of the offices collect information on family income or citizenship status. Five offices reported collecting some type of race/ethnicity data.

In regards to diversion program data collection, most of the 10 offices using diversion track data on program participation dates (e.g., dates of entry and exit from the program); diversion services, such as youths' compliance with diversion conditions and information on services received (e.g., counseling, youth compliance); the most serious charge/offense at the point of diversion referral (e.g., property, person); and when the diversion referral occurs (e.g., pre-arraignment, post-arraignment). About half of the offices collect information on the level of the most serious charge/offense (e.g., misdemeanor), as well as the results of the criminal background check.³ Several offices also reported tracking the total number of offenses at the point of diversion referral and the diversion decision (i.e., whether the office accepts or rejects). When tracking program exit status, most of the offices reported tracking whether the youth successfully or unsuccessfully exited the program; however, few offices tend to capture more detailed information related to why a youth may have unsuccessfully exited the program, such as termination based on a new arrest.

² These are programs for diverted youth provided by a range of organizations, such as community-based organizations, social service agencies, law enforcement, schools, courts, and other juvenile justice agencies, that oftentimes target specific subpopulations of youthful offenders (e.g., fire setting behavior).

³ Criminal background checks include a review of the Court Activity Record Information (CARI) and Criminal Offender Record Information (CORI) systems.

Discussion and Recommendations

Findings from this assessment highlight the variation between DAs' offices related to diversion program structure, eligibility, decision processes, and services. One of the major themes from the scan of practice is the importance of **prevention** in driving DA diversion programs, including preventing youth from obtaining a criminal record, preventing deeper system involvement, and preventing future offending. One theme that arises is the important role that **stakeholder involvement and collaboration** play in the diversion process, with most offices reporting high involvement from a range of stakeholders, such as the courts, schools, law enforcement, and probation. Stakeholders are critical for identifying eligible youth and referring them to diversion; providing input in the decision-making process; providing valuable knowledge regarding specific youth and/or the community context; providing services, such as community service opportunities and counseling; and providing assistance in monitoring youth progress and compliance. Another key theme is the role of **discretion and flexibility** in the diversion process. Many offices noted the importance of enforcing consistent and standard practices, while also assessing each case individually to understand the totality of the circumstances. Many respondents expressed using discretion and flexibility across many elements of program operation, most notably when assessing youth eligibility, monitoring program compliance, and making program termination decisions.

Recommendations for Practice

Based on the scan of practice, ICF researchers extracted recommendations for improving diversion programs and practices across the Commonwealth. The primary recommendations from this assessment include:

- The use of standardized screening and assessment tools to measure risk factors (e.g., reoffending) and identify the needs of youth (e.g., mental health and substance use) early in the diversion process.
- The collection of systematic and comprehensive data related to court-involved youth and diversion programming in order to more effectively measure program performance and assess youth outcomes.
- Recruitment of trained diversion staff who are able to develop rapport with youth and provide more in-depth case management and guidance throughout the diversion process.
- Continued enhancement of interagency collaboration and stakeholder involvement through improved referral protocols and mechanisms; MOUs and other formalized interagency agreements; frequent opportunities for multi-stakeholder case reviews and discussion; and ongoing information sharing among key stakeholders.

Limitations

The background review was developed based on information collected through public sources on DA diversion programs and jurisdictional characteristics, which may not align with the interview findings collected as part of the scan of practice (e.g., due to outdated website information) and should not be interpreted as being representative of DA diversion offerings. Rather, this information is meant to provide a snapshot of each jurisdiction.

The primary limitation of this assessment is its exploratory nature. In addition, the findings in this report are limited to DAs' offices and are not representative of all stakeholder groups involved in juvenile diversion, such as law enforcement, courts, probation, juvenile diversion participants and their families, or community-based providers.

Conclusions

The assessment highlights the importance of interagency collaboration, dedicated diversion staff, formalized policies and protocols (e.g., diversion contract, office policy), and some level of flexibility and discretion to account for unique or special circumstances. In addition, findings suggest the need for continued innovation and creativity in regards to diversion interventions, such as youth courts and restorative justice practices, more systematic data collection and record keeping, and the use of standardized screening and assessment tools.

Findings from this assessment are intended to provide a landscape of DAs' juvenile diversion practices across Massachusetts and make recommendations regarding the enhancement and wider use of model diversion practices. In particular, the purpose of the assessment is to provide DAs, their staff, and other juvenile justice stakeholders with a better understanding of the state of practice in order to make informed decisions regarding their diversion programs.

Data Collection on Court-Involved Youth by District Attorney's Office⁴⁸

	Berkshire	Bristol	The Cape & Islands	Essex	Hampden	Middlesex ⁴⁹	Norfolk	Northwestern	Plymouth	Worcester
Youth Demographics										
Gender		•	•	•	•	•	•	•	•	
Age		•	•	•	•	•	•	•	•	
Family Income										
Citizenship										
Language		•		•			•	•		
Race/Ethnicity										
American Indian or Alaska Native		•	•					•		
Asian		•	•				•	•		
Black or African American		•	•		•		•	•		
Hispanic or Latino		•	•		•		•	•		
Native Hawaiian or Other Pacific Islander			•					•		
White, non-Hispanic		•	•		•		•	•		
Two or More Races			•							
Youth History and Case Information										
Residence (e.g., city/town, zip code)		•	•	•	•	•	•	•	•	
Personal/Family History (e.g., prior involvement with social services)		•		•	•		•	•	•	
School History (e.g., school discipline, truancy)		•	•	•				•	•	
Criminal History (e.g., prior contact with police, prior court involvement)		•	•	•	•	•	•	•	•	
Victim Information			•	•	•			•	•	

⁴⁸ Due to the confidentiality agreement used as part of the key informant interviews, all interview respondents were given an opportunity to review and approve their office's data collection information for inclusion in the report. Ten DAs' offices granted permission to present information on their office's data collection on court-involved youth.

⁴⁹ Beginning in 2015, the Middlesex DA's office will begin tracking race/ethnicity data based on police report records.

Data Collection on Diversion Programming by District Attorney's Office⁵⁰

	Berkshire	Bristol	The Cape & Islands	Essex	Hampden	Middlesex	Norfolk	Northwestern	Plymouth	Worcester
Diversion Programming										
When the diversion referral occurs (e.g., pre-arraignment, post-arraignment)		•	•	•		•	•	•	•	
Results of Court Activity Record Information (CARI) & Criminal Offender Record Information (CORI) review at the point of diversion referral				•		•	•	•	•	
Type of most serious charge/offense at the point of diversion referral (e.g., person, property, drug)		•	•	•	•	•	•	•	•	
Level of most serious charge/offense at the point of diversion referral (e.g., misdemeanor)				•	•	•	•	•	•	
Total number of offenses at the point of diversion referral				•			•	•	•	
Diversion decision (e.g., accepted, rejected)						•	•	•		
Program participation dates (e.g., date of diversion decision)		•	•	•	•	•	•	•	•	
Program exit status: Successful completion		•	•	•	•	•	•	•	•	•
Program exit status: Unsuccessful		•	•	•	•	•	•	•	•	•
Program exit status: Unsuccessful due to non-compliance with diversion contract and original charges filed				•	•	•	•	•	•	
Program exit status: Unsuccessful due to arrest on new offense and new/original charges filed				•	•	•	•	•	•	
Program exit status: Unsuccessful but charges not filed						•	•			
Program exit status: Youth/youth's family chose court after originally accepting diversion referral				•			•	•	•	
Program exit status: Transferred to another DA diversion program							•		•	
Program exit status: Moved out of service area prior to completion				•			•		•	
Diversion services (e.g., services received, youth compliance)		•	•	•	•	•	•	•	•	

⁵⁰ Due to the confidentiality agreement used as part of the key informant interviews, all interview respondents were given an opportunity to review and approve their office's data collection information for inclusion in the report. Ten DAs' offices granted permission to present information on their office's data collection on diversion programming.



44 School Street, Suite 400

Boston, MA 02108

www.cfjj.org