

## **Black Hawk County Pre-Charge Diversion Recommendations and Resources**

Thank you for the opportunity to meet with you on October 30 to discuss Black Hawk County's pre-charge diversion work. I appreciated the opportunity to hear more from stakeholders regarding your current efforts to use early diversion as a strategy to reduce racial and ethnic disparities in the juvenile justice system. I appreciated the fact that so many groups were represented in those discussions, including Juvenile Court Services, the judiciary, the Waterloo Community School District, the County Attorney, law enforcement agencies from in Black Hawk County, and other youth justice system stakeholders.

This visit was part of a larger state-wide effort to promote the use of evidence-based diversion programs throughout the State of Iowa as a strategy to reduce racial and ethnic disparities in the youth justice system. This effort is looking to develop tools and resources, including model policies and protocols and data collection templates, to ensure that communities throughout Iowa are using diversion in an equitable and effective manner. We appreciated the chance to learn from you during this visit, as those conversations will help inform the state-level tools and resources that are created to help standardize diversion practices for all children in Iowa, regardless of geography.

This document is meant to capture recommendations from the review of the materials that you submitted and the discussions that occurred while on site. I have provided links to resources that may be helpful in pursuing the recommendations outlined below. You can also find an electronic copy of the PowerPoint presentation with data referenced during our discussion [here](#), as well as additional resources in our Reducing Racial and Ethnic Disparities Practice Manual, available [online on the CCLP website](#).

As you review these recommendations, I encourage team members to use the most current data available through CJJP, law enforcement, schools, and JCS to inform discussions about changes to or expansion of diversion in your jurisdiction. As a reminder, the CJJP data profiles (which include school suspension data) are available online [at this link](#).

## Recommendations

### **1. Develop a data collection process that does not require entry of information into ICIS.**

It was wonderful to see the amount of data available regarding use of and outcomes from your array of diversion programs. Data collection is clearly a strength in your jurisdiction. While I understand the factors that have led to the use of ICIS to track diversion information, I strongly encourage capturing these data in a system other than ICIS. Even though diversion referrals are coded as “information only,” the fact that the referrals are in the database mean that they have the potential to influence decisionmaking by those who are reviewing a young person’s history with JCS. Indeed, it was my understanding that the diversion referrals could impact a youth’s score on the Detention Screening Tool and Iowa Delinquency Assessment because of its presence in ICIS – something that true diversion efforts should avoid.

Other jurisdictions throughout the state have developed data collection processes that allow for tracking of outcomes without relying on entry of data into ICIS. For example, you may choose to ask one of your contracted providers to gather, maintain, and analyze this information.

There is a CJIS exchange in development, with an estimated completion date of 2020, that would electronically submit all juvenile TraCS complaints and referrals to the Judicial Branch Case Management System. As officials are developing that exchange, they are taking proactive steps to ensure that diversion referrals remain in a separate silo of the Judicial Branch Case Management System and are also taking separate measures to ensure that neither the Detention Screening Tool nor Iowa Delinquency Assessment would be coded to pull data from that diversion section. Once this exchanged is developed, it may make it possible to maintain data in the Judicial Branch Case Management System without the unintended collateral consequence of negatively impacting youth who are in future contact with the system. In the meantime, however, I strongly encourage identification of an alternative way of tracking data on diversion.

### **1. Consider modifications to the diversion referral process that would provide the greatest chance of a young person avoiding formal system contact, such as an official arrest.**

It was obvious to me during our meeting that Black Hawk County has done a wonderful job of engaging law enforcement in early diversion efforts in the County. As mentioned during our meeting, many jurisdictions have identified processes that allow for law enforcement to make direct referrals to diversion in lieu of an official arrest and/or taking a young person in custody. These jurisdictions have developed such processes, in large part, due to the research that youth determined to be lower risk are more likely to be rearrested and less likely to complete school than similar youth “who are not arrested or are diverted from court (as is noted in the Council for State Government’s 2018 report, [Transforming Juvenile Justice Systems to Improve Public Safety Outcomes](#)).

I would encourage Black Hawk County to consider the current referral process alongside the goal of using diversion to help avoid formal system contact at the earliest possible point. As

mentioned during our meeting, jurisdictions such as the State of Connecticut, have created policies, procedures, and processes to do just that, including at the point of arrest. I would be happy to provide additional examples that could be helpful in considering enhancements that would allow for diversion at the earliest possible point and that would minimize potentially negative collateral consequences of justice system contact for youth determined to be low risk.

## **2. Regularly track and report recidivism rates for standardized time periods.**

You should be applauded for your data collection efforts for your diversion programs, including your efforts to disaggregate referrals, engagement rates, and outcomes by race and ethnicity. Your presentation contained data on recidivism rates, which I appreciated hearing about. I was not clear on the extent to which recidivism data are generated and reviewed on a regular basis. If these data are not part of a standardized bi-annual or annual report, I would encourage JCS to produce this information, as it would help reflect the effort and creativity that has gone into developing an array of diversion options. I would encourage officials to use standardized recidivism measures, such as six month and one year recidivism rates, which is consistent with national best practices.

## **3. Consider developing objective criteria for diversion for youth with subsequent referrals and youth referred for misdemeanor marijuana possession.**

I was pleased to see that your policy extends the possibility of pre-charge diversion beyond first time simple misdemeanor offenses to youth who had previously been referred for diversion, particularly where time has elapsed between a previous incident and a new incident, as well as situations where the subsequent incident was of a different nature than the previous incident. I encourage stakeholders to be as specific as possible in writing regarding eligibility under these circumstances to ensure that all youth have equal access to diversion in these situations. For example, you might consider whether you could designate a fixed period of time that would pass before youth would be allowed another opportunity for diversion. You could also develop categories of offenses to help guide when offenses were different enough to warrant another opportunity to participate in pre-charge diversion programming, particularly where different programs are offered as diversion for different types of offenses.

Additionally, the current policy provides that youth “may” be referred to pre-charge diversion for misdemeanor marijuana possession. I would encourage officials to clarify in written policy whether youth should always be referred to diversion for such first-time offenses, or whether there are objective factors that would exclude youth from diversion. This would help ensure that there are fewer opportunities for bias to enter into decisions about eligibility for diversion.

Officials may also wish to consider whether expansion of current diversion efforts could extend to a subset of indictable misdemeanors with agreement from relevant parties. As mentioned during our meeting, there are jurisdictions that choose to divert all misdemeanor offenses and some lower-level felony offenses. I would encourage stakeholders to consider this possibility, particularly along with the recent changes made to Iowa law regarding diversion in [HF 2443](#).

I encourage team members to use the most current data available through CJJP, law enforcement, schools, and JCS to inform any such expansion decisions. As a reminder, the CJJP data profiles (which include school suspension data) are available online [at this link](#). Additionally, the diversion fact sheet that our office prepared may include examples of other program models to review as officials consider possible expansion.

**4. Consider creating outreach materials provided to family members that would promote engagement with the Black Hawk County diversion program.**

As discussed during our meeting, parent unwillingness to participate in diversion programs was a barrier to engaging young people and families with pre-charge diversion services. I would encourage you to incorporate statements regarding the benefit of the programs collected from youth and family members into the materials that you disseminate to family members. This could help encourage more family members to attend and receive the benefits of the program.

**5. Consider whether an enhancement or addition to the diversion program based on social media use or cyberbullying could be appropriate.**

During our discussion, I mentioned work in other jurisdictions that focused on social media use and misuse as a cause of altercations and fights among girls in middle school and high school. I have provided a [fact sheet](#) that summarizes some of the available curricula designed to help address cyberbullying and harmful use of social media.

The Southern Poverty Law Center's Teaching Tolerance initiative has also prepared content designed to engage students on cyberbullying. These resources are [available for free](#) and include sample lesson plans. These resources could help inform an expansion of or modification to the diversion program to address incidents that stem from social media use.

**6. Develop a school discipline/code of conduct policy that provides clear and graduated responses to particular kinds of behavior.**

I had the opportunity to review the Waterloo CSD discipline policy prior to our discussions. While the policy does note that “[a]s a general rule, discipline will be progressive,” the policy does not provide a clear, graduated structure for responding to incidents.

A structured and clear school discipline policy is one of the most important written documents to ensure fair and equitable treatment of youth. I encourage the development of a school discipline policy that reflects the shared values of youth-serving systems and agencies in Waterloo. There are model policies to work from available from the Advancement Project. This [School Discipline Toolkit](#) contains a tip sheet for examining codes of conduct, two model policies, and five sample policies from jurisdictions around the country. Stakeholders should review these materials, particularly the tip sheet and model policies, before engaging in a discussion about whether one of the model policies or policies from other jurisdictions could serve as a basis for developing a new policy.

**7. Identify additional approaches and interventions that could address disparities in school suspensions.**

As discussed during our conversations, data provided by CJJP from the Waterloo CSD indicates a significant overrepresentation of African American youth at the point of in-school and out-of-school suspension. I would encourage a deeper dive into this data to identify areas where an alternative intervention could serve as a response to an underlying issue. In doing so, I caution against the potential for net-widening – for example, referring youth to your current diversion program for minor school behavior that currently would not result in a referral to juvenile court.

Any alternative responses should focus on non-justice system interventions, including a decision to refrain taking future action in lieu of a service referral. For example, many incidents seem to stem from altercations and interpersonal issues. Several jurisdictions have seen success reducing suspensions, arrests, and referrals to court for such issues in a way that has reduced racial and ethnic disparities. [This publication](#) describes work that was undertaken in Peoria, Illinois using a restorative justice approach. Based on our discussion about areas of need within the Waterloo CSD, piloting such a program at one or more middle schools may be a good starting point.

**8. Build upon interest in developing a Memorandum of Understanding among school, law enforcement, and youth justice officials that captures consensus points on pre-charge and early diversion efforts.**

During our meeting, I strongly encouraged officials from JCS, the Waterloo Community School District, the Waterloo Police Department, and other law enforcement agencies to codify agreements regarding the role of diversion in responding to incidents could otherwise result in a referral to juvenile court in a written Memorandum of Understanding (MOU). An MOU serves to outline shared values among parties and clearly outlines expectations regarding certain agreed-upon processes (such as pre-charge diversion protocols). MOUs can also create an infrastructure to sustain efforts to improve youth justice system practices by establishing a working group to regularly review data regarding current efforts and identify potential enhancements based on changing needs and trends. Finally, MOUs serve as a way of promoting the sustainability of past work through the inevitable changes in leadership that occur over time.

I was pleased to hear that officials from the Waterloo Community School District had reached out to obtain information on MOUs following our visit, and that officials at CJJP provided some valuable national models and examples from within the State of Iowa. I applaud the quick follow up on this recommendation and encourage school officials to continue to work with JCS officials and law enforcement on this effort.

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Thank you again for taking a leadership role on efforts to reduce racial and ethnic disparities in the youth justice system in Black Hawk County. I hope that the recommendations and resources outlined below can help advance the work that is underway around diversion. I expect that your efforts will do much to inform the creation of evidence-based state-wide policies and protocols around the use of early diversion throughout the State of Iowa. If you have difficulty accessing

any of the resources or have questions about any of the resources or recommendations, please do not hesitate to contact me at 202-637-0377 ext. 108 or [jszanyi@cclp.org](mailto:jszanyi@cclp.org).