# IOWA PRE-CHARGE DIVERSION TOOLKIT

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CENTER FOR Children's Law and Policy

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# Introduction

With support from the federal Office of Juvenile Justice and Delinquency Prevention, the Iowa Department of Human Rights Division of Criminal and Juvenile Justice Planning (CJJP), leaders in four local Iowa jurisdictions (Black Hawk, Johnson, Scott, and Webster Counties), Iowa's Disproportionate Minority Contact Subcommittee (DMC Sub), the Iowa Task Force for Young Women (ITFYW), and the Center for Children's Law and Policy (CCLP) have partnered to develop tools and resources to assist jurisdiction in Iowa with pre-charge diversion efforts. The goal of this partnership was to promote effective and evidence-based early diversion policies, practices, and programs for young people in contact with the justice system, focusing specifically on the use of early diversion as a strategy to reduce racial and ethnic disparities in the youth justice system.

From March 2018 to April 2019, CCLP and CJJP:

- Compiled national research on the use of and outcomes from pre-charge diversion efforts, including identifying model programs from jurisdictions around the country.

- Conducted assessments of diversion policies and practices in four Iowa counties – Black Hawk (Waterloo), Johnson (Iowa City), Scott (Davenport), and Webster (Fort Dodge) – to obtain information about the strengths and challenges of early diversion efforts already underway and to identify opportunities to strengthen those efforts.

- Began planning for a state-level data collection tool, expected to be available to jurisdictions in 2020, that will centralize diversion data collection while ensuring that diversion data is not inadvertently used to the detriment of young people who come into contact with the youth justice system.

- Created this Toolkit to capture information and resources that can help communities throughout the state create or enhance pre-charge diversion programs and policies, including a model diversion agreement, data collection guidelines, and tools and resource to help focus early diversion on school-based incidents that might otherwise lead to an arrest and referral to juvenile court.

For questions about the resources contained in this Toolkit, please contact CJJP at 515-242-5823 or visit the CJJP website at humanrights.iowa.gov/cjjp.

## About the Center for Children's Law and Policy

The Center for Children's Law and Policy is a nonprofit national public interest law and policy organization focused on reform of juvenile justice and other systems impacting troubled and at-risk youth. CCLP's work is focused on three main areas: eliminating racial and ethnic disparities in the youth justice system, reducing the unnecessary and inappropriate

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incarceration of children, and eliminating dangerous and inhumane practices for young people in custody. CCLP's staff members pursue a range of different activities to achieve these goals, including training, technical assistance, administrative and legislative advocacy, research, writing, media outreach, and public education. CCLP has served a leading role in the largest and most influential juvenile justice reform initiatives in the country, including the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) and the John D. and Catherine T. MacArthur Foundation's Models for Change initiative.

CCLP has assisted jurisdictions in over 30 states with efforts to improve their youth justice systems, and CCLP staff have conducted dozens of assessments of policies and practices in youth justice systems throughout the country. CCLP has extensive expertise and experience with efforts to enhance diversion efforts, particularly at the earliest stages of the youth justice system. CCLP is currently working with four law enforcement agencies as part of a separate project, the Law Enforcement Leadership for Equity Initiative, which is designed to help police departments enhance equity in work with young people and to improve relationships between law enforcement and the communities of color they serve. More information on CCLP is available at www.cclp.org.

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## The Importance of Early Diversion

During the past decade, a growing national consensus has emerged regarding the benefits of alternatives to out-of-home placement and incarceration for young people in contact with the juvenile justice system. Nationally, the number of youth in out-of-home placements has fallen by nearly 60% over the last 15 years.[1] This is in part due to research showing that incarceration-based placements for young people are not only expensive, but can actually worsen outcomes when comparing results to similarly situated youth who receive services in the community.[2] Specifically, out-of-home placements have been linked with:

- Higher rates of recidivism and increased likelihood of recidivism for more serious offenses,
- Increased likelihood of incarceration as an adult,
- Higher high school dropout rates and decreased educational achievement, and
- Decreased likelihood of future employment and earning potential in the labor market.[3]

Jurisdictions throughout the country have demonstrated that reductions in the use of incarceration and out-of-home placement, when coupled with investments in community-based services and supports, achieve better public safety outcomes at a lower cost to taxpayers – all while improving outcomes for young people and families in contact with the juvenile justice system.[4]

A large part of this reduction in the use of incarceration and out-of-home placement has depended on concerted efforts to divert young people away from the justice system altogether at the earliest possible point. This is consistent with research that has clearly demonstrated that most youth assessed to be low risk are unlikely to re-offend, even if there is no intervention from the justice system at all.[5]

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[1] The Pew Charitable Trusts, Steep Drop Since 2000 in Number of Facilities Confining Juveniles (September 2018).
[2] Amanda Petteruti, Marc Schindler, and Jason Ziedenberg, Sticker Shock: Calculating the Full Price Tag for Youth Incarceration (Washington, DC: Justice Policy Institute, 2014).
[3] Patrick McCarthy, Vincent Schiraldi, and Miriam Shark, The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model, National Institute of Justice and Harvard Kennedy School of Government Executive Session on Community Corrections (October 2016).
[4] *See, e.g.*, Josh Weber, Michael Umpierre, and Shay Bilchik, Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes (Washington, DC: Georgetown University Center for Juvenile Justice Reform, 2018); The Pew Charitable Trusts, Re-Examining Juvenile Incarceration (April 2015); Tony Fabelo et al., Closer to Home: An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms (New York: Council of State Governments Justice Center, 2015).
[5] *See, e.g.*, Mark W. Lipsey, The Primary Factors That Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview, 4 Victims and Offenders 124 (2009).

Indeed, many studies have shown that formal interventions by the juvenile justice system often do more harm than good for a large percentage of youth.[6] 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.[7] Additionally, a 2018 report 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.[8] 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.[9]

Moreover, research has illustrated negative effects specific to arresting young people and taking them into custody (versus simply stopping and warning a young person). In one recent study, researchers described the impact of an arrest as follows.

> *[T]he bulk of labeling research and indicate that youth who have been stopped or arrested report significantly less anticipated guilt, greater agreement with neutralization techniques, greater commitment to delinquent peers, and higher levels of delinquency than youth with no police contact. In addition, our findings show that the negative consequences of police contact are compounded for arrested youth; subsequent to arrest, they report less anticipated guilt and more delinquency compared with stopped youth.*
>
> *If simply being stopped and questioned has deleterious consequences, policing practices may inadvertently contribute to higher levels of delinquency even before youth have reached the stages of formal processing. This suggests that while diversion programs may have been unfairly or prematurely dismissed, the possible benefits of such programs occur after youth have already experienced the negative effects of initial police contact.*[10]

Additionally, a literature review published last year by the federal Office of Juvenile Justice and Delinquency Prevention on interactions between police and youth noted the following:

> *With regard to research on police-led diversion programs, a meta-analysis by Wilson and Hoge (2013) on the effects of youth diversion programs (including police-led and court-based programs) found that caution programs had a statistically significant positive effect in reducing recidivism, compared with traditional justice system processing, especially for*

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[6] Richard A. Mendel, The Annie E. Casey Foundation, Transforming Juvenile Probation: A Vision for Getting It Right 9 (2018) (citing, see generally Elizabeth Seigle et al., Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in The Juvenile Justice System (2014)).
[7] *Id.* at 8.
[8] 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)).
[9] *Id. at* 4-5.
[10] Stephanie Wiley and Finn-Aage Esbensen, *The Effect of Police Contact: Does Official Intervention Result in Deviance Amplification?*, 62 Crime & Delinquency 283 (2016).

> *low-risk youths. Similarly, in a recent meta-analysis . . . of studies looking at the effects of police-initiated diversion programs to prevent delinquency, overall findings indicated that diversion was associated with lower rates of recidivism, and that this effect was statistically significant.*[11]

Findings such as this emphasize the importance of identifying diversion opportunities at the earliest possible stage, including prior to or as an alternative to making an arrest. A number of recent publications have outlined the benefits of such pre-arrest diversion programs for both public safety and the well-being of youth.[12] These benefits include avoiding the collateral consequences of an arrest, which can include:

- An inability to obtain employment because of an arrest record;
- Difficulty obtaining housing;
- Restricted access to certain types of employment opportunities;
- Restricted access to college admissions or financial aid;
- An inability to obtain certain professional licenses or certifications; and
- An inability to serve in the armed forces and receive associated benefits.

These collateral consequences can harm youth's ability to develop into successful and productive members of society. They can also make it more likely that youth will engage in illegal activity in the future, as they make it more difficult for a young person to participate in lawful education and employment opportunities.

## What Do We Mean by "Diversion?"

"Diversion" is a general term used to describe the informal handling of cases involving young people in the justice system. Diversion requires stakeholders to make a conscious effort to direct young people away from or out of the youth justice system. Diversion can occur at any point in the youth justice system, from a youth's contact with law enforcement through a youth's adjudication in family court.

Diversion includes two key components:

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[11] Office of Juvenile Justice and Delinquency Prevention, Interactions between Youth and Law Enforcement: Literature Review (January 2018), *available at* https://www.ojjdp.gov/mpg/litreviews/Interactions-Youth-Law-Enforcement.pdf.

[12] *See, e.g.*, Human Impact Partners, Reducing Youth Arrests Keeps Kids Health and Successful: A Health Analysis of Youth Arrest in Michigan (June 2017), *available at* https://humanimpact.org/wp-content/uploads/HIP_MichYouthArrests_2017.06.pdf; Jennifer A. Tallon, Melissa Labriola, and Joseph Spadafore, Creating Off-Ramps: A National Review of Police-Led Diversion Programs, Center for Court Innovation (2018), *available at* https://www.courtinnovation.org/sites/default/files/documents/Creating%20Off-Ramps%20A%20National%20Review%20of%20Police-Led%20Diversion%20Programs.pdf.



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- **Diversion Policy and Process:** Official policies and procedures that direct young people away from the youth justice system altogether or that prevent youth from having deeper involvement with the system – for example, deciding not to make formal arrests for behavior that would otherwise qualify as "disorderly conduct" in public schools.

- **Diversion Programs and Conditions:** Programs and requirements that are intentionally used as a pathway away from or out of the youth justice system. Prevention and intervention programs, while valuable, do not qualify unless they are used as a true alternative to formal contact or involvement with the system – in other words, if not for a youth's involvement with a program, he or she would have entered or moved deeper into the justice system. To be effective, involvement with the program must stop a youth from continuing down the pathway of formal system involvement.

For the purposes of examining pre-charge diversion efforts, officials should focus on options to divert young people prior to a referral being made to the juvenile justice system. Ideally, diversion should occur at the earliest possible time – i.e., as an alternative to an arrest or taking a young person into custody – in order to reflect the research cited above on the negative impact of an arrest and formal involvement with the justice system. Many jurisdictions around the country, including some jurisdictions in Iowa, have developed policies and protocols that allow law enforcement to make direct referrals to diversion programs.

## Core Components of Effective, Research-Informed Diversion Efforts

Diversion programs can take different approaches to steer young people away from formal processing in the juvenile justice system depending on a range of factors, including state and local laws and regulations, as well as the types of cases being diverted. Despite these differences, many successful diversion programs include a combination of the following elements.

- **Diverting youth at the earliest possible contact point**. While diversion can occur throughout the youth justice system, the research described above suggests that the greatest benefits of diversion come when diversion happens at the earliest possible point, ideally before an arrest is made or a young person is taken into custody.[13]

- **Use of warn and release for the vast majority of young people in contact with the system as the first opportunity for diversion**. Warnings without intervention should be available in every diversion program and should be the default response for the great majority of first-time offenses.[14] This is consistent with the research, mentioned above, finding most youth assessed to be low risk are unlikely to re-offend even if there

[13] *Id.*
[14] Mendel et al. at 26.



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is no intervention from the justice system at all.[15]

- **Avoiding formal system involvement for most youth**. Except for youth who have committed serious violent crimes and who pose a significant threat to public safety, all youth referred to the juvenile justice system for the first time should be diverted. Jurisdictions have also expanded diversion to include subsequent misdemeanor referrals to avoid placing youth on probation for such offenses altogether.[16]

- **Identification of community-based organizations and agencies to oversee diversion instead of elements within the justice system**. Shifting the responsibility of overseeing diversion away from court personnel allows youth justice professionals to focus attention on the most serious cases. The entity responsible for diversion should be independent from the court, prosecutor's office, and probation department; offer a single point of entry for assessments, referrals, and case management; receive operating funds from the court, county, or state government; and collect and report data on outcomes to key stakeholders.[17]

- **Use of restorative justice practices**. To respond to offending behavior that allows youth to acknowledge and repair harm, many effective diversion programs use family conferences, victim conferences and mediation, and other forms of restorative justice. Research shows that these practices reduce recidivism rates and are a cost-effective alternative to court involvement and supervision.[18]

- **Rejection of court-imposed consequences for noncompliance with diversion agreements**. There should be no possibility of placement or confinement for failure in diversion, and absent serious subsequent offenses, diverted youth should not be subject to court-ordered conditions. Research shows that "net widening" of diversion programs does more harm than good and that noncompliance with diversion agreements should usually be addressed with a warning. If a young person fails to complete a diversion agreement, he or she is better left to grow and mature under family supervision.[19]

- **Creation of entities to oversee diversion efforts**. Local governments and courts should create oversight committees to monitor and support diversion programs in the jurisdiction. The committee should be made up of young people and family members, local government officials, service providers, public school administrators, leaders from community organizations, and the juvenile probation chief. The committee should set expectations, create program guidelines, conduct training and support for personnel,

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[15] *See, e.g.*, Mark W. Lipsey, The Primary Factors That Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview, 4 Victims and Offenders 124 (2009).
[16] *Id.* at 25.
[17] *Id.* at 26.
[18] Weber et al., at 5-6.
[19] Mendel et al., at 26.

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collect and analyze data, assess needs, and develop programs to expand and improve diversion options.[20]

## Pre-Charge Diversion as a Strategy to Reduce Racial and Ethnic Disparities in the Youth Justice System

In Iowa, as is the case in states throughout the country, significant racial and ethnic disparities exist in the juvenile justice system. Although disparities exist at all stages of the juvenile justice system, these disparities are often most significant at the earliest points in the system – i.e., at the point of arrest and referral to court. For example, in select metro regions in Iowa, African American youth are arrested at rates up to 6.4 times higher than white youth.

Despite increased use of diversion throughout the country, including in Iowa, disparities for youth of color persist.[21] In some jurisdictions, disparities have even worsened, meaning that youth of color have not been the beneficiaries of these reform efforts. 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 . . . ."[22] Thus, there is an urgent need for jurisdictions to examine diversion efforts through the lens of racial and ethnic equity with the explicit goal of using diversion as a tool to reduce racial and ethnic disparities.

An examination of diversion through the lens of racial and ethnic equity also involves exploring the intersection of gender with race and ethnicity. A groundbreaking 2017 report from the Georgetown University Law Center's Center on Poverty and Inequality entitled "Girlhood Interrupted: The Erasure of Black Girls' Childhood"[23] found that "adults view Black girls as *less innocent and more adult-like than their white peers*, especially in the age range of 5-14," mirroring similar previous findings regarding African American boys.[24] The report noted that "[g]iven established discrepancies in law enforcement and juvenile court practices that disproportionately affect Black girls, the perception of Black girls as less innocent and more adult-like may contribute to *more punitive exercise of discretion* by those in positions of authority, *greater use of force, and harsher penalties.*"[25] For example, national research

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[20] Mendel et al. at 13, 28-29.
[21] W. Haywood Burns Institute, Stemming the Rising Tide: Racial & Ethnic Disparities in Youth Incarceration and Strategies for Change (May 2016).
[22] *Id.*
[23] Rebecca Epstein, Jamilia J. Blake, and Thalia González, *Girlhood Interrupted: The Erasure of Black Girls' Childhood*, Georgetown University Law Center's Center on Poverty and Inequality (2017), *available at* https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf.
[24] *Id.* (emphasis in original).
[25] *Id.* (emphasis in original).

indicates that while African American girls represent just 16% of female students overall, they represent more than one-third of all girls with a school-related arrest.[26]

The existence of these disparities presents an opportunity to use pre-charge diversion as a strategy to reduce and eliminate the overrepresentation of youth of color at the point of arrest and referral to court. This is particularly true, given that racial and ethnic disparities are often more pronounced for less serious offenses, which often entail a greater degree of officer discretion. For example, in a recent federally funded review of disparities in youth arrests, researchers found that "[c]onsistent with previous studies, analyses disaggregated by crime severity found that ethnic and racial disparities were more pronounced for less serious offenses, such as status offenses (e.g., Bishop and Frazier, 1996), but after controlling for extralegal and case characteristics, were absent for more severe charges."[27]

For reforms to be successful at reducing racial and ethnic disparities, diversion efforts must be examined through and informed by a specific and intentional focus on racial and ethnic equity. The questions below, illustrated in a chart on the following page, are questions that should be asked of any diversion program. The answers to each of these questions should address the specific considerations outlined after each of those questions, which go to the use of diversion in an equitable manner and as an intentional strategy to reduce racial and ethnic disparities.

- **For whom is diversion available?** Are there clear and objective eligibility criteria for diversion programs? Do those criteria include exclusions for categories of offenses that are the largest drivers of disparity? Is there a requirement that all eligible youth be referred for diversion or is the ultimate referral decision discretionary? Are there clear criteria to prevent the potential for "net widening?"

- **How do supervisors hold staff accountable for diversion decisions?** Who monitors whether all eligible youth receive the opportunity for diversion? What are the procedures for reviewing situations where officials deemed youth to be ineligible?

- **Which services are available for youth and families?** If diversion results in a referral to a program or intervention, what effort has been made to ensure that those programs or interventions are culturally responsive and accessible to youth and families of color? Are there language limitations that make certain youth and families unable to participate?

- **How are staff trained?** For staff who make diversion decisions and those who run diversion programs, what training have individuals received on the rules regarding diversion and the potential ways that implicit and explicit bias can impact opportunities

[26] Monique W. Morris, *Pushout: The Criminalization of Black Girls in Schools* (2016).
[27] Ronald E. Claus, Sarah Vidal, and Michele Harmon, Racial and Ethnic Disparities in the Police Handling of Juvenile Arrests, National Criminal Justice Reference Service Document No. 250804 (June 2017), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/grants/250804.pdf.

for diversion?

- **How are youth and families engaged by the diversion program?** How are opportunities for diversion explained to young people and their families? Is outreach done in a way that is responsive to the ages of youth and the race and ethnicity of young people and families? Do officials imply that youth will be referred for formal processing if they fail to participate, or is outreach conducted from the perspective of offering assistance that may be valuable to youth and family members?

- **What are the rules for youth and families in the diversion program?** Are there rules for the diversion program that are likely to reduce engagement and participation (e.g., requiring young people and family members to admit to the alleged offense; requiring parental participation in programming)?

- **What actions are taken (if any) when program rules are not followed?** Is diversion "true" diversion by ensuring that youth do not receive court consequences for not completing the program? Can the fact of failing to complete a diversion program be considered or used against the young person if he or she is referred to court in the future?

- **When has a youth successfully completed the program?** Does a diversion program define success as completion of the program and avoidance of re-arrest for a period of time, or does the program have success measures that are far too ambitious given the limited scope of the intervention? What efforts are made to analyze outcomes by race, ethnicity, and gender to dig deeper in any differences in outcomes?

Any diversion effort focused on reducing racial and ethnic disparities must also begin with the use of data to identify areas of disparity and opportunities for diversion. Data must also be collected in a standardized way to assess the effectiveness of diversion as a tool to reduce racial and ethnic disparities. Diversion efforts that do not prioritize this type of data collection and analysis cannot expect to be successful at having a measurable and positive impact on youth of color.

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# RED Lens:
# Assessing the Diversion Decision Pathway

**1**

**Objective criteria for eligibility**

For whom is diversion available?

**2**

**Clear supervisory review procedures**

How do supervisors hold staff accountable for diversion decisions?

**3**

**Equal access to effective and culturally appropriate services**

Which services are available for youth and families?

**4**

**Training on policies and procedures; RED**

How are staff trained?

**5**

**Culturally and age responsive engagement**

How are youth and families engaged and motivated in the diversion program?

**6**

**Equitable requirements for youth participation**

What are the rules for youth in the diversion program?

**7**

**Equally-applied sanctions**

What sanctions are employed when program rules are not followed?

**8**

**Objective program completion and exit criteria**

When has a youth successfully completed the program?

## A Typology of Early Diversion Programs

Diversion programs vary widely from jurisdiction to jurisdiction throughout the country, in policy, process, and intervention. As part of a national review of diversion programs, researchers Jill Farrell, Aaron Betsinger, and Paige Hammond of the University of Maryland School of Social Work's Institute for Innovation and Implementation summarized the types of early diversion programs that are commonly used.[28] The typology in the chart below is adapted from their report. It can be helpful in thinking about the range of options for diversion of young people pre-arrest and pre-charge.

**A Typology of Pre-Charge Diversion Programs[29]**

| Program Type | Description |
|---|---|
| **Police-Led** | |
| **Cautioning and Warning Programs** | Youth receive a warning or formal caution instead of further justice system processing. Cautioning programs generally occur pre-charge and are led by police. Traditional cautioning programs typically involve a youth, their parents, and a police officer who describes consequences of further delinquent behavior. Variations of traditional cautioning include: cautioning plus referral to services and restorative cautioning, which entails a structured discussion between offender, affected persons, the victim, and a police officer facilitator. |
| **Civil Citation Programs** | Civil citation programs allow youth to avoid arrest records by accepting citations for misdemeanor offenses. As a condition of accepting citations and avoiding arrest, youth may be required to complete community service hours, participate in intervention services (e.g., counseling), or be subject to other sanctions (e.g., restitution, apology letters). |
| **Service Coordination** | |
| **Case Management** | Case management or broker model programs focus on coordinating and linking youth to external services. Case management programs generally do not provide direct services themselves and rely on referrals to external providers. |
| **Wraparound Services** | Wraparound is a comprehensive, child and family-centered approach, in which a team is built generally consisting of the young person, their family, their community, wraparound staff, and service providers. This team works collaboratively, with the youth and family taking a leadership role, to identify needs, locate services, and create an individualized plan. The goal of wraparound services is to surround the family with a supportive team as they work together to meet the family's unique needs and goals. |
| **Counseling/Skill-Building** | |
| **Individual-Based Treatment** | Individual-based treatment includes individual and group counseling and crisis intervention. |
| **Family-Based Treatment** | Family-based treatment include counseling programs such as Multisystemic Therapy and Functional Family Therapy. |
| **Mentoring** | Mentoring programs generally entail pairing of a youth and an adult, who may act as a caring and supportive relationship and a positive role model for the young person. |

[28] Jill Farrell, Aaron Betsinger, and Paige Hammond, Best Practices in Youth Diversion: Literature Review for the Baltimore Youth Diversion Committee, The Institute for Innovation and Implementation, University Of Maryland School Of Social Work (August 2018), *available at* https://www.dropbox.com/s/uae88oor2buolpm/Youth%20Diversion%20Draft%2008.16.18%20%283%29.docx?dl=0.

[29] *Id.*

| | |
|---|---|
| **Skill-Building Programs** | Skill-building programs include employment training, truancy interventions and other educational services, and life skills training. |
| **Restorative Justice** | |
| **Victim-Youth Mediation** | Victim-youth mediation entails an in-person meeting between victim and youth(s) guided by a trained staff member or volunteer. These meetings offer an opportunity to "humanize the process" by allowing the victim to see the person who caused the harm and the youth to see and hear from the victim. Victim-offender mediation also allows for a facilitated dialogue about how the young person can help repair the harm done, including through an apology, restitution, or community service. |
| **Family Group Conferences** | Family group conferences often include a wider group of participants in addition to the victim and young person, including family, friends, and other important people in the victim and young person's lives. The conference allows for all participants to share their stories and how they were impacted by the crime and collaborate to identify how the offender may make amends. Family group conferences are organized by conference coordinators who may be police officers, school officials, or other individuals. |
| **Teen Court** | Teen court (or youth court) is an alternative to traditional court processing in which court proceedings are carried out by youth volunteers who act as prosecutors, defenders, jury members, and other roles. By including other young adults in the process, teen courts aim to utilize positive peer influence to alter youth behavior. The primary goal of teen courts is to reach a fair sentence for youth with the involvement of their peers. Teen courts generally impose sanctions, such as community service, future teen court jury service, and apology letters. Teen courts can be diverse in nature; a variety of models exist including the adult judge model, youth judge model, and the peer jury model. They also differ in the types of sanctions imposed, the criteria for participation, and other characteristics. |

## Examples of Effective Early Diversion Efforts

Although diversion efforts look different from jurisdiction to jurisdiction, the following list highlights innovative diversion programs across the country that have achieved measurable results. The examples include a wide variety of locations, including large, small, rural, and urban jurisdictions.

- **Philadelphia, Pennsylvania:** Seeking to disrupt its school-to-prison pipeline, in 2014, the Philadelphia Police Department partnered with the School District of Philadelphia, the Philadelphia Department of Human Services, and other agencies to create the Philadelphia Police School Diversion Program. The program is a city-wide, pre-arrest, school-based diversion program that diverts youth who commit low-level offenses on school property from arrest and into community-based diversion programs. School arrests declined 68 percent in the three years following implementation.[30]

- **Baltimore, Maryland:** The Baltimore City Public Schools and Baltimore City School Police have adopted policies and practices designed to limit the offenses for which youth can be arrested in school.[31] Those changes have led to a 97% decrease in arrests of students

[30] *Id.* at 27 (citing University of Drexel Juvenile Justice Research and Reform Lab, Police School Diversion Program (2014)).
[31] Chris Papst, *City Schools See 91 Percent Drop in Student Arrests*, Fox Baltimore (Jul. 17, 2017), https://foxbaltimore.com/news/project-baltimore/city-schools-see-91-percent-drop-in-student-arrests.

by the Baltimore City School Police while at school from the 2007-2008 to 2017-2018 school year (971 arrests vs. 33 arrests). In lieu of making an arrest in most situations, the Baltimore City School Police refer youth to diversion programs, including teen court and substance abuse treatment programs.

- **Summit County, Ohio:** Since 2014, Summit County has effectively replaced juvenile probation with individualized, limited dispositions. Summit County maintains a separate, dedicated Diversion Committee, consisting of representatives from police jurisdictions across the county, that works with the Prosecutor's Office to craft specific diversion agreements. The dispositions can include referral for treatment, referral for assessment, community service, restitution, essay writing, or no further action. Since this implementation, Summit County has reduced the number of youth placed on probation for misdemeanor offenses by 81 percent.[32]

- **Santa Cruz, California:** Over the past two decades, Santa Cruz has refrained from refiling diverted cases when youth fail to complete their diversion programs. Over this time period, arrest rates in Santa Cruz have decreased 75 percent, and following diversion, only 11 percent of youth are charged with new offenses within one year of being diverted.[33]

- **Alameda County, California:** For more than six years, Community Works West has operated the Restorative Community Conferencing program in Alameda County. The program diverts over 100 youth per year away from the juvenile justice system and facilitates organized dialogues in which young people, with the support of family and community members, meet with crime victims to create a plan to address the harm caused by their actions. A 2017 report written by Impact Justice's Restorative Justice Project showed that youth who were formally processed in juvenile court were twice as likely to reoffend as youth diverted into the Restorative Community Conferencing program.[34]

- **Multnomah County, Oregon:** Multnomah County has partnered with community organizations in predominantly Latino and predominantly African-American neighborhoods to create a Community Healing Initiative (CHI). The CHI program offers support for youth on probation who are at high risk of re-arrest. The CHI-Early Intervention program, on the other hand, provides an alternative to formal processing for lower-risk youth. In 2016, only 40 percent of youth referred to court in Multnomah County were formally processed. 32 percent of cases were dismissed by prosecutors,

[32] Transforming Juvenile Probation, *supra* note 6, at 42 (information provided by Summit County Juvenile Court).
[33] *Id*. at 29 (citing Charles Puzzanchera & Wei Kang, Easy Access to FBI Arrest Statistics 1994-2014 (2017)).
[34] *Id*. at 27 (citing, *see generally* Sujatha Baliga et al., Restorative Community Conferencing: A Study of Community Works West's Restorative Justice Youth Diversion Program in Alameda County (2017)).



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and the rest were placed in either community-based or probation-administered diversion programs.[35]

- **Los Angeles County, California**: In November 2017, Los Angeles County began a youth diversion initiative that aims to steer thousands of youth away from the juvenile court system and into supportive service programs. The initiative authorizes law enforcement officers to counsel and release youth they apprehend for status and misdemeanor offenses or to refer youth to diversion programs in lieu of, or following, an arrest for all misdemeanors and some felonies. As part of the initiative, Los Angeles County created an Office of Youth Diversion and Development to build partnerships with law enforcement agencies and community-based agencies to promote the use of diversion, create procedures for managing diverted cases, and collect and analyze data to measure the effectiveness of diversion efforts.[36]

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[35] *Id*. at 25, 42 (information provided by Mary Geelin, Systems Change and Community Initiatives).
[36] *Id*. at 24 (citing, Celeste Fremon, *Los Angeles Board of Supervisors Votes to Launch 'Historic' Juvenile Diversion Plan*, Juvenile Justice Information Exchange (Nov. 8, 2017), https://jjie.org/2017/11/08/la-county-board-of-supervisors-votes-to-launch-historic-juvenile-diversion-plan/)).

# The Landscape for Pre-Charge Diversion in Iowa

## The Need for Early Diversion

In recent years, youth justice reform efforts in the State of Iowa have pointed to a need for expanded early diversion, particularly for youth who are labeled as low or moderate risk. In 2016, Iowa was one of three states to receive a two-year federal planning grant from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for the purpose of developing a comprehensive, statewide plan to improve Iowa's youth justice system. The grant provided an opportunity to partner with national experts from the Council of State Governments Justice Center (CSG), National Youth Screening and Assessment Partners (NYSAP), and the Center for Juvenile Justice Reform at Georgetown University (CJJR) to conduct an extensive assessment of Iowa's juvenile justice system in order to identify strengths and areas for improvement.[37]

The assessment conducted by CSG and its project partners led to a series of recommendations, including several focused explicitly on expanding diversion. These included:

- Develop[ing] more formal, statewide opportunities for pre-arrest diversion to minimize system contact and monitoring for low-risk youth, such as a civil citation program;
- Consider[ing] statute or court rule changes regarding eligibility for diversion . . . including whether to have any form of informal supervision at all . . . .; and
- Establish[ing] statewide screening, diversion, and assessment policies, and formaliz[ing] these policies and training requirements through court rules or a supervisory order from the Supreme Court.[38]

A 2017 assessment of Iowa's juvenile justice system found that youth of different risk levels (i.e., low, medium, high) received the same number of services on average instead of youth with higher risk receiving more services relative to youth categorized as low or medium risk. This finding is important, as research has demonstrated that reoffending is lowest when services and interventions are matched to a youth's level of risk. Reoffending is higher in systems that do not match the type and intensity of services to risk, as the assessment suggested was the case in Iowa.

CSG and its project partners issued those recommendations, in part, because of data illustrating that the majority of limited juvenile justice system resources were used for low-risk

[37] Council of State Governments Justice Center, Iowa's Juvenile Justice System Improvement Planning Grant: Key Findings from System Analysis (Nov. 6, 2017).
[38] *Id.* at 24.



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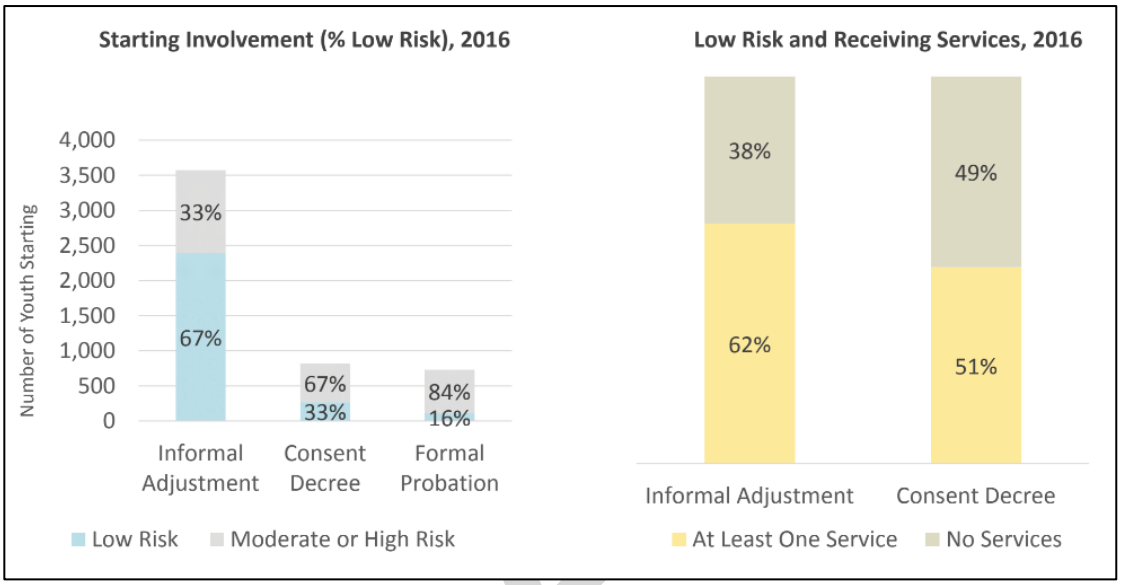
youth "who typically should receive minimal, if any, system intervention," as illustrated in Figure 1 below.[39]

**Figure 1: Dispositions and Service Receipt for Low Risk Youth[40]**




Finally, the assessment also noted that African American youth were less likely to be diverted and more likely to be placed on formal supervision than White or Hispanic youth, as illustrated in Figure 2 below. This may be attributable to a lack of clear and consistent criteria for early diversion in jurisdictions throughout the state. In the absence of such guidelines, factors such as implicit and explicit racial and ethnic bias can influence such decisions.

**Figure 2: Complaint Disposition by Race and Ethnicity, 2015[41]**

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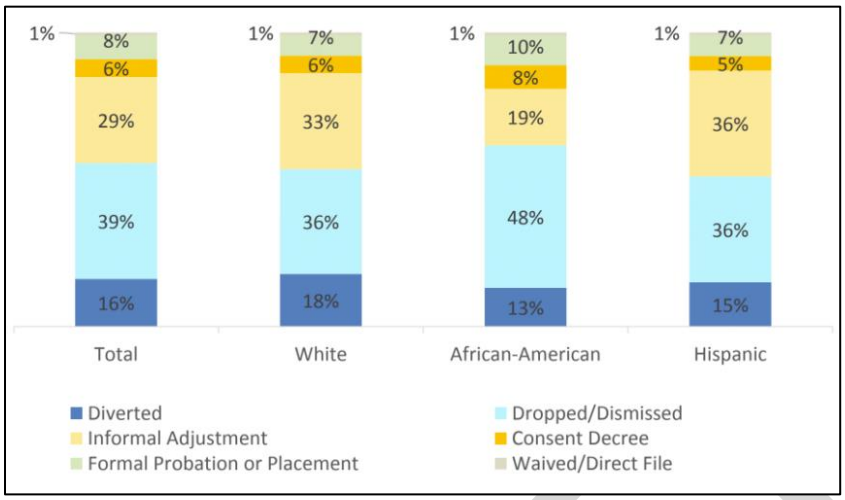
[39] *Id.* at 28.
[40] Council of State Governments, *supra note 37*, at 28.
[41] *Id.* at 39.




Additionally, early diversion efforts vary widely throughout the state, as described in more detail below. To be sure, there should be room for local jurisdictions to tailor services and supports for young people based on the needs of and resources available in their communities. However, young people in Iowa should have the benefit of early diversion opportunities regardless of where they are being raised in the state. That is to say, a young person charged with a simple misdemeanor offense should not be handled differently from one county to another. Nevertheless, more punitive responses may be used in particular jurisdictions, including in communities where youth of color tend to live. Differential handling of identical situations across a state is commonly referred to as "justice by geography" and can be avoided through state-level policy development and implementation. Iowa has undertaken similar state-level efforts with respect to the use of screening instruments at intake and detention to avoid geographic differences in handling of cases.

## New Opportunities for Early Diversion

In 2018, the Iowa General Assembly passed HF 2443, which made changes to the state's juvenile justice code that contemplate broader use of early diversion. Those changes included adding a definition of "juvenile diversion program," which is described as "an organized effort to coordinate services for a child who is alleged to have committed a delinquent act, when the organized effort results in the dismissal of a complaint alleging the commission of the delinquent act or results in informally proceeding without a complaint being filed against the child, and which does not result in an informal adjustment agreement involving juvenile court services or the filing of a delinquency petition."[42]

Additionally, the law makes exceptions to the confidentiality of a youth's records for an individual involved in the operation of a juvenile diversion program, noting that such individuals "may also receive from a state or local law enforcement agency police reports and

[42] Iowa Code § 232.2(32A) (emphasis added).

related information that assist in the operation of the juvenile diversion program."[43] This addition to the Iowa Code allows for direct information sharing between law enforcement and service providers offering diversion services, which can help with the development of pre-arrest diversion processes.

These changes to Iowa law can and should provide a new impetus for exploring and promoting consistency in early diversion efforts in jurisdictions throughout the state.

## Surveying Pre-Charge Diversion Practices in Four Jurisdictions

As part of the development of this Toolkit, CCLP conducted assessments of diversion policies and practices in four Iowa counties – Black Hawk (Waterloo), Johnson (Iowa City), Scott (Davenport), and Webster (Fort Dodge) – to obtain information about the strengths and challenges of early diversion efforts already underway and to identify opportunities to strengthen those efforts.

Three of the four jurisdictions have established pre-charge diversion programs with structured policies and procedures governing how diversion should take place. Although each jurisdiction identifies youth who should be eligible for diversion and the interventions the programs to which youth should be referred, there were differences in:

- Which youth are diverted.
- Whether youth are diverted pre- or post-arrest or pre- or post-referral to JCS.
- Eligibility requirements for participation in diversion.
- Conditions of participation in diversion.
- Whether family members must be involved in diversion programming.
- Whether there are court consequences or not for failing to engage with or complete the program.
- Whether youth who do not participate in or complete diversion have their referrals returned to law enforcement.
- What type of data are maintained about diversion utilization and by whom.

[43] Iowa Code § 232.147(2)(q).

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- Where the diversion data set is maintained (i.e., within the Judicial Branch Case Management System).

- How data are used and by whom the data are used.

- The measures of success for each program.

The chart on the following page helps illustrate some of the differences across jurisdictions in these key areas.

Additionally, the processes for referring youth to diversion programs following a contact with law enforcement or other referring party differed significantly. The flowcharts on the pages that follow the chart of key differences illustrate the variation in the processing of diversion referrals.

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**Figure 3: Differences in Pre-Charge Diversion Practice in Three Jurisdictions**

| | 1st Judicial District | Iowa City | Davenport |
|---|---|---|---|
| **Referral Source(s)** | Law Enforcement | Law Enforcement | Law enforcement, School Resource Officers, Juvenile Court School-Based Liaisons |
| **Referral Process** | Youth taken into custody; referral to JCS | Email from law enforcement to JCS; no arrest/taking into custody | Email from law enforcement; no arrest/taking into custody |
| **Target Population(s)** | First-time Simple Misdemeanors, first-time Possession of Marijuana, and subsequent Simple Misdemeanors when initial referral was for youth under 13; youth whose referring charge is different from prior charge; or when 12 months have passed since previous diversion referral | First-time Disorderly Conduct (LADDERS) and Theft 5th (Shoplifting Diversion) | First time Simple Misdemeanors or Possession Under the Legal Age |
| **Number of Times Youth Can Be Diverted** | Multiple (conditional on rules above and discretion of JCS) | Once | Once |
| **Duration of Program/Service** | Varies | LADDERS: 3-4 hours; Shoplifting Diversion: 90 minutes | Correcting Thinking/True Thoughts: 2 hours |
| **Number of Opportunities to Attend** | Multiple (conditional on JCS approval) | Three | Two |
| **Consequence(s) (If Any) of Failing to Attend/Complete the Program** | Cases held open for 90 days; no JCS consequence | Notification to family; no JCS consequence | Notification to law enforcement; no JCS consequence |
| **Data Collection Process** | Data maintained in Judicial Branch Case Management System | Data maintained in spreadsheet outside of Judicial Branch Case Management System | Data maintained in spreadsheet outside of Judicial Branch Case Management System |

# 1st Judicial District Diversion Process

Law enforcement contact for first time Possession of Marijuana or for SMMS.

Law enforcement emails referral form to JCS for screening for prior referrals to program.

JCS review for prior referral to diversion program.

**No**

JCS enters XO case subtype and info into the JB Case Management System. JCS sends letter regarding the assigned diversion program.

**Yes**

The current offense is an SMMS, and the previous offense for which the child was referred was an SMMS; and either the age of the youth on the initial referral was under 13, the incident is different from the initial report, or 12 months have passed since the prior referral.

**Yes**

**Attend**

Youth completes one of 17 specified diversion programs listed at the bottom of this chart.

**Does Not Attend**

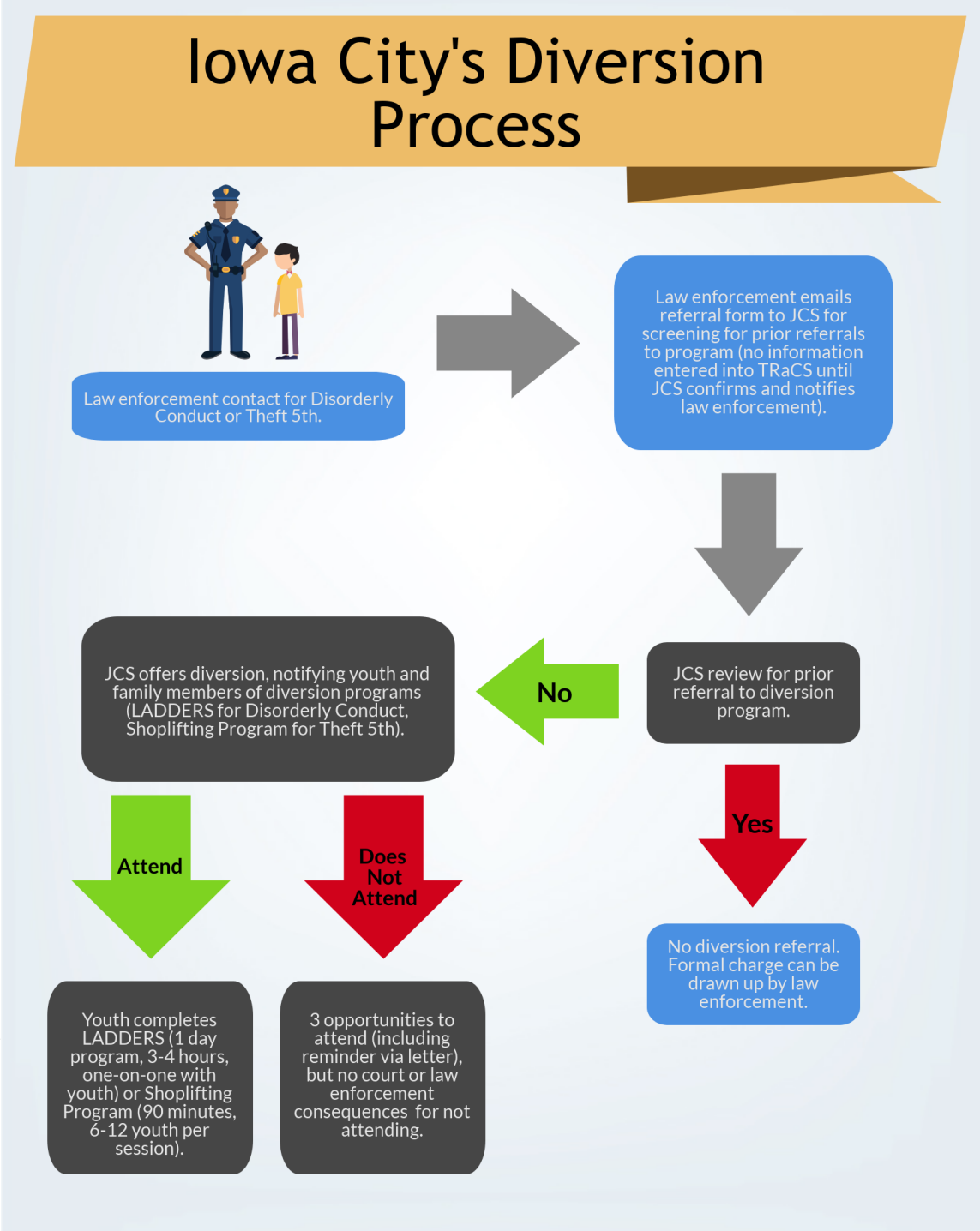
If the child does not attend, the incident report is held open for 90 days. If there are no further law enforcement reports the case is closed.

**No**

Formal charges can be drawn up by law enforcement, but the Court has the option to offer diversion.

## Diversion Programs

- TruThought
- Life Skills Diversion
- TL
- DTBK
- Voices: In School
- Voices: Community
- Mentoring & Me
- Street Smart
- Smart Girls
- Passport to Manhood
- Career Launch with Employment Opportunity
- BHIS
- Family Therapy
- SHOP
- 3rd Millennium
- Individualized Programs
- Hail Mary Project


Iowa City's Diversion Process
Law enforcement contact for Disorderly Conduct or Theft 5th.
Law enforcement emails referral form to JCS for screening for prior referrals to program (no information entered into TRaCS until JCS confirms and notifies law enforcement).
JCS review for prior referral to diversion program.
No
JCS offers diversion, notifying youth and family members of diversion programs (LADDERS for Disorderly Conduct, Shoplifting Program for Theft 5th).
Yes
No diversion referral. Formal charge can be drawn up by law enforcement.
Attend
Does Not Attend
Youth completes LADDERS (1 day program, 3-4 hours, one-on-one with youth) or Shoplifting Program (90 minutes, 6-12 youth per session).
3 opportunities to attend (including reminder via letter), but no court or law enforcement consequences for not attending.

# Davenport's Diversion Process

Law enforcement contact for first time SMMS or PULA.

Law enforcement, an SRO, or a JCSL sends a referral form via TRaCS to JCS for screening for a prior referral to a diversion program.

JCS review for prior referral to diversion program.

**No**

JCS offers diversion, notifying youth and family members of the diversion program Corrective Thinking/True Thoughts. The record from TRaCS is removed.

**Attend**

Youth completes Corrective Thinking/True Thoughts (1 day program for 2 hours).

**Does Not Attend**

2 opportunities to attend. While law enforcement is notified if the child does not attend, there are no court or law enforcement consequences.

**Yes**

No diversion referral. Formal charge can be drawn up by law enforcement.

## Key Themes and Recommendations

As part of CCLP's survey of diversion practices in the four jurisdictions mentioned above, CCLP prepared site visit summaries for each jurisdiction. These site visit summaries identified specific strengths and weaknesses of diversion efforts in each jurisdiction. The individual site-specific reports are available by following this link. However, a number of common themes and recommendations emerged across all jurisdictions:

**An overreliance on formal interventions for youth who should be diverted with a warning and no intervention.**

As mentioned earlier in this report, the literature on effective juvenile justice practices and Iowa's own data demonstrate that most youth assessed to be low risk are unlikely to re-offend, even if there is no intervention from the justice system at all[44] – and that formal interventions by the juvenile justice system often do more harm than good for a large percentage of youth.[45] While the jurisdictions surveyed had developed diversion programs to divert low-risk youth and youth with first-time referrals, the jurisdictions had a tendency to rely on referrals to a diversion program or service for those youth. In general, jurisdictions did not see diversion with no intervention as the presumed default response for youth determined to be low risk, even if diversion with no intervention was used in some circumstances. Recommendations focused on adding warning with no intervention as an explicit step in jurisdictions' diversion continuum and establishing eligibility criteria for that step.

**A need to focus specifically on the use of diversion as an intentional strategy to reduce racial and ethnic disparities.**

Despite noteworthy efforts in local jurisdictions, overrepresentation of youth of color in arrests and referrals to the youth justice system still persists. While some work is underway to use diversion to reduce racial and ethnic disparities, there is an opportunity to significantly expand and deepen these efforts, including through reform efforts targeted at policies held by schools, law enforcement and JCS. There is an urgent need to use available data to identify opportunities to reduce disparities through the use of early diversion, as well as to monitor such efforts for effectiveness.

[44] *See, e.g.*, Mark W. Lipsey, The Primary Factors That Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview, 4 Victims and Offenders 124 (2009).

[45] Richard A. Mendel, The Annie E. Casey Foundation, Transforming Juvenile Probation: A Vision for Getting It Right 9 (2018) (citing, see generally Elizabeth Seigle et al., Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in The Juvenile Justice System (2014)).

### An underutilization of formal diversion programs for lower-level offenses and youth determined to be low or moderate risk.

While it appears that jurisdictions generally are not using warnings without intervention as a diversion option to its fullest potential, it also seemed that jurisdictions were not using established formal diversion programs as widely as they could be. For example, jurisdictions limited eligibility for diversion to particular types of offenses, or they limited eligibility for diversion to youth with no prior referrals at all. As noted in the introduction to this report, many jurisdictions rely much more heavily on diversion, with some jurisdictions opting to divert all misdemeanor offenses to alternative services. Recommendations focused on expanding eligibility criteria, with a particular focus on ensuring that youth of color had access to early diversion programs by using current data on reasons for referrals to JCS.

### Diversion referral processes that still involve being taken into custody by law enforcement or some degree of involvement with the juvenile justice system.

Because one of the core tenets of early diversion is the desire to keep young people away from the justice system when possible, the most effective diversion processes minimize or avoid the stigma and negative effects of formal system contact. This is why, as noted earlier in the report, more and more jurisdictions are focusing on pre-arrest diversion and diversion managed by community-based service providers instead of probation departments. While there were notable examples of efforts to attempt to divert prior to arrest, diversion processes generally still involved some degree of formal contact, be it through an arrest or maintenance of data on diversion within the Judicial Branch Case Management System. Recommendations focused on looking to other jurisdictions' models and processes that allow for diversion at the earliest possible point with the smallest likelihood of formal system involvement.

### A need for standardized, state-level data collection regarding pre-charge diversion.

While Iowa does have notable data collection and reporting capacity for young people in the youth justice system, there is currently no state-level data collection occurring regarding pre-charge diversion. While jurisdictions may be capturing some information for their own use, it is not possible to determine trends in diversion or diversion program success across the state. Additionally, as revealed during the site visits, jurisdictions varied in terms of how much data they were collecting on youth referred for diversion (e.g., race, ethnicity, age, offense, Zip code), as well as outcome measures from diversion efforts (e.g., re-offense rates, successful diversion program completion rates). Recommendations included:

- Developing a standardized state-level data collection process, separate and apart from the existing Judicial Branch Case Management System, that

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would allow for consistent data collection and analysis of statewide and local trends.

- Developing a module within the Judicial Branch Case Management System where only JCS staff could enter information regarding diversion.

- Developing a module within the Judicial Branch Case Management System where only diversion staff (i.e., JCS, providers, law enforcement, etc.) could enter information regarding diversion.

There are current conversations in Iowa about the possibility of developing such a system.

**A need for written agreements among youth justice stakeholders outlining the purpose and goals of diversion and when diversion must be used.**

Although all jurisdictions had made some attempts to capture their current diversion practices in writing, no jurisdiction had a clear, unified policy on diversion that had been agreed to by JCS officials, law enforcement officials, prosecutors, and other youth justice system stakeholders. Recommendations focused on developing memoranda of understanding that codify shared values and outline expectations regarding early diversion protocols and programs.

**A need for partnerships with schools to address school discipline and arrests that lead youth into contact with the justice system.**

In each jurisdiction, there are opportunities for juvenile justice stakeholders to partner intentionally with local school systems to address racial and ethnic disparities in school discipline and school-based arrests. In many jurisdictions, a large percentage of referrals of youth for low-level offenses come from incidents arising in schools. In the absence of clear guidelines and policies regarding the role of law enforcement in schools, law enforcement often assumes the role of a school administrator in responding to incidents, which can drive youth – and youth of color in particular – into the justice system. As noted in the resources section of this Toolkit, many jurisdictions have significantly reduced exclusionary school-based discipline practices and school-based arrests through revisions to codes of conduct, commitments to using progressive discipline, and establishment of formal written memorandums of understanding to establish the roles of law enforcement and school administrators. Recommendations focused on working with school districts to review and implement these practices.

**A need to assess diversion programs through the lens of cultural and gender responsiveness.**

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Across jurisdictions, conversations focused on ensuring that the outreach to youth and families was done in a culturally responsive way that would maximize the likelihood that youth and families would participate in services. Officials also discussed the need to identify other community-based resources that could serve as diversion options within neighborhoods and communities of color. Recommendations focused on modifying diversion outreach strategies to maximize engagement with youth and families, as well as providing support to non-traditional community-based entities that could serve as diversion pathways.

### Inconsistency among outcome and "success" measures and a need to use data to strengthen policies and programs.

Across jurisdictions, outcome measures associated with diversion programs varied from short-term measures of re-arrest to longer-term measures, such as avoiding any future contact with the justice system up to age 18. Additionally, while jurisdictions varied in the level of detail of data collected regarding use of and outcomes associated with diversion programs, the survey of practices revealed opportunities to use available data to dig deeper into trends to identify improvements to existing programs and services. Recommendations focused on ensuring appropriate and uniform outcome measures for diversion programs and using data strategically to assess the effectiveness of programs.

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## Implementing Diversion in Practice: A Roadmap for Beginning and Enhancing Pre-Charge Diversion Efforts

This section of the Toolkit is designed to provide jurisdictions with concrete steps and resources to implement or enhance pre-charge diversion programs. Links are provided to resources in each section to help achieve the goal outlined for each step.

### 1. Map the Pre-Charge Decision Making Process

The first step to implementing or enhancing early diversion efforts is to map the current process for how referrals to JCS are made now, who is involved at different stages of the referral process, and the criteria that those individuals use to make decisions. This mapping should be done in collaboration with youth justice system stakeholders. The process often yields insights about inefficiencies and opportunities for improvement. The goal should be a clear description of the process that can be captured in flowchart form, as illustrated in the examples presented earlier in this report.

*Resources*

- **CCLP System Mapping Exercise**. To assist jurisdictions with a structured process to complete the mapping described above, CCLP has developed an exercise that outlines the data collection that should occur to assist with the mapping, the activities that stakeholders should undertake, and the questions that should be answered as part of the mapping process. The mapping exercise can be used at later decision points in the youth justice system to identify opportunities to divert youth away from deeper system involvement, but it can be particularly valuable with a focus solely on early diversion (e.g., pre-arrest or pre-charge).

- **Survey of Diversion Practices**. As part of the review of pre-charge diversion in Iowa, CCLP developed an online survey of current policies and practices. The survey is available for use as a Google form by following this link and can be completed by jurisdictions looking to examine their own programs.

- **Diversion Flowcharts for Johnson County, Black Hawk County, and Scott County**. The flowcharts pictured earlier in this report were a product of the system mapping done as part of this project. The flowcharts were made using the online tool Piktochart and can serve as a model for visual illustrations of the diversion process once the mapping exercise is complete.

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## 2. Identify a Target Population

Jurisdictions should then use data to identify the youth who stakeholders agree should be eligible for diversion. Efforts focused on using diversion as a strategy to reduce racial and ethnic disparities should identify referral reasons and sources that are leading drivers of youth of color into the juvenile justice system. Jurisdictions can use their data to identify general types offenses that will be eligible for diversion (e.g., simple misdemeanors) or particular offenses (e.g., disorderly conduct).

*Resources*

- **CJJP's DMC Data Website and Easy Access to Juvenile Court Data (EZA)**. CJJP maintains a website of current data, including profiles of individual jurisdictions that contain information on referrals to the youth justice system and school discipline data disaggregated by race, ethnicity, offense, and gender. The EZA allows user to perform data queries on basic juvenile justice decision points (complaints, allegations, informal adjustments, and petitions).

- **Site Visit Data Presentations**. As part of each site visit, CCLP gathered relevant data from CJJP, as well as Juvenile Court Services and law enforcement, to help identify key trends and opportunities to enhance diversion. These PowerPoints contain charts that officials can edit to enter their own information. The charts illustrate the different lenses through which data should be reviewed as part of efforts to expand or enhance early diversion.

## 3. Identify an Appropriate Intervention

Once officials have identified the group or groups of young people who have been targeted for diversion, the next step is identifying what response or intervention is appropriate. As mentioned throughout this Toolkit, the default response for most youth referred to the juvenile justice system is no formal system response, as research indicates that most youth will naturally age out of such behavior. Research also illustrates that youth diverted away from formal system involvement have lower rates of future contact with the justice system as compared with youth who enter the system.

Because school-based incidents are significant drivers of referrals to juvenile court in many jurisdictions, officials should consider developing a memorandum of understanding (MOU) between school officials, law enforcement, and juvenile court officials that outlines when behaviors should be managed within the school system and the narrow range of situations when law enforcement should be involved. A strong school discipline code with graduated responses to student behavior is also helpful in ensuring that students are not referred to the justice system for behaviors that should be managed without court involvement. Similar

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agreements should be developed between law enforcement and juvenile court officials to set expectations for arrests that occur in the community.

Finally, jurisdictions may opt to develop specific programs to match certain types of referrals. For example, many jurisdictions have a shoplifting program for youth charged with misdemeanor retail theft. Information about the diversion program that Johnson County created for disorderly conduct referrals, LADDERS, is available through the link below.

*Resources*

- **Model MOUs among School Officials, Law Enforcement, and Juvenile Court Officials**. As mentioned above, a memorandum of understanding helps to ensure that young people are not referred to juvenile court for behaviors that should be managed within a school setting. The link contains a model MOU developed in 2018 by officials in Massachusetts, including prosecutors and law enforcement officials. The link also contains a model MOU developed by the Advancement Project, which is a national organization that has extensive experience helping jurisdictions reduce exclusionary school discipline and school-based referrals to court.

- **School Discipline Toolkit and Model Discipline Codes**. The Advancement Project has created a school discipline toolkit that provides suggestions for revising student codes of conduct. The toolkit contains sample discipline codes from a variety of jurisdictions throughout the country.

- **Description of Johnson County's LADDERS diversion program**. This brochure contains information about the program that Johnson County officials created for disorderly conduct referrals that are diverted.

## 4. Determine Eligibility for Diversion and Other Program Conditions

Officials must determine the eligibility criteria for diversion. Criteria should be set with the goal of establishing clear and objective standards for determining eligibility, including mandating or requiring a strong presumption for diversion for eligible situations. In the absence of clear criteria, implicit racial and ethnic bias or other inappropriate factors will impact a young person's access to diversion. Screening tools that have been determined to be race neutral can also assist in determining eligibility for diversion.[46]

In general, conditions of participation should be avoided, as they limit the availability of diversion. For example, some jurisdictions require a young person to admit to the alleged offense as a condition of participation. However, this restriction can unnecessarily exclude

[46] *See, e.g.*, Ohio Youth Assessment System – Diversion Version (OYAS-Div), Ages 12-17, https://www.dys.ohio.gov/Community-Programs/Ohio-Youth-Assessment-System-Registration; Massachusetts Screening Tool for Law Enforcement (MASTLE), http://www.nysap.us/MASTLEbrief%20Nov%2015.pdf.

young people from the opportunity to participate in diversion, and it can raise due process concerns as young people are generally not represented by counsel at the stage when diversion decisions are made. Moreover, such a requirement is not necessary for a young person to receive the benefits of diversion. Other conditions, such as a requirement of parental participation, should be avoided, as they will necessarily limit young people's access to diversion.

*Resources*

- **Model Diversion Agreement**. This model diversion agreement is designed to help jurisdictions develop a clear, objective, and unified policy regarding early diversion efforts. The agreement contains space to insert details of local practices, but it requires consideration of key aspects of diversion, including eligibility criteria, the process for referrals, data collection, and other topics.

## 5. Establish the Referral Process

Jurisdictions should then establish how referrals will be made for diversion. This includes how law enforcement will provide information to entities responsible for diversion (or for making determinations about eligibility for diversion). As noted throughout this Toolkit, the referral process should be structured in a way that avoids formal system involvement, including an arrest or being taken into custody. The system mapping results from Step 1 can be helpful in outlining this process. It can be helpful to illustrate the process through use of flowcharts, as referenced below.

*Resources*

- **Johnson County's Modified Juvenile Contact Report from Law Enforcement**. In order to streamline referrals to diversion from law enforcement, Johnson County officials worked with local law enforcement agencies to modify their juvenile contact forms to include a "diversion referral" checkbox, which is marked for all contacts for Theft 5th and Disorderly Conduct. Law enforcement then emails the contact form to JCS, who screens the youth for eligibility and forwards information about eligible youth to their providers. This process avoids the stigma of arrests for young people being arrested, as well as the creation of an arrest record for incidents that are ultimately diverted.

- **Davenport Police Department Diversion Policy**. This policy from the Davenport Police Department establishes a requirement to divert certain eligible offenses, as well as the process law enforcement officers must follow when doing so. The policy removes officer discretion for cases eligible for diversion, which ensures that all youth receive the opportunity for diversion.

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- Diversion Flowcharts for Johnson County, Black Hawk County, and Scott County. The flowcharts pictured earlier in this report were a product of the system mapping done as part of this project. The flowcharts were made using the online tool Piktochart and can serve as a model for visual illustrations of the diversion process once the mapping exercise is complete.

## 6. Collect and Analyze Data

Jurisdictions must use data to determine opportunities to expand diversion opportunities, but also to evaluate and enhance existing efforts. This requires collecting consistent data on diversion referrals and outcomes. At a minimum, diversion data collection should include the following information. This information should be stored in a data system so that the diversion does not result in a juvenile complaint within the Judicial Branch Case Management System. This will preserve the confidentiality of diverted youth and to ensure that diversion referrals are not counted against a young person in any subsequent referral.

| Youth Information | Referral Information | Program Information |
|---|---|---|
| Age | Referral Date | Referral Accepted/Rejected (including reason for rejection) |
| Gender | Referral Reason (Offense/Reason) | Successful/Unsuccessful Engagement (including reason for unsuccessful engagement) |
| Race | Point of Referral (Pre-Arrest, Post-Arrest, Pre-JCS Referral, Post-JCS Referral) | Program Start and End Date |
| Ethnicity | Referring Agency/Party (including specific school) | Successful/Unsuccessful Completion (including reason for unsuccessful completion) |
| Home Zip Code | | Longer-Term Outcomes |

*Resources*

- Site Visit Data Presentations. As part of each site visit, CCLP gathered relevant data from CJJP, as well as Juvenile Court Services and law enforcement, to help identify key trends and opportunities to enhance diversion. These PowerPoints contain charts that officials can edit to enter their own diversion data information. The charts illustrate the different lenses through which data should be reviewed as part of efforts to enhance early diversion.

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## 7. Evaluate and Improve the Program

Based on the data collected regarding referrals to diversion, engagement with diversion programs, successful completion rates, and other longer-term outcomes (e.g., re-arrest rates within 12 months), officials should consider opportunities to improve existing programs or add new interventions to address changing trends in referrals. Each of the site visit summaries prepared as part of this project, linked below, contain recommendations to enhance those jurisdictions' diversion programs. Jurisdictions should also use the questions outlined earlier in the Toolkit focused on analyzing diversion through the lens of racial and ethnic equity, which can help identify additional improvements.

**Resources to include/reference:**

- **Site Visit Summaries**. As part of CCLP's survey of diversion practices in the four jurisdictions mentioned above, CCLP prepared site visit summaries for each jurisdiction. These site visit summaries identified specific strengths and weaknesses of diversion efforts in each jurisdiction.

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