



# BALTIMORE YOUTH DIVERSION ASSESSMENT

APRIL 2019

CENTER FOR  
**Children's**  
*Law and Policy*

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## Introduction

As part of the Consent Decree with the U.S. Department of Justice, the City of Baltimore and the Baltimore Police Department (BPD) are required to conduct a “comprehensive assessment” of the City of Baltimore’s efforts to decrease young people’s involvement with the juvenile justice and criminal justice systems, including the barriers that exist to diverting more youth away from contact with the justice system and the way interactions between law enforcement and youth may impact diversion efforts.<sup>1</sup>

In October 2018, the City chose the Center for Children’s Law and Policy (CCLP), a non-profit based in Washington, DC, to complete this assessment and report. CCLP has worked with jurisdictions throughout the country to improve how systems respond to young people who have contact with the justice system, particularly from the lens of racial and ethnic equity and inclusion.

This report reflects the recommendations identified during CCLP’s assessment of current efforts to divert young people away from the justice system altogether, as well as to identify alternatives to formal processing in the justice system for youth who have entered the system. CCLP’s assessment was supported and informed by a 25-person Advisory Group made up of community members, convened by the Mayor’s Office of Human Services and the Baltimore Police Department. The Appendix at the end of this report contains a listing of Advisory Group members and affiliations.

In this report, CCLP has focused on identifying opportunities and recommendations that can further strengthen and expand efforts to develop alternatives to justice system involvement for youth arrested for and charged with crimes. Importantly, because African American youth are significantly overrepresented in arrests and referrals to the youth justice system in Baltimore, this assessment’s findings and recommendations are also critical to addressing racial disparities within the youth justice system. This assessment notes many points of strength within existing policies and programs in Baltimore, as there are many strong points worthy of recognition. However, one of the primary goals of this assessment was to provide a roadmap for making improvements that would serve as a basis for discussion and potential implementation by stakeholders in the City of Baltimore.

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<sup>1</sup> Consent Decree, *United States v. Baltimore Police Dept., et al*, No. 17-cv-00099-JKB (ECF 2-2), entered as an Order of the Court on April 7, 2017 (ECF 39). The Consent Decree requires, among other things that “The City will conduct a comprehensive assessment of the City’s efforts to decrease Youth involvement with the juvenile and criminal justice systems and obstacles to doing so, including the City’s diversion programs, community-based alternatives to incarceration, and treatment options for Youth in need of mental health treatment, drug treatment, or other services. The assessment will include community organizations with particular expertise and/or insight into issues affecting Youth, academics, and Youth advocates. The City will issue a report publicizing the results of its assessment and making recommendations to improve the City’s supports for Youth and its diversion programs.” Consent Decree § 219.

## National Context

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, and the number of residential facilities housing youth has fallen by 42%.<sup>2</sup> 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 their community.<sup>3</sup> Specifically, out-of-home placements have been linked with:

- Higher rates of recidivism, particularly 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 decreased earning potential in the labor market.<sup>4</sup>

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.<sup>5</sup>

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, or away from deeper or more extensive involvement if youth have already entered the formal system. Studies show that formal interventions by the juvenile justice system do more harm than good for a large percentage of youth.<sup>6</sup> Compared to

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<sup>2</sup> The Pew Charitable Trusts, *Steep Drop Since 2000 in Number of Facilities Confining Juveniles* (September 2018).

<sup>3</sup> Amanda Petteruti, Marc Schindler, and Jason Ziedenberg, *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* (Washington, DC: Justice Policy Institute, 2014).

<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> Richard A. Mendel, *The Annie E. Casey Foundation, Transforming Juvenile Probation: A Vision for Getting It Right 9* (2018) (citing Elizabeth Seigle et al., *Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in The Juvenile Justice System* (2014)).

system intervention, diversion generally decreases a young person’s likelihood of re-arrest. A 2013 study found that low-risk youth placed in diversion programs reoffended 45% less often than similar youth who were formally processed or who received restrictive sanctions.<sup>7</sup>

Similarly, 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.<sup>8</sup> Longitudinal studies and brain science research corroborate these findings, demonstrating that the majority of young people age out of delinquent behavior, with or without system intervention.<sup>9</sup>

Despite these significant reductions in out of home placements and increased use of diversion overall, disparities for youth of color persist.<sup>10</sup> In some jurisdictions, these 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 . . . .”<sup>11</sup> 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.

## What Does Diversion Mean for the Purpose of this Assessment?

“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 juvenile court.

For the purpose of the Comprehensive Assessment, “diversion” includes two things:

- **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.

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<sup>7</sup> *Id.* at 8.

<sup>8</sup> Josh Weber et al., *Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes 4* (2018) (citing National Research Council, *Reforming Juvenile Justice: A Developmental Approach* (2013)).

<sup>9</sup> *Id.* at 4-5.

<sup>10</sup> W. Haywood Burns Institute, *Stemming the Rising Tide: Racial & Ethnic Disparities in Youth Incarceration and Strategies for Change* (May 2016).

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

- **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.

Using the rubric above, this assessment examined efforts to divert young people away from the formal justice system at four main decision points in the youth justice system:

1. **Pre-Arrest:** What efforts are made to avoid resorting to a referral to law enforcement for youth who may have committed a crime? What policies, practices, and programs exist to require or make available an alternative to placing a young person under arrest?
2. **Arrest:** At the point of arrest, what efforts are made to divert youth away from a referral to the justice system?
3. **Intake and Pre-Adjudication:** For youth who are referred to the justice system, what efforts are made to divert youth away from formal charging and/or adjudication in juvenile court?
4. **Detention:** What efforts are made to avoid incarcerating youth and removing them from their families and communities while they await resolution of their case?

For each of the decision points listed above, recommendations are listed in three areas: (1) recommendations for changes to policy and process, (2) recommendations for changes to programs and conditions, and (3) recommendations to enhance partnerships with the communities of color most deeply impacted by the juvenile justice system. The assessment also includes a final section with overarching recommendations for strengthening and expanding diversion efforts across the City of Baltimore.

## Principles of Effective Diversion

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.

**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, particularly non-violent offenses.<sup>12</sup>

**Avoiding formal system involvement for youth charged with misdemeanors:** Except for youth who have committed serious violent crimes and youth who pose a significant threat to public safety, youth referred to the juvenile justice system should be diverted to alternatives to formal system processing whenever possible. For example, while the standard response to juvenile court involvement has been to place young people on probation, jurisdictions have developed alternatives to probation and formal system involvement with improved results for young people and public safety.<sup>13</sup>

**Identification of community-based organizations and agencies to oversee diversion instead of arms of the justice system:** Shifting the responsibility of overseeing diversion away from court personnel allows them to focus their attention on the most serious cases. The responsible organization or agency should be independent from the court, prosecutor's office, and probation department; should offer a single point of entry for assessments, referrals, care coordination, and crisis intervention; should receive operating funds from the court, county, or state government; and should be responsible for development, oversight, and tracking outcomes.<sup>14</sup>

**Use of restorative justice practices:** To hold youth accountable for their actions in a meaningful and constructive way, many effective diversion programs use family conferences, victim conferences and mediation, and other forms of restitution as a way of acknowledging and repairing harm. Research shows that these practices reduce recidivism rates and are a cost-effective alternative to court involvement and excessive supervision.<sup>15</sup>

**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. Most youth grow out of delinquent behavior without intervention, and formal processing dramatically increases the likelihood of future arrest. If a young person fails to complete a diversion agreement, he or she is better left to grow and mature under family supervision.<sup>16</sup> Moreover, attaching court-imposed consequences for failure to complete diversion raises concerns about youth's due process rights, as youth are unlikely to have the benefit of consulting with an attorney and have not had an independent factfinder assess their involvement in a specific incident.

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<sup>12</sup> Mendel et al. at 26.

<sup>13</sup> *Id.* at 25.

<sup>14</sup> *Id.* at 26.

<sup>15</sup> Weber et al., at 5-6.

<sup>16</sup> Mendel et al., at 26.

**Creation of entities to oversee diversion efforts:** Local governments and juvenile courts should create oversight committees to monitor and support diversion programs in the jurisdiction. The committee should be made up of local government officials (including youth justice system stakeholders and representatives of other youth-serving components of government), service providers, public school administrators, various leaders from community organizations, families, and young people. The committee should set expectations, create program guidelines, conduct training and support for personnel, collect and analyze data, assess needs, and develop programs to expand and improve diversion options.<sup>17</sup>

**Ensure racial and ethnic equity and cultural responsiveness of diversion policies, practices, and programs:** Racial and ethnic disparities are a pervasive and persistent challenge for youth justice systems across the country. Youth of color are overrepresented in the justice system, more likely to receive harsher and more punitive treatment than their similarly situated White counterparts, and more likely to enter and move deeper into the justice system in cases where alternatives outside of the system have proven more effective. As mentioned above, diversion is a vital mechanism for reducing racial and ethnic disparities in the juvenile justice system when approached with an explicit focus on using diversion to reduce and eliminate disparities.

## Methodology

CCLP staff members Tiana Davis, Policy Director for Equity and Justice, and Jason Szanyi, Deputy Director, were the primary authors of this report, under the supervision of Executive Director Mark Soler. CCLP drew upon seven primary sources of information when preparing this analysis:

**Quantitative Data:** CCLP reviewed quantitative data provided by BPD, the Maryland Department of Juvenile Services, service providers, and other system stakeholders regarding referrals to the justice system, participation in diversion programs, and outcomes associated with those diversion programs. CCLP incorporated that data where appropriate to provide additional context for the report and recommendations. CCLP has attempted to identify major areas where limitations in the availability or quality of data limited this review.

**Document Review:** CCLP reviewed a variety of documents to obtain context for diversion efforts in the City of Baltimore and to frame interviews with stakeholders. These documents included agency policies and procedures, public and internal reports, organizational charts and staffing information, contracts with service providers, budget information, program descriptions, and other documentation related to diversion.

**System Mapping:** During several meetings of the Advisory Group convened by the City and BPD to oversee this aspect of the Consent Decree, CCLP led a series of system mapping exercises with key stakeholders responsible for making diversion decisions

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<sup>17</sup> Mendel et al. at 13, 28-29.

throughout the youth justice system, including BPD, the Baltimore City School Police, the Maryland Department of Juvenile Services, and the State's Attorney's Office. During these mapping exercises, individuals from each agency shared information about existing diversion efforts and fielded questions from CCLP and Advisory Group members to help inform this assessment.

**Interviews:** CCLP conducted in-person interviews with a variety of individuals, including BPD and City officials; youth justice system stakeholders from the Office of the Public Defender, State's Attorney's Office, Maryland Department of Juvenile Services, and the juvenile court; youth and racial justice advocates; service providers; and other community representatives and activists.

**Focus Groups:** CCLP, in partnership with BPD, City officials, and representatives of the Advisory Group, conducted a series of focus groups with key stakeholders. These included 2 focus groups with impacted youth, 1 focus group with impacted family members, and 2 focus groups with law enforcement officers and supervisors. Young people and family members were compensated for participation in these focus groups, either by credit toward meeting existing diversion program's requirements or direct compensation for their time.

**Surveys:** CCLP and its partners developed several surveys for youth, family members, and community members, which were distributed by BPD, City officials, and other partner agencies. CCLP also distributed a survey to over 60 youth service providers within the City of Baltimore regarding current engagement with diversion efforts and capacity to and interest in engaging in potential expansion of diversion efforts. CCLP received survey responses from 55 youth and 175 community members, and 25 service providers. These survey responses, some of which are referenced below, helped to inform this assessment's recommendations.

**Review of Best Practices:** CCLP reviewed resources and other information related to research and best practices on diversion for young people in the youth justice system to inform the recommendations identified in this report. This included a literature review of best practices in youth diversion completed by Jill Farrell, Aaron Betsinger, and Paige Hammond of the University of Maryland School of Social Work's Institute for Innovation and Implementation that was completed on behalf of the Youth Diversion Advisory Group.<sup>18</sup> This comprehensive literature review will serve as a resource as officials consider implementation of new diversion programming. CCLP also drew upon its experience working with agencies and officials in state and local jurisdictions throughout the country on efforts to improve programming and services for youth in out-of-home placement.

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<sup>18</sup> 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/uae880or2buolpm/Youth%20Diversion%20Draft%2008.16.18%20%283%29.docx?dl=0>.

As mentioned previously, any assessment such as this will significantly understate the many strengths of the youth justice system and its stakeholders, particularly given the narrow scope of the assessment and the limited time and resources available to complete this report. However, the primary focus here was to examine the ability to engage alternatives to formal justice system involvement for youth charged with crimes, with a focus on what can and should be done to make the juvenile justice process in Baltimore City more efficient, effective, and equitable.

## Acknowledgments

CCLP thanks all of the individuals involved in making this assessment possible, particularly the many young people and adult citizens of the City of Baltimore who shared insights and recommendations. CCLP also thanks the Youth Diversion Advisory Group members for the time and energy they put into making this assessment a success, and the Abell Foundation, which provided funding for stipends for young people and community members who participated in focus groups and listening sessions. Finally, CCLP extends special thanks to Holly Gonzales, Youth Strategist for the Mayor's Office of Human Services, and Erika Groover, Compliance Manager for the Baltimore Police Department's Consent Decree Implementation Unit, who spent countless hours coordinating activities for the assessment and made our work possible on an aggressive timeline.

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

CCLP 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 juvenile justice system, reducing the unnecessary and inappropriate incarceration of children, and eliminating dangerous and inhumane practices for youth 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 John D. and Catherine T. MacArthur Foundation's Models for Change initiative and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI).

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 juvenile justice systems throughout the country, and CCLP staff have played a role as expert consultants in federal litigation over practices in the juvenile justice system. CCLP has extensive expertise and experience with efforts to enhance diversion efforts, particularly at the earliest stages of the youth justice system.

Additionally, CCLP is familiar with juvenile justice in the State of Maryland. CCLP staff members have been involved with the development and implementation of JDAI in Baltimore. CCLP has also assisted the Maryland Department of Juvenile Services with efforts to identify ways of supporting youth on probation in the community through the use of graduated responses. CCLP is currently working with BPD as part of a separate program, the Law Enforcement Leadership for Equity Initiative, which is designed to help police departments enhance equity in policing practices involving young people and improve relationships between law enforcement and the communities of color they serve. More information on CCLP is available at [www.cclp.org](http://www.cclp.org).

## A. Pre-Arrest

This component of the assessment addresses policies and programs that are intentionally made to reduce referrals to law enforcement or arrests of youth who may have engaged in behaviors that are considered offenses under Maryland law. Baltimore has a wide array of prevention and early intervention programs that effectively help young people develop into healthy, law-abiding citizens. These programs are undoubtedly valuable, but this assessment is focused on programs that are intentionally used as a pathway away from the formal youth justice system.

As an example of intentional pre-arrest diversion, 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. Those changes have led to a 97% decrease in arrests of students by the Baltimore City School Police while at school from the 2007-2008 to the 2017-2018 school year (971 arrests vs. 33 arrests). During previous school years, the Baltimore City School Police would refer youth to diversion programs such as Teen Court, Restorative Response, and Mountain Manor in lieu of making an arrest. However, as of the 2018-2019 school year, Baltimore City School Police and the Baltimore City Public Schools have decided that referrals to such programs were not necessary, as arrests were not being made and school officials were making efforts to address incidents that occur within the school system.

BPD's arrest data suggests that there are opportunities to consider a pre-arrest diversion program for certain lower-level offenses. Notably, nearly all arrests – over 90% in any given month – are arrests of African American youth,<sup>19</sup> notwithstanding the fact that African American youth represent just 64% of the youth population in Baltimore.<sup>20</sup> Potential targets for pre-arrest diversion could include, but should not necessarily be limited to, youth who are currently arrested for the following offenses, which represented nearly one in four (23%) of all youth arrested during 2018.

- CDS Possession of Marijuana (38 youth)
- CDS Distribution of Marijuana (31 youth)
- Disorderly Conduct (29 youth)
- Malicious Destruction of Property (30 youth)
- Misdemeanor Theft (69 youth)
- Second Degree Assault (136 youth)
- Trespassing (24 youth)

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<sup>19</sup> *Id.*

<sup>20</sup> Easy Access to Juvenile Populations, National Center for Health Statistics (2018). *Vintage 2017 postcensal estimates of the resident population of the United States (April 1, 2010, July 1, 2010-July 1, 2017), by year, county, single-year of age, bridged race, Hispanic origin, and sex*. Prepared under a collaborative arrangement with the U.S. Census Bureau. Available online from [https://www.cdc.gov/nchs/nvss/bridged\\_race.htm](https://www.cdc.gov/nchs/nvss/bridged_race.htm) as of June 27, 2018, following release by the U.S. Census Bureau of the unbridged Vintage 2017 postcensal estimates by 5-year age groups.

This list is not meant to be exhaustive, and stakeholders would need to agree on the eligibility criteria and exclusionary criteria of any such pre-arrest diversion program. However, this list illustrates the opportunity for and potential impact of a pre-arrest diversion program that could provide more than 300 youth a pathway out of the juvenile justice system, notwithstanding the significant declines in overall arrests of youth in Baltimore in recent years. This list may change over time, but 2018 arrest data suggest that these charges could be a strong starting point for pre-charge diversion efforts.

## Barriers to Diversion

There are five primary barriers to pre-arrest diversion in the City of Baltimore. First, while Maryland law allows for law enforcement to divert young people away from a formal system involvement in lieu of arrest, BPD's current policies do not specify when such diversion is appropriate by BPD officers or how it should occur. For example, policies do not specify when warning and releasing a youth, issuing a citation to a young person in lieu of arrest, or making a direct referral to a program or service should be the presumptive response.

Second, the lack of clear policy guidance has led to variability in diversion practices within BPD from District to District and from officer to officer, as revealed by conversations with BPD officers and commanders. For example, some officers interviewed as part of this assessment described the use of citations in lieu of arrest for certain situations involving youth, but other officers indicated that they had no knowledge of being able to use citations as an alternative to an arrest. This variability is also a product of the fact that there are many new officers who, while receiving training, are not receiving clear guidance about their options to respond to situations involving young people without making an arrest.

Third, there is a culture within BPD where patrol officers are afraid to make diversion decisions. This discomfort is a product of two main factors. First, the lack of policy guidance and training mentioned above means that officers do not feel empowered to exercise such discretion. Second, officers expressed concerns about the repercussions that may follow for them as an officer if a youth re-offended or if a commanding officer questioned their judgment. This culture appears to be consistent with other recent survey results of BPD officers indicating a general belief that they have been restricted in their decisionmaking by the Consent Decree,<sup>21</sup> when a concerted focus on diversion opportunities could help expand officers' options with regard to youth.

Fourth, and as described in more detail below, the fact that BPD has a diversion program and coordinator housed at the Baltimore City Juvenile Justice Center has led officers to rely on that program to make diversion decisions. This is problematic because the BPD diversion program, while undoubtedly valuable, is not the best option officers have to divert young people away

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<sup>21</sup> Councilman Isaac Schleifer, Baltimore Police Department 2019 Survey (Feb. 13, 2019), available at <https://htv-prod-media.s3.amazonaws.com/files/bpd-survey-2019-1550257663.pdf>.

from a formal arrest. Indeed, and as described in more detail in the next section of this report, BPD's program is currently structured to require an arrest and transportation of youth in handcuffs to the Baltimore City Juvenile Justice Center for booking. The fact that officers see the BPD program as "the" diversion program for young people means that officers are unlikely to exercise other diversion options.

Additionally, and as described in more detail below, Maryland law does not allow for warrantless arrests of youth for misdemeanor offenses not committed in view of an officer, except in limited circumstances. However, as is current practice, officers transport youth to the BCJJC for booking, where diversion decisions are made by BPD's diversion coordinator. It appears that officers are making arrests of youth who will ultimately be referred for diversion (especially given that youth charged with misdemeanors are the most likely candidates for diversion by law enforcement), a practice that seems inconsistent with Maryland law.

Many jurisdictions have developed policies and practices that allow for law enforcement diversion of youth without requiring transportation of youth to a central location such as the BCJJC, relying upon a call-in protocol from officers to a centralized location to determine eligibility for diversion. Given the 24-hour-a-day staffing at the BCJJC, this could be a viable option in Baltimore and is worth exploring. Indeed, even if 24-hour-a-day staffing for such a call-in program is not possible, guaranteeing staff availability between 7am to 11pm would capture the majority of arrests that currently occur. During 2018, 89% of arrests of young people occurred during this time period.

Additionally, it may be possible to develop direct diversion referral policies and programs for each BPD District, or in Districts with the highest rates of arrest and referral to the justice system. Indeed, during 2017, BPD officials, youth justice stakeholders, service providers, and community members in the Western District came close to implementing such a program, named SideStep, that would have served as a diversion program for youth in contact with law enforcement in the Western District. Officials got as far as developing an 18-page Memorandum of Understanding and a BPD policy, which would have designated a social worker who would manage referrals to the program and who would assist with connecting young people with appropriate services and supports. The program would have given officers an option for diversion in lieu of an arrest or transport to the BCJJC, which was designed in part to empower officers to engage with youth in a more positive way. However, the program never became operational.

Fifth, BPD does not currently provide adequate training on adolescent development and effective interactions with youth. BPD officers do receive some training on youth-specific policies through its Professional Development and Training Academy. New recruits are also exposed to young people through activities that are scheduled with young people during their training, such as school and sporting events. However, the Department does not provide enough training focused on understanding how adolescent development may impact young people's behavior and their interactions with law enforcement, as well as techniques to de-escalate situations involving youth.

There is no question that some young people have had positive interactions with BPD and other law enforcement officers. This was evident in conversations with young people and family members as part of this assessment. However, as clearly illustrated by the surveys, focus groups, and other outreach conducted as part of this assessment, youth, family member, and community member perceptions of the relationship between youth and law enforcement was generally very negative.

For example, young people surveyed as part of this assessment were asked to respond to the following question: "On a scale of 1 to 5, how would you rate police interactions with youth in Baltimore?" A score of 1 meant interactions between police and youth were bad or poor, and 5 meant interactions were good or positive. All but a handful of young people rated the interactions between "bad or poor" and "neutral," with a small number of young people ranking them as "good or positive." When asked what young people thought police should know when interacting with youth to help improve relationships, the most common response by far was to encourage law enforcement to be respectful.

Among the community members surveyed for this assessment, nearly 80% disagreed (31%) or strongly disagreed (48%) with the statement that the relationship between young people and law enforcement was positive. When asked about suggestions to improve relationships between young people and law enforcement, the two largest trends in survey responses were to (1) ensure police officers are actively involved in the communities they police in law enforcement roles, and (2) to ensure police officers have training and skills to interact with children in developmentally appropriate ways. Community members were also asked to rank the biggest challenges for young people in the community among six factors: (1) access to quality education, (2) economic opportunities, (3) access to activities during non-school hours, (4) neighborhood problems, (5) inadequate public services, and (6) the relationship between youth and law enforcement and the justice system. Community members ranked the relationship between youth and law enforcement and the justice system as the second biggest challenge, just behind economic opportunity.

The feelings outlined above are a product of many factors, some of which are not within BPD's control. However, it is clear that negative interactions have a significant and lasting impact on perceptions. There are many steps that can be taken to attempt to improve the relationship between young people and law enforcement, as outlined throughout this assessment. Ensuring that all officers have an adequate knowledge base on working with adolescents and strategies to engage young people in positive ways is one important step.

In response to the Consent Decree's requirements regarding young people, BPD contracted with and paid Strategies for Youth, a national organization that offers training and technical assistance to law enforcement agencies that has led to measurable reductions in youth arrests and citations, particularly for lower-level offenses. BPD developed a training curriculum with Strategies for Youth focused on training officers to interact with young people in developmentally appropriate ways. The training includes content on normal adolescent

development, the connections between neuroscience and typical adolescent behavior, effective ways of engaging youth and de-escalating situations, the impact that implicit and explicit racial bias can have on policing young people, and other topics.

Strategies for Youth also conducted a comprehensive review of BPD policies to align them with best practices around adolescent development and interactions with youth. Strategies for Youth identified a number of specific recommendations and revisions to existing policies that would ensure that the Department has a unified and clearly articulated policy regarding interactions with youth. Those recommendations also included recommendations to align policies with relevant case law and Maryland statutes regarding specific legal protections for young people. Strategies for Youth also recommended being much more specific about the importance of diversion and the options available to officers to divert youth in lieu of an arrest or citation.

The training and policy revisions mentioned above have not yet been implemented, but BPD expects to do so during the second year of the monitoring plan, which focuses on training and policy development.

## Key Recommendations

### 1. Policy and Process

- a. Revise BPD policies on interactions with youth, particularly Policy 1202: Juveniles: Consensual, Non-Custodial Contacts and Custody Procedures, to clearly outline the options for officers to divert youth from an arrest.
- b. Develop mandatory criteria or a strong presumption for the use of the diversion options discussed above for certain offenses. This includes being explicit that warning and releasing a youth is available as a diversion option and should be considered in addition to formal referrals to existing diversion programs.
- c. Incorporate edits to BPD policies recommended by Strategies for Youth, which are focused on setting standards for interactions with youth.
- d. Limit the criteria for transportation of youth to the BCJJC who would be eligible for detention. Clarify when transportation to the BCJJC is allowable for youth alleged to have committed misdemeanors outside of the view of an officer and incorporate those criteria into both policy and training.
- e. Develop a call-in protocol to the BCJJC that would allow patrol officers to make diversion decisions on the spot, as opposed to requiring officers to transport youth to the BCJJC for that determination to be made. Identify supports that would be needed for the BCJJC's booking officers and diversion coordinator to

make such a protocol possible.

- f. Deliver the Strategies for Youth training to all new and current officers and commanders.

## 2. Programs and Conditions

- a. Explore and pilot options for District-based pre-arrest diversion policies and programs that would leverage community-level partnerships and resources to help youth avoid formal justice system involvement. Consider reviving plans to pilot SideStep in the Western District, which already has a proposed Memorandum of Understanding and BPD policy to build upon.
- b. For existing diversion programs that have additional capacity and resources that are not being used to their fullest potential, consider how to repurpose or reframe services and supports for youth and families to ensure that they are aligned with best-practices, effective for the population served, and available without requiring contact with law enforcement.
- c. Develop a plan, in conjunction with the Youth Diversion Advisory Group members, to review the results of the Youth Service Provider Surveys completed during this assessment to identify untapped and underutilized diversion resources in the BPD districts with the highest number of arrests and referrals to the youth justice system. This mapping would help replicate previously planned District-based diversion programs, such as SideStep, in other parts of Baltimore.

## 3. Community Engagement and Partnerships

- a. As described above, explore and pilot options for District-based pre-arrest diversion programs that would focus on connecting young people to resources and individuals in their neighborhoods in lieu of formal system involvement. Ensure that there is representation from community members and young people when designing and developing such programs.
- b. Incorporate major themes from the feedback from young people, family members, and community members obtained through the focus groups and surveys conducted as part of this assessment into the new training focused on effective interactions with youth described above.
- c. Develop a plan to conduct targeted outreach to young people, family members, and community members so that they have a meaningful opportunity to review and make recommendations to revised BPD policies regarding interactions with youth and diversion of young people pre-arrest or at arrest. Posting policies on

the Consent Decree website with a link to provide feedback, while undoubtedly valuable, is not sufficient to obtain input from these groups.

- d. Engage in outreach to youth service providers who expressed interest in receiving referrals of young people who have contact with the justice system, both currently and potentially in the future with additional resources, to identify a wider array of existing community-based diversion options that can be used in lieu of an arrest.

## B. Arrest

Over the course of the last several years, arrests of young people in Baltimore City have dropped significantly. Arrests of young people fell by 27% in the two years from 2016 to 2018 (2,136 arrests in 2016 as compared with 1,566 arrests in 2018). The decline is even more significant when looking back to 2014: arrests of young people have fallen by 55% since that time (3,485 arrests in 2014 as compared with 1,566 arrests in 2018).<sup>22</sup> As mentioned in the previous section, nearly all arrests – over 90% in any given month – are arrests of African American youth.<sup>23</sup>

For young people who have been arrested in the City of Baltimore by BPD, the primary diversion program is the Baltimore Police Department Diversion Program, which identifies eligible youth, completes an intake and assessment with eligible youth and family members, and makes referrals to programs used as diversion options, including referrals to Teen Court, Restorative Response, and mental health service providers. This program has diverted between 10 to 13% of youth who are arrested each year by BPD for the last several years (13% in 2018).<sup>24</sup>

### Barriers to Diversion

This section of the assessment focuses on barriers to diversion for youth who have been arrested. In doing so, this assessment is focused on enhancing diversion for young people after an arrest has been made. As discussed above, however, there are opportunities to develop diversion options that do not require an arrest, which should be considered by stakeholders to help avoid the stigma and trauma that can be associated with an arrest.

There are four main aspects of the process for diversion that could be strengthened. First, as described earlier in this report, the current process for diversion by BPD officers relies on transporting all youth to the BCJJC in handcuffs, even those who are eligible for diversion. In addition to the questions about the legality of this practice for certain offenses described above, the process raises resource issues, as officers must transport young people from the location of the arrest to a location that may be far from a young person's home and family. Indeed, many officers expressed frustration with the fact that they spent time transporting youth and completing the booking process, only to see the young person released from custody shortly thereafter. The officer's frustration seemed to be rooted primarily in a feeling that there was no consequence for the young person when, in fact, there may have been via a referral to diversion or forwarding of the case to the Maryland Department of Juvenile Services.

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<sup>22</sup> Baltimore Police Department, Juvenile Arrest Report, December 2018 (Jan. 22, 2019).

<sup>23</sup> *Id.*

<sup>24</sup> Baltimore Police Department, Juvenile Arrest Report, December 2015 (Jan. 22, 2016).

Moreover, research has identified negative consequences of placing a young person under arrest. As noted in one recent study:

*[T]he bulk of labeling research . . . indicate[s] 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.<sup>25</sup>*

Second, the current process for screening for post-arrest diversion relies upon a lengthy process that is more appropriate for youth who are deemed to be ineligible for diversion. Specifically, even for cases that were ultimately diverted, arrest reports are transmitted to the State's Attorney's Office's Immediate Charging Unit for a review of legal sufficiency of the allegations, then returned to juvenile booking. The report is then transmitted to the Maryland Department of Juvenile Services (DJS), whose intake staff determine whether the youth is on probation or has a prior history with DJS. The report is then returned to BPD, where a diversion decision is ultimately made.

This process, which at the fastest takes two hours, seems to be unnecessarily complex for the purposes of identifying diversion-eligible cases. To be sure, BPD could consult with DJS to identify whether a young person is currently on probation, which might affect a diversion decision. BPD could also ask the State's Attorney's Office to provide input on the legal sufficiency of a charge if needed in certain situations. However, the decision to divert pre-arrest or at arrest should be BPD's decision, even if it is informed by those other parties. A more streamlined process would allow for quicker handling of these cases, particularly for those that are likely to end up being diverted. Indeed, it appears that in the past, BPD had a process of flagging arrests as eligible for diversion, which put them on a different path than an arrest that was not going to be diverted.

Third, while there are eligibility criteria for the BPD diversion program, policy does not establish a requirement or strong presumption that diversion will occur if those eligibility criteria are met. Such a presumption should be in place to ensure that all eligible youth receive the opportunity to participate if they meet the criteria.

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<sup>25</sup> Stephanie Wiley and Finn-Aage Esbensen, *The Effect of Police Contact: Does Official Intervention Result in Deviance Amplification?*, 62 *Crime & Delinquency* 283 (2016).

Fourth, there is no Memorandum of Understanding (MOU) or other written agreement between BPD and the entities it uses for diversion. The same is true for the Baltimore City School Police and its partner agencies. An MOU should capture agreements between law enforcement and providers about (1) which referrals will be sent to each program, (2) the process and timelines for sending referrals to those programs, (3) the data that should be collected and shared between law enforcement and providers, and (4) a structure for regular meetings and oversight of the diversion process.

The lack of an MOU has meant that data are not collected and reviewed on a regular basis, and that regular conversations are not occurring between law enforcement and providers about concerns and challenges with the diversion process. For example, providers expressed concerns that they were not receiving referrals for all youth who could be eligible for their programs. To be sure, the decline in arrests of youth in recent years would mean that there are fewer youth who are eligible for diversion to begin with: arrests of young people fell 65% from 2011 to 2018 and 34% from 2017 to 2018. Additionally, as noted in the Pre-Arrest section of this report, the Baltimore City School Police have made an intentional decision to handle incidents in collaboration with the Baltimore City Public Schools instead of making a formal referral to diversion programs. Nevertheless, an MOU would help ensure that all youth eligible for diversion have access to those opportunities.

Additionally, some stakeholders expressed concerns about the amount of time that elapsed between an arrest and referral to a diversion program, noting that there were no agreed upon timeframes between BPD and providers. While data were not available to assess the extent of delays, CCLP did receive information that suggested that months had passed from an arrest to referral in certain situations. Delays such as these are problematic for a variety of reasons, including the fact that they lessen the likelihood that a young person will associate his or her action with the identified intervention. They may also delay access to services that would help a young person address underlying issues that led to contact with law enforcement. Finally, delays increase the likelihood that it will be more difficult to locate and contact a young person's family, as phone numbers or addresses may have changed since the time of the alleged incident.

The creation of an MOU would not necessarily resolve all of the concerns outlined above regarding the diversion process. However, it would establish consensus on key issues, which would help promote accountability and transparency among law enforcement and providers. Until such an MOU is developed, it would be valuable for law enforcement and diversion partners to have a standing meeting on a regular basis (e.g., monthly) to discuss concerns and share information. Even having a one-hour standing telephone call could help address concerns about a lack of communication.

In addition to the barriers in the diversion process, there are several identified barriers with respect to the diversion program and its conditions. First, young people must admit to the offense in order to be eligible for BPD's diversion program. As described earlier, many young people and their family members may have strong feelings about their recent interactions with

law enforcement. Understandably, these feelings may lead them to not want to admit to an offense, particularly until they can share their version of events. This requirement also raises due process concerns, as youth are entitled to a presumption of innocence and are unlikely to have counsel at the time a diversion decision is made. The requirement to admit to the offense is not required by Maryland law – indeed, DJS removed this requirement from its diversion process. As it stands, the requirement may mean that young people who could benefit from the diversion services may be unnecessarily excluded from them.

Second, under BPD’s current policies, young people who do not engage with or complete diversion programs have their arrests referred to DJS. To be sure, it is likely that many such cases are ultimately diverted by DJS at the point of intake. However, the best practice for early diversion programs such as BPD’s is to treat the diversion opportunity as just that: an intentional decision to divert a young person away from deeper contact with the justice system. Retaining the ability to refer a case to DJS is inconsistent with that best practice.

Third, it is clear that BPD’s diversion program would benefit from additional staffing during the hours in which most youth arrests occur. BPD has the benefit of an experienced practitioner managing its diversion program who has worked non-traditional hours to accommodate family member schedules and avoid removing youth from school for intakes. However, the diversion program manager is one person with responsibility for managing intakes, referrals, and all other aspects of the program. As outlined above, given that almost 90% of arrests of young people occur between the hours of 7am and 11pm, the program would benefit from additional staff time that could allow the diversion and intake process to happen as soon as possible.

As noted in the introduction, more and more jurisdictions are identifying ways to house diversion programs outside of the formal youth justice system, most commonly by vesting that responsibility with a community-based organization or provider. While it is notable that BPD has taken the lead in creating an in-house diversion program, BPD may be best served by supporting this type of staffing within a partner agency that is based in the community. This would help align the arrest diversion program with best practices in housing diversion outside of the youth justice system, and it may also help increase engagement rates of young people and family members with the program who may have negative views of law enforcement. If the diversion process were housed with a community partner and housed outside of the BPD, it could also have the effect of sending a message that the BCJJC is not to be used as a one-stop shop for youth, but a place for intakes for a limited number of young people who may require secure detention.

Fourth, many law enforcement officials expressed a desire for additional options for interventions that could be used in lieu of referral to DJS. For example, many individuals interviewed for this assessment suggested that programs or interventions that provided additional support for young people at school would be beneficial, in addition to the current programs that receive referrals when diversion decisions are made. A more focused partnership with the Baltimore City Public Schools, or the designation of a liaison between

BPD and BCPS could assist with identifying school-based resources that can serve as an alternative to referral to the youth justice system.

As part of this assessment, CCLP disseminated a survey to 60 youth service providers to ask for perspectives on gaps in services for young people, as well as the willingness of providers to serve as diversion opportunities for young people. Notably, nearly two-thirds of providers who responded stated that they were interested in receiving more information about accepting referrals from the juvenile justice system or referrals for youth being diverted away from the juvenile justice system altogether (64%, or 16 of 25 organizations responding to the survey). Indeed, many providers described being underutilized by the justice system or feeling that they did not receive such referrals because of a lack of awareness among justice system stakeholders. The youth service provider survey data have been compiled and are available for review as part of this assessment. The data are not included in this report itself in the interest of brevity, but the results clearly suggest that there is a wider array of untapped resources to divert youth away from initial or deeper involvement with the justice system.

Fifth, some stakeholders expressed concerns that the trainings that officials had received on restorative practices, while undoubtedly valuable, may have had the unintended consequence of leading some officials to believe that they were equipped to engage in restorative practices themselves. This was raised as a concern primarily with respect to School Police. Baltimore has the benefit of a community-based service provider skilled in restorative practices that has the capacity to take referrals of young people from school and justice system stakeholders in a timely way. While it is helpful for individuals to have a working knowledge of the principles of restorative practices, the focus should be on connecting young people to the resource in the community that is best equipped to use those practices to achieve a positive result.

Finally, additional efforts should be made to gather accurate contact information at the time of arrest, improve the timeliness of diversion referrals, and identify other ways of making contact with young people and families. CCLP reviewed data indicating that after a diversion referral had been made, relatively high numbers of youth and family members failed to respond to outreach by some diversion providers. For example, in 2017, 42% of youth and families referred to Teen Court failed to respond.

This is not because of a lack of timely outreach by Teen Court, nor is it a product of a lack of efforts, as Teen Court's staff make multiple attempts to contact youth and families. However, four main factors appear to be driving failures to engage. First, law enforcement may not be capturing enough information or accurate information to help Teen Court make contact with young people and their families. Second, delays in the referral process may decrease the likelihood that families will understand the reason for the referral and, as outlined above, it may mean that contact information is out of date. Third, Teen Court's initial outreach is by mail, with staff members using phone or text to make contact after an initial response. However, it may be helpful to attempt outreach via text at the outset, as it may increase the likelihood of an initial response as compared with a physical mailing. Fourth, family members may not see the value in the program and the potential to help their child. Having additional

materials (e.g., pamphlets, videos) that captured family members' experience with the program and the benefits it offered could help improve engagement among this group.

## Key Recommendations

### 1. Policy and Process

- a. As outlined earlier in this report, build upon the policy changes and training curriculum that have already been identified for BPD by Strategies for Youth as components of improving interactions between police and youth.
- b. Given the harmful effects of arrest and booking on future delinquency, BPD should consider implementing policy and protocols that minimize the unnecessary in-custody arrests and transport of young people to the BCJJC. This should include developing and piloting a process that would allow BPD officers to make diversion decisions without having to transport youth to the BCJJC. BPD should partner with DJS to adopt criteria or a screening tool to assist patrol officers and the BPD booking officers at the BCJJC in deciding when:
  - i. Warn and release is appropriate;
  - ii. A citation or pre-arrest diversion referral is appropriate;
  - iii. An out-of-custody complaint or arrest is appropriate; and
  - iv. An in-custody arrest and transport to the BCJJC for booking is necessary.
- c. Develop a more streamlined process for BPD to make diversion decisions that does not rely on processing of diversion-eligible cases in the same fashion as arrests that are not eligible for diversion.
- d. In BPD policy, clarify that youth who meet the eligibility criteria for diversion will be accepted for the diversion program.
- e. BPD should consult with DJS about changes DJS is making to its diversion screening tools to attempt to align the screenings conducted by BPD.
- f. Create an MOU between BPD, DJS, and the primary service providers for BPD's diversion program that captures (1) which referrals will be sent to each program (e.g., which youth are eligible, including the number of times youth may be referred for diversion), (2) the process and timelines for sending referrals to those programs, (3) the data that should be collected and shared between law enforcement and providers and a template for a standardize data report, and (4) a structure for regular meetings and oversight of the diversion process. Include the Maryland Office of the Public Defender in the development of this MOU to ensure that confidentiality of young people's records is protected. A standardized data report should include the following data elements,

disaggregated by race, ethnicity, gender, age, the location of the incident leading to the contact with law enforcement, and type of offense or reason for referral:

- i. Number of youth eligible for diversion according to eligibility criteria;
  - ii. Number of youth referred for diversion;
  - iii. Number of youth not referred to diversion and reasons for not being referred;
  - iv. Time between incident and referral to diversion program;
  - v. Time between referral to diversion and contact with youth and family members;
  - vi. Number of youth who successfully engage with the diversion program;
  - vii. Number of youth who successfully complete the diversion program;
  - viii. Number of youth who do not complete the diversion program and reasons for not completing the program; and
  - ix. Other relevant outcome data.
- g. As the MOU is being developed, convene regular (e.g., monthly) meetings of the parties outlined above to discuss concerns and share information.

## 2. Programs and Conditions

- a. Remove the requirement that youth admit to the offense for which they have been arrested in order to be eligible for the BPD diversion program.
- b. Reconsider the policy of referring unsuccessful diversion referrals to DJS.
- c. Add staff capacity to the BPD diversion program to better reflect the times at which most young people are arrested, which would allow for more timely intervention and referral to an appropriate diversion option. Undertake an hour-by-hour analysis of arrests by hour between 7 a.m. to 11 p.m. to help narrow the window of time when most arrests occur. Additional capacity could allow for a case management component to the program, which the program is not currently staffed to provide. As noted above and in the recommendations below, ideally these functions would rest in a community-based provider or organization.
- d. Ensure that law enforcement officers, particularly School Police, are not attempting to engage in restorative justice practices themselves but are referring situations to Restorative Response in a timely manner.
- e. Make additional efforts to gather accurate contact information at the time of arrest and improve the timeliness of diversion referrals in order to help raise

rates of engagement with and successful completion of diversion programs.

3. Community Engagement and Partnerships

- a. Consider partnerships that would allow BPD to support community-based service providers that could serve the intake, referral, and case management functions that are currently housed within BPD.
- b. As mentioned in the previous section, review the responses to the outreach to youth service providers completed as part of this assessment to identify other diversion options that can be added to the continuum of available referral sources.
- c. As mentioned above, include an acknowledgment that a young person or family member may have had recent or previous negative interactions with law enforcement when conducting intakes for diversion post-arrest, and do not use those negative perceptions as a reason for excluding youth from diversion programs.
- d. Consider new ways of making first contact with young people and family members who have been referred to diversion (e.g., reaching out initially via text instead of a physical mailing).
- e. Develop materials that focus on sharing positive experiences of youth and family members from participating in diversion from the youth and family members' perspectives and in their own words.

## C. Intake and Pre-Adjudication

This section focuses on the intake and pre-adjudicatory processing of delinquency cases by the Maryland Department of Juvenile Services (DJS) and the State's Attorney's Office (SAO), and the barriers to diversion that currently exist at these stages of juvenile justice system processing in Baltimore City. In other words, this section looks at how cases are handled when they come in for screening by the Maryland Department of Juvenile Services, as well as how some cases are resolved without a formal delinquency finding in juvenile court.

Intake complaints to DJS for Baltimore City dropped by 28.4% from FY 2016 to FY 2018, as compared with a 12% decline in intake complaints for the state as a whole over the same time period.<sup>26</sup> For FY 2018, DJS received 1,783 complaints in Baltimore City, the lowest number of complaints on record.<sup>27</sup> These data trends are positive and suggest progress has been made in identifying alternatives to formal justice system involvement. However, as at the point of arrest, nearly all youth referred to intake for a complaint are African American youth – 94% in FY 2018.<sup>28</sup> Given the significant overrepresentation of African American youth at intake, efforts to enhance diversion must be approached through a lens of racial and ethnic equity, as is the case with diversion pre-arrest and at arrest.

Some stakeholders interviewed for this assessment suggested that additional opportunities for diversion at intake or pre-adjudication were limited or non-existent in Baltimore City because the decline in overall youth arrests has meant that the remaining arrests and referrals in Baltimore City are for more serious offenses. Recent data indicate that Baltimore City has a higher percentage of referrals for crimes of violence and felony offenses than the rest of the state. In FY 2018, 40% of Baltimore City intakes were for misdemeanor offenses, 30% were for felony offenses (excluding crimes of violence), and 30% were for crimes of violence.<sup>29</sup> By comparison, in the rest of Maryland, 70% of intakes were for misdemeanor offenses, 7% were for felony offenses, and 10% were for crimes of violence (the remaining 13% of intakes were for citations, ordinance offenses, and children in need of supervision referrals, of which Baltimore City had fewer than 20 referrals).<sup>30</sup>

These differences have implications for diversion opportunities, particularly at the intake stage, for young people in Baltimore City. For example, while DJS has authority to handle cases informally in certain situations, they must consult with SAO if considering diversion for misdemeanor referrals involving a handgun, felony referrals, and referrals for crimes of

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<sup>26</sup> Maryland Department of Juvenile Services, Data Resource Guide: Fiscal Year 2018 (December 2018), available at [https://djs.maryland.gov/Documents/DRG/Data\\_Resource\\_Guide\\_FY2018\\_full\\_book.pdf](https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2018_full_book.pdf).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> FY 2018 data provided by DJS to CCLP for this assessment. A listing of crimes of violence is available on page 222 of the FY 2018 DJS Data Resource Guide.

<sup>30</sup> *Id.*

violence. In Baltimore City, that means that SAO approval would be needed for approximately 65% of intake complaints, through what is known as the “felony memo” process, as compared with just 23% of intake complaints for the rest of the state.<sup>31</sup>

One other important trend is the number of complaints to DJS intake that are a result of cases where a young person was initially charged as an adult in criminal court, but then ultimately had their case transferred back to juvenile court. Data indicate that referrals to DJS for adult court transfers returned to juvenile court are a growing share of overall referrals. In FY 2016, referrals from adult court transfers represented just 4.8% of all DJS referrals, but in 2018, adult court transfers represented 10% of all complaints.<sup>32</sup>

In June 2018, the Abell Foundation conducted an analysis of youth crime and court processing of cases involving young people in Baltimore City.<sup>33</sup> The analysis found that, despite an increase in the number of young people charged in the adult system for serious crimes, these cases comprised a relatively small percentage of all cases involving young people.<sup>34</sup> Also, from 2012 to 2017, over 40% of cases charged in adult court were ultimately transferred back to juvenile court. The percentage of cases transferred back to juvenile court has been on the rise for the last several years, with over two thirds of cases (67%) charged in adult court being transferred back to juvenile court in 2017, as compared with just 29% in 2015.<sup>35</sup> And, of cases ultimately retained in and disposed of in the adult system, only 46% resulted in conviction, and less than a quarter of convictions (22%) resulted in incarceration beyond the time served pre-trial.<sup>36</sup>

At the point of intake and pre-adjudication diversion, this assessment identified several opportunities for improved diversion policies and programs that could reduce involvement with juvenile court when community-based services would yield better outcomes for the young person and public safety.

## Barriers to Diversion

In most cases, DJS receives and processes initial intake complaints involving young people. Citizens, schools, and law enforcement can bring complaints to DJS intake, although law enforcement is by far the largest referral source. In Baltimore during FY 2018, law enforcement agencies (including BPD and the Baltimore City School Police) initiated 75% of all complaints

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<sup>31</sup> *Id.*

<sup>32</sup> Data Resource Guide, *supra* note 26.

<sup>33</sup> Sheryl Goldstein and Katherine McMullen, Fact Check: A Survey of Available Data on Juvenile Crime in Baltimore City, The Abell Report, Vol. 31, No. 3 (June 2018), *available at* <https://www.abell.org/sites/default/files/files/Juvenile%20Justic%20Report%20-%20Sept%2013%20edits.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

to DJS intake.<sup>37</sup> Sometimes police take youth into custody and bring them directly to the DJS intake office, which is co-located with other juvenile justice agencies at the Baltimore City Juvenile Justice Center. In other cases when DJS receives complaints in situations where youth have not been taken into custody, youth must attend a meeting with a DJS intake officer at a later time.

Upon receiving a complaint from law enforcement, Maryland law requires that DJS's intake officers conduct a review of each case to determine whether the court has jurisdiction over the matter and "whether judicial action is in the best interests of the public or the child."<sup>38</sup> This can include a review of the merits of the complaint, a review of relevant records, and interviews with the young person and the young person's parent, guardian, or caregiver.<sup>39</sup> The DJS intake officer also completes an intake screening tool, which is part of the Maryland Comprehensive Assessment and Service Planning (MCASP), to inform intake decisions. The tool analyzes several factors, including a young person's delinquency history, social history, and the most serious alleged offense, to help identify cases recommended for formal action.<sup>40</sup>

Upon completion of this process, the DJS intake officer must make a determination among three options for handling the referral: 1) refuse authorization to file the petition for a lack of legal sufficiency or some other factor; 2) propose an informal adjustment of the complaint, which may include "informal case processing"<sup>41</sup> by DJS and referral to programs such as Restorative Response, Teen Court, or Mountain Manor; or 3) authorize the petition and forward the case to the State's Attorney's Office for further processing.<sup>42</sup> For the purposes of this assessment, CCLP regards both refusal to authorize the filing of a petition and informal adjustment as diversionary processes that end or limit involvement with the youth justice system.

During the intake process, DJS must also determine whether a young person can safely return home with a parent or caregiver while his or her case is pending, and if so, whether certain conditions are necessary to ensure public safety while the young person awaits resolution of his or her case. In only the most serious cases, the intake officer may deem that secure detention is necessary to ensure public safety. Conditions, supervision, and community-based programs used as alternatives to secure detention represent a special type of diversion, which is addressed in the next section of this assessment report.

CCLP identified three significant barriers to diversion at DJS Intake. First, stakeholder interviews revealed that there is a need to strengthen DJS diversion policies, protocols and decision-making criteria at intake. Stakeholders noted that aspects of DJS's current diversion

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<sup>37</sup> Data Resource Guide, *supra* note 26.

<sup>38</sup> Md. Code Ann. § 3-8A-10.

<sup>39</sup> Data Resource Guide, *supra* note 26.

<sup>40</sup> *Id.*

<sup>41</sup> DJS uses the term "informal case processing" in lieu of the term "diversion" to avoid confusion with other early diversion efforts, such as those led by law enforcement.

<sup>42</sup> *Id.*

policy are unclear and do not incorporate a clear and strong presumption for diversion in appropriate cases. The ambiguity in these policies can result in a significant level of subjectivity among intake officers, including a reluctance to divert cases in the absence of clear guidelines. The lack of clear guidelines also means that factors such as implicit racial bias may affect decisionmaking about which cases to divert and which cases to move forward as formal referrals.

Additionally, the absence of clear policies or guidelines may mean that some intake officers are engaging in practices that are narrowing diversion opportunities. For example, although DJS rescinded a policy that required youth to admit to an offense in order to be eligible for diversion some time ago, several stakeholders expressed concern that DJS intake officers still impose this requirement on young people that they are considering for diversion.

Second, several stakeholders identified the requirement for victim consent for an informal adjustment as a barrier to diversion at the point of intake. While it is certainly important to respect a victim's right to be heard regarding a potential diversion decision, stakeholders expressed concern that some intake officers are not as invested in creating diversion opportunities for young people and are not skilled at conveying the documented benefits of diversion for the youth, the victim, and the broader community from a public safety perspective. DJS has acknowledged these barriers and is currently working to remedy them in several ways. For example, DJS is in the process of developing a new clear, objective diversion policy and a quality assurance process for diversion decisions. DJS is also exploring better training for intake staff and the addition of a new family and peer support specialist for Baltimore City. Among other duties, this staff person would be responsible for outreach to victims in support of diversion efforts.

Third, many stakeholders suggested that intake officers may not always consider whether a young person is already receiving existing services or supports that could be adjusted or enhanced in lieu of informal adjustment or formal processing. Stakeholders noted that many youth are often involved with services through multiple public systems and providers and that layering more on top of those services may impair the ability of those supports to achieve their intended effect. Many individuals suggested that more rigorous exploration of a young person's current services and supports would help support increased use of diversion at intake.

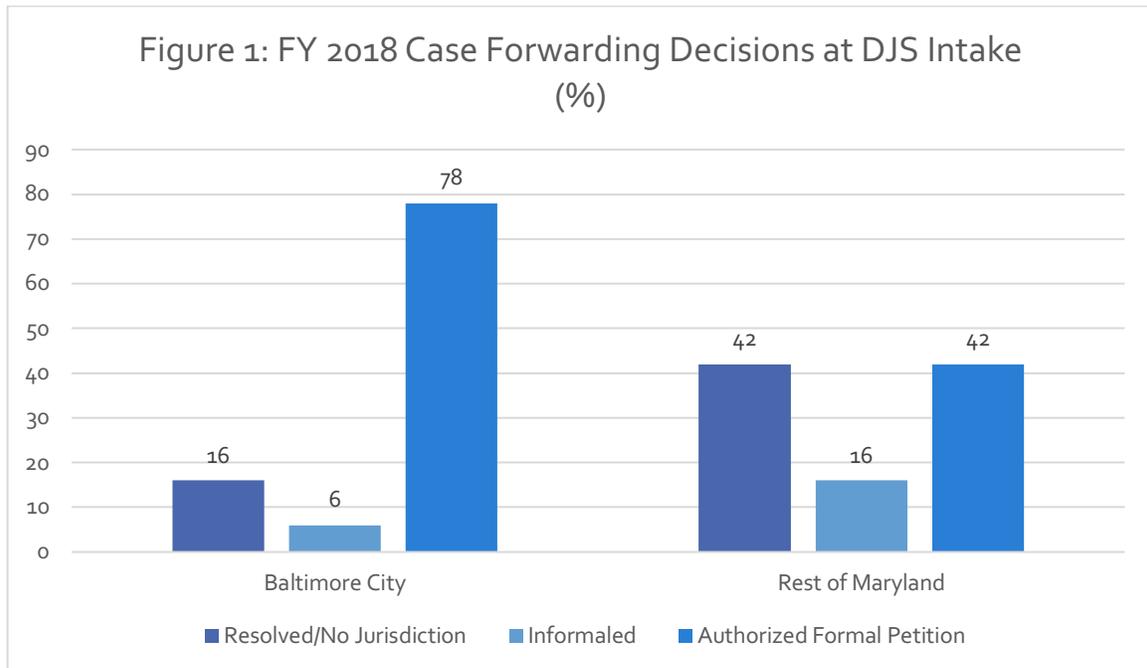
Trends in DJS intake data support the hypothesis that there may be significant variability in diversion practices at DJS intake, both within Baltimore City and between Baltimore City and the rest of the state. As mentioned above, DJS Intake received 1,783 referrals in Baltimore City in FY 2018.<sup>43</sup> As shown in Figure 1, 16% of these cases were resolved at intake, 6% were "informaled" (placed on pre-court or informal supervision),<sup>44</sup> and 78% of cases were

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<sup>43</sup> *Id.*

<sup>44</sup> DJS uses the term "informaled" to refer to cases that are handled without a referral to juvenile court or through informal supervision.

“formaled.”<sup>45</sup> In contrast, for the rest of Maryland, 42% of cases were resolved at intake, 16% were informaled, and only 42% were referred to SAO for formal processing. These data indicate that a much larger percentage of intake referrals were authorized for a formal petition in Baltimore City than in the rest of the state, which is a cause for concern and a call for more in-depth analysis.



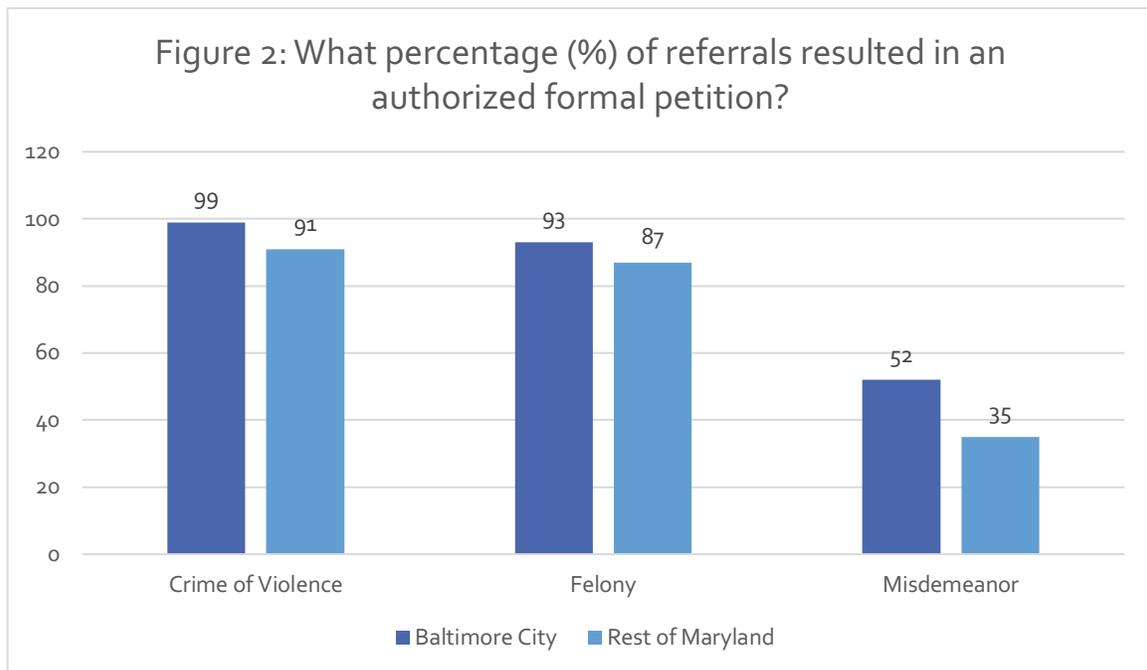
Stakeholder interviews surfaced several possible hypotheses to explain why the percentage of intakes authorized for formal petition in Baltimore City is nearly double that of the rest of the state. First, there is a general perception among stakeholders that referrals appearing at DJS intake in Baltimore may be of a more serious nature than those appearing at DJS intake across the rest of Maryland. Others suggested that the higher rates of formal processing may reflect the fact that youth in Baltimore City may have previous referrals or contact with law enforcement at a higher rate than youth from the rest of the state, which could make it less likely that intake officers would accept a referral for diversion.

To dig more deeply in the nature of the difference in intake diversion rates, CCLP examined rates of formal petitioning by offense category at intake (i.e., crimes of violence, felonies, and misdemeanors) for Baltimore City as compared to the rest of the state. As noted in Figure 2, crimes of violence referrals at intake were formaled at high rates: 99% in Baltimore City as compared to 91% in the rest of Maryland.<sup>46</sup> Similarly, 93% of felony referrals at DJS intake in Baltimore were formaled, while 87% of felony referrals in the rest of Maryland were formaled.

<sup>45</sup> *Id.* DJS uses the term “formaled” to refer to cases where DJS has authorized the filing of a formal petition and where cases have been forwarded to SAO for further processing within the juvenile court.

<sup>46</sup> FY 2018 data provided by DJS to CCLP for this assessment.

Thus, the percentages of formal referrals for Crimes of Violence and Felonies in Baltimore City are higher than the percent formalized in the rest of Maryland by 8% and 6%, respectively.



During this assessment, stakeholders hypothesized that the difference in authorized formal referrals for felony referrals might be driven by differences in the handling of felony drug cases between Baltimore and the rest of the state. While this may not fully account for the difference for felony referrals overall, data confirm that 16% of felony drug referrals in the rest of Maryland were resolved or informaled at intake, while only 5% of felony drug referrals in Baltimore City were diverted.<sup>47</sup> It is important to note that Maryland state law requires that SAO must authorize any informal handling of felony cases at DJS intake, so it is possible that this difference is a result of differences in SAO decisionmaking rather than decisions made by DJS intake officers regarding informal handling of this case type.

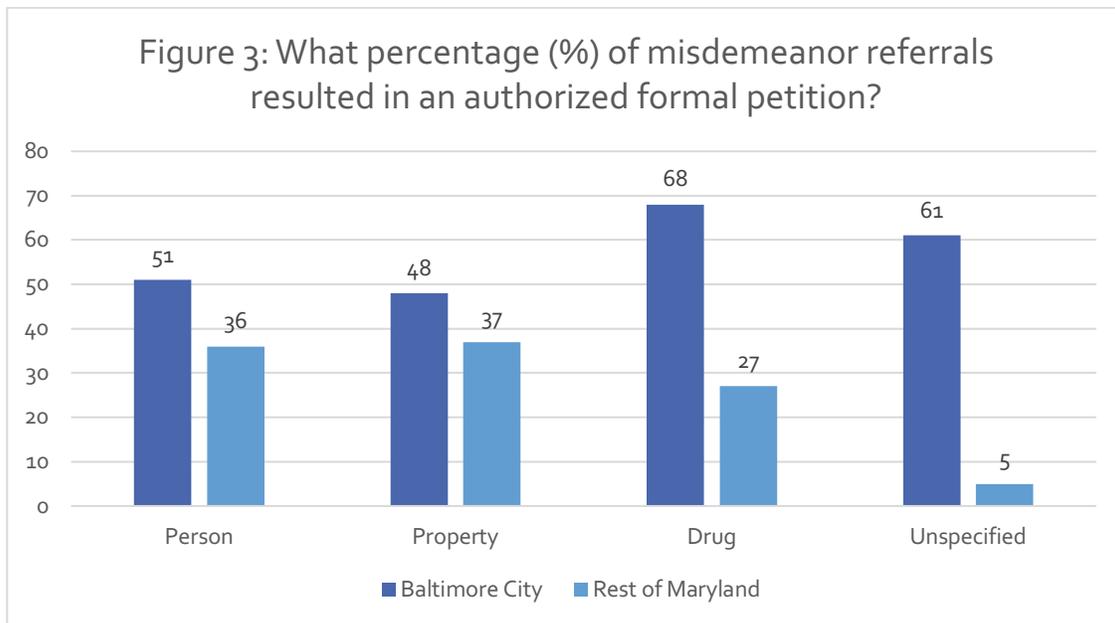
As illustrated above in Figure 2, the largest difference in percentage of formalized intake referrals between Baltimore City and the rest of Maryland was for misdemeanor referrals. In the rest of Maryland, only 35% of misdemeanor referrals at DJS Intake were authorized for a formal petition. In Baltimore City, however, that percentage was significantly higher, with 52% of intake cases formalized – a difference of 17 percent.<sup>48</sup>

As depicted in Figure 3 below, the percent of formalized misdemeanor referrals in Baltimore City is consistently higher across all misdemeanor categories when compared to the rest of Maryland. The largest difference is for unspecified misdemeanors and drug misdemeanors. It is

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

difficult to draw conclusions from the comparison for unspecified misdemeanor cases, as there was a very small number of these cases in Baltimore (18) as compared with a much larger number for the rest of state (352).<sup>49</sup> However, the large difference in percent of formal referrals in other misdemeanor categories raises significant questions about access to diversion across Maryland jurisdictions, particularly the large difference in formal processing rates for misdemeanor drug referrals. In Baltimore, 68% of misdemeanor drug cases were formalized, while only 27% of these cases were formalized in the rest of Maryland, a difference of 41%.<sup>50</sup>



Misdemeanor referrals present one of the best opportunities for early diversion. The fact that a significantly larger percentage of misdemeanors referrals are formalized in Baltimore City is cause for concern and deeper investigation. It is possible that many of the formalized misdemeanor referrals were deemed ineligible for diversion due to prior referrals or current status with DJS, among other possible reasons. If this is the case, stakeholders should consider specialized diversion pathways and services that would be appropriate for youth with prior referrals or who are currently under supervision. Also, because drug referrals seem to be a significant driver of different rates of formal handling between Baltimore City and the rest of Maryland, officials should consider whether resources targeted specifically to address substance use and involvement in the distribution of controlled substances would enhance diversion opportunities for this subset of cases. Finally, data were not available on how many misdemeanor referrals were not eligible for diversion because they involved possession of a firearm. However, Baltimore officials can consult with other jurisdictions that have developed diversion programs for youth charged with firearm possession.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

It is important to note that the analysis above does not compare rates of authorized formal petitions between Baltimore and the rest of the state for citations, ordinance violations, and children in need of services referrals. During FY 2018, Baltimore had very few of these kinds of referrals compared with the rest of the state. Due to the small number of cases in Baltimore City, a comparative analysis of case forwarding decisions for these referral types between Baltimore and the rest of the state would likely render misleading results. The fact that Baltimore has so few citation and ordinance violation referrals, which are for low-level behaviors such as tobacco and alcohol possession, suggests that law enforcement and others are not making arrests and referrals to the justice system for those reasons. This is encouraging, as it is a clear indication that law enforcement and others in Baltimore City are focusing resources on more serious situations.

Even if a referral is forwarded to SAO and juvenile court for formal processing, there are opportunities to divert such cases from an official adjudication of delinquency in juvenile court. For example, SAO can decide to withdraw or deny a petition itself, or SAO can return a referral to DJS for informal supervision, although it was unclear how often, if at all, SAO returned referrals to DJS for informal supervision. SAO can also reach an agreement with the young person through his or her attorney to agree to an informal resolution of the case if a youth follows certain terms and conditions for a period of time. This can include a mutual postponement, which allows SAO the option to reopen a case if a young person does not follow the agreed upon terms, but also allows for dismissal of the case if a young person does complete the terms that have been outlined. This can occur in lieu of placing a young person on probation or referring them to DJS.

As above, CCLP analyzed how formalized cases were resolved in Baltimore City relative to the rest of Maryland. Figure 4 below provides the breakdown of dispositions for formal referrals during FY 2018. The most common disposition of formalized cases in Baltimore City was to have the case dismissed, closed, or nolle prossed (32% of formalized cases), which means that the cases proceeded to court but did not result in a delinquency adjudication.<sup>51</sup> By contrast, the most common disposition for formalized referrals in the rest of the state was placement on probation (30%).<sup>52</sup> Baltimore City had a similar rate of cases resolved with a disposition of "Petition Withdrawn, Denied by SAO, or Non-Est," which meant that the cases did not proceed to court, as the rest of the state (13% vs. 12%, respectively).<sup>53</sup>

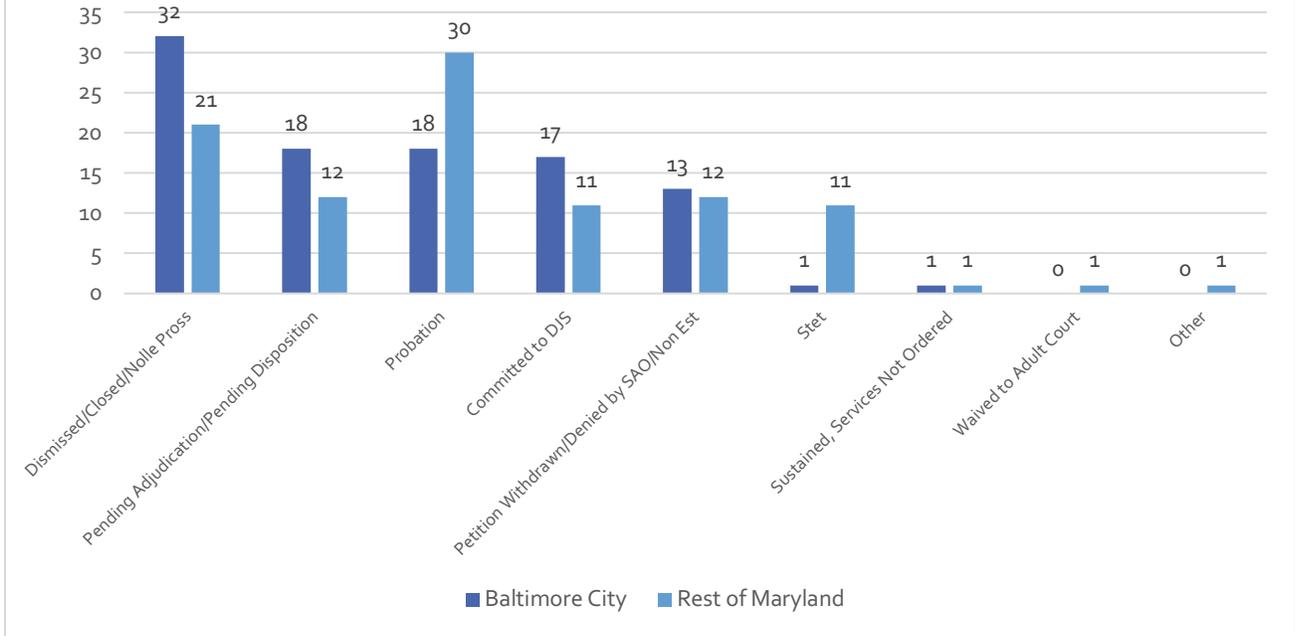
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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

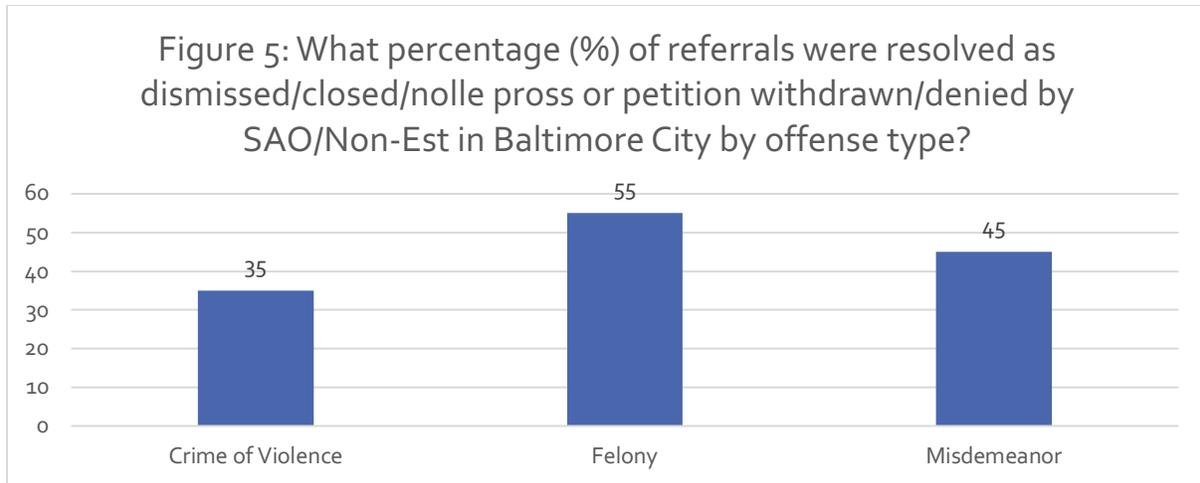
<sup>53</sup> *Id.*

Figure 4: What was the disposition of formed referrals? (%)

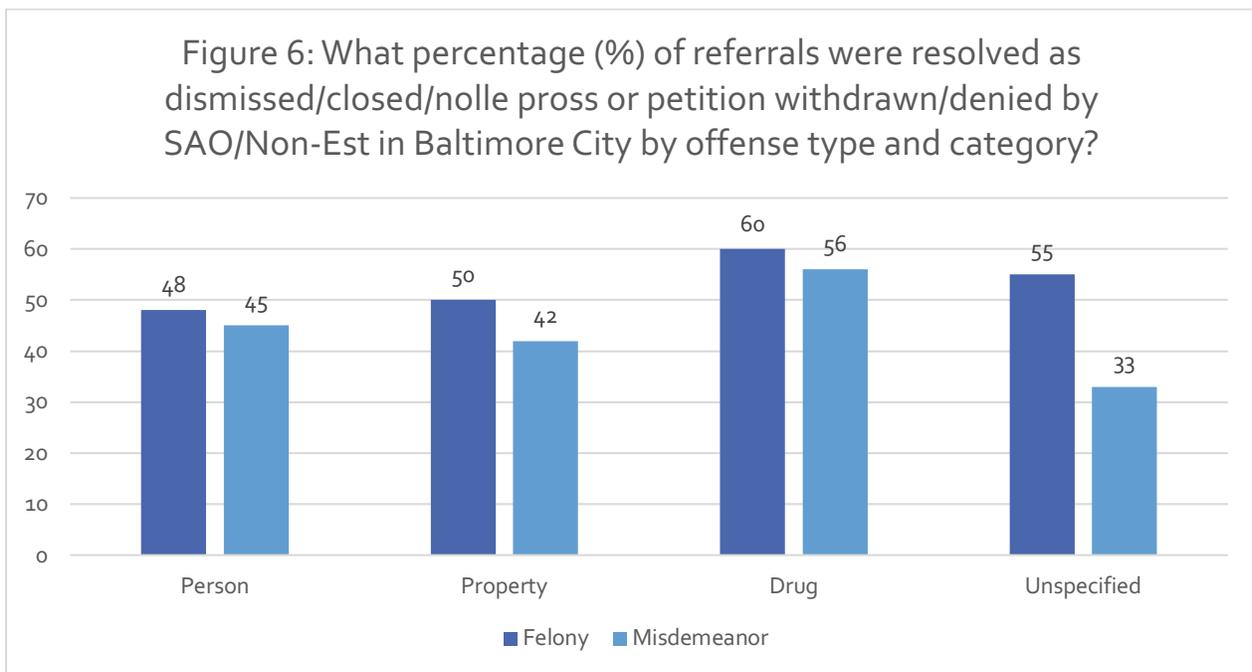


The fact that far fewer young people are placed on probation as a disposition for formed referrals in Baltimore City relative to the rest of the state appears to reflect a desire to avoid formal supervision by the youth justice system, which is laudable and consistent with national trends to significantly limit the use of traditional probation as an intervention for youth.<sup>54</sup> Nevertheless, the high percentage of cases resolved informally prior to adjudication through a dismissal, closure, or nolle pross (32%) or withdrawal of the petition (13%) suggest that there may be opportunities to divert some of those cases earlier in the process, which would allow for connection of youth and families with services and supports sooner after their initial contact with the justice system. To explore this possibility, CCLP conducted an analysis of which types of cases received one of these two dispositions, as illustrated below in Figure 5.

<sup>54</sup> See, e.g., Richard A. Mendel, The Annie E. Casey Foundation, *Transforming Juvenile Probation: A Vision for Getting It Right*.



As indicated above, it is actually more likely that felony referrals will receive one of these two dispositions than for misdemeanor offenses. Indeed, a majority of felony referrals (55%) are resolved in this way.<sup>55</sup> To dig deeper into which felony and misdemeanor cases received one of these two dispositions, CCLP analyzed disposition outcomes for formalized referrals by offense type and severity, as illustrated below in Figure 6.



As noted earlier in this section of the report, the relatively small number of referrals for unspecified offenses makes any analysis of disposition rates difficult. However, the fact that there are relatively consistent rates of handling of cases across offense type and severity suggests that there may be opportunities to explore earlier diversion opportunities across the

<sup>55</sup> FY 2018 data provided by DJS to CCLP for this assessment.

board, particularly for misdemeanor drug and felony offenses, which had the highest rates of resolution in this manner. Notably, felony referrals for all offense types were more likely to be resolved in this manner than misdemeanor offenses.

Given that so many cases are resolved through one of the two dispositions noted above without a formal delinquency adjudication, many stakeholders expressed an interest in exploring earlier diversion opportunities. Although some suggested that opportunities for earlier diversion would be limited because of the need to obtain victim consent for person offenses, data suggest that exploring earlier diversion for drug offenses and property offenses could have a significant impact on efforts to divert young people from deeper system involvement, as drug offenses and property offenses together represented nearly half of all formalized referrals (20% and 23%, respectively).

This assessment identified five primary barriers to earlier diversion and resolution of cases prior to adjudication. First, while SAO does negotiate and enter into mutual postponements with young people (many of whom are represented by the Office of the Public Defender), the agreements are entered into after formal court involvement, sometimes after a significant amount of time has passed since the incident that led to the referral. Many stakeholders felt that it would be beneficial to enter into agreements earlier to minimize the negative impacts of formal system involvement and to connect young people and families with appropriate services and interventions more quickly.

Some suggested that moving up the timing of diversion decisions would be difficult, noting time is needed to investigate cases and meet with any alleged victims. However, the fact that DJS has had a record low number of referrals suggests that there may be more resources to conduct such information gathering on a faster timetable with fewer cases to investigate. The cases for which there appeared to be the greatest interest in and consensus for earlier resolution included drug distribution cases, robberies without the use of force or violence (e.g., snatch and grabs), some second-degree assault cases, unauthorized use of a vehicle cases that do not involve carjacking, and problem sexual behavior cases (particularly where the victim was a family member).

Second, as is the case with decisions to divert cases at intake, many stakeholders noted that obtaining victim consent could present a barrier to earlier resolution of these cases. While CCLP did not have data to indicate how often this issue presented a barrier to earlier diversion, there could be strategies employed to obtain higher rates of victim consent, such as engaging a victim advocate to conduct outreach to victims about the benefits of diversion to the young person, victim, and public safety. Others suggested that outreach to the victims might not always include specific benefits of and outcomes from existing diversion programs, such as Restorative Response.

Third, many stakeholders expressed that there seemed to be a reluctance to engage diversion programs as an alternative to a resolution of a formalized referral once a case had been initiated because officials felt that diversion programs did not provide significant consequences to a

young person. Others noted that others believed that outcomes from existing programs were not consistent with community safety, notwithstanding the fact that programs such as Restorative Response have demonstrated a high rate of satisfaction among victims, young people, and family members who participate in the program.

Fourth, SAO's juvenile unit has a high rate of turnover in Baltimore City, in large part because prosecutors see work in the juvenile unit as a stepping stone to obtaining trial experience in the adult system. This is problematic for two reasons. First, prosecutors may see their time in the juvenile unit as a training ground for work in the adult system and may, therefore, prioritize opportunities for trial experience as opposed to identifying the best resolution based on the specific case and the rehabilitative goals of the youth justice system. Second, prosecutors may not be familiar with resources available as an alternative to formal processing and, therefore, may be less inclined to use them.

Fifth, SAO does not have any formal policies or guidelines to guide decisions about handling of individual cases. Some stakeholders suggested that official policies or guidelines for cases would be inconsistent with the discretion traditionally afforded to prosecutors. However, given the specific and unique goals of the youth justice system and the fact that there is such a high rate of turnover in the juvenile unit, such guidelines would help ensure that decisions are informed by an understanding of available resources and the principles of promoting healthy adolescent development – not the professional ambitions of a specific prosecutor. As noted below, jurisdictions around the country are developing such guidelines, which could help serve as a model for Baltimore City.

## Key Recommendations

### 1. Policy and Process

- a. DJS should continue on its current path to develop and implement clear and objective criteria for informal adjustment to ensure consistent decision-making and equitable access to diversion at the point of intake.
- b. DJS should dedicate staffing resources and develop an enhanced service and supervision protocol for informal adjustment cases authorized by the SAO via the felony memo process. This team would work closely with the SAO to facilitate early diversion of consensus cases and ensure routine feedback to the SAO about the status of these cases.
- c. DJS should prioritize enhancing the diversion process as an explicit focus of its upcoming engagement with the Crossover Youth Practice Model and the Georgetown University Center for Juvenile Justice Reform.
- d. SAO should reconsider the role of the Immediate Charging Unit. While the unit was initially established to ensure that all juvenile complaints referred by law

enforcement meet legal sufficiency for further processing, in practice the unit seems to have taken a broader role than that contemplated by Maryland Law for the State's Attorney's Office during intake decisions. Improved training and quality assurance from BPD among patrol officers and by BPD's booking officers could mitigate the need for this function of the Immediate Charging Unit and allow those attorneys to focus on investigating facts associated with felony referrals that could help expedite resolution of those cases.

- e. SAO should consider implementing a written policy to govern the handling of juvenile cases. The policy should create a presumption for diversion in many cases, while also preserving prosecutorial discretion. The policy should specify all procedural pathways for diversion and outline objective diversion eligibility and exclusion criteria. The recent policy issued by Philadelphia District Attorney Larry Krasner can serve as a model for the Baltimore SAO.<sup>56</sup>
- f. In partnership with other stakeholder agencies, including OPD and the Juvenile Court, SAO should explore opportunities to prioritize the following types of cases for early diversion at DJS intake stage, with appropriate monitoring of such cases by SAO:
  - i. Second Degree Assault
  - ii. Unauthorized Use of a Motor Vehicle (excluding carjacking)
  - iii. Possession of a Controlled Dangerous Substance
  - iv. Problem Sexual Behaviors (especially those occurring within a familial context)
  - v. Robbery (without a weapon used against a victim, if the case is appropriate for mediation through Restorative Response)
- g. Convene SAO, OPD, Juvenile Court judges, and Criminal Court judges to discuss trends in transfer of cases back to juvenile court from adult criminal court and identify ways of preventing cases from originating in criminal court that have a high likelihood of being transferred back and/or ensuring that such cases are transferred back more quickly than they currently are.
- h. SAO should consider a staffing approach that would reduce high turnover within the Juvenile Unit to ensure greater continuity of policy and to build a well-seasoned prosecution team in this highly specialized practice area. The staffing approach should incentivize resolution of cases with outcomes that best meet the needs of young people and the community as opposed to incentivizing trial experience.

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<sup>56</sup> Philadelphia District Attorney's Office, Philadelphia DAO's Juvenile Justice Policy, Feb. 6, 2019, available at <https://medium.com/philadelphia-justice/philadelphia-daos-juvenile-justice-policy-9c819fa6e0d3>.

- i. SAO should review current data collection and information management practices to aid in future understanding of case trends, case handling decisions, diversion practices, and diversion outcomes.

## 2. Programs and Conditions

- a. SAO should consider realigning staffing resources in the Immediate Charging Unit to a newly structured Expedited Diversion and Alternative Resolution Unit to improve efficiency in early diversion practices at the prosecutorial level. This unit could serve several key functions after DJS intake:
  - i. Conduct centralized screening of all juvenile referrals received from DJS to facilitate earlier diversion of cases that are likely to be resolved prior to adjudication.
  - ii. Review, facilitate, and oversee felony memo request from DJS to identify cases that would be appropriate for diversion through informal adjustment at DJS intake.
  - iii. Screen cases for legal sufficiency, over-charging, and other factors likely to lead to resolution prior to adjudication.
  - iv. For more serious referrals, but referrals likely to be resolved through some form of deferred prosecution, assist with expediting these cases toward resolution by conducting early investigations, making early referrals to diversion, and overseeing completion of the diversion process.
  - v. Monitor trends in juvenile referrals received, diversion efforts, and outcomes of diversion referrals to better inform management decisions using data.
- b. SAO, OPD, and the Juvenile Court should obtain consensus on the types of offenses or cases that are currently resolved through a deferred adjudication that could be handled earlier with appropriate interventions and services. Continue the diversion resource mapping process undertaken as part of this assessment to identify existing programs and prioritize development of new programs to match these offenses. For example, if officials reach consensus on targeting CDS possession offenses for early diversion, then system partners should focus on building capacity to connect youth to services targeted to the needs and risks of this particular population (e.g., Mayor's Office of Employment Development to enhance employability and move young people toward meaningful employment to address financial needs).

## 3. Community Engagement and Partnerships

- a. Officials should partner closely with communities and community-based organizations to ensure a robust range of diversion options, particularly for the

list of offenses outlined above where there seems to be more willingness to look toward earlier resolution of cases.

- b. SAO should consider an organizational commitment to greater transparency regarding data and information sharing about policies and protocols that govern decision-making within the office.

## D. Detention

This component of the assessment addresses policies and programs that are intended to limit secure detention of Baltimore City's young people prior to adjudication in juvenile court. Best practices indicate that young people should be held in secure detention before adjudication only when there is a significant risk to public safety or a significant risk that the young person will fail to appear for subsequent court hearings.

Since 2000, the Maryland Department of Juvenile Services (DJS) has spearheaded Baltimore City's involvement with the Juvenile Detention Alternatives Initiative (JDAI), an initiative of the Annie E. Casey Foundation.<sup>57</sup> JDAI is a multi-system public safety partnership that seeks to reduce the unnecessary and harmful use of secure detention for young people who pose minimal or moderate risk to public safety, and who could be served more effectively in a community setting.

Through JDAI and other major initiatives, DJS, in partnership with Baltimore's other youth justice stakeholders, has implemented a series of policies, practices, and programs designed to limit admissions to secure detention. These efforts include investment in an evening reporting center, a community-based program that provides supervision and services for youth who would otherwise be admitted to secure detention. DJS has adopted a graduated responses protocol, which ensures consistent system responses to both positive and problematic behaviors from young people while they are on community supervision with DJS from the lens of limiting the use of detention to respond to negative behaviors. Finally, DJS intake uses an objective tool, the Detention Risk Assessment Instrument (DRAI), to guide detention admission decisions – a tool that is designed to objectively assess the risk of young people failing to appear in court or committing a new offense prior to adjudication.

These reforms have yielded significant results for Baltimore's youth justice system. Pre-dispositional admissions to secure detention for Baltimore City fell significantly by 30% over recent years, from 1,083 in FY 16 to 758 in FY 18.<sup>58</sup> This reduction outpaces a 26% reduction in detention admissions for the rest of the state of Maryland over the same time period (2,201 in FY 2016 to 1,619 in FY 2018).<sup>59</sup> Indeed, reforms have been so impactful in Baltimore, they have led to a significant reduction in the population of securely detained youth at the BCJJC. While capacity at the BCJJC is 120, the average daily population at the facility has held steadily below 50 between FY 2016 and FY 2018.

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<sup>57</sup> Annie E. Casey Foundation, *Juvenile Detention Reform in Baltimore in the Year of Freddie Gray* (Mar. 7, 2016), available at <https://www.aecf.org/blog/juvenile-detention-reform-in-baltimore-in-the-year-of-freddie-gray/>.

<sup>58</sup> Maryland Department of Juvenile Services, *Data Resource Guide: Fiscal Year 2018* (December 2018), available at [https://djs.maryland.gov/Documents/DRG/Data\\_Resource\\_Guide\\_FY2018\\_full\\_book.pdf](https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2018_full_book.pdf).

<sup>59</sup> *Id.*

As a result, DJS has dedicated unused capacity at the BCJJC to hold young people charged in the adult criminal justice system, a laudable effort intended to help young people avoid some of the harmful consequences of processing them in the adult criminal justice system. This is a population that stays for longer periods at the BCJJC. For example, in FY 2018, 141 young people from Baltimore City were placed in detention awaiting a transfer hearing, with an average length of stay of five months (149 days), with 98% of these youth being youth of color.<sup>60</sup> Notably, the amount of time adult-charged youth have spent in detention has increased significantly in recent years, having nearly doubled from the first year DJS published data on transferred youth in its data resource guide (76 days in FY 2014 to 149 days in FY 2018).<sup>61</sup>

## Barriers to Diversion

This section of the assessment focuses on barriers to diversion for youth who have been arrested and brought to DJS intake at the BCJJC, which operates 24 hours a day to process and admit young people who have been authorized for secure detention. In accordance with Maryland law, upon receiving a complaint and request for detention from law enforcement, DJS intake must make an initial decision regarding whether a young person should be securely detained. DJS intake uses an objective tool, the Detention Risk Assessment Instrument (DRAI), to guide detention admission decisions. The DRAI assesses several factors, including (1) the risk that a youth will reoffend or fail to appear for a court hearing based on known risk factors in the youth's history; (2) the seriousness of the current alleged offense; and (3) factors requiring detention regardless of risk or offense, such as an outstanding writ or warrant or interstate hold.<sup>62</sup>

Based on these three factors, the DRAI recommends either release to a parent or caregiver, placement in an alternative to detention program (ATD), or placement in secure detention.<sup>63</sup> The instrument also has an option to override the recommended outcome, either in favor of release or release to an alternative for youth who would otherwise be eligible for detention, or to detain for youth who otherwise score as eligible for release or release to an alternative. Overrides should be used sparingly and must be monitored carefully by officials.

For the purposes of this assessment, CCLP considers release to a parent or caregiver and placement in an ATD as diversion options at this phase of processing. All secure detention admissions authorized by DJS intake are subject to review and reauthorization by the juvenile court no later than the next court day. It is also important to note that the juvenile court may detain a young person directly in cases where the youth appears during court hours for a new charge, a writ or warrant, or a violation of a court order.

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<sup>60</sup> *Id.* at 116.

<sup>61</sup> Maryland Department of Juvenile Services, Data Resource Guide: Fiscal Year 2014 (December 2014), available at [https://djs.maryland.gov/Documents/DRG/Data\\_Resource\\_Guide\\_FY2014\\_full\\_book.pdf](https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2014_full_book.pdf).

<sup>62</sup> *Id.* at 105.

<sup>63</sup> *Id.* at 105.

A significant body of research documents the many short and long-term negative impacts of secure detention on young people and public safety. Young people who are incarcerated are more likely to experience negative effects related to their education, mental health, future employment, and other life outcomes.<sup>64</sup> One study of youth in Florida found that detained youth were three times more likely to be committed to a juvenile facility, the juvenile court's most restrictive intervention, than similar youth who were not detained.<sup>65</sup>

The outcomes of secure detention for public safety are equally poor. Research has shown that most young people who engage in delinquent behaviors will naturally "age out" of delinquency as they mature and approach young adulthood. However, secure detention is likely to interrupt this natural aging out process.<sup>66</sup> One study found that youth "who are admitted to secure detention are more likely to recidivate than youth who are supervised in a community-based setting, or not detained at all."<sup>67</sup> Indeed, another study found that, when controlling for other factors, prior incarceration was a better predictor of future recidivism than membership in a gang or carrying a weapon.<sup>68</sup>

In stark contrast, studies have repeatedly demonstrated that alternatives to detention are more effective at reducing crime and recidivism than secure detention.<sup>69</sup> Jurisdictions with well-run youth justice systems have an array of less costly and more effective pre-adjudication ATD programs. The primary purpose of ATDs is to provide enhanced supervision to ensure that young people who would otherwise be detained appear in court and do not re-offend while they await adjudication of their case. Pre-adjudication ATDs are not intended as "treatment" for youth. Instead, their role is more narrowly defined: to provide an adequate level of supervision so that youth appear in court and do not re-offend. In Baltimore City, the ATD continuum includes community detention, electronic monitoring, and an evening reporting center, as well as the Pre-Adjudication Coordination and Transition (PACT) Center and the Detention Reduction Advocacy Program (DRAP).<sup>70</sup> Emergency shelter care is also used for cases where the young person is unable to return home but does not represent a significant risk to public safety.

As noted earlier, owing largely to the leadership of DJS and the engagement of other local youth justice stakeholders in JDAI, Baltimore City secure detention admissions have been on a steady decline, falling by 30% between FY 16 and FY 18.<sup>71</sup> These notable results for Baltimore's

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<sup>64</sup> Barry Holman and Jason Zeidenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (Justice Policy Institute, 2006), available at [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf)

<sup>65</sup> *Id.* at 5.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 6.

<sup>68</sup> *Id.* at 4.

<sup>69</sup> *Dangers of Detention*

<sup>70</sup> Maryland Department of Juvenile Services, *Data Resource Guide: Fiscal Year 2018 (December 2018)*, available at [https://djs.maryland.gov/Documents/DRG/Data\\_Resource\\_Guide\\_FY2018\\_full\\_book.pdf](https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2018_full_book.pdf).

<sup>71</sup> *Id.*

young people are a testament to DJS and other officials' ongoing commitment to ending an overreliance on secure detention through the eight core strategies of JDAI:

- (1) **Collaboration** among youth justice agencies, community organizations and other governmental agencies;
- (2) **Use of data** to drive policy and case-level decisions;
- (3) **Objective Detention Risk Assessment Instruments (DRAIs)** to guide detention decisions;
- (4) **Robust continuum of Alternatives to Detention (ATDs)** to provide other forms of supervision for young people who would otherwise be detained
- (5) **Case processing efficiencies** to reduce the time between arrest and case disposition;
- (6) **Reductions in special detention populations** (e.g. violations of terms of probation or terms of release, warrants, and cases awaiting placement);
- (7) **Racial and ethnic fairness** in policies and case-level decision-making; and
- (8) **Improvement of conditions of confinement** to ensure that the few young people who require secure detention are held in safe and humane conditions.

Through a continuous process of system improvement, DJS has taken significant steps to sustain and enhance the results achieved through JDAI. DJS has improved data capacity and the routine use of data to inform management decisions about detention utilization; refined its DRAI to ensure fair, objective and risk-responsive detention admission decisions; and invested in the robust array of ATDs for Baltimore City. DJS has also built internal capacity and infrastructure to ensure that the processes, practices, and principles of JDAI are integral to the Department's day-to-day operations. DJS's Systems Reform Unit, comprised of a Director of Systems Reform, several local detention managers, and a team of case expeditors, works directly with line staff across the Department to operationalize reforms.

Given these investments, CCLP is confident that DJS will continue to sustain the results of past and current strides in detention reform. However, this assessment highlighted three main barriers to diversion at this phase of the juvenile justice process in Baltimore City. First, many stakeholders reported that engagement among stakeholders has waned and the Baltimore City JDAI Oversight Committee has not met regularly for some time. Many expressed concern that if Baltimore City officials do not make an intentional effort to reconvene and refocus the work of this group over the next few months, then the collaborative process that is so essential to the success of JDAI will be irreparably damaged or lost. In order to advance Baltimore City's detention reform work, this group will need to galvanize around new and more ambitious goals for reducing secure detention utilization, improving racial equity, enhancing access to culturally relevant and responsive community-based alternatives, and improving outcomes for young people who come into contact with the justice system in Baltimore City.

With new administrative leadership on the juvenile court bench in Baltimore City, several officials noted plans to reconvene the JDAI Oversight Committee, which is encouraging. However, many also expressed concern about past levels of engagement from key partners, namely BPD, which reportedly had not been consistently represented on the JDAI Oversight

Committee. In some cases, the BPD was absent from the collaborative table. In other cases, BPD designees to the JDAI Oversight Committee were not executive-level BPD staff with the authority to influence policy and practice within the Department. In either case, inadequate representation from law enforcement proved an ongoing barrier to the critically important detention reform work. As community and system stakeholders prepare to reconvene the JDAI Oversight Committee, there is an even greater level of concern about BPD's participation in JDAI, particularly given the imminent changes in leadership at BPD and the Mayor's Office of Criminal Justice. Officials are unsure what to expect from the new leadership in these key roles, which is a significant source of consternation for many.

Second, as identified in earlier sections of this report, stakeholder interviews and mapping sessions revealed an overreliance by BPD on in-custody arrests and transports to the BCJJC. In the current practice, BPD officers routinely take young people who are appropriate for diversion at the law enforcement or DJS intake levels into custody and transport them to the BCJJC. In processing low-level cases in precisely the same manner as more serious cases, BPD exposes young people to the harmful effects of arrest, which may create more harm than good to the young person and the interests of public safety

The DJS's annual Data Resource Guide indicates that "juvenile detention may be authorized by DJS intake officers on a temporary basis at the request of a law enforcement officer . . . ."<sup>72</sup> The resource guide further depicts that only after being taken into custody and screened for diversion at the law enforcement level, DJS performs a screening for secure detention admission using the DRAI detention screen on a young person only *after* the police officer requests secure detention. However, CCLP was unable to confirm that youth were screened for detention only if detention was requested by law enforcement. Indeed, stakeholder interviews revealed that it is common practice for DJS intake to conduct the DRAI screening for all youth brought to the BCJJC by law enforcement, even youth who will eventually be diverted.

This is concerning for a number of reasons. Again, processing low-level cases in a manner that is appropriate for more serious cases can expose a young person to undue harm. In addition to the harms associated with arrest and transport, extensive and unnecessary processing once at the BCJJC exposes the young person to further detriment and keeps the young person separated from their home, school, and community. Also, once DJS performs the DRAI screen, the information gathered and score that is generated will remain a part of the young person's juvenile justice history and may influence processing and case disposition should the young person come into contact with the justice system at a later time.

The DJS Data Resource Guide indicates that there is a clear procedural step between arrest and administering the DRAI for detention admission, namely the police officer's request for detention. If this is a step exercised by law enforcement agencies in other parts of Maryland and a clear expectation of DJS intake officers in other DJS regions, Baltimore's stakeholders should be concerned about how these procedural differences might work to the disadvantage

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<sup>72</sup> *Id.* at 105.

of young people in Baltimore City as compared to their peers in other parts of the state. To the extent that this step serves as a procedural safeguard between a young person and the doors of secure detention in other regions, it should also be available for the young people of Baltimore City. Additionally, operating according to a principle of presumptive diversion, conducting the DRAI should not be the default for all youth.

Third, stakeholders expressed concern about the availability of programming and skill-building opportunities for youth held in detention, particularly young people who are charged as adults who stay at the facility for long periods of time. As noted above, it is laudable that officials have made changes to realign open bed capacity at the BCJJC to more effectively serve youth charged as adults in the Circuit Court. This move has undoubtedly spared hundreds of Baltimore's young people from the grave dangers to safety and well-being that young people face when they are incarcerated with adults, including high rates of physical assault, sexual abuse, isolation, and suicide.

There is no question that the BCJJC is the better place to hold young people charged as adults. However, for those youth who stay at the facility for many months and those who will face significant barriers to reentry once released, many stakeholders felt that more could be done to work with young people on skill-building while in detention. There are programs doing this at the present time. For example, Baltimore Youth Arts works with young people in detention to provide mentorship and skill-building in artistic and creative expression while at the facility and upon a young person's release.

However, almost all stakeholder interviewed on this topic felt that more could be done to make more productive use of young people's time in detention, particularly those youth who are charged as adults. There do seem to be opportunities to introduce new and more structured and intentional skill-building programs focused on youth who spend longer lengths of time at the BCJJC. For example, the Cook County Juvenile Temporary Detention Center in Chicago, Illinois, has created a barbershop within its facility where young people work under the supervision of professional barbers and have the opportunity to earn their barber's license while at the facility. Young people in other facilities also have opportunities to participate in other licensing and credentialing programs, such as ServSafe and OSHA 10-hour courses, that can provide helpful certifications to young people upon release when looking for employment opportunities.

## Key Recommendations

### 1. Policy and Process

- a. As recommended above, BPD should implement policy and protocols that minimize the unnecessary in-custody arrests and transport of young people to the BCJJC, such as a remote screening process, which would limit the number of young people who are transported to the BCJJC altogether and limit the number

of youth who should be screened for detention.

- b. BPD should consider implementing the Massachusetts Screening Tool for Law Enforcement (MASTLE): an objective, validated screening instrument that is designed to assist police officers in making the decisions identified above. The MASTLE can be accessed for implementation at no cost. Limited training and technical assistance from the tool's developer, the National Youth Screening and Assessment Project, may also be available to support implementation.
- c. DJS should consider amending its practice of screening all youth who appear at the BCJJC for detention admission using the Detention Risk Assessment Instrument, even youth who will ultimately be diverted prior to DJS referral through the BPD Diversion Program. This will limit young people's exposure to the detrimental impact and collateral consequences associated with generating unnecessary DJS and court records.
- d. BPD should develop a training and messaging strategy to increase officer knowledge and understanding of new policies and protocols for interacting with youth, the purpose of the juvenile court system, details of the juvenile justice process, and the purpose of secure detention. Clear and consistent messaging for officers will help to mitigate the frustration that officers reportedly experience when they perceive that young people are not being held accountable by the system.
- e. Conduct a case processing analysis of adult-charged youth in detention to identify why time spent in detention for these youth has doubled from 2014 to 2018 and develop policies and programs to address the causes of delays.

## 2. Programs and Conditions

- a. The City should partner closely with DJS and the Baltimore JDAI Oversight Group to assess the continuum of Secure Detention Alternative established by DJS and the extent to which it meets existing needs.
- b. The City and its appropriate offices and agencies should partner with DJS to identify additional programs for youth in detention, in particular youth charged as adults, that can help young people build skills and connections that will help them succeed following release and return to their communities.
- c. To the extent that there are gaps in the existing Secure Detention Alternatives Continuum, the City and DJS should partner closely to identify resources to enhance the Alternative Continuum. As a resource, stakeholders should consult the results of the Youth Service Provider Survey conducted as part of this assessment.

3. Community Engagement and Partnerships

- a. Officials should work collaboratively to reconvene the Baltimore City JDAI Oversight group, ensuring strengthened and sustained leadership and executive-level participation from the Mayor's Office of Criminal Justice and BPD.

## E. Overarching Recommendations

The previous sections of this report were designed to outline concrete and specific recommendations to enhance diversion at various stages where youth have contact with the justice system. However, as noted at various points in this assessment, there is a need for continued work and oversight of diversion in order to translate those recommendations into actual changes to policies, practices, and programs.

This final section of the report outlines overarching recommendations that are designed to address broader structural issues related to diversion of young people, as well as to overcome some of the current barriers that exist to implementing the reforms outlined throughout this report.

### Barriers to Diversion

As described in the introduction to this report, this assessment involved the work of many youth justice system stakeholders – individuals who helped oversee the mapping of diversion options and who helped identify changes that could strengthen and expand current diversion efforts. This assessment would not have been possible without the work of the Advisory Group members, who also provided accountability for the work that needed to occur to complete this assessment.

At this time, there is no formal role for the Advisory Group moving forward following this assessment, but there is a clear need for a body to oversee the implementation of recommendations outlined in this report and to monitor outcomes from implementation of those recommendations. Without such accountability, many of the recommendations are likely to remain just that. Officials will need to consider whether the Advisory Group or another group such as the City's JDAI collaborative, can oversee a process for implementation of the recommendations outlined in this report.

Additionally, as a result of this assessment, stakeholders identified several areas where better coordination and information sharing would help promote consistency in diversion practices and help ensure that all young people who are eligible for diversion receive the opportunity to be diverted away from initial contact or deeper involvement with the justice system. There is a clear need for an agreement among the various law enforcement agencies in Baltimore regarding when diversion is appropriate, which would help promote consistency in law enforcement officers' interactions with young people and which would help promote broader use of diversion. There would also be value in data sharing among law enforcement and justice system stakeholders to help ensure that diversion is being used as intended, although any such agreement must obviously protect the confidentiality of youth records and should not be used to narrow youth's eligibility for diversion.

Another major takeaway from the assessment process was that, while there is always a need for additional resources, there are programs and services that are not currently used as an option to divert youth – but that could be in the future. Where CCLP identified specific programs and services that could be used in a different or expanded way to meet a particular need, we have identified such programs and services in this report. However, it was clear that it would be valuable for the Advisory Group or any future entity charged with overseeing youth diversion to map out the additional potential opportunities identified through the assessment and discuss how they could be integrated into a more formal process for diversion at the various decision points discussed in this report. As mentioned elsewhere in the report, any such programs and services should have clear eligibility criteria and target populations identified to avoid the potential for net widening. Additionally, implementation of the recommendations outlined in this report could yield cost savings that could be captured and reinvested in new programs and services or redirected to existing services that lack needed capacity to meet the needs of young people.

In the same vein, many individuals consulted as part of the assessment expressed some degree of frustration with the messaging around efforts to divert young people away from initial or deeper contact with the justice system. For some, this frustration was borne out of a belief that not enough was being done to disseminate information on the positive outcomes of programs currently being used to divert young people, such as reduced likelihood of future contact with the justice system and the percentage of victims that express happiness with the outcome of cases that are handled through a diversion program (e.g., Restorative Responses 97% successful resolution rate in 2017). Without this information, some noted, some stakeholders and community members will be less likely to consider an expansion of diversion efforts because of a belief that such programs simply offer youth a “free pass” with no benefits to the young person or the community.

Others felt that the City needed to do more to message the prevention and early intervention programs that are being put in place to respond to community concerns about the lack of programs for young people, such as the Roca program that was launched in 2018 to target youth age 16-24. These individuals noted that many community members have negative perceptions of City services that are rooted in their individual history and experience. However, those perceptions could be changed with better messaging about changes that are being made to address those concerns.

These perceptions could also be changed by introducing new programs designed to address specific behaviors that currently lead to contact with the justice system. For example, many youth consulted during focus groups conducted for this assessment noted that adding recreational opportunities within the City, such as a dirt bike park, could help provide an outlet for behavior that would otherwise occur illegally and in a dangerous way. Indeed, during the focus group conducted with young people in detention at the BCJJC, several youth had justice system involvement stemming from incidents involving dirt bikes. The possibility of creating a dirt bike park has been a topic of much controversy and conversation for many years, but the

fact that young people consistently raised it as a need should be important context for any future conversations.

Additionally, in recognition of the fact that many have longstanding, deeply entrenched, and strongly held views about the shortcomings of the current justice system, some suggested that the City would be best served by taking a bold step that would develop an alternative response outside of the justice system for a certain group of young people who are currently involved with the system. This “Baltimore New Deal” would focus on creating a clear and expedited pathway out of the justice system for youth, with the goal of moving toward meaningful employment, treatment, training, education, and other life opportunities. It would involve making evidence-based programs and interventions available for system-involved young people who are facing more serious or violent charges, which has been a growing percentage of overall referrals to the youth justice system given the overall significant declines in arrests and intakes. This approach, which could be piloted with a group of young people, would be consistent with other jurisdiction’s moves to adopt a public health framework and response to youth crime, as is the case in King County, Washington’s (Seattle) [Zero Youth Detention Roadmap](#).

Finally, many individuals expressed very strong feelings about policy and personnel changes that had been made within BPD that individuals felt affected the Department’s approach to community policing. There were two concerns that were consistently raised. The first was the debate over the benefits of having a fully centralized community engagement staff under a single Department-wide commander versus dedicating specific officers within each District to lead community engagement efforts under the supervision of District commanders. While law enforcement agencies approach community engagement in different ways, BPD’s current approach is to have Neighborhood Coordination Officers (NCOs) in each District who report to District commanders. Although BPD did not have a full complement of NCOs in each District at the beginning of this assessment (one Sergeant and two officers), the Department was close to full staffing for NCOs in each District at the time of this assessment’s publication.

The second major concern was the decision to move away from post positions within Patrol to sector enforcement, which makes it less likely that officers will be a consistent presence in a particular neighborhood, as officers are ordered to respond to calls for service within their sector, which can include a relatively large area of the City. Some believed that sector enforcement also made it less likely that officers would be in a position to have positive or non-enforcement interactions with the community, as the focus is on responding to calls for service within that sector.

An analysis of the Department’s structure and community policing practices is well beyond the scope of this assessment. Moreover, it is clear that BPD is facing significant manpower issues at this time, which limits the Department’s ability to move in certain directions. However, it is clear that the issues outlined above are likely to have a significant impact on the perception of law enforcement by the general public. This includes the perception of young people of law

enforcement. Any decisions to reconsider or modify the Department's approach to deployment or structure to improve police-community relations should account for that fact.

## Key Recommendations

### 1. Policy and Process

- a. Create or build upon an existing collaborative to create a multi-disciplinary stakeholder committee to focus on the implementation of the reforms outlined in this assessment and monitoring and improvement of diversion efforts moving forward. For example, this collaborative could be a continuation or extension of the Advisory Group created to help conduct this assessment. Create a staffing structure to coordinate and support the work of this committee moving forward.
- b. Develop a written diversion policy and data sharing agreement among law enforcement agencies and justice system stakeholders that would allow for better information sharing about available diversion options and better coordination among entities that may be working with youth. Include safeguards to protect the confidentiality of youth records, and ensure that any such agreement expands, not narrows, opportunities for diversion pre-arrest and after an arrest. Ensure that Maryland Transit Administration Police, which was not part of this assessment, participates in this process.

### 2. Programs and Conditions

- a. Publicize the positive outcomes from existing diversion programs such as Restorative Response and Roca, which would help increase buy-in for broader use of such programs for youth charged with more serious or violent offenses. When engaging in such outreach, ensure that the materials describe the mechanisms used to repair harm and help youth and families avoid future contact with the justice system to help dispel public perceptions that such programs lack any consequences and fail to respect the rights of victims.
- b. As described elsewhere in this report, use the results of the youth service provider survey conducted as part of this assessment, as well as other recent asset mapping exercises, to identify programs and services that could be used to divert young people away from initial or deeper contact with the youth justice system. Develop clear criteria that identify the target populations for such programs and the eligibility criteria, if any, for receiving referrals.
- c. Consider creative solutions to low-level law-breaking behavior that would show that the City is being responsive to community concerns without resorting to punitive measures or dangerous law enforcement tactics. Consider a public-

private partnership to support the implementation of such a program, which could include a presence from BPD that would allow officers to interact with young people in a more positive setting.

- d. Develop an enhanced continuum of community-based programs and resources that can be leveraged as diversion options. Each diversion program resource should have clearly defined target populations, eligibility and exclusion criteria, requirements, and expected outcomes. The continuum should differentiate with whom and when these resources should be used for diversion. This will prevent net-widening and ensure that responses are measured with the presenting offense and the totality of the young person's risk factors and needs. Each diversion program should also be mapped to specific system processing points, which should correspond to the young person's level of need and risk, once diversion processes are structured to reflect the recommendations outlined throughout this report.
- e. Consider an immediate realignment of policies, practices, and programs to pilot a diversionary pathway for youth who have significant histories or who are otherwise deeply entrenched with the justice system and who would otherwise be excluded from diversion eligibility, as described above. For example, highly effective evidenced based programs such as Multisystemic Therapy, Functional Family Therapy, and Roca are typically reserved for young people who are formally involved with DJS and the juvenile court. Officials should consider realigning these to the front end so that young people can have the best opportunities with less system involvement. Philanthropy can play a major role by supporting efforts to build new capacity and earlier access for programs that work.

### 3. Community Engagement and Partnerships

- a. Ensure that young people and community leaders are represented on the committee that is created to oversee youth diversion efforts moving forward. Ensure that such individuals are compensated for their time and effort as part of the committee.
- b. Develop and implement a plan to share the results of this assessment and obtain feedback on the assessment's recommendations from young people, family members, and community members. Incorporate this feedback when implementing policy, training, and programming changes.
- c. Reconsider policing practices that raise the likelihood that law enforcement will be interacting with young people and community members solely in the context of a problem or crisis.

- d. As BPD further develops its community policing approach, consider a command structure that fully integrates NCOs and their activities into District-level operations, but that also ensures coordination of NCO training, mandates, and duties across Districts at the Departmental level. While District commanders need latitude to leverage NCOs in response to community-level concerns, basic guidelines should be in place to protect this critically important function and to ensure consistency across districts.

## Appendix: Advisory Group Members

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