



# DIVERSION

**A Hidden Key to Combating Racial and Ethnic Disparities in Juvenile Justice**



**THE  
SENTENCING  
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM



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### **DIVERSION: A HIDDEN KEY TO COMBATING RACIAL AND ETHNIC DISPARITIES IN JUVENILE JUSTICE**

This report was written by Richard A Mendel, Senior Research Fellow, Youth Justice at The Sentencing Project.

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The Sentencing Project promotes effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.

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# DIVERSION:

## A HIDDEN KEY TO COMBATING RACIAL AND ETHNIC DISPARITIES IN JUVENILE JUSTICE

### EXECUTIVE SUMMARY

Diverting youth from juvenile court involvement should be a central focus in efforts to reduce racial and ethnic disparities and improve outcomes in our nation's youth justice systems.

Clear evidence shows that getting arrested in adolescence or having a delinquency case filed in juvenile court damages young people's futures and increases their subsequent involvement in the justice system. Compared with youth who are diverted, youth who are arrested and formally petitioned in court have far higher likelihood of subsequent arrests and school failure. Pre-arrest and pre-court diversion can avert these bad outcomes.

Research shows that Black youth are far more likely to be arrested than their white peers and far less likely to be diverted from court following arrest. Other youth of color – including Latinx youth, Tribal youth, and Asian/Pacific Islander youth – are also less likely than their white peers to be diverted. The lack of diversion opportunities for youth of color is pivotal, because greater likelihood of formal processing in court means that youth of color accumulate longer court histories, leading to harsher consequences for any subsequent arrest.

Expanding diversion opportunities for youth of color therefore represents a crucial, untapped opportunity to address continuing disproportionality in juvenile justice.

### WHAT IS DIVERSION AND WHY IS IT SO IMPORTANT?

Diversion is a decision to address delinquent conduct without involving a young person formally in the court system. This can be accomplished in one of two ways.

- **Pre-arrest diversion** occurs when authorities make a decision not to involve police, not to make an arrest, or not refer a case to juvenile court.
- **Pre-court diversion**, or informal processing, occurs whenever prosecutors or court intake staff decide that a young person referred to juvenile court on a delinquency charge should not be formally petitioned in court, and their misconduct should rather be addressed informally outside the court system.

Both types of diversion are used far less than the evidence shows would be optimal. This is especially true for youth of color, who are denied opportunities for diversion far more often than their white peers.

**For most youth, diversion is more effective and developmentally appropriate than court.** Compelling research finds that formal involvement in the justice system tends to undermine rather than enhance public safety and to reduce young people's future

success. Studies find that youth diverted from the justice system:

- Have far lower likelihood for subsequent arrests
- Are less likely to be incarcerated
- Commit less violence
- Have higher rates of school completion and college enrollment
- Earn higher incomes in adulthood

### **Diversion is vastly underutilized in the United States.**

Of the youth referred to juvenile or family courts for delinquency each year, just 7% are accused of serious violent offenses. Therefore, a large majority of youth accused of delinquency should be diverted rather than arrested and formally processed in a juvenile court. Yet the use of diversion remains limited.

- While no national data are available on the use of pre-arrest diversion, surveys find that only one-third of law enforcement agencies nationwide participate in any form of pre-arrest diversion.
- The proliferation of school resource officers stationed in our nation's schools has driven more misbehavior at school into court.
- Among youth referred to juvenile courts in 2019, less than half were handled informally. The share of juvenile cases diverted in the U.S. has not changed in a generation despite increasing evidence showing diversion's benefits over formal court processing.
- By contrast, many other advanced nations have substantially expanded youth diversion in recent times, and divert a far higher share of delinquency cases than the U.S.

**Racial and ethnic disparities in diversion are deep, pervasive and longstanding.** Nationwide in 2019, 52% of delinquency cases involving white youth were handled informally (diverted), far higher than the share of cases diverted involving Black youth (40%). For Latinx, Tribal, and Asian American youth, the share of cases diverted ranged from 44-48%. These gaps cannot be explained by the seriousness of offenses youth are accused of committing: glaring disparities between Black vs. white youth can be seen within every major offense category. Over time, these disparities have been getting worse, not better.

### **Research finds that disparities in diversion reflect systemic bias, with severe consequences for young people.**

At least 20 academic studies over the past 25 years have detected significant racial or ethnic bias in decisions regarding formal processing of delinquency cases referred to juvenile court. Many leading scholars have found that disparities in the early stages of the juvenile justice process, including diversion, are a key driver of larger disparities in subsequent stages of the process, including commitments to residential confinement.

### **WHY ARE DISPARITIES AT DIVERSION SO SEVERE?**

**Disparities in diversion often emerge from subjective biases.** Clear criteria for making diversion decisions are seldom spelled out in state laws, juvenile court procedures or probation department policy manuals. Instead, with little oversight and few objective guidelines, diversion decisions are highly subjective, making this stage of the process especially prone to disparities and geographic variations.

- **Implicit Bias Against Youth.** Abundant research shows most people's thinking is swayed by subconscious attitudes that lead them to view and respond to people of color differently (and less favorably) than to whites. The impact of these implicit biases is especially powerful in perpetuating disparities in juvenile justice – and in diversion particularly.

- **Implicit Bias Against Families.** Research also finds that implicit biases extend to young people’s families. Court officials often assess families of color more harshly than white families. These negative assessments limit diversion opportunities for youth of color and exacerbate disparities.
- **Unequal Justice By Geography.** Disparities in diversion opportunities are also perpetuated by what can be vast differences in diversion practices between jurisdictions within states.

**Disparities in diversion are often exacerbated by problematic practices, including:**

- Rules that unnecessarily limit eligibility for diversion to youth referred to court for the first time on misdemeanor or status offenses.
- Weak efforts to inform youth and families and secure their participation.
- Rules that make it difficult for families to meet diversion program requirements.
- Requirements that youth admit to guilt in order to qualify for diversion.
- Fees/costs required to participate in diversion programming.
- Punitive responses to youth and families unable to pay diversion fees or restitution.
- Assignment of diverted youth to informal probation caseloads.
- Lack of support and assistance to youth and families at risk of failing diversion.

**WHAT CAN BE DONE TO REDUCE DIVERSION DISPARITIES AND EXPAND DIVERSION OPPORTUNITIES?**

Several states in recent years have expanded and improved diversion as part of comprehensive juvenile justice reform laws. Other states have adopted policies and programs specifically targeting diversion, as have numerous local justice systems.

These recent reform efforts have showcased several promising strategies:

- Expanding the use of diversion through new rules allowing, mandating, or creating a presumption for diversion for specific offenses.
- Providing funding to support diversion programming and to create new diversion pathways.
- Intensifying efforts to contact and engage parents/guardians and other family members.
- Reducing imbalances in diversion opportunities within states by requiring all jurisdictions to develop diversion options, or by setting standard guidelines for diversion.
- Limiting periods of diversion oversight and minimizing consequences for non-compliance with diversion rules and requirements.
- Creating new mechanisms to assist and support youth who might otherwise fail diversion and have their cases formally petitioned in court.
- Improving data collection in order to track progress and analyze disparities.
- Creating ongoing oversight boards to review progress and recommend adjustments and further policy and practice reforms.

**Importance of focusing explicitly on racial and ethnic equity.** To date, however, renewed efforts to expand and improve diversion have most often lacked one essential ingredient: an explicit and determined focus on reducing racial and ethnic

disparities. Especially at the diversion stage of the process, where decisions are often subjective and easily influenced by implicit biases, reform efforts are unlikely to narrow disparities unless new approaches are crafted with an explicit focus on racial equity.

Therefore, state and local advocates and system leaders should:

- Make reducing racial and ethnic disparities the primary focus in efforts to expand and improve diversion.
- Abandon common rules and practices in diversion that harm youth of color disproportionately and exacerbate disparities.
- Recognize and respond to the hidden influence of implicit bias by adopting policies that reduce subjectivity in diversion decisions.
- Require that youth justice systems prepare racial impact statements to analyze the effects of new

and existing policies and practices in diversion.

- Collect, track and regularly report disaggregated data documenting progress (or the lack of it) in reducing disparities and expanding opportunities for diversion.
- Sustain the focus on racial and ethnic equity by appointing an oversight body to track progress in expanding and reducing disparities in diversion, and to push for adjustments and additional reform steps over time.

**Conclusion.** The diversion stage of the juvenile court process should be a top priority for youth justice reform. Advocates should push for and system leaders must take aggressive action to address racial and ethnic disparities in diversion. Combined, reforms to expand and improve the use of diversion offer perhaps the most important and promising avenue currently available to reduce disparities and to improve youth justice systems nationwide.



## DEL'QUAN SEAGERS



*Photo: Facebook*

## ABSENCE OF DIVERSION LEADS TO TRAGEDY IN SOUTH CAROLINA

On November 25, 2015, 16-year-old Del'Quan Seagers died under mysterious circumstances at a state-funded wilderness camp – a juvenile corrections facility – in the South Carolina woods.<sup>165</sup> The official cause of death, asthma, was disputed by some youth in the facility,<sup>166</sup> and a legislative audit report later concluded that the state's Department of Juvenile Justice "did not properly investigate" claims of foul play in his death.<sup>167</sup>

The story has many tragic elements, but perhaps the most tragic is that Del'Quan Seagers should never have entered the justice system.

At age 14, two years after his father was murdered, Del'Quan was arrested and referred to juvenile court for stealing candy.<sup>168</sup>

Rather than diverting him, the juvenile court placed Del'Quan on probation. When he didn't follow probation rules, authorities shipped Del'Quan off to a wilderness camp for three months.<sup>169</sup>

After his release, the court kept Del'Quan under probation supervision, and more than a year later authorities shipped him off to a second camp – the place where he died – for skipping school and staying out past curfew.<sup>170</sup>

**Had South Carolina's courts followed the evidence and diverted Del'Quan Seagers from court in response to his petty offense at age 14, he would probably be alive today.**



# INTRODUCTION

Despite substantial reductions in recent years in the use of confinement by juvenile justice systems nationwide, there has been scant improvement in the overwhelming racial and ethnic disparities in youth confinement.<sup>1</sup>

Why not? And what can be done to reverse this fundamental injustice?

This report demonstrates that the early stages of the process in youth justice, and specifically diversion from formal processing in juvenile court (and ideally diversion from arrests), are key to answering this challenge and should be a central focus in efforts to promote equity.

National data show that Black youth are far more likely to be arrested than their white peers<sup>2</sup> and far less likely to be diverted from court following arrest.<sup>3</sup> Research consistently finds unequal treatment at these early stages of the process. The resulting lack of diversion opportunities for youth of color is pivotal given the powerful evidence showing that arrest and formal court processing increase the likelihood of future arrests and have harmful effects on school attendance, dropout rates, and self-reported delinquent conduct. Also, greater likelihood of formal processing in court means that youth of color accumulate longer court histories, leading to harsher consequences for any subsequent arrest.



Until recently, diversion from arrests and from formal court processing has not been a central focus in most efforts to address racial and ethnic disparities – or to reform youth justice generally. This report shows why this inattention to diversion has been ill-advised. More specifically, the report will illustrate how existing policies and practices for diversion disadvantage youth of color, and it will identify an array of approaches available to states and to local jurisdictions seeking to expand diversion opportunities and reduce disparities in the critical early stages of the juvenile court process.

## PART ONE:

# WHAT IS DIVERSION, WHY IS IT IMPORTANT, AND HOW DOES IT DRIVE RACIAL AND ETHNIC DISPARITIES IN JUVENILE JUSTICE?

### **Diversion is an alternative to formal involvement in juvenile court.**

The term diversion lacks a clear common definition in discussions about juvenile justice. Rather, diversion is used commonly to describe any decision or any program that enables youth to avoid a deeper level of system involvement.

For the purposes of this report, diversion is defined as any decision to address delinquent conduct without involving a young person formally in the court system. This can be accomplished in two ways.

- **Pre-arrest diversion** occurs when authorities make a decision not to involve police, not to make an arrest, or not to refer a case to juvenile court. For instance, student behavior at school may be handled through the school's discipline protocols without involving police or the courts. Pre-arrest diversion also occurs when a police officer apprehends a young person but issues only a warning or citation rather than making an arrest.
- **Pre-court diversion**, or informal processing, can occur whenever a young person is referred to juvenile court on a delinquency charge. Once prosecutors or court-intake staff determine that the case cannot be dismissed for lack of evidence, they may decide not to file a case but instead to handle the case informally.

Both types of diversion have been employed for decades. Many law enforcement agencies nationwide participate in some form of pre-arrest diversion,<sup>4</sup> and in some jurisdictions officers are authorized to issue stationhouse adjustments<sup>5</sup> or civil citations<sup>6</sup> in lieu of arrest. Until the 1990s, when many schools nationwide began stationing police

officers on campus and adopting zero tolerance discipline policies, the vast majority of youth misbehavior at school was addressed without police or court involvement.<sup>7</sup> Likewise, juvenile courts have always chosen to divert many cases of young people referred to court on delinquency charges.<sup>8</sup> These diversion options should be used far more frequently, particularly for youth of color, because data reveal that white youth are far more likely to be diverted than youth of color with comparable backgrounds and offending histories.<sup>9</sup>

Many jurisdictions also use the word diversion to describe opportunities provided to youth after their cases have been filed in court, such as when courts agree to hold off on formally adjudicating a case and to dismiss charges if the young person complies with behavioral expectations during a period of probation supervision. These agreements do not shield youth from formal involvement in the court system, so they are not considered diversion here. The term diversion is also used frequently to describe programmatic responses to delinquent conduct, such as when youth are enrolled in a diversion program, required to sign a diversion agreement, or involved in a restorative justice process. But none of these programmatic elements is required in diversion. Sometimes, a simple warning may be all that's involved in diversion, or an apology letter, or a one-time workshop.<sup>10</sup>

### **For most youth, diversion is more effective than court.**

Diversion is a critical tool in the juvenile justice system for one simple reason: because more often than not, the experience of getting arrested and funneled into juvenile court is toxic.

As documented below, research shows conclusively that formal involvement in the justice system tends to reduce young people's future success and to harm public safety.

**In study after study, youth whose cases are handled in juvenile court achieve less success and do more harm than comparable youth whose misbehavior is addressed outside of the formal court system.**

These poor outcomes are unsurprising given adolescent development research showing that – because their brains are not fully developed – adolescents are more likely than adults to participate in risky behaviors, including lawbreaking<sup>11</sup> – and that teens generally grow out of their problematic behaviors without any intervention.<sup>12</sup>

Meanwhile, a vast body of research supports what is known as labeling theory, a dynamic where the process of identifying young people as delinquent becomes self-fulfilling for two reasons. First, getting arrested and prosecuted in court harms young people's self-image. Second, arrest and adjudication make youth known to police and other authorities and subject to heightened surveillance and rule enforcement.<sup>13</sup>

For all these reasons, one of the most powerful and consistent lessons in juvenile justice research finds that arrest, court processing, and other court interventions tend to be ineffective or – in many cases – counterproductive, especially when they target youth with limited involvement in delinquency.<sup>14</sup> Diversion is the more effective alternative.

More specifically, the available research shows that:

**Diversion reduces subsequent justice system involvement and improves public safety.** Research

consistently finds that diversion reduces both future arrests and self-reported subsequent offending.

The most detailed and carefully controlled study to date, released in 2021, involved more than 1,200 young people in Orange County, California, Jefferson Parish (New Orleans), Louisiana, and Philadelphia who were arrested for offenses with roughly equal likelihood of being diverted or formally processed (such as drug possession, theft, and assault). This "Crossroads" study found that youth whose cases were formally processed in court were "more likely to be re-arrested, more likely to be incarcerated, engaged in more violence [and] reported a greater affiliation with delinquent peers" than informally processed youth.<sup>15</sup>

In a related analysis, researchers compared the Orange County participants in the Crossroads study with youth from similar backgrounds who self-reported similar levels of delinquency but had never been arrested by police. The analysis found that youth in the Crossroads sample (who had been arrested at the study's outset) were more likely to be arrested over the following six months than their counterparts who had not been arrested. The difference was especially large when the never-arrested youth were compared with peers whose cases were formally processed in juvenile court.<sup>16</sup> Likewise, studies in Florida have found that youth who are offered a civil citation in lieu of arrest are far less likely to be arrested and referred to court on subsequent charges.<sup>17</sup>

These findings echo the results of many previous research studies on diversion. Two comprehensive reviews of available research undertaken in 2010 and 2013 found that diversion significantly lowers recidivism among youth.<sup>18</sup>

Because it allows youth to avoid any court history and reduces the likelihood of future arrests, diversion also substantially lowers the likelihood that young people will penetrate deeper in the justice system over time, such as being found delinquent in court, placed on probation, or removed from home and sent to a youth correctional institution or other residential

placement.<sup>19</sup> As one recent study explained, “front-end processing decisions heavily impact youths’ trajectories toward or away from entrenchment into the justice system.”<sup>20</sup>

**Diversion improves educational attainment and future well-being.** In the Crossroads study, youth whose cases were handled formally in court proved less likely to be enrolled in school at subsequent interviews and less likely to graduate high school. They also reported less capacity to suppress aggression and had lower perceptions of future opportunities than youth who were diverted from court. Overall, the Crossroad study compared outcomes for diverted versus formally processed youth on 19 measures, and youth whose cases were formally processed did not achieve better outcomes on any.<sup>21</sup>

Other studies have found that arrests and court processing harm educational outcomes. Indeed, compared with youth from comparable socioeconomic backgrounds who engage in similar delinquent behaviors but do not get arrested, youth who get arrested during adolescence have higher dropout rates,<sup>22</sup> lower college attendance,<sup>23</sup> less earned income in adulthood, and greater reliance on public assistance.<sup>24</sup>

**Greater use of diversion offers a range of other potential advantages for youth, taxpayers and the justice system itself.** In addition to reducing young people’s subsequent involvement in the justice system and improving their life outcomes, increased use of diversion also holds promise to advance other important policy goals.

- **Potential for timely access to beneficial supports in the community.** Diversion from court can be a vehicle to quickly connect youth and their families to organizations and caring adults in their communities, and to provide young people with counseling services and positive youth development opportunities that address behavior issues and boost long-term success.<sup>25</sup>
- **Savings for taxpayers.** Increasing use of diversion can also yield savings to taxpayers due both

to reduced costs of system processing and by lower likelihood of subsequent arrests and court processing in the future.<sup>26</sup>

- **Heightened justice system concentration on youth who pose greater risks to public safety.** The increased use of diversion will lower probation caseloads and allow probation officers to work more intensively with youth who remain on their caseloads. With smaller caseloads, probation officers can partner with families and communities to help young people thrive in school, participate in positive youth development activities, and improve their abilities to control impulses, weigh consequences, resist negative peer pressure and navigate stressful situations.<sup>27</sup>

### **Diversion from juvenile court is vastly underutilized in the United States.**

Only a small minority of youth arrests or cases referred to juvenile court for delinquent behavior – 7% in 2019 – involve serious violent crimes. The majority of the delinquency cases referred to juvenile courts each year (700,000 in 2019) involve less serious offenses such as trespassing, disorderly conduct, shoplifting, and simple assault (e.g., schoolyard fights).<sup>28</sup> Moreover, the majority of youth referred to court on delinquency charges never return.<sup>29</sup> Meanwhile, another large pool of adolescents – 90,000 in 2019 – are taken to juvenile court for status offenses such as truancy, running away from home, curfew violations, and underage drinking that would not be crimes if committed by adults.<sup>30</sup>

**Given the harms of arrest and formal court processing and the low risk most youth pose to the community, a large majority of youth accused of delinquency – and all youth accused of status offenses – should be diverted.**

Yet the use of diversion remains limited. A 2018 national survey of law enforcement agencies found that only 34% participate in any type of pre-arrest



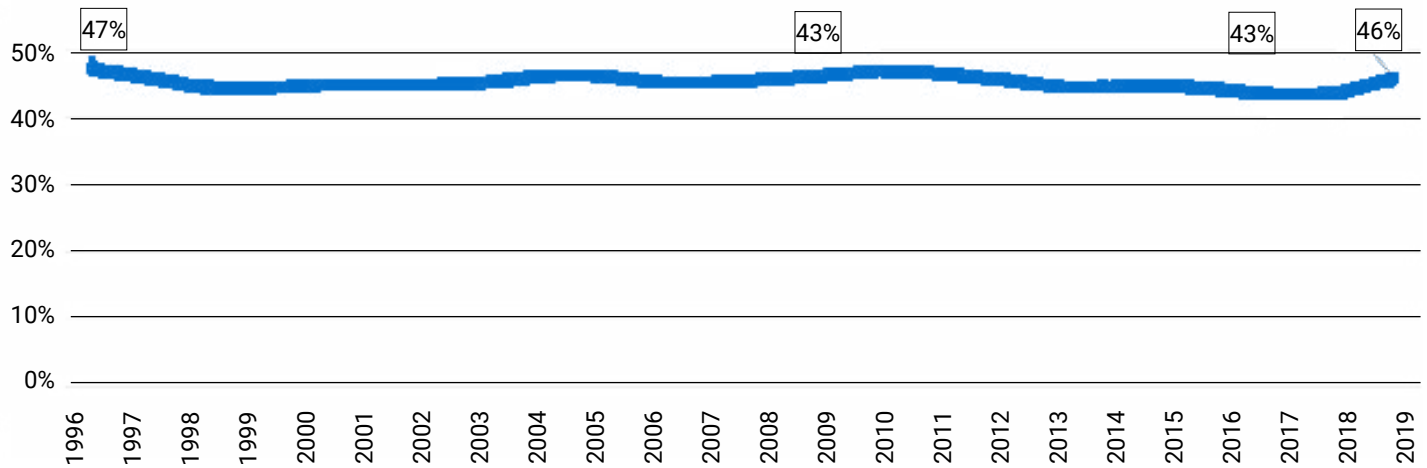
diversion. Only 21% operate pre-arrest diversion programs, and not all of these programs focus on youth.<sup>31</sup> No national data are available on the use of pre-arrest diversion. Meanwhile, in public schools, the proliferation of school resources officers in recent decades has decreased the use of diversion; behavior that would have been handled informally in the past now generates hundreds of thousands of court referrals each year.<sup>32</sup> This trend has persisted despite compelling evidence that diverting youth involved in minor law-breaking behavior at school yields better outcomes for both public safety<sup>33</sup> and youth success.<sup>34</sup>

Despite the increasingly powerful evidence showing diversion’s benefits over formal court processing, the share of juvenile cases diverted in the U.S. has

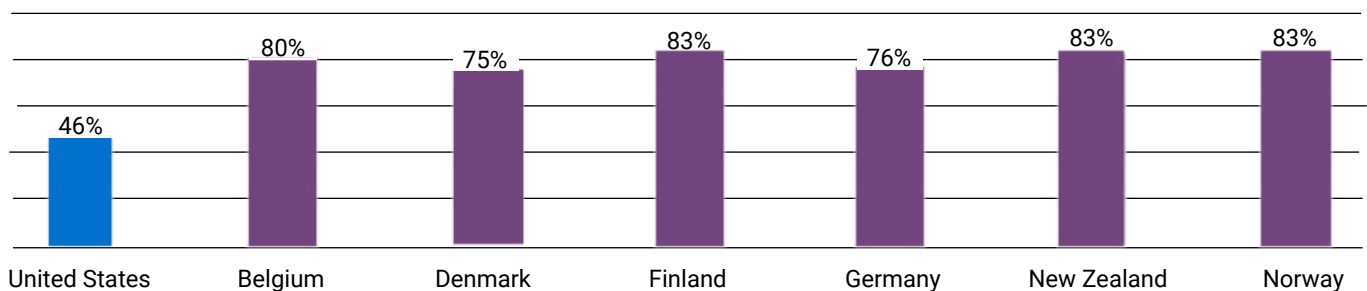
remained flat for a generation: in every single year since 1996, the share of referrals to juvenile court handled informally has hovered between 43% and 47%.<sup>35</sup> In 2019, the most recent year for which data are available, only 46% of delinquency cases referred to juvenile courts were handled informally (See **Figure 1**).<sup>36</sup>

This failure by U.S. juvenile justice systems to heed the evidence and divert a greater share of delinquency cases stands in stark contrast to many peer nations. For instance, England,<sup>37</sup> New Zealand,<sup>38</sup> Scotland,<sup>39</sup> and Australia<sup>40</sup> have all enacted policies in recent years to avoid arrests in most instances of adolescent lawbreaking. Meanwhile, as shown in **Figure 2** below, peer countries divert a much larger share of young people referred to court on delinquency charges.<sup>41</sup>

**FIGURE 1.**  
**Share of All Delinquency Cases Handled Informally (Diverted from Court)**  
**1996 to 2019**



**FIGURE 2.**  
**Share of All Juvenile Cases Diverted from Formal Processing in Court**  
**U.S. vs. Selected Nations**



**Racial and ethnic disparities in diversion are deep, pervasive, and longstanding.**

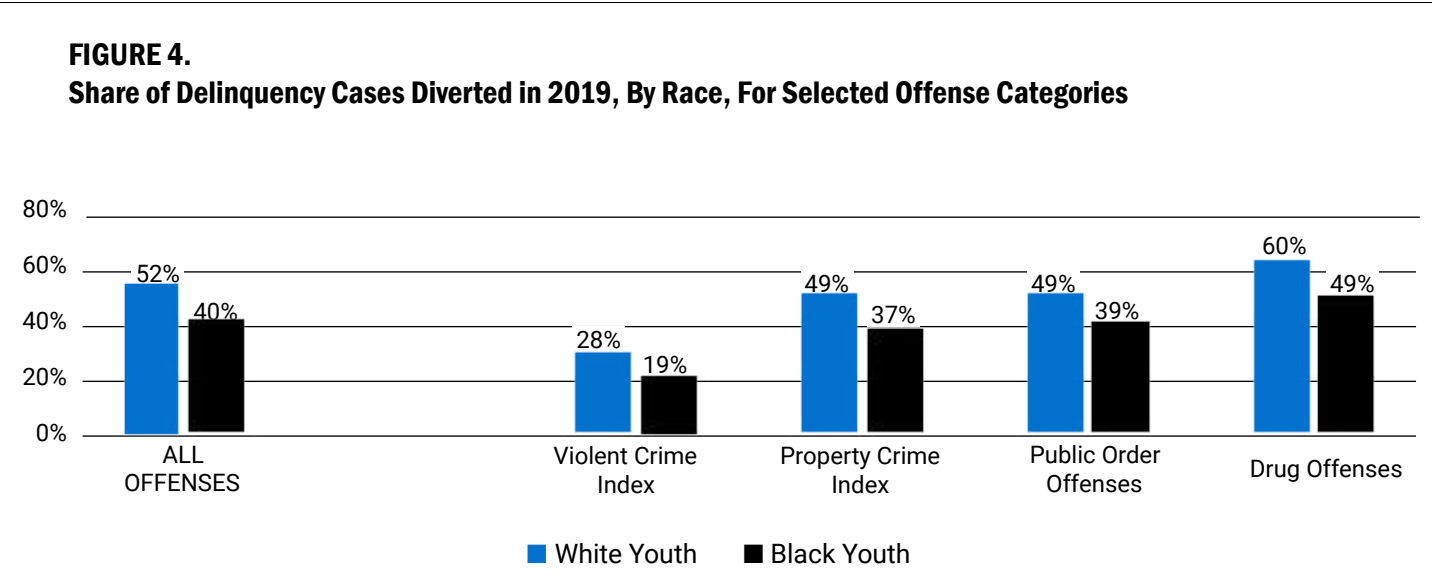
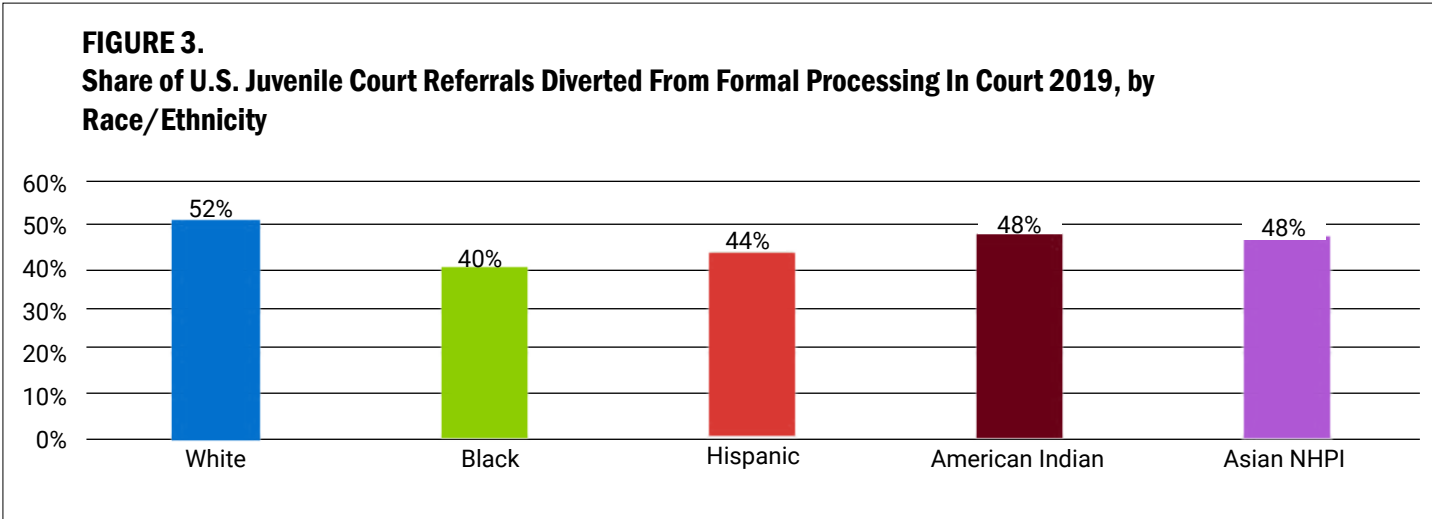
In 2019, 52% of delinquency cases involving white youth referred to juvenile courts were diverted, compared to only 40% of cases involving Black youth. For Latinx, Tribal, and Asian American youth, the share of cases diverted ranged from 44-48%.<sup>42</sup> (See **Figure 3**.)

These disparities cannot be explained by the seriousness of the offenses of which youth are accused. As shown in **Figure 4** below, disparities between Black and white youth appear in every major offense category. Moreover, the trends over

the past 10-15 years show no increase in the overall share of cases diverted, but do show an increase in racial disparities.<sup>43</sup> In 2005, the share of white youth diverted from formal processing was 20% higher than the share for Black youth; by 2019, the gap had jumped to 30%.<sup>44</sup>

**Disparities in diversion reflect systemic bias against youth of color with severe consequences for their futures.**

At least 20 academic studies over the past 25 years have detected significant racial or ethnic bias in decisions regarding formal processing of delinquency



cases referred to juvenile court.<sup>45</sup> These studies have found disparities in diversion all across the country, and they have identified a variety of pathways and patterns that frequently disadvantage youth of color. Studies also find that youth of color receive less favorable treatment in pre-arrest diversion than white youth.<sup>46</sup>

In reviews of juvenile justice research, scholars frequently describe the early stages of the justice process, including diversion, as particularly prone to disparities.<sup>47</sup> Many leading scholars have found that disparities in the early stages of the court process are a key driver of larger disparities in subsequent stages, including commitments to residential confinement. For instance, a 2020 study by University of California-Irvine criminologists Margaret Goldman and Nancy Rodriguez explained that “because prior records influence subsequent court outcomes, racial inequalities accumulate as youth move through the system.”<sup>48</sup>

In general, reviews of research on youth justice have identified four decision points where disparities are especially pervasive and problematic: (1) arrest; (2) referral to court for misbehavior at school (school-to-prison pipeline); (3) formal versus informal processing (diversion); and (4) pre-trial detention.<sup>49</sup> One of these – pre-trial detention – has been the focus of the most ambitious and sustained reform effort in the history of the US juvenile justice system: the Juvenile Detention Alternatives Initiative.<sup>50</sup> The other three are all associated with diversion.



## PART TWO:

# WHY ARE RACIAL AND ETHNIC DISPARITIES IN DIVERSION SO SEVERE?

### Disparities in diversion often emerge from subjective biases.

Decisions about whether to divert youth tend to be highly subjective. Clear criteria for deciding whether to divert a young person referred to juvenile court for delinquent conduct are seldom spelled out in state laws, juvenile court procedures, or probation department policy manuals.<sup>51</sup>

**Diversion decisions most often rest on spur-of-the-moment judgments – making this stage of the process highly prone to disparities and to wide geographic variations.**

As a recent review of racial and ethnic disparities in juvenile justice observed, because diversion decisions are made so quickly and with so few objective guidelines, court intake staff may rely on “shorthand cues based on race and class stereotypes.”<sup>52</sup>

**Implicit Bias Against Youth.** Abundant research shows that whatever their beliefs and whatever their own race and ethnicity, most people’s thinking is swayed by subconscious attitudes – known as implicit biases – that lead them to view and respond to people of color less favorably than to whites. These implicit biases have a particularly powerful impact in juvenile justice.<sup>53</sup>

Experiments with police officers, probation personnel, judges, and other groups have all found substantial racial and ethnic disparities in how adults characterize youth accused of delinquent conduct and in the responses they recommend for addressing misconduct.<sup>54</sup>

The most relevant study on implicit bias in juvenile diversion decisions, published in 2021, examined diversion in three Arizona counties and found that white youth were substantially more likely to be diverted than comparable Black, Latinx, and Tribal youth. In addition, the study identified striking differences by race and ethnicity in court officials’ written notes about the young people: the case files of Black youth had six times as many critical comments about the young people’s characters (such as “feels no remorse,” “does not take offense seriously” or “uncooperative with justice officials”) as those of white youth. Latinx youth and Tribal youth had three times and four times, respectively, the number of negative character attributions as white youth, and these attributions “had a significant negative effect on the likelihood of receiving diversion.”<sup>55</sup>

**Implicit Bias Against Families.** Research also finds that implicit biases extend to young people’s families: court officials assess families of color more harshly than white families, and these negative assessments limit diversion opportunities for youth of color and exacerbate disparities. As one recent study explained, “In diversion, the family situation of the juvenile is especially important because decision makers see the family as critical to supporting successful diversion programs.”<sup>56</sup> One scholarly review of race disparities reported that the case records of minority youth often reported that parents were “unwilling to supervise their children and incapable of exercising proper control (even when they expressed a willingness to do so).”<sup>57</sup> The authors of that review noted that “the danger of racial stereotyping is unmistakable.”<sup>58</sup>

Another recent study found that although probation officers’ perceptions of young people’s home and families play a big role in diversion decisions, the officers’ assessments of youths’ homes were



“unrelated to youths’ subsequent offending.”<sup>59</sup> Also, youth living in one-parent homes are far less likely to be diverted than youth in two-parent homes, which exacerbates disparities due to the higher share of youth of color who reside with one parent.<sup>60</sup>

**Unequal Justice Within States.** Disparities in diversion opportunities are also perpetuated by vast differences in diversion practices among jurisdictions within some states. Scholars have been documenting noteworthy differences in juvenile justice practices between different types of jurisdictions (urban versus rural versus suburban; majority white vs. more diverse, etc.) for decades, a phenomenon known as “justice by geography.”<sup>61</sup>

Geographic disparities can be particularly severe in decisions about juvenile diversion.<sup>62</sup> In the City of Baltimore, where 93% of the youth population is youth of color, 84% of youth referred to juvenile courts on delinquency charges in 2021 were formally processed in court. That was nearly double the rate (43%) in neighboring and largely suburban Baltimore County, where youth of color comprise half of the youth population.<sup>63</sup> In Oregon, Black youth were 45% and 50% less likely to be diverted than white youth in the state’s largest county (Multnomah) and third largest county (Clackamas) in 2020, but only 13% less likely in the state’s second largest county (Washington).<sup>64</sup>

**Disparities in diversion are often propelled by problematic policies and practices.**

**Many policies and practices employed in diversion appear unbiased but, in practice, cause disproportionate harm to youth of color.**

Some of these problematic practices exclude youth from diversion, while some make it less likely that youth will complete diversion and avoid the harms of formal involvement in the justice system.

## **A. Practices that exclude youth from diversion:**

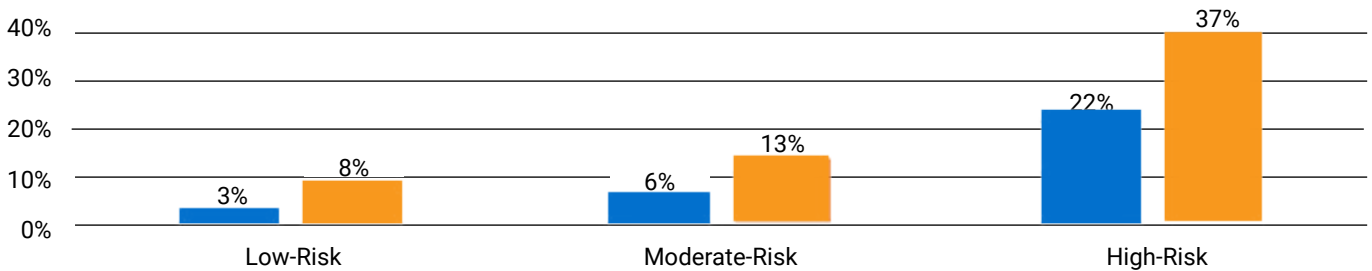
### **1. Rules limiting diversion to first offenses and low-level offense categories.**

In many or most jurisdictions nationwide, eligibility for diversion is limited to youth who have been referred to court for the first time on misdemeanor or status offenses.<sup>65</sup> Many jurisdictions exclude even some misdemeanor offenses.<sup>66</sup>

Prohibitions on diversion for second or subsequent offenses are not rooted in evidence, and they have a profound effect on racial and ethnic equity. Even though youth of color and white youth have similar rates of self-reported law-breaking for most categories of crime,<sup>67</sup> youth of color are far more likely to be arrested than their white peers.<sup>68</sup> Youth of color tend to live in communities and attend schools subject to far higher levels of police surveillance than white youth, and abundant evidence shows that police are far more likely to arrest youth of color than comparable white youth.<sup>69</sup> As a result, rules limiting diversion to first offenses are far more likely to prevent youth of color, especially Black youth, from accessing diversion.

Likewise, rules prohibiting diversion for youth assessed as higher risk to reoffend and those involved in a felony offense have no empirical basis. Indeed, a 2013 meta-analysis found that diversion was equally effective for youth assessed as low-risk and those assessed as moderate/high risk.<sup>70</sup> Likewise, a 2014 study examining the recidivism outcomes for thousands of youth in Ohio found that at every risk level, youth who were diverted from court had far lower recidivism rates than those who were formally petitioned. Among those who scored as high risk,

**FIGURE 5.**  
**Recidivism Results for Diverted vs. Petitioned Youth in Ohio, By Risk Level**



youth who were diverted from court proved 40% less likely to recidivate (22% versus 37%) than their peers who were petitioned in court.<sup>71</sup> (See Figure 5). Also, some studies show that youth accused of felonies who are placed in diversion programs achieve lower recidivism than comparable youth processed in court.<sup>72</sup>

## **2. Weak efforts to inform youth and families and secure their participation.**

In most jurisdictions, between 10% and 25% of youth referred to diversion never enroll.<sup>73</sup> Youth are often ineligible for diversion if their parents cannot be contacted or do not appear for an interview.<sup>74</sup> Yet youth and families of color are more likely than white youth and families to mistrust the justice system,<sup>75</sup> and they are more likely to face difficulties with phone service and housing stability.

**Unfortunately, the process for engaging young people deemed eligible for diversion is far from robust in many jurisdictions.**

In some cases, it involves only a form letter, or a phone call that, if unanswered (or if the number on file with the court has been disconnected), can automatically return the case to formal processing. For instance, in Kentucky court workers used to inform eligible youth and families about their diversion opportunity only through a standardized letter indicating the date, time, and location for an intake interview. When state leaders analyzed the problem following passage of a 2014 reform law, they discovered that youth and families of color were far less likely than white families to appear for their intake interviews.<sup>76</sup> (As detailed on p.22, Kentucky subsequently revised these protocols.)

## **3. Burdensome participation requirements that prevent or dissuade families from entering diversion**

Most diversion programs require youth and caregivers to participate in mandatory activities and inform them that missing required activities can be grounds for terminating diversion and reinstating delinquency charges in court.<sup>77</sup> Yet because families of color have less reliable access to phones, transportation, and childcare, and are more likely to face difficulties taking time off from work, these participation requirements make it more difficult for them to comply than white families.<sup>78</sup>

#### 4. Narrow definitions of family.

Courts also limit enrollment in diversion when they employ narrow definitions of family that require participation from and only engage with a young person's parent or guardian – an approach ill-suited to multi-generational households and blended families that are more common in communities of color.<sup>79</sup> Court intake workers should consider other close relatives or non-relatives with long-standing ties to the youth who are regarded as family in assessing a young person's family support system as they make diversion eligibility decisions. These extended family members should also be involved in discussions about the young person's needs, and they should be engaged to support young people during diversion. "It is not the role of the system to define who a family is," Justice for Families, an organization comprised of family members of court-involved youth, explained in a 2013 report. "Families and especially youth should be given the opportunity to define this for themselves."<sup>80</sup>

#### 5. Admission of guilt requirements.

In most jurisdictions, eligibility rules for diversion require that the young person confess to their alleged offenses.<sup>81</sup> Court officials often view such confessions a necessary signal of appropriate remorse for the harm caused<sup>82</sup> and of likely compliance with other program requirements.<sup>83</sup> However, studies find that youth of color are less willing to make such confessions than white youth,<sup>84</sup> likely because of their widespread mistrust of police and other justice officials.<sup>85</sup>

#### 6. Fees/costs required to participate in diversion programming.

In a 2016 report, the Juvenile Law Center found that in 26 states youth or their families were required to pay fees to participate in diversion. In most of these states, inability to pay the fees resulted in a formal petition in court. In other states, youth and families unable to pay required diversion fees faced more frequent court visits and other consequences.<sup>86</sup>

**Given that families of color have substantially lower average income<sup>87</sup> and net wealth<sup>88</sup> than white families, the imposition of diversion fees has disproportionate impact, exacerbating disparities.**

"Jurisdictions that want to increase black, Latino, and Native American youths' participation in diversion programs shouldn't charge a fee to participate," writes DePaul University sociologist Traci Schlesinger, "and shouldn't exclude youth who can't meet financial requirements."<sup>89</sup>

#### **B. Rules or practices that make it difficult for youth to complete diversion successfully and result in youth being returned to court for formal processing.**

Several common diversion practices also disproportionately reduce the likelihood that youth of color will complete diversion successfully, further increasing the odds that they will be formally petitioned in court.

##### **1. Punitive responses to youth and families unable to pay diversion fees and restitution.**

In addition to dissuading some youth and families from participating in diversion, heavy fees and restitution payments can also cause youth to fail diversion and enter the formal juvenile justice system.<sup>90</sup> A recent academic study of more than 1,000 youth in Pennsylvania found that heavy fines and restitution obligations increased recidivism and led to a host of negative consequences, and that these financial obligations have a racially disparate impact.<sup>91</sup>

##### **2. Assignment of diverted youth to informal probation caseloads.**

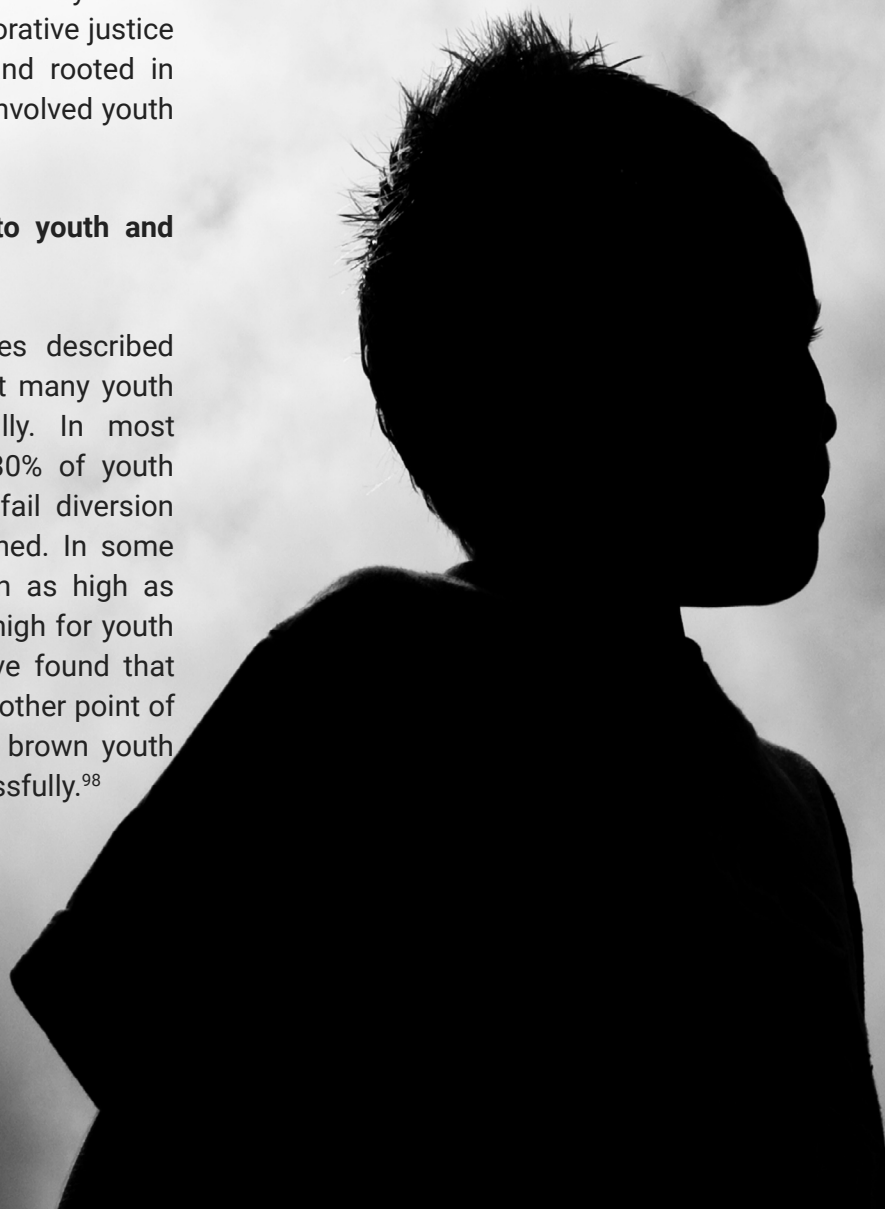
In many jurisdictions, many or most diverted youth are placed on "informal" or "voluntary" probation and required to comply with rules and conditions similar to

those imposed on adjudicated youth placed on formal probation. Indeed, more than 50,000 youth in 2019 were placed on probation nationwide despite being diverted from formal court processing.<sup>92</sup> Research studies have shown that the intensity of probation supervision can be as high or higher for lower risk youth than for those with more extensive delinquency histories and greater risk factors for re-arrest.<sup>93</sup>

Though youth of color are not being placed in informal probation disproportionately, informal probation can be especially problematic for youth of color because they are more likely than white youth to be cited and detained for violating conditions of probation.<sup>94</sup> Abandoning the use of informal probation would be especially beneficial for youth of color if diverted youth are instead assigned to community-based organizations that are focused on restorative justice and/or positive youth development and rooted in the neighborhoods where most court-involved youth reside.<sup>95</sup>

### **3. Lack of support and assistance to youth and families at risk of failing diversion.**

Given the many problematic practices described above, it should not be surprising that many youth don't complete diversion successfully. In most jurisdictions across the country, 10-30% of youth initially diverted from court typically fail diversion and have their cases formally petitioned. In some courts, diversion failure rates can run as high as 50%.<sup>96</sup> Failure rates can be especially high for youth of color.<sup>97</sup> Indeed, several studies have found that success or failure in diversion is yet another point of significant disparities, with Black and brown youth less likely to complete diversion successfully.<sup>98</sup>





## PART THREE:

# WHAT CAN BE DONE TO ADDRESS RACIAL AND ETHNIC DISPARITIES IN DIVERSION AND TO EXPAND DIVERSION OPPORTUNITIES?

State and local justice systems should make expanding diversion opportunities, supporting success in diversion, and reducing disparities in diversion top priority goals. While the past several years have seen an uptick in attention to diversion policies and practices, most juvenile courts continue to employ some or all of the problematic diversion practices described in the previous section.

Fortunately, a clear roadmap for expanding diversion and reducing disparities is discernible from the available evidence. Indeed, at both the state and local levels, ongoing reform strategies offer substantial promise to combat disparities in diversion and to expand diversion opportunities in juvenile justice systems nationwide. A number of jurisdictions are already demonstrating that substantial improvements in diversion outcomes are within reach.

### **State-level policy reforms offer a promising path to expanding diversion opportunities, but cannot succeed without special attention to racial and ethnic equity.**

After a generation in which diversion received scant attention in state policy discussions about juvenile justice, several states in recent years have taken action to expand diversion opportunities.

To date, however, renewed efforts to expand and improve diversion have most often lacked one essential ingredient: an explicit and determined focus on reducing racial and ethnic disparities. As a result, opportunities to reduce system disparities through more and better use of diversion have remained largely unrealized.

### **Comprehensive Juvenile Justice Reform Laws.**

Over the past decade, at least 10 states have included significant provisions to expand and improve diversion as part of comprehensive new juvenile justice reform laws. Colorado,<sup>99</sup> Hawaii,<sup>100</sup> Indiana,<sup>101</sup> Kansas,<sup>102</sup> Kentucky,<sup>103</sup> Massachusetts,<sup>104</sup> Maryland,<sup>105</sup> South Dakota,<sup>106</sup> Utah,<sup>107</sup> and West Virginia<sup>108</sup> have substantially expanded diversion as part of comprehensive new juvenile justice reform laws.

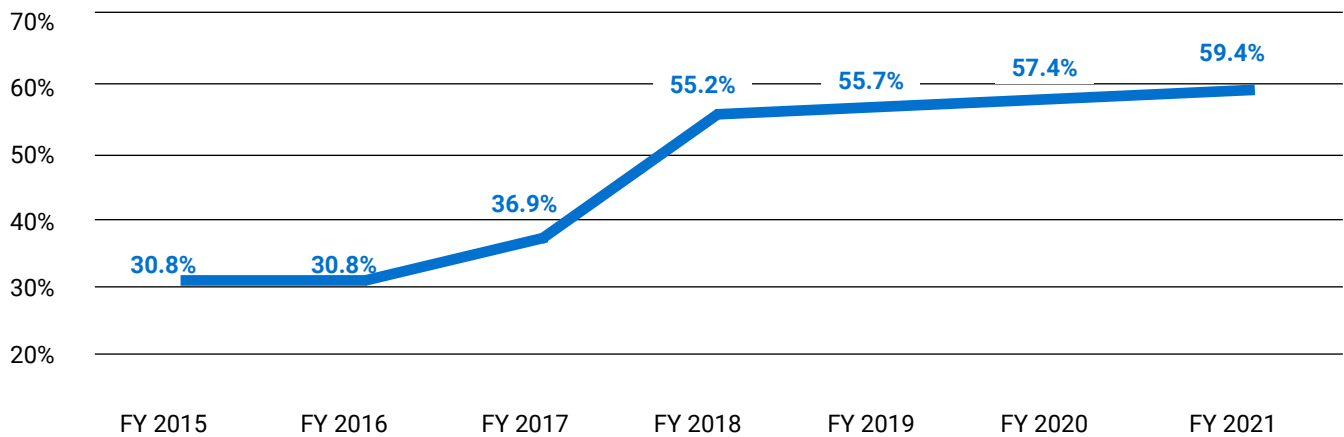
Reform laws in these states have:

- Expanded the use of diversion through new rules allowing, mandating, or creating a presumption for diversion for specific offenses.
- Provided funding to support diversion programming.
- Reduced imbalances in diversion opportunities within their states by requiring all jurisdictions to develop diversion options, or by setting standard guidelines for diversion.
- Limited periods of diversion oversight.
- Created new mechanisms to assist and support youth who might otherwise fail diversion and have their cases formally petitioned in court.
- Improved data collection in order to track progress and analyze disparities.
- Created ongoing oversight boards to review progress and recommend adjustments and further policy and practice reforms.

In many of the states, reforms have led to noteworthy expansions in diversion opportunities. Utah's 2017 juvenile justice reform law required diversion for

**FIGURE 6.**

**UTAH: Share of Youth Referrals Diverted From Court Before and After Passage of 2017 Juvenile Justice Reform Law**



youth accused of status offenses or misdemeanors. The law also prohibited prosecution of youth for an array of low-level offenses at school, and it required and provided funding for every jurisdiction statewide to offer an array of diversionary alternative responses (mobile outreach teams, restorative justice programs, receiving centers where youth can receive counseling and temporary shelter) to serve youth involved in unruly and delinquent conduct.<sup>109</sup> The share of youth receiving diversion nearly doubled from 31% in fiscal years 2015 and 2016, before the law was enacted, to 59% in FY 2021 (See Figure 6).<sup>110</sup>

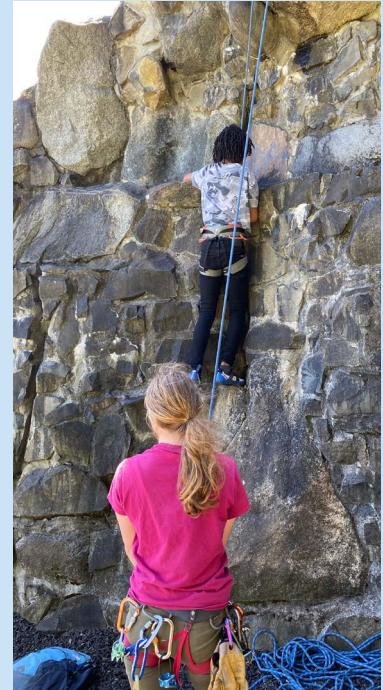
In Kentucky, the share of cases diverted jumped from 42% in 2013, the year before reform legislation was enacted, to 62% in 2020,<sup>111</sup> while South Dakota saw a 43% jump in the number of youth diversions from 2017 to 2021.<sup>112</sup>

Some states have crafted innovative strategies to improve success rates of youth in diversion. In Kentucky every judicial district now convenes an interdisciplinary Family Accountability, Intervention, and Response (FAIR) team to provide enhanced case management for youth identified with high needs and those who don't appear for their initial appointment

or make progress toward completing diversion. An evaluation by a prominent think tank found that the FAIR teams improve the success rates of youth they serve.<sup>113</sup> In South Dakota, which now funds diversion coordinators and provides a financial incentive to local court districts for every successful diversion, the proportion of diverted youth who did not reoffend rose from 75% in 2017 to 88% in 2021.<sup>114</sup>

**Targeted Action to Expand and Improve Diversion.** In addition to states that have enhanced diversion as part of comprehensive juvenile justice reform laws, several other states have taken important strides to expand and improve diversion through more targeted approaches.

- In Florida, police officers are authorized to issue civil citations in lieu of arrests for most youth accused of misdemeanor offenses. The program now operates statewide and serves two thirds of all youth apprehended for eligible offenses.<sup>115</sup> State data show that youth issued civil citations are re-arrested far less often than youth arrested and referred to juvenile courts; and controlled evaluation studies have confirmed that civil citations are associated with lower re-arrest rates



*Photo: Pierce County Juvenile Court Programs - Tacoma Community Boat Builders Positive Youth Development Program, Metals Positive Youth Development Program, Outdoor Life Positive Youth Development Program*

## **TACOMA, WASHINGTON, LEARNS: “IT IS FAR BETTER TO KEEP THEM OUT OF COURT”**

Over the past decade, Pierce County in Washington State has earned a national reputation as a leader in juvenile probation transformation<sup>171</sup> thanks to its Opportunity-Based Probation model, which promotes behavior change primarily through rewards and incentives,<sup>172</sup> and its “Pathways to Success” probation program for younger African American Boys.<sup>173</sup>

More recently, Pierce County has turned its attention to expanding diversion. By 2021, the County reported that nearly three-fourths (73%) of all county youth referred to court on delinquency charges were diverted<sup>174</sup> – a substantial increase from prior years.<sup>175</sup> The County first created a diversion program focused on youth involved in domestic violence incidents, and it has since developed an array of community-based diversion options in lieu of court processing. For instance, the “I am Worthy” program,<sup>176</sup> a 4-hour workshop led by a formerly incarcerated community leader, has worked with more than 150 diverted young people since 2016, most of them youth of color.<sup>177</sup>

Results from the new diversion programs are promising: a recent analysis found that less than 20% of diverted youth are re-arrested within two years, and just 7% are re-arrested for a felony.<sup>178</sup>

“Pierce County recognizes that court involvement isn’t necessary or beneficial for most of the young people referred to our court on delinquency charges,” says Kevin Williams, Pierce County’s Juvenile Probation Manager. “It is far better to keep them out of court and connect them with caring people in the community.”<sup>179</sup>

than formal processing in juvenile court, or even diversion from court following arrest.<sup>116</sup>

- Several states – including California,<sup>117</sup> Delaware,<sup>118</sup> Maryland,<sup>119</sup> Massachusetts,<sup>120</sup> New Hampshire,<sup>121</sup> New York,<sup>122</sup> and Utah<sup>123</sup> – have enacted laws in recent years raising the minimum age for juvenile court eligibility for all or most offenses, which essentially mandates diversion for youth below the specified age.
- Washington State enacted legislation in 2018 to significantly increase the use of diversion. The law expanded the range of offenses eligible for diversion to include many felonies, prohibited the cap on the number of times a youth might be diverted (previously youth were limited to two diversions), and allowed for pre-arrest diversion by law enforcement. The law also recognized restorative justice and positive youth development as important principles for diversion, and it encouraged jurisdictions to partner with community organizations to pursue community-based diversion services rather than having diverted youth overseen by probation agencies or the courts.<sup>124</sup> “The efficacy of diversion in reducing recidivism is striking,” found a 2021 report on racial equity in the state’s youth justice system.<sup>125</sup>
- Massachusetts launched an ambitious effort to expand and improve diversion in 2019, when a new Juvenile Justice and Policy and Data Board published an 80-page report assessing the status of juvenile diversion efforts statewide.<sup>126</sup> This was followed by a 100-page Model Program Guide for youth diversion in March 2021<sup>127</sup> that will guide a new statewide juvenile diversion “learning lab.” In October 2021, the learning lab began operation to test and evaluate the model in three pilot sites across the state.<sup>128</sup> The Data and Policy Board has also issued ambitious recommendations to improve data collection and analysis related to diversion.<sup>129</sup>
- Several states – including California, Colorado, Louisiana, Maryland, Nevada, New Mexico,

Oregon, Texas, and Virginia – have prohibited or minimized fines and fees associated with diversion (and probation), which eliminates a barrier to participation and a reason for failed diversions that disproportionately impacts youth and families of color.<sup>130</sup>

**Importance of Explicit Focus on Racial Justice.** As Part One of this report documented, youth of color are offered diversion far less often than white youth, and overwhelming evidence finds that this gap in diversion opportunities is fueled by system biases. Research also makes clear that disparities in diversion have cascading effects that fuel even larger disparities at later stages of the court process – and especially in confinement.

Given these realities, reform efforts to expand and improve the use of juvenile diversion cannot succeed – cannot be expected to produce a more just juvenile court and corrections system – unless they concentrate specifically on racial equity.

**While most states have made improving disparities a stated goal of their diversion efforts, experience has shown that diversion reforms do not necessarily narrow the gap in disparities without an explicit focus on racial justice.**

In Colorado, a 2013 evaluation of state-funded restorative justice diversion programs found that Black youth were 80% less likely than white youth to participate in state-funded diversion programs.<sup>131</sup> In 2020, a subsequent evaluation found Black youth remained 61% less likely to participate in state-funded diversion programs.<sup>132</sup> In explaining the modest progress, the 2020 evaluation noted that despite the earlier report’s problematic findings, Colorado had not changed its practices to address disparities.<sup>133</sup>



In Kentucky, early results of the state's 2014 juvenile justice reform law showed that expanded diversion opportunities were going primarily to white children.<sup>134</sup> A 2017 data analysis by the Crime and Justice Institute found that Black youth received just 19% of diversion agreements in the 2017 fiscal year but were 35% of cases not receiving diversion.<sup>135</sup>

### **Noteworthy Efforts to Address Diversion Disparities.**

Fortunately, juvenile justice leaders in **Kentucky** have taken concerted action to address the widening diversion disparities. The state's Administrative Office of the Courts' Department of Family and Justice Services (FJS) implemented an ambitious, multi-pronged racial equity agenda in partnership with community organizations and other state leaders.<sup>136</sup> Elements of the program include the following:

- **Implicit bias training.** FJS partnered with the pastor of an African American church to deliver implicit bias training to court personnel statewide.<sup>137</sup>
- **Improved outreach.** When state officials learned that many youth were failing to appear at diversion intake interviews, "We changed the policy in one day," said Rachel Bingham, the director of FJS.<sup>138</sup> Instead of issuing a letter dictating the time and location of the interview, state workers now reach out to engage families by phone, and they set the meeting dates collaboratively with the families.
- **Local action plans to address disparities.** FJS also worked with local teams, particularly in counties with the largest disparities, to develop local action plans to identify and address the underlying reasons for disparities.<sup>139</sup>
- **Reducing the use of overrides.** When data revealed that disparities in diversion were being fueled by overrides – where judges or prosecutors declined to divert youth on their first offenses, as recommended in the state's 2014 reform law – state leaders and their community partners worked together to coax prosecutors and judges to reduce their use of overrides.<sup>140</sup> In Jefferson,

the state's largest county, diversion overrides of Black youth by the county prosecutor fell 91% from 2014 to 2019.<sup>141</sup>

Though significant disparities persist in Kentucky, efforts to address them have made a difference. Statewide, failures to appear at diversion intake meetings have fallen 40%, with Black youth making the greatest improvements. Diversion overrides by county attorneys fell from 11% of all cases in 2014 to 4% in 2018, with the decline for Black youth outpacing the statewide average.<sup>142</sup>

**New York State** has also made reducing disparities in diversion a priority. Based on data showing that Black youth statewide were 45% less likely than white youth to have their cases diverted,<sup>143</sup> the state created a Youth Justice Equity Policy Academy in 2021 to train and support leadership teams from five counties to increase the number of youth of color, especially Black youth, who are offered diversion, enter diversion programs, and complete diversion successfully.<sup>144</sup> Also, in its 2020 Racial and Ethnic Disparities Action plan, the New York State Division of Criminal Justice Services narrowed its focus to concentrate on reducing disparities at the point of diversion from formal processing in court – and set a goal to reduce the disproportionality in diversion between Black and white youth by at least 10%.<sup>145</sup>

### **Local justice systems have many promising opportunities to reduce diversion disparities and to expand and improve diversion.**

Considerable progress is also possible at the local level to expand the use of diversion and narrow disparities. Indeed, a wide-ranging set of best practice reform strategies show potential not only to expand and equalize diversion opportunities at the intake stage of the juvenile court process, but also to improve youth outcomes and promote racial equity systemwide.

More specifically, multiple strategies on each of seven reform priorities all hold promise for local court systems seeking to promote equity and maximize



the beneficial use of pre-arrest diversion and informal processing. As detailed more thoroughly in the textbox below, these seven priorities include strategies to:

- set clear ambitious goals for expanding use of diversion and reducing disparities
- expand eligibility for diversion
- intensify efforts to contact and engage parents/guardians and other family members
- create new diversion pathways
- close the School-to-Prison Pipeline
- increase diversion success rates and minimize consequences for non-compliance
- improve data tracking and analysis on diversion

Following are examples illustrating the transformational progress available to jurisdictions that embrace best practice to expand diversion opportunities and reduce disparities in diversion.

- Between 2013 and 2020, **Nashville/Davidson County, TN**, increased the share of delinquency cases diverted from 17% to 54%.<sup>146</sup> Once diverted, youth are referred to a community diversion partner organization, and the County does not return youth to court for non-compliance. Juvenile arrests in the county have fallen by 72% since 2013, including fewer arrests for most serious offenses.<sup>147</sup> Meanwhile, just 6% of youth diverted from court in 2019 were re-adjudicated as juveniles for a new offense within two years.<sup>148</sup> Recently, Davidson County also began using a restorative justice diversion program for youth accused of serious felony offenses. Of the first 45 graduates, only two had been re-arrested for a new offense as of late 2021.<sup>149</sup>

- In 2017, the **Los Angeles County** Board of Supervisors unanimously approved a plan aimed at diverting as many as 80% of youth apprehended for delinquent offenses each year – up to 11,000 youth per year – prior to arrest.<sup>150</sup> Under the plan,<sup>151</sup> modeled on a program operated by Centinela Youth Services in Inglewood,<sup>152</sup> the county is funding community-based organizations to work with youth apprehended for misdemeanors and some felonies and to coordinate restorative justice processes. So long as youth participate in the program and avoid re-arrest for 30 days, their cases are closed and no arrest record is created.<sup>153</sup>
- During the 2013-14 school year, **Philadelphia** police arrested students 1,580 times, mostly for low-level offenses, and city data showed that schools were the city's top referral point for juvenile arrests.<sup>154</sup> The following year, the city's police instituted new rules prohibiting arrests for several misdemeanor offenses at school.<sup>155</sup> Instead, students involved in those offenses were referred to community based service providers. Student arrests fell 84% in the program's first five years.<sup>156</sup> Diversion also increased school safety: serious behavioral incidents in the schools fell 34%.<sup>157</sup>
- In **Alameda County/Oakland**, a Restorative Community Conferencing Program offers diversion interventions to youth accused of serious offenses (62% of them felonies).<sup>158</sup> The program has served over 300 youth since it began a decade ago. A formal evaluation found that one year after completing the program, participating youth were 44% less likely to be adjudicated or convicted of a new offense than comparable youth formally processed in juvenile court. In addition, 75% of youth and 80% of parents reported that the program improved family relations. Almost all victims, 91%, approved of the process.<sup>159</sup> The evaluation found that Restorative Community Conferencing was far less costly than probation (\$4,500 vs. \$23,000), and that it reduced disparities.<sup>160</sup>

# PROMISING STRATEGIES FOR LOCAL ACTION TO EQUALIZE, EXPAND, AND IMPROVE DIVERSION

## **A. Set clear ambitious goals for reducing racial and ethnic disparities in diversion and for expanding the use of diversion generally.**

- Set goals for reducing racial and ethnic disparities in the share of youth offered diversion, the share actually enrolled in diversion, and the share who complete diversion successfully and avoid arrests, formal involvement in the court system, or both.
- Set goals for the use of pre-arrest diversion and for the share of delinquency cases referred to juvenile court who are offered pre-court diversion/informal processing.
- Set goals both for the share of youth placed into diversion and for the share who complete successfully.
- Track success rates of diverted youth vs. formally processed youth in terms of re-arrest and continued enrollment and progress in school.

## **B. Expand eligibility for diversion**

- Eliminate rules prohibiting diversion for youth with past offenses.
- Allow diversion for all misdemeanors and status offenses and for many or most felony offenses.
- Require diversion for low-level misbehavior at school and in the community.
- Eliminate admission of guilt as a criterion for participating in diversion.
- Stop using subjective assessments of families to determine eligibility for diversion.

## **C. Work harder to contact and engage parents/guardians and other family members**

- Don't rely on mail only to contact families, and don't give up if the phone number on file is not active/accurate.
- Schedule meetings in consultation with youth and families, rather than demanding their appearance at specific times.

## **D. Create and fund new diversion pathways**

- Develop alternatives for police to employ instead of arrest in the community, such as Civil Citations; pre-arrest diversion partnerships; juvenile reception/assessment centers; and domestic violence alternative programs.

- Create restorative justice alternatives to court processing, including programs targeted to youth accused of serious felonies or with extended arrest histories.
- Give responsibility for overseeing diverted youth to community partners, and allocate diversion programming funds to community-based organizations.

#### **E. Close the School-to-Prison Pipeline**

- Remove School Resource Officers (law enforcement) from the schools.
- Prohibit arrests at school for anything other than the most serious behavior.
- Use alternatives to arrest such as restorative justice and/or emergency mental health responses to address behavioral incidents at schools.

#### **F. Increase diversion success rates and minimize consequences for non-compliance**

- End the use of “informal probation” for diverted youth.
- Partner with and adequately fund community organizations to oversee diversion cases, empowering a community agency (or a consortium of agencies) to serve as a single point of entry to coordinate diversion caseloads.
- Offer a continuum of diversion options, including light-touch interventions such as a simple warning, apology letter, or one-time workshop for youth at lower risk of re-arrest.
- Minimize out-of-pocket costs and make sure that fees and restitution don’t pose an obstacle to completing diversion for low-income youth and families.
- Don’t return diverted youth to court for non-compliance, absent a new offense.

#### **G. Improve data tracking and analysis on diversion by requiring jurisdictions to track...**

- The share of youth eligible for diversion
- The share of eligible youth actually diverted.
- Success rates of youth diverted.
- Disaggregate all data by race, ethnicity, and gender.

## RECOMMENDATIONS

The research presented in this report makes clear that juvenile justice systems nationwide can substantially improve both youth development and public safety outcomes by expanding the use of diversion and by improving diversion practices in ways that increase success rates and minimize the number of young people who enter the court system.

Even more importantly, given the vast racial and ethnic disparities in diversion opportunities documented in the report, these reforms offer tremendous potential to reduce the inequities that have long plagued youth justice.

Indeed, many of the state and local reform steps described in the previous section could and should reduce disparities not only at the diversion stage but also at later stages of the process as youth of color accumulate less extensive arrest and court histories.

- Given the much higher arrest rates suffered by youth of color, expanding the use of pre-arrest diversion should reduce the vast differences in likelihood that youth of color will be arrested and referred to juvenile court on subsequent delinquency charges compared to white youth.
- Also, those higher arrest rates also mean that eliminating rules prohibiting pre-court diversion for second and subsequent offenses should benefit youth of color far more than white youth, as should eliminating requirements for youth to make an admission of guilt.
- Likewise, abandoning common practices that disproportionately disadvantage youth of color – such as rigorous program participation requirements, imposition of heavy fines and fees, and narrow definitions of family – should also reduce disparate outcomes in diversion.

However, achieving progress in reducing disparities has proven exceedingly difficult in juvenile justice systems nationwide. Despite a federal mandate to

address disproportionate minority contact issued 30 years ago, juvenile justice systems have seldom been successful in their efforts to reduce disparate treatment. In its most recent review of juvenile incarceration trends, The Sentencing Project found that pervasive disparities remained essentially unchanged from 2007 to 2017: Black youth remained nearly five times as likely as white youth to be incarcerated, and Tribal youth and Latinx youth also continued to be incarcerated at higher rates than white youth.<sup>161</sup> In its 2022 report, *Too Many Locked Doors: The Scope of Juvenile Confinement is Vastly Understated*, The Sentencing Project found that disparities in juvenile detention – typically confinement in the pre-trial period – worsened substantially from 2010 to 2019.<sup>162</sup>

Especially at the diversion stage of the process, where decisions are often subjective and easily influenced by implicit bias, reform efforts are unlikely to narrow disparities between youth of color and their white peers unless new approaches are crafted with an explicit focus on equity. Therefore, to seize the immense opportunities described in this report, state and local advocates and system leaders should adhere to the following principles:

### **1. Make diversion a primary focus in juvenile justice reform.**

The evidence makes clear that expanding the use of diversion and improving diversion practices offer great potential both to improve system outcomes and reduce disparities in juvenile justice.

### **2. Make reducing racial and ethnic disparities the core emphasis in efforts to expand and improve diversion.**

State and local systems should set concrete goals for reducing disparities in the share of youth who are offered diversion opportunities, sign diversion agreements, and successfully complete diversion and avoid formal processing in juvenile court.

**3. Abandon common rules and practices in diversion that harm youth of color disproportionately and exacerbate disparities.**

States as well as local court systems should stop relying on criteria to determine eligibility for diversion that disadvantage youth of color; and they should abandon policies and practices that disproportionately reduce the probability that youth of color will participate and succeed in diversion.

**4. Recognize and respond to the hidden influence of implicit bias by adopting policies that reduce subjectivity in diversion decisions.**

Specifically, states and local court systems should mandate diversion for many categories of potential delinquency court cases – prohibiting arrests for certain low-level misbehaviors, for instance, making diversion the presumptive option for all misdemeanor cases, and raising the minimum age for children to be charged with delinquency.

**5. Require that youth justice systems prepare racial impact statements to analyze the effects of new and existing policies and practices in diversion.**

Employed by a number of states for policy changes in their adult justice systems, racial impact statements provide a means to ensure that policymakers carefully consider the likely effects of new policies on racial and ethnic equity, as well as the current effects of existing policies. To date, nine states have adopted laws requiring racial impact statements in their criminal justice systems,<sup>163</sup> and at least one

locality has done so as well.<sup>164</sup> This concept is just as important for juvenile justice, and it should be especially valuable in identifying diversion policies and practices that exacerbate disparities.

**6. Collect, track and regularly report disaggregated data documenting progress (or the lack of it) in reducing disparities and expanding opportunities for diversion.**

Key indicators should include the use of pre-arrest diversion; the number and share of delinquency court referral cases diverted from formal processing; the use of overrides to deny diversion opportunities for youth who would otherwise qualify; actual enrollment in diversion as share of youth who are deemed eligible; and the success rates of youth diverted from court in completing diversion without being returned to court for non-compliance. All data should be disaggregated by race and ethnicity, and also by gender.

**7. Sustain the focus on racial and ethnic equity by appointing an oversight body to track progress in expanding and reducing disparities in diversion, and to push for adjustments and additional reform steps over time.**

Reducing disparities and expanding the use of diversion are long-term challenges, and they require a long-term focus. Therefore, as part of all efforts to reform diversion practices, states and localities should establish and provide funding to staff an ongoing oversight body to track diversion trends, analyze the underlying factors that limit progress, brainstorm solutions, and propose additional action steps over time.



# CONCLUSION

Across the country, states and localities are waking up to the critical importance of diversion and the powerful opportunities to improve justice outcomes available by shrinking the footprint of juvenile justice and addressing adolescent behavior issues outside the formal court system. The evidence leaves no doubt that the justice system is toxic for youth and should be employed only in cases when young people pose a serious and imminent threat to the safety and well-being of others. For most young people, diversion yields better public safety and youth development outcomes than formal processing in juvenile court – and for much less money.

However, youth of color are not being offered diversion in the same numbers as white youth. Racial and ethnic disparities at diversion play a significant

role in propelling system-wide disparities and represent a key reason why efforts to improve equity in juvenile justice have achieved so little progress to date.

For all of these reasons, the diversion stage of the juvenile court process should be a top priority for youth justice reform. Advocates should push for and system leaders should take aggressive action to address the disparities highlighted in this report. Combined, the reforms recommended here to expand the use of diversion and to enhance supportive community-led programming for diverted youth offer perhaps the most important and promising avenue currently available to reduce disparities and to improve youth justice systems nationwide.



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<sup>152</sup> Evaluations of Centinela’s original program show that just 11% of youth referred to the program are rearrested within one year – far less often than comparable youth who are not offered diversion. See Loudenback, Jeremy (Feb. 16, 2016). [How a diversion program in South L.A. hopes to break the cradle-to-prison pipeline](#). *The Imprint*.

<sup>153</sup> Loudenback, Jeremy (2016). [How a diversion program in South L.A. hopes to break the cradle-to-prison pipeline](#); and Schooley, T. (2017). [Youth Diversion in Los Angeles County: Advancing Evidence-Informed Policy to Improve Youth Outcomes](#). Los Angeles County Office of Diversion and Reentry.

<sup>154</sup> Goldstein, N.E.S., Nemoyer, A., Le, T., Kreimer, R., et al. (2022). [Evaluating Impacts Of The Philadelphia Police School Diversion Program: An Alternative To Arrest Policing Strategy](#). National Criminal Justice Reference Service.

<sup>155</sup> Kopp, J. (Nov. 4, 2015). [Bethel leaving Philly police to strengthen diversionary program](#). *Philly Voice*.

<sup>156</sup> Goldstein, N.E.S., Nemoyer, A., Le, T., Kreimer, R., et al. (2022). [Evaluating Impacts Of The Philadelphia Police School Diversion Program: An Alternative To Arrest Policing Strategy](#). National Criminal Justice Reference Service.

<sup>157</sup> Ibid.

<sup>158</sup> Baliga, S., Henry, S., & Valentine, G. (2017). [Restorative Community Conferencing](#).

<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> Rovner, J. (2021). [Racial Disparities in Youth Incarceration Persist](#).

<sup>162</sup> Rovner, J. (2022). [Too Many Locked Doors: The Scope of Youth Confinement is Vastly Understated](#). The Sentencing Project.

<sup>163</sup> Porter, N. (2021). [Racial Impact Statements](#). The Sentencing Project.

<sup>164</sup> [Montgomery County Racial and Social Justice](#) (n.d.). Montgomery County (MD) Office of Legislative Oversight.

<sup>165</sup> Hawes, J.B. & Smith, G. (Oct. 8, 2017). [Into the Wilderness: Secretive South Carolina Camps Come Under Scrutiny Following Teen’s Death](#). *The Post and Courier* (Charleston, S.C.).

<sup>166</sup> Ibid.

<sup>167</sup> [A Limited Review of the South Carolina Department of Juvenile Justice](#) (Jan. 2017). Legislative Audit Council, South Carolina General Assembly.

<sup>168</sup> Hawes and Smith, “Into the Wilderness...”

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> The Annie E. Casey Foundation. [Pierce County: Trailblazer for Probation Transformation](#) (May 28, 2018); and Esthappan, S., Laco, J., & Young, D. (2019). [Juvenile Probation Transformation: Applying the Approach in Lucas County, OH, and Pierce County, WA](#). Urban Institute and Mathematica Policy Research.

<sup>172</sup> [Opportunity-Based Probation \(OBP\): A Brief Report \(2019\)](#). SAJE Center.

<sup>173</sup> [Juvenile Probation Transformation: Applying the Approach in Lucas County, OH, and Pierce County, WA](#). Urban Institute and Mathematica Policy Research.

<sup>174</sup> The Annie E. Casey Foundation. [Pierce County Youth Probation: Few Youth Need Out-of-Home Placement](#) (May 12, 2022).

<sup>175</sup> County data show that each year from 2013 through 2018, Pierce County consistently diverted 58% to 60% of delinquency referrals. Since expanding its focus on community diversion in 2019, the share has jumped to 73%. Data provided by Kevin Williams, Juvenile Probation manager, June 13, 2022.

<sup>176</sup> Information comes from the [I am Worthy](#) (internet homepage).

<sup>177</sup> Data and information about the “I am Worthy” program provided via email by Jinnie Horan, Public Information Specialist, Pierce County Juvenile Court, June 10, 2022.

<sup>178</sup> The Annie E. Casey Foundation. [Pierce County Youth Probation: Few Youth Need Out-of-Home Placement](#) (May 12, 2022).

<sup>179</sup> Kevin Williams, Juvenile Probation Manager, Pierce County Juvenile Court, personal communication with the author, June 11, 2022.



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