

APRIL 2011



MINNESOTA DIVERSION GUIDEBOOK

JUVENILE
JUSTICE
COALITION OF MINNESOTA

DIVERSION GUIDEBOOK

Diversion Work Group Committee Member Acknowledgement

The Juvenile Justice Coalition of Minnesota would like to recognize and thank the following current and past committee members for their help in creating this guidebook. They shared their expertise, experience, passion for diversion and commitment to help Minnesota's youth, families and communities succeed.

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Produced by the Juvenile Justice Coalition of Minnesota and funded by the Justice Assistance Grant (JAG) American Recovery and Reinvestment Act (ARRA) • April 2011

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Introduction

Diverting young offenders from the formal juvenile court process can improve outcomes, reduce costs, hold youth accountable and protect public safety. While Minnesota statute 388.24 requires county attorney offices to offer diversion, local law enforcement, courts and corrections may also divert youth from the formal court process. The type of response, who receives diversion and desired outcomes vary by county and community across the state. The Juvenile Justice Coalition of Minnesota (JJC) has developed these guidelines to promote greater consistency in the use of diversion, higher quality responses and an increase in the number of youth diverted in Minnesota.

The Juvenile Justice Coalition of Minnesota (JJC) is a systems change and advocacy-based organization that promotes state-level juvenile justice reform throughout Minnesota. The JJC is an unincorporated association of juvenile justice-related professional organizations, state agencies, leaders and stakeholders. Representatives from 25 member organizations provide state-wide leadership and accountability for our work.

What is Diversion?

Juvenile diversion is a community's response to offending behavior of youth. Diversion affords youth the opportunity to acknowledge the harm they have caused and holds them accountable to the victim and community, while forgoing the formal juvenile court process. Diversion connects youth to resources to prevent future offenses, while promoting public safety and encouraging responsible citizenship. The process of diversion may be administered by law enforcement, county attorney offices, corrections organizations, educators or community-based organizations.

CASE FOR DIVERSION

Research Findings

Research conducted in recent decades has improved our understanding of young offenders, our ability to identify those at risk for delinquency or reoffending and our knowledge of successful intervention types. This awareness supports a comprehensive framework to focus formal court resources on those youth who pose the greatest risk to public safety and provide alternative responses through diversion to the majority of youth who pose little to no risk.

First, a large percentage of youth involved in juvenile justice are not considered violent, serious or chronic offenders. In a large 1998 study of 151,209 youth offenders in Maricopa, Arizona, for example, only a small percentage of justice-involved youth were identified as violent and chronic offenders:

- 64% were non-serious, non-violent and non-chronic offenders
- 34% were serious offenders
- 15% were chronic offenders with 4 or more court referrals
- 8% were violent offenders
- 4% were both chronic and violent offenders¹

This research also revealed that child offenders were more likely than youth who began offending at later ages to have violent and chronic crime trajectories as they aged.² Juvenile arrest data in Minnesota in 2009 show a similar distribution, with 26% of arrests for Part I (serious offenses) and 73% for Part II (less serious) and status offenses.³

RESEARCH FINDINGS

Second, youth who engage in violent or chronic offenses tend to follow distinct paths. In a longitudinal study conducted by Thornberry, Huzinga and Loeber in three large metropolitan areas, three developmental pathways of delinquency were mapped. Minor aggression appeared first, followed by physical fighting and then other violence.

The Authority Conflict Pathway

- Prior to age 12, stubborn behavior
- Progresses to defiance
- Ends with authority avoidance (truancy)

The Covert Pathway

- Prior to age 15, minor covert behavior (shoplifting, frequent lying)
- Progresses to property damage (vandalism, fire-setting)
- Followed by moderately serious delinquency (fraud, pick-pocketing)
- Ends with serious delinquency (auto theft, burglary)

The Overt Pathway

- No minimum age, minor aggression (bullying, annoying others)
- Middle years - physical fighting (physical fighting, gang fighting)
- Later years - violent behavior (rape, attack, strong-arm, homicide)⁴

This research also identified characteristics that may lead to recidivism. While prediction of reoffense is not accurate for individuals, longitudinal studies have identified characteristics with relatively large statistical associations with reoffending behavior. Valid risk assessment instruments can identify those characteristics shown as predictors. Predictors include:

- Early initiation of delinquent behavior including substance use
- Prior delinquent offenses (number and severity)
- Delinquent peers, gang membership
- Poor school performance, attendance
- Family problems⁵

Since we know a relatively small number of youth engage in serious behavior and we can identify the factors leading to potential future offending, at youth's first contact with the system, we should be able to use these valid tools to distinguish between youth who are at risk or high risk from those simply engaging in "typical" adolescent behavior. While at-risk youth meet diversion criteria and should be diverted, the system may need to provide additional responses to address their underlying risk factors and build on the youth's strengths to prevent further involvement. By focusing the court formal process and resources on high-risk youth, the system can utilize diversion for the majority of youth who do not pose a risk to public safety.

Adolescent Brain Development Research

Recent research on the brain development of adolescents provides additional evidence supporting diversion. Neurologists have determined that young brains are still “under construction” through the early 20s. The last part to develop is the prefrontal cortex, known as the brain’s “executive center.” This part of the brain is responsible for risk assessment, consideration of consequences and controlling impulses.⁶

Some might interpret the relatively late development of the prefrontal cortex as an excuse for offending or inappropriate behavior by youth, but explaining youth behavior is not the same thing as excusing youth behavior. The science actually supports the need to hold youth more accountable for their behavior. According to discussions with Dr. David Walsh, a national expert in this area, adolescents only learn how to consider the consequences of their actions and control impulsive behaviors by receiving the consequences of that behavior. They, in other words, need to be held accountable to fully develop into adulthood. By holding youth directly accountable for their actions and teaching them the appropriate behavior, youth learn not to engage in those behaviors in the future.

Additional Factors

Data collected nationally and locally indicate a high percentage of youth have additional concerns that may contribute or serve as risk factors for their involvement in the juvenile justice system. A large number have a mental health or chemical health disorder, have experienced trauma or have a disability. These youth may be high-need, but not necessarily high-risk; diversion would be the more appropriate response to their behaviors.

Screens conducted in Minnesota in 2005 with justice-involved youth revealed approximately 70% have mental health disorders.⁷ Results from the 2010 Minnesota Student Survey of youth in correctional facilities indicated:

- 32% of males and 46% of females said they had an emotional or mental health problem that lasted at least 12 months
- 25% of males and 41% of females had been treated for an emotional or mental health problem during the past year
- 21% of males and 35% of females had thought about killing themselves in the past year⁸

According to PACER’s website, it is estimated that between 60-75% of the youth in the juvenile justice system have one or more diagnosable disabilities, which may include mental health disorders. Youth in correctional facilities reported through the Minnesota Student Survey 64% of males and 48% of females had or have an Individual Education Plan.⁹

Additionally, chemical use and its impacts were also reported by youth involved in juvenile justice. Correctional facility youth in the Minnesota Student Survey:

- 38% of males and 47% of females said alcohol use by a family member repeatedly caused family, health, job or legal problems
- 33% of males and 47% of females said drug use by a family member repeatedly caused family, health, job or legal problems
- 35% of males and 40% of females had been treated for alcohol or drug use during the last year

RESEARCH FINDINGS

Research also shows youth who have been abused and neglected are at higher risk for getting involved in the juvenile justice system.¹⁰ One explanation comes from brain science, which has discovered that children exposed to early trauma experience significant developmental delays and changes in their brain development that impact their future behavior and abilities. “Prolonged, severe, or unpredictable stress—including abuse and neglect—during a child’s early years is problematic. The brain’s development can literally be altered by these experiences, resulting in negative impacts on the child’s physical, cognitive, emotional, and social growth.”¹¹ A child’s brain development may be disrupted. Their brain may activate a set of adaptive responses designed to help them survive and live in a different state of “normal,” leading the child to actually think differently from other children.¹² These youth are more likely to exhibit “unacceptable or inappropriate” behavior and, as a result, end up in the juvenile justice system. Youth in correctional facilities reported in the 2010 Minnesota Student Survey:

- 43% of females were hit, hurt, threatened or made to feel afraid by someone they were going out with
- 29% of females were forced to have sex or do something sexual when they didn’t want to with someone they were going out with
- 26% of males and 33% of females had been hit so hard or so often by an adult in the household that they had marks or were afraid of that person
- 29% of males and 38% of females had someone in their family hit someone else in the family so hard or so often the victim had marks or was afraid of that person
- 13% of males and 41% of females had an older person outside the family touch them sexually against their wishes or force them to touch the adult sexually
- 8% of males and 21% of females had an older/stronger family member touch them sexually or force the youth to touch them sexually¹³

This research contributes to our understanding of youth involved or at risk of involvement in juvenile justice. Recognizing that many justice-involved youth share these additional factors, the system needs to determine whether each specific youth’s involvement is based on their disease, history of trauma or disability. For many, diversion and referral to community-based services will address underlying issues and result in better outcomes than sending the youth through the formal court system.

Cost-Effectiveness

Not only does research support use of diversion, but many metrics show that diversion programs reduce costs and produce positive outcomes for youth. A study of early intervention programs in Minnesota conducted by Wilder Research and the University of Minnesota’s Hubert H. Humphrey School of Public Affairs indicated the following cost savings:

- Reduced school costs
- Reduced near-term court costs through use of diversion
- Reduced costs of adult crime (crime losses of victims and costs of prosecution and incarceration)
- Reduced need for social services (long term family counseling and public assistance)¹⁴

RESEARCH FINDINGS

The benefits include:

- Reduced truancy
- Improved school performance
- Reduced high school dropouts
- Increased lifetime earnings of youth
- Improved health outcomes (reduced use of drugs and alcohol)¹⁵

The study also provided a Social Return on Investment analysis of two fictional programs and estimated:

- An effective, comprehensive program costing around \$2,000 per participant returns benefits of \$4.89 for every dollar of cost, based on very conservative assumptions about effects and valuations. Moreover, the program returns \$14.68 for every state dollar invested, assuming a 2 to 1 match of other funding.
- A targeted program to reduce recidivism of property crimes costing approximately \$200 per participant returns benefits of \$8.18 per dollar invested.
- If strictly public benefits are compared to public costs, the comprehensive program produces \$2.33 for every public dollar, while the targeted program produces \$8.18 for each public dollar invested.¹⁶

The Washington State Public Policy Institute conducted a meta-analysis of 13 studies of juvenile court diversion programs that worked with low-risk, first-time juvenile offenders. They estimated Washington taxpayers save approximately \$5,679 per participant in reduced criminal court and crime victim costs.¹⁷

SYSTEMS RESPONSE

Systems Response

Once a juvenile is arrested for an alleged offense, the decision to divert a youth can be decided by the following:

- Arresting officer or designated officer within a department
- County attorney's office
- Corrections department

The closer the decision occurs to the time the youth engaged in the offending behavior, the more likely the youth will remember the behavior and learn from the consequences of their actions. That is, acting quickly to divert will lead to the best outcomes. This recommendation is supported by National Association of Pre-Trial Service Agencies Best Practices (NAPSA) research stating "a faster connection to supervision and treatment interventions can increase effectiveness and reduce recidivism"¹⁸ and follows one of the NAPSA's standards for diversion:

- 2.1: The opportunity to apply for a pretrial diversion/intervention program should be available as soon as possible to eligible defendants from the point of the filing of formal charges through final adjudication.¹⁹

Who Should Receive Diversion?

As the research indicates, Minnesota's juvenile justice system should identify youth and refer them as follows:

- Low-risk youth who are least likely to reoffend should be referred to informal or formal diversion opportunities, depending on the youth's needs and risks.
- High-risk youth should be referred to the formal court system with access to therapeutic interventions.
- High-need youth who are at low risk to reoffend should be referred to diversion programs for accountability and to the appropriate community-based services to address their additional needs.

Who is diverted in Minnesota varies across the state. We developed uniform criteria to help guide the decision of which youth could benefit from diversion to promote greater consistency and equity. Being diverted from the formal court system can mean the difference between a youth's continued engagement in offending behavior or development into successful adulthood.

The underlying philosophy is "when in doubt, offer diversion." Diversion costs less than the formal court process, and, if a youth fails diversion, they can still be held accountable through the courts at a later date. The courts do not lose and the potential positive results far outweigh any potential risk. The criteria are broad enough to allow for youth to receive diversion more than once and for higher level offenses than might be traditionally diverted in Minnesota's communities as supported by the above research.

PROPOSED CRITERIA

Proposed Criteria

1. The youth must be under 18 years of age.
2. There is enough evidence from case investigation to show the youth committed a chargeable offense.
3. Diversion will be offered even if the youth previously participated in diversion. Prior traffic or status violations will not interfere with eligibility for a diversion program.
4. Diverting a youth for a particular incident shall recognize the community's values related to public safety and personal accountability and shall not be limited by offense level.
5. The decision to divert a youth shall take into account each youth's unique circumstances, history, strengths, risks and needs. However, the community shall address and prevent any unequal treatment of youth with similar offenses and circumstances that may arise from individualizing all responses.
6. The offender's parent/s (guardian) must approve of the youth being diverted from the juvenile justice system.
7. The youth must:
 - Admit to committing the offense.
 - Exhibit a cooperative attitude throughout the assessment and contract development process.
 - Sign a written agreement or contract with the diversion program.

DIVERSION PROCESS

Diversion Process

The following is a general outline of the diversion process, which may vary by community. It does not recommend a specific response (as each response must be dependent on the youth's offense, risks, available resources and community values), but provides guidance for how diversion could be structured within a comprehensive community-based juvenile justice system.

1. Decision made to divert youth either by an individual officer informally at initial contact with the youth or formally using the criteria above. The formal decision may be made by an individual officer, a county attorney's office, or a team of community members. It is recommended law enforcement, if resources allow, refer youth for pre-trial court diversion to provide a more timely response to a youth's behavior.
2. Ensure youth's legal rights are maintained by requiring youth, with family or legal guardian consent, sign a contract or acknowledge on the record the following:
 - Youth understands diversion is voluntary.
 - Youth may decline diversion and have case go to court.
 - Youth admits responsibility for action, including date and charge.
 - Youth understands diversion involvement waives the following legal rights:
 - (1) Right to plead "not guilty" before a court of law
 - (2) Right to an attorney
 - (3) Right to remain silent
 - (4) Youth understands if fails diversion, those legal rights will be restored
 - Youth understands that information the youth provides regarding the offense(s) referred to diversion, may be given to the county attorney's office or the courts and used against the youth in any prosecution or court proceeding.
 - Youth understands need to remain cooperative and have a positive attitude.
 - Youth understands must remain law abiding during contract time and will be terminated from diversion and referred to juvenile court if commits any additional offenses.
3. Diverted youth is referred to diversion administrator in their community. The diversion administrator (who might be located in a law enforcement agency, county attorney's office, corrections department, or community-based provider) contacts the youth and the youth's family, as close to the time of the offense as possible (to ensure immediate consequences and promote speedily repairing the harm committed to victims and the community).
4. Diversion administrator uses screening and/or personal interview to determine how best to respond to the youth's behavior. Because the appropriate response may differ depending on underlying risk factors, youth's involvement in other systems, the youth's attitude toward the offense committed and ability of the diversion administrator to monitor the youth's accountability to the satisfaction of the victim or community, it is recommended communities offer more than one type of diversion response.

DIVERSION PROCESS

5. Goals of diversion, including clear consequences, conditions and learning opportunities for the youth, are established. Diversion response should:
 - Include input from the youth, youth's family, any existing case workers working with the youth, and, if possible, the victim/and or community
 - Be individualized to each youth's needs, strengths and risks to reoffending
 - Be sensitive to cultural, gender, mental health, chemical health and trauma-related issues
 - Be realistic for youth to accomplish conditions
 - Be thoroughly understood by youth and youth's family
 - Include opportunity for youth to be held accountable for specific actions, a chance to learn from consequences and opportunities to make amends
 - Be detailed in writing and signed by the youth, parent/s (guardian), and diversion representative
6. Youth is monitored for completion of assigned conditions by diversion administrator. Appropriate authority is notified once youth completes (or fails to complete) diversion.
7. If youth fails diversion process, the reasons for failure are explored (that is, it is considered whether the expectations and conditions were realistic and doable for the youth to succeed). If the failure is determined to be not the youth's fault, a second chance is given. If not, youth is referred to appropriate court contact.
8. Performance measures/diversion outcomes tracked and monitored for continued success and improvement.

Quality of Diversion Response

Based on research on the effectiveness of intervention programs and adolescent brain development, diversion should provide youth the following in a quality manner:

- Consistency, limits and consequences appropriate to behavior
- The avoidance of power struggles
- Guidance on how to move forward
- Opportunity to learn a new appropriate behavior

Diversion responses need to:

- Be culturally relevant to individual youth by reflecting a history or connection with a youth's community and employing or involving individuals either from the youth's community or with good knowledge and understanding of the youth's community
- Be geographically practical and transportation-friendly for youth to access in order for the youth to successfully meet diversion conditions

COMPONENTS OF DIVERSION

Components of Diversion

Ideally, diversion is a response by a youth's community to the offending behavior and should provide specific conditions clearly outlined with the youth and their family that at a minimum include:

Accountability. Youth have an opportunity to make amends to any victim(s) and the community by repairing the actual damage or harm, paying restitution or engaging in community-service activities designed to repair similar harm. Ideally, the victim and community, if possible, should be involved in determining the conditions of diversion and how to hold the youth accountable. Restorative justice practices and programs represent successful models for making these connections and holding youth accountable if a victim is identified. Minimal or family-based consequences can be the most appropriate response for youth identified as extremely low-risk for reoffending, especially if no victim is impacted. More involved action may actually have the opposite effect.

Assigning a blanket number of community service hours may promote positive youth development, but does not necessarily hold a youth truly accountable for the real harm created by the particular act committed. The community service performed should connect to the actual action of the youth.

Family Involvement. Engage a youth's "family" (however the youth describes their family) in the process from the beginning. A youth's "family" may be biological or made up of relatives, a caring adult or mentor, or foster parents.

Families can be engaged by:

- Joint involvement with the youth toward repairing the harm
- Participating in conditions required by the diversion program
- Sharing relevant information with those making the diversion decision or helping administer the diversion program and monitor success
- Being involved in the decision on whether a youth should be diverted
- Giving input on the conditions for the youth's diversion, including having the family administer the agreed-upon consequences (rather than an outside organization)
- Maintaining regular communication regarding the youth's progress and program completion
- Being made aware if the youth fails to meet the conditions of diversion, including clear communication about the next steps of the court process.

As mentioned earlier, data reveal a high percentage of youth involved in juvenile justice have mental health, chemical health use, past or current trauma or involvement in the child welfare system. Since these youths' behavior and risk for future reoffending is most likely impacted by potentially permanent factors, diversion can be a more appropriate systemic response than referring these youth to court. Incorporating the following options in the diversion process helps identify these youth early in their involvement with the juvenile justice system and follows NAPSA standard 5.1 which recommends conducting a comprehensive risk and needs assessment for every person referred to diversion.²⁰

COMPONENTS OF DIVERSION

Screening. With parental/(guardian) permission, utilize a valid and reliable no-cost screening tool to identify whether a youth shows signs of mental health, chemical health or trauma issues or other potential underlying risk factors for future offending behavior. Youth with any “red flags” should be referred to the appropriate county services or community-based provider for further action as deemed appropriate by the above organization. If a youth already receives services or is involved in the child welfare system, the appropriate case manager or family member should be notified to assess whether additional interventions are needed in place of a juvenile justice system response.

Some youth may not have existing involvement in other systems, but be identified in the initial screening process with further risks or needs, requiring a greater response from the system to prevent reoffending behavior. The following are two additional options for diversion responses.

Short-term Intervention. Provide opportunity for youth to learn new behavior(s) and understand consequences of continued negative behavior through research-driven and outcome-based activities. Research shows therapeutic interventions achieve the best results.

Referral. Connect youth with positive youth development services to foster long-term creation of positive behavioral responses, build on strengths, increase resiliency and connect with positive peer groups.

Diversion Performance Measures/Outcomes

In order to ensure diversion opportunities for youth are successful and appropriate, diversion administrators need to monitor youth and the diversion process regularly against pre-determined performance measurements and outcomes. Without continuous monitoring, youth could be held solely accountable, when in fact, it may be the diversion opportunity itself that is inappropriate and unsuccessful. Monitoring must also analyze diversion data to ensure all youth are treated equally by diversion decision makers, regardless of race, ethnicity, sexual orientation, age or gender. The following performance measures are recommended.

- **Accountability:** Youth successfully repairs harm to victim and/or community.
- **Family Involvement:** Family (as defined by youth) is involved in the process. Families need to understand the program’s conditions, consequences and successful completion markers and connect the youth to supportive services and interventions if needed.
- **Diversion Completion:** Youth successfully completes the diversion requirements.
- **Recidivism:** Youth does not commit a new offense and remains law abiding for 6 months following diversion completion.

DATA COLLECTION

Data Collection

Collecting data on the diversion process, the youth involved and the outcomes listed above can be beneficial for decision makers and staff to determine whether the diversion process is successful, treats all youth equally and follows best practices. While all diversion systems may not be able to collect all the data below, the suggested information would help identify over or under-representation based on race, gender, ethnicity, socio-economic status or involvement in child welfare; track the success of diversion responses; and monitor accountability of both the youth and the system as a whole.

Optional Data to Collect

- Age and gender of youth diverted or not diverted
- Race and ethnicity of youth diverted or not diverted
- Child welfare involvement to determine cross-systems involvement
- Offense types
- Location of offense
- Recidivism of youth diverted
- Program completion rates of youth diverted
- Restitution collected
- Satisfaction of victims
- Degree of family involvement and satisfaction

Promising Practices in Diversion

NAPSA advocated the following promising practices identified through member surveys and research review. While these largely apply to adult diversion, most can apply to youth diversion as well, and provide additional guidance in designing and implementing successful diversion responses.

Promising Practice #1: Formalized cooperative agreements between the pretrial diversion program and key stakeholders to assure program continuity and consistency.

Promising Practice #2: Defendant access to counsel before the decision to participate in pretrial diversion.

Promising Practice #3: Specific due process protections incorporated into programming.

Promising Practice #4: Broad, equitable and objective diversion eligibility criteria, applied consistently at multiple points of case processing.

Promising Practice #5: Uniform and validated risk and needs assessment to determine the most appropriate and least restrictive levels of supervision and services needed.

Promising Practice #6: Intervention plans tailored to individual participant risks and needs and developed with the participant's input.

Promising Practice #7: Graduated sanctions short of termination as responses to participant behavior.

Promising Practice #8: Maximum possible privacy protections for participants and program records.

Promising Practice #9: Independent program evaluations.²¹

REGARDING JUVENILE RECORDS

Note Regarding Juvenile Records

Although the majority of juvenile records are private, they are accessible by a number of government actors, agencies and licensing bureaus. For example, the Minnesota Department of Human Services, which conducts between 300,000 and 500,000 background studies a year, considers juvenile records (ranging from arrest to adjudication) when determining licensing and employment in positions concerning direct care to vulnerable people (Minnesota Statute 245C).

Additionally, some private data miners report juvenile records and few legal remedies exist for juveniles. By statute, a judge may "expunge the adjudication of delinquency at any time it deems advisable," as long as legal custody is transferred to the commissioner of corrections (Minn. Stat. 260B.198, subd. 6). Due to the lack of procedural guidance, courts turn to the adult expungement chapter to inform the juvenile record remedy (Minnesota Statute 609A). However, this statute does not recognize the juvenile justice system's purpose to rehabilitate youth (Minnesota Statute 260B.001, subd. 2). Juvenile adjudications of delinquency are not eligible for pardon extraordinaries (Minnesota Statute 638.02, subd. 2), where only convictions are eligible for pardons.

ENDNOTES

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