

# Protect and Redirect: Best Practices for Juvenile Diversion

***Diversion programs should be used judiciously, and they should be community-led with a focus on restorative justice.***

Young people’s likelihood of avoiding future justice system contact and achieving success is affected not only by whether or not their cases are diverted from the justice system, but also by how their cases are handled once diverted. A growing consensus among youth justice experts supports several priorities regarding how best to organize and utilize youth diversion.

## **Move responsibility for diverted youth out of the court system**

Too often, youth diverted from formal processing in court are overseen by prosecutors or probation officers in a process that can mirror traditional probation supervision.

In 2020, the latest year for which data are available, more than 32,000 youth whose cases were not formally processed in court were nonetheless placed on probation caseloads.<sup>1</sup> In practice, this type of informal probation often differs little from formal probation,<sup>2</sup> with a long list of rules and requirements and the threat of returning to court for prosecution if youth don’t meet all expectations imposed on them.<sup>3</sup>

Adolescent development research and practical experience suggest strongly that this approach is misguided. Rather, the best practice is to divert youth away from the justice system and empower community partner organizations, as well as schools and families, to address young people’s misbehavior.<sup>4</sup>

Jaquita Monroe, a senior associate in the Annie E. Casey Foundation’s Juvenile Justice Strategies Group, argues that “Juvenile courts and probation agencies should abandon the practice of placing diverted youth on informal probation caseloads.” Monroe refers to this practice as “probation lite.”<sup>5</sup>

Prosecutor-led diversion programs, which are widespread,<sup>6</sup> also raise concerns. As noted in a recent academic article, “There are no checks or balances, in the traditional constitutional sense, on the prosecutor’s office in its management of prosecutor-led diversion programs.”<sup>7</sup> In prosecutor-led diversion programs, prosecutors and their staff decide who gets to participate; determine the rules and conditions youth must follow; assess the youths’ compliance; and determine whether and when to release youth from the program or cite them as failures in diversion and initiate a formal delinquency case.<sup>8</sup>

This issue brief is one piece in a five-part package of publications about youth diversion by The Sentencing Project in 2024. Click [here](#) to access all the diversion briefs and other resources on The Sentencing Project’s youth diversion webpage.

Shifting responsibility for diversion away from prosecutors and probation offices – and instead empowering community partner organizations – is important for several reasons.

- Community organizations – especially those rooted in neighborhoods where a large concentration of court-involved youth reside – are better equipped than agencies affiliated with the court system to engage youth and their families. They can hire staff from similar backgrounds and with similar experiences to the young people, and they are better positioned than court staff to earn the trust and confidence of young people and their families.<sup>9</sup>
- Community-based organizations that have ongoing capacity to support youth and families – and are rooted in the neighborhoods where young people live – can foster lasting positive connections for young people that extend well beyond the period of their diversion intervention.<sup>10</sup>
- Community organizations are better situated than prosecutors, probation, or other court-affiliated agencies to facilitate meaningful restorative justice practices that enable youth to understand and repair the harms caused by their behavior. In its Restorative Justice Toolkit, Equal Justice USA discourages participation by legal system representatives (police, prosecutors, probation) both to ensure confidentiality in the restorative justice process and to address mistrust of police and the court system in under-resourced communities of color where restorative justice diversion programs often operate.<sup>11</sup>
- Empowering community partner agencies to oversee diversion allows courts, prosecutors, and probation agencies to focus their limited resources on youth who pose significant threats to public safety.<sup>12</sup>

### **What Is Restorative Justice?**

Restorative justice is an alternative to the traditional justice system that emphasizes repairing the harm caused by delinquent behavior rather than ascertaining guilt and punishing the guilty.

Typically, restorative justice interventions bring together those most affected by an offense—the justice-involved youth and members of his or her family, the person harmed, other community members—in a non-adversarial conference led by a trained facilitator where participants discuss the harm caused by the offense and craft a response plan that both addresses the needs of the people harmed and connects the youth to individualized services that support their success and minimize their likelihood of future offending.”<sup>13</sup>

### **Avoid Net-Widening**

Diversion rules and requirements are only appropriate for youth who would otherwise be arrested and prosecuted in the justice system. However, considerable research shows that youth diversion programs are often imposed on youth who do not pose significant risks to public safety and who – if not for the existence of the diversion program – would otherwise receive just a warning from police or have their cases dismissed once referred to court. In these cases, diversion actually worsens outcomes.<sup>14</sup> According to the Council of State Governments Justice Center, “Juvenile justice systems can do more harm than good by actively intervening with youth who are at low risk of reoffending.”<sup>15</sup>

In light of this research, youth accused of status offenses should not be arrested, and their needs should be addressed by social services agencies, child welfare organizations, and mental health providers unconnected to delinquency courts.<sup>16</sup>

Likewise, unless they have committed serious offenses and pose a significant risk to public safety, youth whose lawbreaking and other conduct problems are driven primarily by mental health, substance abuse, or social services needs should be referred to social services agencies, child welfare organizations, and mental health providers unconnected to delinquency courts.<sup>17</sup>

Youth involved in petty crimes who don't have a significant history of prior offending should not be arrested – or, if arrested, they should be diverted from prosecution in the justice system. When problematic behaviors occur at school, they should be addressed as a matter of school discipline, not delinquency.<sup>18</sup> Those whose misbehavior occurs in the community can be warned and released, or their behavior can be addressed with a light-touch diversion, such as an apology letter or a relevant one-time workshop (on anger management, for instance).<sup>19</sup>

More than 100 communities across the country have opened assessment centers that handle the cases of youth accused of less serious offenses.<sup>20</sup> These centers typically meet with youth and their families; conduct detailed assessments to identify any needs facing the youth and family in terms of mental health, substance abuse, education, or social services; and refer youth to appropriate service providers in the community.<sup>21</sup> In **Clark County (Las Vegas), NV**, for instance, all youth arrested on misdemeanor charges are now brought to a local assessment, called The Harbor, where they are assessed, referred to relevant services, and provided with 60 days of case management support.<sup>22</sup> Only 17% of youth referred on delinquency charges who were assessed at The Harbor in 2020 were charged in juvenile court within three years.<sup>23</sup>

### **Focus diversion programs on repairing harm and promoting youth success – not punishment or control.**

Restorative justice holds tremendous potential as diversion from the court system for youth accused of delinquent conduct. In a 2021 paper, the Council of State Governments Justice Center concluded: “Restorative justice programs are more responsive to youth needs [than the traditional juvenile court process] and more effective in preventing future crimes because they help young people take responsibility for their behavior and repair the harm that was caused to victim(s) and the broader community.”<sup>24</sup>

Not only does research show that restorative diversion reduces the likelihood that youth will reoffend,<sup>25</sup> but it also offers several other advantages over traditional court processing. Restorative justice gives young people the opportunity to learn from their mistakes and repair the harm they have caused. Meeting with those harmed by their behavior and jointly crafting a plan to repair the harm they have caused helps youth build empathy, a critical adolescent development challenge.<sup>26</sup> Also, restorative justice meets the needs of victims far more effectively than a traditional court process: Surveys find that an overwhelming majority of victims report satisfaction with the restorative justice process, as do the vast majority of accused youth and their parents who participate.<sup>27</sup> Also, youth participating in restorative justice make far more restitution payments than youth whose restitution is ordered by a court.<sup>28</sup> Many youth development experts argue that restorative justice is especially well-suited for young people, given their developmental stage.<sup>29</sup>

### Why Restorative Justice Is Especially Well-Suited to Adolescents

“When we divert young individuals from the justice system and neglect the restorative process, we miss a profound opportunity to heal, to nurture empathy, and to foster growth. Youth learn empathy through relationships. By forging personal connections with those they’ve harmed, they gain insight into the consequences of their actions. True diversion demands not only rehabilitation but also accountability—the opportunity for youth to mend the harm they’ve caused. It is a matter of fairness to those affected by crime, as well as an investment in the growth and self-forgiveness of the responsible youth.”<sup>30</sup>

– Jessica Ellis, executive director of Centinela Youth Services, a community-based organization in the Inglewood section of Los Angeles that has been providing diversion programming since 1975

“A key aspect of reducing recidivism rates is to ensure that children understand the consequences of the harm they have caused and actively take responsibility for that harm. The participatory dimension of restorative justice provides children with the opportunity to fully grasp the extent of the harm done and to be part of a constructive response.”<sup>31</sup>

– United Nations Office of the Special Representative of the Secretary-General on Violence Against Children

Beyond its practical benefits, restorative justice also aligns well with public opinion about how best to address adolescent offending,<sup>32</sup> and it is being embraced by justice systems in an increasing number of states and localities nationwide.

For instance, **Colorado**’s state-funded restorative justice program has served more than 1,300 diverted youth over the past decade in multiple judicial districts.<sup>33</sup> **Nebraska** has made restorative justice diversion a central focus of its youth justice system, and it has made a significant investment in restorative justice diversion programs across the state.<sup>34</sup> In 2023, the **Minnesota** legislature passed a law creating a new Office of Juvenile Restorative Justice that will promote and provide grant funding to support restorative justice programs.<sup>35</sup> In **California**, restorative justice is a central feature of diversion programs in San Francisco,<sup>36</sup> Los Angeles,<sup>37</sup> Long Beach,<sup>38</sup> Richmond,<sup>39</sup> and Oakland,<sup>40</sup> as well as several smaller cities. Though no reliable data are available nationwide on the use of restorative justice diversion, the National Conference of State Legislatures reported in 2022 that 23 states have enacted legislation establishing juvenile restorative justice programs, and another 20 states have passed laws encouraging or providing guidance to localities wishing to establish restorative justice programs.<sup>41</sup>

### Complement restorative justice with positive youth development and therapeutic and support services.

In addition to incorporating restorative justice practices to repair harm and address victims’ needs, effective diversion programs also should promote young people’s well-being and success. At the outset of diversion, every young person should be interviewed along with their caregiver(s), assessed using a validated assessment instrument, and referred to appropriate services to address any underlying needs identified in the assessment process.<sup>42</sup>

Youth should also be connected with youth-serving organizations and youth development programs that can provide them with encouragement, support, and positive relationships with peers and caring adults. For instance, both **Pierce County (Tacoma), Washington** and **Davidson County (Nashville), Tennessee** divert a majority of youth referred to juvenile court on delinquency charges, and partner with a wide variety of community-based youth organizations to serve diverted youth.<sup>43</sup>

## ENDNOTES

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<sup>2</sup> Wagoner, R., Schubert, C., & Mulvey, E. (2015). Probation intensity, self-reported offending, and psychopathy in juveniles on probation for serious offenses. *Journal of the American Academy of Psychiatry and Law* 43(2), 191-200.; Fabelo, T., Thompson, M., Plotkin, M., Carmichael, D., Marchbanks, M., & Booth, E. (2011). *Breaking schools’ rules: A statewide study of how school discipline relates to students’ success and juvenile justice involvement*. Justice Center of the Council of State Governments and Public Policy Research Institute.

<sup>3</sup> *Transforming juvenile probation: a vision for getting it right*. (2018). Annie E. Casey Foundation; Models for Change Juvenile Diversion Workgroup. (2011). *Juvenile diversion guidebook*. Models for Change.

<sup>4</sup> *Transforming juvenile probation: a vision for getting it right* (2018), see note 3.

<sup>5</sup> *What is diversion in juvenile justice?* (2020). Annie E. Casey Foundation.

<sup>6</sup> There were 479 prosecutor-led diversion programs nationwide as of November 2022, according to: Nielsen K., Nippoldt, L., Gonzalez, N. & Shklyan, K. (2023). *Principles and Strategies for Community-Led Diversion in Juvenile Justice*. National Conflict Resolution Center and the University of California San Diego Applied Research Center for Civility.

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<sup>8</sup> Wright & Levine (2021), see note 7.

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