



POSITION ON PROPOSED LEGISLATION

BILL: House Bill 169 Juvenile Law – Informal Adjustment

POSITION: Favorable, with Amendments

DATE: February 22, 2021

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report with Amendments on House Bill 169.

Diversion of youth from the juvenile legal system is an essential aspect of case processing that should be utilized more comprehensively and equitably in Maryland. Diversion is defined by the Department of Juvenile Services (“DJS”) as “a program or practice where the primary goal is to reduce the occurrence of juvenile crime by diverting a youth from the traditional juvenile justice system and providing an alternative to formal processing.”¹ Examples of diversion are mental health services including evidence-based Multi-Systemic Therapy and Functional Family Therapy, mentoring, teen courts, and restorative justice practices such as family conferences, victim/youth conferences and mediations. **DJS effectuates diversion through what is called an informal adjustment under Maryland law.**²

The benefits of juvenile diversion include: Preventing association with delinquent peers; holding youth accountable for their actions; providing proportionate responses to delinquent behavior; providing youth with opportunities to connect with services in the community; reducing court caseloads, detentions, and out-of-home placements; reducing justice system costs and preserving resources for youth who pose a greater public safety risk or have greater needs for services; and improved relations between youth and community.³ One of the most important benefits of diversion is reducing recidivism by keeping low-risk youth away from the stigma of the juvenile justice system.⁴ National research has shown that low-risk youth placed in diversion programs re-offend less often -- up to 45% less often -- than similar youth who were formally processed and are more likely to succeed in and complete school.⁵ Maryland’s own data shows that diversion

¹ Department of Juvenile Services, Data Resource Guide 2019, p. viii.

² Md. Code Ann., Cts. & Jud. Proc. 3-8A-10.

³ Farrel, Betsinger, & Hammond. Best Practices in Youth Diversion: Literature Review for the Baltimore City Youth Diversion Committee. Univ of Md. School of Social Work (Aug 2018), <https://theinstitute.org/>.

⁴ Models for Change Juvenile Diversion Work Group, Juvenile Diversion Guidebook at 11 (2011), <https://www.modelsforchange.net/publications/301>.

⁵ Wilson, H.A., & Hoge, R.D. (2013). The effect of youth diversion programs on recidivism: A meta-analytic review. *Criminal Justice and Behavior* at 8; Josh Weber et al., *Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes* at 4 (2018).

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works. Approximately 80% of young people who participate in diversion through DJS successfully complete it and 90% of young people who complete diversion do not recidivate within one year.⁶

Maryland data, however, also suggests significant room for expansion of diversion and a reduction in racial disparities in the use of diversion. Despite the research which calls for avoiding formal system involvement for youth charged with misdemeanors and non-violent felonies, in FY 2019 DJS forwarded over 30% of all misdemeanors and 85% of all felonies for formal charging.⁷ Further, DJS reported disturbing racial disparities in the use of diversion. Youth of color were well over twice as likely to have their cases referred to DJS, 50% more likely to have their cases petitioned with formal charges, and over 30% less likely to have their cases referred to diversion.⁸ Youth of color were offered diversion less often than white youth in both misdemeanor and felony cases.⁹ Black youth were the least likely to receive diversion for low-level offenses.¹⁰

While House Bill 169 addresses the need to expand diversion, it enhances the opportunity for informal adjustment only after the youth has been formally charged by the State's Attorney and has begun to appear before the Juvenile Court. Overall, House Bill 169 does not go nearly far enough and **should be amended by taking the following actions:**

- Require informal adjustment of misdemeanors (excluding handgun possession) and non-violent felonies for all youth who have not previously been adjudicated delinquent.

This action will expand the use of diversion and reduce any racial disparities caused by the discretionary decisions of DJS and the State's Attorney.

- Eliminate the requirement that DJS forward complaints of non-violent felonies to the State's Attorney for approval of informal adjustment.

This action will expand the use of diversion while preserving the State's Attorney's opportunity to petition formal charges if the informal adjustment is unsuccessful.

This action will increase the number of youth who receive interventions. In FY 2019, 46% of all juvenile cases forwarded to the State's Attorney for petitioning of formal charges did not result in court ordered probationary or commitment services, mostly due to dismissal, nolle pros, or stet of the cases.¹¹

- Eliminate the requirement of victim consent but require reasonable efforts to contact the victim in order for informal adjustment to proceed.

This action will expand the use of diversion while increasing victim satisfaction. 90% of youth who successfully complete diversion do not recidivate within one year, making victims'

⁶ Juvenile Justice Reform Council Final Report January 2021 (maryland.gov) at 36.

⁷ Juvenile Justice Reform Council Final Report January 2021 (maryland.gov) at 35-36.

⁸ Department of Juvenile Services, Data Resource Guide 2019, p. 230.

⁹ Juvenile Justice Reform Council Final Report January 2021 (maryland.gov) at 36.

¹⁰ Juvenile Justice Reform Council Final Report January 2021 (maryland.gov) at 35.

¹¹ Department of Juvenile Services, Data Resource Guide 2019, p. 22.

communities safer.¹² Additionally, while victim consent will not be required for diversion, DJS will offer victims the opportunity to participate in a restorative justice diversion. National research shows that restorative justice programs provide higher levels of victim satisfaction with the process and outcomes, including a greater likelihood of successful restitution completion than traditional justice programs.¹³ Maryland hosts a number of restorative justice programs across the state that are utilized for youth diversion, including Restorative Response Baltimore (“RRB”) RRB’s results reflect the national research. 85% of victims recover restitution through RRB.¹⁴ In a RRB FY 2020 survey, 84% of participants were satisfied with the conference and 87% of participants would recommend the conference to others.¹⁵

While victim satisfaction is desirable, victims should not be in control of whether diversion is utilized for a young person. Victim consent is not required for the diversion of adult criminal justice cases¹⁶ and should not be required for the diversion of a young person’s case, particularly when research demonstrates that diversion is healthier for young people and achieves very good public safety outcomes in Maryland.

In addition to the three critical actions above, a final recommended amendment is that House Bill 169 allow Court referred informal adjustment even if a prior unsuccessful informal adjustment has occurred in the case. This amendment will make room for instances in which the parties and Court desire informal adjustment based upon the State’s assessment of its case for trial or a change in circumstances in the life of the young person that may increase the likelihood for success.

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For these reasons, the Maryland Office of the Public Defender urges a favorable report *with amendments* on House Bill 169.

¹² Juvenile Justice Reform Council Final Report January 2021 (maryland.gov) at 36.

¹³ Family Group Conferencing: Implications for Crime Victims (ncjrs.gov) at 1.

¹⁴ Restorative Response Baltimore – Collective Action To Resolve Conflict.

¹⁵ Restorative Response Baltimore – Collective Action To Resolve Conflict.

¹⁶ Maryland Youth Justice Coalition Diversion Recommendations at 4.