

### **Monroe County, Indiana** **Review of Front-End Youth Diversion Practices**

#### Introduction

At the request of Monroe Circuit Court Probation and Judge Stephen R. Galvin of the Monroe Circuit Court, the Center for Children's Law and Policy (CCLP) conducted a review of Monroe County's current efforts to divert young people away from formal contact with the youth justice system. This assessment focused on identifying options for enhancing current efforts and ensuring approaches to diversion are aligned with research and best practices, with a specific focus on ensuring Monroe County's approach promotes equity for youth of color.

CCLP applauds Monroe County stakeholders for undertaking this critical look at its diversion practices, notwithstanding the County's overall success with its implementation of the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI). Since joining JDAI in Indiana in 2014, Monroe County has achieved significant and positive impacts in its youth justice system, including:

- A 50% reduction in annual admissions to detention, including a 35% reduction for youth of color;
- A 60% reduction in the average number of youth in detention on any given day; and
- An 87% reduction in felony petitions filed.<sup>1</sup>

Part of Monroe County's success in JDAI and its other youth justice improvements has stemmed from concerted efforts to divert young people away from the justice system at the earliest possible point, or away from deeper or more extensive involvement if youth have already entered the system. This effort has been consistent with studies that show formal interventions by the youth justice system do more harm than good for a large percentage of youth.<sup>2</sup> The Annie E. Casey Foundation recently published an excellent summary of research supporting the expanded use of diversion.<sup>3</sup>

Compared to system intervention, diversion generally decreases a young person's likelihood of re-arrest. A 2013 study found that low-risk youth placed in diversion programs reoffended 45% less often than similar youth who were formally processed or who received restrictive sanctions.<sup>4</sup>

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<sup>1</sup> Results are comparing calendar year 2020 with a baseline year of calendar year 2013.

<sup>2</sup> Richard A. Mendel, The Annie E. Casey Foundation, *Transforming Juvenile Probation: A Vision for Getting It Right 9* (2018) (citing Elizabeth Seigle et al., *Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in The Juvenile Justice System* (2014)).

<sup>3</sup> Annie E. Casey Foundation, *Research in Brief to Transform Juvenile Probation* (2020), *available at* [www.aecf.org/resources/expand-the-use-of-diversion-from-the-juvenile-justice-system/](http://www.aecf.org/resources/expand-the-use-of-diversion-from-the-juvenile-justice-system/).

<sup>4</sup> *Id.* at 8.

Similarly, a 2018 report concluded youth who are not arrested or are diverted from court are less likely to be re-arrested and more likely to succeed in and complete school than peers who are formally adjudicated in the youth justice system.<sup>5</sup> Longitudinal studies and brain science research corroborate these findings, demonstrating that the majority of young people age out of delinquent behavior, with or without system intervention.<sup>6</sup>

CCLP's assessment of Monroe County's current diversion practices included a review of quantitative data on youth contacts with law enforcement and the youth justice system, as well as utilization of and outcomes associated with existing diversion programs. Assessments also include a review of policies and procedures related to arrest and early diversion, as well as Zoom interviews and focus groups with stakeholders, including youth, family members, service providers, and community members. CCLP thanks everyone who generously volunteered their time and insights as part of this process.

### What Does "Diversion" Mean for the Purpose of This Assessment?

"Diversion" is a general term used to describe the informal handling of cases involving young people in the justice system. Diversion requires stakeholders to make a conscious effort to direct young people away from or out of the youth justice system. Diversion can occur at any point in the youth justice system, from a youth's contact with law enforcement through a youth's adjudication in juvenile court.

For the purpose of this assessment, "diversion" includes two things:

- **Diversion Policy and Process:** Official policies and procedures that direct young people away from the youth justice system altogether or prevent youth from having deeper involvement with the system – for example, deciding not to make formal arrests for behavior that would otherwise qualify as "disorderly conduct" in public schools.
- **Diversion Programs and Conditions:** Programs and requirements that are intentionally used as a pathway away from or out of the youth justice system. Prevention and intervention programs, while valuable, do not qualify unless they are used as a true alternative to formal contact or involvement with the system – in other words, if not for a youth's involvement with a program, he or she would have entered or moved deeper into the justice system. To be effective, involvement with the program must stop a youth from continuing down the pathway of formal system involvement.

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

1. **Pre-Arrest:** What efforts are made to avoid resorting to a referral to law enforcement for youth who may have committed a crime? What policies, practices, and programs exist to require or make available an alternative to making an arrest, be it taking into custody or

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<sup>5</sup> Josh Weber et al., *Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes 4* (2018) (citing National Research Council, *Reforming Juvenile Justice: A Developmental Approach* (2013)).

<sup>6</sup> *Id.* at 4-5.

making a paper referral?

2. **Arrest:** At the point of arrest, what efforts are made to divert youth away from a referral to the justice system?
3. **Intake:** For youth who are referred to the justice system, what efforts are made to divert youth away from formal charging and/or adjudication in court?

## Principles of Effective Diversion

Diversion programs can take different approaches to steer young people away from formal processing in the youth justice system depending on a range of factors, including state and local laws and regulations, as well as the types of cases being diverted. Despite these differences, many successful diversion programs include a combination of the following elements. A summary of traditional diversion practices compared with effective diversion practices prepared by the Annie E. Casey Foundation appears at the end of this report.

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

**Use of warn and release for the vast majority of young people in contact with the system as the first opportunity for diversion:** Warnings without intervention should be available in every diversion program and should be the default response for the great majority of first-time offenses, particularly non-violent offenses.<sup>7</sup>

**Avoiding formal system involvement for youth charged with misdemeanors:** Except for youth who have committed serious violent crimes and youth who pose a significant threat to public safety, youth referred to the youth justice system should be diverted to alternatives to formal system processing whenever possible. For example, while the standard response to youth justice system involvement has been to place young people on probation, jurisdictions have developed alternatives to probation and formal system involvement with improved results for young people and public safety.<sup>8</sup>

**Identification of community-based organizations and agencies to oversee diversion instead of arms of the justice system:** Shifting the responsibility of overseeing diversion away from court personnel allows them to focus their attention on the most serious cases. The responsible organization or agency should be independent from the court, prosecutor's office, and probation

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<sup>7</sup> Mendel et al. at 26.

<sup>8</sup> *Id.* at 25.

department; should offer a single point of entry for assessments, referrals, care coordination, and crisis intervention; should receive operating funds from the court, county, or state government; and should be responsible for development, oversight, and tracking outcomes.<sup>9</sup>

**Use of restorative justice practices:** To hold youth accountable for their actions in a meaningful and constructive way, many effective diversion programs use family conferences, victim conferences and mediation, and other forms of restitution as a way of acknowledging and repairing harm. Research shows that these practices reduce recidivism rates and are a cost-effective alternative to court involvement and excessive supervision.<sup>10</sup>

**Rejection of court-imposed consequences for noncompliance with diversion agreements:** There should be no possibility of placement or confinement for failure in diversion, and absent serious subsequent offenses, diverted youth should not be subject to court-ordered conditions. Research shows “net widening” of diversion programs does more harm than good and noncompliance with diversion agreements should usually be addressed with a warning. Most youth grow out of delinquent behavior without intervention, and formal processing dramatically increases the likelihood of future arrest. If a young person fails to complete a diversion agreement, he or she is better left to grow and mature under family supervision.<sup>11</sup> Moreover, attaching court-imposed consequences for failure to complete diversion raises concerns about youth’s due process rights, as youth are unlikely to have the benefit of consulting with an attorney and have not had an independent factfinder assess their involvement in an incident.

**Creation of entities to oversee diversion efforts:** Local governments and courts should create oversight committees to monitor and support diversion programs in the jurisdiction. The committee should be made up of local government officials (including youth justice system stakeholders and representatives of other youth-serving components of government), service providers, public school administrators, various leaders from community organizations, families, and young people. The committee should set expectations, create program guidelines, conduct training and support for personnel, collect and analyze data, assess needs, and develop programs to expand and improve diversion options.<sup>12</sup>

## Data Headlines

The following data headlines come from juvenile probation data provided to CCLP. The analyses below compare two 12-month periods: April 1, 2019-March 31, 2020 (labeled below as 2019-20) and April 1, 2020-March 31, 2021 (labeled below as 2020-21). CCLP used those two time periods to compare referrals to juvenile probation prior to the pandemic, as well as during the pandemic. However, CCLP strongly encourages caution when interpreting data from the COVID-19 pandemic, particularly when attempting to make comparisons with other time periods, given the policy changes, societal changes, and other challenges during COVID-19.

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<sup>9</sup> *Id.* at 26.

<sup>10</sup> Weber et al., at 5-6.

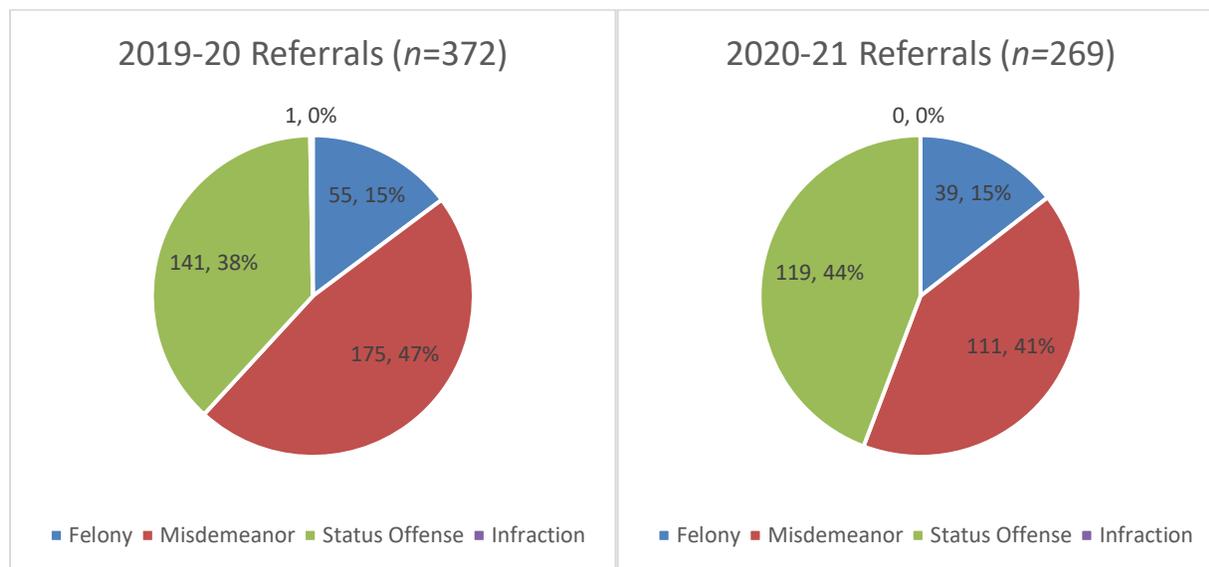
<sup>11</sup> Mendel et al., at 26.

<sup>12</sup> Mendel et al. at 13, 28-29.

We also encourage further analysis to connect the probation data below with law enforcement contact data. CCLP has worked with Empact Solutions to develop a new data tool to help visualize and use law enforcement-level data in Monroe County. We expect this tool to help advance and deepen conversations regarding diversion, particularly given that law enforcement agencies represent the largest source of referrals to probation. The tool was not finalized by the time of the preparation of this report, but CCLP would be happy to assist with comparisons of law enforcement contacts with youth and referrals to probation as compared with to probation’s handling of those referrals. Such analyses are important to promoting equity at youth’s first contact with police, as well as to understanding how probation practices are promoting equity within referrals to the probation department.

Finally, Monroe Circuit Court Probation and the Circuit Court should be applauded for investing in and maintaining a high-quality data system that permits detailed analyses, including deep dives into decisionmaking points and youth outcomes. Monroe County’s investment in the Quest data system has paid dividends in advancing effective practices and reforms in the youth justice system.

**Data Headline #1: The vast majority of youth referred to probation are referred for status offenses or misdemeanor offenses, with youth of color overrepresented in those referrals.** In both 12-month periods examined, youth of color were overrepresented as a percentage of referrals (29% and 28%, respectively) as compared with their representation in the general youth population of 13%.<sup>13</sup> The percentages of white youth and youth of color referred for felony offenses were comparable in the first 12-month period (14% and 17%, respectively) and slightly higher for youth of color in the second 12-month period (12% and 21%, respectively). However, as noted below, felony offenses represent a small share of overall referrals.



<sup>13</sup> Puzanchera, C., Sladky, A., & Kang, W. *Easy Access to Juvenile Populations: 1990-2019* (2020), available at <https://www.ojjdp.gov/ojstatbb/ezapop/>.

**Data Headline #2: The top 5 most common referral reasons were similar during both time periods for white youth and youth of color, and they represented more than half of overall referrals during each time period.** The charts below list the top 5 offenses below for white youth and youth of color during each time period. The raw number of referrals appears in parentheses.

White Youth, 2019-20	White Youth, 2020-21	Youth of Color, 2019-20	Youth of Color, 2020-21
Leaving Home without Permission (45)	Leaving Home without Permission (47)	Leaving Home without Permission (26)	Truancy (14)
Truancy (38)	Truancy (37)	Truancy (19)	Leaving Home without Permission (13)
Domestic Battery (32)	Domestic Battery (12)	Battery (9)	Battery (9)
Battery (15)	Intimidation (9)	Theft (9)	Criminal Mischief (5)
Theft (13)	Battery (8)	Battery Resulting in Bodily Injury (7)	Domestic Battery (5)

**Data Headline #3: The majority of referrals for both white youth and youth of color are handled without filing a petition, although there were some differences in the types of dispositions over time periods and across race.** The fact that Monroe County already handles the majority of referrals using mechanisms other than a formal petition is certainly a strength and raises the potential to expand the use of additional and earlier diversion opportunities, as recommended below.

**2019-20**

Intake Disposition	White Youth	Youth of Color
Dismiss – No Action because PTM / PTR / APM Filed in Another Case	13%	6%
Dismiss – No Action Taken because Other Reason	41%	49%
Informal Adjustment	9%	6%
Petition Filed	16%	21%
Referred to Other Agency	19%	17%
Blank	2%	1%

**2020-21**

Intake Disposition	White Youth	Youth of Color
Dismiss – No Action because PTM / PTR / APM Filed in Another Case	10%	11%
Dismiss – No Action Taken because Other Reason	43%	26%
Informal Adjustment	6%	16%
Petition Filed	13%	29%
Referred to Other Agency	23%	13%
Direct File to Adult Court	<1%	1%
Blank	2%	1%

## Recommendations

The recommendations below represent CCLP's suggestions for steps Monroe County stakeholders can take to advance race equity, focusing specifically on the points of arrest, diversion, and intake. These recommendations are grounded in CCLP's experience with successful efforts to reduce racial and ethnic disparities in jurisdictions throughout the country, research and best practices around race equity and diversion (including guidelines from the Annie E. Casey Foundations Transforming Juvenile Probation initiative), and direct engagements with jurisdictions in their implementation of pre-arrest and pre-referral diversion policies and programs.

CCLP also recognizes diversion will not be an option for some young people. However, this assessment was focused on identifying opportunities available to Monroe County's youth justice system, either independently or in partnership with current collaborating agencies and organizations. We have intentionally focused our recommendations on specific changes to policies and practices we believe could have a significant and positive impact on the use of diversion and racial equity. Some recommendations would entail reallocation of existing resources or an investment of additional resources, which we have tried to note below.

In making these recommendations, we acknowledge there are broad, cross-cutting issues which contribute to many youth's contact with the justice system. These include, but are not limited to, longstanding structural racial and socioeconomic inequalities, educational disengagement, the availability and quality of behavioral health services, and a greater need for opportunities for youth to connect to adults who can mentor and support them. The recommendations below are informed by these challenges, but do not pretend to be able to resolve them on their own. Indeed, these are larger problems than any youth justice system stakeholders could attempt to solve with the resources available to them. These recommendations do, however, represent potential steps, achievable in the near term, that could contribute toward progress in addressing these challenges in the future.

While we believe all of these recommendations are interrelated and important, we have intentionally listed them in an order that we believe would allow Monroe County to build upon achievable goals in the near term, while also working toward longer-term goals.

### **1. Partner with youth to discuss and develop additional diversion options for youth in the community.**

CCLP appreciated the effort that Monroe County stakeholders made to schedule interviews and focus groups with young people, including compensating those young people for their time. The insights from these young people, of which there were many, provide a foundation for many of these recommendations. While it will ultimately be up to Monroe County stakeholders to decide which recommendations to pursue, any discussions, planning, and reform work should be done in partnership with young people. There are many resources available on authentic youth partnerships in youth justice reform, including within the JDAI network (e.g., the recently formed Albuquerque Justice for Youth Community Collaborative). We have also been encouraged by recent efforts in Monroe County to obtain additional insights on how to

meaningfully partner with young people. Many of the young people interviewed for this assessment expressed interest in being part of any such effort. And, as one young person noted, “We know what we need. We want to be heard, not to be told.”

## **2. Create written criteria outlining eligibility for diversion and expand the number of times youth can be eligible for diversion.**

As mentioned above, Monroe County does divert many youth from deeper and more formal involvement with the youth justice system through referrals to other agencies, dismissals, and placement on informal adjustment. This clearly is a strength of the County, and a reflection of the good working relationship between probation and other stakeholders, including prosecutors and law enforcement. When probation intake staff recommend diversion decisions, they use a variety of screening and assessment tools. However, they also consider the totality of the youth’s circumstances and needs, recognizing that a young person cannot be judged on the nature of an offense itself. Intake staff clearly use a thoughtful approach to their recommendations and are clearly focused on keeping young people out of the system whenever possible. Additionally, final referral disposition decisions are made using a “blinding” process that does not include race, ethnicity, or names – a step that has been shown to promote more equitable decision in some child welfare and youth justice contexts.

Notwithstanding the use of diversion in Monroe County, there are limitations on its use – limits that many jurisdictions have reconsidered in recent years. First, there is a general expectation youth can be eligible for diversion via informal adjustment only once, although there are occasional exceptions made. This limit on eligibility for diversion is significantly more stringent than other state and local jurisdictions which have sought to expand opportunities to divert youth to community-based resources. For example, as part of comprehensive, bi-partisan youth justice reform enacted in Utah, the state expanded its use of diversion. Among other things, Utah standardized and expanded pre-court diversion by establishing statewide criteria for nonjudicial adjustments and requiring that intake officials offer all youth referred for infractions, status offenses, or misdemeanors the option of nonjudicial adjustments unless the youth had more than three prior adjudications or had been unsuccessful in four or more previous nonjudicial adjustments.<sup>14</sup>

Second, there is significant weight given to recommendations to a particular screening tool when making diversion decisions, the Indiana Youth Assessment System Diversion Tool. The tool asks a series of questions to assign point values to a young person, categorizing them as “low,” “moderate,” or “high risk.” While there can be value in screening instruments, there are also concerns. For one, such instruments may include factors which are highly discretionary or are known to be disproportionately true for youth of color. Some of the factors that could fall within those categories on the IYAS Diversion Tool are:

- Age at first contact with the youth justice system under 16, which assigns youth one point.
- Parents or siblings having been arrested, which assigns youth one point.

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<sup>14</sup> Pew Charitable Trusts, *Utah’s 2017 Juvenile Justice Reform Shows Early Promise* (2019), available at [https://www.pewtrusts.org/-/media/assets/2019/05/pspp\\_utahs-2017\\_juvenile\\_justice\\_reform\\_brief\\_v3.pdf](https://www.pewtrusts.org/-/media/assets/2019/05/pspp_utahs-2017_juvenile_justice_reform_brief_v3.pdf).

- Parents are not able to provide adequate supervision, which assigns youth one point.

Given that simply earning two points labels youth as moderate risk, there are concerns that the IYAS may unnecessarily limit diversion options – and may do so more frequently for youth of color. To be sure, such screening tools often are grounded in research on factors that can be associated with future justice system involvement. However, these tools frequently fail to acknowledge the bias which may be associated with those factors. Not only that, such tools may not quantify the beneficial outcomes associated with diversion, or the fact that a jurisdiction chooses to prioritize keeping youth out of the system from the perspective of youth well-being (given what research says about the potential harms of system involvement). At a minimum, CCLP would strongly encourage conducting a validation study of the IYAS to determine whether the tool promotes or limits equitable diversion decisions.

Finally, while Monroe County is diverting many youth, there are no written eligibility criteria or designations for mandatory or discretionary diversion. As mentioned throughout, more and more jurisdictions have adopted mandatory or presumptive diversion criteria. Such criteria can allow for some degree of discretionary decision-making, but having written criteria helps ensure that there is consensus on which cases should be diverted, and clear accountability for making decisions consistent with those criteria.

**3. Ensure that informal adjustment reflects practices associated with true diversion, and that it is not used for situations where a referral to a community-based service or entity is most appropriate.**

As is true in many jurisdictions, Monroe County’s probation department has the option, in certain circumstances, to divert cases from deeper system involvement through the use of “informal adjustment.” The fact that Monroe County actively uses this option is positive. However, there are several ways that informal adjustment departs from best practices in the field. First, youth placed on an informal adjustment are assigned to the same ten standard terms and conditions as youth who are placed on probation. The youth justice field has moved away from the use of standard terms and conditions and incarceration for violations of those terms and conditions for youth. In 2017, the National Council of Juvenile and Family Court Judges issued a resolution on the need to align probation practice with the principles of adolescent development, recommending ending the use of standard terms and conditions.<sup>15</sup>

Other leading national organizations have also followed suit. In 2018, the Center for Juvenile Justice Reform at Georgetown University and the Council of State Governments Justice Center issued a report that called for jurisdictions to “[t]ie conditions of supervision directly to youth’s delinquent offenses.”<sup>16</sup> CCLP acknowledges that Monroe County is currently examining its terms of probation using a race equity impact analysis – work that is certainly worthwhile.

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<sup>15</sup> National Council of Juvenile and Family Court Judges. (2017). *Resolution Regarding Juvenile Probation and Adolescent Development*. [https://www.ncjfcj.org/sites/default/files/Fnl\\_AdoptedProbationPolicyResolution\\_7-2017\\_1.pdf](https://www.ncjfcj.org/sites/default/files/Fnl_AdoptedProbationPolicyResolution_7-2017_1.pdf).

<sup>16</sup> Weber, J., Umpierre, M., & Bilchik, S. (2018). *Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes* pg. 12, available at <https://cjjr.georgetown.edu/wp-content/uploads/2018/05/Transforming-Juvenile-Justice-Systems-to-Improve-Public-Safety-and-Youth-Outcomes.pdf>.

However, CCLP recommends Monroe County stop applying standard terms and conditions for youth placed on informal adjustment, tailoring any requirements to specific goals.

Second, youth are placed on informal adjustment for a period of six months, with the possibility of extending to nine months of supervision. As the Annie E. Casey Foundation notes, best practices for diversion should resolve cases within three months or less.<sup>17</sup> Shorter periods can help target interventions toward immediate needs and reserve scarce probation resources for cases requiring more intensive supervision.

Third, youth can be assessed fees when placed on informal adjustment. Many stakeholders noted significant socioeconomic disparities within Monroe County, particularly for Black youth and families. While many individuals stated fees were not consistently assessed or collected, the use of informal adjustment as a true diversion option would not involve the potential to accrue fees for being diverted. This is also consistent with the Annie E. Casey Foundation's probation transformation framework,<sup>18</sup> and the movement of many jurisdictions to end the use of fines and fees in the youth justice system.<sup>19</sup>

Finally, some stakeholders expressed concern that youth could be placed on informal adjustment for referrals that would be better handled through a referral out to a community-based resource. For example, the reasons a young person is not attending school are often complex and related to unmet youth and family needs. Many individuals shared that a period of monitoring akin to probation supervision was unlikely to meaningfully meet those underlying needs. To be sure, many noted more should be done to intervene prior to referring a youth to court for truancy. For example, some individuals interviewed noted that simply providing parents or guardians notice of unexcused absences should not be considered an "intervention," as it does not go to identifying or meeting root causes of truancy. CCLP was encouraged to hear there was work underway prior to the pandemic to develop a truancy diversion program. We hope that work resumes, as more and more jurisdictions are removing issues such as truancy from court jurisdiction altogether.

#### **4. Expand what can be considered a diversion option, and resource non-traditional pro-social opportunities to serve in that capacity.**

In many jurisdictions, officials divert youth to a fixed set of services or programs identified to address particular issues, such as substance use disorders or behavioral health needs. While youth who do have significant unmet needs should receive appropriate interventions, this arrangement often means diverted youth have a similar experience to youth on probation, albeit with reduced levels of supervision.

However, in more and more jurisdictions, officials are expanding options for diversion to focus on non-traditional pro-social opportunities. For example, as part of its probation transformation work with the Annie E. Casey Foundation, Pierce County, Washington's probation department now funds boat building, skateboarding, yoga, and bicycle repair, as well as programs at the

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<sup>17</sup> Mendel et al., *supra* note 2, at 28.

<sup>18</sup> Mendel et al., *supra* note 2, at 14-15, 38.

<sup>19</sup> Mendel et al., *supra* note 2, at 38.

local YMCA. The county is also funding a local organization to provide mentors for youth.<sup>20</sup> This programming is available for youth on probation, but Pierce County can also use it as a diversion option to connect youth with positive activities, peers, and adults.

Monroe County has the potential to move in the same direction, particularly given the wide array of youth-focused programs and initiatives in the jurisdiction. Indeed, in a survey of youth service providers completed as part of this assessment, 33% of respondents noted that they currently accepted diversion referrals, and 33% stated they would consider taking referrals if they had additional resources. Additionally, nearly 90% of respondents (87.5%) indicated they were interested in receiving more information about referrals for diversion.

Use of a broader array of pro-social programs explicitly as diversion options will require more specific conversations, but CCLP believes those conversations are worth having. Almost all youth interviewed as part of this assessment raised the need for more opportunities to connect with youth and adults, a theme that would be consistent with such an effort. To be sure, many individuals (including young people) raised the cost of some programming and transportation as barriers to participation, which would have to be addressed. However, as noted above, jurisdictions such as Pierce County have made direct investments in programs to have the capacity to work with youth, and other jurisdictions have employed flex funding to support barrier removal for youth and families who need it.

One specific area of need that was identified by almost all youth and adults consulted during this assessment was increased access to mentorship opportunities for youth. Many youth expressed a feeling that they did not have many, if any, adults who they trusted for advice or support in their lives. Research and our own life experiences underscore how important these connections are, particularly during childhood and adolescence. For this reason, Pierce County and other probation departments have invested in mentorship and credible messenger programs. Monroe County does have existing mentorship opportunities, including the BOYS to MEN program offered by the Boys & Girls Clubs of Bloomington and Big Brothers Big Sisters of South Central Indiana. We strongly encourage increasing investments in existing programs or identifying and developing new mentorship opportunities for young people that can be part of a continuum of diversion options in Monroe County.

##### **5. Expand the use of direct referrals to programs and services for status offenses in lieu of paper referrals and arrests.**

As noted above, Monroe County should be applauded for diverting a significant percentage of referrals that it receives from deeper system involvement. The fact that Monroe County does divert so many referrals, though, raises the question of whether diversion could occur earlier in the process and outside of the formal youth justice system. Identifying community-based organizations to respond to referral reasons such as truancy and other status offenses would be consistent with current trends in the youth justice field, which have focused on having diversion occur through community-based organizations instead of within the court system.

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<sup>20</sup> Mendel et al., *supra* note 2, at 33.

More and more jurisdictions are taking steps to remove these referral reasons from the jurisdiction of probation and court altogether. For example, Connecticut removed truancy and disobeying school rules from court jurisdiction in recent years. Youth are now referred to community-based services if youth or their families need help – specifically, Connecticut’s Youth Service Bureaus (which are similar to Indiana’s Youth Service Bureaus). Youth cannot be referred to the justice system and have a court case initiated for these reasons. Connecticut’s Department of Education [put out guidance and resources](#) for the equivalent of the state’s local management boards when state law was changed to prohibit court referrals for truancy and defiance of school rules. This included a [chronic absence prevention and intervention guide](#).

Many stakeholders expressed interest in such an entity, which could rapidly field and respond to youth referred for a variety of reasons which are not threats to public safety. Many young people were interested in such an option, too, with one young person noting “Instead of asking ‘What can you do better?’, ask ‘What do you need?’” Monroe County has no shortage of youth-serving community-based organizations, and it is likely one or more of those entities could be resourced to serve in this capacity.

**6. Enhance and increase the use of restorative practices, both in school and as an alternative to informal adjustment and probation.**

More and more jurisdictions are building restorative responses into their diversion systems in lieu of referral to court and probation, recognizing restorative responses teach skills and competencies, build victim empathy, and provide meaningful ways for harm to be repaired and for victims to engage in a growth opportunity for the young person if they choose to participate. They can also achieve better public safety and youth outcomes. For example, a 2017 report written by Impact Justice’s Restorative Justice Project showed that youth who were formally processed in court were twice as likely to reoffend as youth diverted into a Restorative Community Conferencing (RCC) program.<sup>21</sup> Following the RCC, facilitators asked participants to complete a survey to evaluate the process and its outcomes. Ninety-one percent of victim participants who completed the survey reported they would participate in another conference, and an equal number (91%) stated they would recommend the process to a friend.

Monroe County has the benefit of a local restorative justice provider, the Community Justice and Mediation Center (CJAM), which probation does use as a diversion option. However, there are no written criteria for when referrals could be made. The Monroe County Community School Corporation (MCCSC) is exploring the use of restorative practices within its schools, including in lieu of other disciplinary sanctions, which is encouraging. However, there is no formal partnership between the CJAM and MCCSC to facilitate restorative responses.

Additionally, some expressed there could be more done to build up existing capacity for the use of restorative practices beyond what currently exists. This includes ensuring the current use of restorative practices is aligned with research and best practices on facilitation of restorative responses, particularly with respect to diversion. For example, Impact Justice, which has been a recognized leader in the implementation of restorative practices as a diversion option, has an

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<sup>21</sup> *Id.* at 27 (citing sujatha baliga et al., [Restorative Community Conferencing: A Study of Community Works West’s Restorative Justice Youth Diversion Program in Alameda County](#) (2017)).

online [Restorative Justice Toolkit](#), focused on diversion of youth, which could be a good starting point to examine where current practices may depart from the most effective practices. For example, while restorative processes certainly focus on providing an opportunity to repair harm, it is a best practice to avoid labeling participants as “offenders.” It is worth examining Monroe County’s current restorative justice diversion process using the online toolkit to identify potential opportunities for improvement.

After completing the components of the Restorative Justice Toolkit, jurisdictions have an opportunity to request training from Impact Justice, which may be of interest. However, organizations such as Impact Justice or the [Center for Restorative Justice](#) at Suffolk University may also be able to provide an assessment and direct support to expand the use of restorative practices as a diversion option, including in schools. While it would take additional resources to expand the use of restorative practices as a diversion option in these ways, the investment would likely yield many positive results, including the potential for quicker resolution of incidents where a young person has caused harm, higher victim satisfaction rates, and fewer youth who experience formal involvement with the court system.

**7. For youth referred for misdemeanor offenses, consider a diversion model that uses a case management model as opposed to a traditional supervision-based probation model.**

Because of Monroe County’s work on youth justice reform, the Monroe County is in a position to consider innovative and results-oriented models for diversion which would not be feasible in other jurisdictions. This is particularly true for referrals for misdemeanor offenses, which have been a focus of other jurisdictions’ work to expand the use of community-based diversion options in lieu of diverting youth after a referral to the system.

For example, Lucas County, Ohio – one of the jurisdictions featured in the Annie E. Casey Foundation’s Transforming Juvenile Probation report, has created a Misdemeanor Services Unit, which the report describes as follows:

*[A]ll youth referred to juvenile court on misdemeanors in Lucas County are now either diverted from court or overseen by specialized case managers in the county’s new Misdemeanor Services Unit. Based on an initial assessment, youth overseen by this unit are referred to appropriate resource providers in the community such as a mentoring program, positive youth development activity or evidence-based family treatment program. Youth may also be assigned to pay restitution and/or perform community service.*

*But unlike conventional probation cases, the case managers do not require these youth to attend regular meetings, submit to drug testing or participate in activities under threat of further court action. Most importantly, while case managers work diligently to gain young people’s cooperation, Lucas County does not return youth with misdemeanors to court for noncompliance with their service plans. Instead, these young people’s cases are terminated as unsuccessful completions.*

*Only if they commit a felony offense are youth on the misdemeanor caseload referred to court and potentially placed on probation.*<sup>22</sup>

Given Monroe County already diverts a significant portion of referrals for misdemeanors, shifting toward this kind of arrangement could further Monroe County’s goals of reducing unnecessary system involvement – akin to what has been achieved through the Stride Center.

**8. Ensure any new approaches to diversion are codified in a Memorandum of Understanding or other written agreement that includes a requirement to regularly collect, review, and report data on outcomes.**

As part of any work to implement any of the recommendations outlined above, or other changes made to diversion policies and practices, Monroe County stakeholders should ensure that such changes are documented in a Memorandum of Understanding or other written agreement. This step is not just a mere formality. Ensuring a jurisdiction’s approach to diversion is outlined clearly in writing promotes transparency and accountability among youth justice stakeholders. It also assists with sustainability by providing a framework for reforms that can survive leadership changes which will inevitably occur in the future.

This agreement should also include specific requirements to regularly collect, review, and report data on outcomes associated with diversion. These outcomes should look beyond simply recidivism and should be developed in partnership with community members. For example, the recently released report from the W. Haywood Burns Institute report, *Los Angeles County: Youth Justice Reimagined*, includes specific recommendations about defining outcomes with community.<sup>23</sup> An additional resource is a report from Human Impact Partners, *Advancing Racial Equity in Youth Diversion: An Evaluation Framework Informed by Los Angeles County*, which includes specific recommendations for outcome measures in various aspects of diversion.<sup>24</sup> Finally, the Annie E. Casey Foundation’s probation transformation framework also contains insights related to measures of success.

Several stakeholders interviewed during this assessment suggested many youth and families could only be successful with court intervention and oversight. However, we know from the research cited earlier in this publication that diversion is often the more effective option relative to formal justice system involvement. This level of transparency and data collection will help Monroe County stakeholders share the successes of its work on diversion moving forward using the measures of success most relevant for their own community.

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<sup>22</sup> Mendel et al., *supra* note 2, at 37.

<sup>23</sup> W. Haywood Burns Institute, *Los Angeles County: Youth Justice Reimagined* (Oct. 2020), available at [https://burnsinstitute.org/wp-content/uploads/2020/12/YJC\\_report\\_11.pdf](https://burnsinstitute.org/wp-content/uploads/2020/12/YJC_report_11.pdf).

<sup>24</sup> Human Impact Partners, *Advancing Racial Equity in Youth Diversion: An Evaluation Framework Informed by Los Angeles County* (July 2019), available at <https://humanimpact.org/hipprojects/evaluateyouthdiversion/>.

## TRADITIONAL VS. EFFECTIVE DIVERSION

### Substantially Reduce Probation Caseloads By Diverting Youth Involved In Less Serious Misbehaviors Away From The Justice System

	TRADITIONAL DIVERSION	EFFECTIVE DIVERSION
Population	<ul style="list-style-type: none"><li>• Inconsistent access to diversion</li><li>• Extensive research showing that youth of color get less access to diversion than white youth</li><li>• Most often offered only for youth accused of first-time misdemeanors</li><li>• Nationwide, just 44 percent of delinquency cases diverted</li></ul>	<ul style="list-style-type: none"><li>• Offered to all youth who are not involved in serious offenses and do not pose high risk to public safety</li><li>• All misdemeanor cases and all first-time nonviolent felony cases referred to diversion</li><li>• Also offered to many youth facing second or third-time felony charges, depending on assessed risk of rearrest and other case-specific factors</li><li>• At least 60 percent of delinquency cases diverted</li></ul>
Interventions and Programming	<ul style="list-style-type: none"><li>• Process closely mirrors probation</li><li>• Diverted youth often ordered to participate in intensive intervention programs/services</li><li>• Limited and inconsistent use of restorative justice approaches</li><li>• Many jurisdictions charge fees to families to participate</li><li>• Intensive intervention programs often unavailable</li><li>• Informal cases can remain open for six months, one year or longer</li></ul>	<ul style="list-style-type: none"><li>• Diverted youth never placed on probation caseload</li><li>• Most diverted youth receive only a warning</li><li>• Many others assessed and referred to programs, opportunities and resources, with no follow-up</li><li>• Widespread use of restorative justice approaches</li><li>• Intensive intervention services available to diverted youth with serious needs</li><li>• No fees or financial costs for families (beyond reasonable restitution orders)</li><li>• Cases typically resolved within three months or less</li></ul>
Role of Probation Agency	<ul style="list-style-type: none"><li>• Diversion programs and services typically overseen by probation agencies</li><li>• Many youth assigned to probation officer caseloads and supervised like youth on formal probation</li></ul>	<ul style="list-style-type: none"><li>• Responsibility (and funding) for diversion transferred to community organizations and/or non-court public agencies</li><li>• Ideally, diversion overseen by a single community-based organization or by a coalition of organizations</li></ul>
Consequences for Noncompliance	<ul style="list-style-type: none"><li>• In most jurisdictions, youth subject to referral back to court for formal processing if they fail to complete diversion agreements and comply with diversion rules</li></ul>	<ul style="list-style-type: none"><li>• No court consequences for noncompliance with diversion</li><li>• Failure in diversion results in unsuccessful completion, which can limit eligibility for diversion in any future cases but cannot lead to referral back to court</li></ul>

To learn more about the Casey Foundation's vision for transforming juvenile probation, please visit [www.aecf.org](http://www.aecf.org).

