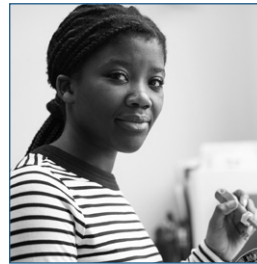


THE SUPREME COURT *of* OHIO

JUVENILE DIVERSION



TOOLKIT
for Judicial Use



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THE SUPREME COURT *of* OHIO

Juvenile Diversion *Toolkit for Judicial Use*

May 2021

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1. INTRODUCTION

Over the last decade there has been a movement to reduce the unnecessary incarceration of youth and alternatively provide diversion interventions to redirect a juvenile's delinquent behavior. The term diversion is not consistently used among juvenile courts in Ohio. Some courts believe that diversion is a process that occurs prior to the filing of a formal complaint. Other courts hold that diversion can occur at any point before disposition. Because there is no commonly understood definition of diversion, beliefs about what diversion is, and what it is not, vary. As a result, the practices of diversion also vary from community to community across Ohio.

This toolkit is intended as a roadmap offering a common statewide definition of diversion for courts to consider and highlights the decision point at which the practices of diversion occur. Diversion is an intentional act redirecting a youth from formal juvenile justice processing. The intervention(s) chosen after the decision to redirect a youth from formal juvenile justice processing are many and varied.

Note to the Reader:

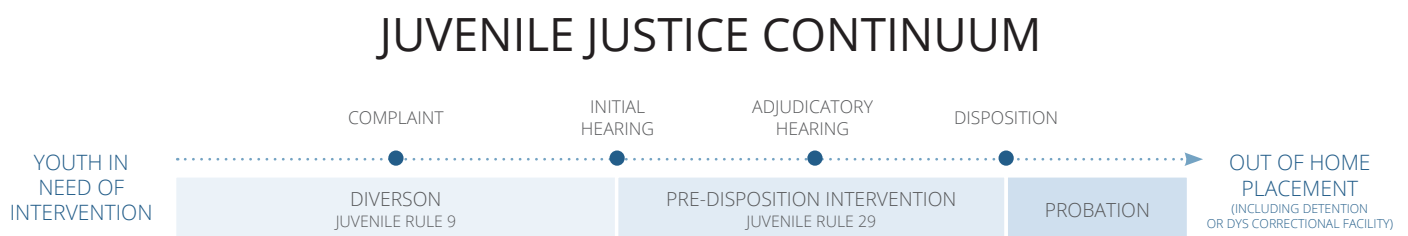
There was a conscious decision by the workgroup members to avoid referring to diversion as a "program." The word "program" implies a specific beginning or ending, a completion or failure, and generally a one-time opportunity. As reflected in this toolkit, these are not characteristics of effective diversion.



2. THE JUVENILE JUSTICE CONTINUUM

In order to begin a dialogue on diversion, the term “diversion” must be defined so there is a common understanding of what it means and where it fits within the juvenile-justice continuum. Diversion is the redirection of youth from the formal processing of juvenile court and occurs prior to the youth’s initial appearance before the judge. Rule 9 of the Rules of Juvenile Procedure calls for “formal court action” to be “avoided and other community resources utilized to ameliorate situations brought to the attention of the court.”¹

Ohio’s juvenile courts have had success adjudicating with a disposition dismissal expectation when youth successfully complete court orders and terms. While these intervention strategies are a necessary and important alternative when diversion is not practical, they themselves are not diversion. Any additional contact, service, strategy, or intervention ordered after the initial hearing through disposition is considered to be a pre-disposition intervention.



| |
|--|
| <p>Diversion</p> <p>Juvenile diversion is the redirection of youth from the formal processing of the juvenile court.</p> |
| <p>Pre-Disposition Intervention</p> <p>A pre-disposition intervention occurs after a hearing with a judicial officer is held after the filing of a formal complaint. The judicial officer imposes an intervention for the youth to complete and dismisses the complaint upon successful completion pursuant to Rule 29(F) of the Rules of Juvenile Procedure.</p> |
| <p>Probation/Post-Dispositional Supervision²</p> <p>A post-dispositional intervention ordered by a judicial officer to promote long-term success for youth who pose a significant risk for serious offending.</p> |

1 Juv.R. 9(A) emphasis added.

2 For purposes of this toolkit, the term probation includes post-dispositional supervision.



3. WHY DIVERT YOUTH FROM FORMAL JUVENILE JUSTICE PROCESSING?

While formal juvenile justice processing is necessary in some instances, it must be acknowledged that even in those cases when formal processing is necessary, harm occurs to the youth. Formal entry into the juvenile-justice system has shown to be detrimental to the future success of youth.

In 2018, 59% of delinquency referrals in the United States were formally processed, though only 6% of those cases stemmed from violent offenses.³ A 2020 report published by the Annie E. Casey Foundation found that arresting and formally processing juveniles in court significantly increases their likelihood of subsequent arrest.⁴ For example, researchers in California found that male youth formally processed were THREE times as likely to be arrested than those informally processed and NINE times as likely as those whose cases were dismissed entirely.⁵

The purpose of diversion is to redirect youth from involvement in the formal juvenile court system in an effort to hold youth accountable for their behavior without resorting to legal sanctions, court oversight, or the threat of confinement to mitigate future risk and subsequent delinquent behavior.⁶

By creating informal alternatives to court processing, diversion interventions serve as an opportunity to reduce the criminogenic effects that entry into the juvenile justice system and incarceration have on long-term youth development such as increased recidivism, stigmatization, and increased criminal-justice costs.

3 Sickmund, Sladky & Kang, Easy Access to Juvenile Court Statistics: 1985–2018, (2020), <https://www.ojjdp.gov/ojstatbb/ezajcs/>.

4 Annie E. Casey Foundation, Expand the Use of Diversion from the Juvenile Justice System, (Aug. 4, 2020), <https://www.aecf.org/resources/expand-the-use-of-diversion-from-the-juvenile-justice-system/> (accessed Feb 19, 2021).

5 Id. at 4 citing Fine, et al., And Justice for All: Determinants and Effects of Probation Officers' Processing Decisions Regarding First-time Juvenile Offenders. 23 Psychol. Pub. Pol'y & L. 105 (2017).

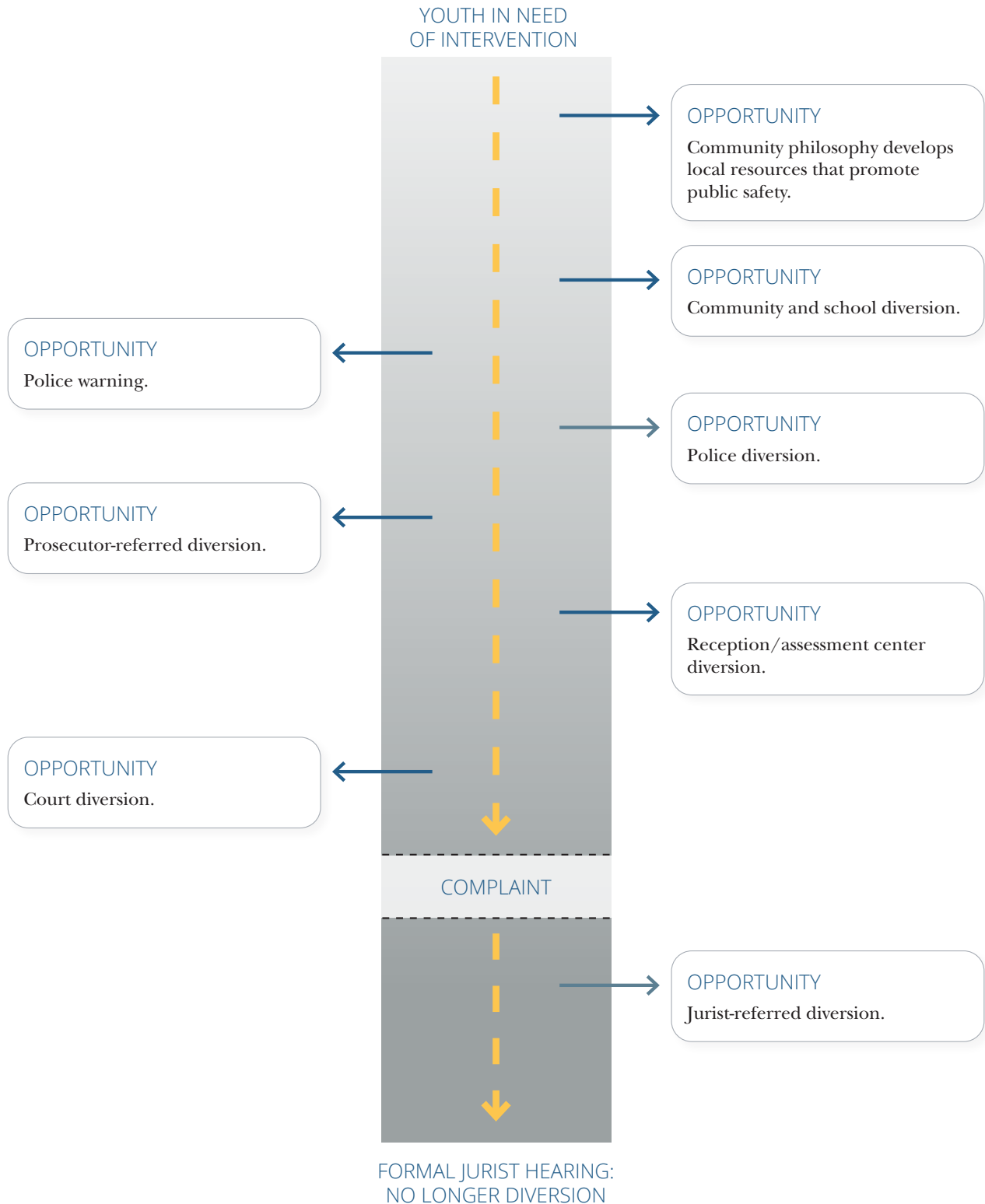
6 Annie E. Casey Foundation, What Is Juvenile Diversion, (Oct. 22, 2020), www.aecf.org/blog/what-is-juvenile-diversion (accessed Feb. 19, 2021).

Benefits of Juvenile Diversion

Juvenile diversion interventions provide benefits not only to the juvenile, but also to the court and the community.

| Benefits to the Juvenile | Benefits to the Court | Benefits to the Community |
|--|---|--|
| <ul style="list-style-type: none">• Reduces premature involvement in the juvenile-justice system;• Decreases the likelihood of subsequent arrests;• Prevents a juvenile from having a formal court record;• Increases the likelihood of success in school and future opportunities for higher education;• Promotes positive youth development; and• Maintains youth connectedness to community. | <ul style="list-style-type: none">• Reduces detention center-related costs;• Eliminates fees associated with formal court processing;• Reduces crowded court dockets;• Allows individualized interventions that address the underlying cause of the delinquent behavior; and• Reduces probation caseloads allowing officers to work with high-risk youth and chronic youth offenders. | <ul style="list-style-type: none">• Enhances public safety;• Keeps youth connected to and productive within their community; and• Reduces lifelong risk to reoffend. |

4. OPPORTUNITIES FOR DIVERSION



Rule 9 of the Rules of Juvenile Procedure directs juvenile courts to avoid formal court action and use community resources where appropriate.⁷ The definition of diversion set forth previously is rooted in the notion that diversion-intervention strategies can occur at any time up until the point of formal processing or a court's initial hearing, because the risk to youth increases upon entrance into a courtroom for a formal hearing presided over by a judicial officer.

Ideally, youth would be diverted before the filing of a formal complaint using community options such as police diversion, when a police officer directly refers youth to a municipal program, or school diversion, when students are referred to an internal school program instead of the juvenile court.

If necessary a juvenile can be screened using appropriate instruments (e.g., Ohio Youth Assessment Screen (OYAS) Diversion tool, GAIN-SS, CANS, or MAYSI-2) to best identify the youth's potential risks/needs. These screenings should be completed at an assessment center or an intake office, preferably outside of a courthouse before charges are filed, thereby eliminating the need for a complaint to be held in abeyance and later dismissed. This practice also prevents a youth from having a formal record or from having to enter a plea.

When youth assessed as low risk are diverted, they are 45% less likely to reoffend than comparable youth facing formal court processing.⁸ Both arrests and formal processing in juvenile court substantially reduce young people's later success in school and employment.⁹

The availability of community resources varies by county; therefore, diversion opportunities will look different in each court.¹⁰ There are, however, minimum characteristics necessary in order for the intervention to be effective. Courts also may seek to employ best practices by enhancing their diversion opportunities.

7 The overriding purposes of juvenile courts in matters of delinquency are to care for and protect the mental and physical development of youth, to rehabilitate and hold youth accountable, while protecting the public and restoring victims. [R.C. 2152.01.]

8 Wilson & Hoge, The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review. *Criminal Justice and Behavior*, 40(5), 497–518 (2012). <https://doi.org/10.1177/0093854812451089>.

9 Annie E. Casey Foundation, Expand the Use of Diversion from the Juvenile Justice System, *supra*.

10 It is recognized that courts have various arrangements with local law-enforcement agencies and county prosecutors' offices potentially making it difficult to provide intervention strategies before charges have been filed.

| Minimum Characteristics of Effective Diversion | Enhanced Diversion Practices |
|---|--|
| Youth attend an informal meeting with diversion staff, instead of a formal court hearing with a judicial officer. | Diversion meetings are held in a community location instead of a courthouse. |
| A risk or mental health screen is conducted on each youth. Youth are referred for a full assessment when indicated by the screen. | Youth should be accepted into diversion more than once. |
| An individualized diversion plan is developed with input from the youth and parent/guardian. | Diversion eligibility is not limited to non-assaultive misdemeanor, status, and unruly offenses. |
| Diversion plan does not include extensive standard rules/conditions. Any required programming is brief and evidence-based or -informed. | Youth/families are not charged a fee for participating in diversion. |
| Intervention does not require youth to attend standard routine meetings with diversion staff. Visits/meetings are determined on a case-by-case basis. | Youth should not be involved in any activities (such as community service) with youth on probation. |
| Prescribed youth participation normally does not exceed 90 days. | Youth participation is made on a case-by-case basis and the matter is closed as soon as possible. |
| Youth successfully completing diversion do not have a formal court record. | When possible, youth referred for diversion do not have a formal complaint filed against them. |
| Youth success is tracked for one year after diversion completion. | When possible, diversion youth should be assigned to a designated staff person who does not also supervise probationers. |



5. SAMPLE MENU OF INTERVENTION STRATEGIES

There are numerous types of intervention strategies available to a court, ranging from light-touch contact (e.g., police warning) to high-risk interventions, such as assigning a youth a diversion officer requiring regular check-ins. The type of intervention strategy used is most often determined first by the circumstances of the situation and later by the need(s) of the youth. It is important to note, however, that juvenile courts “can do more harm than good by too actively intervening with (those) youth who are not at risk of reoffending.”¹¹ **The least-restrictive option is always the one to consider first.**

RISK TO THE YOUTH

Light-Touch Contact

- Neighborhood not heavily policed
- School diversion
- Community diversion
- Police warnings
- Police make direct referral to diversion
- Admonishment (one and done)

Low-Risk Interventions

- Screening referral
- Informal diversion meeting not held in a courtroom
- Brief online course/assignment
- Prosecutor referral to diversion

Moderate-Risk Interventions

- Court-created diversion plan created
- Brief services with limited follow-up
- Mediation
- Examples: community service, apology letter, writing assignment

High-Risk Interventions

- Jurist-referred diversion (e.g., high-risk youth, felony)
- Having an assigned officer
- Having multiple check-ins

11 Annie E. Casey Foundation, Expand the Use of Diversion, supra at 6 citing Seigle, Walsh & Weber, Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in the Juvenile Justice System (2014) <https://csgjusticecenter.org/wp-content/uploads/2020/01/Juvenile-Justice-White-Paper-with-Appendices.pdf> (accessed Feb. 19, 2021).

It is important to note these strategies are not pass-or-fail interventions. If a strategy is not “successfully completed,” there is not an automatic need to increase the level of intervention, thereby moving a youth further into the juvenile justice system (e.g., formal court hearing). For example, the first attempt at an apology letter intervention might be riddled with blame toward the victim. This should provide an opportunity for correction, not an additional sanction or formal court processing. In a school setting, an example might be seeking the “why” before sanctioning or punishing a youth who habitually is absent from class.

Diversion is not for everyone. While perhaps it should be the aspiration, as stated at the outset of this toolkit, juvenile diversion is not a practical expectation for every youth. Despite best efforts, there are those youth who require the formal handling of the justice system.

6. CREATING A MENU OF INTERVENTION STRATEGIES

The types and number of intervention strategies a juvenile court offers will vary depending on the resources available to the court and within the community. It is recommended that courts create a “menu” of different types of interventions designed to meet the needs of the target population.

It is important to establish clear goals and objectives. Is there a particular need or behavior change that needs to be addressed, such as access to services, recidivism, or improving outcomes for youth? Use historical data to help determine the target population, such as first-time offenders or misdemeanor charges.

Data Collection & Intervention Strategies for Diverted Youth

Data collection and analysis play a key role in the development and oversight of intervention strategies used to promote positive strength-based results for youth and families. As data is collected, it should be reviewed regularly so that strategies can be tweaked to ensure successful outcomes.

At a minimum, courts should capture:

- Date of referral
- Date of admission/intervention (i.e., the date of the informal conference/meeting)
- Date the intervention was completed
- Whether completion was ideal or neutral
- Whether the youth returned to the court within the following 12 months to track recidivism targets

All data collected should be disaggregated by race, ethnicity, gender, geography, and offense/reason for referral. Research has found that not only are white youth being diverted more often, but also they are being diverted for more serious offenses than those of their peers of color.¹² Therefore, it is imperative that interventions be designed using a lens of race equity and inclusion. Oftentimes, strategies can create unintended disparities for youth of color.

Regardless of the intervention strategy used, it is critical to note that **the goal of diversion is to divert the young person from formal court processing**, so they have the best opportunity to successfully mature into adulthood.

¹² “A white youth involved in an offense against a person, such as aggravated assault, is more likely to be diverted than an African American youth involved in an offense against public order, such as trespassing or graffiti.” Annie E. Casey Foundation, *Expand the Use of Diversion from the Juvenile Justice System*, *supra*, at 5.

Collaboration of Community Partners

Effective community partnerships are essential to the success of the court's intervention strategies by making diversion from the formal juvenile-justice system a shared vision and value. Courts should engage community-based organizations, faith-based organizations, businesses, schools, treatment providers, and court-involved youth and families. These groups provide insight as to what services, resources, or activities may be available for youth. The more active stakeholders are involved in the process, the wider community support and positive attention diversion will receive.

Ideally, intervention strategies should be driven by the schools, law enforcement, and other community organizations in collaboration with the court, with the goal that these providers first serve the majority of identified at-risk youth who require interventions. Examples of community-driven strategies are the Summit County Police Diversion (Summit County), Columbus City Police Department Diversion (Franklin County), Montville Police Traffic Diversion (Medina), and Elementary School Engagement Initiative (Richland County).

Engaging Staff

It is essential to have all court staff members understand the risks associated with formal processing of youth and the benefits of diversion. When engaging court staff, seek their input on defining the need, creating the menu of strategies, and establishing policies and procedures. Just as it is important for the community to share the vision and value of diversion, so too should the court staff.

Training is an essential component to engaging court staff and ensuring they can carry out intervention strategies effectively. Courts should consider having staff attend trainings on topics such as motivational interviewing, restorative justice, adolescent brain development, implicit bias, cultural sensitivity, equity and inclusion, sexual orientation, and gender orientation.

Other Courts as Resources

Courts do not have to reinvent the wheel when developing diversion interventions. Many juvenile courts currently offer a menu of strategies. For example, several Ohio counties subscribe to the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) framework that seeks to eliminate unnecessary and inappropriate use of detention. Courts also have established diversion strategies with assistance from the Robert F. Kennedy National Resource Center for Juvenile Justice, Georgetown University's Center for Juvenile Justice Reform, and the Office of Juvenile Justice & Delinquency Prevention.

Regardless of the interventions a court seeks to implement, it is important to recognize that the success of any intervention hinges on the support of court staff, local law enforcement, and the county prosecutor's office. Strong judicial leadership is essential to ensuring the buy-in of these two groups from the very beginning.



7. RESOURCES

Annie E. Casey Foundation, [Expand the Use of Diversion From the Juvenile Justice System](#) (August 2020).

Annie E. Casey Foundation, [Juvenile Detention Alternatives Initiative](#)

Georgetown University, [Center for Juvenile Justice Reform](#)

Office of Justice Programs, [Model Programs I-Guides: Diversion Programs](#)

Office of Juvenile Justice & Delinquency Prevention, [Diversion from Formal Juvenile Court Processing](#) (February 2017).

Ohio Department of Youth Services, [Juvenile Detention Alternatives Initiative](#)

[Robert F. Kennedy National Resource Center for Juvenile Justice](#)

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