

# MINNESOTA JUVENILE DIVERSION

## A SUMMARY OF STATEWIDE PRACTICES AND PROGRAMMING

JUNE 2012



DEPARTMENT OF PUBLIC SAFETY  
OFFICE OF JUSTICE PROGRAMS

# **MINNESOTA JUVENILE DIVERSION**

## **A SUMMARY OF STATEWIDE PRACTICES AND PROGRAMMING**

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## INTRODUCTION

Juvenile diversion, or the intentional decision to address unlawful behavior outside of the formal juvenile justice system, has long been in practice in the state of Minnesota. In 1995, a requirement for at least one juvenile diversion program became a uniform requirement in every county under Minnesota Statute § 388.24.<sup>1</sup> This legislation further solidified diversion in Minnesota as both a cost-saving measure and a pro-social, community-based response to youth offending. Furthermore, the statute ensures that diversion is available across jurisdictions regardless of youths' county of residence.

While Minnesota statute specifies the purpose of diversion and establishes minimum eligibility criteria, most aspects of juvenile diversion programming and service delivery are left to individual counties to determine. With 87 counties, which youth receive diversion, what agency oversees programming, the conditions necessary to complete diversion, and the services offered in conjunction with diversion can vary widely. This variability can potentially result in inconsistent application of diversion or inequitable access to services among those diverted.

This report provides an overview of juvenile diversion programs and services across the state of Minnesota using information collected directly from diversion service providers. The recommendations included in this report are derived from literature related to best practices in pretrial diversion as well as gaps and inconsistencies in diversion service delivery and policy identified in the interviews. It is the intention that the findings of this report will be useful to support the work of juvenile-diversion providers; to advocate for continued and enhanced diversion opportunities; to promote greater consistency in the use of diversion; and to highlight the importance of data collection and evaluation to effective service delivery.

## PURPOSE

In 2009, the Minnesota Legislature required a study to be completed on “the feasibility of collecting and reporting summary data relating to the decisions that affect a child’s status within the juvenile justice system.”<sup>2</sup> The Minnesota Department of Public Safety Office of Justice Programs (OJP) was appointed to produce a report identifying the key decision points in the juvenile justice system and assessing Minnesota’s ability to collect data on youth at each point.

A workgroup of more than 50 representatives from law enforcement, county attorneys, juvenile courts, juvenile probation, juvenile correctional facilities, academia, policy and advocacy groups, and community members was convened throughout the year to discuss the legislative requirement. The final report, *Juvenile Justice System Decision Points Study: Strategies to Improve Minnesota’s Juvenile Justice Data (2010)*, illuminated that one area with a significant gap in state-level information was juvenile diversion services and outcomes:<sup>3</sup>

“While many law enforcement agencies use diversion programs for youth in lieu of formal referral to the county attorney, and while county attorneys are required by statute to have at least one diversion program for juvenile offenders in lieu of a referral to juvenile court, there is no comprehensive list of these programs in the state. It is unknown how many diversion programs exist, in what counties they operate, what youth populations are served, and with what degree of success...”

A specific recommendation of the *Juvenile Justice System Decision Points Study* was to create a comprehensive list of law enforcement and county attorney diversion programs, including the type of program provided;

program duration; referral source/method; and type of offender eligible to participate. One purpose of this report is to fulfill the *Juvenile Justice System Decision Points Study* recommendation and to publicly disseminate information regarding juvenile diversion. A secondary goal of this report is to present information on evidence-based practices in juvenile diversion programming, where they exist, and compare these practices to diversion in Minnesota.

Finally, exploration of juvenile diversion data relates to compliance with the federal *Juvenile Justice and Delinquency Prevention Act of 2002 (JJDP)*. This federal act requires that states receiving certain federal funds collect data on the number, race and ethnicity of youth served at nine pre-determined points in the juvenile justice system. These data must be reported annually to the federal *Office of Juvenile Justice and Delinquency Prevention* for states to continue to be eligible for federal funding. One required data collection point is the decision to divert youth from formal court processing. Because juvenile diversion activities are subject to local control, and because there is no state-level database for referrals received or cases diverted by county attorneys, Minnesota has been unable to provide diversion data at this required decision point. This report examines whether and how diversion programs collect participant data, which may inform future state-level data collection and analysis activities in support of the JJDP.

## METHODOLOGY

In 2011, OJP staff developed and tested a survey instrument to collect information from diversion providers regarding their interventions and services. The survey consisted of 100 questions related to program operations; staffing and budgets; eligibility criteria and service numbers; diversion program requirements for youth and families; data collection and outcomes measurements; and the personal perceptions of diversion providers. The survey included both closed-ended questions with set responses from which to choose, and open-ended questions which allowed participants to explain and elaborate. Survey content was piloted in one county to ensure question clarity prior to statewide implementation.

The survey instrument was designed as a semi-structured telephone interview. Juvenile diversion providers were identified in all 87 Minnesota counties and were contacted by OJP staff to schedule an interview time. Whenever possible, the person or agency directly responsible for the provision of diversion services in the county was interviewed. Due to the diverse nature of diversion programming in the state, interviewees represented county attorney's offices, probation, law enforcement agencies and community-based providers. Interview questions were provided to the participants in advance via email to allow for preparation. Interviews typically lasted 45 minutes to one hour. All interviews were completed by OJP staff or the office's Masters-level student workers.

Ultimately, 85 interviews were conducted involving 91 participants. All 87 of Minnesota's counties are represented in this study. At times, a single interview participant was able to provide information about diversion services in multiple counties. At other times, multiple interviews were necessary to fully understand diversion services in a single county. It was not uncommon for multiple staff from the same diversion program to participate in the same interview call (i.e., Supervisor, Diversion Worker and Support Staff). One participant representing a five-county service area did not complete a telephone interview, but did complete and submit a print copy of the survey.

In addition, all survey participants were asked to share their printed diversion materials with the goal of compiling a variety of diversion resources for analysis and sharing. Sixty-six counties submitted materials,

including diversion policies, brochures, notification letters, rights disclosures, assessments and assignments. Some printed resources were analyzed for this report while others will be used for later projects.

## **SCOPE OF THE STUDY**

Interview participants were informed that the scope of diversion programs for discussion were those existing under Minnesota Statute § 388.24 intended to prevent youth from having their charges forwarded by the county attorney to juvenile court. Diversion programs operated by law enforcement agencies *prior* to any submission of charges to the county attorney are excluded from this study. Law enforcement agencies were only included in this study if they are the agency contracted to divert youth on behalf of the county attorney.

In addition, an array of diversion opportunities exists after youth have appeared in juvenile court. Diversions occurring *after* a court appearance are not included in this study. Judges may order youth to complete certain conditions or a period of supervision in what are known as *Continuances for Dismissal* or *Stays of Adjudication*. These additional methods keep youth from having offenses on their permanent record by providing services and second chances to remain law abiding.

In the event participants shared information about diversion programs operated by or only accepting referrals from entities such as social services, schools or other community-based venues, those programs were also excluded. The most common example of this was truancy programs operated through non-corrections based entities and where the truancy referral did not come through a juvenile justice agency or county attorney.

Finally, by state statute, Minnesota counties must also provide *adult* pretrial diversion services. Programs diverting adults from formal criminal justice system processing are also beyond the scope of this study.

## **DATA ANALYSIS**

Survey responses were recorded on paper during the course of the telephone interviews. Because of the semi-structured, conversational nature of the interviews, not all questions were asked sequentially. Comments, clarifications and unsolicited statements were also manually recorded.

When all interviews were complete, a coding system was created such that responses could be transferred to Excel spreadsheets for analysis, allowing for easy counting, sorting and tabulating by responses and program characteristics. Any unanswered questions were coded with a “missing” variable and reported in the data tables as “Not Specified.”

Responses to open-ended questions, as well as comments and clarifications made, were analyzed using a technique known as Content Analysis. In this process, similar responses were grouped and counted by common themes. These themes were included in the report and tables when they provided context to the data or when they highlighted issues related to diversion.

Not all comments made by respondents are included in this report. On the data tables, comments made by interview participants are provided followed by the number of respondents who made a comment related to that theme in parentheses. Individual themes or comments are separated in the data tables by semicolons.



## **REPORT LIMITATIONS**

Effort was made to interview the individuals most knowledgeable about diversion in each county. Participants were asked to answer the questions to the best of their ability. However, it was not always the case that respondents knew all the nuances of programming, staffing or budgets, especially if diversion responsibilities were shared across multiple agencies. Some participants elected to leave certain questions unanswered. The data included in the report represents the best knowledge of participants at the time of the interviews.

Many counties reported having multiple diversion programs with varying eligibility criteria and conditions. In these cases, respondents were asked to provide as much information as possible for each program. At the time of data analysis, unique programs were collapsed down to represent the services available in the county as a whole. For example, if a county operated two distinct programs, one for alcohol offenders and one for shoplifters, the county would be recorded as having diversion programming for alcohol and shoplifting offenses even though juvenile offenders might not attend both programs. As such, the data represent *total* known diversion services and criteria within a county.

In the event a single participant responded on behalf of multiple counties, all counties were coded with the same information, unless the respondent provided specific distinctions between the counties. County collaboratives often have agreed upon program criteria that apply across multiple jurisdictions.

## **JUVENILE DIVERSION IN MINNESOTA**

The following section provides a brief overview of juvenile diversion activities named in Minnesota Statute or court Rules of Juvenile Procedure. While the majority of these activities are beyond the scope of this study, they illustrate the range of interventions in the state designed to minimize contact with the formal juvenile justice system and consequences associated with a record of delinquency.

### **PRETRIAL DIVERSION**

#### **JUVENILE OFFENDER CLASSIFICATION**

In one regard, Minnesota has diversion written into statute simply by the way that juvenile offenders are defined and classified. Several provisions for juvenile offenders exist that are below the level of delinquency (misdemeanor, gross misdemeanor or felony). Minnesota has a statutory provision for Juvenile Alcohol Offenses,<sup>4</sup> for use alcohol under age 21, and Juvenile Controlled Substance Offenses<sup>5</sup> for possession of a small amount of marijuana by minors. By statute, these youth are adjudicated as “petty offenders” and not as delinquents.<sup>6</sup>

Juvenile Petty Offenses also include tobacco violations and “violation of a local ordinance, which by its terms prohibits conduct by a child under the age of 18 years,” namely curfew. As such, many dispositional options are limited for these common juvenile offenses. In other states, conduct prohibited by youth under 18 or 21 are often called “status offenses” because they are unlawful solely based on age. In Minnesota, they are all under the rubric of Juvenile Petty Offenses.

In addition, the Juvenile Petty Offender designation includes most offenses which would be charged as misdemeanors if the same offense were committed by an adult.<sup>7</sup> This is an inherent diversion in that a misdemeanor level offense committed by a juvenile can twice be reduced to a petty offense by the prosecutor. In the event a juvenile commits a third or subsequent offense, they may then be charged with a misdemeanor.<sup>8</sup>

Juvenile petty offenses have lesser consequences than misdemeanors, including lower fines, fewer restrictions that can be placed upon youth, and the inability to place youth out of the home. The exception to this is that a juvenile alcohol or controlled substance offender may be placed in treatment after their third or subsequent alcohol or drug offense even though their offense is not elevated to a misdemeanor. Conversely, there are certain misdemeanors that are never reduced to petty misdemeanors. These are called “targeted misdemeanors” and they include offenses such as domestic assault; fifth-degree assault, fifth-degree arson; obscene or harassing phone calls; indecent exposure; certain weapons violations; and violation of a harassment/restraining order. While these offenses can still be diverted, they remain misdemeanor level offenses.

## **PAYABLE OFFENSES**

The Minnesota Judicial Branch is authorized to establish fines for certain unlawful behavior, which can be paid without a court appearance. These offenses are referred to as “payables.” Generally, petty misdemeanor offenses in Minnesota can be resolved by paying a fine.

As they relate to juveniles, certain traffic and petty offenses are on the *Statewide Payables List* created by the Judicial Council.<sup>9</sup> According to the *Rules of Juvenile Procedure*, a juvenile may pay a fine and submit a signed *Plea and Waiver Form*. The *Plea and Waiver Form* must advise the youth that payment constitutes a plea of guilty and an admission; that the youth understands the nature of the offense alleged; that the youth makes no claim of innocence; and that the youth’s conduct constitutes the offense(s) to which the youth is pleading guilty.

This *Plea and Waiver Form* also requires that the plea is made freely, under no threats or promises, and that the youth has and voluntarily waives certain rights, including the right to trial; the presumption of innocence until the prosecuting attorney proves the charges beyond a reasonable doubt; the right to remain silent; the right to testify on the youth's own behalf; the right to confront witnesses; and the right to subpoena witnesses.

In 2011, all alcohol offenses committed by persons under age 21 became payables, as did possession/sale of a small amount of marijuana and possession of drug paraphernalia. At the time of the interviews for this study, many practitioners were concerned about youth being able to pay fines for these offenses rather than participate in diversion. County attorneys were concerned that youth with multiple alcohol or drug citations may not come to their attention for screening, education and referral to services. Since the time of the interviews, the *Statewide Payables List* has been modified to indicate that alcohol and controlled substance offenses are *not* payables for juveniles.

## **LAW ENFORCEMENT DIVERSION ACTIVITIES**

While not required by statute, many law enforcement agencies such as police departments and sheriff’s offices have diversion options for youth. In these situations, law enforcement withholds a citation and does not forward the charge to the county attorney provided a youth completes certain conditions. Some law enforcement agencies operate diversion programs while others contract with other agencies.

## JUVENILE PRETRIAL DIVERSION STATUTES

In 1995, Minnesota Statute § 388.24 went into effect requiring every county attorney to have a pretrial diversion program for juveniles. This statute applies to youth who are alleged to have committed delinquent acts (misdemeanor, gross misdemeanor and felony). The statute places limitations on eligibility based on a youth's prior involvement with the justice system and current alleged offense. According to the statute, pretrial diversion means, "the decision of a prosecutor to refer an offender to a diversion program on the condition that the delinquency petition against the offender will be dismissed or the petition will not be filed after a certain period of time if the offender successfully completes the program." Throughout this report the goals of diversion and restrictions on participation will be explored.

An additional statute in Minnesota's Criminal Code (Minn. Stat. § 609.092) went into effect in 2009 and emphasizes the use of restorative justice programming for first-time juvenile petty offenders. These programs are to use restorative justice principles, such as inclusion of the victim in proceedings, victim restoration, and agreed upon appropriate sanctions for the youth.

The statute does not require restorative justice programming statewide. Rather, prosecutors may refer youth to a restorative justice or culturally responsive programming in lieu of traditional accountability and education-based diversion programming.

## POST-PETITION DIVERSION

Additional diversion options following a court appearance are available for youth who are not eligible for diversion; elect not to participate; or for whom diversion is revoked. Besides negotiating a plea agreement, three diversion options exist for youth following a court appearance: *Continuance for Dismissal*, *Stay of Adjudication*, and *Extended Jurisdiction Juvenile*. While this report focuses on pretrial diversion, knowledge of post-petition diversion illustrates the full range of juvenile diversion activities in Minnesota. In addition, some of these diversions have procedural safeguards and restrictions in use that can inform pretrial diversion activities.

### CONTINUANCE FOR DISMISSAL

A "Continuance" or "Continuance for Dismissal" is a diversion that occurs when a youth appears in court. Under these circumstances, no finding or admission of guilt has occurred, but rather the youth, defense attorney and prosecuting attorney agree to offer a continuance.<sup>10</sup> In essence, the proceedings are suspended for a period of time agreed upon by the parties (typically 180 days). The suspension of proceedings cannot be longer than the juvenile court would otherwise have jurisdiction over the youth were they found guilty of the offense.<sup>11</sup>

During the continuance, youth must remain law-abiding and the judge may impose conditions, including victim restitution, community service, court costs, and participation in a rehabilitation program such as treatment, counseling or education. The benefit to youth is that the child will have no delinquency offense on their record if they complete the conditions. Youth given a continuance often receive conditions comparable to those received

by youth on pretrial diversion. Because the youth has appeared in court, however, they have had the procedural safeguards of court proceedings, including representation by a public defender.

## **STAY OF ADJUDICATION**

When a youth receives a “Stay” or “Stay of Adjudication,” it means that the youth has appeared in court and the judge has determined that there is sufficient evidence for a finding of guilt. The court must find that the allegations of the charging document have been proven before it can continue a case without adjudication. Rather than adjudicating the youth as a delinquent, the judge withholds the adjudication. When a judge stays an adjudication, the case cannot remain open for more than 90 days followed by one additional 90-day period if the court re-examines and extends the continuance period. At the end of the 180 days, the judge must either honor the stay or adjudicate the youth delinquent.

During any continuance without adjudication of delinquency, the court may again give youth a wide range of consequences to fulfill. A stay of adjudication remains on a juvenile’s record and is counted as criminal history if their offending continues into adulthood. The benefit of a stay to youth is that statutory consequences which occur only after an adjudication do not go into effect such as submitting DNA.

## **EXTENDED JURISDICTION JUVENILE PROSECUTIONS**

Youth age 14 and older who commit serious offenses which, if they were committed by an adult, would result in prison time based on *Minnesota Sentencing Guidelines*, may be tried as an adult in Minnesota. This process is often called “certification” by which a juvenile is transferred to the adult criminal justice system and receives an adult sentence.

In 1994, a statute went into effect in Minnesota known as Extended Jurisdiction Juvenile prosecution (EJJ) or “blended sentencing.”<sup>12</sup> This is a dispositional option for prosecutors which allows youth with serious offenses to remain in the juvenile justice system but with enhanced accountability. Youth who receive EJJ are under the supervision of the juvenile court until they are 21 years old (as opposed to a maximum age of 19) and these youth have an adult sentence that has been “stayed.” In the event a youth does not comply with conditions of their supervision or commits a new offense, their EJJ status can be revoked and the adult sentence executed. EJJ is the final diversion opportunity afforded youth in Minnesota.

## **PREVALENCE OF PRE-PETITION DIVERSION IN MINNESOTA**

The number of youth diverted in a given year is a difficult assessment to make, as these data are maintained at the individual county level. Presumably, the number of juvenile arrests less the number of juvenile petitions filed in court reflects the number of youth who have been diverted from formal system processing for any reason. These cases include those ending in successful diversion participation as well as those that are declined by the county attorney or otherwise transferred to another child-serving agency or state.

In 2009 and 2010, data provided by the Minnesota Bureau of Criminal Apprehension and select individual police departments suggests that an average of 52,750 juvenile arrest events occurred. In these data, arrests are both custodial arrests as well as the issuance of tickets and citations. According to the state Court Administrator’s

Office, there were an average of 40,100 petitions filed in court for delinquency, petty misdemeanors/status offenses, truancy and runaway in 2009 and 2010. If total petitions are subtracted from total arrests, the remainder is an average of 12,650 cases diverted annually from judicial processing.

Diversion providers in this study were asked to estimate the number of youth diverted by their county in a typical year. When totaled, the range reported in Minnesota was between 13,000 and 14,500 per year. If one factors in an approximate 5 percent diversion failure rate (which likely go on to be prosecuted), between 12,350 and 13,775 youth are successfully diverted annually. This falls within the range of, and accounts for the majority of cases diverted from judicial processing. These calculations are further illustrated in the table below.

<b>Approximate System Stage Counts</b>	<b>2009</b>	<b>2010</b>	<b>Average 2009-2010</b>
<b>Total Juvenile Arrests</b>	55,500	50,000	52,750
<b>Total Juvenile Petitions Filed: Delinquency, Status, Petty Offender, Truancy and Runaway</b>	41,500	38,700	40,100
<b>Total Cases Not Charged (Arrests minus Petitions)</b>	14,000	11,300	<b>12,650</b>
<b>Percent of Juvenile Arrests Not Charged</b>	25.2%	22.6%	24.0%
<b>Estimate of Cases Successfully Completing Diversion Programs</b>	12,350 to 13,775	12,350 to 13,775	<b>12,350 to 13,775</b>
<b>Percent of Juvenile Arrests Diverted</b>	22.3% to 24.8%	24.7% to 27.6%	23.4% to 26.1%

While these are largely estimates and averages, they suggest that in any given year about one-quarter of all juveniles arrests are in some way diverted, and that formal diversion programs account for the majority of cases diverted. This gives diversion programs a unique and important role in the juvenile justice system. Furthermore, petition data support that just under half of all juvenile petitions filed are for petty/status level offenses. In theory, nearly 20,000 additional petitions a year could be diverted as non-delinquency matters.

## OTHER RECENT ASSESSMENTS OF JUVENILE DIVERSION

Before proceeding to Minnesota's diversion data, it is worthwhile to highlight other assessments of juvenile diversion which occurred at a similar time as this study. These distinct activities inform and support this study, and one another, in making a comprehensive argument for consistent, quality diversion programming.

### 1. THE JUVENILE JUSTICE COALITION OF MINNESOTA: *MINNESOTA DIVERSION GUIDEBOOK* AND DIVERSION DATABASE

In April 2011, the *Juvenile Justice Coalition of Minnesota* (JJC) released a report entitled the *Minnesota Diversion Guidebook*.<sup>13</sup> The JJC is a systems change, advocacy-based organization that promotes state-level juvenile justice reform throughout Minnesota. The JJC is an association of juvenile justice-related organizations, state agencies,

leaders and stakeholders.<sup>14</sup> A subcommittee of JJC members convened to create the *Minnesota Diversion Guidebook*.

The *Minnesota Diversion Guidebook* lends insight to the topic of diversion in the state by defining diversion; providing research on the appropriateness of diversion for a significant percentage of non-violent, non-chronic juvenile justice offenders; and presenting evidence that diversion is a cost-effective response to low-level delinquent behavior through review of Return on Investment (ROI) analyses.

The guidebook also includes proposed criteria for the state of Minnesota to use as a whole to ensure that diversion services are equitably applied, that the rights of juveniles are upheld, and that youth diverted receive a quality intervention which can be evaluated for effectiveness.

In 2010, the JJC partnered with Minnesota Help Info, a public resource website, to post known diversion programs on JJC's website to assist law enforcement with identification of available community-based resources and encourage greater use of diversion. This activity assists in identifying law enforcement level diversion programs, consistent with the recommendations of the *Juvenile Justice System Decision Points Study*.

## **2. THE MINNESOTA DEPARTMENT OF CORRECTIONS' JUVENILE DIVERSION SURVEY**

The Minnesota Department of Corrections (DOC) had also recently surveyed select counties regarding juvenile diversion programs in the counties where the DOC provides juvenile probation services. Minnesota has a three-tiered probation delivery system such that the DOC (state employees) provides juvenile probation in about one-third (28) of counties. In the other two-thirds of counties, juvenile probation services are provided by the county and county employees.

The DOC sent a print survey to its regional supervisors regarding basic diversion information in their area, including who runs the diversion program; eligibility requirements; who makes the diversion decision; length of diversion and conditions to be met; whether rights and benefits of diversion are discussed; and whether data is collected on outcomes. At the time, the survey results were being collected and used internally and on the aforementioned work with the JJC. The DOC did share their collected survey responses (17 counties) with OJP in support of this study. The information provided by the DOC supplemented but did not replace interviews in this study.

## **3. THE MODELS FOR CHANGE INITIATIVE: *JUVENILE DIVERSION GUIDEBOOK***

At the national level, the John D. and Catherine T. MacArthur Foundation's Models for Change Initiative released a report entitled *Juvenile Diversion Guidebook* in March 2011.<sup>15</sup> One purpose of the *Juvenile Diversion Guidebook* is to explore whether there is consistency in how juvenile diversion is delivered from state to state. The workgroup distributed a comprehensive survey about juvenile diversion programs in 16 states resulting in responses from 36 distinct programs. The survey responses illuminate a wide range of services and eligibility criteria nationwide.

Another objective of the Models for Change *Juvenile Diversion Guidebook* is to provide information regarding how to plan, implement or improve juvenile diversion programming. The report outlines 16 specific steps that agencies should take when developing a juvenile diversion program. These steps range from defining purposes and objectives to prioritizing data collection and assessment.





## REPORT FRAMEWORK: THE 16 STEPS OF DIVERSION PLANNING

Because the “16 Steps” of the aforementioned Models for Change *Juvenile Diversion Guidebook* clearly depict the key questions that must be answered when planning or improving juvenile diversion, and because the content of their juvenile diversion survey so closely matched that of OJP’s survey, this report uses the framework of the Models for Change *Juvenile Diversion Guidebook* as a template for presenting Minnesota’s data. The 16 planning and program improvement steps in Models for Change *Juvenile Diversion Guidebook* are as follows:

<b>THE MODELS FOR CHANGE INITIATIVE <i>JUVENILE DIVERSION GUIDEBOOK</i></b>	
<b>16 STEPS FOR PLANNING A DIVERSION PROGRAM</b>	
<b><u>Section A: Purpose</u></b> 1. Program Objectives 2. Referral Decision Points 3. Extent of Intervention  <b><u>Section B: Oversight</u></b> 4. Operations 5. Funding  <b><u>Section C: Intake Criteria</u></b> 6. Referral and Eligibility 7. Screening and Assessment	<b><u>Section D: Operation Policies</u></b> 8. Participant Requirements 9. Services 10. Incentives 11. Consequences of Failure to Comply 12. Program Completion/Exit Criteria  <b><u>Section E: Legal Protections</u></b> 13. Information Use 14. Legal Counsel  <b><u>Section F: Quality</u></b> 15. Program Integrity 16. Outcome Evaluation

This report is divided into the six sections depicted in the table above (A-F), and further divided by the diversion planning steps (1-16). A summary of each step presented in the Models for Change *Juvenile Diversion Guidebook* is provided, followed by a presentation of Minnesota’s diversion survey results related to that step. Each section includes literature review and information about best practices in juvenile diversion, concluding with a section summary and recommendations.

This report includes one additional section (G), capturing the opinions of diversion providers as to what additional diversion service needs exist in Minnesota.

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# SECTION A: PURPOSE OF DIVERSION

## STEP 1. PROGRAM OBJECTIVES

According to the Model for Change Initiative's *Juvenile Diversion Guidebook*, it is vital when planning and implementing a juvenile diversion program to consider the purpose of the program. To determine this, two questions must be addressed:

- What will be the primary objectives of the diversion program?
- What stakeholders from the public and private juvenile justice youth services systems will be involved to provide input and support in shaping program development?

The Models for Change *Juvenile Diversion Guidebook* suggests that to identify the objective(s) of the program, it is important to invite stakeholders to the discussion, including juvenile probation officers, law enforcement agencies, county attorneys, program planners, school staff, community members, families and juveniles.

Many different stakeholders have a variety of views on what the purpose of a diversion program should be. One stakeholder may value reducing cost while another may value accountability. It is important when determining program objectives that planners consider each perspective and establish objective(s) to address community needs.

Diversion program objectives need to be clear and concise. Establishing a clear purpose helps not only to inform the community of the program's goals, but also guides future program activities. Another value of identifying objectives is that a clear purpose allows for evaluation of outcomes of the program. The Models for Change *Juvenile Diversion Guidebook* includes as examples the following potential program objectives: reducing recidivism; providing services; reducing system costs; reducing unnecessary social control; increasing successful outcomes for youth; assuring accountability; avoiding labeling effects; and reducing the overrepresentation of youth from communities of color in the juvenile justice system (Disproportionate Minority Contact).

## MINNESOTA FINDINGS

According to the Minnesota statute governing juvenile diversion, pretrial diversion in Minnesota means "the decision of a prosecutor to refer an offender to a diversion program on the condition that the delinquency petition against the offender will be dismissed or the petition will not be filed after a specified period of time if the offender successfully completes the program."<sup>16</sup> Diversion must be "designed and operated to further the following goals:

1. Provide eligible offenders with an alternative to adjudication that emphasizes restorative justice;
2. Reduce costs and caseload burdens on juvenile courts and juvenile justice system;
3. Minimize recidivism among diverted offenders;
4. Promote collection of restitution to the victim of the offender's crime;
5. Develop responsible alternatives to the juvenile justice system for eligible offenders;
6. and to develop collaborative use of demonstrated successful culturally specific programming, where appropriate."

Because the purpose of juvenile diversion is written into statute, this study did not expressly ask respondents to state the purpose of their diversion program. Respondents were asked, however, to send in copies of their print materials for youth and families involved in diversion. A sampling of materials was provided by 66 counties (76%). These documents were reviewed for the stated purpose of diversion and youth benefits.

## PURPOSE AND BENEFITS OF DIVERSION

The most commonly stated purpose of diversion found in Minnesota diversion materials was “an alternative to formal juvenile justice system processing.” Of the 66 counties that submitted materials, 59 percent included some reference to diversion as an alternative to adjudication, prosecution, system involvement or court.

The benefits of diversion for the juvenile justice system and for youth themselves were equally represented in the sample of materials. In 24 counties (36%), system benefits named included reduced recidivism, reduced costs and caseloads, and the balancing of public safety. In the same number of counties (36%), materials also emphasized the benefits of diversion for youth. The most frequent benefit promoted for youth was the dismissal of the charge or the absence of an offense on their record. A faster response for youth than court and less costly fines or fees were also named as benefits.

<b>Purpose/Benefits of Diversion in Print Materials Totals ≠ 100%</b>	<b>Number (Percent) of Counties N=66</b>	<b>Select Comments</b>
<b>Alternative to Formal Processing</b>	39 (59%)	Alternative to prosecution/court (25); Alternative to formal justice system involvement (11); Alternative to adjudication (3).
<b>System Benefits</b>	24 (36%)	Reduce costs/caseloads/court calendars (14); Reduce recidivism (8); Balance public safety (2).
<b>Youth Benefits</b>	24 (36%)	Dismissal of petition/no offense on record (16); Faster or less costly response than court (5); Culturally responsive programming (2); Save youth cost of an attorney.
<b>Restoration of Victim</b>	24 (36%)	Collect restitution (11); Repair harm/restore relationship with victim (11); Restorative justice (2).
<b>Accountability</b>	22 (33%)	Opportunity for accountability/responsibility (12); Imposition of appropriate/meaningful consequences (8); Consistent response to offenses (2).
<b>Address Offending Issues</b>	17 (26%)	Improve decision-making/skills (7); Address problems that contribute to offending (4); Help youth understand their problems (3); Rehabilitation (2); Services for youth.
<b>Community Involvement</b>	9 (14%)	Opportunity for citizen involvement (4); Informal, community-based response (4); Use collective resources.

Reparation to victims through restorative justice or restitution payments was similarly included as a diversion purpose or benefit by 36 percent of counties. This was followed closely by 33 percent of counties that cited diversion as an opportunity for youth to take accountability and responsibility for their actions.

Additional motivations for diversion programming included the opportunity for youth to change their behavior and community involvement. Seventeen counties (26%) stated that a diversion purpose or benefit addressed the underlying reasons contributing to their offending and learned skills for better decision-making. Nine counties

(14%) promoted diversion as an opportunity to have a community-level response and involve citizens in the process.

While this is an assessment of a sampling of materials provided by Minnesota counties, clearly the purposes of diversion listed in Minnesota statute are prevalent in diversion materials created at the county-level. The exception to this is that only two counties made specific reference to culturally competent programming, as appears in statute.

The following tables relate to the number of juvenile diversion programs in each county, service areas, years in operation, geographic distribution and other diversion services offered in the county. These help to understand the current distribution of resources and the history of diversion.

## NUMBER OF JUVENILE DIVERSION PROGRAMS

Interview participants were asked how many juvenile diversion programs are currently in operation in their county. By statute, all counties must have at least one juvenile diversion program, although one county stated it had not had a juvenile petition that would meet diversion criteria in the past seven years. As such, this county responded “not applicable” to nearly all remaining survey questions. Overall, 65 counties (75%) identified one diversion program; 16 counties have two to three programs (19%); four counties have four to six programs (4%); and one county has seven juvenile diversion programs (1%).

Number of Juvenile Diversion Programs	Number (Percent) of Counties N=87
0	1 (1%)
1	65 (75%)
2	12 (14%)
3	4 (5%)
4	2 (2%)
6	2 (2%)
7	1 (1%)

## SERVICE AREA

Service Area	Number (Percent) of Counties N=87
Countywide	62 (71%)
Multiple County Service Area/Collaborative	14 (16%)
Countywide & Out-of-County Residents	5 (6%)
Partial County	1 (1%)
Various Cities Throughout County	2 (2%)
Not Specified (2)/ Not Applicable (1)	3 (4%)

The majority of counties (71%) indicated that their diversion service area is countywide. Five counties specified that they serve their county and also accept youth who reside in other counties. Fourteen counties (16%) are a part of a multiple county service area or collaborative. Only one county diverts youth from one region of the county, but reports that efforts are underway to expand diversion to the other half of the county soon. Two county providers (2%) listed the specific cities in which diversion services are located around the county. The youth’s geographic residence in the county dictates where they will receive diversion services.

The unique juvenile probation service delivery system in Minnesota formulated under the *Community Corrections Act* of 1973 allows “one or more contiguous counties” to assume responsibility for development, implementation and operation of correctional services with a centralized administration.<sup>17</sup> For some counties, diversion services are the same among their multiple county service area, whereas others referenced little similarity to other counties in their joint powers agreement.

## YEARS IN OPERATION

Interview participants were asked how long juvenile diversion programming had been in operation in their county. The statute requiring diversion was enacted in 1994 with an implementation year of 1995 (16 years ago at the time of interviews).

Nearly one-third of counties (31%) indicated that their diversion programming had been in existence for more than 20 years and prior to the statutory requirement. An additional 42 counties (48%) expressed that they have had diversion for 10 to 20 years. Twelve counties (14%) stated that they have offered diversion for less than 10 years.

These data are not to indicate that some counties are not in compliance with statute. Many providers expressed that they had taken over diversion services from another agency and were reporting the length of time that *their* agency or organization specifically had been in charge of diversion.

Numerous counties shared information about diversion programs or services that went into effect more recently, including truancy diversions, teen courts, sexting curricula and restorative justice programs. It was also not uncommon for providers to cite (or identify) diversion services or programs that had previously existed but were no longer provided.

Years of Juvenile Diversion Programming	Number (Percent) of Counties N=87	Select Comments
Under 10 years	12 (14%)	Took over in 2011.
10 to 20 years	42 (48%)	Truancy since 2002; Used to be in probation department; Truancy for one year, "Sexting" diversion for past three months; Diversion was managed by community corrections until 2001; Had a teen court for 5 to 10 years that collapsed.
Over 20 years	27 (31%)	Corrections since the 1950s, mediation in 1987; 1970s; teen court since the 1980s, diversion since 2009.
Unsure	1 (1%)	
Not Specified/ Not Applicable	5 (6%)	Not specified (3); Not applicable (2).

A recommendation of the Models for Change *Juvenile Diversion Guidebook* is that community stakeholders be actively involved when designing or improving a juvenile diversion program. Many interview respondents stated that their diversion programming had existed for a long time or preceded their involvement with the agency. This report cannot comment on the degree to which other system stakeholders, community members, youth and families are involved in the creation of diversion services in Minnesota.

## OTHER DIVERSION SERVICES IN THE COUNTY

Participants were asked if additional juvenile diversion activities exist in their counties beyond those provided by their agencies. The majority of counties (49%) stated that there are no other diversion programs or services in their county. An additional 16 percent did not specify an answer to the question.

Eleven counties (13%) stated that there are diversion services or programs existing at the law enforcement level before charges are forwarded to the county attorney. Other diversion activities cited are restorative circles (7%), truancy diversion programs provided by other agencies (5%), traffic diversions (2%), tribal diversions (1%), and other social services based diversions (2%).

Are There Other Juvenile Diversion Providers/ Programs in Your County? (Select All That Apply) Totals ≠ 100%	Number (Percent) of Counties N=87	Select Comments
<b>No</b>	43 (49%)	Have adult diversion (2); Used to have a substance use program; Sheriff used to do restorative conferencing; Only other diversion is <i>Continue for Dismissal</i> from courts.
<b>Law Enforcement</b>	11 (13%)	Police department does payable for tobacco; School resource officer diversion; Law enforcement has a traffic diversion; Law enforcement has a “street level” diversion; Law enforcement can refer directly to diversion; Police department has a tobacco and property crime diversion.
<b>Circle/Conferencing</b>	6 (7%)	Circle (3); Sentencing circles (2); Training on police conferencing with kids, unsure how being used.
<b>Truancy</b>	4 (5%)	Truancy through schools (2); Truancy with human or social services (3).
<b>Social Services</b>	2 (2%)	Social services do some diversion—unsure what it is.
<b>Traffic</b>	2 (2%)	“Alive at 25” traffic diversion; Class for minor traffic violations in lieu of fine.
<b>Tribal</b>	1 (1%)	Tribal program: “talking circles.”
<b>Other</b>	3 (3%)	
<b>Not Specified/ Not Applicable</b>	16 (18%)	Not specified (13); Not applicable (3).

## STEP 2. REFERRAL DECISION POINTS

The stage of the juvenile justice process at which a juvenile is referred to a diversion program is an important component to diversion program design. There are several points of diversion prior to adjudication, including but not limited to: arrest, intake, petitioning and pretrial probation contact. Each of these steps offers an opportunity to divert juveniles out of the formal juvenile justice system. The Models for Change *Juvenile Diversion Guidebook* suggests two questions to be answered at this time:

- At what point or points will referral decisions be made?
- Who, within the processing spectrum, will be responsible for making the decision to divert youth?

In making these decisions, it is important to consider whether it is beneficial to get juveniles out of the formal adjudication process sooner rather than later and, if so, at what point. Some programs take referrals from many different points along the juvenile justice process to increase the opportunities to avoid formal adjudication.

Some argue, however, that diversion which happens after petitioning or pretrial probation contact has *not* served the purpose of diversion. At these points, juveniles may have been exposed to many juvenile justice personnel, obtained a record, been detained for a period of time, and been exposed to other juvenile delinquents or adult offenders. Therefore, diversion after petitioning has already exposed youth to many of the formal processes that diversion opportunities are created to avoid.



## MINNESOTA FINDINGS

### TIMING OF DIVERSION

The statute governing pretrial juvenile diversion in Minnesota largely dictates the point at which diversion applies. It is to apply to youth for whom there is sufficient evidence for charging, but *prior* to a plea being entered.

The stage at which juveniles enter a plea of guilt or innocence in juvenile court in Minnesota is called “arraignment.” This necessarily limits the scope of diversion to occurring before the youth appears in court for arraignment or any court stages that come later such as trial, adjudication or disposition. It is possible that youth may be diverted who have experienced detention related to their offense. Youth can appear in court following detention whereby a decision is made by a judge to release them into the community. The offense for which they were detained may still be diverted from further court processing.

In short, the diversion opportunity created under statute applies prior to significant contact with the justice system, negating some of the exposure the Models for Change *Juvenile Diversion Guidebook* warns of. In fact, in the comments section of Minnesota’s Court Rules for Juvenile Procedure (Chapter 14), states that “with statutory pretrial diversion readily available for less serious juvenile offenders, presumably the use of continuance without adjudication and continuance for dismissal under these rules will become less common.”<sup>18</sup> Essentially, the need for diversion later in the justice system will be reduced by increased diversion opportunities before court filing.

### DIVERSION REFERRAL SOURCE

Referrals to diversion services in Minnesota come from a variety of sources. The referral source(s) also vary depending on the agency responsible for diversion. For instance, if county attorneys are the diversion service provider, they are more likely to express that referrals come from law enforcement. Conversely, if a probation department is the appointed diversion provider, they are more likely to express that referrals come to them from the county attorney.

Ultimately, 76 counties (87%) indicate that referrals are accepted from the county attorney, followed by 35 counties (40%) that receive referrals directly from law enforcement. The third most frequent referral source was directly from schools (17%).

<b>Diversion Referral Sources (Select All That Apply) Totals ≠ 100%</b>	<b>Number (Percent) of Counties N=87</b>
<b>County Attorney</b>	76 (87%)
<b>Law Enforcement</b>	35 (40%)
<b>Schools</b>	15 (17%)
<b>Court Services</b>	11 (13%)
<b>Probation/Corrections</b>	10 (11%)
<b>Family/Self-Referral</b>	6 (7%)
<b>Social Services/ Child Welfare</b>	5 (6%)
<b>Community-Based Organization</b>	1 (1%)
<b>Not Applicable</b>	1 (1%)

Just more than one in 10 counties accept referrals from court services (13%) or the probation/corrections department (11%). “Court services” is another name for the department that oversees probation supervision in roughly one-third of Minnesota counties. If these two are combined, nearly one-quarter of counties accept referrals from their probation provider (24%).

A small percentage of counties accept referrals directly from families (7%), social services or child welfare departments (6%); or community-based agencies (1%).

## PETITION SCREENING AGENCY

Another recommendation of the Models for Change *Juvenile Diversion Guidebook* is to establish who will make the diversion decision. Minnesota statute does not provide any guidance as to what agency is to screen youth for the appropriateness of diversion. This decision is left to local county jurisdictions.

In 65 counties (75%), the county attorney's office receives the juvenile petition and screens it for diversion eligibility. The second most used agency for eligibility screening is the probation or corrections department (9%), followed by an "other" arrangement (6%). "Other" arrangements include county attorney/probation collaboratives, county sheriff, or a division of responsibilities between agencies based on the offense level (i.e., truancy petitions to probation and delinquency petitions to the county attorney). Courts are least likely to be named as the diversion screening agency (2%).

Agency Responsible for Diversion Screening	Number (Percent) of Counties N=87
County Attorney	65 (75%)
Probation	8 (9%)
Courts	2 (2%)
Other	5 (6%)
Not Specified (6)/ Not Applicable (1)	7 (8%)

## DIVERSION DECISION: STAFF

Interview participants were asked to share which employee(s) specifically make the diversion determination. In one-third of Minnesota counties (33%), either the county attorney or assistant county attorneys are responsible for making the diversion decision. In just under one-quarter of counties (23%), a probation officer or court services agent makes the diversion decision.

Paralegals and support staff are third most likely staff to make a diversion determination in 9 percent of counties, followed by a prosecuting attorney in 8 percent of counties. The diversion decision is made by a multidisciplinary team in six counties (7%). Just 3 percent of counties stated explicitly that there is a juvenile diversion coordinator who makes the diversion decision.

Person Responsible for Making Diversion Decision	Number (Percent ) of Counties N=87	Comment Totals
County Attorney	29 (33%)	Assistant County Attorney (17); County Attorney (12).
Probation Agent	20 (23%)	Probation Officer/Court Services Agent (19); Probation Team.
Paralegals or Support Staff	8 (9%)	Paralegal/Support staff (6); Case aide; Intake person.
Other Attorney	7 (8%)	Juvenile prosecution unit/Attorney (5); Juvenile Attorney (2).
Multidisciplinary Team	6 (7%)	Multidisciplinary team (3); Prosecution and corrections together (3).
Diversion Coordinator	3 (4%)	
Court Staff	1 (1%)	
Law Enforcement	2 (2%)	Sheriff's Deputy (2).
Not Specified	11 (13%)	

## STEP 3. EXTENT OF INTERVENTION

According to the Models for Change *Juvenile Diversion Guidebook*, wide arrays of interventions are available through diversion programs nationally. Some have no conditions such as “Warn and Release” or those in which youth are discharged if there are no further charges within a set time period. Many programs have specific conditions that must be met or services in which youth must participate. To determine the extent of the intervention, the Models for Change *Juvenile Diversion Guidebook* asks program staff to consider:

- What degree of intervention will the program utilize?
- Will the program provide the youth with a written contract (either formal or informal)?

For programs with set conditions, the Models for Change *Juvenile Diversion Guidebook* emphasizes that the conditions should be clear and in writing. Other suggestions for conditions outlined by the Models for Change *Juvenile Diversion Guidebook* are to:

- Express objectives that are measurable (deadlines, work hours, restitution amount, etc);
- Clearly reflect that the child is knowingly and voluntarily consents to participate in diversion;
- Clearly reflect that the juvenile and parents have been notified of their right to refuse certain conditions/requirements of diversion;
- Set a definite, limited duration;
- Include provisions relating to both incentives and sanctions; and
- Express provisions for what constitutes successful completion and termination of charges.

## MINNESOTA FINDINGS

### VOLUNTARY NATURE OF DIVERSION

According to interview respondents, in the vast majority of counties (97%) youth are informed that they have the option to decline diversion and have their case go to court. Two counties (2%) state that diversion is not optional.

Can Youth Decline Diversion?	Number (Percent) of Counties: N=87
Yes	84 (97%)
No	2 (2%)
Not Applicable	1 (1%)

### ADMISSION OF OFFENSE

Admission of Guilt Required?	Number (Percent) of Counties: N=87
Yes	68 (78%)
No	17 (20%)
Not Specified (1)/ Not Applicable (1)	2 (2%)

Presently Minnesota counties are inconsistent as to whether youth have to admit to the offense to be eligible for diversion. In 17 counties (20%), an admission of responsibility is not required in order to proceed. In more than three-quarters of counties (78%), an admission of responsibility is a condition of diversion.

## DIVERSION CONTRACT

Interview participants were asked if youth are required to sign a written diversion contract as a part of the diversion program participation. Again, the majority of counties (88%) require youth to sign a diversion contract as compared to nine counties (10%) that do not require a written contract. In cases where no contract is required, youth may be sent a letter instructing them to complete conditions on their own, but no formal meeting with a diversion agent occurs.

<b>Diversion Contract Required</b>	<b>Number (Percent) of Counties N=87</b>
<b>Yes</b>	76 (88%)
<b>No</b>	9 (10%)
<b>Unsure</b>	1 (1%)
<b>Not Applicable</b>	1 (1%)

## DURATION OF DIVERSION

The Models for Change *Juvenile Diversion Guide-book* recommends that diversion should be time-limited and that the length to complete should be clearly articulated. Minnesota counties vary in how long youth have to complete their diversion conditions, or how long they remain under the supervision of the diversion agency.

The most common maximum length of time that youth are on diversion in Minnesota is 90 days (51% of counties), followed by 26 percent of counties which allow up to six months to complete conditions. Nine counties (10%) have a diversion period of 60 days or less; three programs (3%) state they can keep diversion cases open for up to one year.

Another area where programs differ is whether diversions are complete when youth meet their conditions or when a specific amount of time had passed. This issue arose as interviews were conducted; no question addressed the issue in the interview schedule. As such, no counts or percentages are available. Nevertheless, it appears this standard varies by county. Some youth may complete diversion requirements within a week or two as compared to youth who may have their case open for several months. These differences may affect youth's ability to successfully complete their diversion without technical violations of their contract.

## FREQUENCY AND INTENSITY OF SERVICES

Diversion program representatives reported a wide range of responses when asked how often they meet with youth on diversion (frequency) and how long meetings or classes typically last (intensity).

In just less than one-quarter of counties (23%), diversion typically consists of one meeting with the youth and parent to review diversion

<b>Maximum Days of Diversion</b>	<b>Number (Percent) of Counties: N=87</b>	<b>Total Comments</b>
<b>60 Days or Less</b>	9 (10%)	60 days (5); 30 to 45 days (2); 30 days; 30 to 60 days.
<b>90 Days or Less</b>	44 (51%)	90 days (34); 60 to 90 days (7); 7 to 90 days; 14 to 90 days; 20 to 90 days.
<b>180 Days or Less</b>	22 (26%)	180 days (9); 90 to 180 days (6); 90 to 120 days (3); 30 to 180 days; 60 to 150 days; 120 days; 120 to 180 days.
<b>365 Days or Less</b>	3 (3%)	90 to 365 days (3).
<b>Not Specified/ Not Applicable</b>	9 (10%)	Not specified (7); Not applicable (2).

conditions. Additional meetings are not scheduled unless the youth is struggling to meet diversion expectations.

An additional 17 counties (20%) indicated that there is an initial diversion meeting with youth and family, as well as an educational obligation to fulfill.

Eleven percent of counties reported that they do not meet with the youth directly. In these situations a letter is sent and, if the youth accepts diversion, he or she schedules any classroom portions or work service obligations on their own. Verification that conditions have been met is sent back to the diversion agency.

Finally, 18 percent of counties reported meeting requirements that are more frequent, including monthly or bimonthly class sessions; regular meetings or check-ins with diversion staff; or regular check-ins by phone or email. While not tracked specifically, it was infrequent

that diversion programs reported a meeting for closure or discharge from diversion. A letter sent to the county attorney and the family stating that conditions were completed is the most common closing activity reported.

<b>Frequency of Meetings</b>	<b>Number (Percent) of Counties: N=87</b>	<b>Select Comments</b>
<b>No Meeting Required</b>	10 (11%)	No check-ins required (4); No meeting required (3); Letter only; No supervision requirement; Class meets 2 times for 2 hours; 2-hour alcohol and drug class.
<b>1 Meeting</b>	20 (23%)	30 minutes (4); 15 minutes; 20 to 30 minutes; 30 to 40 minutes; 30 to 90 minutes; 90 minutes; If youth isn't completing probation schedules follow-up.
<b>2 Meetings</b>	5 (6%)	15 minutes (5).
<b>Intake Meeting Plus at Least 1 Class</b>	17 (20%)	4-hour class (2); 2 to 3 hours (2); 1 hour; 2 ½ hours; 2½ to 3 hours; 2 to 4 hours; 6 hours; 8 hours; Class meets 4 times; bimonthly classes; Varies by class.
<b>Monthly</b>	9 (10%)	Varies by classes (2); 30 minutes (2); 15 minutes after the first 30-minute meeting; 90 to 120 minutes; 2 hours; 3-hour class; Monthly or bimonthly classes.
<b>Weekly</b>	7 (8%)	Check-ins every two weeks (2); 5 minutes; 10 to 15 minute check-ins; Generally weekly for ½ hour; Group 1½ hours; 2 hours for class and weekly check-ins by phone or email; Need based.
<b>Other</b>	1 (1%)	Varies
<b>Not Specified/ Not Applicable</b>	18 (21%)	Not Specified (12); Not Applicable (6).

## SECTION A: LITERATURE REVIEW AND BEST PRACTICES

### PROGRAM MISSION

In 2008, the National Association of Pretrial Services Agencies (NAPSA), published *Performance Standards and Goals for Pretrial Diversion/Intervention*. While NAPSA is a professional association that most often supports adult pretrial diversion, the goals and performance standards they support are highly applicable to juvenile pretrial diversion as well.

Not unlike the Models for Change *Juvenile Diversion Guidebook*, NAPSA emphasizes the importance of organizational structure, namely that a diversion program should have a “well-articulated mission statement as well as operational and program goals” and that the programs should be “structured to accomplish its mission and stated goals.”<sup>19</sup> NAPSA also emphasizes that the activities of the program should support the mission and be periodically reviewed to ensure that they continue to support the mission statement. The program’s mission and goals should involve the input of program staff and stakeholders, and be distributed to system partners to help organize resources to achieve the goals.<sup>20</sup>

Many states have statutes that establish statewide objectives for juvenile diversion programs. One of greatest discrepancies leading to established best practice objectives is the lack of evaluation and oversight of these objectives. The Models for Change *Juvenile Diversion Guidebook* and the Center for Juvenile Justice Reform’s report, *Improving the Effectiveness of Juvenile Justice Programs*, both direct programs to set clear outcomes that can be evaluated. Without clear outcomes, the effect of program services cannot be tracked and the ability to meet objectives cannot be demonstrated. Outcome evaluation is further explored in Section F.

### REDUCE LABELING

From a sociological standpoint, a key benefit of juvenile diversion is reducing the likelihood that youth will be labeled or self-identify as delinquent. Labeling theory suggests that the juvenile justice system negatively impacts juveniles in that secondary effects of deviance are imposed on youth when they are processed through the formal juvenile justice system.<sup>21</sup> Juveniles who are given the label of “deviant” become stigmatized and display more deviant behavior than if they had not been labeled.<sup>22</sup> From this perspective, when juveniles are diverted out of the juvenile justice system they are less likely to self-identify as delinquent.

### EARLIEST INTERVENTION

Consistent with labeling theory, literature indicates that diversion should occur at the earliest point in the juvenile justice system<sup>23</sup> and before disposition.<sup>24</sup> Early intervention provides services that can prevent further involvement with the system. It should be noted that early intervention does not entail net-widening that captures a larger population than would otherwise be processed through the juvenile justice system. One way to ensure this is that youth who are diverted meet all the necessary probable cause criteria and legal merits needed to forward the case in court.<sup>25</sup>

This is not to say that diversion services are not effective at later points in the justice system. The *Center for Juvenile Justice Reform* states that having a continuum of programs that intervene at different points in the

system has a much better chance at succeeding. This is especially pertinent to addressing chronic offenders who develop their offending habits over time.<sup>26</sup> Studies support that diversion can be safely implemented with juveniles who have more severe offenses.<sup>27</sup> Risk should be determined using a valid and reliable risk assessment tool, which is discussed in Section C of this report.<sup>28</sup> It is vital that juvenile interventions be the least restrictive based upon the needs and safety of the juvenile and community.<sup>29</sup>

## **VOLUNTARY NATURE OF DIVERSION AND ADMISSION OF RESPONSIBILITY**

A meta-analysis of family interventions supports that programs with voluntary participation had significantly reduced recidivism compared to mandatory participation.<sup>30</sup> Diversion programs should clearly define the conditions of diversion to ensure that juveniles make an informed decision to participate. This is also in line with NAPSA recommendations for adult pretrial diversion which states, “a defendant’s decision to apply for a pretrial diversion/intervention program should be voluntary and made with written, informed consent.”<sup>31</sup> The presence of a written contract ensures that all parties are aware of conditions for successful completion and consequences for non-compliance.

Whether or not individuals participating in pretrial diversion should have to admit responsibility for the offense in order to participate is a challenge. Both the Models for Change *Juvenile Diversion Guidebook* and NAPSA Performance Standards documents indicate that diversion should not be conditioned on a formal plea of guilt. However, “an informal admission of responsibility may be acceptable as a part of a diversion plan.” The terms *accept responsibility*, *admit responsibility* and *accept, admit or plead guilty* appear to largely be legal distinctions. These wordings may affect what happens if a youth fails or withdraws from diversion and goes to court. This legal issue, as well as youths’ option to waive their right to trial, is further investigated in Section E.

NAPSA maintains that potential participants who maintain their innocence should not be denied the opportunity to do so if they make an informed decision to take the diversion option. NAPSA states that it is not the place of the diversion program to compel a potential participant to procedure through the justice system if that person does not wish to do so for reasons of their own.<sup>32</sup> Furthermore, NAPSA states that the purpose of diversion is to tie the receipt of services to that most likely to prevent future arrest, not to the crime allegedly committed.<sup>33</sup>

## **RISK-RESPONSIVITY PRINCIPLE**

Research strongly supports what is known as the “risk-responsivity principle” in which the lowest-risk youth should receive the fewest formal interventions and services, and the highest-risk youth should receive the most formal interventions.<sup>34</sup> This is contrary to previous theories where it was thought that giving lowest-risk youth the greatest interventions would deter further delinquent behavior early, and that the highest-risk youth were out of reach. In order for risk-responsivity to be effective, an accurate assessment of a youth’s risk to continue to engage in anti-social behaviors or delinquency is necessary. While a youth’s offense level is a risk factor, it is only one component. Youth who commit serious crimes may not be high-risk to reoffend whereas youth who have low-level offending patterns may be high-risk to continue delinquent behavior.<sup>35</sup>

The relevance of the risk-responsivity principle for diversion is that research supports that giving low-risk youth too many interventions can actually be harmful, and have the effect of increasing deviant attitudes and behaviors.<sup>36</sup> Formal interventions can indoctrinate low-risk youth into the justice system; can label and stigmatize youth; and can compromise pro-social connections to family, school, peers and community. The



extent of the diversion youth receive, the frequency and intensity of services, and the duration of diversion ought to take this responsivity principle into account.

## **DURATION OF DIVERSION**

NAPSA standards indicate that “time limits for the duration of participation in pretrial diversion should be established.” A traditional goal of diversion is to reduce the use of formal system resources. The longer an individual remains in diversion, the more resources are utilized. In addition, duration of diversion should not be “longer than necessary to achieve the other primary goal; deterring and reducing crime.”

Generally, someone participating in diversion should not be in the program longer than they would be under sentence or supervision for committing the crime.<sup>37</sup> The literature does not suggest an ideal duration for diversion such that each jurisdiction must determine the maximum length of time that prosecution can safely be deferred. The length of deferral depends on how long it will take participants to complete conditions and what time frame leads to a demonstrated reduction in further offending.

A final consideration regarding duration of diversion is whether youth successfully complete diversion when their conditions are done, or whether they remain under the diversion contract until an agreed upon amount of time has passed. The *Models for Change Juvenile Diversion Guidebook* supports that termination when conditions are complete is a natural, cost-free incentive that programs can use to encourage youth to actively complete their contract. In addition, if a youth remains on a diversion contract after their conditions are complete, there is an increased chance that they could have their diversion opportunity withdrawn because of other conditions not directly related to their offense. Technical violations for school attendance or behaviors, or violation of household rules, expectations and parental curfews could negatively affect youth when those issues are better addressed by a community-based, non-justice system response.

## SECTION A: SUMMARY

### STEP 1: PROGRAM OBJECTIVES

- The purpose of juvenile diversion is specified in Minnesota Statute § 388.24 and is largely reflected in county-level diversion materials. These materials include reference to an alternative to formal justice system processing; reduction in costs and justice system caseloads; reducing recidivism; and making restitution to victims. Additional benefits of diversion highlighted in materials is the opportunity for youth to not have an offense on their record; for youth to take accountability for their actions; to address youths' underlying issues; and to provide the opportunity for community involvement.
- Under Minnesota Statute § 388.24, every county attorney in the state must offer at least one diversion opportunity for youth with misdemeanor to felony-level offenses. The majority of counties (75%) have one diversion program; the greatest number of diversion programs in a single county is seven. Service areas are most often countywide (71%) with an additional 16 percent as a part of a multi-county service collaborative.
- In roughly one-third of counties (31%), diversion for juveniles has been in effect for more than 20 years (longer than the statewide statute has been in effect). Nearly half of counties (49%) state that they are not aware of any additional juvenile diversion programs in effect in their county beyond their own. The most frequently cited entity operating other juvenile diversion programming was law enforcement in 13 percent of counties.

### STEP 2: REFERRAL DECISION POINTS

- Minnesota Statute § 388.24 specifies that diversion is to apply once a charging document has been filed, but before a youth makes a plea in court. As such, pretrial juvenile diversion occurs typically in lieu of court appearances or before a guilty plea is entered.
- Depending on which entity operates the diversion program, referrals for diversion are received most frequently by county attorneys (87%), law enforcement (40%), probation/court services (24%) and schools (17%).
- In three-quarters of counties (75%), the county attorney's office makes the diversion decision, followed by the probation department (9%). A county attorney or assistant county attorney is the staff person most likely to make the diversion determination in 33 percent of counties, followed by a probation agent in 23 percent of counties. Paralegals or support staff determine diversion eligibility in 9 percent of counties.

### STEP 3: EXTENT OF DIVERSION

- While a *Continuance for Dismissal* and *Stay of Adjudication* have standards of guilt, lengths of jurisdiction, and supervision conditions specified in Minnesota Statutes and court Rules of Juvenile Procedure, this is not the case for pretrial diversion. Most program components, including length of diversion and acknowledgement of guilt, are determined at the county-level. Minnesota is inconsistent as to whether

youth must admit to the offense in order to be diverted (78% yes, 20% no), and whether youth must sign a written diversion contract (88% yes, 10% no).

- The maximum amount of time youth are on diversion ranges from 60 days to 365 days. The most common length of time to complete diversion conditions was 90 days (51% of counties). Counties also vary in whether a youth successfully completes diversion once the conditions are met, or if they remain supervised until the maximum time has expired.
- Diversion programs in Minnesota vary in their intensity. Some programs send a diversion letter with conditions outlined and never meet with youth (11%); nearly half (49%) meet one or two times; and 18 percent describe meetings or classes as monthly to weekly.

## **BEST PRACTICES:**

- Diversion programs are to establish a mission and goals clearly supported by the activities of the program. The program's mission and goals should be understood by staff and disseminated to system partners and stakeholders.
- Diversion should occur at the earliest justice-system decision point as possible and always prior to disposition. Youth diverted should have cases meeting the prosecutorial merit required to bring their case to court to avoid bringing youth into the justice system who would not otherwise be involved.
- Multiple sources on diversion support that diversion participants should not have to, or be compelled to, admit guilt for the alleged offense as a condition of program participation.
- All programs should utilize a written diversion agreement or contract that confirms youths' voluntary participation and clearly states the conditions necessary to successfully complete diversion.
- Diversion programs should have time limitations that do not exceed those that the court would impose were they adjudicated for the offense. Also, the frequency and intensity of diversion services delivered should be based on the principle that lower-risk youth require a lesser intervention whereas higher-risk youth require greater intervention.
- Allowing youth to successfully complete diversion as soon as all their conditions are completed can be a built-in incentive for program participation.

## **SECTION A: RECOMMENDATIONS**

- All youth have the right to have their case heard in court in Minnesota. All youth and families must be informed that diversion is optional and they may have their case heard in juvenile court if they wish to plead not guilty.
- Diversion program providers should have a written mission statement and goals. Providers (or staff) should regularly review their program activities to ensure compliance and consistency with the goals of diversion outlined in Minnesota statute.
- Youth participating in diversion should be provided with a written contract or agreement that clearly states the conditions of their diversion and obligations they must fulfill for successful completion.
- Not unlike how post-court diversions in Minnesota have a maximum length that youth may remain on diversion before an adjudication or dismissal must be entered, Minnesota ought to have a standardized, maximum length of pretrial diversion. Based on other juvenile justice timelines, 180 days would be a consideration for discussion.
- Standardize whether youth remain on diversion until conditions are met or until the maximum diversionary period has expired. In the interest of swift accountability and limited justice-system involvement for low-risk youth, it is recommended that youth be discharged from diversion as soon as all contract criteria are complete.
- Minnesota counties vary in whether an admission of guilt is required to participate in diversion. County attorneys and public defenders ought to convene and establish a standard procedure.

## **SECTION B: OVERSIGHT**

### **STEP 4. OPERATIONS**

According to the Models for Change *Juvenile Diversion Guidebook*, it is important when planning a diversion program to answer certain questions related to program operations. These key questions are:

- What agency or office will house and maintain the program?
- How the community will be used to oversee the program?

When considering what agency will run the diversion program, several factors must be considered, one of which is the agency's reputation in the community. The past history and reputation that a public office or community-based agency has in the community will likely impact the development and implementation of any program.

Other important factors to consider is the motivation that an agency or office has in operating a diversion program, and the readiness of the agency to take on diversion responsibilities. Operating agencies include, but are not limited to, county juvenile justice services, county attorney's offices, court services, community-based agencies and law enforcement.

Advisory boards or panels can be used to oversee and monitor diversion programs. These boards or panels are viewed as a vital element for programs because of the involvement of community members and leaders. Boards and panels bring together professionals and community members from a spectrum of backgrounds to review program objectives, policies, and maintain communication with youth and their families. The more connected the board members are with the program, the stronger the relationship between the community and the program.

### **MINNESOTA FINDINGS**

The Minnesota statute governing juvenile diversion does not specify which entity must provide juvenile diversion services, only that it is the county attorney's responsibility to ensure that at least one diversion program exists. There is no restriction on county attorneys coordinating with other entities to deliver the intervention.

This section explores which agencies operate juvenile diversion in Minnesota, as well as program staffing, program capacity and budgets.

#### **AGENCIES RESPONSIBLE FOR DIVERSION PROGRAM**

The most common agency in Minnesota to operate diversion programs is the probation or community corrections department (72%). In just less than one-third of counties (31%), the county attorney's office retains the diversion program "in house." In 8 percent of counties, a community-based provider or nonprofit is responsible for operating the county's juvenile diversion programming. Just because a program is based within a probation department or county attorney's office does not mean that all diversion activities are provided or delivered from within that agency. County representatives often describe collaborative relationships where diversion is overseen by a county agency, while certain aspects of the diversion (such as educational

components) are provided by other agencies such as a community-based groups, human services, public health or schools.

Participants were not specifically asked the degree to which boards, panels or other oversight bodies are used for diversion. Some programs did reference panel-style programs and the reporting of outcomes to county boards or boards of directors. These are further described in sections related to Services and Outcome Evaluation (sections D and F). It is unknown the degree to which Minnesota diversion programs are overseen by multidisciplinary advisory groups.

<b>Agency Responsible for Diversion Activities (Select All That Apply) Totals ≠ 100%</b>	<b>Number (Percent) of Counties: N=87</b>
<b>Probation/Community Corrections</b>	63 (72%)
<b>County Attorney's Office</b>	27 (31%)
<b>Community-Based Provider/ Non-Profit</b>	7 (8%)
<b>County or State Human Services/Child Welfare</b>	3 (3%)
<b>Law Enforcement</b>	3 (3%)
<b>Courts</b>	2 (2%)
<b>School/District</b>	1 (1%)
<b>County or State Public Health</b>	1 (1%)

## STAFFING

Counties vary in the number of paid staff allocated to diversion. In nearly half of all counties (46%), diversion is the responsibility of a single staff person. This single diversion staff is often less than full-time or is full-time, but also has other caseload or administrative responsibilities. Counties that expressed having more than one diversion employee corroborated that these staff members are less than full time. At times, support staff or supervisors are included in the diversion employee count even if they do not directly participate in diversion activities.

<b>Number of Paid Staff</b>	<b>Number (Percent) of Counties N=87</b>	<b>Select Comments</b>
<b>1 or Less</b>	40 (46%)	Agent also has other case load (adult and/or juvenile) (12); Quarter- to part-time (4); Agent has other administrative/office responsibilities (2): diversion coordinator.
<b>Over 1 to 2</b>	26 (30%)	Staff have other caseload responsibilities (6); Staff plus supervisor; staff plus support staff (4); 1 FTE, .75 FTE; 1 reviews charges; 1 diversion coordinator.
<b>3 to 5</b>	11 (13%)	Five staff in 3 different programs; All part-time; 1 FT, 2 PT, 1 supervisor; 1 PO, part-time diversion worker, 1 support staff; 1 county attorney, 1 diversion coordinator, 1 law enforcement agent; All agents also lead or conduct diversion classes.
<b>7 to 11.5</b>	3 (3%)	Seven direct staff, 3 therapists; 1 county attorney and 10.5 community-based providers.
<b>Not Specified/ Not Applicable</b>	7 (8%)	Not specified (6); Not applicable.

In 76 percent of counties, diversion staff members are employees of the operating organization. In 9 percent of counties, contracted staff members are paid to deliver some aspect of diversion (such as work crew or an educational component) or a collaboration exists with another county or city agency.

Interview participants were asked if interns or volunteers are ever used in delivery of diversion services. Four in 10 counties (40%) state that they use interns or volunteers, including college students, adult community members, peer jurors, program facilitators and speakers. More than half of counties (54%) stated they do not use interns or volunteers in diversion programming or services.

Use of Volunteers or Interns in Diversion Services?	Number (Percent) of Counties: N=87	Select Comments
<b>Yes</b>	35 (40%)	College students/interns (14); Community members/adult volunteers (7); Youth volunteers/peer jurors (4); for CWS projects (3).  Other (9): Class speakers (2), Mediators; Volunteer attorneys; Program facilitators, CD counselor; Independent contractors; Interpreters; Panel members.
<b>No</b>	47 (54%)	
<b>Not Specified/ Not Applicable</b>	5 (6%)	Not specified (4); Not applicable.

## PROGRAM CAPACITY

Respondents were asked to report or estimate the average number of youth served by their program at any one given time. It was most common for a county to report that they have 10 or fewer youth on diversion at any one time (42%). Nearly four in 10 counties (38%) had between 11 and 50 youth on diversion at a time. Five counties (6%) reported over 80 youth on diversion at once. The highest report was 500 youth at a time.

Respondents were asked to report or estimate the number of youth served in a typical year. If a range of participants was provided, the highest number reported was used for the analysis. Responses were grouped in increments of 12 in order to extrapolate an average number of referrals to diversion per month.

In total, 70 percent of counties served fewer than 120 youth per year such that the average number of referrals to diversion per month was 10 or fewer. Just under one-quarter of counties (22%) reported diverting between 121-960 youth per year or 10 to 80 youth per month. Finally, five counties (6%) reported diverting between 960 and 2,400 youth per year, or an average of 90 to 200 youth per month.

Average Number of Youth Diverted at One Time	Number (Percent) of Counties N=87
<b>10 or less</b>	37 (42%)
<b>11-20</b>	9 (10%)
<b>21-30</b>	13 (15%)
<b>31-50</b>	11 (13%)
<b>80-500</b>	5 (6%)
<b>Unsure</b>	4 (5%)
<b>Not Specified (7)/ Not Applicable (1)</b>	8 (9%)

Typical Number of Youth Served in a Year	Number (Percent) of Counties N=87	Monthly Average (Calculated by OJP)
<b>0-24</b>	22 (25%)	(0 to 2/mo)
<b>25-60</b>	22 (25%)	(2+ to 5/mo)
<b>60-120</b>	17 (20%)	(5 to 10/mo)
<b>121-240</b>	13 (15%)	(10+ to 20/mo)
<b>241-960</b>	6 (7%)	(20+ to 80/mo)
<b>960-2400</b>	5 (6%)	(90 to 200/mo)
<b>Unsure</b>	2 (2%)	



## TIMELINESS OF DIVERSION

A potential benefit of diversion for both systems professionals and for youth and families is that it can be a more immediate consequence for behaviors than can be provided by the petitioning process. Interview respondents were asked to report how often there is a wait or waiting list to begin diversion. They were provided with the options presented in the table to the right ranging from *Never* to *Always*.

The majority of counties (69%) stated that there is never a wait or waiting list to enter diversion. Respondents often stated that a diversion letter is sent out to

youth and families within a week or two of having received the charge. Respondents clarified that not all aspects of diversion are immediately available. It was somewhat common for youth to have to wait for a class session or a community-service component to become available. Some of the educational and panel components met monthly, every other month, or even quarterly to allow for a sufficient number of participants. No counties stated that there is frequently or always a wait to begin diversion. Some did opine that law enforcement is not always as timely as they could be about sending the referral in for diversion screening.

How Often is There a Waiting List for Diversion?	Number (Percent) of Counties N=87	Select Comments
<b>Never</b>	60 (69%)	Can be a wait for class component (7); 1 week from referral; Very fast—2 weeks tops; Usually 1 to 2 weeks from letter to meeting; Only wait may be if referred to groups; Can take a couple months to get into diversion panel rotation.
<b>Occasionally</b>	13 (15%)	1 to 2 months (4); Can be a wait for the classroom component (3); About 2 weeks (3); Classes/committee meets quarterly (2).
<b>Frequently</b>	0 (0%)	
<b>Always</b>	0 (0%)	
<b>Not Specified (13)/ Not Applicable (1)</b>	14 (16%)	1 to 3 months (4); Class occurs monthly or bi-monthly (3); Classes every other month (2); Up to a month for diversion to meet.

## STEP 5. FUNDING

At a time when state and counties are cutting budgets and considering what areas require financial support, it can be difficult to secure funding for diversion programs. However, there are a variety of financial resources used to fund diversion programs. These range from court and county attorney budgets, to fees and grants. According to the Models for Change *Juvenile Diversion Guidebook*, there is no blueprint for funding a diversion program.

Programs must identify how much funding is needed to provide programming. When considering funding sources, the Models for Change *Juvenile Diversion Guidebook* stresses that it is important to seek out sustainable funding streams as well as exploring local, state and federal resources that can support programming. Considering how the program can be sustained long-term and keeping stakeholders informed about funding are two precautions programs can take to ensure preparation for future issues or for program expansion.

## MINNESOTA FINDINGS

State statute requires at least one diversion in every county, and establishes it as the responsibility of the county attorney to ensure programming, yet no additional funds are allocated to county attorney budgets expressly for this purpose. As such, counties use myriad methods to fund diversion programs. The following section will explore funding sources, funding stability and operating budgets.

### FUNDING SOURCES

Interview participants were asked if they were knowledgeable about how diversion is funded in their county. It was most common for programs to report that diversion activities were written into their agency budget. Sixty-two percent of counties stated that diversion was funded wholly or in part through the probation/community corrections budget. An additional 18 percent are funded through the county attorney budget and 2 percent through the courts or judiciary budget. It was very common for respondents to express that there was no line-item in their budgets for diversion, rather it was part of employees' "duties as assigned."

<b>Funding Source(s) (Select All That Apply) Totals ≠ 100%</b>	<b>Number (Percent) of Counties N=87</b>	<b>Select Comments</b>
<b>Probation/Corrections Budget</b>	54 (62%)	Part of probation duties (6); Dept. of Corrections budget; The probation officer is the program.
<b>Supervision Fees or Class Fees</b>	39 (45%)	Teen Court fee; User fee for classes; Administration fee goes to victim restitution fund; Fee helps for other kids who can't pay.  <u>Fee Range:</u> \$10-20 (2); \$25-30 (7); \$40-55 (17); \$60-80 (7); \$100 or more (4); Fee depends on class taken (3).
<b>County Attorney Budget</b>	16 (18%)	Through position salaries (3).
<b>Federal or State Grants</b>	12 (14%)	<i>Youth Intervention Program</i> Grants (4); State caseload reduction subsidy; <i>Juvenile Accountability Block Grant</i> ; Had a restorative justice grant through DOC; <i>Safe Schools Grant</i> ; SAMSHA Grant.
<b>Other Fines/Fees</b>	4 (5%)	No comments.
<b>Private Donations</b>	4 (5%)	Fundraising events; Families First Collaborative.
<b>Court/Judiciary Budget</b>	2 (2%)	Through position salaries.
<b>Business/Corporate Sponsor</b>	2 (2%)	Corporate sponsorship.
<b>Other</b>	16 (18%)	Municipal funding/city contributions (4); Schools (2); third-party insurance; Social Services; LSS; Sheriff's budget; Non-profit secures its own funding.

Nearly half of counties (45%) stated that diversion fees are collected, or that youth must pay for some aspect of diversion programming out-of-pocket. Inability to pay the fees, however, was not used to disqualify any youth from diversion. The table above illustrates supervision and user fees in effect ranging from \$10 to more than \$100. A fee of \$40 to \$55 was the most common range reported.

Diversion providers reported other funding sources outside of public agency budgets. Twelve counties (14%) stated they receive state or federal grant money for diversion programming; six counties (7%) reported

accepting private donations, or business or corporate sponsorships; and 16 counties (18%) reported receiving money from sources such as their municipality, social services agencies, insurance payments and schools.

## DIVERSION FUNDING STABILITY

Interview respondents were asked, on a scale of 1 to 5, how stable they perceived juvenile diversion funding to be in their county. Eight percent of counties rated the stability of their funding below neutral. These counties shared that they are not certain where additional funds will come from; that they have to raise the money themselves; or that their program is newer and does not have reliable funding secured.

Respondents who indicated that funding was moderately stable (15%) also alluded to the uncertainty of procuring grants, or that some diversion programs were more vulnerable financially than others.

On a Scale of 1-5, How Stable is Your Diversion Funding?	Number (Percent) of Counties N=87	Select Comments
<b>1 (Not at All Stable)</b>	2 (2%)	We have to come up with the money ourselves; Not sure once Recovery Act money runs out.
<b>2</b>	5 (6%)	A lot is funded by user fees (4); Funding is unstable; We have only been running diversion a year since another program stopped; We do maintain a fund balance.
<b>3 (Moderately Stable)</b>	13 (15%)	50/50 shot at grants; Stability is different for each program.
<b>4</b>	30 (35%)	Diversion will always be there, the question is how many agents we can keep (2); Fee has helped; It is part of our job, it will continue to happen.
<b>5 (Extremely Stable)</b>	29 (33%)	It is part of the position (5); It is something the county attorney believes in; Pretty well-ingrained in the budget; Had it for the past 10 years.
<b>Unsure</b>	1 (1%)	
<b>Not Specified/ Not Applicable</b>	7 (8%)	Not specified (4); Not applicable (3).

Counties that indicated that their diversion funding was stable (68%) most often expressed that diversion had a strong history of funding in their budgets. There was an acknowledgement even among those who classified their funding as stable, however, that they are vulnerable to reductions in the number of staff they can allocate to diversion activities based on budget constrictions.

## OPERATING BUDGET

Interview participants were asked if they were knowledgeable about their operating budget for diversion. Respondents from more than half of all counties (51%) stated they did not know the operating budget for their program. An additional 25 percent did not answer the question. Again, respondents frequently stated that diversion is a part of position duties and cannot be easily parsed out.

The range of known operating budgets for diversion programs in Minnesota was between \$0 per year and \$260,000 per year. Diversion representatives who were most likely to know their operating budgets were those who stated that their diversion program is funded, at least in part, by state or federal grants.

### **COST SAVED PER YOUTH DIVERTED**

Another benefit of diversion for the juvenile justice system is the cost savings associated with diverting youth away from formal processing. When asked, the majority of counties (85%) stated they did not have, or were not aware of, any figure related to cost-saved per youth diverted in their county. An additional 12 percent were unsure if such a calculation existed or did not answer the question.

One participant indicated that the cost of diversion per youth in their county was about \$300. A different county stated that their county has a calculation that each youth who goes to court costs about \$1,100. Overall assessments of resources saved by youth diverted or Return on Investment (ROI) analysis around juvenile diversion is lacking in Minnesota.

<b>Annual Operating Budget</b>	<b>Number (Percent) of Counties N=87</b>
<b>Unknown</b>	44 (51%)
<b>\$0</b>	7 (8%)
<b>\$3,000-\$11,000</b>	4 (5%)
<b>\$20,000</b>	2 (2%)
<b>\$40,000-\$50,000</b>	4 (5%)
<b>\$60,000-\$80,000</b>	3 (3%)
<b>\$100,000-\$260,000</b>	2 (2%)
<b>Not Specified (13)/ Not Applicable (8)</b>	21 (24%)

## SECTION B: LITERATURE REVIEW AND BEST PRACTICES

### DIVERSION AGENCY

A review of the literature does not indicate that the agency in charge of diversion has a significant effect on youth success.<sup>38</sup> While many juvenile justice agencies are well-positioned to provide diversion services, a key goal of diversion is to reduce youth contact with the formal justice system. Therefore, programs or services operated by community-based entities and in community-based locations may help to reduce stigma for youth and utilize natural community-based assets.<sup>39</sup> Community-based programs have been shown to have positive outcomes with justice system-involved youth.<sup>40</sup>

In 2006, the *National Association of Pretrial Services Agencies (NAPSA)* published a report entitled *Promising Practices in Pretrial Diversion*. In this document, nine promising practices are highlighted, the first of which is “formalized cooperative agreements between the pretrial diversion program and the key stakeholders to assure program continuity and consistency.”<sup>41</sup> Whereas many diversion arrangements between agencies have historically been informal, formalized service agreements between providers helps to ensure role clarity and prevent service disruptions that can result from turnover in leadership, elected positions and staffing. Regardless of who provides the diversion service, clear collaborations between agencies involved are a best practice.

Again, the *Models for Change Juvenile Diversion Guidebook* states that the importance of constructing an advisory board “cannot be overstated.” This allows diversion providers to have contact with myriad community partners to both broker and deliver services for youth. It is recommended that these community partners are involved in program goals and objectives from the beginning.<sup>42</sup> NAPSA Performance Standards promote that diversion program staff should be active participants in the community by regularly meeting with local representatives to ensure that program practices met the needs of the community served and the youth population diverted.

### STAFFING

The literature did not discuss how the number of program staff, or use of volunteers or interns affected diversion programs. What the literature does reveal is that program staff should have the appropriate values, qualifications and skills to provide services. It is essential that staff competence and service delivery be monitored, include supervision, and be evaluated to ensure program standards are met.<sup>43, 44, 45</sup> A review of juvenile offender research indicates that consistent staffing that builds trusting relationships with juveniles has a positive effect on juvenile behavior change.<sup>46</sup>

It is important that staff members are well-trained in the skills required to effectively deliver diversion services. Staff should be knowledgeable about the program’s mission and goals;<sup>47</sup> how to utilize screening tools and assessments;<sup>48</sup> be trained in any curricula delivered; and informed about evidence-based practices with opportunities to learn and enhance new skills.<sup>49</sup> In the event interns and community volunteers are involved, they too should receive sufficient training relative to their role in the program.

## CAPACITY AND TIMING OF DIVERSION

Although the capacity of diversion programming is not explicitly discussed in the literature, research supports that small caseloads are ideal for case management.<sup>50</sup> Although, waiting periods before starting juvenile diversion may be unavoidable due to resources, effective interventions should be as immediate as possible. Research on accountability shows that sanctions imposed as quickly as possible following an offense have the most deterrent value in capitalizing on the cognitive dissonance between one's values and behavior.<sup>51</sup> This also supports that diversion, as a more timely response than court, may be a greater deterrent than a court appearance occurring a longer time after the offense.

## DIVERSION FUNDING

No one funding source for diversion programming is identified in the literature as better than another, and there is no model for jurisdictions to follow when securing funds.<sup>52</sup> Programs must be willing to explore funding through multiple funding streams as well as non-traditional funding sources. Juvenile justice agencies are one of the most common sources of funding for diversion programs. Programs with more specific programming such as mental health or substance abuse are more likely to receive additional funding from alternative sources.<sup>53</sup>

The Center for Juvenile Justice Reform notes in their report, *Improving Effectiveness of Juvenile Justice Programs*, that reductions in budget spending are leading to cuts in programming, increased workloads, reduction in operating support, and lack of funding for training. Reduction in funding and lack of monetary stability calls for further expansion of evidenced-based practices that implement cost-effective services.<sup>54</sup> Furthermore, programs can maximize use of their funding by collaborating with agencies that already provide services; utilize unpaid interns and volunteers; and bill health insurance and Medicaid for allowable activities. Also, juvenile justice programs may be eligible for state and federal funds that are not expressly for criminal prevention and intervention, such as funding from the Substance Abuse and Mental Health Services Administration (SAMSHA).<sup>55</sup>

Regardless of funding sources, programs should engage in long-term fiscal planning. They also should disseminate financial information as needed to support operational goals and requests for funding.<sup>56</sup> At times, user fees are applied to recoup costs of programming. However, NAPSA Performance Standards specify that no one should be denied access to diversion because of the inability to pay program fees.<sup>57</sup>

## **SECTION B: SUMMARY**

### **STEP 4. OPERATIONS**

- While the state statute governing county attorneys dictates that juvenile diversion must exist in every county, it does not specify which agency must operate the diversion program. Nearly three-quarters of counties (72%) indicate that the probation/corrections department operates diversion, followed by nearly one-third of (31%) of county attorneys who keep the program “in house.” In 8 percent of counties, diversion is provided by community-based programs.
- It is most common for a single staff member to be assigned to diversion (46% of counties). Diversion staff is also frequently less than full-time, and has additional administrative or caseload responsibilities beyond diversion.
- Four in 10 counties (42%) estimate having 10 or fewer youth on diversion at any one time. The highest number of youth on diversion at any one time was 500. As such, youth diverted in a typical year in individual Minnesota counties ranged from 0 to 2,400.

### **STEP 5. FUNDING**

- In 80 percent of counties, diversion is funded wholly or in part by provisions within the operating budgets of probation/corrections and county attorneys. Nearly half of counties (45%) support diversion through supervision or user fees. State and federal grants rounded out the top three funding sources for diversion in Minnesota.
- The majority of respondents (68%) described funding for diversion in their county as stable. Those who felt funding was moderately stable to unstable were unsure where funds would come from following the expiration of grants; relied more heavily on user fees; or had less established programs to support.
- Few interview participants knew the amount of funding allocated for diversion annually, in part because it is not a line item in most budgets. No county was able to provide a figure calculated for the cost saved per youth diverted.

### **BEST PRACTICES:**

- Agencies overseeing diversion should have strong ties to the community to broker and deliver services needed by the youth and community. Active participation by the community in diversion planning and goals, as well as clear role delineation between justice system agencies and community-based agencies, is a best practice in service delivery.
- Consequences are most effective when delivered as soon as possible after the anti-social or delinquent act. Efforts should be made to expedite delivery of the citation or complaint for diversion screening and to schedule a diversion meeting with youth and families.

- Diversion programs should consider multiple funding sources when planning for sustainability, including non-traditional funding streams and tactics to share resources with other agencies. It is acceptable to use fees for diversion applied to youth and families; however, those who are unable to pay fees should not be precluded from participating in diversion.
- Staff members who provide diversion services should be clear on program mission and goals; be trained in best-practices; know how to administer assessment and screening tools; and be trained in curricula or course delivery. Volunteers are acceptable in diversion programs provided they have been adequately trained to their role in the program.



## **SECTION B: RECOMMENDATIONS**

- A consistent funding stream for juvenile diversion programming should be explored at the state level. Such funding might consider a formulaic calculation based on the overall juvenile population in the county or arrest and diversion statistics. Stable funding may also alleviate the need to pay for diversion through user fines or fees.
- Counties that are positioned to complete Return on Investment assessments or calculate system costs saved per youth diverted can advocate for the cost-saving nature of diversion in Minnesota counties as compared to prosecution.
- To the greatest extent possible, diversion should occur as soon as possible after the youth's offense. Obstacles to timely transfer of the citation or charging document to the screening agency should be addressed, as well as barriers to youth beginning their diversion contract.
- Diversion providers should make community involvement in the planning and oversight of diversion activities a priority in order to promote community buy-in to programming and engage community partners.
- While probation departments are often best positioned to provide diversion services and supervision given their role in overseeing other juveniles with justice system conditions, diversion ought to limit contact with justice system players as much as possible. To the extent possible, monitoring and delivery of diversion services can be administered by community-based agencies in community-based settings.

## SECTION C: INTAKE CRITERIA

### STEP 6. REFERRAL AND ELIGIBILITY

According to the Models for Change *Juvenile Diversion Guidebook*, there are a few stages at which eligibility for diversion must be assessed. First and foremost, it is important that cases meet “legal sufficiency.” Legal sufficiency is when evidence provided in a complaint meets the criteria for petitioning and can be substantiated. Ensuring legal sufficiency prevents juvenile cases that would not otherwise meet charging criteria from being processed through the juvenile justice system in a phenomena known as “net widening.”

If the case is deemed legally sufficient, eligibility is to be determined through the specific guidelines of the agencies involved. The initial determination that a juvenile is eligible for diversion may be made by the police department or county attorney’s office. Initial eligibility criteria typically include a youth’s age, criminal history, and severity or type of the alleged offense.

It is often the case that diversion programs only serve youth who have no prior involvement with the juvenile justice system or diversion. Programs need to consider what kind of offense they wish to target and whether an offense history will impact eligibility. Programs usually limit the types of offenses that youth are charged with and may not take youth who are alleged to have committed more serious crimes. Some programs focus only on status offenses (juvenile petty offenders in Minnesota) while others may take delinquent offenses.

The criteria of a referring agency or program should reflect the youth targeted by the diversion program. While it is understood that many factors influence a youth’s eligibility, criteria should be clear and defined. However, leaving some room for discretion in the eligibility process allows decision-makers to evaluate unique circumstances.

### MINNESOTA FINDINGS

According to Minnesota’s juvenile diversion statute (subdivision 1), youth are “offenders” and are eligible for diversion if:

- The child is petitioned for, or probable cause exists to petition or take a child into custody for a felony, gross misdemeanor or misdemeanor, and they have not yet entered a plea in the proceedings;
- The offense is a non-person offense;
- The child has not previously been adjudicated in Minnesota or other state for an offense against a person; and,
- The child has not previously had a petition dismissed as a part of a diversion program in Minnesota.

The remainder of this section explores additional inclusionary and exclusionary criteria for diversion at the county level.

### GENDER AND MINIMUM AGE DIVERTED

Interview respondents were asked to share their eligibility criteria related to gender and age. The vast majority of counties (95%) express that they divert both males and females; the remaining 5 percent did not specify.

Over half of counties (57%) reported that the minimum age eligible for diversion in their county was 10. A

Minimum Eligible Age For Diversion	Number (Percent) of Counties N=87	Select Comments
None	6 (7%)	
Ages under 10	3 (3%)	Age 5; Age 8; Age 9; Mainly counseling sessions for very young.
Age 10	50 (57%)	We try to keep young kids off the work crew; Under 10 are CHIPS kids; We will modify the program for younger kids; Rare to do a case under age 10; We will take some 9 year olds.
Ages 11 or 12	18 (21%)	Rare that there would be an exception to the minimum; No documented minimum; Also operate a 12-and-under program with parent and child.
Ages 13 or 14	6 (7%)	12 and under usually go to Child Welfare; If under 13 likely will go to Social Services.
Not Specified	4 (5%)	Will divert any juvenile (2); Have had as young as 9; Will take kids from elementary school.

smaller percentage of counties (8%) stated that they will take youth under age 10 or they have no documented minimum age for diversion. Age 10 is a popular minimum age for diversion as it is the lowest age of jurisdiction under which youth may be processed in the juvenile justice system.<sup>58</sup> Youth under age 10 are typically served by social services agencies, such as Children in Need of Protection or Services (CHIPS).

In 24 counties (28%), the minimum diversion age is older than age 10. Some counties expressed that while there is one age limit to participate in

diversion, there is another, higher age limit related to participating in certain classes or community-service work crews.

## MAXIMUM AGE DIVERTED

Respondents were similarly asked if there is a maximum age of youth diverted in their county. Again, the most common response (61% of counties) is age 18, as this is the typical upper end of juvenile jurisdiction. An additional 25 percent of counties stated that they will divert 18-year-olds provided the offense occurred when they were under 18. Six counties (7%) indicated that their maximum diversion age is 16.

Maximum Age Diverted	Number (Percent) of Counties N=87	Select Comments
Age 16	6 (7%)	
Age 17	53 (61%)	Must be under age 18 at time of offense (8); Will take them in class if they have turned 18 by the time it starts.
Age 18	22 (25%)	If under 18 at time of offense; Up to 18½ years.
Not Specified (4)/ Not Applicable (2)	6 (7%)	Any juvenile (2).

## ELIGIBILITY: PRIOR OFFENSE HISTORY

Minnesota's diversion statute specifies that youth who have previously been adjudicated for an offense against a person are not eligible for diversion. It does not specify that youth who have been adjudicated for other offenses are ineligible or that diversion only applies to first-time offenders.

Interview respondents were asked if they have a requirement that they will only divert first-time offenders in their county. In the majority of counties (84%), it is a requirement that youth have no priors in order to receive diversion. Nevertheless, many who reported having a policy on the issue allow for discretion and exceptions. In 14 percent of counties, a prior offense history does not automatically preclude youth from being considered for diversion.

<b>Divert First Offense Only?</b>	<b>Number (Percent) of Counties N=87</b>	<b>Select Comments</b>
<b>Yes</b>	73 (84%)	Some second time offenses (2); Try to stick to first offense only, unless a different type of offense.
<b>No</b>	12 (14%)	Doesn't necessarily have to be first time offense.
<b>Not Specified/ Not Applicable</b>	2 (2%)	Not specified (1); Not applicable (1).

## **ELIGIBILITY: OFFENSE LEVEL**

Interview respondents were asked about their eligibility criteria relating to type or seriousness of the offense. Again, Minnesota statute specifies that diversion is to apply to non-person offenses ranging from misdemeanor to felony level.

Four in 10 counties (40%) report that they divert property offenses only; 5 percent divert person-offenses only; and nearly five in 10 counties (48%) divert both property and person offenses.

Most counties divert petty misdemeanors and misdemeanors. It is noteworthy that nearly three in 10 counties (29%) indicated they divert petty misdemeanor level offenses only. Petty misdemeanors are lower-level offenses than misdemeanors, meaning these counties may not have elevated diversion programming to the level that it would affect the delinquency population targeted in statute. Conversely, these counties may be diverting misdemeanors reduced to petty misdemeanors.

<b>Eligible Offenses: Number (Percent) of Counties</b>	<b>Offense Subgroups</b>	<b>Number (Percent) of Counties N=87</b>	<b>Select Comments</b>
<b>Property Offenses Only 35 (40%)</b>	Petty Misdemeanor Only	14 (16%)	Up to \$50 of restitution; Also diverts status offenses.
	Petty Misdemeanor or Misdemeanors Only	14 (16%)	No hard rule on offense level.
	Up to Gross Misdemeanor or Felony	8 (7%)	No assaultive conduct.
<b>Person Offenses Only 4 (5%)</b>	Petty Misdemeanor Only	4 (5%)	
<b>Property and Person Offenses 42 (48%)</b>	Petty Misdemeanors Only	7 (8%)	First-time curfew (2); Delinquency occasionally (2); Most petty misdemeanors and status offenses; Curfew is only CHIPS diverted.
	Petty Misdemeanors and Misdemeanor Property.	4 (5%)	
	Petty Misdemeanors and up to Gross Misdemeanor Property	5 (6%)	

	Petty Misdemeanors, Misdemeanors, and up to Felony Property	4 (5%)	All but violent offenses; Gross misdemeanor and felony based on county attorney's discretion.
	Petty Misdemeanors, Misdemeanors	17 (20%)	Not truancy or runaway (2); No curfew (2).
	Petty Misdemeanors, Misdemeanors, Gross Misdemeanors	3 (3%)	No programs take felonies.
	All offenses are eligible	2 (2%)	County attorney discretion.
<b>Not Specified 5 (6%)</b>		5 (6%)	Case-by-case basis (2); Varies (2); Depends on severity.
<b>Not Applicable 1 (1%)</b>		1 (1%)	

In many counties, a felony-level charge is an automatic diversion exclusion whether a property or person offense. A small percentage of Minnesota counties expressed that they will divert felony-level offenders. Twelve counties stated they will divert felony-level property crimes; two counties stated that all offenses are reviewed for diversion, including felony-level person offenses.

## ELIGIBILITY: OFFENSE TYPE

Interview participants were asked if their diversion program targets a specific offense or accepts specific types of offenses. The most common offenses for which there are targeted diversion activities are alcohol offenses (80%), shoplifting (78%); marijuana offenses (77%); theft (68%); and tobacco (64%).

Roughly half of counties reported diversion programming for youth who had curfew violations (54%), disorderly conduct charges (48%), or charges related to drugs other than alcohol or marijuana (47%).

Three in 10 counties (30%) stated that youth with assault charges can be accepted on diversion. These were often for fifth-degree assault, one of the lowest levels of assault. Bullying and harassment are also unique areas of diversion available in two in 10 counties (21%).

"Other" offenses specified by counties that are targeted in diversion include skateboarding; boating violations; traffic violations; criminal damage to property; motor vehicle tampering; and possession/receiving stolen property.

<b>Specific Offenses Targeted (Select All That Apply) Totals ≠ 100%</b>	<b>Number (Percent) of Counties: N=87</b>	<b>Continued</b>	<b>Number (Percent) of Counties: N=87</b>
<b>Alcohol</b>	70 (80%)	<b>Bully/Harassment/Stalking</b>	18 (21%)
<b>Shoplifting</b>	68 (78%)	<b>Truancy</b>	16 (18%)
<b>Marijuana</b>	67 (77%)	<b>Arson/Firesetting</b>	16 (18%)
<b>Theft</b>	59 (68%)	<b>Checks/Forgery/Identity Theft</b>	16 (18%)
<b>Tobacco</b>	56 (64%)	<b>Driving/License</b>	10 (11%)
<b>Curfew</b>	47 (54%)	<b>Runaway</b>	9 (10%)
<b>Disorderly Conduct</b>	42 (48%)	<b>DUI</b>	4 (5%)
<b>Other Drugs</b>	41 (47%)	<b>Violent Offenders</b>	3 (3%)
<b>Assault</b>	26 (30%)	<b>Other</b>	5 (6%)

## ADDITIONAL EXCLUSIONARY CRITERIA

Interview participants were asked what additional criteria would preclude youth from being eligible for diversion. The Models for Change *Juvenile Diversion Guidebook* terms these as “de-selection criteria.” This was an open-ended question so that respondents could freely name other exclusionary conditions. Again, two-thirds of counties (67%) reiterated that certain types of offenses or severity of offenses are not eligible. Additional factors mentioned included offenses with weapons, domestic violence offenses or violation of Orders for Protection. These offenses are examples of targeted misdemeanors that cannot be reduced to petty misdemeanors in Minnesota.

Youth with prior offenses are potentially excluded from diversion by more than half (55%) of counties. If a youth has committed the same offense a second time, they will typically not be offered another diversion opportunity unless their county specifically has programming serving repeat offenders. Prior diversion is also mentioned as exclusionary criterion by nearly one-third of counties (32%). The Minnesota juvenile diversion statute does specify that youth who have already had charges dismissed through diversion are not eligible for diversion again.

Criteria for Exclusion (Select All That Apply) Totals ≠ 100%	Number (Percent) of Counties N=87	Select Comments
Type/Severity of Offense	58 (67%)	Gross misdemeanors or felonies (20); Weapons (4); Orders for Protection violations (4); Fifth-degree assault (2); Certain drug charges (2); Domestic violence (2); DWI (1).
Criminal History/Priors	48 (55%)	Prior delinquency (8); Second offense of same nature (4); Multiple priors (3).
Prior Diversion	28 (32%)	Unless a long time has passed (2); Unless for a different offense (1).
Person Offenses	21 (24%)	Sex offenders (5); Felony-level assaults (4); Assault (2).
Restitution Amount	13 (15%)	Over \$1,000 (5); Any (3); Over \$500 (2); Over \$200 (2).
Out-of-County Resident	6 (7%)	
Youth Functioning	4 (5%)	Low IQ (3); Mental health Issues; Under age 10.
Refusal to Admit Guilt	2 (2%)	
Other	1 (1%)	Gang-related offenses.

Nearly one-quarter of counties (24%) specified that person offenses are not eligible for diversion, including assaults and sex offenses. Fifteen percent of counties have the amount of restitution owed a victim as a factor in diversion. Some counties would not divert youth who owe any restitution, whereas others have designated thresholds such as \$200 or \$500.

Additional considerations that would preclude youth from diversion is if they are out-of-county residents; if they have a low IQ level or other mental health issue that would make diversion difficult; if the offense is gang-related; or if a youth will not admit guilt for the offense.

## PRIOR DIVERSION

Minnesota statute indicates that youth who have previously received a diversion in Minnesota resulting in a dismissed petition do not meet eligibility requirements for additional diversion. Survey participants were asked if prior diversion automatically results in charges being forwarded to the court.

More than half of counties (52%) stated that they will accept a youth who has previously attended diversion in a different program (such as in another county). Discretion would be used related to not diverting for the same offense, exploring how much time has passed between offenses, and weighing the severity of the offense. A common response to this question by many counties was that they generally do not have a way of knowing if a youth has been diverted in another county. Ten counties (11%) stated that if they knew of a diversion occurring elsewhere that they would not divert a youth again.

Prior Diversion History	Response	Number (Percent) of Counties N=87	Select Comments
<b>Would You Accept a Youth Who Has Previously Attended a Different Diversion Program?</b>	Yes	45 (52%)	If enough time has passed (6); Not for same offense (4); Case by case (3); Wouldn't know if they have been diverted (2); If a very minor/low-level offense (2).
	No	10 (11%)	No way of knowing (2); Unless unaware of it; If from a different county.
	Unsure	6 (7%)	Usually wouldn't know if diverted elsewhere (4).
	Not Specified (25)/ Not Applicable (1).	26 (30%)	Wouldn't know if otherwise diverted (3); If not very serious offense; If enough time has passed.
<b>Would you Accept a Youth Who Has Previously Attended Your Diversion?</b>	Yes	63 (72%)	If enough time has passed (15); Not for same offense (14); If a very minor/low-level offense (6); Case by case (5); Can do the other diversion program in county (3).
	No	10 (11%)	Not for same offense (2); Case dependent; One shot at each program; Very rare to be diverted a second time.
	Unsure	0 (0%)	
	Not Specified (13)/ Not Applicable (1).	14 (16%)	Sometimes; Depends on offense type; If first diversion was minimal offense.

Respondents were also asked if they will divert a youth a second time who has already participated in their county's diversion programs. The majority (72%) stated that they will divert a youth again provided it is not for the same offense or that a sufficient amount of time has passed between charges. If a county offers more than one diversion program, youth may be eligible for a program they have not yet completed. Again, 10 counties stated they will not divert youth again if they have participated in their diversion program in the past.

## DIVERSION TRACKING

Counties were asked if they track whether a youth has previously participated in diversion. Two-thirds of counties (67%) indicated they track prior diversion.

Most frequently, counties use a database operated by the Minnesota Department of Corrections called the *Court Services Tracking System (CSTS)* to track diversion. Some counties use the *Minnesota Court Information System (MNCIS)* or a court access tool called *Odyssey*, to check for prior diversion. Many counties keep the



information in their county attorney files or databases, including the *Minnesota County Attorney Practice System (MCAPS)*. In addition, counties may check with neighboring jurisdictions or directly ask the youth and families if they have received prior diversion elsewhere.

A challenging aspect of many of these databases is that users can only view data for their own county. As such, they cannot see if a youth has been diverted in a different county, even if they track diversion using the same database. This speaks to issues of data access, data sharing and youth data privacy.

Verification of Prior Diversion	Number (Percent) of Counties N=87	Select Comments
Yes	58 (67%)	CSTS (25); Only within our own county (12); Ask youth/parent (9); MCAPS (4); County Attorney records (3); DOC's <i>Statewide Supervision System, S3</i> (2); Court Administrator/ <i>Odyssey/MNCIS</i> (6); Check with neighboring counties (2).
No	13 (15%)	Don't know what's been done beyond our county (7).
Unsure	1 (1%)	
Not Applicable/ Not Specified	15 (17%)	Not specified (14); Not applicable.

## STEP 7. SCREENING AND ASSESSMENT

Screenings and assessments allow diversion programs to determine if youth have specific areas of need, risk or difficulty. Screening tools also provide information about youth strengths and protective factors. Screenings are less formal than full assessments and typically take 10 to 15 minutes to complete. The purpose of a screening is to give providers information about youth and determine who requires a deeper level assessment or service intervention. Assessments are evaluations that give a more comprehensive understanding of the youth's needs and risks in a particular area. These are typically administered by licensed professionals in the fields of psychology, social work and chemical dependency.

Screening and assessment tools should be standardized, relevant, reliable and valid. According to the Models for Change *Juvenile Diversion Guidebook*, the most common kind of screenings and assessments used in diversion programs are related to criminal risk factors, mental health and substance use. Screening tools are often used in the intake process and can also be used to determine program eligibility.

It is vital that staff in diversion programs has set protocols when conducting these evaluations. This not only ensures the safety and privacy of the youth, but also provides staff with guidance in correctly interpreting and utilizing screening results.

### MINNESOTA FINDINGS

Minnesota's diversion program providers were asked whether youths' ability to complete diversion is assessed in making the diversion determination; whether any formal screenings occur at the outset of diversion; and whether any additional screening tools are used over the course of the diversion period.



## ABILITY SCREENING

The majority of counties (67%) stated they do not have any assessment of a youth's ability to complete diversion prior to the diversion decision.

Generally, accommodations to diversion conditions are made based on an agent's prior knowledge of the youth or on information revealed during an intake meeting.

Nearly one-quarter of counties (26%) indicated that they assess a youth's abilities but typically through an informal interview or screening. They use interview information to find the most appropriate fit of programming and/or conditions based on their needs.

Do Eligibility Criteria Take into Account Youth's Ability to Complete Diversion?	Number (Percent) of Counties N=87	Select Comments
Yes	23 (26%)	Informal assessment of ability level (7); Interview with parents and youth (4); Find the right program for them based on needs (4); Mental health (2); Chemical dependency; <i>MAYSI</i> .
No	58 (67%)	No formal screen (2); Make decision based on agent's knowledge of youth; Make some accommodations for deficiencies; Adjustments made after interview.
Not Specified/ Not Applicable	6 (7%)	Not specified (5); Not applicable (1).

## SCREENING TOOLS

Screening Tool	Number (Percent) of Counties N=87	Select Comments
No	67 (77%)	Criminal history (4); Program has criteria (3).
Yes	6 (7%)	Program criteria (3); County attorney has criteria/checklist (2); <i>MAYSI</i> (2); "How I Think" mental health and chemical dependency; Diversion plan; <i>MAYSI</i> and <i>PESQ</i> ; Meeting with probation officer.
Not Specified/ Not Applicable	14 (16%)	Not specified (13); Not applicable (1).

The majority of counties (77%) reported they do not use any formal screening instruments when making a diversion or a service determination for diverted youth. Instruments used by respondents who reported screenings included the *Massachusetts Youth Screening Instrument (MAYSI)* and the *Personal Experience Screening Questionnaire (PESQ)*. Other counties mentioned that assessments are within educational programs, or that the county attorney has a checklist of diversion criteria used for all youth.

## OTHER SCREENINGS AND ASSESSMENTS

Beyond eligibility determination, respondents were asked if any other screenings or assessments occur in conjunction with diversion. Again, the majority of counties (67%) stated that no other screenings or assessments occur. One provider stated that diversion is an assessment as to whether or not families have other needs in and of itself. Other providers echoed that referrals are made if needs arise while youth are on diversion.

Those who did provide additional assessments (23%) again referenced *MAYSI* and *PESQ*, as well as the *Problem Oriented Screening Instrument for Teenagers (POSIT)* and *Youth Level of Service Inventory (YLSI)*.

Other Screenings/ Assessments Done at the Time of Diversion?	Number (Percent) of Counties N=87	Select Comments
No	58 (67%)	Diversion itself is an assessment to see if there are other needs; Will make other referrals if they see something of concern; Social Services representative on the panel can help with services.
Yes	20 (23%)	<i>POSIT</i> (4); <i>PESQ</i> (2); <i>YLSI</i> risk assessment (2); Mental health symptom checklist; Occasional Mental health screens; <i>MASYI</i> ; Created own instrument; Asset survey; Refer out for mental health/chemical dependency screening; Pre- <i>YLSI</i> screen.
Not Specified/ Not Applicable	9 (10%)	Not specified (8); Not applicable.

## SECTION C: LITERATURE REVIEW AND BEST PRACTICES

### EQUAL ACCESS

According to the National Association of Pretrial Services Agencies (NAPSA), a promising practice named in pretrial diversion is “broad, equitable and objective diversion eligibility criteria, applied consistently at multiple points of case processing.”<sup>59</sup> Basic fairness dictates, according to NAPSA, “that two defendants similarly charged, with similar criminal histories should receive equal consideration for diversion, even if other factors are the final determinates about acceptance into the program.”

NAPSA Performance Standards support that eligibility criteria should be broad enough to encompass all potential participants who are amenable to the diversion option, and under no circumstances should diversion be limited by race, ethnic background, religion, gender, disability, sexual orientation or economic status.<sup>60</sup>

It is recommended that jurisdictions and programs create a set of criteria for which youth “must” be *referred* to diversion and that additional screening or criteria will then de-select certain youth.<sup>61</sup> This ensures equitable access to diversion from all referral sources but gives the screening agency final authority. NAPSA affirms that pretrial diversion programming has an affirmative obligation to ensure that eligibility criteria are consistently applied, and justice professionals have an obligation to monitor fair application of diversion eligibility requirements.<sup>62</sup>

### ELIGIBILITY CONSIDERATIONS

The literature has very little specificity regarding what types or levels of offense should or should not be diverted. It is largely up to individual states to dictate in statute, or for local jurisdictions to determine. These decisions are affected by community values, public safety considerations and service availability. Again, the risk-responsivity principle (see Section A) dictates that a serious offense does not in and of itself mean that someone is high-risk to reoffend. The same principle supports that diversion and other juvenile interventions should focus resources on youth who are medium-to-high risk to reoffend, and subsequently should avoid placing low-risk offenders in intensive services.<sup>63,64</sup> Higher-level offenses and person offenses can presumably be diverted just as lower-level and property offenders if the youth has sufficient assets and protective factors that minimize the likelihood of reoffending.

Furthermore, literature supports that the vast majority of juvenile status offenders do not become repeat offenders.<sup>65</sup> It must also be stated that juveniles have an increased opportunity for system involvement because certain offenses only apply to juveniles.<sup>66</sup> Adolescent brain development research shows that the portions of the brain that govern reasoning and comprehending consequences are not fully developed in youth. As such, diversion opportunities for youth are especially important given diminished reasoning capacity; the broader range of behaviors that are criminalized; and the likelihood of growing out of offending behavior.<sup>67</sup> That is not to say youth cannot be held accountable—brain science also supports accountability for youth as an important component in healthy moral development and learning.<sup>68</sup> Indeed, the entire juvenile justice system would benefit from review based on brain development research.

The most common diversion eligibility criteria are a youth’s age, their current offense and their history of contact with diversion and the court. Many programs have set guidelines on whether they will accept juveniles with prior offenses, as well as the level and type of offense accepted. Regardless of the criteria, the Models for

Change *Juvenile Diversion Guidebook* recommends that written guidelines be developed regarding program eligibility. These criteria must be “firm and definitive to be of use to decision-makers,” but also be “flexible to permit the exercise of discretion.”<sup>69</sup> Programs must decide at the outset if they will intend to target certain offense or level or offenses. Criteria must balance the values related to avoiding formal processing with assuring public safety.<sup>70</sup> It is again emphasized that legal sufficiency be present in all youth diverted and that cases not meeting legal sufficiency for prosecution be dismissed.

As it relates to age, the literature does not indicate that youth of a certain age are more or less amenable to diversion. It is more important that programming be age-appropriate as well as meet the cognitive abilities of the juvenile. In the multi-state survey assessment of diversion completed in the Models for Change *Juvenile Diversion Guidebook*, the most common age for diversion is between 10 and the highest age of juvenile jurisdiction (typically 17 or 18).<sup>71</sup>

## SCREENING

Screening and assessment tools can be used to assess the risk of future harm to self or others, risk to reoffend, specific problem areas for youth, and special considerations related to a youth’s behavioral or mental health problems.<sup>72</sup> Valid risk assessment tools must be used to determine the risk of recidivism.<sup>73, 74</sup> NAPSA names the use of a “uniform and valid risk and needs assessment to determine the most appropriate and least restrictive level of supervision and services needed” as a promising practice in pretrial diversion programming.<sup>75</sup> It is recommended that these assessments be done at or shortly after diversion intake.<sup>76</sup>

The importance of risk and need assessments are discussed widely throughout the literature. Specifically, literature supports the identification of criminogenic needs<sup>77</sup> which are based on dynamic crime producing factors that are highly associated with risk.<sup>78</sup> Other criminogenic factors include a juvenile’s peer group, lack of problem-solving skills, school and employment status, criminal attitude and anti-social values.<sup>79</sup> Programs that target four or more of these needs have shown to reduce recidivism.<sup>80</sup> Risk screening tools help to develop appropriate and meaningful diversion contracts.

According to the Models for Change *Juvenile Diversion Guidebook*, screening and assessment instruments should be:

- Standardized: always done the same way every time with youth;
- Relevant: assists in making the necessary decisions at hand and can be utilized by staff;
- Reliable: research indicates the different raters using the tool will get the same results;
- Valid: research supports that the tool measures what it claims to measure.

These are the criteria for valid and reliable screening and assessment tools. Additional considerations when selecting a tool are length of time to administer; ease of administration; degree of staff training or expertise to interpret; and cost of the tool.<sup>81</sup> In all cases, staff must be trained on how to administer the tools and interpret the results correctly.

Beyond criminal risk assessments, some programs provide mental health or chemical dependency screenings. It is a NAPSA performance standard that diversion plans be developed through comprehensive assessment and address specific needs related to reducing future criminal behavior. That being said, “intervention plans should not designed to respond only to the crime charged.”<sup>82</sup> Increasingly, individuals with mental health and substance abuse disorders receive services through the justice system. These kinds of screenings also need to be

conducted with a standardized instrument that is valid and reliable.<sup>83</sup> Partnering with community-based agencies is one way to deliver these services in a professional, cost-effective manner.

Needs assessments are designed differently because they do not purport to be predictive of behavior, rather they match youth with identified needs. These may assist in determining if youth require a referral to additional resources or if families need assistance. The Center for Juvenile Justice Reform's publication *Improving Effectiveness of Juvenile Justice Programs* outlines a comprehensive strategy to integrate best practices. Part of the strategy includes targeting youth across the spectrum of risk and needs, of which diversion services are a part.

## **DIVERSION DATA**

While data and data practices are further explored in Section E, NAPSA does support that diversion programs should develop and operate an accurate management information system to support data collection, case management and program evaluation.<sup>84</sup> In addition, programs should develop and implement policies which address data-sharing and information protection.<sup>85</sup> The degree to which information about prior diversion participation should be shared across agencies and jurisdictions to make subsequent eligibility determinations is not discussed. This interest must be balanced with data privacy issues and a reduction in the labeling affect for youth if a minor contact with the system is accessible by too many entities.

## SECTION C: SUMMARY

### STEP 6. REFERRAL AND ELIGIBILITY

- All counties in Minnesota divert both males and females. Most commonly, youth between the ages of 10 and 18 are able to receive diversion provided they were 17 at the time of the offense. In total, 24 counties have a minimum diversion age older than 10 while six have a maximum diversion age of 16.
- Generally, a prior offense history in Minnesota will preclude youth from diversion in 84 percent of counties. Nevertheless, many counties noted that there is discretion on the matter. As it relates to criminal history, state statute only limits diversion for youth with a past adjudication for a person offense.
- Minnesota statute requires that diversion apply to misdemeanor through felony-level non-person offenders. Nearly three in 10 counties (28%) only divert petty offenders, which is narrower than the statute specifies. Conversely, 28 percent of counties will divert person-offenses that are misdemeanor or above, which is broader than the statute requires.
- The most common offenses targeted for diversion in Minnesota counties are, in order: alcohol offenses, shoplifting, marijuana offenses, theft and tobacco offenses. Roughly one-half of counties also divert curfew violations, disorderly conduct, and charges related to drugs other than alcohol or marijuana.
- Beyond offense type and criminal history, youth may be excluded from diversion in select counties if they have had prior diversion; if they owe restitution; if they reside in a county other than where the offense was committed; if they have lower cognitive functioning; and/or if they refuse to admit responsibility for the offense.
- Most counties state that prior diversion does not automatically preclude youth from another diversion opportunity, which is broader than state statute criteria. The severity of offense, how much time has passed between offenses, and the charge on which the youth was initially diverted are all factors in whether youth will be diverted again.
- Two-thirds of counties (67%) use some method for tracking which youth receive diversion in their county. The majority of participants stated they do not have any way of knowing if youth have completed diversion in another Minnesota county.

### STEP 7. SCREENING AND ASSESSMENT

- Minnesota diversion programs generally do not assess a youth's ability to complete diversion beyond an informal assessment through an intake interview. Many programs will make modifications to diversion conditions to meet the cognitive or developmental needs of youth.
- Programs that do conduct screenings as a part of a diversion determination, or as a later component of diversion, referenced the following tools: *Massachusetts Youth Screening Instrument (MAYSI)*; *Personal Experience Screening Questionnaire (PESQ)*; *Problem Oriented Screening Instrument for Teenagers (POSIT)*, and *Youth Level of Service Inventory (YLSI)*.

## **BEST PRACTICES:**

- Access to diversion should be broadly and equitably applied. There should be legal sufficiency in all cases to prosecute to avoid “net widening,” and in no case should diversion be denied based on race, ethnic background, religion, gender, disability, sexual orientation or economic status.
- Programs should formally establish eligibility criteria in writing. States and jurisdictions can determine what level of offenses and criminal histories, if any, are precluded from diversion based on their community’s values and public safety needs.
- Screening tools and more formal assessments can assist diversion providers in making appropriate referrals to diversion, meaningful diversion conditions, and connecting youth and families to the services they need. Such screening tools might measure criminogenic risk factors, mental health concerns or chemical dependency.
- Risk tools must be standardized and demonstrated to be reliable and valid. Staff must be trained to administer tools, and appropriate professionals must interpret the results when necessary.

## SECTION C: RECOMMENDATIONS

- Based on principles of risk-responsivity, diversion should target youth with fewer criminogenic needs, whereas youth with greater needs should receive greater resources. A pre-diversion screening instrument could provide additional information as to which youth ought to be diverted as compared to those who may be more appropriately served in the justice system.
- While county attorneys ought to retain discretion as to whether it is appropriate for youth to have multiple diversion opportunities based on their present offense, past offense history and services available in their county, greater consistency on these factors across county jurisdictions would be beneficial to ensure equitable application of diversion.
- Develop a universal screening instrument that counties can elect to use to determine the appropriateness of diversion, need for referral to additional services, and criminogenic attitudes to target during diversion.
- Expand diversion services for person-based offenses such as disorderly conduct, threats and fifth-degree assault, especially if the parties involved are all juveniles. Provide person-based offense diversions based on the principles of restorative justice consistent with Minnesota statute § 609.092.
- Counties that presently only divert juvenile alcohol offenders and controlled substance offenders ought to expand diversion opportunities to youth who would potentially be petitioned for delinquency matters, as required by statute § 388.24.
- In order for equal application of opportunity, diversion options should exist for all youth from age 10 to 17 at the time of offense. These options do not need to be the same programs or providers. Developmentally appropriate interventions may support that they are different, but age should not preclude diversion from occurring in one county but not another.
- Create or identify an existing database to track county-level diversions statewide. Allow counties state-level access to be able to determine if youth have previously been diverted in other Minnesota counties.



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## SECTION D: OPERATION POLICIES

### STEP 8. PARTICIPANT REQUIREMENTS

A primary objective of juvenile diversion is to offer youth an alternative experience to the juvenile justice system. Although diversion programs offer a different experience than formal adjudication, there is a strong need to hold youth accountable through the requirements set forth in the program. These requirements should be in the form of measurable objectives that are monitored over a period of time. These requirements should not only consider the need of the victim and the community, but also the needs of the youth.

According to Models for Change *Juvenile Diversion Guidebook*, there are two broad areas that programs must consider:

- The specific requirements that programs will set for youth to determine successful completion of the program;
- How to inform youth and caretakers of the nature of the program and full disclosure of consequences involved with participating and not participating.

The requirements for each program vary widely based upon the style of the program and how it is implemented. Some programs only require that restitution be paid while others have community work service components, mandatory classes and a host of other conditions.

### MINNESOTA FINDINGS

Across Minnesota, diversion programs have developed a multitude of requirements unique to their programs, resources and communities. This section explores participant requirements across jurisdictions.

#### NOTIFICATION AND SCHEDULING

The majority of Minnesota counties (94%) notify youth and families of the diversion decision by mail. In 86 percent of counties, the youth and parent are then responsible for contacting the diversion provider following receipt of the letter. Two counties state that the program provider is responsible for following up with the family about diversion. Seven counties did not specify who is responsible for following up with the letter.

Interview participants were asked to indicate how prescriptive their diversion programming is on a scale from 1 to 5. A

“1” is *Very Prescriptive*, with all youth receiving the same conditions and interventions; “5” is *Highly*

Notification Process	Number (Percent) of Counties N=87	Select Comments
Mail	82 (94%)	Letter sent with appointment time (23); Mail letter with timeframe to respond and schedule appointment (3); Letter and program facilitator also follows up (3); Probation makes contact if no response (2); Letter to set up class time and pay fine.
In Person	1 (1%)	Usually in person then by formal letter.
Not Specified/ Not Applicable	4 (5%)	Not specified (3); Not applicable (1).

*Individualized* such that each youth receives unique conditions and interventions based on their offense and individual risks and needs.

In one-third of counties (32%), programs were rated as a 1 or 2, indicating they are quite prescriptive in their services and style regardless of the attributes or needs of the youth. One participant described their diversion program as “annoyingly identical.” Conversely, more than an additional third of counties (36%) indicated that the content of their diversion programs is individualized such that they base the youth requirements and services significantly on the offense or the risks and assets of the youth.

How Prescriptive Is the Diversion Programming	Number (Percent) of Counties N=87	Select Comments
<b>1: Very Prescriptive</b>	16 (18%)	All diverted participate in same group setting; Very standard, very specific requirements; Annoyingly identical.
<b>2</b>	12 (14%)	Base program with individual needs factored in; Accommodations made for special needs/circumstances; Primarily the same with each kid; Uniform requirements unless youth have special needs.
<b>3</b>	20 (23%)	Case dependent based on what conditions/requirements are added; Based on needs of family and youth; All have curfew and work service but other conditions vary; Different conditions for different offenses; All have set consequences but can tailor to offense and youth.
<b>4</b>	19 (22%)	We tailor conditions; Cater to offense/case; Mandatory requirements and others added based on asset survey; Diversion panel; Highly adaptable to youth needs.
<b>5: Highly Individualized</b>	12 (14%)	Individualized based on juror recommendations; Many get similar but no requirement that they all get the same.
<b>Not Specified (7); Not Applicable (1).</b>	8 (9%)	Diversion hearings utilize a script but all is based on individual needs; Classes work off a curriculum; We make a lot of accommodations for families that can't afford or do CWS in place of cost.

## PARTICIPANT REQUIREMENTS

Interview participants were asked which requirements or conditions on the table below are requirements that all youth in their program must complete. Community service was the most common requirement given to youth in two-thirds (67%) of counties. Half of all counties (51%) also have a requirement that youth complete an apology letter. Payment of restitution to victims is also a requirement in 37 percent of Minnesota counties.

Youth on diversion also are given obligations to the diversion agent, including having to complete assignments or program homework (29%), having to check in with the agent (17%), or being under community supervision (7%) or house arrest (5%).

Nearly one-quarter of counties (23%) require involvement in a chemical dependency curriculum, while two in 10 (20%) have another cognitive skills curriculum for youth. Individual and/or family counseling are also diversion conditions in 19 percent of counties. Curfew and school attendance were mentioned most often as “other” requirements.

<b>Diversion Components All Youth Will Receive. (Select All That Apply)</b>	<b>Number (Percent) of Counties N=87</b>	<b>Continued</b>	<b>Number (Percent) of Counties N=87</b>
<b>Totals ≠ 100%</b>			
<b>Community Work Service</b>	58 (67%)	<b>Victim-Offender Mediation</b>	8 (9%)
<b>Apology Letters</b>	44 (51%)	<b>Family Counseling</b>	7 (8%)
<b>Restitution Payments</b>	32 (37%)	<b>Community Supervision</b>	6 (7%)
<b>Assignments/Homework</b>	25 (29%)	<b>Anger Management</b>	4 (5%)
<b>Chemical Dependency Curriculum</b>	20 (23%)	<b>House Arrest/Electric Home Monitoring (EHM)</b>	4 (5%)
<b>Cognitive Skills Groups</b>	17 (20%)	<b>Mentoring</b>	3 (3%)
<b>Call-ins/Check-ins</b>	15 (17%)	<b>Activities/Outings</b>	2 (2%)
<b>Urine Analysis (Drug Tests)</b>	10 (11%)	<b>Academic Tutoring</b>	2 (2%)
<b>Individual Counseling</b>	10 (11%)	<b>Other</b>	7 (8%)

## COMMUNITY WORK SERVICE

The vast majority of counties (87%) indicate their diversion program has a community work service (CWS) component. Counties vary significantly in how many hours of CWS youth are typically assigned or how youth are to meet the CWS requirement.

<b>Community Service Requirement</b>	<b>Number (Percent) of Counties N=87</b>
<b>Yes</b>	76 (87%)
<b>No</b>	10 (12%)
<b>Not Applicable</b>	1 (1%)

The 76 counties that stated they have a CWS requirement were asked to indicate a typical number of CWS hours that a diversion client will receive. Based on interview responses, groups were created based on the *maximum* number of CWS hours given. In 24 percent of counties with CWS requirements, 10 is the maximum number of hours a diversion youth would receive. An additional 16 percent of counties have a maximum CWS requirement of 12 to 16 hours.

<b>Counties with CWS Requirements: Maximum CWS Hours</b>	<b>Number (Percent) of Counties N=76</b>	<b>Select Comments</b>
<b>10 Hours</b>	18 (24%)	8 to 10 hours (5); 4 to 8 hour (3); 8 hours (2); 10 hours (2); 8 to 24; 8 hours: Base of 6 hours; Under 10 hours; 3 to 6 hours; Usually 4 hours.
<b>12 to 16 Hours</b>	12 (16%)	8 to 16 hours (3); 16 hours (2); 12 to 15 hours; Base of 16 hours; Usually not more than 12 hours; 16 hours average; 10 to 15 hours; 16 hours standard.
<b>20 or More Hours</b>	15 (20%)	20 hours (4); 10 to 25 hours (3); 10 to 20 hours; 10 to 30 hours; 10 to 40 hours; 20 to 30 hours, 80 hours for a felony offense; 8 to 24 hours depending on age/offense; 5 to 30 hours; 24 hours maximum; 16 to 24 hours.
<b>Varies/Offense Specific</b>	21 (27%)	Probation officer determines at intake; Based on offense (8); County attorney decides; CWS can pay course fees but not restitution; Guide-sheet to determine; Probation department determines; No standard; Varies; ½ the hours a judge would order based on county standard.

<b>Other</b>	2 (3%)	CWS is in lieu of fee (2).
<b>Not Specified</b>	8 (10%)	

Twenty percent of counties stated that their maximum number of CWS hours for diversion in their county youth is 20 hours or more. The highest number reported is 80 hours for diverted felony-level offenses. A significant percentage of counties (27%) stated that the requirement is variable in that it is determined by a guide-sheet; is at the discretion of the county attorney or probation officer; or is based on the level of offense. The comments section of the data table illustrates the wide range of CWS requirements.

In nearly one in four counties with a CWS requirement (38%), a work crew option is available or youth are required to complete their hours on the work crew. Not all counties have a juvenile work crew specifically, rather they may have an adult work crew but reserve a day of the week or a special time for juveniles. Some counties specified minimum age limits to participate on a work crew.

In six in 10 counties with a CWS requirement (59%), youth are either expected to, or have the option of doing CWS hours, on their own. Half of counties (50%) provide youth with a list of locations that are acceptable to complete their hours. These locations generally include non-profits, religious sites or government-based entities. Some counties shared that they used to have a juvenile work crew or work crew day but that the service has been cut. Finally, in 14 percent of counties, the diversion agent assigns youth to a CWS location.

While not a planned interview question, some counties were asked over the course of the project what the monetary equivalent of an hour of CWS

is in their county. At times, youth can work off restitution owed through CWS with payments to victims made out of a Victim Restitution Fund. There is no standardized calculation of the value of a CWS hour across counties. Responses included \$5, \$6, \$6.50, \$7, \$8, and \$10 per hour.

<b>Counties with CWS Requirements: CWS Site Selection</b>  <b>(Select All That Apply)</b> <b>Totals ≠ 100%</b>	<b>Number (Percent) of Counties</b> <b>N=76</b>	<b>Select Comments</b>
<b>Work Crew Option</b>	29 (38%)	Must do on work crew or at a Law Enforcement site; Must be 14 to do work crew; Diversion worker sets youth up on crew; If over age 14 can do <i>Sentence to Serve</i> (STS) crew; STS or on their own.
<b>CWS Done on Own</b>	45 (59%)	Get own site approved (3); Any non-profit (2); Has to be non-profit or government site; Youth can propose their own; Community based, used to have an STS juvenile day; Flexible on where do CWS; Used to have work crews; CWS credit for going to counseling; Large onus on kids to set up their own site.
<b>Given List of Approved Sites</b>	38 (50%)	We give them a lead, they set up and get approved; CWS coordinator gives list; List of 4 to 5 approved sites or any nonprofit/community based agency; Criteria for sites given and a work service contract.
<b>Placed by Agent at a CWS Site</b>	11 (14%)	Current CWS Coordinator position to be cut and CWS will be individualized (4); Assigned to an activity by probation; Placed on crew if 14 years old or over—under 13 do on their own; Sentence to Serve coordinator places at a site; Agent determines site.

## STEP 9. SERVICES

Diversion program services can vary significantly based upon who is operating the program, requirements for completing the program and program objectives. The operator of the program can administer services in-house or refer program components out to other service providers. In many cases, it is a combination of both. There is no right way of providing services, but ideally they will target the underlying issues connected to youth offending. According to the *Models for Change Juvenile Diversion Guidebook*, some key questions programmers should ask about services are:

- What services will be provided for the youth while participating in the diversion program?
- What services are available in the community?
- Will the diversion program encourage or require the youth's family to participate in services?

Answering these questions will help determine the style of program, where services are delivered and level of family involvement necessary. Services include but are not limited to: decision-making skills, substance use education, mental health treatment, life-skills training, family-based interventions and mentoring. These can be offered through the operating organization or partnering service providers, and each service may have a different structure.

Another component that must be considered in service delivery is gender-specific programming and culturally specific services to support girls and minority youth. These, like all services, should be developed based on community needs.

## MINNESOTA FINDINGS

### PROGRAM COMPONENTS

According to Minnesota's juvenile diversion statute, (subdivision 3), diversion programs may:

1. Provide screening services to the court and prosecution authorities to help identify likely candidates for pretrial diversion;
2. Establish and monitor goals for diverted offenders;
3. Perform chemical dependency assessments of diverted youth, make referrals for treatment and monitor treatment and aftercare;
4. Provide individual, group and family counseling services;
5. Oversee victim restitution payments;
6. Assist diverted offenders in identifying and contacting appropriate community resources;
7. Provide educational services to enable offending youth to earn a high school diploma or GED;
8. Provide information to the courts, prosecutors, defense and probation on how offenders perform in the program.

Note that the language in the statute is "may" such that none of the aforementioned services are required, and counties may offer services in addition to those listed. The following section continues the exploration of juvenile diversion services and program models.

## LOCATION OF SERVICES

Interview participants were most likely to report that diversion meetings and services were delivered out of a probation building or office (33%), followed by a general government building/center (31%). Use of a courthouse building was the third most common venue for diversion services (23%). Relating to courthouse use, participants clarified that conference rooms were used as opposed to the formal courtroom.

Less than 10 percent of counties use a community-based diversion provider's space, school or county attorney's office for diversion. Nearly two in 10 counties (18%) reported an "other" location for diversion meetings and services, including churches, libraries, coffee shops, clients' homes or other county departments. As one provider shared, "We go where the kids are."

<b>Service Location:</b> <b>(Select All That Apply)</b> <b>Totals ≠ 100%</b>	<b>Number (Percent) of Counties N=87</b>
<b>Probation Office</b>	29 (33%)
<b>General Government Building</b>	27 (31%)
<b>Court House</b>	20 (23%)
<b>City Hall/County Seat</b>	7 (8%)
<b>Community -Based Provider's Space</b>	7 (8%)
<b>School</b>	7 (8%)
<b>County Attorney's Office</b>	4 (5%)
<b>Law Enforcement Agency/Center</b>	4 (5%)
<b>Rented Space/Storefront</b>	1 (1%)
<b>Community Center</b>	0 (0%)
<b>Other</b>	16 (18%)

## PROGRAM MODEL

Participants were provided with a list and asked to select which program model or style best describes their program(s). Respondents could select more than one style if they had multiple diversion programs or if they felt more than one style applied. More than three-quarters of respondents stated that their program style included

<b>Program Style or Model</b> <b>(Select All That Apply)</b> <b>Totals ≠ 100%</b>	<b>Number (Percent) of Counties N=87</b>
<b>Single-Meeting, Contract Model</b>	67 (77%)
<b>Classroom, Informational, Lecture Model</b>	48 (55%)
<b>Work Service Project</b>	32 (37%)
<b>Agent Supervision Model</b>	22 (25%)
<b>Group Model</b>	16 (18%)
<b>Circle or Restorative Justice Model</b>	10 (11%)
<b>Mediation Model</b>	7 (8%)
<b>Problem-Solving Court/Teen Court Model</b>	5 (6%)
<b>Mentoring Model</b>	3 (3%)
<b>Other: Online class (3); Panel style.</b>	9 (10%)

a single meeting with a diversion contract (77%); more than half of counties (55%) described their program as having a classroom, informational or lecture style. More than one-third (37%) and one-quarter of counties (25%) described their program models as work service projects and agent supervision, respectively.

Smaller percentages described their program as using a group model with group ground rules and interactions (18%), a "circle" or restorative justice model (11%); or problem-solving court/teen court model (6%). "Other" responses given by participants included the use of online learning modules and community panel-style diversions.

## EDUCATIONAL COMPONENTS

The tables on the following pages summarize the educational classes reported by interview participants to the extent that information was provided about topics, curricula, meeting requirements and costs associated with courses. In sum, 100 different course components were described. More than half of counties (53%) did not report a classroom, group or online learning component.

## CLASS CONTENT

It was most common for counties to report a class component related to alcohol, marijuana or other drug use (49%). On average, these programs meet one time for three to four hours, with a participation fee of \$50 to \$75. The 3<sup>rd</sup> Millennium curriculum was mentioned by several counties, which is an online curriculum that youth complete on their own time.

The second most prevalent course subject is for offenders with shoplifting, theft or other property-related offenses. Again, these programs generally meet one time for two to three hours. The cost of these programs ranges from less than \$50 to \$100.

Number of Educational Classes	Number (Percent) of Counties N=87
None	46 (53%)
1 Class	8 (9%)
2 Classes	14 (16%)
3 Classes	13 (15%)
4 or More	6 (7%)

General delinquency programs as well as those with cognitive-behavioral components round out the most common classes at 13 percent and 10 percent of counties, respectively. While general delinquency classes are most likely to be one-time sessions, there are a few that meet multiple times. The cognitive-behavioral programs are more likely to meet for multiple sessions, which is standard for this type of programming. Topics addressed include anger management, problem-solving and positive decision-making. None of these programs are reported to exceed \$60 in user fees.

Nine percent of counties indicate that they have tobacco programming; 9 percent report having other programs that target specific issues, including arson, truancy, traffic matters, bullying and sexting.

The extent to which specific programs and curricula are named are included in the data table below. A wide variety of staff and agencies provide course content, including sheriffs, probation agencies, public health departments, local chemical dependency providers, and other non- and for-profit groups.

Educational Components N=87	Properties	Select Comments
<b>Alcohol and/or Drug 43 (49%)</b>	Number of Sessions	Once (26); More than once (4).
	Program Length	3 to 4 hours (14); Over 6 hours (8); 2 hours (7).
	Cost	\$50 -\$74 (21); \$75 or more (9); Under \$50 (3); No fee (2).
	Course Title/Curricula	SAFE; 3rd Millennium; Reality of Drug Use; CAPS; YIELD
<b>Shoplifting, Theft, Property Crime 18 (21%)</b>	Number of Sessions	Once (12); 2 to 3 times (2); 4 times (2).
	Program Length	2 hours (5); 3 hours (4); Over 3 hours (2).
	Cost	Under \$50 (7); \$50 -\$60 (6); \$100.
	Course Title/Curricula	Action and Constructive Thinking (ACT); Program for the Encouragement of Responsible Thinking (PERT).
<b>General Delinquency 11 (13%)</b>	Number of Sessions	Once (6); 3 times (4).
	Program Length	2 to 3 hours (6).
	Cost	\$40; \$60.
	Course Title/Curricula	Diversion I; Diversion II; Second Chance Class; Delinquency Diversion.
<b>Cognitive-Behavioral 9 (10%)</b>	Number of Sessions	One (2); 4-6 sessions (2); More than 6 sessions (1).
	Program Length	Less than 2 hours (2); 2 hours (2); Over 2 hours (3).
	Cost	\$60 (3); \$0; \$40.



	Course Title/Curricula	PERT (3); Anger Management (2); Stages of Change; Change Direction; Problem-solving.
<b>Tobacco 8 (9%)</b>	Number of Sessions	Once (7).
	Program Length	2 hours (4); 1 hour; 3 hours.
	Cost	\$10-30 (4); \$40-60 (2); \$99; \$0.
	Course Title/Curricula	No curricula specified.
<b>Specialty 8 (9%)</b>	Number of Sessions	16 sessions (1); 2 times a week/8 weeks.
	Program Length	1 hour.
	Cost	\$25 (3); \$30; \$100; \$0.
	Course Title/Curricula	Arson; Truancy; Traffic/Seatbelt; Peer Court; Bullying; Sexting.
<b>Interpersonal Violence 3 (3%)</b>	Number of Sessions	One (2); 2.
	Program Length	2 hours (2); 4 hours.
	Cost	\$0 (2); \$50.
	Course Title/Curricula	Peaceful Alternatives.

## GROUPING OF YOUTH: GENDER

While all counties divert both males and females, only three counties (3%) expressed that males and females are programmed separately from one another, a practice consistent with the tenets of gender-responsive programming. In 70 percent of counties, males and females are programmed together for diversion. Twenty-seven percent of counties stated it did not apply as there is no group component.

## GROUPING OF YOUTH: OTHER YOUTH ATTRIBUTES

When asked what attributes *other than gender* youth might be separated by, just more than one-quarter of counties (26%) provided additional criteria, including separation based on offense or class content and age.

## GROUPING OF YOUTH: REFERRAL SOURCE

Participants were asked whether youth on diversion are ever mixed with youth referred from other sources or from other stages of the juvenile justice system. More than half of counties (52%) stated that diverted youth are mixed with others, including youth on probation (17); youth court-ordered to attend classes (13); and youth court-ordered to work crew or CWS hours (10). Additionally, youth may be mixed with referrals from schools, other community-based providers, self-referrals and out-of-county residents.

## TRANSPORTATION

In 98 percent of counties, youth and families are responsible for providing transportation to and from diversion meetings and required activities. Five counties expressed that they can provide vouchers for public transportation or gas. Several counties stated that they try to rotate meetings among their cities to accommodate travel issues (3); that probation officers will provide transportation if necessary (4); or that the

work crew provides transportation to the work sites from a central location (7). Twelve percent of counties stated that transportation problems are rarely an issue.

## PARENTAL INVOLVEMENT

Respondents were asked the degree to which parental involvement is required or whether it affects a youth's ability to successfully complete diversion. More than half of counties (54%) stated that there is some parental component or requirement to the youth's diversion program. Providers commented that the more involved the parents are, the more likely the youth are to successfully complete. Providers also noted that parental support and networking is essential to the program, and the expectation is that parents model interest and investment in diversion. That being said, many programs stated that considerations can be made for youth who are willing to comply with diversion even if their parents are unwilling to participate.

Parental Requirement	Number (Percent) of Counties N=87
Intake Only	39 (45%)
Intake and Class Component	26 (30%)
Class Component Only	6 (7%)
None	5 (6%)
Intake and Discharge Only	4 (5%)
Intake, Class(es) and Discharge	4 (5%)
Other (Panel/Court Model)	2 (2%)
Not Applicable	1 (1%)

Generally, at least one parent or guardian is required to attend a youth's diversion intake meeting in Minnesota counties. This applied as the only parental requirement in 45 percent of counties. In nearly four in 10 counties (37%), it is also an expectation that a parent attend at least one session of the educational component. In some counties parents attend classes with their children, and in others there is a separate educational component for the parents. Five counties (6%) cited no parental requirement.

## CULTURAL COMPETENCE

One of the goals of juvenile diversion named in Minnesota statute is to "develop collaborative use of demonstrated successful culturally specific programming, where appropriate." Interview participants were asked if their diversion program is intended to serve a specific racial, ethnic or cultural minority group. Almost all counties (97%) stated their program does not have a culturally specific component. The one program that definitively stated they have culturally specific programming referred to a tribal diversion program.

Is Your Diversion Intended to Serve a Specific Racial, Ethnic or Cultural Minority?	Number (Percent) of Counties N=87	Select Comments
Yes	1 (1%)	Tribal Diversion Program
No	84 (97%)	DMC is an issue with an overrepresentation of Native American youth; Staff members represent client base (African American, Hispanic Hmong); Significant reservation/Native American population; Large Native American and Asian population; Have an Amish community.
Not Specified/Not Applicable	2 (2%)	Not specified (1); Not applicable (1).

Programs were also asked if any part of their program is offered in languages other than English or if printed diversion materials are in languages other than English. Many providers expressed that the youth are typically English speaking but the issue exists with their parents or guardians who may not have English as a first language. Thirty percent of counties specified that interpreters are made available as are needed, including Spanish, Hmong and Somali. Sixteen counties (18%) stated they have materials available in languages other than English, including Spanish, Hmong, Somali and Lao.

While infrequent, it was mentioned that families at times have to provide their own interpreter because the county attorney cannot afford to provide the service. In addition, it was suggested that youth get processed through the formal court system if they require interpreter services.

## ADDITIONAL SERVICES

Interview participants were asked to share what other services are provided to youth and families as part of diversion. The most common service that was shared (38%) is the referral to other services, including social services, mental health services and chemical dependency services. Roughly three in 10 counties also indicated that they will either complete on their own or make a referral for mental health screening/assessment (33%) or chemical dependency screening/assessment (30%).

<b>Additional Service(s) Provided</b>  <b>(Select All That Apply)</b> <b>Totals ≠ 100%</b>	<b>Number (Percent) of Counties N=87</b>	<b>Select Comments</b>
<b>Referral to Other Services</b>	33 (38%)	Human services and social services (2); Chemical dependency assessment (2); Mental health if necessary; Psychiatric evaluation; <i>Rule 25</i> ; Voluntary referral to social services (2).
<b>None</b>	30 (34%)	
<b>Mental Health Screening and/or Assessment</b>	29 (33%)	Referrals for mental health assessments.
<b>Chemical Dependency Screening and/or Assessment</b>	26 (30%)	<i>SASSI</i> (4); <i>Rule 25</i> CD Assessment; Referral to chemical dependency provider.
<b>Strengths/Needs Assessment</b>	11 (13%)	Informal strengths/needs assessment; <i>YLSI</i> ; Mental health and chemical dependency questionnaire.
<b>Individualized Case Plan</b>	10 (11%)	
<b>Others</b>	10 (11%)	Comprehensive intake questionnaire; Occasional <i>YLSI</i> ; Has resource list of other county services; Contracted psychologist in corrections; Counseling (3); Mental health issues (2).

A smaller percentage of counties indicated that they use strengths-needs assessments during diversion (13%) or create an individualized case plan for youth (11%). In total, 30 counties (34%) expressed that they do not typically provide any additional services to youth or families during diversion.

Finally, providers were asked whether compliance with a referral to additional or external services becomes a required component of a youth's diversion program. In nearly half of counties (48%), a referral to an outside

agency is a required diversion component for at least as long as youth are on diversion. Conversely, in 22 percent of counties, referrals are suggestions only and are voluntary for youth and families.

Referrals Become Part of Diversion Conditions	Number (Percent) of Counties N=87	Select Comments
Yes	42 (48%)	They are expected to follow recommendations (5); Must if it is written into the diversion contract (5); Must follow recommendations at least as long as on diversion (2); Must at least set up appointment.
No	19 (22%)	Really the services are a suggestion; Voluntary to contact social services; Might get a referral card for mental health or chemical dependency when in the classroom setting.
Not Specified/ Not Applicable	26 (30%)	Not applicable (15); Not specified (11).

## STEP 10. INCENTIVES

According to the Models for Change *Juvenile Diversion Guidebook*, diversion programs often use incentives to motivate youth and their caretakers to participate in the diversion process. The most frequent incentive is that the justice system will take no further action in prosecuting the offense following diversion, and that the youth's participation in diversion will not be used against them in any future proceedings.

Some diversion programs also reduce program requirements as youth progress, including less reporting, reduced monitoring or diminishing requirements. In the Models for Change *Juvenile Diversion Guidebook's* survey of diversion programs among multiple states, a range of incentives were used, including gift cards, awards and other accolades. When planning incentives, programs should consider what incentives motivate youth, what has been effective in other youth programs in the community, and what incentives are feasible to offer.

### MINNESOTA FINDINGS

Program representatives were asked if any incentives are used to support youth participating in or completing their diversion requirements. Nearly all counties (91%) expressly stated that the only incentive for participating in diversion is the dismissal of the petition or citation. Few counties offer additional incentives for participation. Two counties stated they have provided food or completion parties; two have offered field-trips or community outings for youth. Other inherent incentives mentioned is that diversion is faster than the court process; that youth can get an early discharge if they finish their conditions; or that they credit good grades or school attendance for CWS hours.

## STEP 11. CONSEQUENCES FOR FAILURE TO COMPLY

When implementing a diversion program, planners must decide on appropriate consequences for youth that do not comply with their diversion conditions. According to the Models for Change *Juvenile Diversion Guidebook*, a

common system-response for failing youth is to rescind diversion and return the youth to formal processing. Another less conventional approach is to allow the youth to fail *without* forwarding the charges.

The Models for Change *Juvenile Diversion Guidebook* advises that if the youth was not of a risk level to go to court before, formal processing may still not be the most appropriate response. In such cases, it is recorded that the youth failed diversion and any additional charges would be ineligible for diversion, whereas youth who successfully complete may receive additional diversion opportunities.

In addition to the revocation of the diversion opportunity, program adjustments are common for youth who are non-complaint with diversion conditions. These include increasing the length of the program or increasing the frequency and/or intensity of monitoring.

## MINNESOTA FINDINGS

### CONSEQUENCES FOR NON-COMPLETION

Not unlike how the dismissal of the petition is the primary incentive for diversion, the primary consequence for failure to comply with diversion is the forwarding of charges to the county attorney and juvenile court (93% of counties). In addition, just more than half of counties (52%) will extend the amount of time that youth are on diversion if they have not completed conditions.

In order to receive this extra time, youth typically have had to make a good effort in meeting their conditions or have special circumstances as to why they did not complete. One participant stated that their restorative justice model will show a preference for using other consequences before forwarding of charges.

Additional consequences in use by diversion programs include assigning additional CWS hours (23%) or additional class sessions (13%). Seven percent named additional consequences, such as more contact or pressure from the diversion agent, or fees for class no-shows.

Consequences for Non-Completion (Select All That Apply) Totals ≠ 100%	Number (Percent) of Counties N=87
Forward Charges	81 (93%)
Extend Time on Diversion	45 (52%)
Extra CWS	20 (23%)
Extra Groups or Sessions	11 (13%)
Other	6 (7%)

### GROUNDINGS FOR TERMINATION

The main reasons youth are discharged from diversion, according to survey respondents, is failure to attend diversion meetings or classes (68%), getting a new ticket or citation while on diversion (46%); and getting a new delinquency charge while on diversion (68%). Additional reasons for termination cited by county providers include failure to provide a clean drug test (if a drug-related diversion); failure to complete CWS; failure to attend school; household-related issues; and poor behavior in diversion classes.

Interviews revealed that many counties differ in how they would handle a new citation or offense. Some stated that both the original diversion offense and the new charge would be forwarded to the county attorney; some stated that youth could finish diversion for the first offense but would be charged on the second offense; and some stated both may be diverted with doubled-up diversion conditions. In short, a new citation or delinquency

charge does not universally mean that youth are dismissed from diversion in Minnesota. Rather, it appears largely up to the discretion of diversion staff and county attorneys. The severity of the offense and how youth are presently doing on diversion appear to be the most important factors in the decision.

## **STEP 12. PROGRAM COMPLETION/EXIT CRITERIA**

Diversion providers must establish and agree upon criteria for youth to successfully complete diversion. According to the Models for Change *Juvenile Diversion Guidebook*, criteria may be time-based, performance-based or both.

Time-based criteria establish a length of time that youth are on diversion. The Models for Change *Juvenile Diversion Guidebook* stipulates that the length of diversion should not be “overly extensive” as programs that are too long can have negative effects on youth, but it does not provide guidance on how long is too long. In the performance-based approach, the youth’s diversion agreement specifies goals that are measurable and evaluated regularly. When a youth completes their goals, they exit the program.

Furthermore, programs must establish what behaviors are unacceptable and will result in termination from the program. These may include re-arrest, a certain number of absences, or failure to meet other obligations such as attending school.

The Models for Change *Juvenile Diversion Guidebook* recommends that clear exit criteria are explained to youth and parents, and that programs have a way to monitor youths’ progress to ensure they are improving. When diversion services are contracted to another provider, it is important that the contracted agency and diversion agency have an agreed upon communication arrangement. This will help diversion staff to know if and when a youth is having difficulty completing diversion conditions.

## **MINNESOTA FINDINGS**

### **COMPLETION DETERMINATION**

Program completion most commonly occurs when a youth has successfully met their contract conditions. This includes having finished any educational components, community-service obligations, and payment of any fines or fees. However, some programs maintain youth on diversion for a predetermined length of time. The agent who oversees a youth’s diversion is largely responsible for determining when a contract is complete.

### **COMPLETION CONDITIONS**

Beyond remaining law-abiding, the most common requirements for youth to successfully finish diversion relate to restoration of victims. In 61 percent of counties, CWS must be completed, followed by restitution payments in just under half of counties (48%). Written apology letters to victims are also a prevalent condition for diversion completion (44% of counties). In roughly one-quarter of counties, youth are considered finished when they have met all the conditions of their diversion contract or case plan (25%), or when they have attended the required number of meetings or sessions (23%). A small percentage (6%), require completion of a victim-offender mediation.

<b>Conditions Related to Successful Completion</b> <b>(Select All That Apply)</b> <b>Totals ≠ 100%</b>	<b>Number (Percent) of Counties</b> <b>N=87</b>
<b>CWS Complete</b>	53 (61%)
<b>Restitution Complete</b>	42 (48%)
<b>Apology Letter Complete</b>	38 (44%)
<b>Case Plan Goals</b>	22 (25%)
<b>Certain Number of Sessions</b>	20 (23%)
<b>Victim-Offender Mediation</b>	5 (6%)
<b>Other</b>	36 (41%)

A large contingency of counties (41%) listed “other” criteria youth must meet to successfully complete diversion, including meeting all class requirements (16); completing assignments or reports (5); paying all class or administrative fees (4); and attending school (3).

## **SECTION D: LITERATURE REVIEW AND BEST PRACTICES**

### **PARTICIPANT REQUIREMENTS**

Juvenile justice system interventions with youth in general have been shown to be most effective when they identify areas of risk and need, and when programming is individualized based upon identified risks and needs.<sup>86,87</sup> No single risk factor can be used to predict delinquency but certain factors increase the likelihood, namely youth's interaction with peers, family and school, and whether or not they have anti-social or pro-criminal attitudes. Protective factors are those that reduce the risk for future criminality. These include a sense of attachment and integration, individual characteristics and temperament, and pro-social standards of behavior.<sup>88</sup> Linking these areas of risks and assets to intervention has been shown to be effective across juvenile programs.<sup>89,90</sup>

As it relates to diversion and beyond the standard requirements all youth typically receive (remain law-abiding, keep appointments, make restitution), a promising practice is to individually tailor requirements to the needs and risks of each youth.<sup>91</sup> The National Association of Pretrial Services Agencies (NAPSA) recommends that program requirements be focused on factors that contribute to reoffending. This practice supports the evidence-based principle of targeted interventions to reduce risk.<sup>92</sup> NAPSA further states as a pretrial Performance Standard that diversion plans be developed based on a comprehensive assessment of risk and should not solely be designed to respond to the crime charged.<sup>93</sup>

Formulation of diversion plans should be created as soon after enrollment as possible and be in writing. Furthermore, plans should be realistic with achievable goals.<sup>94</sup> Another component of diversion planning is to have youth and families actively involved in plan creation and conditions. Ideally, diversion participants should understand that the diversion conditions are designed to improve their situation rather than as a punishment or a substitution for a sentence. While there will be conditions and expectations imposed upon youth, they should be informed by their individualized risk factors.<sup>95</sup>

An additional NAPSA Performance Standard is that diversion programs address restoring justice and reducing recidivism by incorporating a variety of approaches. These include but are not limited to rehabilitation, community service, victim restoration and restitution. The nature and extent of the requirement should match the level of offense and risk of future delinquent behavior. Specific interventions again should be written into a contract and signed by the youth and guardians.<sup>96</sup>

NAPSA also supports that conditions generally not be "automatic" for all participants. As an example, community service should be used specifically when it will enhance a youth's situation or functioning, or when it contributes to the compensation of a victim. In no case should the requirement exceed that which could be ordered by the court. Similarly, drug testing should only be used when there is good reason to suspect chemical use and to inform if youth need a deeper level of assessment or treatment.

### **SERVICES AND REFERRALS**

As stated in Section B, no specific agency has been identified to best house a diversion program. What the literature does support, however, is that programs delivered by non-juvenile justice providers generally show more successful results and reduced rates of recidivism.<sup>97,98</sup> A NAPSA Performance Standard supports that diversion programs should "develop, identify and partner with treatments and other types of services in their



community which have demonstrated effectiveness.” This includes providers who are professionally accredited or licensed (as appropriate), and that are knowledgeable about gender- and culturally responsive services, and trauma-informed care.<sup>99</sup> Diversion staff should also ensure that contracted services use evidence-based strategies that have been proven effective.<sup>100</sup>

The literature does not specifically address if compliance or completion of outside services or referrals should be a diversion requirement. According to the *Models for Change Juvenile Diversion Guidebook*, “the importance of matching youth needs to the appropriate service cannot be overemphasized.”<sup>101</sup> Based on the premise that all diversion conditions should be written, at minimum these conditions should be in the diversion contract if youth and families will be held accountable. Given that diversion is also voluntary, youth and families should not be forced to receive services or have a long-term service commitment. It may be more appropriate for diversion to initiate processes such as recommending additional screenings or assessments, or initial meetings with counselors and social workers rather than mandating a term of service.

The physical location of services is also to be considered, in part to reduce the negative effects of labeling (see Section A). Providing services in non-justice system locations can reduce stigma associated with diversion for youth. Location can also affect participation. One study of the *Detention Diversion Advocacy Project* identified program’s physical accessibility as a contributing factor to success.<sup>102</sup> Noting these findings, programs may want to utilize locations that are not associated with the juvenile justice system and are accessible to the program’s target population.

Interventions that have been show *not* to be effective and to cause greater risk for youth to reoffend are deterrence-oriented models such as Scared Straight (in which juveniles are exposed to the realities of the prison system) and boot camp models.<sup>103,104</sup> These methods are actively opposed by the federal *Office of Juvenile Justice and Delinquency Prevention*, and at times are in violation of the requirements of the *Juvenile Justice and Delinquency Prevention Act*. Such models should not be utilized in diversion for youth.

## **SERVICE DELIVERY MODE**

A significant amount of literature exists pertaining to the effectiveness of different programming styles and delivery systems. Several models have been developed for diversion interventions, including but not limited to, Teen Court, Functional Family Therapy (FFT), restorative justice and juvenile education programs. Although there is literature that pertains to the effectiveness of different models, a meta-analysis of many different programs and models does not clearly identify one model as superior to another.<sup>105</sup>

However, these studies have yielded that certain program components contribute to successful diversion, including cognitive-behavioral treatments, development of interpersonal skills, small caseloads, and using a therapeutic approach with youth.<sup>106,107</sup> Also, more than one source states that having comprehensive services that can be accessed at several different decision-points in the juvenile justice system has shown to be effective and increases the chances of success.<sup>108</sup>

The Center for Juvenile Justice Reform states in *Improving the Effectiveness of Juvenile Justice Programs*, that services should use program designs that meet the needs of their target population and have proven to be effective. The report also emphasizes the need to implement program models as designed and incorporate the designer in the development process if possible.<sup>109</sup> Although a common service for diversion programs is the use

of education classes targeted to specific offenses such as substance use and shoplifting, only one of the reviewed reports indicated that these were a vital component of intervention.<sup>110</sup>

## **EDUCATIONAL COMPONENT**

To some degree the extent to which education services are offered is driven by community resources and the needs of youth in the community. Common education components include drug and alcohol awareness classes, property crime classes, cognitive-behavioral interventions around decision-making and consequences, and other life and job skills. The extent to which these courses are effective needs to be assessed on a local level and depends greatly on the content delivered, skills of the teacher or presenter, and frequency and length of exposure to the material. As an example, cognitive-behavioral interventions are quite effective in changing youth behavior but they often require many sessions over time, opportunities to practice skills and make mistakes, and staff that is trained to deliver a model curriculum. These may exceed the scope of diversion or the risk-level of some youth.

Conversely, one-time educational programs are useful in facilitating learning new information, but are less effective in changing values and behaviors. A youth may learn new information about the effects of substances, learn more about the law, or better understand the effect of their actions on victims, but they do not have the opportunity to practice new skills or integrate a new belief system. Again, increased knowledge may be useful and appropriate for some youth in the diversion population. Although a common service for diversion programs is the use of education classes targeted to specific offenses such as substance use and shoplifting, only one of the reviewed reports indicated that these were a vital component of intervention.<sup>111</sup>

## **PARENTAL INVOLVEMENT**

Involvement of parents and caretakers is widely supported as effective in juvenile justice system programming. A meta-analysis of the effect of family intervention on recidivism rates found that family intervention treatment significantly reduced recidivism.<sup>112</sup> The Washington State Institute for Public Policy has identified other evidence-based juvenile offender programs that focus on the family unit, including Functional Family Therapy (FFT), Multi-Systemic Therapy (MST), and Family Integrated Transitions (FIT).<sup>113</sup> These programs have been evaluated and shown to be cost-effective to the system, with savings ranging from \$5,000 to nearly \$32,000. Although these studies pertain to interventions for juvenile offenders overall, it is likely that parental involvement has a positive effect on reducing recidivism in diversion programs as well.

In addition, connections to family and parents are a protective factor for youth that reduce the likelihood of criminal behavior. Having parents involved taps a natural non-system asset and involves parents in determining an appropriate level of accountability. Parents are also very knowledgeable about their children as to which interventions may be most appropriate to decrease their child's risk.<sup>114</sup>

## **GROUPING OF YOUTH**

Generally, youth who are receiving diversion should not be mixed with youth who are higher-risk, which may include youth with more significant delinquency histories or higher overall need levels. Research consistently supports the separation of low- and high-risk youth.<sup>115,116</sup> In fact, placing low-risk youth in programs with high-risk youth has been shown to increase recidivism of low-risk offenders.<sup>117</sup> Differential Association Theory

proposes that association with deviant groups increases the likelihood that an individual will become deviant.<sup>118</sup> In essence, low-risk youth can learn criminogenic attitudes and skills from higher-risk youth and it may increase the effect of labeling for lower-risk youth. Most importantly, it is essential that youth on diversion are not mixed with adults who are under the supervision of the criminal justice system.

## **GENDER-RESPONSIVE AND CULTURALLY RESPONSIVE PROGRAMS**

A meta-analysis of studies shows that demographic characteristics such as age, gender and ethnicity do not impact the effects of delinquency intervention.<sup>119</sup> However, demographic characteristics should be considered when implementing services.<sup>120,121</sup> While it is not necessarily detrimental to program males and females together, or youth from different races and cultures, there is evidence that girls and minority cultures do better when there is programming that integrates their unique experiences and issues in majority culture.<sup>122,123</sup> A Performance Standard set forth by NAPS for diversion programs is to partner with agencies that can provide culturally competent and gender-specific programming.<sup>124</sup>

As it relates to gender-responsive programming, these are models that target female offenders and address risk factors unique to girls, as well as build upon girls' assets, strengths and protective factors. Key components of gender-responsive programming are risk-assessments designed for and validated on girls; female staff members who understand girls emotional development and mental health; girls heightened risk and exposure of trauma and victimization; and the importance of personal relationships for girls. These programs for girls are to take place in safe spaces, separate from males.<sup>125,126</sup>

Not unlike gender-specific programming, culturally specific services meet the needs of racial and ethnic communities. These programs are often staffed by employees who represent the minority communities served, and use risk assessment instruments and curricula that are designed for non-white populations. Culturally competent programs acknowledge minority cultures, customs, values and behaviors. They also acknowledge the history of oppression and racism prevalent in society and how that continues to affect their cultures.<sup>127,128</sup> The NAPS Performance Standards express that diversion programs should be "in all policies and practices culturally sensitive and informed."<sup>129</sup>

Minnesota specifically has serious issues with youth from minority races and cultures being overrepresented in the juvenile justice system compared to their percentage of the overall youth population.<sup>130</sup> Cultural competency in juvenile justice system staff and programs is one strategy to make headway against disparities.

## **INCENTIVES AND SUCCESSFUL COMPLETION**

The primary incentive for youth to participate in diversion is to have their citation or petition dismissed upon successful completion of their contract or conditions. NAPS Performance Standards support that diversion programs dismiss charges upon successful completion of program requirements.<sup>131</sup> Furthermore, the Models for Change *Juvenile Diversion Guidebook* recommends that a record of a juvenile's participation in diversion not be used against them in any future proceedings.<sup>132</sup>

Additional incentives for completion of diversion noted in Models for Change *Juvenile Diversion Guidebook* include a reduction in monitoring or supervision as youth proceed through the program or shortening the time on diversion. The Models for Change *Juvenile Diversion Guidebook* supports programs using creative incentives

based on what motivates their youth population and what is feasible given their resources. Programs are advised to track their incentives used and monitor for equitable application.<sup>133</sup>

## CONSEQUENCES AND TERMINATION

A Promising Practice in pretrial diversion named by NAPSA is the use of graduated sanctions, short of termination, as a response to participant behavior.<sup>134</sup> Literature suggests that swift, certain and equitable response to non-compliance with conditions can reduce future issues of non-compliance and reduce recidivism. Likewise, the Juvenile Accountability Incentive Block Grants Program published an article that focused on best practices for juvenile court and probation which indicated that juvenile interventions should, “have consistent, clear, and graduated consequences for misbehavior and recognition for positive behavior.”<sup>135</sup> Graduated sanctions related to diversion can include an increase in supervision level; more community services hours; increased education or treatment requirements; or an increased length of time on diversion.<sup>136</sup>

Ultimately, programs retain the right to terminate the delivery of services if a participant is not meeting program expectations. When such a determination is made, NAPSA asserts participants should be returned to the justice system for formal processing without prejudice.<sup>137</sup> The Models for Change *Juvenile Diversion Guidebook*, which is specific to juvenile diversion, recommends that at times it is most appropriate for youth to be able to fail diversion and not be forwarded to court. They support that if it is a low enough level offense, it should not be forwarded. Only if they have an additional charge will they be ineligible for diversion as a consequence.<sup>138</sup>

## REOFFENDING

According to the NAPSA Performance Standards, arrests that occur during diversion should not be grounds for automatic termination. A program must review the facts related to the arrest and all other circumstances to determine if diversion should continue.<sup>139</sup>

According to the Models for Change *Juvenile Diversion Guidebook*, many programs state “the absence of new arrests” as a diversion condition. However, some programs allow for continued diversion if the new offense fits within the original diversion criteria. It appears that program staff must make their own determination about how best to proceed in the event of new arrests or charges.<sup>140</sup>

## **SECTION D: SUMMARY**

### **STEP 8. PARTICIPANT REQUIREMENTS**

- Diversion programs vary in responsiveness levels. About one-third of counties describe their program as prescriptive with little variability, whereas just over an additional third describe their programs as highly individualized to the nature of the offense and the needs of youth.
- The most common conditions of diversion that youth receive in 67 percent of Minnesota counties is community work service (CWS), followed by apology letters (51%) and payment of restitution (37%).
- The number of CWS hours youth receive as a part of diversion also varies significantly among counties from less than 10 hours to as high as 80 for felony-level youth. The number of hours is often determined by the diversion agent based on the offense or the amount of restitution owed. It is most often the arrangement that youth must complete CWS hours in their community. In 38 percent of counties there is a juvenile work crew options for youth.

### **STEP 9. SERVICES**

- The majority of diversion meetings and services are offered in government buildings, including probation offices, courthouses and county attorney offices. Less than 20 percent of activities occur in a community-based setting, including schools.
- A little more than half of the counties (53%) report that there is no classroom-based educational component in their diversion program. Generally, counties that require a classroom or educational component indicate that they meet one to two times, with classes two to four hours in length, and with a fee of \$30-\$60.
- The most common educational components reported include alcohol-related classes (49% of counties); shoplifting, theft or property crime classes (21%); general delinquency classes (13%); and cognitive-behavioral classes (10%).
- It is common for youth on diversion to be mixed in with youth who are court-ordered to classes or work crews, or those on juvenile probation. In addition, some programs mix diverted youth with youth referred from schools and community-based agencies.
- In 94 percent of counties, there is some parental component required for diversion ranging from intake meetings to class attendance.
- Of all counties, 97 percent stated that their diversion program is not intended to serve a specific racial, ethnic or cultural minority group.
- Additional services provided to youth and families at the time of diversion include referral to other services (38% of counties); mental health screening or assessment (33%); and chemical dependency

screening or assessment (30%). Just over one-third of counties (35%) provide no additional referrals or services through diversion.

## **STEP 10 INCENTIVES.**

- The most common incentive for youth to participate in diversion is dismissal of the petition or citation. Ninety-one percent of counties stated this as the only incentive built into diversion programming.

## **STEP 11. CONSEQUENCE FOR FAILURE TO COMPLY**

- The most common consequence for failure to comply with diversion named by interview participants is the forwarding of charges to juvenile court (93%). More than half (52%) also stated that they will extend the time a youth is on diversion or assign additional CWS (23%).
- The most common issues leading to revocation of the diversion agreement are failure to attend meetings or class sessions (68%) or getting a new delinquency charge while on diversion (68%). Non-delinquency level tickets or citations can also lead to revocation in nearly half of counties (46%). Counties report a variety of responses to new offenses, including diverting new charges if a youth is already on diversion, diverting one charge and charging the other; and/or charging both the old and new offense.

## **STEP 12. PROGRAM COMPLETION/EXIT CRITERIA**

- Programs vary in whether a youth successfully completes diversion as soon as all conditions are met, or whether they remain under their contract until the maximum diversion time period has passed.
- In order to successfully complete diversion, it is most common for youth to have to complete their CWS obligation (61% of counties); pay restitution (48%); and complete apology letters (44%). A large percentage of counties (41%) listed “other” criteria, such as attending/completing classroom components, paying fines and fees, and attending school. The diversion agent is most often responsible for making the determination condition.

## **BEST PRACTICES:**

- Diversion conditions should ideally target risk factors that, when addressed, reduce the likelihood of future offending. These risk and need areas should be based on the results of a risk/needs assessment.
- Youth with different criminogenic risk-levels should not be mixed together for services.
- Diversion conditions should be documented in writing soon after enrollment in a diversion program. Youth and families should be included in the development of conditions, which should be based on a

youth's individual needs and offense, rather than automatic and universally applied. Also, services offered to youth should be connected directly to individual needs.

- Restorative justice principles should be incorporated into diversion, including community work service, victim restitution, apology letters and rehabilitative activities.
- Diversion services should, if possible, be located in community-based settings to maximize community assets and reduce labeling.
- No Scared Straight or other deterrent-based programs should be used as a part of diversion.
- Education components and cognitive-behavioral interventions are common conditions of diversion. These interventions should be targeted to certain offenders and utilize materials demonstrated to be effective with youth.
- Parental involvement improves effectiveness of many juvenile justice interventions. It is likely that parental involvement in diversion conditions is beneficial. It is uncertain if having parents participate in educational programming affects diversion completion or recidivism.
- Gender-specific and culturally specific programs increase outcomes for girls and youth of color involved in the juvenile justice system.
- Youth who successfully complete diversion should have their charges dismissed. Additional incentives for youth in diversion include less monitoring and less time on diversion.
- Best practices in diversion support clear, graduated sanctions that lead up to unsuccessful completion. In the event of unsuccessful completion, all rights in the juvenile justice system should be restored.
- Individual programs must determine how to proceed if youth are re-arrested or receive new charges while on diversion. It is recommended that a new arrest or charge not automatically result in termination, rather that all factors be considered prior to revocation.

## SECTION D: RECOMMENDATIONS

- Assign a consistent range of CWS hours for diverted youth based on their offense level to ensure a comparable diversion experience across the state. Similarly, establish a state-level CWS compensation rate so youth have a comparable experience with victim restitution based on their offense and degree of harm caused to the victim.
- Build incentives into diversion, including completing diversion when conditions are completed; CWS in exchange for fines or fees; CWS hours credited for school attendance, grades or other areas with which youth are struggling; and other acknowledgement of improving attitudes and behaviors.
- Include victim restoration activities in diversion whenever possible to promote reparation of harm and victim empathy. These include CWS, victim offender mediation, apology letters and victim-empathy education.
- Whenever possible, base meetings, classes and other program components in community-based locations other than justice system buildings. This is to limit contact with formal system staff and clients.
- Avoid mixing together youth of differing risk-levels in diversion services and interventions.
- Deliver or contract with agencies that deliver quality educational or cognitive-behavioral programming. In order to have the most relevance and impact, youth should be grouped by similarity of offense, age or other attributes relevant to service delivery. Pre- and post-tests can test knowledge and learning at the beginning and end of classes or curricula.
- Exploration of the need for gender-specific programming for girls and culturally specific programming for minority races and cultures is necessary, based on referral numbers and issues of minority overrepresentation.
- Diversion contracts should clearly include which behaviors or conditions are grounds for forwarding charges to the county attorney, and what degree of communication youth must maintain with the diversion provider. If the provider maintains the right to extend the amount of time on diversion, or add additional conditions after the initial contract, this must be clearly communicated to youth and families. Similarly, if there are areas that diversion does not monitor (i.e., school, attendance, household rules, etc.), parents should be made aware that diversion will not intervene in these matters.
- The most common consequence for failure to comply with diversion is forwarding of charges. Diversion providers should consider that youth can fail diversion without forwarding of low-level charges. Future offenses would not receive an additional diversion opportunity, but one-time offenders would not be subject to the juvenile justice system.



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## SECTION E: LEGAL PROTECTIONS

### STEP 13. INFORMATION USE

Many diversion programs require the collaboration of county attorneys, probation providers, community-based agencies, schools, law enforcement and other contracted partners. The Models for Change *Juvenile Diversion Guidebook* advises that diversion programs have policies in place regarding how information on juveniles is to be collected and used, as well as protections around confidentiality.

Decisions must be made regarding what information, if any, will remain confidential. Agencies collaborating and sharing information ought to have clear policies or Memoranda of Understanding (MOUs) about what data will be shared; the purpose for the data-sharing; the scope of how data will be used; and whether youth and families must sign a release of information for data-sharing. Furthermore, these data-sharing use and data-sharing arrangements must be explained clearly to youth and parents at the outset of the diversion process.

### MINNESOTA FINDINGS

Minnesota Statutes Chapter 13 regulates Government Data Practices including law enforcement, judicial, corrections and criminal justice data.<sup>141</sup> Most data on individual youth involved in the juvenile justice system are private such that names and other identifying information are not available to the public.

State statute does allow for sharing data between organizations to facilitate diversion. Minnesota statute § 260B.171 Subdivision 5 (f) states: “in any county in which the county attorney operates or authorizes the operation of a juvenile prepetition or pretrial diversion program, a law enforcement agency or county attorney's office may provide the juvenile diversion program with data concerning a juvenile who is a participant in or is being considered for participation in the program.” It is up to individual counties and programs to determine the extent of information shared for delivery of services.

Furthermore, the statute regarding juvenile diversion requires that every county attorney who establishes a diversion program under statute § 388.24 shall report the following information to the Bureau of Criminal Apprehension (BCA): name and date of birth of each diversion program participant and any other identifying information the superintendent considers necessary; the date on which the individual began to participate in the diversion program; the date on which the individual is expected to complete the diversion program; the date on which the individual successfully completed the diversion program, where applicable; and the date on which the individual was removed from the diversion program for failure to successfully complete the individual's goals, where applicable.” As such, record of diversion becomes part of a youth’s criminal history file at the BCA.

## DATA-SHARING

Interview participants were asked whether data is shared between the county attorney and a diversion provider. In more than half of counties (53%), there is data-sharing, mostly consisting of names, dates of birth, information about a youth's diversion conditions, and whether they are met.

Twenty-one percent of counties indicated that they did not share data with another organization, or that the question was not applicable because they run the program within their own agency.

Is Data Shared Between the Diversion Program and Contracted Organizations?	Number (Percent) of Counties	Comments
<b>Yes</b>	46 (53%)	Completion information/requirements met (12); Just name of youth referred (6); With a release of Information (6); Contents of referral form (5); Only as needed/cases dependent (4).
<b>No</b>	6 (7%)	Class is in-house (2); Just if the youth participated in the class; If needed, get a signed release.
<b>Not Specified (20)/ Not Applicable (15)</b>	35 (40%)	Only basic name info (3); Referral form; Whether completed or not; Most programs are run in house; It is just between us and the police report.

Interview participants were asked to explain the extent to which they share data or information on juveniles between the diversion provider and county attorney's office. It was most common for counties to report that they only share basic information about successful completion or termination with the county attorney (34%). Nearly one-quarter of counties (23%) stated they have extensive data-sharing between organizations and/or regular updates as to how the youth is doing on diversion. Twenty-one percent of counties stated they share whatever is asked for on the referral form, and other information as needed.

Extent of Information Shared between County Attorney and Diversion Provider	Number (Percent) of Counties N=87
<b>Termination/Completion Only</b>	30 (34%)
<b>All Information/Extensive Sharing</b>	16 (18%)
<b>Referral Form Content</b>	15 (17%)
<b>Regular Updates</b>	4 (5%)
<b>As Needed</b>	3 (4%)
<b>Other</b>	3 (4%)
<b>Not Specified (11)/ Not Applicable (5)</b>	16 (18%)

## WORKING RELATIONSHIP

When asked to describe the quality of the relationship and communication between the county attorney and diversion provider on a scale of 1 to 5, no counties indicated that their relationship was challenging or difficult. Nearly nine out of 10 counties (88%) rated their relationship and communication as "collaborative and clear."

Relationship/Communication Between County Attorney and Diversion Program (Scale of 1-5)	Number (Percent) of Counties N=87	Select Comments
1 to 2 (Very Challenging/Difficult)	0 (0%)	
3	4 (5%)	
4	23 (26%)	Both very busy and can be hard to make contact but relationship is very good; As county attorneys rotate, there is a new learning curve but the relationship is good; We talk several time per week about kids.
5 (Extremely Collaborative/Very Clear)	54 (62%)	Solid; Open-door policy; Very easy to work with provider; Excellent communication with both county attorney and community corrections; Very good communication.
Not Specified/Not Applicable	6 (7%)	Not applicable (5); Not specified (1).

## BCA REPORTING REQUIREMENT

Five counties (6%) expressed that they send juvenile diversion information to the BCA consistent with the statute's requirement; an additional 40 percent of counties were either unsure or did not specify if they send data to the BCA. More than half of counties (53%) reported that diversion data is not sent to the BCA.

Is Diversion Information Sent to BCA?	Number (Percent) of Counties
Yes	5 (6%)
No	46 (53%)
Unsure	17 (19%)
Not Specified (17)/Not Applicable (2)	19 (22%)

County attorneys differ in their perception as to whether they are required to send all diversion data to the BCA. Because the juvenile diversion statute states that "diversion programs operating under this statute shall submit data," it is often interpreted that only diversions for misdemeanor level or higher offenses must be submitted. Therefore, any youth receiving diversion for status/petty level offenses would not require that a form be submitted to the BCA.

During development of the Minnesota Juvenile Decision Points Study, the extent to which diversion data can be extracted from the BCA's *Criminal Justice Information System (CJIS)* was explored. It was revealed that there will be a comment in an individual's *Criminal History File* which is not amenable to data analysis. Because of this, characteristics of youth diverted overall, or the success or failure rates of youth on diversion statewide cannot be determined. Furthermore, this is not the source of data counties use to determine a criminal history or previous diversion.

## STEP 14. LEGAL COUNSEL

According to the *Models for Change Juvenile Diversion Guidebook*, this step directs policy-makers to determine what access to counsel youth will have as a part of diversion, especially if a rule on the matter is absent from state statute or local policy. Approximately a dozen states have laws that specify some role of counsel for youth, typically limited to the intake time when youth and families are making the decision whether or not to participate in diversion.

The Models for Change *Juvenile Diversion Guidebook* further explains that even if state statute does not specify the role of counsel, the policies of individual counties can provide for a wide range of defense counsel roles, “from the full right to counsel throughout the program participation to little to no role for defense counsel.” In cases where confidentiality provisions are fewer, the right to counsel is more important. If admissions of guilt, program communications, assessments and other evaluations can be forwarded to a prosecutor, it is more important that youth are making an informed decision prior to diversion.

Youth must be informed of the full ramifications of failing diversion. If a youth fails diversion and there is the potential to be adjudicated delinquent in the proceedings, the argument for legal counsel prior to diversion is stronger than for youth who might be adjudicated as a petty offender or alcohol/controlled substance offender. The more serious the repercussions for youth should they fail the diversion, the greater the need for legal counsel at the diversion decision point.

## **CONFIDENTIALITY AND SELF-INCRIMINATION**

In the event the youth makes incriminating statements during diversion or informal processing, a decision must be made as to whether this information can be used against youth at a later time. It must be decided also if any protection against incrimination applies to the entire period of diversion, or only during the intake, assessment or treatment elements of the program.

Programs must be especially careful when requiring an admission of guilt in order to participate in diversion, as this could potentially be used against them if their case was returned to court. An argument can be made that such an admission at the time of diversion could be deemed involuntary and suppressed. Some states, such as Illinois, Georgia, Montana and Nevada, have statutes that specifically prohibit using diversion statements against youth at a later time.

## **MINNESOTA FINDINGS**

In Minnesota, the right to legal counsel does not apply if a charge is less than a misdemeanor. Many offenses for which youth are diverted are status or juvenile petty offenses such that even if they went to court, they would have no right to a public defender. Only on a youth’s third or subsequent petty offense does the right to counsel apply.<sup>142</sup> Youth are always entitled to counsel for misdemeanor, gross misdemeanor and felony-level offenses and appeals.<sup>143</sup> As it relates to child protection, youth who are being petitioned solely for habitual truancy are not entitled to public defense. However, no out-of-home placement, including foster care, may be ordered without public defense assigned.<sup>144</sup>

The closest procedural equivalent to making an admission of guilt for pretrial diversion is a youth making a plea agreement in court. In the event a youth agrees to plead guilty in court in exchange for certain concessions, their admission of guilt cannot be used against them in court if the judge ultimately refuses to accept the plea, according to Minnesota Rules of Juvenile Procedure.<sup>145</sup> If that same standard is applied to diversion, then youth’s acknowledgement of guilt to participate in diversion could not be used against them if they were later petitioned to court on the offense.

Diversion respondents were asked the degree to which youth are made aware of their rights prior to diversion. In nearly half of counties (49%), youth are informed that the decision to participate in diversion includes a

waiver of their right to an attorney. Roughly eight in 10 counties expressly state that diversion is voluntary (82%) and that they have the right to bring their case to court (78%).

<b>Diversión Rights</b> <b>(Select All That Apply)</b> <b>Totals ≠ 100%</b>	<b>Number (Percent) of Counties N=87</b>
<b>Voluntary Nature of Diversion</b>	71 (82%)
<b>Right to Go to Court</b>	68 (78%)
<b>Must Admit Responsibility for the Offense to be Eligible</b>	56 (64%)
<b>Diversión Information Can Be Given to Courts</b>	54 (62%)
<b>Program Requirements/ Grounds for Termination</b>	45 (52%)
<b>Waiver of Right to Attorney</b>	43 (49%)
<b>Restoration of Rights if Returned to Court</b>	33 (38%)

In 62 percent of counties, youth are told that information collected during diversion can be sent to the courts if needed; fewer than four in 10 (38%) counties inform youth that their rights are restored if they go to court.

In nearly two-thirds of counties (64%), youth must admit to the offense in order to be eligible for diversion. In cases where youth are diverted for an offense higher than a status/petty, this could result in adjudication should they fail diversion. While presumably the right to public defense would apply at the time of their hearing, it may be the case that an admission of guilt at the time of diversion can be provided to prosecutors. It does not appear that there is consistency in youth diversion rights among counties in Minnesota or that all potential legal issues are addressed at the time of the diversion decision.

## SECTION E: LITERATURE REVIEW AND BEST PRACTICES

### INFORMATION USE

Because diversion can include many communications between juvenile justice system agencies, youth and families, and contracted providers, the Models for Change *Juvenile Diversion Guidebook* supports that diversion programs have procedures and protocols in place regarding how information is collected during the diversion process.<sup>146</sup>

The National Association of Pretrial Services Agencies (NAPSA) recommends in their Performance Standards that programs should specify and share with participants “precisely what information might be released, under what conditions it might be released, and to whom it might be released.”<sup>147</sup> Additionally, diversion programs guarantee through intra- and inter-agency agreements that information collected during the course of diversion will not be admissible as evidence in “any subsequent civil, criminal or administrative proceeding.”<sup>148</sup>

These agreements can be arranged through use of contracts, Memoranda of Understanding (MOU) or other written documentation. It is also encouraged that Releases of Information are procured and signed by youth and families to facilitate information exchanges.

### ADMISSION OF GUILT AND ACCESS TO COUNSEL

Many diversion programs require that youth accept responsibility or admit guilt to the alleged offense in order to participate in diversion. The legal issue becomes whether this admission of responsibility can be used against youth if the diversion opportunity is revoked or if they elect to withdraw from diversion. The extent to which programs require an admission of responsibility or do not protect confidentiality affects whether they require legal representation.

NAPSA recommends in two separate Performance Standards that all participants have the opportunity to consult with counsel before making the decision to apply for diversion, and that participants have the ability to review, with counsel, the merits of the case against them.<sup>149</sup> NAPSA also supports defendant access to counsel before the decision to participate in pretrial diversion as one of nine *Promising Practices*.<sup>150</sup> As a broader issue yet, potential diversion participants should have due process rights if they feel they have been unjustly barred from the diversion option by the screening agency.<sup>151</sup>

Even the Models for Change *Juvenile Diversion Guidebook*, which focuses exclusively on juvenile diversion, states that programs must determine the role that legal counsel will play, including use of private counsel and public defense. It also must be determined if youth will have counsel at the participation decision or all through the diversion process.<sup>152</sup> In Minnesota, this decision would largely apply only to youth charged with a misdemeanor or higher, as petty offenders have no right to representation by public defenders.

The Models for Change *Juvenile Diversion Guidebook* cautions that the importance of counsel differs depending on the consequences a youth may receive if charged in court. Youth and families must fully understand the potential legal outcomes of participating in court versus diversion. This is less of a concern if programs do not intend to pursue formal charging as a condition of failing diversion.<sup>153</sup>

## **SELF-INCRIMINATION**

During the course of diversion, other youth conduct and issues may come to light. Again, whether or not this information can be used in future prosecutions must be determined. The Models for Change *Juvenile Diversion Guidebook* recommends that diversion programs have a policy of confidentiality such that statements and information revealed during the diversion process be confidential and not used against youth in any future legal proceedings. Exceptions to this include information which providers are required to report by statute, such as child abuse. Additional confidentiality provisions may also apply related to therapist-patient privilege related to issues of mental health or substance use.<sup>154</sup>

Generally, the importance of open communication between parties to assist in addressing youth's underlying reasons for offending behavior support that confidentiality should be a priority. A study of state statutes revealed that 10 states have statutes which provide that incriminating statements made by youth during diversion or informal processing cannot later be used against the declarant.<sup>155</sup> NAPSA also supports that, as a general rule, that information gathered in the course of diversion should be considered confidential and should not be released without the participant's prior, written consent.<sup>156</sup> Programs must determine if this confidentiality provision applies to the entire course of diversion or only during intake and assessment periods.

## **RIGHT TO RETURN TO FORMAL PROCESSING**

It is important that youth who are diverted are made aware that diversion is voluntary. Youth are not to receive any extra penalties if they elect not to participate in diversion, or if they wish to discontinue diversion and have their case go to court. According to NAPSA Performance Standards, those who elect to return to traditional system processing should be able to do so "without prejudice." Likewise, the program itself also retains the right to terminate and return participants to court without prejudice, but must provide in writing the reasons participants are terminated.<sup>157</sup>

As a rule, the diversion provider cannot recommend that a participant be charged. Rather, that decision is turned back over the prosecuting agency to make. If youth are to have their case prosecuted, that which has been shared in diversion should not be held against them, consistent with the previous sections on admission of responsibility and confidentiality. NAPSA further recommends in their Performance Standards that diversion programs limit the information provided to the court and prosecutors to that which is necessary to verify that program requirements were met and the intervention plan was addressed satisfactorily.



## **SECTION E: SUMMARY**

### **STEP 13. INFORMATION USE**

- In roughly one-third of counties (34%), the extent of information-sharing between the county attorney and diversion provider is limited to notification of program completion or determination. In about one-quarter of counties (23%,) there is extensive information-sharing or regular updates on youth regarding diversion progress. Programs vary in the amount of information and data shared between the program and referring agency.
- The majority of counties (88%) rate the relationship and communication between the diversion provider and county attorney as extremely collaborative and clear. No counties rated their relationship as challenging or difficult.
- Six percent of counties submit data on youth diverted to the BCA, consistent with the juvenile diversion statutory requirement.

### **STEP 14. LEGAL COUNSEL**

- In Minnesota, the right to counsel applies only if youth commit a misdemeanor level offense or higher. Status or petty offenses are not entitled to public defense.
- In 82 percent of counties, youth are informed that diversion is voluntary; in 78 percent of counties, youth are told that they have the right to go to court. In nearly two-thirds of counties (64%), youth must admit to the offense in order to participate in diversion. Also, six in 10 counties (62%) stated that youth are told that information about their participation or performance in diversion can be shared with the court.

### **BEST PRACTICES**

- Youth in diversion and their families should be informed about the types of information collected about them, and how and under what circumstances that information might be shared. This should be communicated to clearly and be based on a Release of Information signed by both youth and families.
- Youth should be given the opportunity to consult counsel prior to their decision to participate in diversion about any requirements for an admission of guilt. This ensures full understanding by youth and their family about the merits of their case and the consequences of a guilty admission should the youth have their diversion revoked or if they withdraw from diversion. Conversely, youth who are denied access to diversion should have due process rights if they feel they are unjustly denied a diversion opportunity.
- Confidentiality should always be a priority. It is recommended that diversion programs have a policy stipulating that subsequent admissions of problematic conduct or other issues by youth on diversion not

be used against them in future legal proceedings. This policy should clearly articulate if confidentiality applies to the entire course of diversion or only during intake and assessment.

- There are times that youth, whether as their own decision or as a decision on the part of the program, leave diversion to have their case heard in traditional court. When this occurs, it should happen without prejudice, meaning that information shared in diversion not be held against them.

## SECTION E: RECOMMENDATIONS

- In cases where the charges forwarded to the court could result in an adjudication (M, GM, F), youth should be made aware that in court they would have a right to public defender. Youth should similarly be informed that if the charge would be a petty misdemeanor that they do not have a right to counsel at public defense, but could provide their own attorney.
- Consider providing youth and families with a public defender, or having a public defender review cases prior to making a diversion decision in the case of diversion for gross misdemeanor and felony-level offenses, given the increased consequences associated with these offenses if adjudicated guilty in court.
- Sharing of information about youth on diversion should be limited to that which is necessary for effective service provision and to facilitate completion of conditions. In the event providers require direct contact with collateral sources such as schools, social services, health, mental health or other treatment providers, a signed Release of Information should be acquired from a youth's parent or guardian. This release should be time-limited to the duration of diversion and expressly state the intended use of the information.
- Eliminate the reporting requirement to the BCA as a state-level tracking of diversion database. Create or identify an existing database to track county-level diversions statewide. Allow counties state-level access to be able to determine if youth have previously been diverted in other Minnesota counties.
- Youth and families should be told that in the event a youth fails diversion and is remanded to court, that their admission of guilt will not be used against them in their court proceedings.

## SECTION F: QUALITY

### STEP 15. PROGRAM INTEGRITY

According to the Models for Change *Juvenile Diversion Guidebook*, diversion planners should attend to both program development and maintenance in order to achieve a high-quality program. The process of program development and identification of objectives was discussed in Step 1 (Section A). In the maintenance phase, program planners should provide for quality assurance by creating monitoring processes, collecting and reporting data, reviewing policies, retraining of staff and assessing program fidelity.

Clear, well-reasoned policies and procedures are a hallmark of quality programming. Policies and procedures should be set out in a manual to aid with training and implementation in a consistent manner across diversion providers and over time. All personnel who operate the diversion program, as well as all providers of diversion services, should be trained in diversion policies and procedures, as well as topics that help to understand the risk factors and service needs of youth.

The Models for Change *Juvenile Diversion Guidebook* also emphasizes that establishing a data collection system is important to measure program integrity and to provide a foundation for program evaluation. Programs also must determine what data fields to collect, who will be responsible for data entry, and how data will be standardized across providers and reported.

Quality assurance can be achieved through several mechanisms:

- Internal monitoring includes periodic reports based on ongoing data collection that provide information about client characteristics, program activities, and achievement of program goals. These may include site visits with contracted providers, interviews or surveys with program participants and other records audits.
- Process monitoring ensures that the programs activities can be measured against program goals, also known as “fidelity.” Data can be collected on the number of youth referred and accepted, length of time in the program, and an assessment to know if the program is reaching the targeted population. Programs may also assess if they are screening youth appropriately, providing services in a timely fashion, and whether youth appear for programming components. If a program is a replica of a best-practice model, there should be regular assessment of the program’s fidelity to the components of the model program.
- Finally, external monitoring of programs can be conducted by advisory board or panels, or local governing bodies. Periodic reports to the advisory group are a good method of external quality assurance so that they may critique a program’s performance. Another method of external review is using program consumers (youth, families, stakeholders) to gain insight about the program, such as through the use of focus groups.

## MINNESOTA FINDINGS

### IS YOUR PROGRAM A REPLICA OF ANOTHER PROGRAM?

The majority of interview respondents (73%) did not believe that their diversion program was a replica of any other diversion program. They did acknowledge similarities to other programs or that certain components had been gleaned from other counties. Some counties expressed that they had developed their own diversion program based on statutory criteria or that the program was “tailor-made” for their community.

Those counties that reported that their program was a replica of another (16%) also

stated that components of their program had been taken from others. A handful of counties (5) specifically named replication of a teen court or peer court model, or other restorative justice model.

Is Your Program a Replica of Another Diversion Program?	Number (Percent) of Counties N=87	Select Comments
<b>No</b>	64 (73%)	Similar to others (3); Developed on our own following the statutory requirement (3); Took components from other counties (2); Tailor-made for our community.
<b>Yes</b>	14 (16%)	Components taken from other counties (4); Education classes use curricula from others (2); Teen Court model (2); Restorative Justice model (2); Peer Court model; “Change Directions” curriculum.
<b>Unsure</b>	4 (5%)	Similar to others but not sure if modeled after any other (2).
<b>Not Specified/ Not Applicable</b>	5 (6%)	Not specified (4); Not Applicable (1).

### KNOWLEDGE OF JUVENILE DIVERSION SERVICES IN OTHER COUNTIES

Interview participants asked, on a scale of 1 to 5, the degree to which they were familiar with juvenile diversion services being offered in other counties. Nearly two-thirds of counties (64%) stated they did not know services in other counties very well on a scale of 1 to 5. An additional two in 10 counties (21%) rated themselves as somewhat knowledgeable of other services. The smallest group of respondents rated their knowledge of diversion services in other counties as high (12%).

In addition, counties were asked if they are familiar with, or are members of the *Minnesota Association of Pretrial Services Agencies (MAPSA)*. MAPSA is an association of pretrial service professionals in the state, but their primary focus is on adult diversion. In total, 17 counties (20%) stated that they had heard of or were familiar with MAPSA. Despite a somewhat small knowledge base among juvenile diversion providers, MAPSA may be well-positioned in the state to expand to support, educate and track juvenile diversion activities.

Knowledge of Diversion Services Offered in Other Counties	Number (Percent) of Counties N=87
<b>1 (Not Well at All)</b>	23 (26%)
<b>2</b>	33 (38%)
<b>3</b>	18 (21%)
<b>4</b>	8 (9%)
<b>5 (Very Well)</b>	3 (4%)
<b>Not Specified (1)/ Not Applicable (1)</b>	2 (2%)

## UTILITY OF OTHER PROGRAMS' DATA AND BEST PRACTICES

Interview participants were asked, as providers, how helpful it would be to have information about other diversion programs in the state; other programs' service numbers and outcome data; and general best practices in juvenile diversion. Respondents were asked to scale the utility of this information on a scale from 1 (not at all helpful) to 5 (very helpful).

How Helpful Would it be to Have Information About the Following:	Other Diversion Programs in the State N=87	Other Programs' Numbers Served and Outcomes N=87	Best Practices in Juvenile Diversion Programming? N=87
Number (Percent) of Counties			
<b>1 (Not at all helpful)</b>	2 (2%)	8 (9%)	2 (2%)
<b>2</b>	3 (4%)	16 (18%)	6 (7%)
<b>3</b>	23 (27%)	28 (33%)	20 (23%)
<b>4</b>	21 (24%)	24 (28%)	25 (29%)
<b>5 (Very Helpful)</b>	36 (41%)	8 (9%)	32 (37%)
<b>Not Specified/ Not Applicable</b>	2 (2%)	3 (4%)	2 (2%)

Roughly two-thirds of counties (65%) expressed that it would be helpful to have information about what services are being offered in other counties. Counties were somewhat less likely to report that information about other programs' numbers served or outcome measures would be helpful (37%). Just more than one-quarter of counties (27%) expressed that it would not be especially helpful to have information about other

programs' service numbers or outcomes. Again, two-thirds of counties (66%) reported that information on best practices in juvenile diversion would be helpful to them in diversion implementation.

## DATA DISSEMINATION

Generally, counties were more likely to report that they use diversion data internally (43%) than externally (33%). Those who do publish data were most likely to report that their department uses it in an annual report (typically a public publication), or that they have a year-end report or statistical summary (typically an internal publication). In addition, diversion data are compiled for the county board or board of directors for the agency, or are necessary for grant reporting. A few counties stated they review their diversion data quarterly.

Do You Use or Disseminate Data in Year End Reports, Updates, External Publications, etc.	Internally? N=87	Externally? N=87	Select Comments
<b>Yes</b>	37 (43%)	29 (33%)	Year-end report/statistics (12); Annual report (8); For the county board or board of directors (7); Quarterly (3); For grant reporting
<b>No</b>	42 (48%)	47 (54%)	Only as needed, no annual reports (2); Overall end of year offender statistics but not diversion specifically; No data yet—new program; Used to do them quarterly.
<b>Unsure</b>	2 (2%)	2 (2%)	County attorney might do this; I think it is in reports put out by probation.
<b>Not Specified/ Not Applicable</b>	6 (7%)	9 (11%)	

The majority of counties stated that they do not regularly publish or disseminate diversion data internally (48%) or externally (54%). A small percentage was unsure if another party involved with diversion might disseminate data (2%).

## STEP 16. OUTCOME EVALUATION

According to the Models for Change *Juvenile Diversion Guidebook*, every diversion program should have a way to determine whether it is meeting its goals and objectives. One of the greatest benefits of outcome evaluation is the ability to make program adjustments over time. Good program evaluations not only indicate whether objectives are being met, but also identify when, why and for whom they are not met.

Program evaluations that reveal positive outcomes can be used to advocate for continued funding in the community. Conversely, programs that do not have promising outcomes can signal the community to invest in more promising practices. Evaluation such as this requires a systematic way of collecting data over time.

Evaluation methods should be in place before a program begins, and the outcomes evaluated will depend on the original objectives of the diversion program. The development of a *Logic Model* can help programs to define their process, goals, objectives, inputs, outputs and outcomes.

Common diversion goals include reducing recidivism; reducing system costs; increasing successful outcomes for the child; increasing accountability; reducing labeling; and restoring victims. Programs that are intending to measure these outcomes must have definitions for what constitutes a new offense, how systems costs are calculated; how increased success or accountability will be measured; and how victims are restored. Some of these can be measured by diversion program staff, while others may require the support of contracted specialists and following youth for a long-term evaluation period.

## MINNESOTA FINDINGS

### REPORTING REQUIREMENTS

According to the Minnesota juvenile diversion statute, there is only one required reporting component. Effective in 1997, every county is required to report to the Minnesota Bureau of Criminal Apprehension (BCA), the name and date of birth of every program participant; date the individual began diversion; date they are expected to complete diversion; date they actually complete (where applicable); and date they are removed from diversion for failing to successfully complete (where applicable). The BCA superintendent is to have this diversion information entered into an individual's criminal history file. To facilitate the reporting of diversion data, a section for reporting the above diversion information appears on the BCA's *Offender Tracking Form*.

Many diversion providers stated that reporting to the BCA only applies to youth who are diverted under the state statute, and that the statute applies to misdemeanor, gross misdemeanor and felony-level offenses. As such, youth diverted for any offense below a misdemeanor ("status" offenses including petty misdemeanors, juvenile alcohol offenders and juvenile substance offenders) do not have to be submitted to the BCA. Furthermore, an investigation into the BCA's *Criminal Justices Information System (CJIS)* where these diversion data are housed, does not allow for diversion data to be extrapolated for analysis.<sup>158</sup>

Originally, the juvenile diversion statute had a fifth subdivision which was repealed in 1997. Subdivision 5 required that biennially:

“Each county attorney shall report to the Department of Corrections and the Legislature on the operation of a pretrial diversion program required under this section. The report shall include a description of the program, the number of offenders participating in the program, the number and characteristics of the offenders who fail to complete the diversion program, and an evaluation of the program’s effect on the operation of the juvenile justice system in the county.”<sup>159</sup>

Essentially, the data reporting and evaluation requirement of the statute was removed before it had the opportunity to go into effect. With no requirement, programs are left to evaluate their programs when and if they choose.

## DIVERSION DATA FILES

A significant majority of counties (86%) reported that they maintain paper files on juvenile diversion recipients. Paper files are used for hard copies of diversion materials, contracts, signed documents and contact logs. Many counties specified that these paper files are kept for a certain period of time and then destroyed either when youth complete diversion or when they turn 18 or 19 years old.

The majority of counties (79%) also use a computerized data file to track information on diversion recipients. The most common database use is the *Court Services Tracking System* (CSTS) maintained by the Minnesota Department of Corrections. This database is used by all Minnesota counties to track their probation caseloads but is not used by all counties to track diversion. The second most used database is the *Minnesota County Attorney Practice*

Where Are Data Kept on Diversion Participants (Select All That Apply) Totals ≠ 100%	Number (Percent) of Counties	Select Comments
<b>Paper Files</b>	75 (86%)	Paper file kept until 18 (8); 3 years on paper file, then shred; Paper file shredded when turn age 19; Copies of letters kept in paper files; Keep copies of letters, log sheets, diversion packets in paper file; Paper file is destroyed when diversion is done.
<b>Computer Database</b>	69 (79%)	CSTS (50); MCAPS (9); County or program-specific database (4).
<b>Computer Case File</b>	17 (20%)	Agency has electronic summary form.
<b>Computer Spreadsheet</b>	10 (11%)	County attorney and provider both keep a spreadsheet; Individual electronic files within the database; Excel spreadsheet.
<b>Paper Spreadsheet</b>	3 (3%)	

*System* (MCAPS). Not all counties in the state use the MCAPS database package, as there are a variety of data management systems in use for county attorneys. Individual computer case files, computer spreadsheets and paper spreadsheets are also in use by some counties to track diversion participants.



## COMPLETION RATES

The majority of counties in Minnesota (62%) indicated that they track diversion completion rates. Several of those not tracking diversion rates stated that their non-completion numbers are almost none or that non-completion is rare. Similarly, 10 percent of counties were unsure but a very small percentage do not complete, namely those who do not respond to the diversion letter. Five counties stated that the question was not applicable because all of their diverted youth have thus far successfully completed.

Do You Track Completion Rates?	Number (Percent) of Counties N=87	
<b>Yes</b>	54 (62%)	Very small percent of non-completers (5); Mostly non-responders to diversion letter.
<b>No</b>	13 (15%)	Rare; Almost none; Could be determined with some effort.
<b>Unsure</b>	9 (10%)	A small percentage are unsuccessful, mostly those who don't respond to diversion letter; Very low percent; Very few don't complete; Majority complete—don't track figure; We use a color coding system for completers vs. non-completers on file.
<b>Not Specified (5)/ Not Applicable (6)</b>	11 (13%)	So far they have all completed (5).

Interview participants were asked to report or estimate the percent of youth who do not complete diversion for any reason. The respondents included in the following section are those who stated that they track completion in the previous question (n=54). Nearly half of counties (47%) reported that 5 percent or less of diversion participants do not complete. One-third (33%) of counties that track completion rates indicated that 10 percent is the maximum number they would estimate as non-completers of diversion.

Programs That Track Completion: What Percent of Youth Do Not Complete	Number (Percent) of Counties N=54
<b>2% or less</b>	10 (19%)
<b>Under 5%</b>	15 (28%)
<b>10% Max</b>	18 (33%)
<b>10%-20%</b>	6 (11%)
<b>Over 20%</b>	3 (5%)
<b>Not Specified</b>	2 (4%)

## REASONS FOR NON-COMPLETION

As a whole, county representatives are somewhat unsure the extent to which their systems include information about the reasons youth fail diversion. Twenty-nine percent of counties stated that they do not systematically track the reasons youth fail to complete, plus an additional 30 percent of counties did not specify an answer to the question or were unsure. Comments provided included that the reason youth did not complete would be on the failure letter but not elsewhere; that the file or electronic log (Chrono) would say *termination* or *unsuccessful* but not the reason why; or that they only track the number of youth who decline diversion from the beginning.

Four in 10 counties (41%) responded that they do track the reasons youth do not complete in their files or databases. Some of the reasons tracked were failure to complete conditions; failure to respond; new offenses; referral back to court; or if the juvenile moved out of the jurisdiction.

Do You Track the Reasons for Non-Completion?	Number (Percent) of Counties N=87	Select Comments
Yes	36 (41%)	Failure to respond/failure to complete conditions (15); In file/database (10); New offense/referral back to court (7); Refusal (2); Moved (2).
No	25 (29%)	Don't track—they do write on the letter why (3); No shows; It would say "termination" but not why.
Unsure	1 (1%)	
Not Specified (19)/ Not Applicable (6)	25 (29%)	It would say "unsuccessful" in <i>CSTS Chrono</i> (2); Just no-shows who never start; Just started tracking in 2012.

## DATA EXTRACTION

Given the variability in the types of data management systems used between counties, interview participants were asked how hard or easy it would be to extract data on the age, gender and race of youth who began and/or completed their program. Two-thirds of counties (67%) stated that it would be easy or fairly easy to extract those data. Many expressed that the CSTS or MCAPS systems are capable of running reports to extract those data. That being said, 13 of these counties stated that they do not track any data on participant race or ethnicity.

Difficulty of Providing Age, Gender and Race Data on Those Who Began and/or Completed Diversion	Number (Percent) of Counties N=87	Select Comments
Easy/Fairly Easy	58 (67%)	MCAPS report or CSTS report (26); No race data (13).
Moderate	12 (14%)	Would take time; Need a different staff to do it; Manually pull from hard copy of files.
Considerable Effort/Difficult	11 (12%)	No long-term diversion records (5); On paper files; Hard to find.
Not Specified/ Not Applicable	6 (7%)	Not specified (5); Not applicable (1).

An additional 14 percent of counties stated that they could get the requested data, but it would be a bit more time-consuming or would require pulling the information manually from files. Twelve percent rated this data request as difficult or requiring considerable effort. These counties stated that these diversion data would be hard to find, that it exists only on paper files, or that no diversion records are kept long-term.

## RECIDIVISM

A primary rationale for diversion is to lower the likelihood of re-offense or recidivism. In Minnesota, 44 percent of county diversion representative indicated they track recidivism for diversion participants; just over half (54%) do not.

Do You Monitor Recidivism Rates of Program Participants?	Number (Percent) of Counties N=87
Yes	38 (44%)
No	47 (54%)
Not Specified (1)/Not Applicable (1)	2 (2%)

## RECIDIVISM TIMING

The 38 counties that track recidivism were asked within what timeframe recidivism is tracked and what constitutes a new offense or justice system contact. The greatest percentage of these counties (32%) indicated that they check for additional system involvement at one year following diversion. Twenty-one percent of counties stated that they check for recidivism at six months following diversion and in six-month increments. A small percentage (10%) expressed tracking diversion for more than a year. Furthermore, a significant percentage of counties who track recidivism (29%) stated that they track it periodically or upon request. One county tracks recidivism until youth turn age 18.

Timing of Recidivism Tracking	Number (Percent) of Counties N=38	Select Comments
6 months	8 (21%)	6 months after completion (3); At 6 months and 1 year (3); Every 6 months (2).
1 Year	12 (32%)	
More than 1 Year	4 (10%)	At 1 and 2 years; 2 years from referral; For 3 years.
Other	11 (29%)	Periodically (3); Upon request (2); Until age 18.
Unsure	3 (8%)	

## RECIDIVISM DECISION POINT

Counties also vary in the system point at which a new offense is counted. The most common point at which recidivism is counted is a new petition filed in juvenile court (29%), followed by a new adjudication in juvenile court (21%). Counties are least likely to report that recidivism for diverted youth is tracked based on an arrest or referral to the county attorney (8%).

Nearly three in 10 counties that track recidivism (31%) are unsure or did not specify at which decision point a recidivism assessment occurs.

Programs That Track Recidivism: At What System Point(s) is Recidivism Tracked?	Number (Percent) of Counties N=38	Select Comments
Arrest	2 (5%)	
Referral to CA	1 (3%)	
Petition to Court	11 (29%)	New petitions (3).
Adjudication	8 (21%)	New adjudications (3).
Other	4 (11%)	Petition and adjudication; Arrest and petition; Varies by program.
Unsure	2 (5%)	
Not Specified	10 (26%)	

## RECIDIVISM OFFENSE LEVEL

An additional factor to consider related to recidivism is the level of charge that will be considered a “new offense.” Nearly two-thirds of respondents (63%) were uncertain or did not specify the level of offense counted in their recidivism tracking. More than one-quarter of counties that track diversion (26%) indicated that any and all offenses are included, including status and petty-level offenses. Eleven percent of counties indicated that they only count recidivism if the offense is a misdemeanor level or higher charge.

Programs That Track Recidivism: For What Offenses Do You Track Recidivism?	Number (Percent) of Counties N=38	Select Comments
All/Any New Offenses	10 (26%)	Any new adjudication/disposition (2); New petitions (2); Any new charges in system; All offenses tracked; Any new petition in <i>Odyssey</i> system; Any new petition, citation or diversion.
Misdemeanor or Higher	4 (11%)	
Unsure	2 (5%)	
Not Specified	22 (58%)	

Counties reported that they collaborate with others to procure recidivism information. Several reported that they get information directly from their local law enforcement agencies, that they get it from their county attorney, or that they utilize support staff to gather the information. Some counties also survey diversion participants and have them self-report additional system contact or charges. Sources of data include CSTS, MCAPS, the *Statewide Supervision System (S3)*, and *MNCIS/Odyssey*.

## OTHER OUTCOMES TRACKED

Program providers were asked what additional outcome measures their programs monitor. Nine percent of counties indicated some type of pre-post testing or surveying of youth and/or parents. An additional 10 percent reported an “other” outcome measure that frequently involved surveys given to youth and parents. Seven percent of counties assess program satisfaction while 3 percent assess victim satisfaction. In total, 71 counties (82%) indicate that they do not track any additional program outcome measures beyond recidivism.

Additional Outcomes Tracked  (Select All That Apply) Totals ≠ 100%	Number (Percent) of Counties N=87	Select Comments
None	71 (82%)	
Pre-Post Tests	8 (9%)	<i>Youth Intervention Program</i> Pre-post survey (2); Post-survey of juveniles and parents.
Program Satisfaction	6 (7%)	
Criminal Attitudes	1 (1%)	
Victim Satisfaction	3 (3%)	
Community Surveys	2 (2%)	
Other	9 (10%)	Just completion (2); Participant survey; Post surveys; Survey of offenders and parents; Parent survey; Criminal involvement survey.

## RACE DATA COLLECTION

The *Models for Change Juvenile Diversion Guidebook* states that another function of diversion data is to monitor the juvenile justice system for the overrepresentation of youth from communities of color. Nationally, and in Minnesota, data support that minority youth are arrested at rates significantly higher than white youth. The decision of county attorneys to divert youth away from formal judicial processing is one technique to reduce overrepresentation of youth of color in the system.

Diversion is a formal, system-decision point recognized by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP). As such, states receiving certain federal funding, Minnesota included, must collect and submit data on the race and ethnicity of youth who are diverted from formal processing in any way (decline, diversion, dismissal).

Because Minnesota has no centralized database for county attorney data or decision points, this study asked the extent to which these data are collected at the county level. Interview participants were asked, on a scale of 1 to 5, how complete their county's race data is on youth who receive diversion. Nearly one-quarter of counties (24%) reported that their race data is complete as compared to 22 percent of counties that stated no race data is collected. An additional 32 percent had responses ranging between 2 and 4.

On a Scale from 1-5, How Complete Is Your County's Diversion Race Data?	Number (Percent) of Counties N=87	Select Comments
1 (All Missing)	19 (22%)	None collected (4).
2	6 (7%)	Inconsistent on police reports (2); Doesn't get entered consistently.
3	5 (6%)	We enter it if it is provided to us (2); It doesn't affect guilt or innocence.
4	17 (19%)	Generally we get it from law enforcement (4); Might not know it until we meet with youth (2); We could do a better job at making it more complete (2).
5 (All Recorded)	21 (24%)	All except those who refuse; Easy now with CSTS.
Unsure	5 (6%)	
Not Specified (7)/ Not Applicable (7)	14 (16%)	We don't retain diversion data (5).

Issues affecting the collection of race data include the information being provided inconsistently from law enforcement; information being entered inconsistently into their systems; not having any race information until a worker meets the youth. In addition, some stated that race information does not affect guilt or innocence, and therefore is not collected or not a priority.

## CATEGORIES COLLECTED

Interview participants were provided with a list of racial categories and asked which categories their counties use. One-third of counties (33%) reported they do not specifically use any of the race categories provided. They either do not collect race data at all; there is an open-ended line to write in race; or they get whatever race categories are sent on the police report. Nearly one-quarter of counties (24%) stated that they collect all race data categories provided or that they collect "whatever categories are in the CSTS system." A review of the CSTS User Manual shows that the race codes in that system are *White*, *Black*, *Asian/Pacific Island*, *American Indian/Alaskan Native* and *Unknown*. Another 19 percent of counties stated that they track race, but do not have certain categories such as *Biracial* or *Mixed Race*, *Other Race*, or *Unknown* or *Missing* race categories.

What Race Categories are Tracked?	Number (Percent) of Counties N=87	Select Comments
All Race Categories	21 (24%)	CSTS race categories (6); County attorney doesn't track race but the community-based providers do.
No Race Categories	29 (33%)	Race data not tracked (14); There is one line to write in youth's race; County attorney doesn't track race—provider might (2); We don't ask on application; Might be on police report; Probation might have it.
Partial Race Data	16 (19%)	No mixed race category (10); No "other" race group (7); No Hispanic race group (5); No "unknown" race group (4).
Unsure	7 (8%)	Whatever categories are in CSTS (3); Unsure if race is tracked; 95 percent White youth.
Not Specified (13)/ Not Applicable (1)	14 (16%)	Whatever is in CSTS (4).

## HISPANIC ETHNICITY

Finally, respondents were asked whether Hispanic ethnicity is collected and whether it is its own category or whether it is asked or collected separately from race. Best practices in race data collection support that Hispanic ethnicity be collected in a field or question separate from race, and preferably that this question be asked first. A large percentage of counties (71%) stated that they are unsure if Hispanic ethnicity is collected as a racial group or separate from race, or that the question was not applicable due to no collection of race data. Two in 10 counties (21%) stated that Hispanic ethnicity is asked or collected independently of race; in 8 percent of counties, it is its own racial category.

A review of the *CSTS User Manual* also shows that Hispanic ethnicity is not a race category, and is collected in a separate field from race. That being said, neither race nor ethnicity is a mandatory field in CSTS to create a file. As such, these data points can remain blank during the creation of a case file. A true understanding of counties' ability to report race and ethnicity data on youth diverted cannot be fully understood until counties uniformly report this information.

Is Hispanic Ethnicity Collected Separately from Race?	Number (Percent) of Counties N=87
Yes	18 (21%)
No	7 (8%)
Unsure	10 (11%)
Not Specified (18)/Not Applicable (34)	52 (60%)

## SECTION F: LITERATURE REVIEW AND BEST PRACTICES

### MODEL PROGRAMS AND PROGRAM QUALITY

According to the *Improving the Effectiveness of Juvenile Justice Programs* report, one approach to implementing best practices is to use a model program supported by research. These models are implemented in local settings using developer's specifications. This is often called model implementation or replication. To uphold integrity when implementing a diversion program, it is crucial that program designs are followed.<sup>160</sup> The "evidence-based" title is given to programs that have been evaluated and found credible by a set of designated reviewers.

A program is credible when it has had positive effects in the settings in which it was evaluated. Using a model program has the benefit of having a known potential for effectiveness. However, implementing these programs require rigid adherence and may be expensive if it requires special staff training or to obtain a license.<sup>161</sup> It is important to recognize that the research on juvenile diversion is limited and best practices are still being formulated in this field.<sup>162, 163</sup> Therefore, using research-based findings can, "be extended beyond brand-name model programs to local and home-grown programs that are more generic instances of program types whose effectiveness is adequately supported by research."<sup>164</sup>

NAPSA supports as a Performance Standard a commitment to effective managerial and service-delivery techniques based on sound principles and evidence-based practices. While the amount of research and best practices on diversion is somewhat sparse, programs can draw on other best practices in service delivery from other proven justice system interventions.<sup>165</sup>

### RECORDS MANAGEMENT AND DATA DISSEMINATION

According to NAPSA Performance Standards, diversion programs should develop and operate an accurate management system to support data collection and presentation, compliance monitoring, case management and program evaluation. In addition, policies should be in place around data protection and sharing.<sup>166</sup> Records should support the core functions of diversion, including criminal histories, case plans and monitoring progress on diversion requirements and goals. Data-management systems should support day-to-day activities of diversion staff, and be useful to data analysis on program and staff effectiveness.<sup>167</sup>

NAPSA further names as an emerging practice the use of an automated management system that supports internal performance evaluation and independent evaluation.<sup>168</sup> Automated systems help managers to access relevant and accurate information to ensure accurate decision-making. Naturally, policies and practices need to be in place to regulate access to electronic records and data use.<sup>169</sup>

These data should be used internally to inform progress toward program goals and disseminated externally to relevant partners. Proper care must be taken to disseminate aggregate data only that does not publically reveal explicit or implicit information about any unique program participants.

The literature does not directly speak to how diversion outcomes should be shared. One component mentioned in both the *Models for Change Juvenile Diversion Guidebook* and *Improving the Effectiveness of Juvenile Justice Programs* is the need to involve stakeholders. One way of continuing a dialogue with stakeholders and the

community is through the external dissemination of data. Informing stakeholders and community members may support public funding and increase awareness of juvenile justice needs.<sup>170</sup>

## OUTCOME EVALUATION

Outcome evaluation should be emphasized in that data on best practices for diversion programs is lacking due to the small number of evaluations performed. It can often be difficult for programs to find the time and/or funding to conduct evaluations. However, the information obtained through evaluations are vital.<sup>171</sup> This process can also help identify where there is an unmet need, what components may need revision, and how best to spend program dollars. These benefits make evaluation one of the most valuable components to any diversion program.

A key objective for many diversion programs is reduction of recidivism. Some studies indicate that diversion may have little to no impact on recidivism. One study that analyzed recidivism rates of first-time juvenile offenders for alcohol and tobacco found that recidivism rates were not significantly different from juvenile offenders who were diverted from formal adjudication without going through a diversion program.<sup>172</sup> Although the literature on the impact of juvenile diversion programs show mixed results in reducing recidivism, there are other benefits to juvenile diversion. Some diversion programs are able to provide services at a lower cost, serve more offenders than the formal juvenile process,<sup>173</sup> and reduce strain on the juvenile justice system.<sup>174</sup>

As discussed in Section A, program objectives must be determined and based upon a number of factors, including target population, program goals and stakeholder input. A diversion program should construct outcome evaluations based upon identified objectives. While no literature related to diversion was found that supports a preferential way to track recidivism, many of the studies and reports reviewed tracked recidivism rates in relation to types of intervention, demographic data and program components.<sup>175</sup>

Additional evaluation activities supported by the Models for Change *Juvenile Diversion Guidebook* include evaluating reduced services costs; evaluating successful outcomes for the child (such as increased skills or pro-social attitudes); increased sense of accountability or empathy; and reduction of social control provided by the state. Programs may wish to solicit the guidance of program evaluation specialists to assist them in program evaluation.<sup>176</sup>

NAPSA's Promising Practices support the use of independent program evaluations for diversion.<sup>177</sup> At minimum it is recommended by NAPSA as a Performance Standard to conduct periodic program evaluation and audit to determine the effectiveness of its performance and practice.<sup>178</sup> NAPSA further names the auditing of external programs providing diversion service-delivery as an Emerging Practice.<sup>179</sup>



## SECTION F: SUMMARY

### STEP 15. PROGRAM QUALITY

- In three-quarters of counties (73%), the diversion programs in operation are not replicas of any other diversion programs that interview participants were aware of. While components of diversion or curricula elements may have been replicated from other counties or jurisdictions, most counties are not implementing or replicating a model program.
- The majority of counties (64%) rated their knowledge of diversion services in other counties as “not well at all or not very well” on a scale from 1 to 5. Many expressed familiarity with the services immediately surrounding them but not in other areas of the state.
- Diversion providers felt it would be most helpful to have information about best practices in juvenile diversion (66%); followed by information about other diversion programs in the state (65%); and followed by information on other programs’ service numbers and outcomes (37%).
- About four in 10 counties (43%) use diversion program data for internal reports or dissemination, followed by one-third (33%) that use or publish diversion data in external publications, such as annual reports or data summaries for county boards, agency directors or other stakeholders. Most programs do not use diversion data internally or externally with regularity.

### STEP 16. OUTCOME EVALUATION

- Most counties have multiple ways that they maintain data on youth in diversion, including a computer database as well as a paper file. Many counties shred paper files after a certain length of time. Major databases used by counties include the DOC’s Court Services Tracking System (CSTS) and the Minnesota County Attorney Practice System (MCAPS).
- Sixty-two percent of counties reported tracking diversion completion rates. Those that do not track completion often stated that no youth have failed to complete or the non-completion numbers were extremely low. Nearly half of counties (47%) estimated their non-completion rate at 5 percent or less, with an additional third of counties (33%) stating their non-completion rate is 10 percent or less. The most common reasons youth do not complete diversion are failure to respond to the diversion notice; failure to complete conditions; and being charged with new offenses while on diversion.
- Less than half of counties (44%) reported that they track recidivism on diverted youth. Those that do also vary in the point at which a new offense is counted (arrests, petition, adjudication); level of offense required (status/petty, misdemeanor or higher); and how long diversion is tracked (every six months, once a year, more than one year). As such, recidivism data would not be consistent across counties or even across programs.
- Additional outcome measures collected by diversion providers include pre-post tests; participant and parent satisfaction surveys; criminal attitudes and behavior surveys; and victim/community surveys. Eighty-two percent of counties reported no additional outcome measures beyond recidivism.

- Nearly one-quarter of all counties (22%) reported that no race or ethnicity data is collected on youth diverted. An additional 13 percent of counties stated that their race data is often incomplete or only as complete as the data provided by the referral source. In fewer than one-quarter of counties, Hispanic ethnicity data is collected as a category separate from race, consistent with best practices in race data collection.

## **BEST PRACTICES**

- While the amount of research on diversion programming is limited, it is recommended that diversion programs be based on model programs with proven effectiveness. When implementing a model program is too difficult, program can strive to replicate local programs that have been evaluated and show promise.
- It is recommended that diversion programs employ a records management system that includes information supporting the core functions of diversion. Care must be taken that these systems support day-to-day activities of the diversion program, and also can be automated to provide information for internal and external performance evaluation. Policy should be developed that details how, why and who has access to diversion records, as the confidentiality of diverted youth is paramount.
- Outcome evaluation based on a program's identified objectives is one of the most valuable components of a diversion program. Outcome evaluation can inform a program about unmet needs of participants, components of a program that may be working well or in need of revision, and how best to allocate funding.
- While reducing rates of recidivism is often a primary outcome of diversion programming, there is limited evidence that diversion consistently impacts this outcome. However, diversion programs have myriad outcomes, all of which should be evaluated to show the impacts and value of diversion programming.

## SECTION F: RECOMMENDATIONS

- Explore model diversion programs and curricula to assess the degree to which they are successfully preventing further involvement in the juvenile justice system. Implement effective diversion methods.
- Youth and families must be made aware that diversion is not a requirement, and they must be fully informed of their legal rights and waiver of certain rights when participating in diversion. The notification of rights and waivers should be made in writing.
- Youth and/or guardians requiring an interpreter should be provided with interpretation services free of charge. Inability to speak or understand English should not preclude youth from diversion eligibility or require families to pay for services.
- County attorneys collectively should consider:
  - Standardized race and ethnicity categories and a uniform collection methodology across jurisdictions.
  - A way to track completion rates and reasons for non-completion across programs and jurisdictions.
  - What is meant by recidivism for diverted youth, including length of time new offenses will be tracked, level of offense tracked, and decision point at which recidivism is tracked.
- Access to individual diversion records should be limited to that which is needed to provide services and evaluate program effectiveness. Data privacy for youth related to diversion participation should be closely guarded.
- Diversion data collected by county attorneys should be disseminated annually with the number of youth referred to diversion and number of youth who complete or fail diversion. These data should include youths' age, gender, race and Hispanic ethnicity to explore for differential outcomes and facilitate federal reporting for the *Juvenile Justice and Delinquency Prevention Act (JJDP)*.

## SECTION G: MINNESOTA DIVERSION NEEDS

Because diversion directors and providers have the most first-hand knowledge in administering juvenile diversion programs, interview participants were asked what the biggest need is in their county to better serve or divert youth. Similarly, study participants were asked if there is a demographic of youth diverted that they wished they could serve better. These were both open-ended questions allowing participants to respond freely.

### PROGRAM AND SERVICE NEEDS

The most common themes shared by interview respondents related to additional programming needs was improved program quality and financial resources, mentioned by 16 percent of counties each.

As to program quality, respondents spoke of the need for more education services or better quality of programming, or for the location or frequency of education components to be more convenient. Related to finances, respondents shared concerns that they needed more resources or an increased diversion budget, or that funding for diversion is lacking or unstable.

Another theme present in 9 percent of responses was the need for increased collaboration among law enforcement, county attorneys, schools, parents and other diversion providers. Frequent additional themes included staffing needs or training quality (8%); specific educational topics (7%); and access to other services such as mental health and chemical health assessments, counseling and treatment (7%).

<b>Diversion Need Areas (Select All That Apply) Totals ≠ 100%</b>	<b>Number of Comments (Percent of Comments) N=129</b>	<b>Select Comments</b>
<b>Program Quality</b>	21 (16%)	More services (8); Education location/convenience (4); Education quality (5); Education frequency (2); Transportation (2).
<b>Financial Resources</b>	20 (16%)	Need for resources (6); Increase budget (7); Unstable funding (3); Lack of county money (2); Prevention funding; Restitution for CWS.
<b>No Identified Need</b>	14 (11%)	Program doing well (7); No need areas (5); Cost-effective (2).
<b>Collaboration</b>	11 (9%)	Communication with law enforcement diversion (4); Communication with county attorney (2); Greater collaboration; Communication with schools; Communication with parents; Differing philosophies between county attorney and probation; Understanding of neighboring diversion programs.
<b>Staffing</b>	10 (8%)	More staff or time (7); Staff education (2); Staff representative of youth diversity.
<b>Program Specific Areas</b>	9 (7%)	Alcohol/chemical use education (3); More consequence options (2); Cognitive component; Anger-management component; Bullying programming.
<b>Service Accessibility</b>	9 (7%)	Address underlying issues (3); Mental health screening/assessments (2); Access to evaluations/ treatment (2); Chemical dependency screening/assessments; Counseling access.

<b>Service Delivery</b>	8 (6%)	Restorative justice model (3); Outcome tracking/decrease recidivism (2); Increase face time; More focused; Program redesign.
<b>Community Involvement</b>	8 (6%)	Community services (6); Community presence/outreach (2).
<b>More Diversion</b>	6 (5%)	Divert more offenses (5); Divert more youth.
<b>Service Cost</b>	4 (3%)	Offset class fees (2); Money for classes; Cost issues for resources affecting families.
<b>Focus of Resources</b>	3 (2%)	Save resources for highest-risk kids; More flexibility/individuality; Serve appropriate referrals.
<b>Law Enforcement</b>	2 (2%)	Increased awareness of referral without citation; More direct diversion from law enforcement agencies.
<b>Other</b>	4 (3%)	Quicker processing of juvenile cases (2); More information on best practices; Sharing resources for adults and juveniles.

While a smaller percentage of respondents, some providers made comments related to appropriate use of diversion and program processes. Some respondents commented that diversion should be expanded to additional youth or offenses, whereas others stated that resources should be reserved to serve the highest-risk youth in the county or that diversion needs to better serve appropriate referrals.

Related to underserved populations or offenses, nearly half of responses given to this question (45%) were related to access to more programming options, including curricula or content related to chemical use, alcohol, smoking, mental health, cognitive-behavioral and anger management. Similarly, one-third of responses (33%) were related to diverting a broader range of offenses, including disorderly conduct, fifth-degree assault, person offenses and bullying.

In total, just less than one-quarter of responses (22%) related to the provision of services for cultural minorities and girls. Services for the Native American and Latino communities specifically were mentioned, as were cultural/racial groups in general. Some diversion interview participants spoke of the need for separate programming for girls or to target girls' relationship issues with males.

<b>Underserved Populations or Offenders</b>  (Select All That Apply) Totals ≠ 100%	<b>Number of Comments (Percent of Comments)</b> N=49	<b>Select Comments</b>
<b>Cognitive-Behavioral Programs</b>	22 (45%)	Chemical dependency (9); Alcohol (6); Mental health (4); Tobacco/Smoking (2); <i>Thinking For Change/Aggression Replacement Training</i> curriculums.
<b>Offense Specific</b>	16 (33%)	Divert more youth (3); Person offenses (2); Disorderly conduct (2); Bullying (2); Gross misdemeanors; Level fifth-assault; Shoplifting; Some felonies; Gang intervention; Truancy; Youth who commit offense in a different county.
<b>Culturally Specific</b>	8 (16%)	Targeting Native American community (4); Latino community/Spanish-speaking (2); Cultural/racial groups (2).
<b>Gender Specific</b>	3 (6%)	Separate gender programming (2); Females with male relationship issues.

## **SECTION G: BEST PRACTICES**

The sentiments shared by juvenile diversion providers in Minnesota to this survey reiterated many of the best practice elements discussed in previous sections of this report. Study participants shared that finances are an ongoing concern, illuminating the need for stable funding for diversion. Furthermore, participants spoke of the need for quality programs that meet a range of service needs based not only on the offense diverted, but also the individual needs of youth and families.

Direct service providers are able to discern when their interventions lack quality or impact, or when there are gaps in services. Some providers referenced issues with location of services; need for greater collaboration among providers; and need for improved services to meet the needs of girls, youth from minority communities, and youth with mental and chemical health concerns. Many providers also stated that the scope of diversion could be expanded to include a greater range of offenses, including low-level person offenses.

It is important to listen to the needs of staff, families, youth and community partners to have a complete understanding of how to improve diversion and service delivery in Minnesota. Professional associations such as the Minnesota chapter of the NAPSA, Minnesota Association of Pretrial Services Agencies (MAPSA), may be an appropriate organization to delve deeper into the needs of juvenile diversion in the state and advocate on behalf of diversion providers with a unified voice.

## **SECTION G: SUMMARY**

- Minnesota diversion providers express that the main need areas to better accomplish youth diversion are program quality, financial resources, collaboration and staffing.
- Specific service needs mentioned by Minnesota providers included services for youth with mental health and chemical dependency needs; counseling access; and educational programs that address specific offending behavior.
- Providers suggested that diversion could be used for a broader level of offenses, including some low-level person offenses.
- Programming that is specific to girls and youth from communities of color in Minnesota are needed areas in diversion programming.

## **SECTION G: RECOMMENDATIONS**

- Consider a professional association related to juvenile diversion to keep providers up-to-date on current services in the state, model programs, training opportunities and legislative needs.
- Continue to evaluate diversion for possible expansion to meet additional offenses and low-level person offenses.
- Prioritize gender- and culturally specific programming components in diversion.

## CONCLUSION

Minnesota utilizes a variety of strategies to divert youth from deeper, more formal involvement in the justice system. These range from the manner in which Minnesota classifies youth offenders in statute, to dispositional alternatives to adjudication. These provisions acknowledge that diversion is a more effective use of limited justice system resources, and that youth may benefit from the opportunity to make personal changes and restitution without having an offense on their record.

In 1995, it became a requirement in state statute that all counties offer a least one pretrial diversion program option for juveniles. As such, diversion was formalized with a specific purpose and criteria established for participation. Despite the statutory guidance, other aspects of diversion eligibility and most aspects of service delivery are left to individual counties to determine. While this discretion allows individual county communities to develop standards and services that meet the unique needs of their population, it also creates the potential for disparate opportunities for diversion in Minnesota based on a youth's geographical location.

The findings of this study support that diversion criteria and services vary widely among Minnesota's 87 counties. While county attorney discretion around eligibility and individualized services for youth are important components of diversion, some aspects of diversion could be standardized by providers around the state for a more equitable diversion experience. The *Juvenile Diversion Guidebook*, published by the MacArthur Foundation's Models for Change Initiative, presents 16 key steps when planning and implementing a diversion program that consider the needs and resources of communities; rights of both victims and juvenile offenders; and need for public safety and accountability. These 16 planning steps, coupled with the Minnesota specific data provided in this report can serve as a catalyst for discussion regarding opportunities for consistency.

Regardless of whether Minnesota's agencies come together for greater uniformity in pretrial diversion activities, all counties should prioritize the use of best practices in the delivery of their diversion program. These clear mission and goals include family and community involvement, use of restorative justice principles, and assessment of program effectiveness, to name a few. In addition, the broader the range of offenses eligible for diversion and the more community-based the intervention strategies, the less contact youth will have with formal justice system. Diversion is an important aspect of the justice system and barriers to access and eligibility should be addressed. This will allow the greatest number of youth to make amends to victims and communities, and address the underlying issues that contribute to future delinquent behavior.



## APPENDIX A

### 388.24 PRETRIAL DIVERSION PROGRAMS FOR JUVENILES

#### Subdivision 1. **Definition.**

As used in this section:

- (1) a child under the jurisdiction of the juvenile court is an "offender" if:
  - (i) the child is petitioned for, or probable cause exists to petition or take the child into custody for, a felony, gross misdemeanor, or misdemeanor offense, other than an offense against the person, but has not yet entered a plea in the proceedings;
  - (ii) the child has not previously been adjudicated in Minnesota or any other state for any offense against the person; and
  - (iii) the child has not previously been petitioned for an offense in Minnesota and then had the petition dismissed as part of a diversion program, including a program that existed before July 1, 1995; and
- (2) "pretrial diversion" means the decision of a prosecutor to refer an offender to a diversion program on condition that the delinquency petition against the offender will be dismissed or the petition will not be filed after a specified period of time if the offender successfully completes the program.

#### Subd. 2. **Establishment of program.**

By July 1, 1995, every county attorney shall establish a pretrial diversion program for offenders. If the county attorney's county participates in the Community Corrections Act as part of a group of counties under section 401.02, the county attorney may establish a pretrial diversion program in conjunction with other county attorneys in that group of counties. The program must be designed and operated to further the following goals:

- (1) to provide eligible offenders with an alternative to adjudication that emphasizes restorative justice;
- (2) to reduce the costs and caseload burdens on juvenile courts and the juvenile justice system;
- (3) to minimize recidivism among diverted offenders;
- (4) to promote the collection of restitution to the victim of the offender's crime;
- (5) to develop responsible alternatives to the juvenile justice system for eligible offenders; and
- (6) to develop collaborative use of demonstrated successful culturally specific programming, where appropriate.

#### Subd. 3. **Program components.**

A diversion program established under this section may:

- (1) provide screening services to the court and the prosecuting authorities to help identify likely candidates for pretrial diversion;
- (2) establish goals for diverted offenders and monitor performance of these goals;
- (3) perform chemical dependency assessments of diverted offenders where indicated, make appropriate referrals for treatment, and monitor treatment and aftercare;

- (4) provide individual, group, and family counseling services;
- (5) oversee the payment of victim restitution by diverted offenders;
- (6) assist diverted offenders in identifying and contacting appropriate community resources;
- (7) provide educational services to diverted offenders to enable them to earn a high school diploma or GED; and
- (8) provide accurate information on how diverted offenders perform in the program to the court, prosecutors, defense attorneys, and probation officers.

**Subd. 4. Reporting of data to Bureau of Criminal Apprehension.**

Effective August 1, 1997, every county attorney who establishes a diversion program under this section shall report the following information to the Bureau of Criminal Apprehension:

- (1) the name and date of birth of each diversion program participant and any other identifying information the superintendent considers necessary;
- (2) the date on which the individual began to participate in the diversion program;
- (3) the date on which the individual is expected to complete the diversion program;
- (4) the date on which the individual successfully completed the diversion program, where applicable; and
- (5) the date on which the individual was removed from the diversion program for failure to successfully complete the individual's goals, where applicable.

The superintendent shall cause the information described in this subdivision to be entered into and maintained in the criminal history file as defined in section 13.87.

**Subd. 5.**

[Repealed, 1997 c 7 art 2 s 67]

**History:**

*1994 c 576 s 42; 1995 c 226 art 4 s 19; 1995 c 259 art 1 s 54; 2009 c 59 art 6 s 18*

## **APPENDIX B**

### **609.092 JUVENILE PETTY OFFENDERS; USE OF RESTORATIVE JUSTICE**

#### **Subdivision 1. First-time juvenile petty offenders; applicability; procedure.**

- (a) This subdivision applies to a child alleged to be a juvenile petty offender who:
- (1) has not been previously adjudicated delinquent or as a petty offender;
  - (2) has not previously participated in or completed a diversion program for an offense;
  - (3) has not previously been placed on probation without an adjudication for an offense or received a continuance under section 260B.198, subdivision 7; and
  - (4) agrees to successfully complete a restorative justice program under this section.

(b) Subject to subdivision 6, the prosecutor shall refer a child described in paragraph (a) to a restorative justice program or provider that has been included on the approved provider list described in subdivision 4. The program or provider shall arrange an appropriate outcome for the matter using restorative justice concepts. The program or provider shall involve the victim of the offense in the proceedings. If the victim is unwilling or unable to proceed, or if there is no identifiable victim, the program or provider shall ensure that someone serves as a proxy for the victim. The program or provider and child, along with other participants, shall agree in writing to an appropriate sanction for the child. The sanction may include any of the dispositions authorized in section 260B.235, if appropriate, along with any other sanctions agreed to.

#### **Subd. 2. Failure to comply.**

If a person fails to comply with the settlement agreement, the person shall be referred back to the court for further proceedings.

#### **Subd. 3. Dismissal of charge.**

Upon the successful completion by a person of the sanctions agreed to in the settlement agreement, the program or provider shall notify the court and the court shall dismiss the charge against the person.

#### **Subd. 4. Approved list.**

The prosecutor shall maintain a list of approved restorative justice programs and providers to which persons may be referred under this section.

#### **Subd. 5. Preference for culturally specific programs.**

If a restorative justice program or provider that is tailored in a more culturally specific manner to the person is on the list of approved providers under subdivision 4, and the prosecutor is referring the person to a restorative justice program or provider under this section, the prosecutor shall refer the person to the more appropriate program or provider.

#### **Subd. 6. Exceptions; availability of programs; diversion alternatives; domestic abuse.**

This section applies only in jurisdictions where suitable restorative justice programs and providers are available and are able to accept the referral. This section does not apply if a prosecutor has determined that a nonrestorative justice diversion program is more appropriate for the person. In addition, this section does not apply to cases involving domestic violence or domestic assault.

Subd. 7. **Definition.**

As used in this section, "restorative justice" has the meaning given in section 611A.775. The term also includes Native American sentencing circles.

**History:**

*2009 c 83 art 2 s 38*

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