

# Establishing a Consent Policy for Youth Diversion in Los Angeles County

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Prepared for the Office of Youth Diversion and Development within the Los Angeles County Department of Health Services, Office of Diversion and Reentry



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## Client

This report was prepared for the Office of Youth Diversion and Development (YDD), a division of the Los Angeles County Department of Health's Office of Diversion and Reentry. In 2017, the Board of Supervisors created YDD based on recommendations of the ad-hoc Youth Diversion Subcommittee of the Countywide Criminal Justice Coordination Committee. With the support of the Board of Supervisors, YDD is tasked with creating and implementing a pre-arrest model for diversion programs across Los Angeles County to address disparities in the juvenile justice system.<sup>1</sup> Using a youth development framework, YDD is increasing capacity for community-based diversion programs and coordinating efforts between law enforcement and youth service providers. Ultimately, YDD's mission is to reduce youth involvement with the justice system and support positive youth development.

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<sup>1</sup> Human Impact Partners. "Los Angeles County Diverts Justice-Involved Youth". At: <https://healthequityguide.org/case-studies/los-angeles-county-diverts-justice-involved-youth/>.

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## Glossary of Key Terms

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**Arrest:** “The detaining of a person by a law enforcement officer, which may include being taken into custody or restrained for a period of time,” as defined by the Countywide Criminal Justice Coordination Committee (CCJCC) Youth Diversion Subcommittee.<sup>2</sup>

**Asian or Pacific Islander:** Individuals who have origins in East Asia, Southeast Asia, the Indian subcontinent, Pakistan, the Philippines, Hawaii, Guam, Samoa, or the Micronesian, Melanesian, and Polynesian regions.<sup>3</sup>

**Black:** Individuals who have origins in any of the Black racial groups of Africa. This report uses Black rather than African American so as not to conflate racial/ethnic identity with nationality or country of origin.<sup>4</sup>

**Booking:** “The processing (e.g. fingerprinting, photographing, creation of criminal record identification number, etc.) of an arrest by a law enforcement officer,” as defined by the CCJCC Youth Diversion Subcommittee.<sup>5</sup>

**Citation:** “A written order to appear before a magistrate or probation officer at a later date in lieu of being arrested and delivered to juvenile authorities for a violation of law,” as defined by the CCJCC Youth Diversion Subcommittee.<sup>6</sup>

**Citation model:** One of the primary models law enforcement agencies use to refer youth to diversion. In this model, law enforcement agencies mail information on approved local community-based organizations to cited youth, who then choose which program to attend. Upon successful completion of an alternative justice program, the law enforcement agency voids the citation.<sup>7</sup>

**Community-Based Organization (CBO):** A public or private nonprofit organization that is representative of a community or significant segments of a community and provides services to individuals in that community.<sup>8</sup>

**Counsel and release:** “An encounter between law enforcement and a young person where the officer determines the situation can be concluded with informal warning, information, or connection to school or community-based services rather than either formal diversion

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<sup>2</sup> Countywide Criminal Justice Coordination Committee (CCJCC) Youth Diversion Subcommittee & the Los Angeles County Chief Executive Office (CEO). “A Roadmap for Advancing Youth Diversion in Los Angeles County.” September 2017. At: <http://ccjcc.lacounty.gov/LinkClick.aspx?fileticket=958nu4vfXQQ%3D&portalid=11>. Referred to heretofore as “CCJCC Youth Diversion Subcommittee, 2017.”

<sup>3</sup> IPUMS. “Race.” At: [https://usa.ipums.org/usa-action/variables/RACE#codes\\_section](https://usa.ipums.org/usa-action/variables/RACE#codes_section) (accessed March 19, 2019).

<sup>4</sup> IPUMS. “Race.” At: [https://usa.ipums.org/usa-action/variables/RACE#codes\\_section](https://usa.ipums.org/usa-action/variables/RACE#codes_section) (accessed March 19, 2019).

<sup>5</sup> CCJCC Youth Diversion Subcommittee, 2017.

<sup>6</sup> CCJCC Youth Diversion Subcommittee, 2017.

<sup>7</sup> League of California Cities. “Juvenile Citation Diversion Program.” At:

<https://www.cacities.org/Top/Partners/California-City-Solutions/2016/Juvenile-Citation-Diversion-Program>.

<sup>8</sup> 26 United States Code § 501(C)(3).

programming or arrest/citation. The officer does not generate a crime report or introduce legal consequences,” as defined by the CCJCC Youth Diversion Subcommittee.<sup>9</sup>

**County Counsel:** The Office of the Los Angeles County Counsel is the chief civil law officer of the County and provides legal services to the Board of Supervisors, county and court officials, and other agencies and districts.<sup>10</sup>

**Detention:** Being held in custody by law enforcement or probation.<sup>11</sup>

**District Attorney (DA):** A county district attorney (DA) is a public official who acts as prosecutor representing the people of the State of California. In the context of this report, DAs traditionally have access to diversion records, which can influence their sentencing of a youth.<sup>12</sup>

**Diversion:** “An intervention that redirects a response to law enforcement contact (e.g. providing an alternative to arrest or citation) in order to prevent or reduce a young person’s involvement in the justice system. Diversion seeks to better align responses to support positive youth development and address underlying needs,” as defined by the CCJCC Youth Diversion Subcommittee.<sup>13</sup>

**Juvenile Hall:** Juvenile hall is a detention facility for young people up to age 21 who are either alleged to have committed an offense under the jurisdiction of the juvenile court (pre-adjudication), have been sentenced to incarceration by the juvenile court (post-disposition), or are awaiting sentencing and placement (pre-disposition).<sup>14</sup>

**Latinx:** This paper describes all persons of Hispanic/Spanish/Latino origin as Latinx. Within the Integrated Public Use Microdata Series (IPUMS) dataset this analysis relies on, individuals labeled as other races may be Latinx. However, the authors of this report created a binary Latinx race/ethnicity variable in order to analyze arrest data by race as collected by the California Department of Justice, which uses the United States Census Bureau’s definition of Hispanic “a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race”.<sup>15 16</sup> This paper uses Latinx given California’s considerable Latin American immigrant population and shared regional culture.<sup>17</sup>

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<sup>9</sup> CCJCC Youth Diversion Subcommittee, 2017.

<sup>10</sup> Los Angeles County Counsel. “About Us.” At: <https://counsel.lacounty.gov/About-Us>. (Accessed March 19, 2019).

<sup>11</sup> California Welfare and Institutions Code 207.1(d)(1)

<sup>12</sup> Los Angeles County District Attorney’s Office. “Office Overview.” At: <http://da.co.la.ca.us/about/office-overview> (Accessed March 19, 2019).

<sup>13</sup> CCJCC Youth Diversion Subcommittee, 2017.

<sup>14</sup> California Welfare and Institutions Code § 850.

<sup>15</sup> IPUMS. “Hispanic origin.” At: [https://usa.ipums.org/usa-action/variables/HISPAN#description\\_section](https://usa.ipums.org/usa-action/variables/HISPAN#description_section) (accessed March 19, 2019).

<sup>16</sup> Open Justice. “Glossary.” California Department of Justice. At: <https://openjustice.doj.ca.gov/resources/glossary> (accessed March 19, 2019).

<sup>17</sup> Hans Johnson and Sergio Sanchez. “Immigrants in California.” Public Policy Institute of California (PPIC). May 2018. At: <https://www.ppic.org/publication/immigrants-in-california>.

**Legal guardian:** A legal guardian is appointed custody of a child by a court. Legal guardians share many of the same rights and responsibilities as parents: they can decide where the child lives and goes to school, and they can make decisions about the child's health care.<sup>18</sup>

**Minor:** Any individual under the age of 18. For the purposes of this report, minors will be heretofore referred to as youth.

**Net widening:** As defined by the CCJCC Youth Diversion Subcommittee, net widening refers to the phenomenon where the juvenile justice system expands its reach, usually through the adoption of prevention and early intervention programs. For example, if the juvenile court processes the same numbers of cases as before but additionally places large numbers of youth into pre-court diversion programs, then the system has "widened the net" by involving more youth than before.<sup>19</sup>

**Neurodiverse:** Neurodiversity is an approach to learning in which neurological differences are recognized and respected as normal variations in the human genome. These differences can include those labeled with Dyspraxia, Dyslexia, Attention Deficit Hyperactivity Disorder, Dyscalculia, Autistic Spectrum, Tourette Syndrome, and others.<sup>20</sup>

**Other:** In this report, there is a race/ethnicity category referred to as "other." This category includes an unknown category called "Other" in the California Department of Justice data and American Indians.

**Over-Serving:** An over-application of services resulting in an overall ineffective outcome. Over-service can result from an inappropriate dosage of one intervention or the over-application of too many different services.<sup>21</sup>

**Parent:** An individual who, by law, has custody, guardianship, or access rights regarding a child.<sup>22</sup>

**Probation:** Probation is a period of supervision by the county probation department over a juvenile court-involved young person. Probation supervision can be ordered by the court in lieu of serving a sentence in a county juvenile post-disposition facility or after release from incarceration.<sup>23</sup>

**Station Model:** Allows law enforcement to bring youth back to the police station for a six-hour window (see temporary detention) to determine if referral to a diversion program is appropriate.

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<sup>18</sup> California Courts. "Guardianship." At: <https://www.courts.ca.gov/selfhelp-guardianship.htm> (accessed March 19, 2019).

<sup>19</sup> CCJCC Youth Diversion Subcommittee, 2017.

<sup>20</sup> "What Is Neurodiversity?" National Symposium on Neurodiversity at Syracuse University. March 23, 2012. Accessed March 21, 2019. <https://neurodiversitysymposium.wordpress.com/what-is-neurodiversity/>.

<sup>21</sup> Daniel P. Mears et al., "Juvenile Court and Contemporary Diversion," *Criminology & Public Policy* 15, no. 3 (2016): 953–81, <https://doi.org/10.1111/1745-9133.12223>.

<sup>22</sup> Cal. Family Code § 7500-7507

<sup>23</sup> County of Los Angeles. "Juvenile Probation Information." At: <https://probation.lacounty.gov/#juvenile> (accessed March 19, 2019).

If deemed appropriate, law enforcement will sign an agreement with youth and their parent or guardian, send a referral to the CBO, and release the youth to the parent or guardian.<sup>24</sup>

**Status Offense:** An act that is considered a law violation simply due to a young person's status as a minor. Examples include truancy, curfew violations, and underage drinking.<sup>25</sup>

**Temporary detention or temporary custody:** The process of keeping a youth who has been arrested in temporary detainment at a police station. In the context of this report, temporary detention typically cannot exceed 6 hours.<sup>26</sup>

**White:** This ethnicity category includes "persons having origins in any of the original peoples of Europe, the Middle East, or North Africa."<sup>27</sup> Unfortunately the United States Census Bureau does not separate these categories into more specific categories.

**Youth:** For the purposes of this report, youth are defined as young people up to the age of 18. Transitional age youth is a category that extends from 18 to 24. Other diversion processes may need to be tailored to fit the needs of transitional age youth or young people who are outside the purview of the juvenile justice system.

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<sup>24</sup> Michael Klein, "Juvenile Diversion Guide: Holding Youth Accountable While Reducing Juvenile Justice System Involvement in California." Council For A Strong America. Mar. 2018. At: <https://strongnation.s3.amazonaws.com/documents/403/836f2d21-1a25-422b-8809-d3db04ffed94.pdf?1521754410&inline;%20filename=%22Juvenile%20Diversion%20Guide.pdf%22>

<sup>25</sup> Office of Juvenile Justice and Delinquency Prevention (OJJDP). "Status Offense." September 2015. At: [https://www.ojjdp.gov/mpg/litreviews/Status\\_Offenders.pdf](https://www.ojjdp.gov/mpg/litreviews/Status_Offenders.pdf).

<sup>26</sup> California Welfare and Institutions Code 207.1(f)(1)

<sup>27</sup> U.S. Census Bureau. "Race." At: <https://www.census.gov/topics/population/race/about.html> (accessed March 19, 2019).

## Executive Summary

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Los Angeles County has the largest juvenile justice system in the nation.<sup>28</sup> Over the past decade, arrest and incarceration rates for youth in Los Angeles County have decreased significantly; this decline coincides with a greater engagement with alternatives to incarceration such as diversion.<sup>29</sup> Diversion programs are not only more effective at reducing crime than incarceration, they minimize the harmful effects and collateral consequences of justice system involvement by serving youth in the community.<sup>30</sup> However, the diversion programs that currently exist in Los Angeles County require parent or guardian consent to participate, which restricts access for certain groups of youth, and there is currently no standard consent policy for diversion. This lack of a standard consent policy has left open crucial legal and ethical questions about the balance between youth rights and parental rights. As such, our client, the Los Angeles County Office of Youth Diversion and Development (YDD), asked us to address the following policy question:

*How should YDD construct its consent policy, given the ethical, legal, and practical concerns surrounding implementation in Los Angeles County?*

To address this policy question, we researched existing literature on this topic, analyzed youth arrest data, and conducted over 40 interviews with key stakeholders. Our research revealed three key findings about youth consent: (1) some youth either cannot obtain parent/guardian consent or feel unsupported by their parent/guardian; (2) youth do not understand their legal rights; and (3) many young people had negative experiences with adults in the justice system, which influenced their legal decisions. Additionally, we uncovered three systemic issues that are tangential to the process of consent: (1) law enforcement is over-diverting youth for low-level offenses; (2) diversion services are not always proportionate to a young person's needs; and (3) there is a lack of coordination between county departments and community-based organizations that provide diversion services.

Based on our findings, we crafted guidelines to assist YDD when developing their consent policy. These include *Policy Guidelines for Consent*, which are immediately actionable and address our client's need for a standard consent policy, and *Policy Guidelines for the Diversion System*, which address longer-term, systemic issues that stem from the consent process. For each guideline, we developed a set of specific policy options and evaluated those options based on four criteria. Ultimately, we are recommending a set of policies that responsibly increases access to diversion by removing barriers to consent, while protecting against coercion and over-serving.

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<sup>28</sup> Board of State and Community Corrections (BSCC). Juvenile Detention Profile Survey - Los Angeles County Average Daily Population (ADP) as of February 2018. At: [http://www.bscc.ca.gov/s\\_fsojuvenileprofile.php](http://www.bscc.ca.gov/s_fsojuvenileprofile.php). Accessed January 2019.

<sup>29</sup> Taylor Schooley, "Los Angeles County Diverts Justice-Involved Youth," HealthEquityGuide.org, accessed March 19, 2019, <https://healthequityguide.org/case-studies/los-angeles-county-diverts-justice-involved-youth/>.

<sup>30</sup> Anthony Petrosino, Carolyn Turpin-Petrosino, and Sarah Guckenburger, "Formal System Processing of Juveniles: Effects on Delinquency" (Washington, DC: US Department of Justice, Office of Community Oriented Policing Services, 2013), <https://ric-zai-inc.com/Publications/cops-p265-pub.pdf>.

Los Angeles County is at the forefront of juvenile justice policy nationwide and is one of few counties to implement a large-scale, pre-arrest diversion model.<sup>31</sup> Ensuring equal access to pre-arrest diversion for all youth is an important step towards addressing racial disparities in arrest and incarceration and reducing the harmful effects of justice system involvement. Our findings provide a solid research backing for a blended consent policy that eliminates barriers to consent while mitigating the risks of a youth consent policy. Advancements made in Los Angeles County may influence juvenile justice systems around the country to take similar steps. We hope that this report not only serves as a blueprint for YDD, but that our findings demonstrate an effective consent model as more counties adopt pre-arrest diversion programs.

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<sup>31</sup> Washburn, "LA County Embarks on Sweeping Youth Diversion Plan," *California Health Report*(blog), March 8, 2018, <http://www.calhealthreport.org/2018/03/08/la-county-embarks-sweeping-youth-diversion-plan/>.

## Introduction

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### Youth Justice in Los Angeles County

Los Angeles County has the largest juvenile justice system in the United States with three juvenile halls, eight probation camps, eight delinquency courts, and over 9,900 youth under probation supervision—about 1,040 of whom are incarcerated in county facilities.<sup>32</sup> Research shows that all levels of justice system involvement, ranging from arrest to incarceration, are associated with a multitude of negative, long-term outcomes. Detention or incarceration in a juvenile facility exacerbates mental illnesses in young people, precipitates the onset of depression and suicidal ideation, interrupts education and increases school dropouts, and diminishes future earnings.<sup>33</sup> Arrest alone has also been associated with negative outcomes, such as expulsion from school and an increased risk of reoffending and rearrest.<sup>34</sup>

Moreover, Black and Latinx youth are disproportionately policed, arrested, and incarcerated in Los Angeles County. Despite an overall decrease in youth arrest rates, racial disparities in arrests have actually increased slightly. In 2017 compared to 2007, the proportion of total arrests representing Black youth increased by five percent while the proportions of white and Latinx youth arrests decreased.<sup>35</sup> In Los Angeles County, Black youth are arrested at a rate of about 16 arrests per 1,000 youth—three times higher than the arrest rate of Latinx youth, five times higher than that of white youth, and 34 times higher than the arrest rate for Asian youth.<sup>36</sup> Latinx youth are arrested at nearly twice the rate of white youth and 10 times that of Asian youth.<sup>37</sup>

Beyond arrests, racial disproportionalities persist through every step of the juvenile justice system. In Los Angeles County, Black and Latinx youth comprise a disparate percentage of youth supervised by probation; Black youth constitute just six percent of the County's youth population, but 36 percent of youth on probation are Black, while Latinx youth represent 48

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<sup>32</sup> Los Angeles County Probation. Find A Facility. At: [https://probation.lacounty.gov/placement-services-2/#juvenile\\_halls](https://probation.lacounty.gov/placement-services-2/#juvenile_halls). Accessed January 2019.; Los Angeles County Superior Court. Juvenile Delinquency Courthouses. At: <http://www.lacourt.org/courthouse/mode/division/juvenile>. Accessed January 2019.; Resource Development Associates, Inc. LA Probation Governance Study. Los Angeles County Executive's Office. February 2018. At: [http://file.lacounty.gov/SDSInter/probation/1033765\\_LAPGS\\_FinalMergedReport\\_20180206.pdf](http://file.lacounty.gov/SDSInter/probation/1033765_LAPGS_FinalMergedReport_20180206.pdf).; Board of State and Community Corrections (BSCC). Juvenile Detention Profile Survey - Los Angeles County Average Daily Population (ADP) as of February 2018. At: [http://www.bscc.ca.gov/s\\_fsojuveniledetentionprofile.php](http://www.bscc.ca.gov/s_fsojuveniledetentionprofile.php). Accessed January 2019.

<sup>33</sup> Barry Holman and Jason Ziedenberg. The Dangers of Detention. Justice Policy Institute. June 2011. At: [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf)

<sup>34</sup> David S. Kirk and Robert J. Sampson. Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood. *Social Educ.* 2013 January 1; 88(1): 36–62. At: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4192649/pdf/nihms611904.pdf>.; Akiva M. Liberman, David S. Kirk, and KiDeuk Kim. Labeling Effects of First Juvenile Arrests: Secondary Deviance and Secondary Sanctioning. *Criminology*. February 2014. At: <https://www.urban.org/sites/default/files/publication/33701/413274-Labeling-Effects-of-First-Juvenile-Arrests-Secondary-Deviance-and-Secondary-Sanctioning.PDF>.

<sup>35</sup> Dataset on file with the authors of this report using California Department of Justice arrest data (requested by the Los Angeles County Office of Youth Diversion and Development) and Integrated Public Use Microdata Series (IPUMS) American Communities Survey (ACS) data for 2005-2017 available at [www.ipums.org](http://www.ipums.org). Referred to heretofore as "IPUMS USA - CA DOJ dataset, 2019."

<sup>36</sup> IPUMS USA - CA DOJ dataset, 2019.

<sup>37</sup> IPUMS USA - CA DOJ dataset, 2019.

percent of the County's youth population but 56 percent of youth on probation.<sup>38</sup> Given the negative effects of justice system involvement, researchers suspect these trends contribute to racial inequities beyond the juvenile justice system, including disparities in educational attainment, income levels, and health outcomes.<sup>39</sup>

## An Overview of Youth Diversion

In many situations, diverting young people away from arrest and incarceration at the earliest point of police contact can reduce the negative consequences associated with justice system involvement.<sup>40</sup> Moreover, diversion has proven more effective at reducing crime in all but the most serious cases and is less costly than formal processing.<sup>41</sup> The act of diversion manifests in many forms; informal diversion has always existed through law enforcement officers' individual discretion not to arrest youth for minor offenses. However, police are more likely to stop, question, and arrest youth of color, primarily Black youth.<sup>42</sup> Therefore, a more formal diversion system is needed to reduce racial disparities in arrest.

In recent years, formal diversion programs have been incorporated into juvenile justice systems across the United States to address the conditions or behaviors that gave rise to law enforcement's initial contact with a young person. These programs seek to connect youth to mental health treatment, substance use treatment, or other responsive, community-based services. However, the structure, eligibility criteria, and consequences of program completion vary widely.

In Los Angeles County, diversion has also been applied inconsistently. According to an environmental scan conducted by the County Department of Health, in 2017, there were 22 diversion programs operating across Los Angeles County: 16 programs allowed law enforcement officers to divert youth before transferring them to probation, five programs allowed probation officers to divert youth before transferring cases to the district attorney, and one program allowed district attorneys to divert youth before their case was formally transferred to juvenile court.<sup>43</sup> Only two programs explicitly diverted youth before an arrest or citation was recorded.<sup>44</sup>

Additionally, in Los Angeles County, the procedural policy by which young people enroll in diversion programs remains unclear. Law enforcement agencies and diversion service providers require a parent or legal guardian to consent for youth under age 18 to participate in diversion programs. However, this policy excludes some young people who do not have a present or

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<sup>38</sup> Resource Development Associates, Inc. LA Probation Governance Study. Los Angeles County Executive's Office. February 2018. At: [http://file.lacounty.gov/SDSInter/probation/1033765\\_LAPGS\\_FinalMergedReport\\_20180206.pdf](http://file.lacounty.gov/SDSInter/probation/1033765_LAPGS_FinalMergedReport_20180206.pdf).

<sup>39</sup> Nicole Wetsman. "To Reduce Long-Term Health Gaps, a Push for Early Intervention in Juvenile Detention." Undark. July 6, 2018. At: <https://undark.org/article/juvenile-detention-health-care-racial-disparities/>. 1/7/18/2018

<sup>40</sup> CCJCC Youth Diversion Subcommittee, 2017.

<sup>41</sup> Anthony Petrosino, Carolyn Turpin-Petrosino, and Sarah Guckenburg, "Formal System Processing of Juveniles: Effects on Delinquency" (Washington, DC: US Department of Justice, Office of Community Oriented Policing Services, 2013), <https://ric-zai-inc.com/Publications/cops-p265-pub.pdf>.

<sup>42</sup> Office of Juvenile Justice and Delinquency Prevention (OJJDP). Interactions Between Youth and Law Enforcement. January 2018. Pg. 9. At: <https://www.ojjdp.gov/mpg/litreviews/Interactions-Youth-Law-Enforcement.pdf>

<sup>43</sup> CCJCC Youth Diversion Subcommittee, 2017.

<sup>44</sup> CCJCC Youth Diversion Subcommittee, 2017.

willing parent or legal guardian to assist with the diversion process. This population includes foster youth, especially those with open dependency court cases where custody issues are being disputed, unaccompanied homeless youth, immigrant youth who are undocumented or have undocumented parents, and youth whose parents may act against their best legal interest and refuse to consent. Policies surrounding how parental or legal guardian consent is obtained may also create barriers to diversion for youth. For example, requiring parental consent before releasing youth from temporary custody may result in young people with undocumented parents declining services, and homeless youth who cannot contact their parents may be detained in juvenile hall rather than released on their own recognizance.

In an effort to reduce overall contact with the juvenile justice system and broaden access to community-based services, Los Angeles County is now seeking to formalize diversion practices across multiple law enforcement agencies through its new Office of Youth Diversion and Development (YDD).

### Our Client: The Office of Youth Diversion and Development (YDD)

The Los Angeles County Office of Youth Diversion and Development (YDD) was created in November 2017 by the Board of Supervisors to oversee, coordinate, and expand County-funded youth diversion and development programs.<sup>45</sup> Recognizing the benefits of reducing youth contact with the juvenile justice system as early as possible, YDD was tasked with implementing a pre-arrest diversion model that keeps youth out of the system altogether.

In establishing this model, YDD seeks to ensure that diversion programming is accessible to all youth who may benefit from available community services. Currently, YDD is operating under the internal policy that youth may only participate in YDD-funded diversion programs with the signed permission of a parent or legal guardian. This policy is standard throughout many County and community programs, though not explicitly required by legal statute. However, as stated above, this internal policy has the potential to exclude some populations of young people. As such, YDD hopes to implement a “youth consent” policy that would allow young people to consent to their own participation in diversion programs.

A youth consent policy for diversion may increase young people’s access to beneficial programs, reduce system involvement, and protect them from adults who may act against their best legal interest. However, asking youth to consent to diversion themselves may also expose them to unknown legal ramifications, participation costs, or exposure to inappropriate service interventions that do not correspond with their individual needs. Additionally, studies recommend parental involvement in diversion programming as a best practice to achieve positive programming outcomes.

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<sup>45</sup> CCJCC Youth Diversion Subcommittee, 2017.

## Policy Question

Given the trade-offs between increasing youth access to diversion through a youth consent policy and potentially improved youth protections under a parent/legal guardian consent policy, we seek to answer the following policy question: How should YDD construct its consent policy, given the ethical, legal, and practical concerns surrounding implementation in Los Angeles County?

## Background: Diversion in Los Angeles County

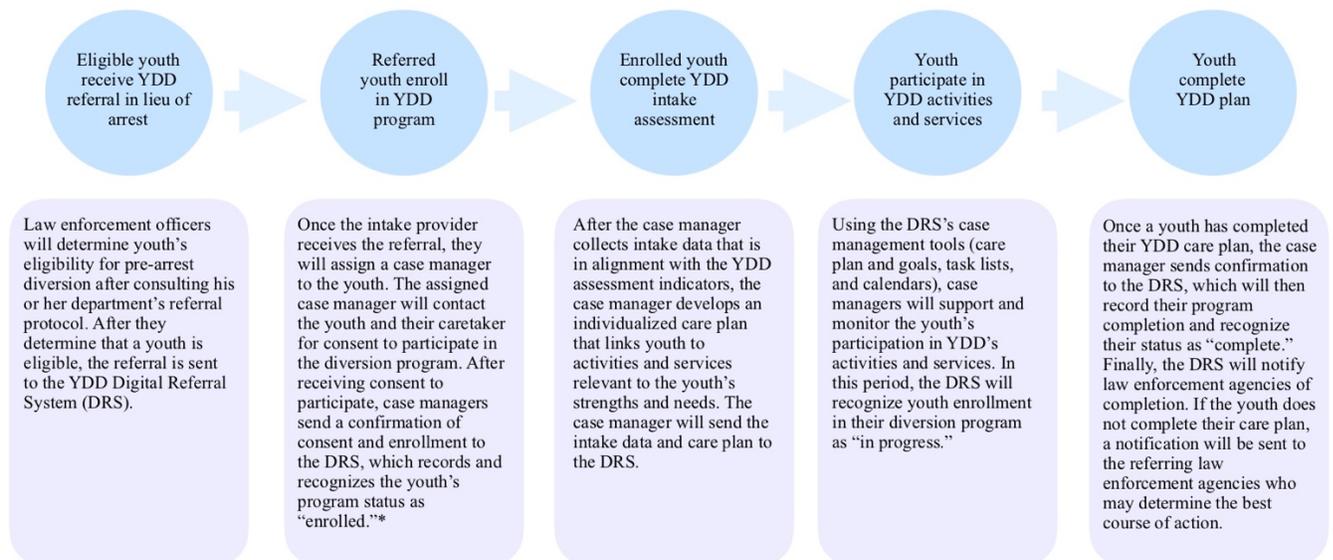
### YDD Awardees and MOUs

In January 2019, YDD awarded contracts for case management services to eight community-based organizations (CBOs) across the county. These CBOs were chosen to provide individualized, community-based services, which range from housing and transportation support to restorative or transformative justice practices as well as a wide range of other services.<sup>46</sup>

The CBOs will partner with one or more law enforcement agencies that will refer youth to diversion services based on the geographic location of the CBO. The terms for each of the CBO-law enforcement partnerships will be specified in unique memoranda of understanding (MOU) that will address referral, data collection, and communication protocol.<sup>47</sup>

### The YDD Model

YDD has created a case flow diagram to identify the stages from when a young person encounters a law enforcement officer through the completion of their diversion program.<sup>48</sup> The first cohort of YDD-funded diversion providers will follow these steps and require parent or legal guardian consent for youth to participate in diversion. We have been asked to develop a standard consent policy that YDD can implement in future years.



\* If the referred youth doesn't enroll in diversion, the youth's status is recorded as "not enrolled." In both cases, the referring law enforcement agency is notified. In the latter case, the law enforcement agency will be notified to determine the best course of action.

<sup>46</sup> Taylor Schooley. Youth Diversion in Los Angeles County: Advancing Evidence-Informed Policy to Improve Youth Outcomes. December 2017. At: [http://file.lacounty.gov/SDSInter/dhs/1034534\\_YDDpolicybrief1\\_19\\_18.pdf](http://file.lacounty.gov/SDSInter/dhs/1034534_YDDpolicybrief1_19_18.pdf).

<sup>47</sup> CCJCC Youth Diversion Subcommittee, 2017.

<sup>48</sup> CCJCC Youth Diversion Subcommittee, 2017.

## Methodology

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YDD is interested in a consent policy that responsibly expands access to diversion by allowing youth to consent for their own participation, eliminating mandated parent or legal guardian consent. By interviewing key stakeholders, analyzing youth arrest data, and reviewing existing diversion literature, we develop a set of guidelines for YDD to consult when developing their consent policy. Given the complexity of laws governing youth justice, our restricted access to data and many key stakeholders, and the fact that YDD is just beginning to launch its programs, creating a set of evidence-informed guidelines will be more useful to our client than recommending one specific consent policy.

After identifying guidelines to shape YDD's consent policy, we develop a set of specific policy options to address each guideline. We then evaluate these policy options according to a set of four criteria that reflect our client's needs and goals. Based on this evaluation, we recommend a final set of policies that enhance the benefits of youth consent while alleviating the risks.

### Quantitative Data Sources and Methodology

We conducted descriptive analyses to understand trends in youth arrests and eligibility for diversion by different demographic variables, specifically race, in Los Angeles County using the following quantitative data:

- Juvenile arrest data for Los Angeles County from the California Department of Justice (DOJ) for 2005-2017.
- Population estimates from the Integrated Public Use Microdata Series (IPUMS) American Communities Survey (ACS) for 2005-2017, using a one percent sample from each year for individuals under 18 years old (the juvenile justice system has jurisdiction over youth ages 0-17).

After building our dataset, we calculated annual arrest rates for Los Angeles County by dividing the total number of arrests by the population estimate. We then created a number of other variables to conduct our descriptive analysis.

### Qualitative Data Sources and Methodology

The analysis for our research depends greatly on the comparison of policy versus practice for various juvenile justice and community stakeholders. To determine how the implementation of juvenile justice policies may vary across stakeholders and how the intended effects of a policy may differ from the actual experiences of young people, we conducted semi-structured interviews with all of YDD's key stakeholders: law enforcement officers, community-based service providers, legal professionals, and individuals who were involved in the juvenile justice system as youth. A detailed, de-identified index of our interviews is included in Appendix B.

Stakeholder Group	Sample Size
Individuals Arrested as Youth	20
Community-Based Service Providers	11
Law Enforcement Officers	3
Juvenile Justice Legal Professionals	7

Interview guides for each of these populations are included in Appendix A. The interview guides were developed by first identifying the aspects of consent that we needed to understand from each stakeholder group. Within these areas, we developed open-ended questions to elicit detailed and thorough responses from our informants. We also prepared follow-up questions, or “probes,” to encourage more detail if necessary. We treated our interview guides as true *guides*, not as surveys; we asked the same core questions of each informant, but we also allowed interviews to flow naturally and let informants deviate from the interview guides when relevant.

**Individuals who were arrested as youth.** Because consenting to participate in a diversion program currently occurs after youth interact with law enforcement, it was critical that we understand what takes place during these interactions (typically moments of arrest). Individuals who were arrested as youth are uniquely knowledgeable about these moments.

**Community-based organizations (CBOs).** As the agencies that provide (or will provide) diversion services to youth, CBOs understand the benefits and limitations of current consent practices. Thus, we needed to understand community-based service providers’ consent requirements, how those requirements affect youth access to or success in programming, and service providers’ opinions about a potential youth consent policy.

**Law enforcement officers.** Because diversion programs depend on the voluntary participation of law enforcement agencies, it was critical to understand law enforcement officers’ perspectives on diversion, information sharing, and youth consent.

**Legal professionals.** Understanding the legal framework surrounding diversion in the context of Los Angeles County’s juvenile justice, child welfare, and dependency court systems was critical for the development of a consent policy that reduces negative legal externalities for youth and minimizes their entanglement in multiple bureaucracies.

To sample a diverse range of opinions and expertise about current consent policies for diversion and what a future policy should consider, we used the following qualitative data collection methods:

1. **Snowball sampling:** We began by conducting interviews with personal contacts which then generated additional referrals. These referrals then spawned further referrals.<sup>49</sup> This method was most practical for receiving guidance from expert informants and expanding our network of relevant stakeholders. Forging connections by building relationships with a shared contact also helped us establish trust with stakeholders.
2. **Sampling for range:** This method is ideal when the total expected sample size is small. Rather than sampling randomly and risking a sample that includes stakeholders with the same opinions, we sought to capture the extent to which stakeholder perspectives differ.<sup>50</sup> The range of opinions gathered spans from those who consider youth consent to be an increased liability to those who are in favor of a more expansive youth consent policy. Initially, we believed that individuals who would prioritize stronger youth protections and a narrower youth consent policy might differ by occupation; however, we found that opinions ranged at an individual level among law enforcement officers, social workers, community case managers, justice-involved youth, and youth policy advocates.

In order to analyze our interview data, we developed code categories based on themes that emerged from interview responses and adapted codes as sub-themes developed (see Appendix C for Interview Analysis Codebook). A coding scheme allowed us to categorize interview responses into common experiences and key disagreements between stakeholders.

## Limitations

Due to confidentiality concerns, the lack of consistent diversion data collected by law enforcement, and the limited number of current community-based diversion service providers, we were unable to collect quantitative data to analyze trends in diversion eligibility and participation. These data would have allowed for a more complete analysis of demographic trends in diversion referrals and would have allowed us to identify points where diversion was not completed due to lack of consent.

Furthermore, our qualitative sample group is not representative of all juvenile justice system and community stakeholders in Los Angeles County. For example, although we sampled for a range of opinions, only one informant of the 20 individuals we interviewed who were arrested as young people identified as a woman. A more robust collection of interviews would allow for a more comprehensive understanding of young people's experiences with the juvenile justice system and opinions about consent.

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<sup>49</sup> Robert Stuart Weiss. *Learning from Strangers the Art and Method of Qualitative Interview Studies*. New York, NY: Free Press, 1995.

<sup>50</sup> Robert Stuart Weiss. *Learning from Strangers the Art and Method of Qualitative Interview Studies*. New York, NY: Free Press, 1995.

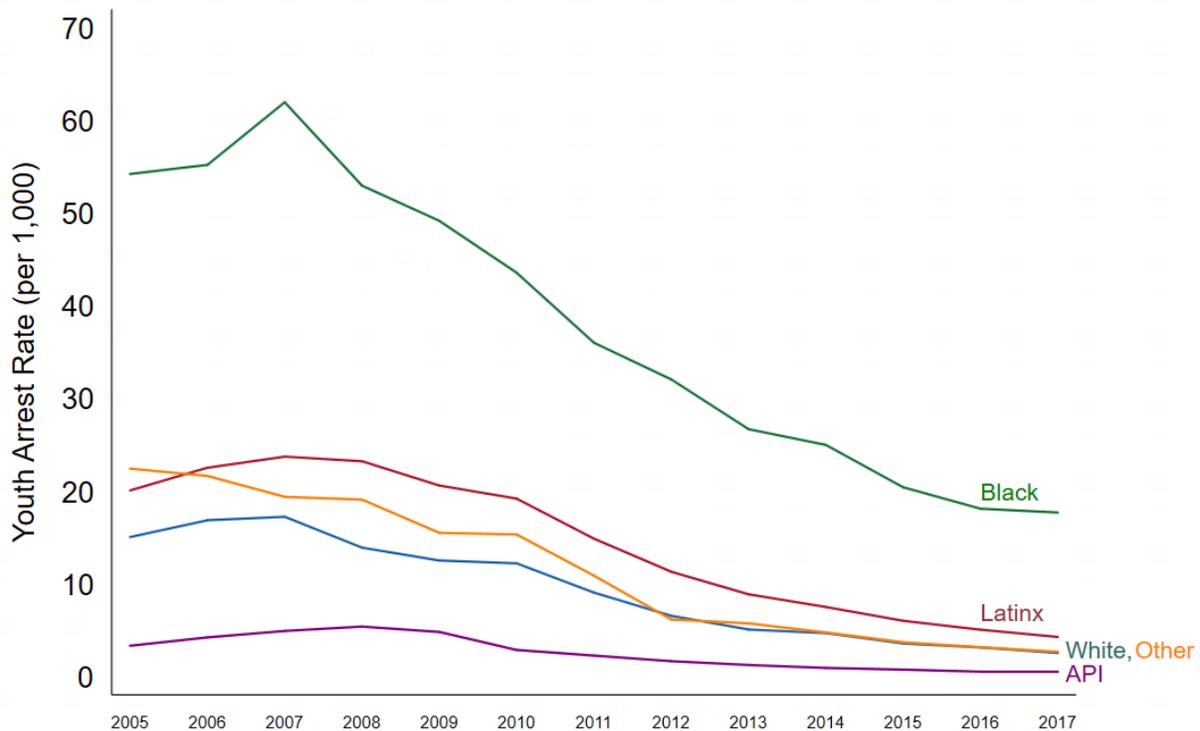
## Analysis and Findings

### Finding 1: Total youth arrests have decreased, but racial disproportionalities persist. Eligibility for diversion also varies significantly by racial group.

Los Angeles County experienced dramatic declines in youth arrests from 2005-2017. After peaking in 2007, the County juvenile arrest rate fell from approximately 24 arrests per 1,000 youth to 4 arrests per 1,000 youth in 2017. Arrest decreases across all three offense categories (felony, misdemeanor, and status offenses) contributed to this drop. From 2007 to 2017, felony arrest rates decreased by 70 percent, misdemeanor rates dropped by 80 percent, and status offenses saw a 95 percent decline. There are no clear causal explanations behind this trend; however, Los Angeles County mirrors both California and national trends.<sup>51</sup>

Despite overall arrest rates dropping to historic lows, Black youth are still arrested at the highest rates given their proportion of the general youth population (Figure 1).

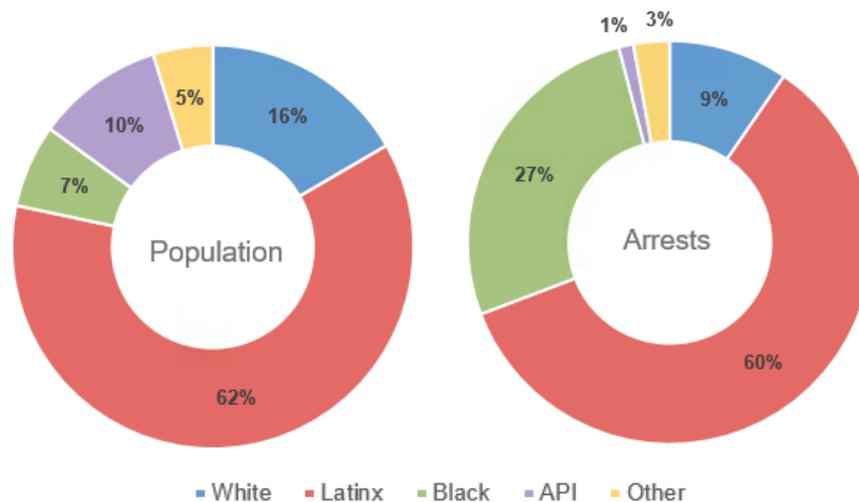
**Figure 1. Los Angeles County Youth Arrest Rate by Race, proportionate to the racial/ethnic composition of the youth population**



<sup>51</sup> Mike Males. "California Youth Continue Steep Declines in Arrests." Center on Juvenile and Criminal Justice. December 2017. At: [http://www.cjcj.org/uploads/cjcj/documents/steep\\_declines\\_in\\_juvenile\\_arrests.pdf](http://www.cjcj.org/uploads/cjcj/documents/steep_declines_in_juvenile_arrests.pdf); "Statistical Briefing Book: Juvenile Arrest Rate Trends," Office of Juvenile Justice and Delinquency Prevention, October 22, 2018, [https://www.ojjdp.gov/ojstatbb/crime/JAR\\_Display.asp](https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp).

In 2017, Black youth made up almost seven percent of the general Los Angeles County youth population but 27 percent of total juvenile arrests (Figure 2).<sup>52</sup> Conversely, the County youth population is about 17 percent white, but white youth comprised only about 10 percent of youth arrests. Though the arrest rates of Latinx youth appear proportional to the Latinx youth population in Los Angeles County, there are documented examples of law enforcement officers targeting Latinx residents base on race.<sup>53</sup> It is possible the data may be disguising disproportionalities resulting from inaccurate race reporting<sup>54</sup> or failure to discern Latinx youth from other ethnicities.<sup>55</sup>

**Figure 2. Los Angeles County Youth Population by Race vs Youth Arrests by Race, 2017**



Arrests are unreliable indicators of behavior given the discretion of individual law enforcement officials (especially for status offense and misdemeanor arrests). Black youth are more likely to attend schools that have police officers,<sup>56</sup> and studies find that young people of color are more likely to be arrested for common, youthful behavior.<sup>57</sup> Thus, these data only describe arrest rates by race in Los Angeles County and do not provide an explanation about which demographic groups commit more crime.

<sup>52</sup> IPUMS USA - CA DOJ dataset, 2019.

<sup>53</sup> Joel Poston and Ben Rubin, "L.A. County Deputies Stopped Thousands of Innocent Latinos on the 5 Freeway in Hopes of Their next Drug Bust," *latimes.com*, October 4, 2018, <https://www.latimes.com/local/lanow/la-me-sheriff-latinos-drug-stops-grapevine-20181004-htmllstory.html>.

<sup>54</sup> Shoshana Walter, "SFPD underreports Latino, Asian arrests." *SFGate*. August 15, 2012, <https://www.sfgate.com/bayarea/article/SFPD-underreports-Latino-Asian-arrests-3788809.php>.

<sup>55</sup> Michael Tapia. 2010. "Untangling race and class effects on juvenile arrests," *Journal of Criminal Justice*, Elsevier, vol. 38(3), pages 255-265, May.

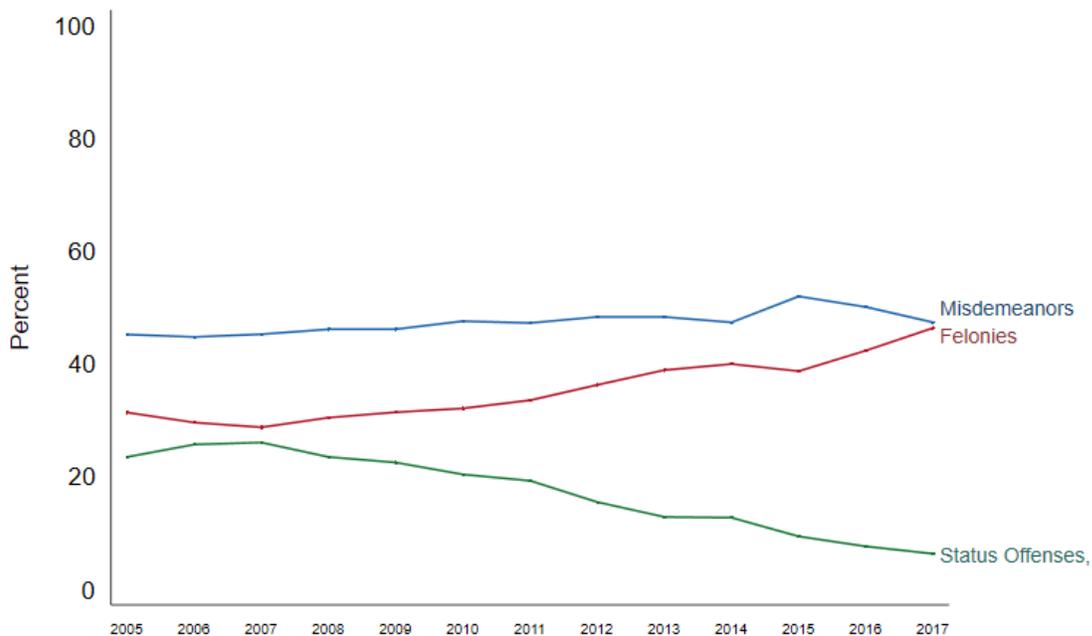
<sup>56</sup> Evie Blad and Alex Harwin, "Analysis Reveals Racial Disparities in School Arrests," *PBS NewsHour*, February 27, 2017, <https://www.pbs.org/newshour/education/analysis-reveals-racial-disparities-school-arrests>.

<sup>57</sup> Jessalyn Schwartz, "Study on Racial Disparities in Youth Commitments and Arrests Released," *American Bar Association*, April 25, 2016. <https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2016/study-racial-disparities-youth-commitments-and-arrests-released/>.

Because we are concerned with how arrests relate to eligibility for diversion, we compared trends in arrests for different offense categories. While police have discretion when determining which youth are referred to diversion, the California Welfare and Institutions Code prescribes some guidelines for eligible offenses.<sup>58</sup> Generally, diversion-eligible offenses include all misdemeanors and nonviolent felonies (YDD recommends counsel-and-release for status offenses).<sup>59</sup>

Figure 3 plots the proportion of total arrests that are felonies, misdemeanors, or status offenses in Los Angeles County. In 2017, misdemeanors and felonies comprised 47 and 46 percent of total arrests, respectively, with status offenses making up only 6 percent of total arrests. While it may seem disconcerting that the proportion of felonies is increasing, overall arrests decreased, especially for low-level offenses, causing the proportion of felony arrests to increase.

**Figure 3. Percent of Total Youth Arrests by Offense Category**

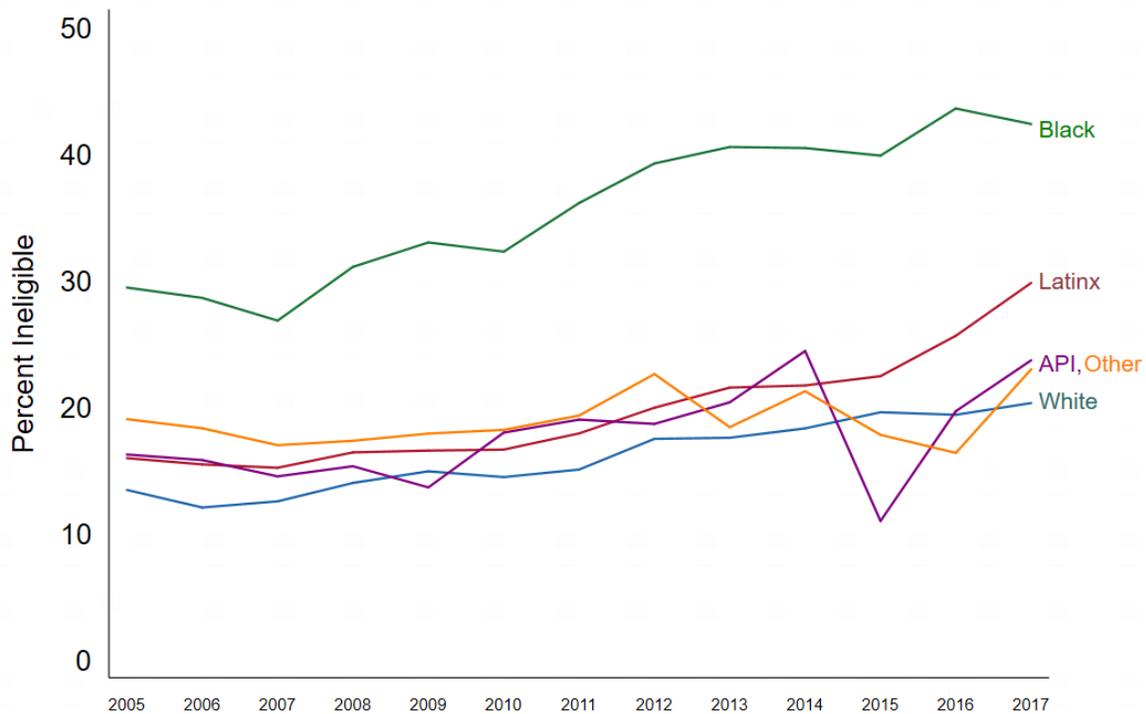


The proportion of felonies is directly related to the proportion of arrests that are eligible for diversion. In 2005, 82 percent of arrests were diversion-eligible; in 2017, it fell to 68 percent. As total arrest rates have declined, the proportion of violent felony arrests has increased, causing a slight decline in offenses that are eligible for diversion.

However, the proportions of eligible offenses are not changing equally across all youth racial/ethnic groups. Black youth are more likely to be arrested for felony offenses than all other racial/ethnic groups, and thus are more likely to be ineligible for diversion (Figure 4).

<sup>58</sup> Cal. Welfare and Institutions Code § 707

<sup>59</sup> CCJCC Youth Diversion Subcommittee, 2017.

**Figure 4. Percent of Youth Arrests Ineligible for Diversion by Race**

**Finding 2: Some youth cannot obtain parent/legal guardian consent or feel unsupported by their parent or legal guardian. Many youth would prefer additional agency for themselves and would choose an alternative adult to support them in a diversion program.**

Interviews with individuals who were arrested as youth, CBO employees, and dependency court and juvenile defense lawyers expressed that some youth may not have access to a parent or legal guardian who would be willing to provide consent. Several system-impacted interviewees did not think their parent would consent to diversion because their parent was the person who originally called the police on them or believed only punitive consequences (incarceration) would teach their child to behave.

Similarly, when asked if parents ever acted against the best or expressed legal interest of their child, youth attorneys in both dependency and delinquency court confirmed that this behavior was a common occurrence and were easily able to recall examples. One juvenile defense attorney responded, “Oh my God, absolutely!” and gave this example:

“[My client’s] mother hated me because she wanted to keep him locked up the entire time, because she felt like he was safer [in detention], because he wouldn’t be out on the streets of Baltimore. And at one point, after successfully getting my young person out again, and out into a group home—and he, for the record, he was always going to a group home because his mother wouldn’t take him home . . . She would yell at me, basically, every time I got him out.”

Interview with LGL3, legal professional, March, 5, 2019

Dependency court attorneys also recalled experiences where foster parents or group home managers were unwilling to fulfill the role of a “prudent parent,” even when that role was legally bestowed upon them.<sup>60</sup> Our interviewees suggested that these individuals were afraid to act in a parental role for fear of being held liable if harm should befall a youth in their care and therefore speculated that such foster parents would likely not consent for their foster child to participate in diversion. An interviewee stated that social workers prefer written permission from the child’s attorney before acting, wrongly assuming that this protects them from being held legally responsible. While California Welfare and Institutions Code 317(e)(3) charges various adults to act as a reasonable parent would, the broad definition does not assuage fears of liability for endangerment or negligence.

Given the prevalence of young people lacking access to a parent or legal guardian, some stakeholders argued that youth should have some control over their case outcomes. In fact, formerly justice-involved young people expressed a desire to be included in decisions affecting their lives and to have the option to make positive decisions for themselves. One interviewee said:

“I think as a kid, as a child, I think being presented with options and feeling like I have a decision to make a choice, I think that makes me feel like I’m included in something, and that my life is not just being governed by what other people say. I think that’s the positive part. And for sure, avoiding any type of criminal record or jail time.”

Interview with AM12, individual arrested as youth, February 21, 2019

Lawyers who represent youth corroborated the lack of youth agency in both the dependency court and juvenile justice contexts, describing a literal lack of freedom in youth detention settings as well as hyper-regulated group home and foster care settings. One juvenile defense attorney attempted to remedy this lack of agency by incorporating their client’s expressed interest into their defense model and found that young people are capable of making good decisions when informed about their options.

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<sup>60</sup> Cal. Welfare and Institutions Code § 362.05

“Something that [young people] are rarely asked is like, ‘What do you want? What are your goals?’ They will define positive goals for themselves . . . And it’s like, 100% of the time, something like, ‘I want to finish school. I want to get a job.’ . . . They’re very receptive to a lot more than we think, and want [what’s] good for them.”

Interview with LGL1, legal professional, February, 7, 2019

However, some of these same stakeholders also felt potential hazards may arise from a consent policy that does not involve a parent or legal guardian. For example, even if youth gain permission to participate in diversion, youth can become ineligible if their guardian stops participating.<sup>61</sup> Attorneys described hearings where the judge deferred to the parents’ judgment about appropriate sentencing because the parent would be overseeing the young person, facilitating their participation in the program, and perhaps paying restitution. Stakeholders also noted that parents have many rights over their children,<sup>62</sup> and CBO interviewees required at least initial consent from parents before searching for alternate adults.

To address current barriers to consent, interviewees described a range of possible alternative contacts besides parents or legal guardians. One CBO mandates a parent or guardian signature upon intake but allows all additional interactions to be informal and flexible. Systems-impacted young people had several ideas, including consent from a preferred adult. An undocumented young person stated they would never call their parents if they were detained in a police station for fear of negative repercussions to their residency status, and thus would have preferred to call their school counselor.

Arrested youth who are ineligible for diversion due to lack of parent consent leave police officers with only two options: formal processing or case dismissal.<sup>63</sup> Stakeholders fear that police will too often choose formal processing in these cases.<sup>64</sup> This is especially harmful to young people living in jurisdictions where formal processing can include booking and detention in the absence of a parent/guardian. One law enforcement officer mentioned that officers cannot counsel and release youth under age 18 after 10:00 pm curfew, so officers request that they be picked up by a parent or guardian. However, officers also estimated that 80 percent of youth arrests occur after 10:00pm, increasing likelihoods that youth will be brought to the station and booked if they cannot access a parent or guardian.

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<sup>61</sup> Models for Change Juvenile Diversion Workgroup, “Juvenile Diversion Guidebook — Models for Change: Systems Reform in Juvenile Justice,” March 1, 2011, <http://www.modelsforchange.net/publications/301>.

<sup>62</sup> Cal. Family Code § 7500-7507

<sup>63</sup> Interviews with law enforcement.

<sup>64</sup> Interviews with case managers, individuals arrested as youth, and youth justice advocates.

### **Finding 3: Stakeholders and youth worry about the legal consequences of diversion, and youth do not understand their legal rights or justice system processes.**

Our literature review and qualitative research show that both youth and adults have trouble understanding the legal system. Several interviewees indicated that they did not understand their rights or the overall process of the justice system.

Informant: “[...] it just went over my head, 'cause I didn't understand how that system worked. It's just like, whatever is being brought to you and presented to you, that's just the way it is. You don't even question it.”

Interviewer: “Did you feel like your parents understood the process at all?”

Informant: “Not really, no.”

Interview with AM12, individual arrested as youth, February 21, 2019

Due to this lack of understanding, youth easily become vulnerable to coercion without additional guidance. Research shows that youth under 15 are more likely to make choices “in compliance with authority,” such as waiving their Miranda Rights or accepting plea bargains.<sup>65</sup> Our interviews with individuals who were arrested as youth revealed that youth consistently received harsher penalties or poor legal outcomes due to their lack of understanding of their legal rights and options as well as coercion by adults in the juvenile justice system.<sup>66</sup> A subgroup of our interviewees explained that they had trusted the adults in the justice system, including police officers and public defenders, to make the best choices for them; unfortunately for some youth, this trust resulted in negative legal outcomes.

“Yea, I got caught up for...I got caught up for some stuff. And the recommendation was to go to camp. And I had just got out of camp. So I was willing to go again. But my public defender was like “No, take this placement.” But I didn't know she was taking me off to something worse than camp. They sent me off to up North, [Facility Name]. Sort of like a military school. I would have rather taken camp, ya know. I was supposed to do 5-7 months or 7-9 months and I ended up doing 16. So she kind of set me up, ya know.”

Interview with AM13, individual arrested as youth, February 13, 2019

Without proper information and additional guidance, youth are at risk of making poor decisions for themselves. Research shows that traumatized youth have difficulty making decisions when faced with hostility,<sup>67</sup> and that youth in general have difficulty making decisions under extreme

<sup>65</sup> Thomas Grisso, Laurence Steinberg, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci, and Robert Schwartz. “Juveniles Competence to Stand Trial: A Comparison of Adolescents and Adults Capacities as Trial Defendants.” *Law and Human Behavior* 27, no. 4 (2003): 333-63. doi:10.1023/a:1024065015717.

<sup>66</sup> Interviews with individuals who were arrested as youth.

<sup>67</sup> Julian D. Ford et al., “Pathways from Traumatic Child Victimization to Delinquency: Implications for Juvenile and Permanency Court Proceedings and Decisions,” *Juvenile and Family Court Journal* 57, no. 1 (2006): 13–26.

stress or pressure.<sup>68</sup> Additionally, although older adolescents weigh risks similarly to adults, they are much more sensitive to immediate rewards; thus, when making decisions, they have lower risk ratios and a higher likelihood of engaging in whichever activity is immediately rewarding.<sup>69</sup> This has implications for how diversion and its alternatives should be conveyed to young people, especially at the traumatic moment of arrest. Information about diversion should be conveyed in a way that uses age-appropriate language, addresses language and cultural barriers, considers a young person's cognitive abilities, and accounts for the effects of past and present trauma.

"I'm specifically thinking of one of my clients who was 12 at the time. And you talk to her and a lot of people probably can't tell, but then when I sat and talked to her, I'm like, 'There's no way she understands what's going on.' [...] Even just the Miranda Rights, for sure she wasn't gonna understand. I don't think she could... I don't think she fully understood what a plea agreement was, right? [...] I honestly didn't know if she was competent to stand trial 'cause I was pretty sure she just wasn't gonna understand what she was facing, right? [...] But so there's gotta be something for, I don't know what the appropriate term is, intellectual disabilities, I suppose, but also recognizing that a lot of them are not obvious."

Interview with LGL2, legal professional, February 22, 2019

Finally, lawyers, law enforcement, and adults who were arrested as youth expressed concern about how records of diversion participation are kept. Youth advocates and CBOs expressed concern that youth would be denied diversion if their records indicated previous participation, whereas law enforcement felt that the maintenance of diversion records was necessary for appropriate referrals. Further, interviewees expressed concern over how diversion records would impact undocumented youth or youth with undocumented parents or guardians.

**Finding 4: Depending on their experiences, individuals who were arrested as youth expressed strong distrust towards adults in the justice system. Many interviewees described coercive tactics used by law enforcement.**

Our interviews reinforce findings that there is a strong distrust between individuals who were arrested as youth and authority figures in the juvenile justice system. While most of the mistrust was directed towards law enforcement, individuals also mentioned public defenders as unsupportive and coercive, pressuring youth to accept suboptimal plea deals. Therefore, while it may make sense logistically to have law enforcement officers explain diversion programs to youth, the lack of trust in justice system authority figures will make it difficult.

Many of our interviews with individuals who were arrested as youth highlighted coercive treatment by law enforcement officers. One participant noted that after their first encounter with the police, they felt that they were assumed to be guilty in every police encounter afterwards.

<sup>68</sup> Laurence Steinberg. "Adolescent Development and Juvenile Justice," *Annual Review of Clinical Psychology* 5 (2009): 459–85, <https://doi.org/10.1146/annurev.clinpsy.032408.153603>.

<sup>69</sup> Laurence Steinberg. "Adolescent Development and Juvenile Justice." *Annual Review of Clinical Psychology* 5, no. 1 (2009): 459-85. doi:10.1146/annurev.clinpsy.032408.153603.

Even when the police officer was mistaken, interviewees felt powerless to stand up against the officer. Additionally, several informants described being beaten and assaulted by law enforcement while in custody. These encounters with police led many of our interviewees to distrust the police. One informant described that they viewed the role of the police not to help but to arrest:

“They're not there to help you, they're there to arrest you, they're there to bust you. They're not there to help you, you're not gonna get help from them. If they feel like they can arrest you and pin a case on you, they're not gonna help you get out of that case 'cause their job is to bust people.”

Interview with AM6, individual arrested as youth, February 19, 2019

Interviews with law enforcement also show that there is not a standard protocol for officers to explain diversion programs to youth, meaning that under the current model, youth are not provided equal information about diversion. One law enforcement officer equated explaining diversion programs to youth with explaining traffic school to someone with a speeding ticket; this oversimplification of diversion programs and the potential legal ramifications demonstrates that some officers likely do not understand how to explain diversion to young people.

Several interviewees stated that learning about diversion from a community member that was trusted in their community or at least racially representative of their community would be preferable over a law enforcement officer or authority figure. Systems-impacted young people also discussed the possibility of hiring specific YDD employees, such as a youth liaison or community-based contractors, to inform youth about the diversion process and support youth's informed consent.

“[It should be] someone that's been in [justice-involved young people's] position or someone that's seen plenty of it. Because those people can be trusted too, a lot of people that are in the system, especially the juvenile system, they care, they want to help, and a lot of kids that have gone through the system they won't believe them, only because they've seen so much crooked stuff happen between lawyers and the cops.”

Interview with AM6, individual arrested as youth, February 19, 2019

Stakeholders also discussed the possibility of having public defenders or juvenile defense attorneys explain diversion. However, a legal advocate explained that public defenders are often hesitant to accept additional obligations due to lack of resources. There may also be trust issues: one interviewee described multiple negative experiences with public defenders who he believed never had his best interest at heart. He noted that every time he wanted to plead not guilty or tried to convince the public defender that he was innocent, they would urge him to take a plea deal instead. Several interviewees stated that they would prefer a social worker explain diversion to them over a lawyer.

Finally, youth development studies suggest that young people should be granted the opportunity to make an informed decision to participate in diversion or not in a non-coercive environment. The justice system often treats youth as independent social actors but fails to also give them the agency to act responsibly;<sup>70</sup> thus, youth are assigned all the blame of their offense but are not given agency to help find a solution or make reparations.<sup>71</sup> In fact, decision-making agency is critically important in counteracting the effects of trauma.<sup>72</sup> As YDD constructs its consent policy, it must identify a credible messenger to explain diversion and offer insight into how it may impact youth's future.

**Finding 5: Law enforcement is mostly diverting low-level offenses, and services for diverted youth are not always proportionate or responsive to their needs. These patterns increase the risks of net-widening and over-serving.**

Our interviews with law enforcement officers, community-based organizations (CBOs), and juvenile defense attorneys revealed that law enforcement officers are mostly diverting low-level offenses instead of higher-level offenses, despite many higher-level offenses being legally eligible for diversion.<sup>73</sup> Law enforcement officers stated that they are primarily diverting low-level misdemeanors and status offenses, and CBOs confirmed this pattern:

"It could be field diversion, and we do very little of that, to be honest with you [...] There is more of the pre-arrest diversion that we do with mostly misdemeanor or infractionary offenses."

Interview with LE1, law enforcement, January 25, 2019

"We've gotten over time a lot of lower level citations, infractions, things that really don't need an RJ process. There's not a victim-- there's loitering or curfew."

Interview with CBO1, diversion service provider, February 8, 2019

When asked how they make the decision whether or not to divert higher-level eligible offenses, law enforcement officers cited fears about protecting public safety. They explained that they would be less likely to divert a young person if their alleged crime involved harm to another human being. One officer gave a hypothetical example of a fight between two young people: although both young people would be eligible for diversion, the officers would be unlikely to do field diversion in a tense situation. In this scenario, our respondent stated that officers would likely arrest the aggressor to defuse the situation.

<sup>70</sup> Roger Smith. "Childhood, Agency and Youth Justice." *Children & Society* 23, no. 4 (2009): 252-64. doi:10.1111/j.1099-0860.2008.00174.x.

<sup>71</sup> Roger Smith. "Childhood, Agency and Youth Justice." *Children & Society* 23, no. 4 (2009): 252-64. doi:10.1111/j.1099-0860.2008.00174.x.

<sup>72</sup> Elizabeth A. Bowen and Nadine Shaanta Murshid. "Trauma-Informed Social Policy: A Conceptual Framework for Policy Analysis and Advocacy." *American Journal of Public Health* 106, no. 2 (2016): 223-29. doi:10.2105/ajph.2015.302970.

<sup>73</sup> California Welfare and Institutions Code § 707

This systemic propensity toward diverting low-level offenses is potentially harmful for youth. There is substantial literature that highlights the importance of implementing diversion only for the appropriate youth and in the correct dosage; otherwise, the system risks net widening.<sup>74</sup> “Net widening” refers to the phenomenon where the juvenile justice system expands its reach, usually through the adoption of prevention and early intervention programs.<sup>75</sup> For example, if the juvenile court processes the same number of cases as before but additionally places large numbers of youth into diversion programs, then the system has “widened the net” by involving more youth than before. Additionally, low-level cases that would have previously been dismissed become more likely to be referred for formal processing.<sup>76</sup> In Los Angeles County’s proposed model, if a youth fails to complete diversion for a low-level offense, their case will be referred back to law enforcement, who will then engage formal processing at their discretion.<sup>77</sup>

Interviewer: “Regarding status offenses, specifically, will you divert for a status offense or do you leave it up to (the CBO)?”

Informant: “We will divert. Again, we do the diversion referral. If when (the CBO) looks at it, if they feel it’s not something they can provide services for, then they will let us know, but if (the CBO) declines essentially to take a case, our only option is to send it to the next step of the process and that’s to refer it to Probation. [...] And the Probation Department makes some determination as to whether or not they can intervene without sending the case to the District Attorney’s office, but if not, it goes to the DA and then the case goes to court.”

Interview with LE1, law enforcement, January 25, 2019

In this way, expanding diversion can actually lead to increased system involvement for young people: law enforcement can use diversion as an outlet for low-level cases that previously may have just been dismissed. Currently, CBOs have the option to decline a case that is inappropriate for diversion, but they rarely do so because they would be consigning youth to formal processing.

“If a case is not appropriate for restorative justice, there’s no obligation to take it [...] Instead, let’s send it back and say, “No, then you really charge it or dismiss it.” Really kind of calling them out and saying, “Either charge this, or let it go.” And I think that’s hard for us on the ground, because we know what the reality is. Then that person’s gonna get charged, and that’s unfair. We’re gonna make a high-minded point to put that young person through the system then.”

Interview with CBO1, diversion service provider, February 8, 2019

<sup>74</sup> Daniel P. Mears et al., “Juvenile Court and Contemporary Diversion,” *Criminology & Public Policy* 15, no. 3 (2016): 953–81, <https://doi.org/10.1111/1745-9133.12223>.

<sup>75</sup> “Widening the Net in Juvenile Justice and the Dangers of Prevention and Early Intervention.” Center on Juvenile and Criminal Justice. August 2001. At: <http://www.cjcj.org/uploads/cjcj/documents/widening.pdf>.

<sup>76</sup> Mears et al., “Juvenile Court and Contemporary Diversion.”

<sup>77</sup> Taylor Schooley. “LAC DHS CHAMP: Youth Diversion and Development ICMS” (Los Angeles County, 2018)

Finally, our interviews revealed a disconnect between who is being diverted and the services offered by CBOs. For example, we spoke with a CBO that offers restorative justice services, where offenders and victims communicate to repair the harm caused by a crime. However, law enforcement stated that they often decide whether to divert based on whether there was “another person that was injured or affected by the actions of the minor.” Given law enforcement’s hesitance to refer youth who would actually benefit from a restorative justice process, this CBO has been forced to develop new programs for youth with low-level offenses. One service provider expressed frustration about the dissonance between goals of restorative justice and law enforcement’s diversion practices:

“So how do we give them services and diversion without that intensive incident? 'Cause we used to do those circle processes [...] for everybody. And how long are we gonna talk about a loitering charge? Even to the point where we're just like, even the young person is like, 'this is messed up, why am I here?' And then for us as case managers, like, "We agree with you, so let's talk about a screwed-up system." And that's still not helpful 'cause we don't want to over-program here.”

Interview with CBO1, diversion service provider, February 8, 2019

Other stakeholders, including legal experts and justice-involved youth, agreed that over-serving was a problem, and their concerns are supported by literature review. Intensive services for low-risk youth have been shown to increase offending,<sup>78</sup> and unnecessary diversion can have adverse effects on youth and families through stigma and labeling.<sup>79</sup> Even the lowest tier of services offered by one CBO for low-level offenses required a considerable commitment from youth and families: four mandatory classes at four hours each.

Although YDD is immediately concerned with creating a youth consent policy, issues of eligibility, net-widening, and over-serving are directly impacted by the consent process in that youth and their families may be unaware of these potential negative outcomes. Therefore, in addition to creating systemic protections against these harmful outcomes, a comprehensive YDD consent policy should include protections against net-widening and ensure that youth receive the appropriate level of services.

**Finding 6: Coordinating youth services is difficult given the administrative requirements of CBOs and government agencies. Lack of coordination results in a delayed referral process, overlap between services, and an increased risk of over-intervention.**

Our interviews with CBOs, law enforcement, and youth demonstrate that there is not a standardized timeline for the diversion referral process in either the citation or station models (see Glossary of Terms for more information). Law enforcement who currently use the citation model informed us that it could take up to a month after the initial contact with youth to even

<sup>78</sup> Daniel P. Mears et al., “Juvenile Court and Contemporary Diversion,” *Criminology & Public Policy* 15, no. 3 (2016): 953–81, <https://doi.org/10.1111/1745-9133.12223>.

<sup>79</sup> Mears et al., “Juvenile Court and Contemporary Diversion.”

mail the youth a referral letter. The youth then has about 90 days to select and enroll in a diversion program; however, this process doesn't always work as intended.

One CBO discussed a case in which law enforcement did not divert the youth involved in the offense until a year after their first contact with law enforcement. When law enforcement finally processed the referral to a diversion program, providing services would not have been beneficial because the offense involved a victim who could potentially re-experience trauma a year after the incident occurred.<sup>80</sup> Waiting long periods of time to send diversion referrals misses a critical window, diminishing the responsiveness of a program to a young person's underlying needs.

"When we, [a CBO], work with law enforcement agencies they might have a case that's six months old or they've been sitting on it. And then when we get it and we reach out, sometimes it's like, 'This happened so long ago. You're asking me the same questions,' and blah, blah, blah. So you have some youth who are already over it by the time they walk in the door [...]"

Interview with CBO1, diversion service provider, February 8, 2019

Inefficiencies within the referral process also include insufficient coordination efforts between County youth services, law enforcement, and CBOs. Dual-status youth, or youth who are under the jurisdiction of both county probation services and child welfare services pursuant to California Welfare and Institutions Code section 241.1, are especially at risk of being over-served by being involved in multiple systems.<sup>81</sup> The complexities that come with serving dual-status youth are captured in an interview with a dependency court attorney:

"Most of the time when [dual-status youth are] in delinquency court, they are facing, generally, behavior that occurred because of their unmet trauma, and unmet mental health needs. There's been this historical [...] advocacy needed by our side when a foster youth is facing the possibility of being placed on diversion or probation.

There's so many different times within the systems themselves where they can be re-traumatized, like if they're living with a sister and suddenly they get separated. [...] And those were all traumas. And then what will happen is the kid might go back to their foster home or group home and break a window, and then they get arrested and they go to jail."

Interview with LGL2, legal professional, February 22, 2019

Our interviews with legal experts reveal a need for better coordination between County services, law enforcement, and CBOs. Some interviewees expressed that youth experience service fatigue when being referred to multiple services, such as multiple iterations of a diversion program for a single offense. An interview with a legal expert highlights how youth who are served in multiple systems are more likely to not complete their diversion programs and enter into formal court processing for even minor offenses:

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<sup>80</sup> Interviews with CBOs.

<sup>81</sup> Cal. Welfare and Institutions Code § 241.1.

“I've had young people that I've represented who do come through the doors of the system and are petitioned against. And I'm trying to collect their history and I find out that they've been involved in teen court for a year for a petty theft or they've been in a program that's part of a diversion [...] They sort of start all over again because they failed the terms of their diversion intervention. Then you start at point zero, a petition is filed. All for a petty theft. It feels like the feedback I get from young people and families, it's almost like there's two years of intervention for petty theft.”

Interview with LGL1, legal professional, February, 7, 2019

YDD's priority is constructing a youth consent policy that will make diversion services more accessible to youth who are currently not being served; however, it is also important to protect against over-serving. Coordinating County services to better meet the complex, individualized needs of youth will be an integral part of developing an effective youth consent policy. Thus, a comprehensive policy will make the referral process timely and create a framework that allows agencies to collaborate and share relevant information.

## Consent Policy Trade-offs

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Given the sometimes-conflicting priorities expressed in our interviews with diversion stakeholders, it is clear that there are both benefits and challenges in implementing a consent policy for diversion that increases youth agency.

Nationally, consent policies for diversion vary along a spectrum from full youth consent to exclusive parent/guardian consent. Through our literature review and qualitative analysis, we identified several dimensions of a consent policy where trade-offs will occur. Consent policy decisions exhibit trade-offs along the following key dimensions:

- Youth Access
- Informed Consent and Vulnerability to Coercion
- Support Network Involvement

For each of these policy dimensions, we identified trade-offs along a spectrum from *liberal* to *constrained*. A *liberal consent policy*, or what we call “full youth consent,” would give all youth the ability to consent for themselves. A *constrained consent policy*, or “exclusive parent/guardian consent,” would require parent/guardian consent for all youth involvement in diversion. Our ideal policy will find the optimal balance along this spectrum from liberal to constrained.

## Youth Access

Perhaps the most obvious trade-off that exists between consent policy options relates to youth access to diversion. A liberal consent policy would give all youth access to diversion because youth consenting for themselves would eliminate obstacles to obtaining additional consent. A constrained consent policy, on the other hand, would mean that some of the most vulnerable youth are disqualified from participating in diversion. However, access is not simply about giving all youth access to diversion; it is concerned with the questions of “*who?*” and “*how much?*” When a consent policy becomes too liberal, we increase the risk of net widening, or over-serving youth.<sup>82</sup> Over-serving has negative consequences on an individual level; system wide, diversion programs can dilute resources away from higher-needs youth by focusing on youth accused of lower-level offenses.<sup>83</sup> On the other hand, a constrained consent policy may help protect against over-serving.

**Figure 5. Trade-offs in Youth Access to Diversion Programs**

	Liberal	Constrained
Benefits	Minor consent allows all youth access to diversion.	Parent consent may lower unnecessary participation in diversion.
Harms	Too much diversion increases the risk of net widening.	Some of the most vulnerable youth are disqualified from participating in diversion.

<sup>82</sup> Daniel P. Mears et al., “Juvenile Court and Contemporary Diversion,” *Criminology & Public Policy* 15, no. 3 (2016): 953–81, <https://doi.org/10.1111/1745-9133.12223>.

<sup>83</sup> Center on Juvenile and Criminal Justice, “Widening the Net in Juvenile Justice and the Dangers of Prevention and Early Intervention” (Center on Juvenile and Criminal Justice, August 2001), <http://www.cjcj.org/uploads/cjcj/documents/widening.pdf>.

## Informed Consent and Vulnerability to Coercion

Unfortunately, a liberal consent policy can leave youth, especially neurodiverse youth, open to coercion by adults in the juvenile justice system, leading to poor legal and health outcomes. Cognitive development research agrees that youth around age 12 are able to think through problems logically and systematically,<sup>84</sup> and California state law currently grants (and sometimes requires) youth the power to consent to mental health treatment,<sup>85</sup> pregnancy-related health care,<sup>86</sup> and substance use care.<sup>87</sup> However, the juvenile justice system is complex and it may be risky for youth to make decisions without counsel.<sup>88</sup> Parents may also lack the ability to understand long-term legal consequences on behalf of their children, so youth may receive no added benefit from a constrained consent policy.<sup>89</sup> On the other hand, a liberal youth consent policy may unfairly reduce parents' rights "to make decisions concerning the care, custody, and control of their children."<sup>90</sup> Whether parents or children are responsible for decision-making, they must be given true and complete information and be protected against coercive practices.

**Figure 6. Trade-offs in Informed Consent and Vulnerability to Coercion**

	Liberal	Constrained
Benefits	Provides youth agency, which is important for positive youth development.	Parents are more likely to understand legal rights and long-term consequences.
Harms	Youth may not understand their legal rights and long-term consequences.	Parents may not understand legal rights and may work against child's best interests.

<sup>84</sup> Stanford Children's Health. "Cognitive Development." At: <https://www.stanfordchildrens.org/en/topic/default?id=cognitive-development-90-P01594> (accessed on March 20, 2019).

<sup>85</sup> Cal. Health & Saf. Code § 124260

<sup>86</sup> Cal. Family Code § 6925

<sup>87</sup> Cal. Family Code § 6929(b)

<sup>88</sup> Interviews with juvenile attorneys

<sup>89</sup> Interviews with juvenile attorneys

<sup>90</sup> Troxel v. Granville, 530 U.S. 57 (2000)

## Support Network

A constrained consent policy that requires parent involvement may increase the effectiveness of diversion programs: family involvement is a widely recognized best practice for diversion, and studies show that it does improve outcomes for youth.<sup>91</sup> However, in a constrained consent policy, these benefits come at the cost of restricting access to diversion for only youth with an actively involved parent or legal guardian. When consent policy becomes too liberal, youth might fail to involve any type of support network in their diversion program. Instead, a moderate consent policy could allow youth to involve the most supportive adults in their lives, whether that is a parent, relative, or family friend. An ideal policy will balance the need for support network involvement in diversion with protections for youth who do not have a supportive parent or legal guardian.

**Figure 7. Trade-offs in Support for Youth in Diversion Programs**

	Liberal	Constrained
Benefits	Allows involvement of a young person's chosen support network	Parent involvement in diversion has been shown to improve outcomes for young people.
Harms	Youth may choose not to involve any support network.	Parents may be unwilling to participate or may contribute to harmful behaviors.

Each of these trade-offs must be carefully considered in order to develop an effective consent policy that protects youth.

<sup>91</sup> Amy Hoffman, "Nebraska Juvenile Pretrial Diversion Guidelines: Best Practice Recommendations for Juvenile Pretrial Diversion Programs in Nebraska" (Lincoln, Nebraska: Nebraska Commission on Law Enforcement and Criminal Justice, May 2015).

## Policy Guidelines and Specific Options

Our policy guidelines are divided into two sections. First, we identify *Policy Guidelines for Consent*: policy guidelines that deal directly with consent and are implementable short-term. Within those broad guidelines, we evaluate specific policy options and recommend the highest-ranking option as the ideal approach to meeting those guidelines. Second, we identify *Policy Guidelines for the Diversion System*: policy guidelines tangential to the consent process that address broader concerns about eligibility and responsiveness. Again, within these guidelines about the larger diversion system, we evaluate several specific policy options to realize the guideline goal and recommend the highest ranked. The structure of our guidelines is reflected in the table below. In this chapter, we explain our specific options by policy guideline. In the following chapter, we evaluate specific options within these guidelines according to our criteria.

	Policy Guideline	Specific Options
Policy Guidelines for Consent	1. Eligible youth should not be denied access to diversion due to lack of parent/guardian at the initial point of consent.	<ul style="list-style-type: none"> <li>Youth can consent for themselves</li> <li>Youth can consent for themselves after attempt has been made to contact parent/guardian</li> <li>Youth can consent for themselves after attempt has been made to contact a young person's chosen supportive adult</li> <li>A young person's chosen supportive adult must consent</li> </ul>
	2. Youth should have access to legal counsel before giving consent.	<ul style="list-style-type: none"> <li>Make public defenders available to youth without personal counsel</li> <li>Contract with CDF or another experienced organization to provide legal services</li> <li>Provide youth with information on how to obtain legal counsel, and give them time and tools to make contact</li> </ul>
	3. Before youth consent to diversion, diversion should be explained by a credible messenger.	<ul style="list-style-type: none"> <li>CBO explains diversion</li> <li>Lawyer explains diversion options</li> <li>Community member (hired by YDD) explains diversion</li> <li>YDD staff (social worker) explains diversion</li> </ul>
Policy Guidelines for Diversion System	1. Diversion should be applied to the appropriate offenses.	<ul style="list-style-type: none"> <li>MOU with law enforcement agencies to mandate referral to diversion for certain offenses</li> <li>Youth-initiated grievance process for youth who were denied diversion</li> <li>A law enforcement superior officer reviews decisions to not divert</li> <li>Independent Oversight Body reviews eligible cases that were not diverted</li> </ul>
	2. Diversion should not be applied to cases that are not legally sufficient.	<ul style="list-style-type: none"> <li>Youth who were wrongly accused can request review by independent review board</li> <li>Youth who were wrongly accused can request review by YDD staff</li> <li>CBOs have discretion to mark as complete without offering services</li> </ul>
	3. Diverted youth should receive the appropriate level of services.	<ul style="list-style-type: none"> <li>Tiered service model for CBOs</li> <li>Centralized referral system where youth are referred to CBO based on services offered</li> </ul>

## Policy Guidelines for Consent

### **GUIDELINE 1: Eligible youth should not be denied access to diversion due to lack of parent/guardian at the initial point of consent.**

#### **Youth can consent for themselves (full youth consent policy)**

Under a full youth consent policy, young people under the age of 18 could consent to participation in a diversion program without requiring the permission of a parent, legal guardian, or other adults. This policy legally likens access to diversion to access to certain types of health care for youth, such as mental health treatment,<sup>92</sup> pregnancy-related health care,<sup>93</sup> and substance use care.<sup>94</sup>

#### **Youth can consent for themselves after an attempt has been made to contact parent/guardian**

This policy would require the agency tasked with obtaining consent to first make its best effort to contact a parent or legal guardian. However, if none can be found, the agency must allow youth to consent for themselves.

#### **Youth can consent for themselves after an attempt has been made to contact a young person's chosen supportive adult**

Similarly, this policy only differs from the previous option in that the adult who provides consent for a youth is not required to be their parent or legal guardian. Instead, a young person may choose an adult to consent (this could still include their parent or legal guardian).

#### **A young person's chosen supportive adult must consent**

Finally, this option requires consent from a supportive adult who is chosen by the young person. This option protects youth who may have a parent acting against their best legal interest, youth with unclear custody situations, and youth who are protecting vulnerable parents (e.g. undocumented parents), while still mandating that a legal adult assumes responsibility (and therefore liability) for the young person.

### **GUIDELINE 2: Youth should have access to legal counsel before giving consent.**

Given the unanswered legal repercussions of participation in diversion, especially for undocumented youth or youth with undocumented parents, youth should be granted access to legal counsel before consenting to diversion. Legal counsel would be required to explain the grievance process for youth to contest their referral to diversion, provide an analysis of the risks to undocumented families, and explain the legal repercussions of diversion regarding how records are kept and what is shared with other agencies.

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<sup>92</sup> Cal. Health & Saf. Code § 124260

<sup>93</sup> Cal. Family Code § 6925

<sup>94</sup> Cal. Family Code § 6929(b)

**Make public defenders available to youth without personal counsel**

This option would require that youth be entitled to counsel by a Los Angeles County Public Defender or Alternate Public Defender prior to consenting to diversion.

**Contract with a legal advocacy organization to provide legal services for young people**

This policy reflects the lack of capacity faced by the public defender's office and recognizes that they may lack the capacity to oversee a substantial additional task. This alternative allows YDD to contract legal services out to an established non-profit to provide legal counsel to youth before they consent to participate in diversion.

**Provide youth with information on how to obtain legal counsel, and give them time and tools to make contact**

This policy alternative puts the onus on young people and their families to reach out to a legal services provider to learn about how participating in diversion would affect them. The consent-obtaining agency would provide young people with the materials necessary to obtain their own legal aid prior to consenting to diversion.

**GUIDELINE 3: Before youth consent to diversion, diversion should be explained by a credible messenger.****CBO explains diversion**

Case managers would explain diversion to youth who are eligible, which is what currently happens in the case flow of the YDD model. This option would allow CBOs to reach out to youth and/or their families to explain diversion programs and the implications of enrolling.

**Lawyer explains diversion options**

If this option were implemented, lawyers would explain diversion to eligible youth. This would allow for individual case review for youth and give youth a better understanding of the possible legal ramifications.

**Community member (hired by YDD) explains diversion**

In this option, YDD would hire and train a community member who has gone through diversion or understands the impacts of the justice system in their community to explain diversion to youth. The community member would be able to discuss their own experience navigating the justice system and explain the YDD model. An explanation from law enforcement, schools, or other officials who are in position of authority could bias the youth's decision-making process. This option allows for youth and/or their family to discuss diversion options with someone who they would feel more comfortable trusting.<sup>95</sup>

**YDD staff (social worker) explains diversion**

A social worker would be formally hired by YDD to explain diversion to youth. This option would allow a governmental official who is outside the judicial system to explain diversion to youth.

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<sup>95</sup> Interviews with individuals arrested as youth

## Policy Guidelines for Diversion System

### **GUIDELINE 1: Diversion should be applied to the appropriate offenses.**

#### **Develop MOU to mandate referral to diversion for certain offenses**

Removing law enforcement's discretion and mandating diversion for a given list of offenses could ensure that diversion is applied more appropriately: more serious offenses would continue to be diverted, while minor offenses would not be diverted. To achieve this, YDD could add an agreement to their MOU with law enforcement partners that certain offenses must always be diverted.

#### **Youth-initiated grievance process for youth who were denied access to diversion**

Giving youth the ability to appeal their case if they are denied access to diversion would help reduce the number of diversion-eligible cases being sent to the courts. Youth would file a grievance with YDD, and YDD staff or contracted lawyers would review their case to determine if they are eligible for diversion.

#### **A law enforcement superior officer reviews decisions to not divert**

In this option, when a law enforcement officer makes the decision to not divert an eligible offense, their superior officer would be required to review the decision. The superior officer would have the final authority to divert an eligible offense.

#### **Independent Oversight Body**

An oversight body would serve as a check on law enforcement's discretion over diversion. Ideally, the oversight body would include YDD staff and community member(s), in addition to a law enforcement superior. The oversight body would review all diversion-eligible cases that were sent to formal processing instead of diversion.

### **GUIDELINE 2: Diversion should not be applied to cases that are not legally sufficient.**

Because pre-arrest diversion seeks to avoid justice system involvement for youth, youth do not receive a hearing to determine their innocence or guilt before being diverted. Despite good intentions, this means that diversion inadvertently assumes a youth is guilty. We are particularly concerned about diversion being applied unnecessarily for youth of color: a disproportionate number of youth who are wrongly charged are youth of color.<sup>96</sup> Thus, youth need a grievance process for when they are wrongly accused and sentenced to diversion.

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<sup>96</sup> Edwin Grimsley. "Lessons about Black Youth and Wrongful Convictions: Three Things You Should Know - Innocence Project." The Innocence Project, May 1, 2015, <https://www.innocenceproject.org/lessons-about-black-youth-and-wrongful-convictions-three-things-you-should-know-2/>.

**Youth who are wrongly accused can request review by Independent Review Board**

In this option, youth would be able to file a request for review of their case with an independent review board. The oversight body would likely be made up of community stakeholders. The review board would have the ability to drop a referral to diversion (without any record) if they found that a young person's case was not legally sufficient.

**Youth who are wrongly accused can request review by YDD staff**

In this option, wrongly accused youth would file a request for review of their case with YDD. YDD would have the ability to drop a referral to diversion (without any record) if they found that a young person's case was not legally sufficient.

**CBOs have discretion to mark diversion complete without offering services**

CBOs already have discretion to determine what a young person's diversion program should look like. This option adds to that discretion by allowing CBOs to mark a case as complete without providing services if the CBO decides that a youth has been wrongfully referred.

**GUIDELINE 3: Diverted youth should receive the appropriate level of services.****Tiered Service Model for CBOs**

One of the primary concerns we heard from case managers was that a large number of youth are being diverted for low-level offenses. In a tiered service model, CBOs would develop different streams of services for youth depending on their offense level. For example, there would be a track for youth with higher-level offenses that entails a greater depth of services. Youth with lower level offenses would receive fewer services, and youth who were wrongly referred to diversion would receive minimal or no services. Additionally, neurodiverse youth should be referred to CBOs who can competently provide appropriate services.

**Centralized Referral System based on appropriateness of services**

In a centralized referral system, YDD staff would make a referral to a CBO based on the young person's service needs instead of exclusively by location of arrest. Each CBO offers different services and specializes in different areas; a centralized referral system would ensure that young people are receiving the appropriate services for their unique needs.

## Criteria

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Our client's goal is to create a consent policy that is consistent with the agency's organizational priorities: to provide accessible youth diversion programs with high retention rates, to advance racial equity within those programs, and to encourage agency and accountability for young people. Given these priorities coupled with our research, we evaluated our policy options based on the following four criteria: Benefit to Youth/Effectiveness, Racial and Ethnic Equity, Logistical Feasibility, and Political Feasibility. For each criterion, we rank the policy option as "high," "medium," or "low." Rankings were decided according to a scoring rubric, which can be found in Appendix D, and our ranking decisions were informed by our qualitative findings and literature review. Each team member first ranked the policy options individually; rankings were then compiled and any disagreements were discussed. Intercoder agreement scores were between 79% and 90% (see Appendix E for a full explanation of Intercoder Agreement Scores).

### Benefit to Youth/Effectiveness

This criterion evaluates the policy's role in responsibly increasing youth access to diversion services. Over-serving, or exposing youth to an unnecessarily high level of therapeutic intervention, has been shown to result in worse outcomes than if youth received no services.<sup>97</sup> A policy that ranks high in effectiveness will allow more youth who are eligible and appropriate for diversion to participate but will not over-serve youth whose cases are so minor that they should not engage in lasting justice involvement.

### Racial and Ethnic Equity

Given the historical and ongoing overcriminalization of youth of color in Los Angeles County, YDD's consent policy must ensure racial and ethnic equity regarding accessibility to diversion. A racially equitable consent policy would result in the racial composition of diversion program enrollment mirroring the total eligible youth population by race. A policy option will be deemed racially equitable if it mitigates racial disparities in the justice system.

### Logistical Feasibility

We will evaluate logistical feasibility by the ability of YDD to execute a policy option given their jurisdictional and resource constraints. For example, if best practices agree that social workers, medical professionals, or legal experts should deliver certain evaluations, how feasible will it be to obtain those services for arrests made in the middle of the night? A policy option ranked as highly logistically feasible will not require considerable additional staff or infrastructure.

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<sup>97</sup> Daniel P. Mears et al., "Juvenile Court and Contemporary Diversion," *Criminology & Public Policy* 15, no. 3 (2016): 953–81, <https://doi.org/10.1111/1745-9133.12223>.

## Political Feasibility

Expanding the practice of diversion across Los Angeles County requires participation from a diverse group of stakeholders with conflicting perspectives and influence over countywide implementation. Political feasibility is defined as the ability to achieve buy-in from the most impactful stakeholders – YDD, Los Angeles County Counsel, law enforcement, and diversion service providers. Furthermore, a highly politically feasible consent policy will also address the concerns of youth justice advocates and defense attorneys.

## Evaluation of Specific Options

In this section, we evaluate the specific policy options within each guideline according to our four criteria: Benefit to Youth/Effectiveness, Racial and Ethnic Equity, Logistical Feasibility, and Political Feasibility. For each criterion, we rank the policy option as “high,” “medium,” or “low.” Rankings were decided according to a scoring rubric, which can be found in Appendix D, and our ranking decisions were informed by our qualitative findings and literature review. We have again kept our guidelines broken out into two segments: *Policy Guidelines for Consent* and *Policy Guidelines for the Diversion System*.

### Policy Guidelines for Consent

In this set of guidelines addressing our client’s immediate interest in determining a consent policy, we evaluate specific options related to the consent process. These options are designed to be implemented in the short-term. As such, we have prioritized Logistical Feasibility and Political Feasibility in the evaluation of these options.

**GUIDELINE 1: Eligible youth should not be denied access to diversion due to lack of parent/guardian at the initial point of consent.**

	Criteria			
	Benefit to Youth/ Effectiveness	Racial and Ethnic Equity	Logistical Feasibility	Political Feasibility
Full youth consent	medium	high	high	low
Youth consent after attempt to contact parent/guardian	medium	medium	high	medium
Youth consent after attempt to contact supportive adult	high	high	high	medium
Supportive adult must consent	medium	high	high	medium

#### Youth can consent for themselves (full youth consent policy)

- **Benefit/Effectiveness:** This policy ranks medium in terms of its benefit to youth because while it increases access to diversion for all eligible youth and reduces the risks associated with detention, best practices advocate for parent or guardian involvement in the diversion process. Additionally, including a parent or guardian is potentially a

protective factor for young people because parents may have a better understanding of their child, the justice system, and their options.<sup>98</sup> Conversely, a full youth consent policy alleviates the risk of a parent or legal guardian denying youth access to diversion even when it would be legally beneficial and reduce long-term negative outcomes of justice system involvement.

- **Racial and Ethnic Equity:** This criterion ranks high. There is evidence that youth within groups that may not have access to a parent or legal guardian (unaccompanied homeless youth, undocumented immigrant youth, and foster youth) are more likely to be youth of color. Los Angeles County is home to just over 2,000 unaccompanied homeless youth under age 18, and the United States Department of Housing And Urban Development (HUD) estimates that 62 percent of all unaccompanied young people in major cities are youth of color.<sup>99</sup> Additionally, in 2017, about 64 percent of all Los Angeles County foster youth in out-of-home placements were Latinx or Black.<sup>100</sup> Lastly, 80 percent of Los Angeles County’s estimated total undocumented population were born in Mexico, El Salvador, or Guatemala, increasing the likelihood that undocumented youth are Latinx.<sup>101</sup>
- **Logistical Feasibility:** This policy ranks high under logistical feasibility because it is the least demanding option in terms of immediate requirements from the agency obtaining consent.
- **Political Feasibility:** This option ranks low under political feasibility because, without parental consent, agencies fear they will be held liable for any potential harms that befall youth or damages youth inflict by endangering public safety.<sup>102</sup>

### Youth can consent for themselves after an attempt has been made to contact parent/guardian

- **Benefit/Effectiveness:** This policy ranks medium under benefit to youth because our qualitative data suggests that most youth have a parent or legal guardian who is willing to provide at least initial consent for their child to participate in diversion. However, mandating an attempt at obtaining parent/guardian consent does not prevent youth without this privilege from participating in diversion.

<sup>98</sup> Centers for Disease Control and Prevention (CDC). “Risk and Protective Factors.” February 27, 2019. At: <https://www.cdc.gov/violenceprevention/youthviolence/riskprotectivefactors.html>.

<sup>99</sup> According to HUD, unaccompanied homeless youth are defined as “people in households with only children who are not part of a family with children or accompanied by their parent or guardian during their episode of homelessness, and who are under the age of 18.” The United States Department of Housing and Urban Development (HUD). “The 2018 Annual Homeless Assessment Report (AHAR) to Congress.” December 2018. At: <https://files.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf>.

<sup>100</sup> Los Angeles County Open Data. “DCFS Caseload Statistics.” June 28, 2018. At: <https://data.lacounty.gov/Children-and-Family/DCFS-Caseload-Statistics/8apu-cunt>.

<sup>101</sup> Migration Policy Institute (MPI). “Profile of the Unauthorized Population: Los Angeles County, CA.” 2008. At: <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/6037>.

<sup>102</sup> Interviews with CBOs, law enforcement officers and legal professionals; *United States v. Carroll Towing Co.*, 159 F.2d 169 (2d Cir. 1947)

- **Racial and Ethnic Equity:** Given the evidence cited in the policy option above, this criterion ranks medium. While this option would allow youth to consent for themselves after an attempt to contact a parent or legal guardian, we learned from our interviews that young people with undocumented parents are hesitant to divulge their vulnerable relatives' information and could be deterred from engaging in the diversion process altogether.
- **Logistical Feasibility:** Our interviews also suggest that it is often not difficult for consent-obtaining agencies to contact a parent or legal guardian in the majority of cases, so logistical feasibility for this policy option is high.
- **Political Feasibility:** The political feasibility of this policy is ranked medium because agencies have the option to obtain parent/guardian consent in the majority of cases, but this option does nothing to alleviate the liability fears of agencies when a parent/guardian cannot be found.

### **Youth can consent for themselves after an attempt has been made to contact a young person's chosen supportive adult**

- **Benefit/Effectiveness:** This policy also ranks high under benefit to youth because it creates a protective factor for youth while also creating flexibility for young people to choose a supportive adult. Our interviews suggest that individuals felt their parents would not have consented to diversion, and undocumented individuals were afraid of forcing their parents to interact with law enforcement agencies.
- **Racial and Ethnic Equity:** This criterion ranks high given the evidence that youth who may not have access to a parent or legal guardian (unaccompanied homeless youth, undocumented immigrant youth, and foster youth) are more likely to be youth of color. This policy ranks high compared to the previous option because it does not require young people to contact a parent or legal guardian if they feel that doing so could put their relative at risk.
- **Logistical Feasibility:** The logistical measures mirror the issues above—both law enforcement agencies and community-based service providers have stated that they are willing to substitute a supportive, responsible adult for a legal guardian if need be.
- **Political Feasibility:** Here, political and logistical feasibility are closely linked, with practical implementation being the primary concern of key stakeholder groups.

### **A young person's chosen supportive adult must consent**

- **Benefit/Effectiveness:** This policy is ranked medium under benefit to youth because while most youth have a supportive adult in their lives who would be willing to consent to diversion, this option inherently creates a barrier to access.
- **Racial and Ethnic Equity:** Again, this criterion ranks high given the evidence that youth who may not have access to a parent or legal guardian (unaccompanied homeless

youth, undocumented immigrant youth, and foster youth) are more likely to be youth of color. Similar to the policy above, this option does not put young people's relatives at risk nor does it create the perception that they may be put at risk.

- **Logistical Feasibility:** Logistical feasibility is high under this policy because it requires the consent-obtaining agency to reach out to only one adult.
- **Political Feasibility:** Political feasibility remains medium because some consent-obtaining agencies like law enforcement may have additional qualms concerning liability in entrusting youth to an adult that officers may not deem to be responsible.

### **Discussion**

We recommend that YDD implement a policy that allows youth to consent to participate in diversion after sufficient attempts have been made to contact a young person's chosen supportive adult, which can include a parent or legal guardian. This option demonstrated the highest benefit to youth, while prioritizing feasibility. Our interviews suggested that law enforcement and CBOs generally do not have difficulty getting in touch with parents. However, not requiring parent or legal guardian consent allows for some youth, such as undocumented youth, homeless youth, or youth living in group homes, to access supportive adults for the purposes of diversion. In the event that no adult can be contacted, youth have the option to consent for themselves. This recommendation is contingent on additional policies being firmly in place to provide critical legal protections to youth.

**GUIDELINE 2: Youth should have access to legal counsel before giving consent.**

	Criteria			
	Benefit to Youth/ Effectiveness	Racial and Ethnic Equity	Logistical Feasibility	Political Feasibility
Make Public defenders available to youth without personal counsel	high	high	low	medium
Contract with a juvenile legal advocacy organization to provide legal services	high	high	medium	high
Provide youth with information on how to obtain legal counsel, and give them time and tools to make contact.	low	low	high	medium

**Make public defenders available to youth without personal counsel**

- **Benefit/Effectiveness:** This model is ranked high under benefit to youth because county juvenile public defenders and alternate public defenders are already experts in juvenile defense and the issues affecting Los Angeles County justice-involved youth.
- **Racial and Ethnic Equity:** Given that Black and Latinx youth are more likely than white youth to have lower socio-economic status, this policy is also ranked high under racial and ethnic equity because public defenders are available to all young people regardless of ability to pay.
- **Logistical Feasibility:** This policy is ranked low under logistical feasibility because Los Angeles County public defenders are chronically overburdened, citing surging caseloads after the passage of significant criminal justice policy reforms.<sup>103</sup> Therefore, adding additional responsibilities to these agencies would require additional staff and compensation; this would require a budget allocation in the next fiscal year, county willingness to pay for these services, and hiring through the county's cumbersome HR process.
- **Political Feasibility:** This policy is ranked medium under political feasibility considering the financial costs and human capital necessary to implement, but in recognition that this policy model exists in the context of youth Miranda Rights law. After the passage of California Senate Bill (SB) 395, which requires that youth age 15 and below consult with

<sup>103</sup> LA County Public Defender Union. "Updates and Information." At: <https://www.lapubdefunion.com/outreach-committee> (accessed March 20, 2019).

an attorney prior to waiving their Miranda rights, the Los Angeles Public Defender's Office scheduled attorneys to be on-call at all times to consult with arrested youth in person, by video, or over the phone.<sup>104</sup> The support for this bill from public defenders and existing precedent for this model increases its ranking.<sup>105</sup>

### **Contract with a legal advocacy organization to provide legal services for young people**

- **Benefit/Effectiveness:** This policy ranks as high under the benefit to youth category because highly competent attorneys would be providing legal services to youth.
- **Racial and Ethnic Equity:** This option would also rank high in racial equity because legal services would be available to all youth.
- **Logistical Feasibility:** Logistical feasibility is ranked medium because it does not allocate an additional task to already-burdened public defenders, does not require YDD to undergo the cumbersome county hiring process, and simply allocates funding to a more nimble organization outside of the county ecosystem.
- **Political Feasibility:** Due to the logistical feasibility and the interests of community advocacy organizations in being more incorporated into county operations, this option is also ranked high under political feasibility.

### **Provide youth with information on how to obtain legal counsel and give them time and tools to make contact**

- **Benefit/Effectiveness:** This policy ranks low because it unduly burdens young people and their families to seek out critical legal information that must be consulted for many young people, especially those with active, past, or potential delinquency, dependency, or immigration cases. Our interviewees have suggested that both youth and their families would be unlikely to follow up with legal services providers.
- **Racial and Ethnic Equity:** This option is also ranked low under racial equity given the correlation between communities of color and neighborhoods of low socioeconomic status. Requiring low-income families to seek out legal services with potentially limited access to the internet, telephone, or ability to travel would not be an equitable option.
- **Logistical Feasibility:** Placing the burden on justice-involved youth or their families makes this policy option very logistically feasible for YDD and Los Angeles County.
- **Political Feasibility:** The current citation model places the burden on families to seek out diversion programs, and this policy alternative would fit within that model. However, youth advocates would oppose this option. Therefore this policy ranks medium.

<sup>104</sup> Countywide Criminal Justice Coordination Committee, "Minutes of the January 17, 2018 Meeting," January 17, 2018, [http://ccjcc.lacounty.gov/LinkClick.aspx?fileticket=f1\\_J6Xf0i90%3D&portalid=11](http://ccjcc.lacounty.gov/LinkClick.aspx?fileticket=f1_J6Xf0i90%3D&portalid=11).

<sup>105</sup> "[T]he LA County Public Defender is a justice reform advocate in Sacramento and Washington, for adults and youths. Recently, the Juvenile Division led the effort to get SB 395 signed into law." Law Offices of Los Angeles County Public Defender. "About Us." At: <https://pubdef.lacounty.gov/about-us/> (accessed March 20, 2019).

## Discussion

We recommend that YDD contract with a legal advocacy organization to provide legal services for young people. Not only would a highly competent attorney be advising young people, but contracting with a non-profit would not additionally burden public defenders, would not require YDD to undergo the cumbersome county hiring process, and would allocate funding to a more nimble organization outside of the county ecosystem. Additionally, legal counsel would be best suited to explain how diversion connects with other issues facing youth of color, such as its potential effects on their immigration status.<sup>106</sup> Thus, this option is the most effective, while prioritizing logistical and political feasibility.

**GUIDELINE 3: Before consenting to diversion, diversion should be explained by a credible messenger.**

	Criteria			
	Benefit to Youth/ Effectiveness	Racial and Ethnic Equity	Logistical Feasibility	Political Feasibility
CBO explains diversion	high	medium	high	high
Lawyer explains diversion options	medium	medium	low	medium
Community member (hired by YDD) explains diversion	high	high	medium	medium
YDD staff (social worker) explains diversion	high	medium	medium	high

### CBO explains diversion

- **Benefit/Effectiveness:** This option ranks high for benefit to youth and effectiveness because CBOs want to increase access for youth who will benefit from their programs and CBOs would be able to fully explain the services they provide.
- **Racial and Ethnic Equity:** Depending on the CBO's focus on racial and ethnic equity, there is some concern that explanations may differ based on the organization, which is why this option ranks medium for racial and ethnic equity.
- **Logistical Feasibility:** Logistical feasibility is high. There are no additional trainings or resources needed for other agencies if CBOs are responsible for explaining diversion.

<sup>106</sup> Lind, Dara. "Trump's controversial 'public charge' proposal that could change the face of legal immigration, explained. Vox. Dec. 10, 2018. At: <https://www.vox.com/2018/9/24/17892350/public-charge-immigration-food-stamps-medicaid-trump-comments>.

- **Political Feasibility:** Political feasibility is high. Currently, CBOs already explain diversion programs, and there is no opposition from other stakeholders about who should explain diversion to youth.

### Lawyer explains diversion options

- **Benefit/Effectiveness:** This option ranks medium for effectiveness and benefit to youth. While access to a lawyer may be helpful for youth to understand the implications of enrolling in a diversion program, individuals may also feel intimidated by lawyers based on prior experiences with public defenders.<sup>107</sup>
- **Racial and Ethnic Equity:** This option also ranks medium for racial and ethnic equity for similar reasons as above. Lawyers may potentially not be aware of racial biases and may not be interested in supporting youth if they have large caseloads.
- **Logistical Feasibility:** Due to the high costs that YDD would incur to hire or contract a public defender, logistical feasibility is low.
- **Political Feasibility:** Political feasibility ranks medium. While there doesn't seem to be explicit disapproval of this option from any stakeholders, there may be pushback against involving a lawyer if the diversion is pre-arrest because a case technically doesn't exist.

### Community member (hired by YDD) explains diversion

- **Benefit/Effectiveness:** This option ranks high for effectiveness and benefit to youth. A community member explaining diversion will help youth make an informed decision and learn about other resources in their community without preconceived notions of law enforcement affecting their decisions to enroll.
- **Racial and Ethnic Equity:** This option ranks high for racial and ethnic equity. Additional to the reason given above, a community member will reflect the community that they're working with, meaning they would explain diversion with an understanding of the racial inequities of the juvenile justice system.
- **Logistical Feasibility:** Logistical feasibility is medium because of the additional resources needed in order to hire and train community members.
- **Political Feasibility:** Political feasibility ranks medium. While some stakeholders see the importance of a community member with lived experience explaining diversion, CBOs and advocates may have concerns about credibility.

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<sup>107</sup> Interviews with individuals who were arrested as youth

### YDD staff (social worker) explains diversion

- **Benefit/Effectiveness:** This option ranks high for effectiveness and benefit to youth. Having a trained individual who is able to identify a young person's needs and advocate on their behalf would increase access for youth.
- **Racial and Ethnic Equity:** Racial and ethnic equity ranks as medium. There may be disparities in how social workers explain diversion to youth, especially for social workers with high workloads.<sup>108</sup>
- **Logistical Feasibility:** Logistical feasibility ranks medium due to the time and financial constraints of hiring and training new staff.
- **Political Feasibility:** Political feasibility is ranked as high because stakeholders have not raised any strong objections.

### Discussion

We recommend that CBOs explain diversion programs. As YDD needs to select an actor to explain diversion immediately, we prioritized logistical and political feasibility, ultimately choosing the option for YDD-contracted CBOs to act as the credible messenger. Given the impact a messenger would have for youth enrollment, this option also assures that contracted organizations will thoroughly explain diversion program to youth.

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<sup>108</sup> Interviews with individuals who were arrested as youth

## Policy Guidelines for Diversion System

In this section, we evaluate guidelines related to the diversion system that stem out of the consent process. These guidelines are designed to address concerns about net-widening, eligibility, and the responsiveness of diversion services. Many of these guidelines will require long-term planning and coordination, but we hope that Logistical and Political Feasibility will become more flexible over time. As such, our four criteria are weighted equally when evaluating these policy options.

### GUIDELINE 1: Diversion should be applied to the appropriate offenses.

	Criteria			
	Benefit to Youth/ Effectiveness	Racial and Ethnic Equity	Logistical Feasibility	Political Feasibility
Develop MOU with law enforcement agencies to mandate referral to diversion for certain offenses	medium	medium	high	low
Youth-initiated grievance process for youth who were denied diversion	medium	medium	medium	high
A law enforcement superior officer reviews decisions to not divert	medium	medium	high	high
Independent Oversight Body reviews eligible cases that were not diverted (cases that were formally processed)	medium	high	low	medium

#### Develop MOU to mandate referral to diversion for certain offenses

- Benefit/Effectiveness:** Mandated diversion for certain offenses ranks medium for effectiveness and benefit to youth: the potential consequences of removing law enforcement discretion outweigh some of the benefits. Although difficult to prove, there is anecdotal evidence that removing discretion for justice system actors can encourage up-charging.<sup>109</sup> In the case of diversion, officers may simply upcharge a high-level offense to make it ineligible for diversion.

<sup>109</sup> Mia Bird and Ryken Grattet, "Realignment and Recidivism," ed. Charis Kubrin and Carroll Seron, *The ANNALS of the American Academy of Political and Social Science* 664, no. 1 (March 2016): 176–95, <https://doi.org/10.1177/0002716215603319>.

- **Racial and Ethnic Equity:** For similar reasons as above, racial and ethnic equity is ranked as medium; the possibility for upcharging will likely be tainted with racial bias.<sup>110</sup>
- **Logistical Feasibility:** Logistical feasibility is ranked as high. YDD already develops MOUs with their law enforcement partners, and this option would not take considerable additional resources to implement.
- **Political Feasibility:** Political feasibility is low because law enforcement agencies are expected to be opposed to reducing their discretion.

### Youth-initiated grievance process for youth who were denied access to diversion

- **Benefit/Effectiveness:** A youth-initiated grievance process ranks medium in effectiveness and benefit to youth. Once a young person is detained, it will be difficult for them to initiate a grievance process.
- **Racial and Ethnic Equity:** Racial and ethnic equity is ranked medium because although all youth would be eligible to file a grievance regardless of race, youth of color may face additional barriers in initiating the grievance process. For example, youth of color are more likely to be detained<sup>111</sup> and may face more barriers to filing a grievance in detention.
- **Logistical Feasibility:** This option ranks medium in logistical feasibility because it would require additional staff and resources to review cases.
- **Political Feasibility:** Political feasibility is high. Stakeholders are unlikely to oppose a youth-initiated grievance process because it does not pose a great threat to oversight of any particular agency.

### A law enforcement superior officer reviews decisions to not divert

- **Benefit/Effectiveness:** This option ranks medium in benefit to youth and effectiveness. Although adding additional oversight will be beneficial, the strength of that benefit depends on the superior officer's own biases and attitude towards diversion.
- **Racial and Ethnic Equity:** Racial and ethnic equity for this option is ranked as medium, although this greatly depends on the superior officer's bias or lack of bias. On the whole, assuming that superior officers are not more biased than the officers they manage, this option would likely neither mitigate nor exacerbate racial disparities.

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<sup>110</sup> Samuel R. Sommers and Satia A. Marotta, "Racial Disparities in Legal Outcomes: On Policing, Charging Decisions, and Criminal Trial Proceedings," *Policy Insights from the Behavioral and Brain Sciences* 1, no. 1 (October 1, 2014): 103–11, <https://doi.org/10.1177/2372732214548431>.

<sup>111</sup> Jessalyn Schwartz, "Study on Racial Disparities in Youth Commitments and Arrests Released," American Bar Association, April 25, 2016.

- **Logistical Feasibility:** Logistical feasibility for this option is high because few additional resources are needed. In fact, some law enforcement agencies already require that diversion decisions be made by a supervisor or watch commander.<sup>112</sup>
- **Political Feasibility:** Political feasibility is high because law enforcement agencies would maintain the final decision-making power on whether to divert a case.

### Independent Oversight Body

- **Benefit/Effectiveness:** An independent oversight body is ranked as medium for effectiveness at ensuring that diversion is applied appropriately. Although there is evidence that police are poor at providing oversight of their peers,<sup>113</sup> there is insufficient evidence to conclude that independent oversight is any more effective.<sup>114</sup> However, an independent oversight body may garner greater public trust.<sup>115116</sup> Given the inconclusive evidence on effectiveness, we have ranked this option as medium.
- **Racial and Ethnic Equity:** An independent oversight body also ranks highly in racial and ethnic equity because the body would be staffed by people who are aware of racial bias in policing.
- **Logistical Feasibility:** Logistical feasibility is ranked low because creating the body's structure and recruiting oversight commissioners would take considerable effort.
- **Political Feasibility:** Finally, political feasibility is ranked as medium because law enforcement agencies are unlikely to be in favor of this option.

### Discussion

We recommend that YDD implement two of these strategies: 1) A youth-initiated grievance process for youth who were denied diversion, and 2) An internal oversight process where a law enforcement superior officer is required to review any decisions to not divert a case. These two strategies will work together well. The internal oversight process will serve as a front-end strategy to ensure that more appropriate higher-level cases are being diverted. On the back end, a youth-initiated grievance process will provide a path for youth to appeal their case if they were wrongly denied the opportunity for diversion. Both of these options were ranked highest in political and logistical feasibility, while still providing the same level of effectiveness as the other options.

<sup>112</sup> Interviews with Law Enforcement Agencies

<sup>113</sup> Tim Prenzler and Carol Ronken, "Models of Police Oversight: A Critique," *Policing and Society* 11, no. 2 (May 2001): 151–80, <https://doi.org/10.1080/10439463.2001.9964860>; Jack R. Greene, "Make Police Oversight Independent and Transparent," *Criminology and Public Policy* 6 (2007): 747–54.

<sup>114</sup> National Research Council et al., *Fairness and Effectiveness in Policing: The Evidence* (National Academies Press, 2004).

<sup>115</sup> Roger G. Dunham and Nick Petersen, "Making Black Lives Matter: Evidence-Based Policies for Reducing Police Bias in the Use of Deadly Force," *Criminology & Public Policy* 16, no. 1 (February 2017): 341–48, <https://doi.org/10.1111/1745-9133.12284>.

<sup>116</sup> Council et al.; Samuel Walker, "Police Accountability: Current Issues and Research Needs" (November 28, 2006), <https://www.ncjrs.gov/pdffiles1/nij/grants/218583.pdf>.

**GUIDELINE 2: Diversion should not be applied to cases that are not legally sufficient.**

	Criteria			
	Benefit to Youth/ Effectiveness	Racial and Ethnic Equity	Logistical Feasibility	Political Feasibility
Grievance process for youth-- request for review by independent board	high	high	low	medium
Grievance process for youth-- request for review by YDD staff	high	high	low	high
CBOs have discretion to mark as complete without offering services	medium	low	high	medium

**Youth who are wrongly accused can request review by Independent Review Board**

- **Benefit/Effectiveness:** Review by an independent review board ranks high in effectiveness and benefit to youth. We do not foresee any negative consequences of an Independent Review Board, other than the fact that review of grievances may take time and could delay the diversion process (if the grievance is denied). However, there would be no additional penalties if a grievance were denied.
- **Racial and Ethnic Equity:** This option is also highly ranked for racial and ethnic equity because an independent review board (with carefully trained and vetted members) will be less likely to perpetuate racial biases.
- **Logistical Feasibility:** Logistical feasibility is low because this option requires considerable resources to implement.
- **Political Feasibility:** Political feasibility is medium because law enforcement and district attorneys are expected to oppose this option.

**Youth who are wrongly accused can request review by YDD staff**

- **Benefit/Effectiveness:** For similar reasons as the previous option, review by YDD staff ranks high in effectiveness and benefit to youth.
- **Racial and Ethnic Equity:** This option is ranked high for racial and ethnic equity: YDD is explicitly working to reduce racial and ethnic disparities in the juvenile justice system, so we expect that YDD staff will be more likely to be aware of racial bias in decision-making.

- **Logistical Feasibility:** Logistical feasibility is low because this option requires considerable resources to implement.
- **Political Feasibility:** Political feasibility is high because YDD already acts as a facilitator and has earned the trust of all stakeholders.

### **CBOs have discretion to mark diversion complete without offering services**

- **Benefit/Effectiveness:** Giving CBOs the discretion to mark diversion as complete ranks medium for effectiveness and benefit to youth. While youth would not be harmed by over-serving under this option, marking diversion as complete means that youth will have a record of diversion. Law enforcement will likely be able to check for previous diversion history and factor this into their decision-making; therefore, even an internal record of diversion completion could have negative consequences for a young person.
- **Racial and Ethnic Equity:** This option ranks low in racial and ethnic equity because youth of color would be more likely to have an unnecessary diversion record.<sup>117</sup>
- **Logistical Feasibility:** Logistical feasibility is high because this option does not require the creation of any new systems.
- **Political Feasibility:** Political feasibility is medium: law enforcement is greatly concerned about youth accountability<sup>118</sup> and will dislike this option, but CBOs and youth advocates will approve.

### **Discussion**

We recommend that YDD implement a grievance process for youth who were wrongly accused. This grievance process should be managed by YDD-- either by a trained staff member or by a lawyer hired by YDD. Giving CBOs the ability to mark diversion as complete without serving is a more immediately feasible option; however, the possible negative consequences of this option outweigh its benefits.

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<sup>117</sup> Edwin Grimsley, "Lessons about Black Youth and Wrongful Convictions: Three Things You Should Know - Innocence Project," The Innocence Project, May 1, 2015, <https://www.innocenceproject.org/lessons-about-black-youth-and-wrongful-convictions-three-things-you-should-know-2/>.

<sup>118</sup> Interviews with Law Enforcement Officers

**GUIDELINE 3: Diverted youth should receive the appropriate level of services.**

	Criteria			
	Benefit to Youth/ Effectiveness	Racial and Ethnic Equity	Logistical Feasibility	Political Feasibility
Tiered service model for CBOs (minimal/nothing, low level, high level), CBO discretion	high	high	medium	high
Centralized referral system where youth are referred to CBO based on services offered, not necessarily by location	high	high	low	high

**Tiered Service Model for CBOs**

- **Benefit/Effectiveness:** A tiered service model would be highly effective and provide a high level of benefit to youth: providing the appropriate level of services protects youth from the harmful consequences of over-serving.<sup>119</sup>
- **Racial and Ethnic Equity:** Racial and ethnic equity is also high because youth of color are at the greatest risk of being over-served.<sup>120</sup>
- **Logistical Feasibility:** Logistical feasibility is medium because most CBOs do not currently offer tiered services and would need to develop new programs.<sup>121</sup> However, we do not think that the additional resources needed are great enough to warrant a low ranking, because CBOs already offer intensive services and will be developing only the lowest level of services.
- **Political Feasibility:** Political feasibility is high: law enforcement, youth advocates, CBOs, and YDD are all expected to support this option.

**Centralized Referral System based on appropriateness of services**

- **Benefit/Effectiveness:** A centralized referral system would be highly effective at ensuring appropriateness of services. We are basing this evaluation on the assumption that YDD would hire and train staff with specialized knowledge of how to appropriately match youth with services according to their needs.

<sup>119</sup> Daniel P. Mears et al., “Juvenile Court and Contemporary Diversion,” *Criminology & Public Policy* 15, no. 3 (2016): 953–81, <https://doi.org/10.1111/1745-9133.12223>.

<sup>120</sup> “Black Youth Five Times as Likely to Be Incarcerated as White Youth,” Equal Justice Initiative, September 14, 2017, <https://eji.org/news/black-children-five-times-more-likely-than-whites-to-be-incarcerated>.

<sup>121</sup> Interviews with CBOs

- **Racial and Ethnic Equity:** Racial and ethnic equity is high because YDD staff would be trained in bias and equity concerns. This option also allows for youth to receive services outside of the area where they were arrested, which could help address any disproportionalities in quality of service provision (if such disproportionalities exist).
- **Logistical Feasibility:** Centralized referrals rank low on logistical feasibility because YDD would need to hire additional full time staff and create entirely new referral systems. The considerable level of additional resources required means this option is ranked as low.
- **Political Feasibility:** Political feasibility is high: law enforcement is most concerned that youth go to diversion and less concerned with where they receive services.<sup>122</sup> CBOs and youth advocates are expected to support this policy.

### Discussion

We recommend that YDD implement a tiered service model for all partner CBOs. When comparing these two policy options, we estimated that they would be equally effective, equally politically feasible, and equally strong at addressing racial and ethnic equity. We ultimately chose a tiered service model due to its higher logistical feasibility: some CBOs already offer tiered services, and CBOs have more room to build and restructure services than YDD. This recommendation is dependent on our estimation that a centralized referral system requires more resources; therefore, YDD may want to evaluate these two options further once the office is more established.

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<sup>122</sup> Interviews with law enforcement officers

## Recommendations

We recommend that YDD adhere to the following set of guidelines when developing its consent policy. Within each guideline, we also make a recommendation for a specific policy option; however, as stated above, we established the broader guidelines acknowledging that YDD may need to diverge from these specific options given their evolving political and logistical concerns as a new agency.

	Policy Guideline	Specific Recommendation
Policy Guidelines for Consent	1. Eligible youth should not be denied access to diversion due to lack of parent/guardian at the initial point of consent.	<ul style="list-style-type: none"> <li>Youth can consent for themselves after attempt has been made to contact a young person’s chosen supportive adult</li> </ul>
	2. Youth should have access to legal counsel before giving consent.	<ul style="list-style-type: none"> <li>Contract with CDF or another experienced organization to provide legal services</li> </ul>
	3. Before youth consent to diversion, diversion should be explained by a credible messenger.	<ul style="list-style-type: none"> <li>CBO explains diversion</li> </ul>
Policy Guidelines for Diversion System	1. Diversion should be applied to the appropriate offenses.	<ul style="list-style-type: none"> <li>Youth-initiated grievance process for youth who were denied diversion</li> <li>A law enforcement superior officer reviews decisions to not divert</li> </ul>
	2. Diversion should not be applied to cases that are not legally sufficient.	<ul style="list-style-type: none"> <li>Youth who were wrongly accused can request review by YDD staff</li> </ul>
	3. Diverted youth should receive the appropriate level of services.	<ul style="list-style-type: none"> <li>Tiered service model for CBOs</li> </ul>

Our recommendations are divided into three categories: 1) policy recommendations that are immediately implementable and deal directly with a youth consent policy, 2) policy recommendations that are intended to improve the effectiveness of the diversion system tangential to the process of consent, and 3) recommendations that emerged from our analysis of existing literature and interviews with stakeholders as stand-alone suggestions that did not require evaluation in comparison to similar specific policy options.

## Policy Recommendations for Consent

**Youth should be able to consent for themselves after an attempt has been made to contact a young person's chosen supportive adult.**

We recommend that YDD implement a policy that allows youth to consent to participate in diversion after sufficient attempts have been made to contact a young person's chosen supportive adult, which can include a parent or legal guardian.

**Contract with a legal advocacy organization to provide legal services for young people.**

We recommend that YDD contract out to provide legal services for young people based on the ongoing unanswered legal questions concerning diversion and other issues facing youth of color, such as the potential effects of diversion enrollment on immigration status.

**Community-based organization staff should explain diversion to youth before they consent.**

Having a credible messenger explain diversion is a critical step in building community trust in diversion programs and distinguishing community-based service providers from law enforcement. While there are a number of stakeholders who could be credible messengers for youth, using YDD-contracted CBOs is the most logistically and politically feasible option.

## Policy Recommendations for Diversion System

**YDD should set up a youth-initiated grievance process for young people who were denied access to diversion. Additionally, a law enforcement superior officer should review other officers' decisions to not divert youth.**

We recommend that YDD implement these two complementary strategies. Giving youth the ability to appeal their case if they are denied access to diversion would help reduce the number of diversion-eligible cases being sent to the courts. Additionally, when a law enforcement officer makes the decision to not divert an eligible offense, their superior officer would be required to review the decision. The superior officer would have the final authority to divert an eligible offense.

**Youth who are wrongly accused should be able to request review by YDD staff.**

Because pre-arrest diversion seeks to avoid justice system involvement for youth, youth do not receive a hearing to determine their innocence or guilt before being diverted. Thus, youth need a grievance process for when they are wrongly accused and sentenced to diversion.

**YDD should implement a tiered service model for CBOs.**

In a tiered service model, CBOs would develop different streams of services for youth depending on their level of need. For example, there would be a track for youth with higher-level offenses that entails a greater depth of services. Youth with lower level offenses would receive

fewer services, and youth who were wrongly referred to diversion would receive minimal or no services.

## Additional Recommendations

### **Diversion should be explained using accessible language.**

During the consent process, all reasonable measures should be taken to ensure youth are able to understand the process and possible consequences of diversion. In order to serve youth of various languages, cognitive abilities, and citizenship statuses, we recommend that translated materials and translators should be provided for non-English speakers (including individuals who speak ASL), written and verbal materials should use age-appropriate language, and all materials explaining diversion should clearly state that all youth are eligible, regardless of citizenship status.

### **Youth must be competent to consent for diversion.**

Before young people can consent to diversion without the oversight of a responsible adult, it is important that they are deemed competent to do so. We recommend that service providers conduct an intake assessment to determine each young person's competency to consent prior to enrolling them in diversion services. YDD can help standardize how competency is determined across service providers and coordinate with health service providers as to the best alternative course of action if youth are deemed incompetent.

### **Youth should be able to give consent for diversion in the least coercive environment possible.**

There are currently two general approaches to how law enforcement refer youth to diversion programs. One approach we refer to as the "citation model," wherein officers cite youth in the field by writing them a ticket and mailing them diversion instructions. In this model, youth are not detained at a police or Sheriff's station. Law enforcement is notified by diversion service providers when youth enroll in services per the mailed instructions; if a young person does not enroll within a predetermined time frame (120 days), their case is formally referred to the Los Angeles County Probation Department.

We refer to the second approach as the "station model," wherein law enforcement may hold youth in temporary custody while obtaining parent/legal guardian consent to diversion. The California Welfare and Institutions code stipulates that law enforcement is permitted to detain youth in temporary custody for up to six hours. Therefore, in this model, consent to participate in diversion must be obtained during a six-hour window to avoid formal arrest, booking, and referral of a youth's case to the Los Angeles County Probation Department.

Custody, even when temporary, has been shown to have detrimental effects for youth, so a citation model appears to benefit youth by avoiding detention. However, law enforcement agencies using a citation model must trust youth to provide a proper address and their interaction with youth does not include transferring responsibility for their care to another adult.

As such, our interviews found that law enforcement agencies using the citation model divert only very low-level offenses, including status offenses like breaking curfew, which our research has shown may not require service intervention. Moreover, we found that law enforcement are more likely to divert higher level offenses, which are disproportionately youth of color, if they can hold youth in temporary custody, potentially increasing racial equity in access to diversion (however, this does not address how law enforcement officers may treat youth of color more punitively).

We, therefore, recommend that law enforcement have the discretion to cite youth in the field for low-level offenses and temporarily detain youth accused of more serious offenses. Additionally, law enforcement should not be allowed to require that consent for diversion be obtained within the six-hour temporary custody window, given that youth do not make decisions well under extreme stress or pressure. This recommendation allows youth to make their decision once the stress associated with detainment has decreased and provides time for youth to review diversion materials and consult lawyers, service providers, YDD, and child welfare system stakeholders if applicable.

**Diversion services should be coordinated with other County departments (DCFS, Probation) for youth who are involved in multiple systems.**

Youth who are involved in multiple systems are at risk of being over-served or inappropriately served. Therefore, we recommend that an MOU be developed between YDD and county departments in order to reduce the risk of over-serving and better address the unique needs of youth who are involved in multiple systems.

**Diversion referrals should be timely.**

We recommend YDD implement a timeline as part of an MOU with CBOs and law enforcement. In the current citation model in Long Beach, the referral process can be lengthy, which reduces the effectiveness of diversion. Alternatively, in the more commonly used station model, the amount of time allotted to make a decision about diversion is short (6 hours) and may restrict youth from giving informed consent. In interviews, youth expressed feeling anxiety and even fear in police custody, and as a result, “would say anything” to get out of that stressful situation. Thus, a timeline for diversion should accomplish two goals:

1. Hold law enforcement accountable for referring cases to diversion promptly after their initial contact with youth.
2. Allow enough time for youth and/or their support network to make an informed decision about diversion.

**Youth participation in diversion and statements made during diversion must be protected.**

We recommend that YDD create an MOU stipulating that CBOs cannot be called to testify against the youth they served. This will protect youth from further involvement with the justice system. Youth would likely feel less hesitant to fully engage in diversion programs if they knew that their statements in diversion programs could not be used against them in court.

**Diversion services should involve a young person's chosen support network.**

From our findings, we know that some youth do not have access to a parent or guardian who would support them in a diversion program. Allowing a young person to choose a supportive adult to participate in diversion is expected to increase participation from the youth and lead to better outcomes. Thus, we recommend that YDD encourage the involvement of youth's chosen supportive adult for diversion programs.

## Conclusion

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Diversion programs in Los Angeles County aim to reduce harmful involvement in the juvenile justice system by providing community-based services in lieu of arrest. However, existing diversion programs restrict access to diversion by requiring parent/guardian consent to participate, and the County lacks a standard consent model for diversion. This report provides guidance to the Office of Youth Diversion and Development on creating a youth consent policy that will eliminate existing barriers to consent and responsibly expand access to diversion.

Based on our findings from a literature review and in-depth interviews with over 40 stakeholders, we established a set of guidelines that YDD can use to develop its countywide consent policy. Our findings illuminated several issues that are directly impacted by the consent process but that are not explicitly part of a consent policy. Thus, we developed two sets of guidelines: *Policy Guidelines for Consent*, which YDD can use immediately to build a youth consent policy, and *Policy Guidelines for the Diversion System*, which YDD can use to address long-term systemic issues.

For each guideline, we evaluated a set of specific policy options in order to provide actionable recommendations to our client. YDD may have other ideas for specific ways to meet our guidelines; however, the guidelines themselves provide a critical framework for developing a comprehensive consent policy. We hope that these guidelines serve as a blueprint for YDD over the next few years.

Finally, although our guidelines address many systemic issues impacting diversion, these guidelines were created given the status quo—and we believe the status quo should change. We believe there is a need for statutory reforms to decriminalize some extremely low-level offenses. For example, many cities in Los Angeles County still have curfew laws, despite conflicting evidence on their efficacy in reducing crime.<sup>123</sup> In the City of Los Angeles, breaking curfew is punishable by fines, driver's license restrictions, community service, and/or diversion.<sup>124</sup> Nationwide, curfew laws are disproportionately enforced in communities of color,<sup>125</sup> and our own research revealed that law enforcement officers are over-diverting these extremely low-level offenses. In this report, we provided options for how to mitigate the problem of over-serving; however, the ideal solution would be to create a Los Angeles where young people are no longer criminalized for such minor actions.

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<sup>123</sup> Taylor Tiamoyo Harris, "Curfews Still Controversial, but They Can Pack Big Fines," AP NEWS, July 21, 2018, <https://apnews.com/cdfd8e40630e42a998e14c5eb58df2ac>.

<sup>124</sup> "City of Los Angeles: What Parents & Juveniles Should Know," Los Angeles Police Department, accessed March 18, 2019, [http://www.lapdonline.org/juvenile\\_division/content\\_basic\\_view/2011](http://www.lapdonline.org/juvenile_division/content_basic_view/2011).

<sup>125</sup> Taylor Tiamoyo Harris, "Curfews Still Controversial, but They Can Pack Big Fines," AP NEWS, July 21, 2018, <https://apnews.com/cdfd8e40630e42a998e14c5eb58df2ac>.

## Appendices

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### Appendix A: Interview Guides

#### Interview Guide for Individuals Arrested as Youth

**BEFORE INTERVIEW:** Give brief introduction to the project and state why we wanted to interview them. Get consent to be interviewed and recorded.

#### **Introduction:**

- Can you briefly introduce yourself?
  - Where did you grow up?
  - What do you do now?

#### **Personal Experience with Law Enforcement:**

- *Relationship with Law Enforcement as a Youth:*
  - Can you tell me about the first time you came into contact with law enforcement? [If the first time was when they got arrested, move on to *Arrest Process* questions below]
    - [Follow-up]: What was going through your head while this interaction was happening? What were you feeling?
    - [Follow-up]: Did you feel that law enforcement treated you fairly?
    - [Follow-up]: How do you think this first encounter shaped your relationship/outlook with law enforcement?
- *Arrest Process:*
  - Can you walk me through what happened when you got arrested? (Don't care about the details of the crime, just the arrest process)
    - How old were you when that happened?
    - What were you thinking and feeling in that moment?
    - Did the police detain you (either in the car or at the station)? How did that make you feel?
    - How did your experience being detained impact your opinions about police officers? Did it impact your opinions or thoughts about yourself?
- *Understanding Legal Rights:*
  - What did the police officer tell you about your rights?
    - [Follow-up]: Did you feel like you understood what your rights were?
    - [Follow-up]: What were you thinking and feeling in that moment?
  - Did you ask the police officer any questions about what was going to happen to you?
    - [If yes]: How did they respond?
- *Outcome of Arrest:*
  - What happened after you got arrested? Where did you go?

- What choices were offered to you, if any?
- How did those choices (or lack of choices) make you feel?
- What would you change about the arrest process?

**Youth Consent:**

- *If you had been offered diversion instead of arrest...*
  - What would you have chosen? Why?
  - When you think about what was happening when you got arrested, were there any factors that would have impacted your ability to give informed consent for diversion?
  - If the police had called your parent(s)/guardian, would they have consented to diversion for you?
    - Would you have wanted them to call your parent(s)/guardian?
  - If someone from a community-based organization had called your parent(s)/guardian, would they have consented to diversion for you?
- *If young people could consent to diversion programs without a parent or legal guardian...*
  - What concerns would you have with this type of policy?
  - What benefits can you see from this type of policy?
  - Are there any strategies or processes for consent that you would suggest?

**Concluding Questions:**

- Are there any questions that I missed? Any additional things you want to say?
- Is there anyone else that you think we should talk to about this issue?
- Would you like a copy of our final report?
  - If yes: How should we send it? (Email/mail)
- Do you mind if we contact you for any follow up questions?

## Interview Guide for Law Enforcement

**BEFORE RECORDING:** Introduce self, describe project, explain why we're interviewing law enforcement, and explain confidentiality and ask if they would like confidentiality.

### **Introductory Questions:**

- Can you briefly describe your role and responsibilities?
- How long have you been with [specific law enforcement agency]?
- What areas do you monitor?
- Can you briefly describe the demographics of the areas you patrol?

### **Experiences:**

#### *Youth:*

- How often would you say that you interact with minors?
  - Out of the minors, what age range would you say you interact with the most?
  - What type of offenses do you think you have to deal with the most?
- What are the eligible offenses for youth diversion?
- Can you describe how you might handle these interactions depending on the type of offense?
  - What about specifically those offenses that are eligible for youth diversion?
- Do you think in these interactions with young people that they fully understand their rights and what they're agreeing to when they're arrested?
  - [If no]: What do you think might have helped them understand their rights better?
- [If you think appropriate] Is it conceivable that there are cases where minors are arrested for questionable or unjustified reasons?
  - Have you heard of any questionable cases where law enforcement officers arrest minors?
  - Are there cases where arrests are made over other potential and possibly less damaging avenues?

#### *YDD:*

- What are your thoughts on YDD?
- How do you think the development of this division will impact the way that you or your agency will approach young people?
- What changes have occurred or do you expect to happen in the next few years?

#### *CBO:*

- Can you explain the agency's relationship with the CBOs?
- How often do you interact with case managers and service providers?
- What would an ideal relationship look like?
  - Is there anything missing that you would like to see happen more?
- Do you think being referred to youth diversion programs is the best way to handle these cases?

### **Personal Opinions:**

#### *Youth diversion programs:*

- What has your experience been like referring young people to youth diversion programs?
- Have you observed any changes in how you or other members of your agency interact with minors when your agency started to refer young people to youth diversion programs?
  - [Probe]: Can you describe these changes?

- [Probe]: How do you think these changes have impacted young people's lives?

*Youth consent policy:*

- If young people could consent to youth diversion programs without a parent or legal guardian...
  - Do you think that would change the way that law enforcement agencies interact with young people?
  - What concerns might you have with this type of policy?
  - What benefits can you see from this type of policy?
  - How much do you think this would help or hurt a young person?
- Do you think that there should be steps that should be taken before a minor is allowed to consent?
  - For example, we've heard suggestions of making best efforts to contact a parent or guardian first...
- What kind of feedback do you think we could expect from law enforcement agencies if Los Angeles County proposed a minor consent policy for youth diversion programs?  
*(YDD is interested in minor consent, but we've heard concern from LAPD about this-- what would need to happen get law enforcement on board with a minor consent policy?)  
Concerns about youth accountability??*
- Do you have certain policies in mind that you think would work better with this population?

**Concluding questions:**

- Are there any questions that I missed or any additional things you want to say?
- Is there anyone else that you think we should contact?
- Do you mind if we contact you for any follow up questions?
  - Email/Number

## Interview Guide for Case Managers

**BEFORE RECORDING:** Introduce self, describe project, explain why we're interviewing CBOs, and explain confidentiality and ask if they would like confidentiality.

### Introductory Questions

1. What is your current title and role at your organization?
2. How long have you worked there and what are your responsibilities?
3. What are the age, race, socioeconomic, and geographic demographics of your clients?
4. What are the arresting law enforcement agencies that refer youth to your program?
5. What kind of diversion services do you provide to your clients?

### Eligibility Questions

1. When a young person is arrested for an offense that is eligible for diversion, how does law enforcement reach out to your organization?
  - a. When are you contacted?
  - b. Who are contacted by?
2. How do you determine if someone is eligible to participate in the diversion program?
  1. Sometimes there are people who might not fit the criteria, but you really want to let them into your program,
3. Is there list of criteria prescribing client eligibility?
  1. If so, what does this include?
  2. If not, what is your decision-making process?
  3. Who holds the discretion to accept clients?
4. Are there any additional criteria you think are important determine whether or not you will accept a young person as a client?
5. Can you give me an example of a time when you had to turn someone away from your program, and why?

### Process Questions

1. What is your role (within the description of your position) in the lives of your clients?
2. How do you determine what services a young person needs?
3. How does a young person's arrest record/justice-involvement change case planning?
  1. Do you differentiate between offense levels? For example, do youth with low-level or status offenses receive different services than kids with more serious offenses?
4. How much input do young people have in determining the scope and type of services they will receive?
5. What do you consider when forming a case plan for a young person?
6. Who, if anyone, must you consult in terms of executing that case plan?
  1. For example, parents, law enforcement,
2. Who ensures that the young person is completing various elements of their case plan and meeting their goals?
3. What happens when a young person is meeting these goals?
4. What happens if a young person is having difficulty meeting the goals, is not meeting the goals, or is rearrested?
5. How would you describe your organization's relationship with law enforcement?

**Consent Policy Questions**

1. Does your organization require that a parent or legal guardian give permission for a young person to participate in a diversion program?
  1. If so, why?
  2. If not, why not?
2. What happens if a child does not have a parent/legal guardian?
3. Is it possible for a young person to consent for themselves to participate in diversion programming with your organization?
  1. If so, what is the reasoning for this policy?
  2. If not, why not?
4. Apart from initial enrollment in this diversion program, are there other key decision points that would require permission from a legal guardian or a parent?
5. What concerns do you have about how the consent process works right now?
6. What concerns would you have about a minor consent policy?
  1. Do you know of any strategies to mitigate these concerns?

**Concluding Questions**

1. Is there anything else that I should have asked?
2. Are there additional organizations that you think we should contact?
3. Would you like a copy of the study's summary findings?

## Interview Guide for Lawyers

**BEFORE RECORDING:** Introduce self, describe project, explain why we're interviewing CBOs, and explain confidentiality and ask if they would like confidentiality.

### **Working with youth**

1. In what capacity have you worked with young people?  
[probe] Do they understand their rights?  
[probe] How do you ensure they understand what is happening?
2. How does the age of a young person affect how you represent them?
3. How do address youth with neurodiverse cognitive abilities?
4. What is your role in representing dual status youth?
5. Are there any other characteristics young people may have that influence how you engage with them?

### **Youth Consent**

1. What are your concerns about a youth consent policy?
2. Are there policy protections against these concerns?
3. What are do you think are the benefits of youth consent policy?

### **Parent/Guardian Consent**

1. Have you ever been unable to obtain parent/guardian consent?
2. Does legal guardianship ever become murky during the juvenile/dependency court process?
3. Have you ever experienced foster parents/group home directors avoiding parental responsibility even though they legally may have it?

### **Youth Diversion**

1. Do you have any concerns about the pre-arrest diversion model?
2. Do you there are benefits to the pre-arrest diversion model?

### **Diversion Records**

1. What information do you think law enforcement need or should have access to?
2. What information do you think district attorneys need or should have access to?
3. How do you think diversion records should be maintained?

## Appendix B: Index of De-identified Interviews

<b>Informant Category</b>	<b>Interview Code</b>	<b>Medium</b>	<b>Length</b>	<b>Date</b>
Community-Based Organization	CBO1	In Person	1:31:04	02/08/18
Community-Based Organization	CBO2	Phone	0:30:12	02/11/19
Community-Based Organization	CBO3	Phone	0:30:17	02/15/19
Community-Based Organization	CBO4	Phone	0:38:21	02/12/19
Community-Based Organization	CBO5	Phone	0:47:07	02/15/19
Community-Based Organization	CBO6	Phone	0:33:04	02/13/19
Community-Based Organization	CBO7	Phone	1:07:12	01/04/19
Law Enforcement	LE1	Phone	0:48:59	01/25/19
Law Enforcement	LE2	Phone	0:42:57	02/11/19
Law Enforcement	LE3	Phone	0:48:09	02/13/19
Legal Professional	DA1	Phone	0:25:56	02/22/19
Legal Professional	DA2	Phone	0:29:40	02/20/19
Legal Professional	LGL1	In Person	1:00:47	02/07/19
Legal Professional	LGL2	Phone	1:06:18	02/22/19
Legal Professional	LGL3	Phone	0:59:24	03/05/19
Legal Professional	LGL4	Phone	1:02:06	03/06/19
Adult Arrested as Youth	AM1	Phone	1:00:00	11/18/18
Adult Arrested as Youth	AM2	Phone	0:50:00	11/30/18
Adult Arrested as Youth	AM3	In Person	1:56:37	11/30/18
Adult Arrested as Youth	AM4	Phone	0:34:02	12/02/18
Adult Arrested as Youth	AM5	In Person	1:06:35	01/25/19
Adult Arrested as Youth	AM6	In Person	1:10:32	02/19/19
Adult Arrested as Youth	AM7	In Person	0:47:19	02/19/19
Adult Arrested as Youth	AM8	In Person	0:28:34	02/21/19
Adult Arrested as Youth	AM9	In Person	0:21:26	02/21/19
Adult Arrested as Youth	AM10	Phone	0:58:48	02/22/19
Adult Arrested as Youth	AM11	Focus Group	0:56:18	03/01/19
Adult Arrested as Youth	AM12	In Person	0:53:38	02/21/19
Adult Arrested as Youth	AM13	Focus Group	Not Recorded	02/13/19

## Appendix C: Interview Analysis Codebook

<b>Code</b>	<b>Description</b>
<b>Consent Guidelines</b>	<b>Specifically on the consent issue</b>
<b><i>Limited access due to parent/guardian consent</i></b>	Denying eligible youth access to diversion due to lack of parent/guardian consent or if youth don't have parents/guardians
<b><i>Legal Counsel</i></b>	Regarding legal counsel aiding or leading to legal consequences to diversion and discussions of informed consent
<b><i>Accessible Language</i></b>	Youth and adults do not understand their legal rights or sometimes there's a literal language barrier.
<b><i>Competency to consent/Neurodiverse youth</i></b>	Youth ability to understand the consent process for diversion – include discussions of neurodiverse youth.
<b><i>Credible messenger</i></b>	Discussion of who is explaining what diversion is to youth
Lawyer	
Police	
Social Worker	
<b><i>Coercive environment</i></b>	Being in custody - harsh environment can lead youth to say anything to be let go.
<b>System Guidelines</b>	<b>Can apply to broader systemic/structural issues for diversion programs</b>
<b><i>Appropriate offenses</i></b>	Law enforcement officers diverting low-level offenses instead of higher-level offenses
<b><i>Legally insufficient cases</i></b>	Law enforcement officers arrest youth for things they are innocent of or when they are victims.
<b><i>Appropriate level of services</i></b>	Probation services were not responsive to their offense; frustration with serving youth with minor offenses.
<b><i>Multiple systems</i></b>	Coordination with other County departments (DCFS, Probation); youth are involved in many repetitive systems.
DCFS	
Probation	
<b><i>Timely referrals</i></b>	Referrals to diversion program taking too long
<b><i>Protection of statement/participation</i></b>	Things that may lead to legal consequences; police keeps records of participation, and discussing offenses in diversion programs.
<b><i>Support network</i></b>	Involvement from someone other than young person's parents

## Appendix D: Evaluation Codebook

	Low	Medium	High
<b>Benefit to Youth/ Effectiveness</b>	Policy does not solve the current dilemma of access to diversion for youth who cannot obtain parent/legal guardian consent. Policy risks over-serving and net-widening.	Policy allows more youth who are eligible and appropriate for diversion to participate, but possibly excludes certain youth from accessing diversion. Policy creates risk of over-serving and net-widening.	Policy allows more youth who are eligible and appropriate for diversion to participate but does not over-serve youth. Policy mitigates risk of net-widening.
<b>Racial and Ethnic Equity</b>	Policy exacerbates racial disparities in the justice system by creating new opportunities for racial bias to negatively affect youth of color.	Policy neither mitigates nor exacerbates racial disparities in the justice system.	Policy mitigates racial disparities in the justice system.
<b>Logistical Feasibility</b>	Policy requires considerable additional staff or infrastructure to implement.	Policy requires some additional staff or infrastructure, but the requirement is not extensive.	Policy does not require considerable additional staff or infrastructure.
<b>Political Feasibility</b>	Policy only addresses the concerns of one stakeholder group.	Policy addresses the concerns of some stakeholders but presents minor conflict between stakeholders that YDD would need to overcome.	Policy addresses the concerns of stakeholders, including youth justice advocates, law enforcement, juvenile attorneys, and impacted youth.

## Appendix E: Intercoder Agreement Scores

Each team member independently ranked our specific policy options according to our evaluation rubric (see Appendix D). These rankings were then compiled into a common spreadsheet to determine intercoder agreement. Intercoder agreement scores were calculated by taking the number of responses in agreement divided by the total number of responses. An overall average was then calculated for each Guideline. Intercoder agreement by Guideline ranged from 0.79 to 0.90, which was quite high. Across all Guidelines, overall average intercoder agreement was 85%.

Consent Guideline 1	Coder Name	Criteria				Overall Agreement Score
		Benefit/ Effectiveness	Racial Equity	Logistical Feasibility	Political Feasibility	
Full minor consent	Oceana	medium	medium	high	low	
Full minor consent	Susan	medium	medium	high	low	
Full minor consent	Erica	medium	high	high	low	
Full minor consent	Nikki	medium	medium	medium	low	
Full minor consent	Lindsay	medium	medium	high	low	
INTERCODER AGREEMENT		1	0.8	0.8	1	0.9
Youth consent after contact parent/guardian	Oceana	high	medium	high	high	
Youth consent after contact parent/guardian	Susan	medium	medium	high	high	
Youth consent after contact parent/guardian	Erica	medium	high	high	medium	
Youth consent after contact parent/guardian	Nikki	medium	medium	high	high	
Youth consent after contact parent/guardian	Lindsay	medium	medium	high	high	
INTERCODER AGREEMENT		0.8	0.8	1	0.8	0.85
Youth consent after contact supportive adult	Oceana	high	medium	high	high	
Youth consent after contact supportive adult	Susan	high	medium	high	medium	
Youth consent after contact supportive adult	Erica	high	high	high	medium	
Youth consent after contact supportive adult	Nikki	high	high	high	high	
Youth consent after contact supportive adult	Lindsay	high	medium	high	high	
INTERCODER AGREEMENT		1	0.6	1	0.6	0.8
Supportive adult must consent	Oceana	medium	medium	high	medium	
Supportive adult must consent	Susan	medium	medium	high	medium	
Supportive adult must consent	Erica	medium	medium	high	medium	
Supportive adult must consent	Nikki	medium	medium	high	high	
Supportive adult must consent	Lindsay	medium	medium	high	medium	
INTERCODER AGREEMENT		1	1	1	0.8	0.95
						0.88

Consent Guideline 2	Coder Name	Criteria				Overall Agreement Score
		Benefit/ Effectiveness	Racial Equity	Logistical Feasibility	Political Feasibility	
Make Public defenders available	Oceana	high	medium	low	high	
Make Public defenders available	Susan	medium	medium	low	high	
Make Public defenders available	Erica	high	medium	low	low	
Make Public defenders available	Nikki	medium	medium	low	medium	
Make Public defenders available	Lindsay	high	high	low	high	
INTERCODER AGREEMENT		1	0.6	1	1	0.9
Contract with a juvenile legal advocacy org	Oceana	high	medium	low	high	
Contract with a juvenile legal advocacy org	Susan	high	high	medium	medium	
Contract with a juvenile legal advocacy org	Erica	high	high	medium	high	
Contract with a juvenile legal advocacy org	Nikki	high	high	medium	high	
Contract with a juvenile legal advocacy org	Lindsay	high	high	medium	high	
INTERCODER AGREEMENT		1	0.6	1	1	0.9
Provide youth with info on legal counsel	Oceana	medium	medium	high	medium	
Provide youth with info on legal counsel	Susan	low	low	high	medium	
Provide youth with info on legal counsel	Erica	low	low	high	medium	
Provide youth with info on legal counsel	Nikki	low	low	high	medium	
Provide youth with info on legal counsel	Lindsay	low	medium	high	medium	
INTERCODER AGREEMENT		1	0.6	1	1	0.9
						0.90

Consent Guideline 3	Coder Name	Criteria				Overall Agreement Score
		Benefit/ Effectiveness	Racial Equity	Logistical Feasibility	Political Feasibility	
CBO explains diversion	Oceana	high	medium	high	high	
CBO explains diversion	Susan	high	medium	high	high	
CBO explains diversion	Erica	high	high	high	high	
CBO explains diversion	Nikki	high	high	high	high	
CBO explains diversion	Lindsay	high	medium	high	high	
INTERCODER AGREEMENT		1	0.6	1	1	0.9
Lawyer explains diversion options	Oceana	high	medium	medium	high	
Lawyer explains diversion options	Susan	high	medium	medium	high	
Lawyer explains diversion options	Erica	high	high	medium	high	
Lawyer explains diversion options	Nikki	medium	high	medium	medium	
Lawyer explains diversion options	Lindsay	high	medium	low	medium	
INTERCODER AGREEMENT		0.8	0.6	0.8	0.6	0.7
Community member (hired by YDD)	Oceana	high		medium	high	
Community member (hired by YDD)	Susan	high	high	medium	medium	
Community member (hired by YDD)	Erica	medium	medium	medium	high	
Community member (hired by YDD)	Nikki	high	high	medium	medium	
Community member (hired by YDD)	Lindsay	high	medium	medium	high	
INTERCODER AGREEMENT		0.8	0.4	1	0.6	0.7
YDD staff explains diversion	Oceana	high	medium	medium	high	
YDD staff explains diversion	Susan	high	medium	medium	high	
YDD staff explains diversion	Erica	high	medium	medium	high	
YDD staff explains diversion	Nikki	high	high	medium	medium	
YDD staff explains diversion	Lindsay	high	medium	medium	high	
INTERCODER AGREEMENT		1	0.8	1	0.8	0.9
						0.80

Systems Guideline 1	Coder Name	Criteria				Overall Agreement Score
		Benefit/ Effectiveness	Racial Equity	Logistical Feasibility	Political Feasibility	
MOU with LE to mandate diversion	Oceana	high	high	high	medium	
MOU with LE to mandate diversion	Susan	high	high	high	medium	
MOU with LE to mandate diversion	Erica	high	high	medium	low	
MOU with LE to mandate diversion	Nikki	high	high	medium	low	
MOU with LE to mandate diversion	Lindsay	medium	medium	high	low	
INTERCODER AGREEMENT		0.8	0.8	0.6	0.6	0.7
Youth-initiated grievance process	Oceana	high	high	medium	medium	
Youth-initiated grievance process	Susan	high	high	medium	medium	
Youth-initiated grievance process	Erica	high	medium	medium	high	
Youth-initiated grievance process	Nikki	high	high	medium	medium	
Youth-initiated grievance process	Lindsay	medium	medium	medium	high	
INTERCODER AGREEMENT		0.8	0.6	1	0.6	0.75
Law enforcement superior officer reviews	Oceana	low	low	medium	medium	
Law enforcement superior officer reviews	Susan	medium	medium	high	medium	
Law enforcement superior officer reviews	Erica	medium	low	medium	medium	
Law enforcement superior officer reviews	Nikki	medium	medium	high	high	
Law enforcement superior officer reviews	Lindsay	medium	medium	high	medium	
INTERCODER AGREEMENT		0.8	0.6	1	0.8	0.8
Independent Oversight Body reviews	Oceana	medium	medium	low	low	
Independent Oversight Body reviews	Susan	high	medium	low	low	
Independent Oversight Body reviews	Erica	medium	medium	low	low	
Independent Oversight Body reviews	Nikki	medium	medium	low	low	
Independent Oversight Body reviews	Lindsay	medium	high	low	low	
INTERCODER AGREEMENT		0.8	0.8	1	1	0.9
						0.79

Systems Guideline 2	Coder Name	Criteria				Overall Agreement Score
		Benefit/ Effectiveness	Racial Equity	Logistical Feasibility	Political Feasibility	
Request for review by independent board	Oceana	high	high	low	medium	
Request for review by independent board	Susan	high	high	low	medium	
Request for review by independent board	Erica	high	high	low	low	
Request for review by independent board	Nikki	high	high	low	medium	
Request for review by independent board	Lindsay	high	high	low	medium	
INTERCODER AGREEMENT		1	1	1	0.8	0.95
Request for review by YDD staff	Oceana	high	high	medium	medium	
Request for review by YDD staff	Susan	high	high	medium	medium	
Request for review by YDD staff	Erica	high	high	low	medium	
Request for review by YDD staff	Nikki	high	high	medium	medium	
Request for review by YDD staff	Lindsay	high	high	medium	high	
INTERCODER AGREEMENT		1	1	0.8	0.8	0.9
CBO discretion to mark as complete	Oceana	high	high	high	medium	
CBO discretion to mark as complete	Susan	high	medium	high	medium	
CBO discretion to mark as complete	Erica	medium	low	high	medium	
CBO discretion to mark as complete	Nikki	high	medium	high	medium	
CBO discretion to mark as complete	Lindsay	medium	low	high	medium	
INTERCODER AGREEMENT		0.6	0.4	1	1	0.75
						0.87

