

ADDRESSING LEGAL ISSUES IN YOUTH DIVERSION A TOOLKIT



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ABOUT THE UCLA SCHOOL OF LAW CRIMINAL JUSTICE PROGRAM

The Criminal Justice Program (CJP) at UCLA School of Law serves as a central hub for criminal law related courses and research. Research undertaken by CJP faculty and staff help to inform criminal law and policy at both the national and local levels. CJP engages law students directly in research on critical issues of criminal law and policy, and past work has addressed several key areas, including police brutality and accountability, pretrial detention and bail policy, youth justice and diversion, the family policing system, restorative and transformative justice, and alternatives to policing and prosecution.

ABOUT THIS TOOLKIT

Why did the Criminal Justice Program at UCLA School of Law create this toolkit?

In 2019, CJP received a grant from the Annie E. Casey Foundation and the Liberty Hill Foundation to support its work with the Youth Diversion and Development (YDD) division of Los Angeles County's Office of Diversion and Re-Entry. YDD coordinates the County's first pre-arrest and pre-booking diversion program. YDD's model is designed to refer youth out of the justice system and to community-based organizations at the earliest opportunity. As part of this work, CJP provided trainings and consultations for youth, their families, and community-based providers on legal issues related to diversion.

Through this work, we developed expertise on the legal and policy issues that arise for youth and their families, diversion providers, and government entities. Although youth in YDD are not being processed in the juvenile legal system, legal issues can still arise at all stages of the diversion process, from creation through implementation. For example, YDD faced issues in deciding what to do if youth in diversion are charged with a second offense filed in juvenile court. YDD also had to figure out how to create and implement new record sealing protocols with law enforcement agencies that provided diversion referrals. These issues and others, as well as our recommendations, are outlined in this toolkit.

Our goal in creating this toolkit is to share the lessons learned through this collaborative work we have engaged in with YDD, youth, and other stakeholders.

What is this toolkit?

This toolkit is designed to provide helpful information for jurisdictions looking to develop youth diversion programs. It is designed to be a resource for practitioners, community groups, and government agencies that are considering pre-arrest or pre-filing diversion program for youth. It will also be useful to those jurisdictions that have already adopted diversion programs in their jurisdictions but are looking to further develop the legal rules and policy guidance that is essential for successful implementation. By using this toolkit, jurisdictions can benefit from the best practices and analysis presented here to address the unique issues that will arise in implementation and to promote better outcomes for the youth and their families who participate in these programs.

The analysis and recommendations in this toolkit are drawn from broad lessons learned during the implementation of pre-arrest and pre-filing diversion program in Los Angeles County from a legal perspective. These lessons can be instructive for any jurisdiction when considering common legal issues that may arise in the implementation of pre-arrest and pre-filing diversion. At the same time, Los Angeles County may differ from your jurisdiction in important ways that make some of the insights less applicable.

Toolkit organization

This toolkit is organized into three sections: (1) legal considerations in diversion program creation, (2) legal considerations in program implementation, and (3) legal considerations for youth and families.

Each section contains an explanation and analysis of key legal and policy questions YDD has faced in Los Angeles County, what YDD has done to address these issues, and recommendations for other jurisdictions.



TERMINOLOGY

Community Based Organization (CBO)

Providers

Community based organization (CBO) providers are organizations partnered with YDD to provide diversion services to youth.

Community Circle

A community circle occurs in RJ diversion if all parties agree and the Facilitator feels it would be beneficial after meeting with all parties. In this circle, the Facilitator brings the Person Harmed, Responsible Person, family, and community together to discuss the cause of the harm; how the harm may be repaired and/or how the Person Harmed may have their needs met; and how the Responsible Person can take accountability.

Formal Diversion Referral

For purposes of YDD diversion, a formal diversion referral is a referral from law enforcement to a CBO provider that is predicated on the youth successfully completing their diversion case plan. Once the case plan is completed, the law enforcement agency will not refer the case for filing in the juvenile legal system and will seal any existing juvenile police records. In a formal referral, the CBO provider provides limited updates on the youth's progress to the referring law enforcement agency.

Informal Referral to Services

For purposes of YDD diversion, the law enforcement agency closes the youth's case before referring it to the CBO provider. The CBO provider does not report back to the law enforcement agency about the youth's progress in diversion, and participation in diversion is optional for the youth. This is also known as a preventative referral.

Law Enforcement Agencies (LEAs)

Law enforcement agencies

Memorandum of Understanding (MOU)

A memorandum of understanding (MOU) is a contractual agreement that lays out the obligations of its parties. It can be a binding legal agreement if the parties specify, but it is generally considered to be a document that defines a relationship among parties.



Multiple Charges

Multiple charges refer to any instance in which a youth has been referred to pre-arrest diversion for one charge, and either already has a second charge that is filed in juvenile court or is arrested for a new charge that is filed in juvenile court while they are also in diversion. A multiple charge case can also mean the youth has received a citation for a status offense or other low-level charge and faces fines, community service, a driver's license suspension, or another sentence.

Person Harmed

The Person Harmed refers to the person who was harmed by the action of the Responsible Person in RJ diversion. In the juvenile legal system, this person may be referred to as the victim or survivor.

Pre-Arrest Diversion

Pre-arrest diversion is a process where law enforcement refers eligible youth to community-based organizations for services instead of issuing an arrest and/or citation. No juvenile police records are created before the law enforcement agency makes the referral. Some YDD referrals are pre-arrest diversion referrals.



Pre-Booking Diversion

Pre-booking diversion is a process where law enforcement refers eligible youth to community-based organizations for services after arresting and booking the youth into custody, creating a booking record and arrest record before the referral for diversion services is made. The referral for diversion is made instead of sending the case to the District Attorney's Office. Most of YDD's referrals are pre-booking diversion referrals.

Pre-Filing Diversion

Pre-filing diversion is a process where the District Attorney's office has received a youth's case from law enforcement and decides to refer eligible youth to community-based organizations for services instead of filing the case in juvenile court.

Responsible Person (RP)

In RJ diversion, the Responsible Person is used to refer to the person whose action caused harm to another. In the juvenile legal system, this person may be referred to as the offender, the defendant, or the perpetrator.

Restorative Justice (RJ) Diversion

Restorative justice (RJ) diversion is an alternative method of addressing wrongdoing based in restorative justice theory practices. In RJ diversion, the focus is on the harms caused to a person(s) by a particular action and the needs that arise from the harm. Skilled facilitators work with the person who caused harm to understand how they harmed, the needs that arise from the harm, and what they can do to be accountable by meeting the needs of the person(s) they harmed. Often, an RJ diversion process culminates in bringing together the person(s) who has been harmed, the person responsible for that harm, and the community. It is a voluntary process.

Restorative Justice (RJ) Facilitator

In RJ diversion, the Restorative Justice (RJ) Facilitator is a person who is trained in restorative justice practices and may be either a volunteer or employee of the CBO provider. This person facilitates all aspects of a restorative justice youth diversion process.

Social Contact Referral

For purposes of YDD diversion, social contact referrals are referrals from law enforcement for behavior or concerns that are not connected to an arrestable offense or incident.

Youth Diversion and Development Division (YDD)

The Youth Diversion and Development division (YDD) of the Los Angeles County Office of Diversion and Re-Entry, part of the County's Department of Health Services, is the agency that administers pre-arrest and pre-booking diversion programs in Los Angeles County.





LOS ANGELES COUNTY'S YOUTH DIVERSION AND DEVELOPMENT VISION

To build this toolkit, CJP interviewed YDD staff, CBO provider staff, youth and families who went through the diversion process. Through these interviews, we learned how the diversion program impacted their lives. Some interviewees' reflections on YDD's diversion process are shared here.

"[My favorite part of diversion] were the meetings and like how . . . [case manager] would talk to us about what we are not doing and what we are doing right and how we could help fix it. And, like it helped me because it makes me feel able to do things and gives me motivation. . . They ask us how is our school going, are we doing work, and how [can they] help us. . . It makes me feel good because there's someone there that cares."

—Youth, 14, who completed YDD diversion

“

"[In my RJ diversion program], it was helpful that [case manager] tried to help me find a job. Once you are working with someone who is in trouble with the law, they treat you different. But [case manager] didn't treat me different. He made me feel comfortable. I liked when they would ask us interactive questions – what would you do if you were in this scenario? I liked it because it made me think about how I would act different when I'm not thinking straight, but I would think differently if I had more time."

—Youth, 17, who completed YDD diversion

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"Absolutely . . . [the CBO provider's program] was very, very beneficial. [Youth] was super happy when one of the skaters, I don't remember the guy's name, but a big influence on my son, who I guess had some issues growing up, gave his experience to the kids . . . I happened to be on standby with [Youth] overlooking one of his virtual talks, and my son was very happy, like 'Look at that big guy, he was part of this program too.' . . . I mean the perks of the program are just great because they're just a wonderful team of supporters, mentors, and counselors, and they give guidance and direction to the children, and they've given so much positive feedback to show the kids how to be a better person at home . . ."

—Parent of child who completed YDD diversion

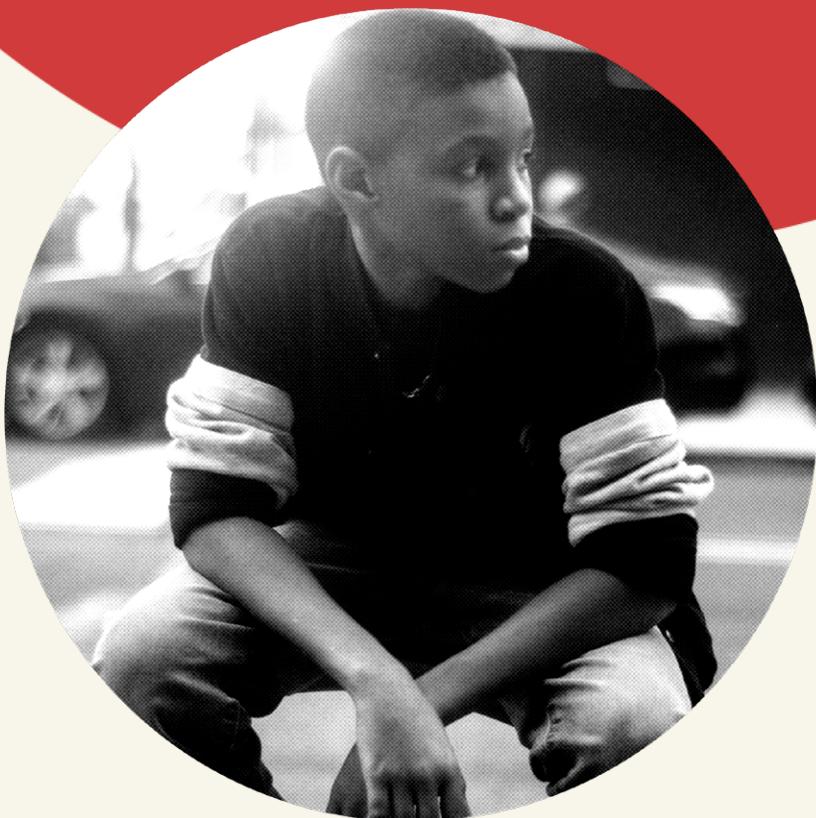
“Oftentimes when people reach out, I'll end up being the person that has an initial conversation . . . and making sure that we are, you know, being good partners. That we are responsive to folks, that we are engaging with community in a way that aligns with what we have stated our goals are of really being accountable to community and our partners in general. . . where we're, you know, it's not so much of a top-down relationship coming from us, but we're really trying to enter into partnership with folks.”

—YDD staff

“ ”

“For us, as a diversion provider we are constantly fighting for our young people. You are spending your social capital with your referral source and sometimes I have to take out a loan for a young person. I will always go to bat every time for our youth, but that builds tension in the relationship [with the LEA].”

—CBO provider



“ ”

“[In the next five years], I want YDD to expand countywide to work with every law enforcement agency. I like the future outlined in Youth Justice Reimagined. Having a Department of Youth Development [DYD], moving youth justice out of Probation, and having YDD handle all youth diversion cases. DYD will handle the whole youth justice system with a healing centered frame.”

—YDD staff

History of YDD

In the early 2000s, community organizations led by youth directly impacted by the juvenile justice system in Los Angeles County were working to highlight the problem of the criminalization of Black and Latine youth, especially in schools.¹

At the time, most youth arrests or citations in Los Angeles County were for status offenses,² misdemeanor offenses such as petty theft, and low-level felonies.³ Community organizers pushed for transformative changes in the prosecution of low-level offenses against young people. These efforts included campaigns to decriminalize truancy, curfew, and fare evasion violations; end Informal and Juvenile Traffic Courts (IJTCs);⁴ grant amnesty for 250,000 pre-2012 juvenile tickets;⁵ and provide free public transit fare for all Los Angeles County students.⁶ These efforts were also foundational precursors to the County's establishment of the division of Youth Diversion and Development (YDD).⁷

As a result of community pressure, in January 2017, the Los Angeles County Board of Supervisors (BOS) established an ad-hoc Youth Diversion Subcommittee and tasked them with developing a plan to coordinate effective youth diversion in Los Angeles County. The Subcommittee recommended the establishment of a central office to provide countywide coordination and contracts for youth diversion services, envisioning a process where law enforcement would counsel and release the youth it encounters, or refer eligible youth to community-based organizations for services instead of issuing arrests and citations for low-level felony, misdemeanor, and infraction matters.⁸

In November 2017, YDD was established within Los Angeles County's Office of Diversion and Reentry, which is housed in the County's Department of Health Services. YDD's mission is to advance youth development infrastructure and implement a pre-arrest and pre-booking youth diversion model that empowers community-based organizations as the providers of diversion programs in lieu of arrest, with the goal of reducing youth involvement in the justice system.⁹

In 2015, eighty percent of youth arrested in Los Angeles County were legally eligible for diversion in lieu of arrest or citation.¹⁰ YDD's overall goal is to receive referrals from each law enforcement partner for about eighty percent of youth arrests by 2024.¹¹

YDD began diverting youth in April 2019. As of April 2022, YDD has received a total of 1,373 youth referrals.¹² As of the publication of this toolkit, YDD is averaging about 127 referrals per quarter, and is not yet averaging its initial benchmark of receiving approximately 100 referrals per month.¹³

The YDD Model

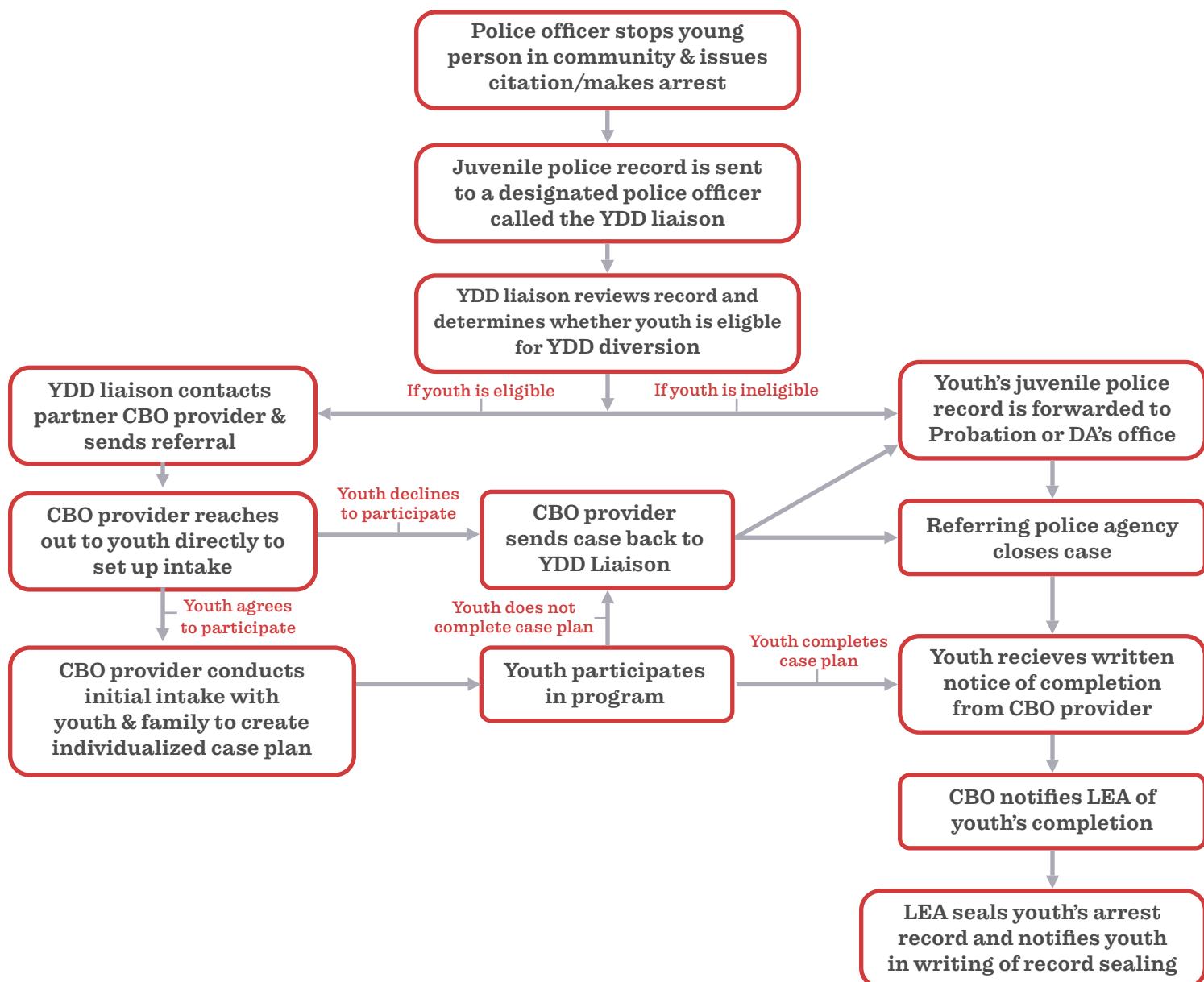
YDD is a countywide centralized coordinating office that provides infrastructure and guides the implementation and evaluation of youth diversion in Los Angeles County. YDD's pre-arrest diversion program spans across eighty-eight different cities, from Lancaster to Pomona, and accepts misdemeanor referrals as well as referrals of low-level felonies for diversion. YDD contracts with community-based organizations (CBO providers) to provide them funding to implement youth diversion programs. Each CBO provider is paired with a law enforcement agency (LEA) that provides referrals. In addition, YDD has created intake and assessment processes; developed data collection and communication infrastructure; and provided technical assistance and training to CBO providers.¹⁴ YDD has also taken a leading role in local initiatives to scale up diversion and youth development work countywide.¹⁵

There are several steps to make a YDD referral. First, a law enforcement officer stops a young person in the community and issues a citation. Then, the citation is sent to that LEA's YDD liaison, another law enforcement officer, who determines whether the youth is eligible for YDD diversion. As of the time of publication, only YDD-partnered LEAs and the Los Angeles County District

Attorney's Office can make referrals to YDD for diversion.¹⁶ If the youth is determined to be eligible, the charge is referred to that LEA's CBO provider partner that has agreed to receive these referrals. These referrals may be pre-arrest or pre-booking.

The LEA sends the CBO provider the police report and/or citation; intake form; and contact information for the youth. Once the referral is received, a case manager from the CBO provider reaches out to the youth and their family directly to set up an individualized assessment. After the youth meets with the case manager, the case manager works directly with the youth and family to determine a case plan to address the young person's needs and mitigate any harms caused from the alleged offense. Generally, case plans are between three and twelve months. The threshold for completion is "substantial compliance" with the case plan, which CBO providers have the discretion to decide. Once the youth completes the case plan, the CBO provider notifies the referring LEA. In some cases, the CBO provider offers aftercare services to the youth, which are optional. Once notified of a youth's completion, the LEA does not forward the charges to Probation or the District Attorney for filing and will seal any juvenile police records that were created, like citations or police reports. If a youth does not complete the case plan, the LEA has discretion to refer the charge to the Probation Department, the District Attorney's office, or take no further action.

FIGURE 1: YDD REFERRAL PROCESS



As of the publication of this toolkit, YDD is in the midst of onboarding new CBO providers with additional LEA partners. YDD's goal is to provide services countywide by 2024, through receiving referrals from every LEA in Los Angeles County, serving a total of 3,500 to 4,000 youth per year.



YDD provides funding for CBO providers to accept two types of referrals: formal referrals and informal referrals to services. There is also a third category of referral, social contact referrals, that YDD does not fund CBO providers to accept. Social contact referrals are explained in more detail in the *net-widening section*.

The distinction between the two referral types is the reporting requirements for the CBO provider and the requirements for youth participation. In an informal referral to services, the LEA refers the youth to a CBO provider with the understanding that the CBO provider will not report back to the LEA about the youth's enrollment and participation in diversion. Participation in diversion is optional for the youth and if they choose not to participate or do not complete a diversion plan, their citation is not returned to the LEA.

In a formal referral, YDD provides limited updates on the youth's progress to the referring LEA. These updates are limited to confirmations that the youth has enrolled, is in progress, and has successfully completed diversion, but does not include information about the individualized assessment or case plan that the youth develops with the CBO provider. The dismissal of the charge and sealing of the juvenile record is contingent on the youth completing the diversion program. If the youth does not complete their diversion program, the CBO provider sends the referral back to the LEA. The LEA may refer the case for formal processing in juvenile court, but that is not required, and the LEA could also decide to take no further action.

In April 2019, YDD announced that its first cohort of partnering CBO providers had begun accepting law enforcement referrals for diversion.¹⁷ These CBO providers vary in experience regarding types of services provided; the organization's size and number of employees; and location(s). Some first cohort CBO providers have previous experience with diversion programming and longstanding relationships with local LEAs, and some had no previous experience in youth diversion before working with YDD. In CJP's experience, the stronger the relationship and level of trust between the CBO provider and referring LEA, the greater number of referrals for more serious charges were made. This is a testament to the relationships among YDD, the CBO provider, and the LEA. Table 1 lists the first cohort's CBO providers and their partnered LEAs.

TABLE 1: YDD-PARTNERED COMMUNITY BASED ORGANIZATION PROVIDERS & LAW ENFORCEMENT AGENCIES (FIRST COHORT)

COHORT ONE CBO PROVIDERS	COHORT ONE LEAS
Alma Family Services	<ul style="list-style-type: none"> • El Monte Police Department • Los Angeles County Sheriff's Department – Industry Station
Asian Youth Center (AYC)	<ul style="list-style-type: none"> • Los Angeles County Sheriff's Department – Lancaster Station
California Conference for Equality and Justice (CCEJ)	<ul style="list-style-type: none"> • Long Beach Police Department • Los Angeles Police Department – Harbor Division
Centinela Youth Services (CYS)	<ul style="list-style-type: none"> • Los Angeles Police Department – 77th, Southwest, Newton, and Olympic Divisions
Champions in Service (CIS)	<ul style="list-style-type: none"> • Los Angeles Police Department – Mission Division
Flintridge Center	<ul style="list-style-type: none"> • Pasadena Police Department
New Earth	<ul style="list-style-type: none"> • Culver City Police Department
Soledad Enrichment Action (SEA)	<ul style="list-style-type: none"> • Los Angeles County Sheriff's Department – Palmdale Station • Huntington Park Police Department
Los Angeles County District Attorney's Office – Refers cases to all YDD-partnered CBOs	

As of the publication of this toolkit, YDD is in the midst of onboarding new CBO providers with additional LEA partners. YDD's goal is to provide services countywide by 2024, through receiving referrals from every LEA in Los Angeles County, serving a total of 3,500 to 4,000 youth per year.¹⁸

SECTION ONE



LEGAL
CONSIDERATIONS IN
PROGRAM CREATION

It is helpful for the CBO provider to have a partnership with a legal services agency with expertise in youth development and diversion to help identify the legal issue, research the matter, and provide consultations based on diversionary best practices.

LEGAL CONSIDERATION IN PROGRAMMING

This section will cover some of the legal issues that may arise in the creation of pre-arrest or pre-booking diversion programming, including obtaining legal support before starting to receive diversion referrals, net-widening and statute of limitations issues, and forming partnerships using memoranda of understanding.

Obtaining legal support for diversion programming

Legal services providers are imperative to building a holistic pre-arrest or pre-booking diversion program.

During the implementation of pre-arrest and pre-booking diversion programs, it is certain that the parties involved will need advice and research on the legality of new diversion-specific policies and practices. For example, CBO providers may have questions about information sharing with law enforcement partners, or whether a specific legal referral is a net-widening referral. In those instances, it is helpful for the CBO provider to have a partnership with a legal services agency with expertise in youth development and diversion to help identify the legal issue, research the matter, and provide consultations based on diversionary best practices.

Additionally, diverted youth and their families may have legal concerns about which they may need to consult with an attorney. In most jurisdictions, if a youth is diverted it is likely that they are not entitled to an attorney. However, diverted youth and their families will still need information about

their rights and may also have legal questions related to the diversion process. For example, before consenting to diversion, a youth may want to consult with an attorney about the diversion process or about pursuing their case in the juvenile legal system. A youth and their family may have legal questions about the impact of diversion on the youth's future goals, like enrolling in college or university, enlisting in the military, or pursuing employment opportunities. Providers can best handle these questions by referring those matters to a partnering legal advocate or legal agency with expertise in youth law who can provide (at minimum) legal consultations to youth and their families.

In Los Angeles County, CBO providers have regularly enlisted CJP's legal support and collaboration on legal issues in the creation and implementation of YDD's diversion program, as well as for direct services to youth and families. Since April 2020, CJP has provided legal consultations to CBO providers and youth and families going through YDD diversion. In providing these consultations, CJP developed extensive expertise on the legal issues that arise from and intersect with youth diversion programs in California and Los Angeles County.

As of the publication of this toolkit, CJP has provided fifty-six legal consultations to CBO providers and youth and families. CJP has provided twenty-six consultations and eight legal trainings to CBO providers. Thirty youth and families have received direct services or consulted with CJP on various legal issues. CBO providers have reported that legal consultations and support have been invaluable to collectively strengthen the CBO providers' knowledge and skills to spot legal issues; have supported youth and families' case plan goals; have prevented negative legal consequences for youth and families; and have saved CBO providers time and resources that may otherwise go to spotting legal issues or researching and referring youth and families to possible avenues for legal support.

Most young people who may have committed a low-level offense do not require formal justice intervention and therefore do not require a formal diversion program.



It is strongly recommended that any jurisdiction contemplating a pre-arrest or pre-booking diversion program contract with a legal services provider to provide additional legal support and services as needed, ideally in advance of implementation as well as throughout implementation.

Net-Widening

What is net-widening?

In the youth justice context, net-widening is the inadvertent expansion of the juvenile legal system. One way that net-widening can occur is if referring agencies over-rely on diversion programs. If the existence of pre-arrest and pre-booking diversion programs change the behavior of referring agencies, causing them to refer youth for diversion who would otherwise not have been required to complete a program, it is net-widening.

For example, if a youth is late to school several times, it would be reasonable to say there is no need for police or justice system intervention. The more appropriate solution may be something informal, like a parent-teacher conference and discussion with the youth about how they might be best supported in getting to school on time. If a youth who is late to school several times is referred to a diversion program, it could be an example of net-widening for two reasons. First, if the youth does not complete the diversion program, they could be referred to the juvenile legal system, which may not have happened but for the diversion program. Second, diversion for a matter such as this, where a police officer could have simply warned the youth, is net-widening because it is more intervention for the youth than is necessary.

The importance of preventing net-widening in diversion programs

Net-widening is a well-known and widely discussed concern in implementing diversion programs because youth who are inappropriately referred for diversion can have increased contact with the justice system, which is the opposite intended effect of diversion and could increase a youth's chances of recidivism.¹⁹ Ideally, diversion programs should only receive referrals of youth who are alleged to have committed a violation that would have otherwise been referred to Probation or to juvenile court.

Most young people who may have committed a low-level offense do not require formal justice intervention and therefore do not require a formal diversion program.²⁰ Additionally, criminalizing acts that are a product of misbehavior or typical youth

development leads to disparate enforcement. Girls, youth of color, and LGBTQIA+ youth are more likely to be charged with low-level status offenses and to be punished more harshly.²¹ Routing those youth to diversion programs reinforces racial and gender bias, homophobia, and perpetuates harm. Net-widening also redirects program resources towards youth that do not need it. Those resources are best allocated to support youth with more serious juvenile charges who would benefit from diversion intervention.

YDD's policies and practices to avoid net-widening

YDD uses data to track charges and prevent net-widening. YDD receives data from CBO providers and LEAs, which is entered into a database that assigns a “charge code” based on the youth’s alleged charge. YDD data policy staff regularly review the charge codes entered by LEAs for clear instances of net-widening, for example, charges for truancy or trespass that are entered as formal referrals. YDD also acknowledges that there are instances where LEAs may be incorrectly categorizing referrals as formal that are more appropriately categorized as informal referrals to services. An individual law enforcement officer has the discretion to determine which charge to enter as the primary reason for a formal diversion and could potentially enter different charge codes into the referral database based on the same set of facts.

CBO providers can also use the information they receive as part of the LEA referral packet to spot net-widening. For example, the CBO provider could receive a formal referral for a charge of battery but may also receive a copy of the police report as part of the referral packet containing details of the incident that appear to be a less serious charge, like disorderly conduct. Disorderly conduct could be treated as an informal referral to services, whereas battery is more likely to be a formal referral. If a referral is incorrectly treated as a formal referral when the underlying facts instead support an informal, light touch diversion program, it could be a net-widening referral.

If YDD’s data policy staff or CBO providers find formal diversion referrals that they consider net-widening, they contact the YDD program managers, who work directly with CBO providers. The YDD program managers then mediate discussions between the CBO provider and LEA about the youth’s charge. The CBO provider advocates for the conversion of the referral to an informal referral to services, which allows the youth to opt-in to the diversion services with no reporting requirements to the LEA. In an informal referral to services, the LEA will also immediately dismiss the youth’s open charge. In YDD’s experience, the LEA has never refused to convert a net-widening case from a formal diversion to an informal referral to services. YDD staff credit this to their hands-on approach to building individualized relationships with law enforcement partners, and their emphasis on shifting the culture of LEAs away from filing every referral as a formal referral.

YDD also crowdsources its data to help monitor net-widening. As of the publication of this toolkit, YDD releases quarterly Data Dashboards that are open to the public. The Data Dashboards are YDD’s commitment to transparency, with the goal to generate discussion and to get feedback from the community on whether broader net-widening exists within the data provided. In the Data Dashboard, YDD shares data on the number of youth referred within the quarter and in total since referrals started; demographic data like age, race/ethnic identity, and gender identity; and incident data, like the type of alleged offenses, the location of occurrence (e.g., schools, group home, residence, etc.), and the level of the alleged offense (status infraction, misdemeanor, or felony).

In order to prevent net-widening, YDD has a current policy on “social contact referrals,” which are referrals for behavior or concerns that are not connected to an arrestable offense or incident. YDD does not provide funding for CBO providers to assist on these types of referrals at this time, although a provider could accept the referral and provide services to a youth through one of its other programs. The policy states that these types of referrals incentivize net-widening and “do not advance YDD’s current scope of diverting young people away from the justice system, even if they can be looked at as preventing involvement at a later time.”²²

Some of the CBO provider’s questions to CJP have raised the issue of whether net-widening is occurring. For example, one CBO provider reached out to request consultation on a referral they had received from law enforcement that they felt was inappropriate because of the length of time between the alleged offense and the referral (over two years). The CBO provider was concerned and rightfully so: the charges had not been filed for over two years and then the case was diverted, necessitating a conversation

about whether the charge itself was serious enough to warrant a formal intervention. Because there is a possibility that if the CBO provider rejects the diversion referral that law enforcement may proceed with formal charges, the CBO provider ended up accepting the referral to avoid that consequence for the youth. However, the CBO provider did work with the LEA to categorize the referral as an “informal referral to services,” meaning that law enforcement would dismiss the charge once it was referred to the CBO provider, and if the youth opted not to participate in diversion, the CBO provider would not have to report that information to the referring LEA.

Recommendations to prevent net-widening in diversion programs

1. Decriminalize low-level offenses and discourage use of law enforcement in response to low-level offenses

Diversion practitioners and stakeholders can discourage net-widening by identifying certain low-level juvenile violations that may only require an informal warning, connection with those in the young person’s support system, and release back into the community—a process known as “counsel and release.” Certain status offenses and other juvenile violations, like curfew, daytime loitering, disturbing the peace, trespassing, and truancy may not merit any law enforcement response or even a referral to diversion. Criminalizing status offenses is harmful to young people and contrary to best practices in handling typical adolescent developmental changes and support needs.²³ An agreement about how to handle these low-level violations without law enforcement responses can be formalized in an MOU.

Counsel and release has been shown to be more effective in reducing recidivism for youth with low-level charges than either diversion programs or processing in the juvenile justice system.²⁴ California law grants broad discretion to a law enforcement officer who takes a young person into temporary custody to not only arrest or cite the youth, but to exercise the option to counsel and release.²⁵ Jurisdictions implementing diversion programs should have a firm understanding of the laws that authorize law enforcement discretion in executing an arrest and charging a youth, and should not allow low-level offenses that are clear examples of net-widening, like truancy, diversion, and other status offenses, to be eligible for diversion.

As part of a greater goal to decrease net-widening and align with best practices, CBO providers or government agencies may wish to identify low-level offenses for which to pursue amendment, repeal, and decriminalization at state, municipal, or local levels.

Additionally, there are many times when teachers, school administrators, group home employees, and other youth workers outsource discipline issues to LEAs rather than handling it themselves. It is important that the implementation of diversion in communities and youth centers also addresses the more time-intensive and involved process of transforming the culture of the community and educating individuals and system actors about the harms of referring minor infractions or discipline issues to law enforcement.

2. Empower CBO providers to reject diversion referrals that cause net-widening

In conjunction with reducing law enforcement discretion to divert cases, practitioners and localities should empower CBO providers to reject diversion referrals that cause net-widening.²⁶ CBO providers should be trained on net-widening, advised on how to issue spot whether a youth’s case may not need further intervention, and supported on communicating to the referring agency that the case should not be pursued or filed. Depending on the case, it may either be rejected outright with no contact made to a youth and the charge dismissed, or the CBO provider may decide to treat the matter as an informal referral to services by offering optional services and supports to families.

When there are multiple CBO providers working within a city or county, CBO providers should work to develop guidelines for rejecting inappropriate diversion referrals collectively. This allows for uniform standards across diversion providers and referring agencies and minimizes the need for individual providers to push back against their referring LEA, which could harm the

relationship. If diversion providers are coordinated by a city or county office, this office should work to support the creation and promulgation of shared standards to prevent net widening.

MOUs can contain a provision authorizing CBO providers to reject diversion cases that are inappropriate as deemed by the provider. The term “inappropriate” can be clearly defined to ensure that the focus is on preventing net-widening, for example, stating that an inappropriate referral would be one for truancy, jaywalking, fare evasion, or other low-level enumerated violations. If a case is rejected by a CBO provider because it is net-widening, it should be agreed upon in the MOU that those cases cannot be referred for further system involvement.

3. Use data to track net-widening

Agencies and practitioners should take both a narrow and broad perspective about the type of data that should be collected to monitor net-widening. Below are the types of data that can be used to determine whether net-widening is occurring in a pre-arrest or pre-booking diversion program.

TYPES OF DATA TO COLLECT

DEMOGRAPHIC DATA

- Age
- Racial/Ethnic identity
- Gender identity/Sexual orientation
- Foster system involvement

INCIDENT DATA

- Type of alleged offense (e.g., battery, truancy, trespass)
- Location of occurrence

LEVEL OF ALLEGED OFFENSE

- Status offense/infraction
- Misdemeanor
- Felony

ARREST DATA

- Number of arrests versus number of referrals made to CBO providers, broken down by type of offense

LOCATION DATA

- Where arrest/citation, or referral occurred (e.g., school, community, group home, residence)

MISCELLANEOUS

- Number of youth referred to diversion since implementation, broken down monthly or quarterly
- Number of youth entering the juvenile legal system before and after diversion implementation
- Counsel and release data pre- and post-diversion implementation

This data should be made available to the community, and open forums should be provided for public comment and input on findings from the data. Additionally, it may be helpful to devise data infrastructure that flags certain charges as net-widening for referring agencies and CBO providers. Policies could state that referrals flagged as net-widening in the data system cannot be made at all or require the referring agency and the CBO provider to discuss those cases and make determinations on their appropriateness for diversion on a case-by-case basis.

Diversion partners should accept that youth transformation does not occur on a specific timeline. Policy making should prioritize flexibility in timing, to give youth the best possible chance of completing diversion on their own terms in conjunction with their individual needs.



Statute of Limitations

What is a statute of limitations?

A statute of limitations is a law that sets the maximum length of time between when a violation occurs and the filing of the case in court. If charges are not filed in court before the statute of limitations period ends, then the charges cannot ever be filed in court. When this happens, the statute of limitations period has run, and the legal action is barred.

The importance of statute of limitations for diversion programs

The statute of limitations is particularly important for jurisdictions that have diversion programs like Los Angeles County's, where if a youth does not substantially complete diversion, the case may be filed in juvenile court. In these localities, one key consideration will be the length of time a diversion program may last. Depending on the offense, the statute of limitations will likely place time restrictions on diversion programming, because a diversion program that lasts longer than the charge's statute of limitations will result in the charge being barred from filing.

Additionally, it is also important that the referring agency and the CBO provider agree about the maximum length of time that a referred youth may be enrolled in a diversion program. The length of time of diversion programs could affect the range and type of services that the CBO providers will offer.

Statutes of limitations in YDD diversion cases

Currently, Los Angeles County law enforcement agencies that are partnered with YDD may file a charge in juvenile court if a youth does not agree to engage in diversion or does not successfully complete their diversion program.

YDD's policies state that providers are encouraged "to support completion of the [diversion] program in the shortest time needed for a youth to complete their goals and anticipates that most youth will complete the program in three to twelve months."²⁷ Anecdotally, Los Angeles County law enforcement agencies have preferred a six-month limit on diversion cases and are reluctant to allow extension of diversion over twelve months, with some exceptions. At least one YDD-partnered LEA has expressed concern over granting any extensions of time over six months because of concerns related to the statute of limitations expiring on the referred charge, and because the District Attorney's office has requirements about the length of time a LEA has to send a case to the District Attorney for filing. Some LEAs are concerned that without the threat of charges, a youth will not be invested in completing diversion.

In California, most misdemeanor cases have a statute of limitations of one year, and most felonies have a three-year statute of limitations. As of April 2022, fifty-six percent of YDD referrals were for misdemeanor offenses, while thirty-four percent of referrals were for felony offenses.²⁸

Recommendations for thinking about statutes of limitations in diversion programs

Before implementing pre-arrest or pre-filing diversion programs, localities should conduct preliminary research into the statute of limitations for eligible pre-arrest diversion charges. This research may inform any discussions with referring agencies like LEAs, as well as CBO providers, about how long diversion programs should last.

For diversion programs that allow CBO providers to return referrals to law enforcement if the youth does not complete diversion, the interests of youth participating in diversion should be prioritized. Consent forms should include a provision, either initialed or signed by the youth, in which the youth agrees that they do not waive the statute of limitations for the diverted offense.

Diversion partners should accept that youth transformation does not occur on a specific timeline. Policy making should prioritize flexibility in timing, to give youth the best possible chance of completing diversion on their own terms in conjunction with their individual needs. One way that localities can incorporate flexibility into diversion timelines is through the creation of policies stating that charges referred for diversion will not be returned to law enforcement, no matter the outcome of the diversion.²⁹ This would allow a CBO provider to focus fully on ensuring a youth can get the most out of diversion on their own timeline.

It is important to acknowledge that any process with an underlying premise that young people must go to diversion or will have their charge filed in juvenile court is not a best practice that will ensure positive outcomes for youth because it is not consistent with current science on adolescent development and is counterproductive to the goals of diversion programming.³⁰ Experts on pre-arrest and pre-filing diversion agree that there needs to be culture and mindset changes in pre-arrest and pre-filing diversion to understand that diversion is an end in itself.³¹

Memoranda of Understanding

What is a memorandum of understanding?

A memorandum of understanding (MOU) is a contractual agreement that lays out the obligations of its parties. It can be a binding legal agreement if the parties specify, but it is generally a non-binding document that is used to define a relationship among parties.

The importance of using memoranda of understanding in diversion programs

MOUs are helpful as a tool for establishing consensus and encouraging transparency between parties on key issues. In a jurisdiction where there will be several MOUs because of various agencies' involvement, MOUs can standardize practices and ensure accountability.

In the youth diversion context, MOUs can encourage providers and referring agencies to agree on the metrics of their diversion programs, including delegating the responsibilities of diversion partners; determining the eligibility criteria for referral to diversion; and enumerating protections that will ensure the best outcomes for youth.

Formalizing the terms of diversion referrals in MOUs is one strategy to build strong and sustainable partnerships with LEA partners and create infrastructure for equitable programming so that diversion does not heighten or replicate the fundamental problems of the juvenile legal system.

YDD's memoranda of understanding policies and practices

Prior to beginning diversion, YDD executes an MOU with each set of diversion partners. The MOU governs the relationship among three parties: a CBO provider, the CBO provider's referring LEA, and YDD.

Once the MOUs are finalized, YDD's policies recommend they are reviewed at least once annually, but the decision to review is left up to the CBO provider and LEAs. The MOUs do not include language specifying the term, or length of time, of the relationship among the parties.

YDD's MOUs include some standard language. Each MOU uses the same language about the purpose, collaboration, and goals of the partnership of the MOU parties; the definitions of various term used throughout the MOU; the research and legal foundations for the YDD program model; and the rights of youth enrolled in YDD diversion. All of YDD's MOUs contain sections on evaluating eligibility and suitability for diversion; responsibilities of each party to the MOU; communication and reporting agreements; and confidentiality protections.

However, YDD's MOUs are also individually tailored to the different parties of each agreement, and the agreements and protections vary in each MOU. In a particular MOU among YDD partners, for example, the eligibility and suitability section states that the LEA will refer any vandalism charge to its partner CBO provider, while another MOU between a different LEA and CBO provider contains a caveat that only vandalism cases "without gang affiliation" could be eligible for diversion. These differences are the result of individual negotiations among the different parties to each agreement. Some CBO providers stated in interviews that they agreed to limit the eligibility of certain offenses for diversion in MOUs with the hope of building a relationship with the LEA and re-negotiating eligibility once the success of diversion is shown.

Regardless of the MOU, there are times when LEAs exercise their discretion and do not make referrals to YDD even if the offense is eligible for diversion. None of YDD's MOUs contain terms requiring "any and all" of a particular charge to be referred to a CBO provider. This provides the LEA with unfettered discretion –for example, in two arrests of two different youth for petty theft, with everything else being equal, one youth could be referred for diversion, and the other could be referred to juvenile court.

In interviews, CBO providers expressed frustration and problems they were having with the number and types of referrals they were receiving. These CBO providers stated that there was significant disagreement with law enforcement about the number and type of referrals the CBO provider wanted the LEA to refer for diversion versus what the LEA wanted to refer CBO providers. CBO providers also expressed a lack of clarity around which types of violations were legally eligible for referral.

Recommendations for creating memoranda of understanding for diversion programs

1. Conduct a legal analysis of current state and local diversion laws

The first step in creating a comprehensive MOU for a diversion program is to conduct a legal analysis of the jurisdiction's existing laws regarding diversion programs. Potential areas of analysis include, but are not limited to:

- Confidentiality protections for youth
- Violations that are eligible and/or ineligible for diversion
- The statutes of limitations for eligible diversion violations
- Law enforcement's discretion to make referrals (if law enforcement will be one of the primary referring agencies)
- Cross-reporting requirements for diversion partners about a youth's progress in diversion (what information must be shared among parties)
- Steps for sealing a juvenile record (if the referring agency creates a juvenile police record before making the referral, like in pre-booking diversion)

This analysis will help determine what MOU terms may be flexible, and which are not because they are mandated by state law. For example, California law requires CBO providers engaging in diversion to report back within 20 calendar days to the referring agency whether the CBO provider is accepting the diversion referral. A CBO provider could therefore agree in a MOU to report back on the acceptance of a referral within 10 days but could not create a term that allows them to report back within 30 days.

2. Standardize certain MOU terms before entering negotiations

In general, any government agency or group of stakeholders creating a diversion program should consider standardizing certain MOU provisions and protocols before entering negotiations. This ensures clarity for all parties on the terms that are foundational aspects of the pre-arrest or pre-booking diversion program. For example, if the diversion program is only a pre-arrest diversion program, one standard, non-negotiable term will be that law enforcement will not arrest, cite, or book any youth before assessing their eligibility for diversion.

Standardized terms also help ensure accountability and create more equitable bargaining power among the parties engaging in negotiations. Using the pre-arrest diversion provision above as an example, if all MOUs contain a standard term requiring LEAs to assess a youth for diversion before arresting, citing, or booking, then new LEAs that agree to make referrals as the diversion program expands have less grounds for changing that term because the provision is contained in several other MOUs. In this way, the provision defines the diversion program's culture and values.

The above example shows how standardized MOU terms can be helpful in larger jurisdictions with several referring agencies. However, standardized terms can be beneficial for smaller jurisdictions as well, like municipalities or counties with only one or two LEAs or CBO providers. For example, a MOU with a provision that requires the parties to re-negotiate its terms every year can be beneficial for a CBO provider. A yearly re-negotiation gives CBO providers more opportunities to use positive diversion outcomes as leverage to obtain commitments in the MOU for the referral of more cases or more serious offenses for diversion in the next year.

Even if agencies will be working from a template agreement that contains standardized provisions, some matters will require negotiation with other parties over terms. Certain provisions will require compromise, and before starting the process, bureaucracies and stakeholders should carefully consider and decide which terms are flexible and which are not.

3. Determine the parties to the agreement

An important initial step in drafting a MOU is determining who the parties to the agreement will be. A MOU may be executed among more than two parties, like Los Angeles County does. However, a locality may not have a coordinating city or county agency to contract with and its MOUs may only include two parties (CBO provider and referring agency, like law enforcement). There are benefits and drawbacks to collaborating with a coordinating agency to execute a MOU.

One of the benefits of an MOU between a CBO provider and a referring agency without a coordinating agency is that it may be easier to reach agreement. The more negotiating parties to an agreement, the more work that will have to be done to agree on particular terms. However, when there is no centralized coordinating agency like YDD, there must be special consideration taken to ensure that terms across two or more MOUs (e.g., a CBO provider contracting with a LEA in one MOU and then executing a second MOU to provide diversion services to a school) are consistent so that the purpose and goals of the diversion program are not lost in the minutiae of negotiating specific terms. A centralized coordinating agency can help maintain consistency across diversion partners.

4. Set the process and timeline for sending referrals to each program

Before beginning to receive diversion referrals, diversion practitioners, CBO providers, and other stakeholders should collaborate to develop a set of referral criteria for LEAs to limit ambiguity and confusion.³² If a local governmental agency is coordinating diversion services, that agency can create program-wide policies and procedures adopted from the referral criteria that specify circumstances in which LEAs should divert cases.

MOUs between CBO providers and LEAs may contain an appendix of the referral criteria developed by stakeholders and should outline the process for making referrals to diversion. This includes provisions delineating whether a LEA or CBO provider will decide who is eligible for diversion, and which agency will determine if a youth successfully completes or does not complete diversion.

Another provision that all MOUs for pre-arrest or pre-filing diversion should include are the deadlines for the length of time law enforcement has to make a referral to the CBO provider. It may be helpful to include some timelines as an appendix, including: the maximum amount of time between a violation and a referral to diversion, the length of a diversion program, and the timeframe for providing updates to the parties. Affirming the timelines of the referral process can also resolve some potential legal issues around **Statute of Limitations**.

In addition to MOU provisions, partnering LEAs should be encouraged to work with local stakeholders to revise or create internal law enforcement policies that incorporate the same diversion referral criteria relied on by CBO providers to ensure that all eligible referrals are being made. If data collected shows that charges that are otherwise eligible are not being diverted, there should be a mutual understanding that the LEA should amend their practices to ensure that all eligible referrals are being made.

5. Include protections for youth confidentiality and data sharing

MOUs should contain information about how the parties to the MOU should protect young people's confidentiality, including how data will be shared among the parties to the MOU. This includes discussion and inclusion of terms around who has access to data; how often and what types of data will be shared; and what tools will be used to restrict data access (e.g., encrypted email or other technology that anonymizes and protects information). Other confidentiality provisions include sealing juvenile police records and CBO provider records once the diversion is completed, as well as limiting the types of information that can be shared if the youth has any future juvenile justice involvement. This issue is further discussed in the **Confidentiality** section of the toolkit.

6. Incorporate provisions that authorize negotiation of MOUs every year while the program expands

As diversion programs expand and CBO providers build a track record of successful diversion cases, providers may have more leverage in negotiating MOU terms that expand the types of violations that can be referred.

In July 2018, Florida enacted an amendment to its existing pre-arrest diversion program, which mandated pre-arrest diversion programming statewide.³³ One of the state's most well-known pre-arrest diversion programs is its civil citation program, where fines are issued for certain low-level violations of law, rather than arrest or referral to the juvenile justice system. A key finding in Florida's civil citation program was that counties that either negotiated new memorandums or renegotiated MOUs saw increased usage of their diversion program after the new MOUs went into effect.³⁴

Instead of negotiating new MOUs every few years, CBO providers, county agencies, and law enforcement may want to include provisions requiring them to sit down and reassess program goals every year as the program expands. This way, all parties can reflect and consider expansion of diversion as a provider has more capacity, as outcomes evolve, and as funding for these programs grows.

To summarize, below is a short list of the different issues the parties may want to discuss as they formalize their relationship using an MOU, and the types of terms that can be included in an MOU.

MOU PROVISION CHECKLIST

- ✓ Create a template agreement. Decide beforehand which provisions are subject to negotiation and which provisions are not.
- ✓ State the names/organizations that are parties to the agreement.
- ✓ List the specific violations that are eligible for diversion in the jurisdiction. A list of violations can be included as an addendum.
- ✓ Outline the process for making referrals to diversion, including naming the party who will decide who is eligible for diversion and will make the referral, and the party who will determine if a youth successfully completes and does not complete diversion.
- ✓ Include a timeline that states the maximum time between a violation and a referral to diversion, how long diversion should last, and the timeframe for providing updates to the parties.
- ✓ Include plans for how the parties will keep a youth's information confidential.
- ✓ Incorporate provisions that specify how data will be shared among the parties (how often will data be shared, what types of data, prohibitions on sharing of certain data, etc.).
- ✓ Set goals for each party relative to diversion. For example, setting a goal that all youth that meet the eligibility and suitability criteria for diversion should be diverted; and/or a goal to equitably reduce arrests and the number of filed citations for eligible cases over the MOU period.
- ✓ Include yearly re-negotiation timelines to revisit, amend, or change MOU provisions.

LEGAL CONSIDERATIONS IN IMPLEMENTATION



SECTION
—
TWO

Determining who may consent to enroll a youth into programming can either increase or limit young people's access to diversion programs.

LEGAL CONSIDERATIONS IN IMPLEMENTATION

This section presents some legal issues that may arise during the implementation process of pre-arrest or pre-booking diversion programming, specifically related to obtaining consent, dealing with diverted youth with multiple charges, mandated reporting, and confidentiality.

Consent

What is consent in the youth diversion context?

In all states, minors need legal authorization, or consent, from a parent or guardian to enroll in or to receive certain services. Some examples of services requiring parental consent include medical information, mental health treatment, or drug and alcohol counseling. In Los Angeles County, before YDD was established, the common practice was for youth under the age of 18 to obtain a parent or legal guardian's signed consent to participate in diversion programs, which can include the services enumerated above.³⁵

The importance of youth consent policies in diversion programs

Determining who may consent to enroll a youth into programming can either increase or limit young people's access to diversion programs.³⁶ A consent policy that requires a parent or guardian's consent could provide more protections to a young person engaging in diversion, as parents are often considered to have better judgment to make fully informed decisions. Additionally, parental consent policies acknowledge the rights of parents to exercise care and control over their

children, and their legal right to make most decisions on behalf of their children.³⁷

On the other hand, a consent policy that authorizes youth to consent on their own behalf may be more equitable and allow more youth to participate in diversion. For example, a youth in the foster system who is referred to diversion may not have an easily accessible parent or guardian to consent for them because they have been removed from their parent's care and placed in the system. Other guardians in their life—group home case managers, child protective services case workers, or their dependency attorney—may face bureaucratic barriers or ethical obligations that prevent them from consenting on behalf of the youth. Additionally, those guardians may not be best equipped to exercise decision-making on behalf of the youth, or that youth may not trust sharing the diversion referral with them.

A policy that requires parental consent in order to participate in diversion could prevent this young person from accessing supportive and meaningful programming, and the lack of consent can mean this youth is referred to juvenile court. Parental consent policies could also present a conflict of interest in an instance where the parent is the person who reported the youth to law enforcement, triggering the diversion referral. These issues highlight the importance of thinking through consent policies to ensure fair access to diversion for youth regardless of their family circumstances.

YDD's policies and practices on consent

YDD requires CBO providers to present youth and/or their parent or guardian a consent form before participating in diversion. YDD prefers that a parent or guardian sign all consent forms, but authorizes CBO providers to exercise their best judgment in deciding a youth's ability to consent for themselves. If CBO providers have reason to believe that the young person should be able to consent without their guardian, they can proceed accordingly.³⁸ The CBO provider should exercise their best judgment in deciding whether the circumstances provide enough reason for a youth to consent on their own behalf.³⁹ If a CBO provider is unsure about whether

a youth may consent for themselves, they are asked to contact YDD or CJP to help them think through the issue on a case-by-case basis.⁴⁰

The type of consent a youth will provide depends on whether they were referred for a formal diversion program or informal referral to services. The largest difference between the formal diversion and informal referral to services consent forms involves information sharing among different agencies involved with the youth's diversion.

The formal diversion program consent form contains provisions that authorize YDD to share enrollment and completion statuses back to law enforcement without additional narrative. This consent form also provides information about what happens if a youth decides not to enroll in diversion, or does not substantially complete their diversion program, including filing of the case in the juvenile court system.

The consent form for an informal referral to services does not authorize YDD to share information with the referring law enforcement agency. There are no provisions on what will happen if a youth does not enroll in diversion or does not complete diversion, because the LEA closes the case before it is referred to the CBO provider, and a youth's participation in an informal referral to services is optional.

Recommendations for thinking about youth consent to diversion programs

In 2019, students with the UCLA Luskin Institute on Inequality and Democracy published a policy report that YDD commissioned to answer the following 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, how should YDD construct its consent policy, given the ethical legal, and practical concerns surrounding implementation in Los Angeles County?⁴¹

The authors conducted data analysis and interviews with YDD stakeholders, including staff, CBO providers, law enforcement, youth, and legal professionals. The report makes several thoughtful recommendations that can likely be adopted more broadly beyond Los Angeles County, including:⁴²

- Considering the adoption of a youth consent policy that allows a youth to select a supportive adult, who may be a parent or guardian, but does not have to be, to consent on their behalf. This recommendation may require additional research and analysis of state law to determine if such a consent policy is possible.
- Youth should be able to consent for themselves if an unsuccessful attempt is made to contact a young person's chosen supportive adult, parent, or guardian. The chosen supportive adult does not have to be a legal guardian.
- Consent documents should be written in accessible language, and CBO providers should explain diversion using accessible language to youth before they consent.
- Youth should be able to give consent in the least coercive environment possible.

For more information on these recommendations and the report's analysis, see [Establishing a Consent Policy for Youth Diversion in Los Angeles County](#).⁴³

Confidentiality

What is confidentiality?

In a youth justice context, confidentiality means the protection from public or interagency disclosure of verbal and written communications, records, and other information associated with youth under the age of 18 who come into contact with the justice system. The types of information that may be confidential in the juvenile legal system include police and arrest records, court records, education records, communications between a youth and their attorney, and physical and behavioral health information.

The types of information and records that can be produced in a pre-arrest or pre-booking diversion program include: (1) arrest, citation, police reports, and booking records created by the law enforcement agency during a police stop; (2) referral forms that show the fact of a youth's participation in diversion; (3) written records created during the diversion process, like intake forms and the CBO provider's case plan that is generated in the course of providing diversion services, which may include drug or mental health treatment information; and (4) verbal communications occurring during the diversion process, like discussions between case managers and youth, or case managers and family members.

The importance of confidentiality in youth diversion programs

One main purpose of pre-arrest diversion programs is to protect youth from the inherent criminogenic nature of the juvenile legal system and its stigmatizing and harmful effects of labelling youth as "criminals" or "delinquents."⁴⁴ Even if charges are not filed, a youth in a diversion program can still have an arrest record, booking record, or citation that may show up on a background check for housing, employment, military service, or higher education, which will impact their ability to achieve their goals and find stability as they move into adulthood.

Providing strong confidentiality protections for youth who are going through pre-arrest diversion supports the mission of diversion, which is to provide boundaries, consequences, and accountability for youth without punitive, stigmatizing, and harmful collateral consequences that have been shown to lead to fewer opportunities, low self-worth, and recidivism. It is important to keep information about a youth's participation in diversion confidential so that young people can move beyond mistakes made in childhood and thrive without the burden of a juvenile record.

YDD's confidentiality policies and practices

YDD's general confidentiality provisions

State law and YDD's confidentiality policies protect the following types of information from being shared without consent:⁴⁵

- **Physical and behavioral health information, as well as substance use information⁴⁶**
- **Educational information⁴⁷**
- **Individualized information about referred youth, except for what is required under California's mandated reporting law⁴⁸**
- **Juvenile police records⁴⁹**
- **Immigration status⁵⁰**

As of the publication of this toolkit, YDD coordinates its services with other County departments, including the Department of Health Services, Mental Health, Public Health, and the Department of Arts and Culture. YDD also coordinates its services with CJP and the Children's Law Center, which represents minors whose parent or guardian have an open dependency court case.

As part of the intake process, youth and families who enroll in YDD's program are asked to sign an *Authorization for Disclosure of Information* that authorizes these different departments and organizations to share information with each other, which waives some of the youth's confidentiality protections. This authorization allows CBO providers to share information about the youth.⁵¹ However, the sharing of information is still limited to certain agencies and the only reason information should be shared is "for the purpose of coordinating care, making referrals, and evaluating YDD's program."⁵²

Before signing below, you can choose whether or not you want to share certain types of information. Check and initial the type of information you agree to share.

- Physical health treatment information _____ (initial)
- Physical health treatment information _____ (initial)
- Mental health treatment information _____ (initial)
- Substance use treatment information _____ (initial)
- Education information _____ (initial)

This form includes a section that allows the young person and their family to check the box and initial next to the specific types of information they are agreeing to allow YDD to share within its coordinator network:

If a young person decides not to share certain information, YDD's authorization notes that the youth's "participation in the YDD program may be limited, and [they] may not be able to receive full care coordinated services," although it does not bar the youth from participating in diversion.⁵³

Not all of these policies are based on state law, which means that CBO providers and partner LEAs may contract out of some of these confidentiality protections in the course of negotiating the MOU.

YDD's confidentiality policy does not eliminate the possibility that CBO providers will share potentially confidential information with their partner LEA, if neither party is aware of the policies or circumvent them. For example, a CBO provider reported that its partner LEA asked if the provider could bring in a group of diverted youth to share their stories with frontline law enforcement officers to promote the diversion program. Although this sounds positive in theory, it conflicts with maintaining the youth's diversion as confidential. In an instance like this, the youth and their parent or guardian would need to waive the youth's confidentiality rights. As a preventative measure for issues like this, YDD encourages CBO providers to build strong relationships with their partnered LEA and keep their individual case managers well-informed on confidentiality issues in order to mitigate the possibility of sharing potentially confidential types of information.

In practice, CBO providers experienced recurring legal questions around issues of confidentiality. CBO providers raised confidentiality questions in considering three types of information: (1) the fact of diversion, or the disclosure that a young person is enrolled in a diversion program; (2) verbal communications between providers and youth in the course of diversion; and (3) written diversion records, which may consist of juvenile police records and also intake forms, assessments, and other documents

CBO providers generate in the course of providing diversion services. Below is an analysis of the confidentiality concerns with each of these three types of information.

Fact of diversion

The fact of diversion refers to the CBO provider's confirmation of a young person's enrollment in diversion services. As of the publication of this toolkit, California law does not directly address the question of whether a youth's participation in a pre-arrest diversion program like YDD's is confidential, nor does YDD have specific policies relating to if or how providers should disclose the fact of diversion to other youth stakeholders, like defense attorneys, district attorneys, or courts.

Pre-arrest or pre-booking diversion providers may face circumstances where they consider whether to disclose a youth's enrollment in their diversion program. For example, a provider may want to disclose a youth's enrollment in diversion if the same youth is stopped and cited or charged by a second law enforcement agency, and the provider wants to try to have the second charge diverted. In that case, a provider will need to weigh the costs and benefits of the disclosure of potentially confidential information. A provider may want to disclose the fact of the youth's current diversion enrollment or at minimum, the fact that the provider has a pre-existing relationship with the youth. Before getting in touch with the defense attorney, the CBO provider should consult with the youth and obtain permission to disclose the existence of the relationship.

In most instances where this has been an issue, the CBO provider has consulted with the defense attorney representing the youth in the juvenile case to determine whether to disclose information to the court, and how the information should be disclosed. CJP has advised CBO providers on drafting letters of support that they can provide to the court that do not include confidential information.

Verbal communications

CBO providers raised questions about the confidentiality of verbal communications between providers and youth during diversion, and how those types of discussions were protected under state law. State law does not explicitly protect all verbal communications shared during diversion, with the exception of communications made during mediation processes, which could encompass Restorative Justice conferences (see *Section on Legal Issues in Restorative Justice* for more information). Nor do YDD's policies provide blanket confidentiality protections for statements made by youth or information verbally disclosed to CBO providers during their diversion program. However, state law does protect communications between youth receiving diversion or treatment services and licensed clinicians, like social workers, therapists, or drug/addiction counselors.⁵⁴

CBO providers also wanted to know if program staff could be subpoenaed or compelled to testify in a later court case about the matters discussed in the diversion. Although it is unclear whether state law shields CBO provider staff from disclosing information about a youth's case if compelled to in court, YDD's policies have supported this protection. YDD recommends that CBO providers and referring agencies agree to protect "statements made by youth in the course of diversion from being used in further juvenile or criminal proceedings."⁵⁵ Additionally, YDD recommends that CBO providers and referring agencies agree in the MOU to protect CBO provider employees, family, community members who participate in diversion, or anyone involved in the youth's case plan, from testifying in later juvenile, criminal or civil proceedings.⁵⁶

As of this toolkit's publication, all but one of YDD's executed MOUs uses YDD's recommended language (or similar language) to protect communications from disclosure in later court proceedings. The excepted MOU states "[LEA] can interview, investigate, or require testimony from [CBO] employees, other diversion service providers, family and community members, and any other participant in the youth's case plan about diversion if a 'judicial subpoena' is issued." This particular MOU authorizes LEAs to obtain information from participants in a youth's case plan on the youth's diversion, and if a later court case occurs, share the information with various court actors, including attorneys, Probation, and judges.

Written diversion records

California law provides comprehensive confidentiality protections for juvenile case files, which include juvenile police records. Until recently, however, state law did not extend confidentiality protections to pre-arrest or pre-booking diversion records. In 2021, state law was enacted that explicitly states that juvenile police records that are part of a pre-arrest or pre-booking diversion program are subject to specific confidentiality protections.⁵⁷ Not only are youth police records protected from disclosure, but so are written records created by a service provider in the course of a youth's diversion.⁵⁸

Recommendations for thinking about confidentiality in diversion programs

Before accepting diversion referrals, diversion stakeholders should conduct legal research on their state's youth confidentiality laws and their applicability to pre-arrest and pre-booking diversion programs. Jurisdictions should pay special attention to the questions of what information is protected as confidential, who has access to confidential information, and whether confidentiality can be waived. If there are instances in which confidentiality can be waived, it is important to understand who has the authority to waive confidentiality and how a waiver can be obtained. This will be helpful in determining which types of information are legally protected, as well as where there are gaps in the law where youth information is not as clearly or comprehensively protected. Later work should be done to expand on and create robust confidentiality protections for youth in diversion programs if those do not already exist.

After this scan is completed, youth justice diversion partners and stakeholders should devise confidentiality protocols and policies that adhere to state law and protect youth people's confidentiality to the fullest extent, even if such confidentiality provisions are not state law. These policies should not only be included in MOUs but disseminated in a readable format to all diversion partners.

YOUTH CONFIDENTIALITY PROTECTIONS CHECKLIST

EVERY JURISDICTION SHOULD ENSURE THE CONFIDENTIALITY OF THE FOLLOWING:

- ✓ Arrest, citation, police reports, and booking records created by the law enforcement agency during police stops
- ✓ Referring agency referral forms that include the fact of a youth's participation in diversion
- ✓ Written records created during the diversion process, such as intake forms and the case plan that CBO providers generate in the course of providing diversion services
- ✓ Youth and family records provided to the CBO provider, such as education records, public benefits records, immigration records, or child protective services case records
- ✓ Verbal communications occurring during the diversion process, such as discussions between case managers and youth, or case managers and family members
- ✓ Physical and behavioral health information, such as mental health information and substance use information
- ✓ Immigration status of youth and families participating in diversion

If a CBO provider decides to make a mandated report, it is important to mitigate the harm that may be caused by doing so.



Mandated Reporting

What is mandated reporting?

Mandated reporting is the legal duty to report alleged cases of child abuse or neglect. In most states, it is a crime if certain professionals who have regular contact with children—like doctors, teachers, or other childcare providers—do not report suspected cases of abuse or neglect. These professionals are called mandated reporters.

The importance of mandated reporting in diversion programs

It is possible that while providing diversion services to a young person that a CBO provider will want to file a mandated report on a youth's behalf. There is also the potential that a CBO provider will learn information that will lead them to file a mandated report against the youth. Because mandated reporting issues are complex and fact-dependent, it is important to address them on a case-by-case basis.

CBO providers may wrestle with the decision to make a mandated report about a youth in diversion because it may negatively impact the relationship that a case manager seeks to build with the youth to support the diversion process. Additionally, CBO provider staff may also empathize and identify with the family and understand how a mandated report could jeopardize the relationships of the youth with their family.⁵⁹

YDD's mandated reporting policies and practices

Under California law, most CBO provider staff are considered mandated reporters and therefore required to report to the state's child protection agency suspected abuse or neglect that may surface during the diversion process.

YDD does not have its own policy on mandated reporting. Instead, each CBO provider agency is asked to follow its own internal procedures for determining when it is necessary to make a mandated report. Although CJP did not receive many referrals on the issue, CBO providers raised mandated reporting as an ongoing legal issue in a survey distributed by CJP in December 2020. Some CBO providers expressed concern about how this could undermine any trust or relationship building between the provider and the youth.

Recommendations for thinking about mandated reporting in diversion programs

CBO providers should assess mandated reporting issues carefully to ensure that a report is made for the right reasons. In California, the statutory definition of neglect is vague, and all too often, poverty or houselessness is mistaken for neglect.⁶⁰ Recent data indicates that almost sixty percent of Black children in Los Angeles will be subjects of a DCFS investigation before they turn eighteen.⁶¹ Nationally, Black, Latine, and Indigenous children are overrepresented in the child welfare system.⁶² For those reasons, CBO providers should carefully weigh the intersecting legal and social issues of youth who are referred for diversion and consider whether implicit or explicit biases are present in their decision to report. The American Academy of Family Physicians published a helpful guide to mitigate implicit bias: [Eight Tactics to Identify and Reduce Your Implicit Biases](#).⁶³

If the issue does not appear to be one that requires mandated reporting, but rather one where the family needs support accessing resources, CBO providers should be trained to provide and help link families to those alternatives.

If a CBO provider decides to make a mandated report, it is important to mitigate the harm that may be caused by doing so. Graduate students at University of Illinois Chicago Jane Addams College of Social Work created a step-by-step guide called [Alternatives to Calling DCFS](#)⁶⁴ (Department of Children and Family Services) that outlines how this can be done:

1. Involve the family;
2. Inform the family of their rights and lack of rights when involving DCFS, including that there is no right to remain silent or a right to counsel when being investigated by DCFS;
3. Request that the operator repeat back everything that is reported and confirm that it is being repeated accurately;
4. Highlight the family's strengths and protective factors; and
5. Provide support and advocacy through the process.

Multiple Charges

What is meant by multiple charges?

For the purposes of this toolkit, the term “multiple charges” means any instance in which a youth has been referred to pre-arrest or pre-filing diversion for one charge, and either already has a second charge that is filed in juvenile court or picks up a new charge that is filed in juvenile court. A multiple charge case can also mean the youth has received a citation for a status offense or other low-level charge and faces fines, community service, and/or a driver’s license suspension while going through diversion.

The importance of considering the effects of multiple charges in diversion programming

The more contact youth have with the juvenile legal system, the higher the risk of negative outcomes.⁶⁵ These outcomes include increased likelihood of involvement in the justice system later in life,⁶⁶ worse education outcomes,⁶⁷ fewer employment opportunities,⁶⁸ and negative health impacts, such as behavioral health or substance use issues.⁶⁹ Black, Latine, and Indigenous youth are overrepresented at every entry point of the juvenile legal system.⁷⁰ It is harmful to and undermines the diversion process for youth to be in diversion and in the juvenile legal system at the same time.

Youth who have a second charge that is very serious could be incarcerated during the pendency of the diversion. In those cases, CBO providers may have trouble staying in contact, coordinating case plan services, and building relationships with the youth. Additionally, if the youth comes under Probation supervision as a result of the second charge, they might be overburdened if they must comply with Probation conditions as well as a diversion case plan.

In juvenile court, judges, prosecutors, and defense attorneys may not understand the range of pre-arrest and pre-filing diversion programs available in the community and how these programs operate. Because these court actors may not expect to see a diverted youth in the court system, they may not have the expertise on diversion or the willingness to collaborate with CBO providers. A judge or prosecutor may use the fact of the youth's diversion against them in court, which could result in harsher dispositions. A defense attorney may be reluctant to collaborate or share information with a CBO provider, especially if the provider does not have a relationship with the youth that is shielded by confidentiality.

As pre-arrest and pre-booking diversion programs are implemented, it is necessary for county or city coordinating agencies, as well as other diversion stakeholders, to understand the different scenarios that may occur for youth who incur multiple charges to ensure that the diversion services provided are in line with diversionary best practices, as well as best practices for youth who enter the juvenile legal system.

YDD's policies and practices for working with youth facing multiple charges

It is unclear how many youth who are diverted to YDD have dealt with a second charge. YDD does not currently have the ability to collect that data. In many cases, if YDD or a CBO provider become aware that a diverted youth is dealing with a second charge, they refer the case to CJP for legal assistance. As of the publication of this toolkit, YDD does not have a protocol for multiple charge cases; instead, these issues are handled on a case-by-case basis. CJP is currently working in partnership with YDD to develop a systemic protocol to deal with multiple charge cases.

When CJP receives a multiple charge referral for a youth with a citation, CJP provides direct legal representation to the youth to resolve the citation. See ***Section Four, Legal Considerations in Youth Diversion***, for more information on this issue and the legal assistance provided.

In cases where the second charge is more serious, the legal questions become more complicated. For example, in the beginning of YDD's diversion programming, there were several instances in which law enforcement made a diversion referral to the CBO provider, and then concurrently filed the case in juvenile court. In those instances, the diversion case became a juvenile court case. There was no mechanism set up to withdraw those cases from juvenile court and revert them back into diversion cases. The most that could be done was that YDD and the CBO provider would address the individual case with the referring LEA to determine how the case had been referred to two different systems, and how this could be prevented from reoccurring. Some CBO providers have re-entry programs for youth and were able to get in touch with the youth's juvenile court attorney to offer these programs as an option for the youth upon release.

There have also been instances in which law enforcement made a diversion referral and then, a second, separate charge was filed in juvenile court. CBO providers struggled with questions about whether to disclose to court actors, like Probation, defense attorneys, prosecutors, and judges, the youth's enrollment in diversion and details of their case plan. This question felt especially important to CBO providers if the youth was doing well in diversion, or the case plan was relevant to the charges filed in the juvenile court case. The CBO providers also questioned what their role could be in the juvenile court case and whether they could support the youth in getting a better outcome or a dismissal of the case.

From these experiences, CBO providers had a range of questions about how to support the youth's juvenile court process, which included the following:

- **What information, if any, should the CBO provider communicate to the LEA who made the initial diversion referral about the juvenile court case (assuming the LEA is not aware of the juvenile court case)?**
- **How does a CBO provider find out whether the juvenile case arises from the same charge as the diverted case?**

- How can the CBO provider contact the youth's public defender?
- Should a CBO provider accompany the youth to court or write a letter of support for the judge in the juvenile court case? If so, how should the CBO provider identify themselves in court?
- Can the youth's diversion be used against them in the juvenile court case?
- What avenues are available for the CBO provider to advocate for the youth's juvenile court case to be dismissed or redirected to the CBO provider for diversion services?

The other common situation that CBO providers faced was a youth who was detained and placed in juvenile hall for a second charge. In those cases, in addition to the questions about juvenile court processes, CBO providers also asked about how to access the youth and how they could provide services:

- How can a CBO provider find out the hall or camp where the youth has been placed? How can a CBO provider arrange to visit the youth or connect with the youth by telephone or virtually (e.g., Skype, FaceTime, or Zoom)?
- What is the feasibility of developing and providing a case plan to a youth with a diversion case in juvenile hall? Is the CBO provider obligated to share information about the development of a case plan for a youth in juvenile hall to the referring LEA?
- If a youth is receiving services in their placement or court-ordered services, can the CBO provider certify to the referring LEA that the case plan has been completed in order for the diversion case to be closed?

Issues about disclosure to court actors came up as CBO providers worked to build trust with the youth's juvenile court attorney. In some referrals, CJP's role was to help the CBO provider identify the youth's defense attorney and get in touch with them. Although the defense attorneys generally expressed that it was helpful for them to connect with the CBO provider and to learn about the diverted charge, tensions also existed. Defense attorneys were protective of their clients and expressed concerns about the CBO provider discussing information with the youth. Most defense attorneys worried that the youth would disclose information related to the juvenile court case, opening the CBO provider up to subpoena and disclosure of otherwise confidential case information. It was then up to the CBO provider to build a relationship with the individual defender and educate them about the program and their work. CJP also worked with CBO providers to educate them on the legal boundaries of confidentiality and discussed methods to mitigate the harms of any confidential information coming up in the providers' conversations with youth.

As of the publication of this toolkit, these types of issues are handled on a case-by-case basis, as the Public Defender's office has not yet established a communications protocol with YDD to address multiple charge issues.

Recommendations for thinking about multiple charges in diversion programs

1. Educate court actors about diversion, and create robust information sharing protocols with defender offices and other partners that may have contact with youth referred to diversion

Before diversion referrals start, public defenders, prosecutors, probation officers, and judges should all be educated on diversion and how it works. Then, these offices should work to create information sharing protocols when a youth faces multiple charges. Particularly, communication networks should be set up between Public Defenders and CBO providers to easily share information when one or the other finds out that their client is dealing with multiple charges. For example, CBO providers should know how to get in touch with a youth's Public Defender if they find out a youth has been charged in juvenile court. Public defenders should

be trained to ask their clients whether they are currently in diversion so that they can activate the process of connecting with CBO providers, which could ultimately be helpful for the youth in juvenile court.

2. Create alternative pathways for completion of diversion programs in cases where youth are dealing with multiple charges

Before beginning to receive diversion referrals, CBO providers and city or county offices coordinating diversion services should create a protocol for youth with multiple charges that is particularly conscientious of ensuring that any diversion case plan is short-term, light touch, and informal, as diversion program conditions that are disproportionate to the offense have been shown to be counterproductive.⁷¹

CBO providers should have clarity on their role in designing case plans for youth and should be encouraged to be creative depending on a youth's individual circumstances. For example, if a youth is on probation and is required to meet certain conditions, CBO providers may be able to advocate for the probation conditions to be credited towards the completion of the youth's diversion case plan, which would avoid overburdening the youth. If a youth is incarcerated, diversion programs should still continue, but CBO providers may need to be ready to draw on more resources to provide the same level of programming they otherwise would if the youth was living in the community.

3. Advocate for LEA policies that prevent youth with multiple low-level charges from entering the juvenile legal system

If a youth is already in diversion and a second offense that qualifies for diversion occurs, the second offense should also be referred to diversion. LEAs should be encouraged to make diversion referrals based on the offense, not the youth who allegedly committed the offense. In other words, officers should not consider a youth's previous referrals to diversion or previous juvenile system involvement when making a diversion referral. Diversion partners and youth justice stakeholders should encourage LEAs to enact their own policies that encourage offense-only considerations in making referrals. For example, a policy of presumptive referrals in all eligible cases has been shown to increase diversion referrals and decrease arrests, while also reducing racial disparities.⁷²

4. Create formal partnerships that authorize CBO providers to access diverted youth in juvenile camps and halls

It is important to acknowledge here that ideally, a diverted youth would never have another charge that would lead to their incarceration while they are also enrolled in diversion. For the small number of cases in which a diverted youth is also incarcerated, city or county offices coordinating diversion services or CBO providers should reach out to the LEA agency running juvenile facilities in their locality and create a formal agreement that authorizes the CBO providers' staff to access the facilities. This agreement should be executed before diversion referrals begin. Some CBO provider case managers may be youth with lived experience in the system and any barriers to their access, like background checks, should be waived or reconsidered in light of the services provided. When visiting a young person, CBO providers should be offered confidential spaces to speak with youth.



**SECTION
THREE**

**SPECIAL LEGAL
ISSUES IN
RESTORATIVE
JUSTICE**

One of the major goals of RJ programs is to center the person harmed. Because of this emphasis, harmed people often express more satisfaction with RJ than the traditional juvenile legal system.

SPECIAL LEGAL ISSUES IN RESTORATIVE JUSTICE

In considering pre-arrest diversion programming, Restorative Justice (RJ) diversion is a viable and promising option for youth who would otherwise be referred to juvenile court. As of the publication of this toolkit, YDD has two program providers that are experts in RJ programming and have extensive experience offering RJ services for eligible diversion referrals. YDD is actively working to train the remaining network of providers to learn and offer RJ principles and practices.

CJP provided technical legal assistance to these CBO providers and determined that RJ diversion programs have unique and specific legal considerations, especially about confidentiality and referral timelines. Some of the legal issues RJ CBO providers face intersect with those discussed previously in the toolkit but are presented here in order to provide a more robust analysis of the complex questions that jurisdictions may contend with in implementing their own RJ diversion programs.

What is restorative justice and RJ diversion?

This toolkit adopts the definition of RJ used by Impact Justice below. RJ in the United States is rooted in Indigenous community practices.⁷³

At its core, restorative justice is about relationships, how you create them, maintain them, and mend them. It is based on the philosophy that we are all interconnected, that we live in relationship with one another, and that our actions impact each other. Grounded in this idea of interconnectedness, restorative justice is able to provide an alternative way of addressing wrongdoing. Wrongdoing is seen as a damaged relationship, a wound in the community, a tear in the web of relationships. Because we are all interconnected, a wrongdoing ripples out to disrupt the whole web—a harm to one is a harm to all.⁷⁴

RJ can be used to repair and rebuild relationships within families, community networks, schools, and workplaces. Within the juvenile legal system, RJ has been used at different stages and decision-making points to completely divert youth out of formal processes, to reduce a youth's sentence, or as a condition of a court's disposition. Typically, an RJ diversion process is aimed at healing and accountability by bringing together the person(s) who has been harmed, the person responsible for that harm, and the community. It is a voluntary process led by skilled facilitators.

Some typical terms used in RJ diversion that will be used throughout this section of the toolkit are listed in Table 2.⁷⁵

TABLE 2: DEFINITIONS OF COMMON DIVERSION RESTORATIVE JUSTICE TERMS

Responsible Person (RP)	The person whose action caused harm to another. In the juvenile legal system, this person may be referred to as the offender, the defendant, or the perpetrator.
Person Harmed (PH)	The person who was harmed by the action of the Responsible Person. In the juvenile legal system, this person may be referred to as the victim or survivor.
Facilitator	This person is trained in restorative justice practices and may be either a volunteer or employee of the CBO provider. The Facilitator engages in preparatory meetings with all parties to discuss the harms, needs and obligations of each. These meetings help the RP to understand the impact of their actions and take accountability; help the PH understand the impact of the harm and the needs that have arisen from that harm; and bring family and community into the process to support the parties directly involved.
Community Circle	If all parties agree and the Facilitator feels it would be beneficial after meeting with all parties, a community circle will occur. In this circle, the Facilitator brings the PH, RP, family, and community together to discuss the cause of the harm; how the harm may be repaired and/or how the PH may have their needs met; and how the RP can take accountability.

The importance of restorative justice as a component of pre-arrest diversion programs

Standard measurements that youth justice stakeholders must consider in the implementation of youth diversion programs include recidivism rates, racial disparities, and the cost of programming to taxpayers. When it comes to these outcomes, RJ has been shown to reduce youth recidivism rates both immediately and over time more than traditional justice system methods.⁷⁶ Additionally, youth are more likely to complete diversion programs based in restorative practices that aim to prevent harm and rebuild relationships.⁷⁷ When implemented with the explicit goal of reducing racial and ethnic disparities, RJ has been shown to reduce racial disparities in the juvenile legal system.⁷⁸ RJ can reduce health care costs when it is used with the intention of reducing post-traumatic stress for crime victims, and it can also reduce court costs when the youth is completely diverted out of the juvenile legal system.⁷⁹

In addition to these measures, RJ programs also center the satisfaction of the PH, the RP, and the youth's parents/guardians with the restorative justice process after they engage in a community circle. One of the major goals of RJ programs is to center the person harmed. Because of this emphasis, harmed people often express more satisfaction with RJ than the traditional juvenile legal system.⁸⁰ Responsible Youth who completed a restorative justice program in Northern California that is similar to the RJ programs offered through YDD thought it was beneficial, and that it had a positive impact on their conflict resolution, communication, and family relationships.⁸¹

How CBO providers practice RJ diversion in YDD's program

As stated, there are currently two CBO providers that partner with YDD to practice RJ diversion. As part of YDD's program, these CBO providers receive referrals from LEAs for matters that would otherwise be filed in court such as theft, robbery, sexual harms,

and other types of juvenile cases involving an identifiable harmed party. The District Attorney's office also makes some pre-filing referrals via the Restorative Enhanced Diversion for Youth (REDY) program, in which these two CBO providers receive pre-filing referrals for RJ diversion.⁸²

Facilitators first meet with all parties to the incident separately. These meetings are a way to offer support, help the RP understand the impact of their actions and take accountability, and understand the harm to the PH and the needs that they might have. This could be one meeting with each party, or several, depending on what is needed for each situation. If all parties are willing, the Facilitator will then engage in a community circle with the PH, the RP, their families, and community members. Sometimes the PH does not want to participate, so the Facilitator will bring in a surrogate to stand in for the PH. In the circle, the Facilitator supports a conversation about the harm caused, what accountability looks like, and repair of the harm at the individual and community level. A product of the circle is an accountability plan that the RP must follow, which is agreed upon by everyone who participates in the circle. Once the circle is completed and the RP has completed their accountability plan, the Facilitator notifies the referring LEA or the District Attorney's office, who seals any juvenile records and closes the case.

Confidentiality considerations for RJ CBO providers

Early in the diversion implementation process, RJ CBO providers requested information about the confidentiality of information shared in community circles. The RJ CBO providers in Los Angeles County have extensive confidentiality forms that rely on California's mediation privilege (detailed below) and have executed their own MOU with the County District Attorney's office around confidentiality for their RJ processes.

Although YDD policy and YDD's MOU template provides that communications related to a youth's diversion case plan are confidential, RJ CBO providers wanted to know whether state law offered stronger protections for youth participating in their programs. The nature of RJ processes requires the RP to engage in open, honest communication, including the acceptance of accountability to the PH and to community, which requires an admission of guilt. RJ CBO providers were concerned that an admission of guilt could be used against a young person in a later civil, juvenile, or adult criminal proceeding.

Additionally, these CBO providers were also concerned about whether they could be subpoenaed to testify in any future court case against their youth client. At least one LEA has stated they are authorized by law to ask a diversion provider for information about youth communications in a RJ circle, but that the diversion provider is allowed to decline to share that information.

California law does not have explicit confidentiality protections for restorative justice processes, although other states have enacted legislation that explicitly protects restorative justice processes.⁸³ However, state law does provide confidentiality protections for organizations engaging in mediation processes.⁸⁴ Specifically the mediation confidentiality law protects "communications, admissions, writings, negotiations, or settlement discussions" from admission or discovery in non-criminal civil proceedings.⁸⁵ RJ community circles may be considered a form of mediation, and thus, anything written or discussed in preparation for or during the community circle may be protected as confidential under this law.

California courts have extended the mediation confidentiality law to juvenile legal proceedings as they are considered civil proceedings.⁸⁶ However, state law does not contain any confidentiality protections for restorative justice processes in adult criminal proceedings.

Recommendations for thinking about confidentiality in RJ diversion programs

Communities that are planning to build RJ diversion programs should understand confidentiality protections and confidentiality exceptions such as mandated reporting laws in their jurisdictions before beginning to receive referrals. Provisions that protect the confidentiality of a young person's disclosures to RJ CBO provider staff and to other third parties, like parents/guardians, the PH, and community, should also be included in MOUs with referring agencies like LEAs.

RJ CBO providers should connect with legal support if they receive any pressure to disclose information discussed while providing diversion services, or if Facilitators are subpoenaed or threatened with subpoena.

Referral timeline considerations for RJ CBO providers

Another issue RJ CBO providers raised was the length of time between an incident and the LEA's referral for diversion services. YDD does not have any limitations on the length of time between when an incident has been reported to law enforcement and when it can be referred to diversion so long as it is within the statute of limitations of the charge, otherwise it may be considered net-widening.

This has led to some issues, as RJ CBO providers reached out to CJP after receiving referrals over a year after the incident was initially reported to law enforcement. In those instances, the RJ CBO provider wondered if they should accept the referral because the length of time could undermine the effectiveness of the RJ process. As the CBO provider explained, a referral of charges years after an incident occurs erodes the RP's ability to connect the incident with the RJ process and may impact their ability to take accountability. Further, the delay in referral can cause harm to PHs. If the last contact the PH had with the juvenile legal system was reporting the incident to law enforcement, and then years pass before a RJ practitioner contacts the PH to inform them the case was referred for diversion, it may feel disempowering to the PH, as though they did not have a voice in addressing how the incident should have been handled. This can also be re-traumatizing to a PH because it resurfaces a harm that the person may have already come to terms with on their own.

It should be noted that there are some instances where RJ processes will take place years after a harm occurred because that is how long the PH needs before they are ready to come face-to-face with the RP. The difference is that it is the PH who is directing the timeline of events, rather than the LEA. The impact that time has on all parties could compromise the outcomes of an RJ process and may be less than ideal.

Another issue the CBO provider questioned was the grounds for the time delay between the incident and the referral. The CBO provider was reasonably suspicious that the LEA did not believe that enough evidence existed to file the charge, so it did not file the case right away and instead, referred it to the CBO provider for RJ diversion. On the other hand, the CBO provider raised concerns about rejecting a case based solely on the referral timeline, because of fear that the case would instead be filed in juvenile court.

If a law enforcement agency refers a case to a CBO provider because it does not believe it has enough evidence to file the case in juvenile court, or if the case is rejected by the District Attorney's office and then is referred to a CBO provider, it is an example of ***net-widening***. CBO providers were left struggling to weigh the costs and benefits of accepting a net-widening case (creating systemic issues) versus rejecting the case for diversion (creating impact on the individual client).

Recommendations for thinking about referral timelines in RJ diversion programs

In cases where concerns about the referral timeline are raised, the CBO provider should first confirm that the statute of limitations for the alleged charge has not expired. If the statute of limitations has expired, the CBO provider should reject the case and inform the referring agency that it is rejecting the case because the statute of limitations expired, rendering the case an example of net-widening.

In cases where several months or years have passed between the incident and the diversion referral, it may not be ideal for the CBO provider to initiate RJ programming. However, it is recommended that a CBO provider do its best to accept any cases in which the referral timeline is an issue to prevent a youth's case from being filed in juvenile court. In those instances, the CBO provider should request additional information about the referral, like police reports or citation copies, and consult with legal support. This information is helpful in determining whether there may be net-widening issues. The CBO provider should then discuss with

the referring agency about why there was such a long time between the incident and the referral. If the charge appeared to be an example of net-widening, the CBO provider should discuss rejection of the case with the referring agency and encourage them to do nothing further.

To address the issue more broadly, jurisdictions must consider these issues before beginning to accept any RJ diversion referrals, including how agencies may need to advocate with a LEA or other referring agency about setting time limitations on referring cases for RJ programming, and providing for policies and MOU provisions to address confidentiality.



LEGAL CONSIDERATIONS FOR YOUTH AND FAMILIES

SECTION FOUR



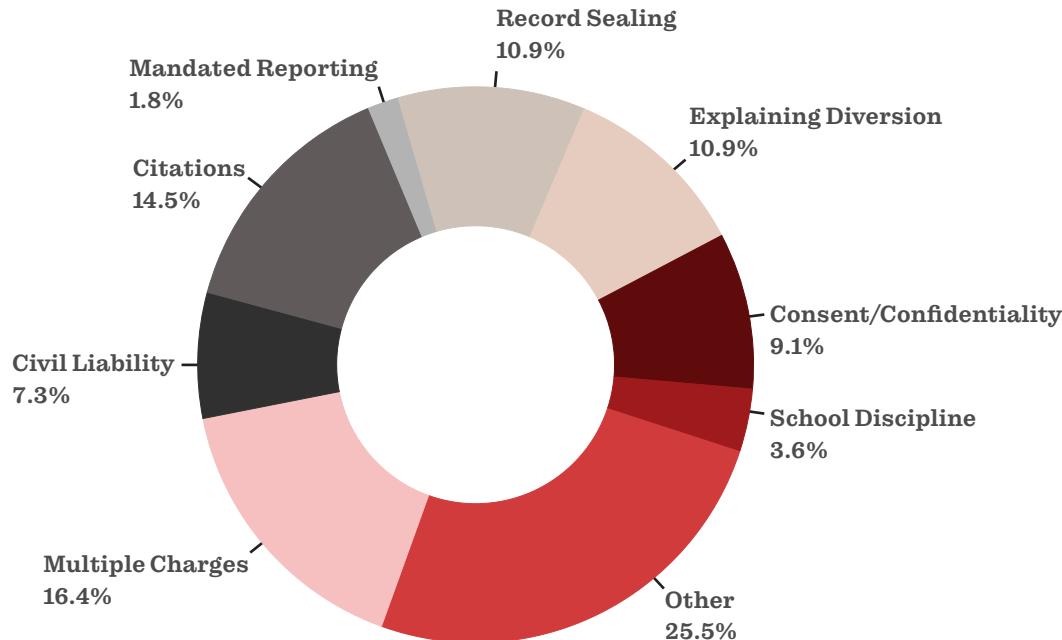
For jurisdictions considering pre-arrest or pre-booking diversion programs, it is important to acknowledge the intersecting legal needs of youth who are referred for diversion. Those youth may have other legal questions outside of their diversion referral that could be handled through a legal services partnership similar to the one that CBO providers have in Los Angeles County with CJP, or through an outside referral to a legal services provider.

LEGAL CONSIDERATIONS FOR YOUTH AND FAMILIES

Overview of CJP referrals

As stated previously, CJP has collaborated with YDD since April 2020 to provide legal consultations and support for CBO providers and youth and families enrolled in YDD diversion. As part of the initial partnership, CJP conducted needs assessments with program staff at each CBO. CJP and CBO provider staff discussed the CBO's model; challenges that have come up during the CBO's implementation of programming and in working with youth and families; and common legal issues or questions that youth/families have experienced during the referral process. At the end of each interview, CJP introduced its program and referral process, and provided a form for CBO providers to use when making legal referrals. The data collected from the legal referral forms completed by the CBO providers comprises the information found in Figure 2, which breaks down the legal issues referred to CJP between March 2020 and March 2022.

**FIGURE 1: LEGAL ISSUES REFERRED TO CJP
MARCH 2020 THROUGH MARCH 2022**



25.5 percent of referrals fell into the “Other” category, which mostly encompasses one-time issues—for example, a youth’s caregiver requesting help with navigating the public benefits system to obtain financial support for the family. These issues were mostly unrelated to the diversion process, which indicates that local bureaucracies, stakeholders, and CBO providers should develop strong referral networks for when youth and families need support unrelated to diversion.⁸⁷

The next largest number of referrals (16.4 percent) were for youth who either had a previous charge referred to juvenile court or were arrested on a second charge that was referred to juvenile court shortly after the diversion referral was made.⁸⁸ Citations comprised about 15 percent of all legal referrals made to CJP. Citations are separated from multiple charges in the above chart because these were matters in which youth had low-level charges, such as truancy, trespass, and fighting at school, that were referred to the Probation Department or to other out-of-court programs for resolution while the youth’s YDD diversion was pending.

Other legal issues that youth and families sought help for were record sealing, needing to understand their legal options (explaining diversion),⁸⁹ and consent and confidentiality issues.⁹⁰ There were fewer youth and families who were referred with school discipline or mandated reporting issues, although CBO providers expressed a lot of concern about youth in their programs experiencing these collateral consequences.

Some of these legal issues are laid out in detail below. For jurisdictions considering pre-arrest or pre-booking diversion programs, it is important to acknowledge the intersecting legal needs of youth who are referred for diversion. Those youth may have other legal questions outside of their diversion referral that could be handled through a legal services partnership similar to the one that CBO providers have in Los Angeles County with CJP, or through an outside referral to a legal services provider.

Collateral Consequences

Citations

Some youth who were referred to YDD had citations for low-level charges, like vandalism, trespass, and smoking weed. Although these types of cases were eligible for YDD diversion, County LEAs also had the option of sending these citations to the County’s Probation Department for a hearing with a Probation officer in a court-like setting through the Department’s Citation Diversion Program.⁹¹ As stated previously, only eleven out of the forty-seven LEAs in Los Angeles County have an ongoing relationship with YDD as of the publication of this toolkit. Thus, most County LEAs referred low-level charges to the Citation Diversion Program, as did some YDD-partnered LEAs. Outcomes for youth who had tickets referred to this program ranged from suspended driving privileges to burdensome fines, fees, or community service.

Many youth and their parents or guardians attempted to resolve the citation before being connected to CJP and had little success. Families shared that they made several attempts to schedule a hearing, but it was difficult to reach courthouses or the Probation Department. Youth were concerned that the citation would negatively impact their prospects, like getting a job or getting into a college or university. Parents and guardians worried about the impact of the citation on their youth’s juvenile record, and the amount of any fines or fees.

As part of its work with families and youth, CJP provided direct representation, advocating for tickets to be dismissed, the fines suspended, and driver’s license suspensions lifted. CJP’s practice was to work closely with the referring CBO provider, who was on hand to assist with any non-legal issues that would help resolve the ticket, for example, helping the youth get their driver’s license or writing letters of support that could be submitted to Probation in support of dismissal.

Resolving these citations, which often were issued by school police agencies, helped youth avoid paying unaffordable fines and fees, obtain their driver’s licenses, and were an integral part of the process of ensuring youth stay out of the justice system.

Record Sealing

It was also common that CJP received referrals of youth and families who needed assistance or had questions about the record sealing process for diversion cases. Juvenile record sealing is the process of ensuring that documents related to a young person's juvenile case, like arrest records, booking records, or citations, are removed from public view so that they cannot be found on a background check. Background checks are routine in instances where someone is applying for housing, employment, higher education, or for a driver's license, as a few examples. Sealing juvenile records may allow a young person to say they have not been arrested, charged, or convicted of a juvenile offense.

These issues came up because of some LEA's procedures for referring cases to YDD. Some LEAs have a practice of arresting, citing, or booking a youth before that youth is referred for diversion. This means these youth will still have a juvenile police record even if they successfully complete their diversion program, if the record is not subsequently sealed by law enforcement. Until January 2020, California did not have a specific law that addressed sealing juvenile records for youth in pre-booking diversion programs,⁹² and neither YDD nor their partnering LEAs had a protocol that ensured record sealing occurred when a youth completed diversion.

CJP helped some youth seal their juvenile records. CJP also worked with YDD to create a protocol to ensure that any youth's police records are automatically sealed by law enforcement after their diversion is completed, and to address the backlog of youth without sealed records that occurred before the 2020 record sealing law and YDD's protocol went into effect.⁹³

Jurisdictions looking to adopt youth diversion programs should standardize protocols about record sealing with LEAs before beginning to accept referrals to ensure that the protections youth are entitled to upon completing diversion happen in a timely manner.

School Discipline Issues

School discipline legal issues that were referred to CJP included suspensions and expulsions, ticketing and arresting youth, and other criminalizing and discretionary practices that exclude a child from the learning environment. As of June 2021, Los Angeles County school districts have seventeen open contracts with the Los Angeles County Sheriff's Department to serve as School Resource Officers (SROs) in schools.⁹⁴ Other schools have contracted with city LEAs or the Probation Department to serve as SROs. Additionally, the Los Angeles Unified School District has one of the largest school police forces in the country. These issues are endemic of the school-to-prison pipeline, as they correlate with youth ending up in the juvenile justice or criminal justice system.⁹⁵ School discipline issues disproportionately impact students with disabilities, students of color, students in the foster system, and LGBTQIA students.⁹⁶

CJP's work began during the pandemic when schools in Los Angeles County were closed, and there were no referrals of school discipline cases for over a year. Once schools reopened, CJP received referrals related to school discipline issues, mainly concerning suspensions and expulsions. Several citations that were referred to CJP were for school-related issues as well, like truancy and possession of weed on school grounds.

CJP provided legal support and consultation to at least one family who had been referred to diversion and had a concurrent school discipline matter that was unrelated to the diverted case. However, it is almost certain that some YDD-diverted youth are dealing with school disciplinary processes arising from the same circumstances that led to their diversion.

For families and students, these legal issues felt overwhelming at times because the youth had to deal with the diverted case and the school discipline process, which had its own separate set of legal concerns. For example, one client who was referred to diversion received a diversion case plan and was regularly participating in afterschool programming with the CBO provider. Because the diverted case was related to a school incident, the school had removed the youth from his home campus and made him sign a behavior contract in which he promised to attend ten counseling sessions, complete ten hours of community service, write a letter

to administrators, and participate in a mentoring program. The school's additional demands of the student could be considered overprogramming when paired with the diversion case plan. CJP was able to work with the CBO provider and the school to make an agreement that the CBO provider's program count as community service and counseling sufficient to meet the school's behavior contract requirements. In this way, CJP helped consolidate the youth's diversion program and the school's requirements.

Civil Liability Issues

Civil liability issues also came up in CJP's consultations with youth and families. Although a young person's juvenile charge is referred to diversion instead of to juvenile court, there is nothing to prevent a victim or person harmed by the youth's conduct to file a civil case for money damages. For example, if a youth is referred to diversion for a charge of hit and run, the person whose property was damaged may file a civil case, or their insurance company may get involved. In another example, a youth may be referred to diversion for shoplifting, but the store sends her a civil notice demanding money for the items taken. In both these cases, a young person, or their parent or guardian, may be civilly liable if a claim is pursued.

CJP conducted research and helped families navigate the process of engaging with insurance companies and with collection agencies. CJP also advised families on their rights, the possible effects of a civil lawsuit, and if necessary, made referrals to attorneys who could represent them in civil court. It is recommended that jurisdictions research and work with local legal services agencies to address civil liability issues for youth in diversion programs.

Conclusion

This toolkit is based on the expertise CJP gained from providing legal consultations in collaboration with YDD's implementation of pre-arrest and pre-booking diversion programs in Los Angeles County. As such, this toolkit provides a comprehensive analysis of many legal issues that communities face in starting their own pre-arrest and pre-booking diversion programs. YDD's diversion model and the policies discussed in this toolkit will continue to evolve as various cases and situations arise and as state laws change.

We recommend that this toolkit be used as an ongoing resource for government agencies providing coordinated diversion support, CBOs, and other youth justice stakeholders.

Endnotes

¹ For more information on the creation of YDD and previous work on youth justice issues, see DIV. YOUTH DEV & DIVERSION, DESIGNING YOUTH DIVERSION & DEVELOPMENT IN LOS ANGELES COUNTY: A COLLABORATIVE HISTORY TOLD WITH YOUTH LEADERS (forthcoming June 2022) [hereinafter YDD CHRONICLE]; CMTY. RTS. CAMPAIGN, LAB./CMTY. STRATEGY CTR., BLACK, BROWN, AND OVER-POLICED IN L.A. SCHOOLS (2013), https://thestrategycenter.org/wp-content/uploads/2017/07/lcsc-overpoliced.web_release.10.30.13_1.pdf [<https://perma.cc/A46E-VPGP>].

² A status offense is an action that is prohibited only as it applies to a certain group of people, in most instances minor youth (those under the age of eighteen). Some examples include truancy, curfew, and underage drinking or smoking.

³ COUNTYWIDE CRIM. JUST. COORDINATION COMM. YOUTH DIVERSION SUBCOMM., A ROADMAP FOR ADVANCING YOUTH DIVERSION IN LOS ANGELES COUNTY 12-13 (2017), <http://ccjcc.lacounty.gov/LinkClick.aspx?fileticket=958nu4vfXQQ%3d&portalid=11> [<https://perma.cc/GF9E-RV32>], [hereinafter A ROADMAP FOR ADVANCING YOUTH DIVERSION].

⁴ Tami Abdollah, *Plan Calls for Major Cuts to LA County Juvenile Courts System*, Southern California Public Radio, 89.3KPCC, Apr. 9, 2012, <https://www.scpr.org/blogs/education/2012/04/09/5485/plan-calls-major-cuts-la-county-juvenile-courts-sy/> [<https://perma.cc/D7P5-YNCD>].

⁵ Order from Juvenile Court Presiding Judge Michael I. Levanas on Dismissal of Former Informal and Juvenile Traffic Citations (Dec. 17, 2015) (on file with author).

⁶ YOUTH JUSTICE COALITION, TRANSPORTATION IS AN EDUCATIONAL RIGHT (2013), <https://www.njjn.org/uploads/digital-library/8thFreeMetroPassCampaignReport.pdf> [<https://perma.cc/2GUS-KXDD>]; Chase Niesner, *Campaign Aims to Keep Students in, Not 'Push' Them Out*, LA SCH. REP., Oct. 1, 2013, <https://laschoolreport.com/campaign-aims-to-keep-students-in-not-push-them-out/> [<https://perma.cc/PN4S-E5UC>].

⁷ YDD CHRONICLE, *supra* note 1.

⁸ A ROADMAP FOR ADVANCING YOUTH DIVERSION, *supra* note 3.

⁹ DEPT. OF YOUTH DIVERSION & DEV., <https://dyd.lacounty.gov/youth-diversion-and-development-data-and-history/> (last visited August 22, 2022) [<https://perma.cc/5QRX-JD8D>] [hereinafter DYD WEBSITE].

¹⁰ A ROADMAP FOR ADVANCING YOUTH DIVERSION, *supra* note 3 at 13.

¹¹ DIV. OF YOUTH DIVERSION & DEV., OFF. OF DIVERSION & RE-ENTRY, UPDATED YOUTH DIVERSION AND DEVELOPMENT QUARTERLY DATA DASHBOARD: YOUTH REFERRED TO YDD PROGRAMS BY APRIL 1, 2022 (2022), http://file.lacounty.gov/SDSInter/dhs/1124437_2022Q1UpdatedYouthDiversionandDevelopmentDataDashboard.pdf [<https://perma.cc/N5FZ-M8YF>] [hereinafter YDD DASHBOARD].

¹² *Id.*

¹³ *Id.*

¹⁴ DYD WEBSITE, *supra* note 9.

¹⁵ *Id.*

¹⁶ In cases where the District Attorney refers cases to YDD, there is an additional step in the referral process because the LEA forwards the case to the District Attorney's office to be filed, but the District Attorney diverts the case instead. This type of diversion is commonly referred to as pre-filing diversion. Since this toolkit primarily focuses on pre-arrest and pre-booking diversion, YDD's District Attorney referrals are not discussed in detail.

¹⁷ DYD WEBSITE, *supra* note 9.

¹⁸ Youth Diversion & Development Summit: Understanding Los Angeles County's New Model to Help Youth Thrive and Succeed 15 (Mar. 1, 2018), http://file.lacounty.gov/SDSInter/dhs/1034535_YDDSummitPresentation3_1_18.pdf [<https://perma.cc/XPH3-S33Q>].

¹⁹ Melissa R. Nadel et al., *Civil Citation: Diversion or Net Widening?*, 55 J. RSCH. CRIME & DELINQ., 278, 282 (2008).

²⁰ *Id.* at 283; Daniel P. Mears et al., *Juvenile Court and Contemporary Diversion: Helpful, Harmful, or Both?*, 15 CRIMINOLOGY & PUB. POL'Y 953, 959 (2016).

²¹ MASHA JAFARIAN & VIDHYA ANANTHAKRISHNAN, VERA INST. OF JUST., *Why Criminalization Is Not the Answer*, in JUST KIDS: WHEN MISBEHAVING IS A CRIME (2017), <https://www.vera.org/when-misbehaving-is-a-crime/why-are-justice-responses-being-used-for-status-offenses> [<https://perma.cc/5SGC-E49G>].

²² DIV. YOUTH DEV. & DIVERSION, THE LOS ANGELES COUNTY DEPARTMENT OF HEALTH SERVICES DIVISION OF YOUTH DIVERSION AND DEVELOPMENT POLICIES AND PROCEDURES HANDBOOK 20 (2022) [hereinafter YDD HANDBOOK] (on file with author).

²³ JAFARIAN & ANANTHAKRISHNAN, *supra* note 21.

²⁴ Holly A. Wilson & Robert D. Hoge, *The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review*, 40 CRIM. JUST. & BEHAV. 497, 511 (2013). This study found that "caution programs," or counsel and release programs, which provided the minimum amount of services and maximum amount of diversion, were the most effective programs for low-risk youth.

²⁵ CAL. WELF. & INST. CODE § 626 (West 2022).

²⁶ BEN ESTEP & CARMEN ROBIN-D'CRUZ, CTR. FOR JUST. INNOVATION, VALUING YOUTH DIVERSION: A TOOLKIT FOR PRACTITIONERS 12 (2016), <https://justiceinnovation.org/sites/default/files/media/document/2019/Valuing%20youth%20diversion%20A%20toolkit%20for%20practitioners.pdf> [<https://perma.cc/JPJ4-LKYT>].

²⁷ YDD HANDBOOK, *supra* note 22, at 37.

²⁸ YDD DASHBOARD, *supra* note 11, at 2 fig. 8. Five percent of YDD referrals were for status or infraction violations, which generally have a one-year statute of limitations in California. Five percent of referrals were labelled as “unknown.”

²⁹ ANNIE E. CASEY FOUND., TRANSFORMING JUVENILE PROBATION: A VISION FOR GETTING IT RIGHT 29 (2018), <https://assets.aecf.org/m/resourcedoc/aecf-transformingjuvenileprobation-2018.pdf> [<https://perma.cc/69J7-U62K>]. There is no conclusive data to show that the threat of filing increases compliance with diversion programs. Santa Cruz, California is one exception to this rule. This jurisdiction has a long-standing practice of not refileing diversion cases without suffering any discernable public safety consequences.

³⁰ *Id.*; CTR. FOR CHILD.’S LAW & POL’Y, BALTIMORE YOUTH DIVERSION ASSESSMENT 5, 20 (2019) <https://www.baltimorepolice.org/sites/default/files/General%20Website%20PDFs/Baltimore%20Youth%20Diversion%20Assessment%20-%20Final.pdf> [<https://perma.cc/W5EP-KZ5Q>].

³¹ ANNIE E. CASEY FOUND., *supra* note 29, at 29.

³² S. REBECCA NEUSTETER ET AL., VERA INST. OF JUST., GATEKEEPERS: THE ROLE OF POLICE IN ENDING MASS INCARCERATION 48 (2019), <https://www.vera.org/downloads/publications/gatekeepers-police-and-mass-incarceration.pdf> [<https://perma.cc/8T4K-4FS2>].

³³ CARUTHERS INST., STEPPING UP: FLORIDA’S TOP JUVENILE PRE-ARREST DIVERSION EFFORTS i-ii (2018), <https://caruthers.institute/wp-content/uploads/2018/06/2018-Study-Report-final-draft-06.22.2018.pdf> [<https://perma.cc/YY5E-PJCF>].

³⁴ *Id.* at 5.

³⁵ Susan Baik et al., Establishing a Consent Policy for Youth Diversion in Los Angeles County 12 (2019) (M.P.P. degree, University of California Los Angeles), <https://luskin.ucla.edu/wp-content/uploads/2019/06/2YouthDiversion.FINAL.WY.pdf> [<https://perma.cc/3334-D5TJJ>].

³⁶ *Id.*

³⁷ Meyer v. Nebraska, 262 U.S. 390 (1923); Troxel v. Granville, 530 U.S. 57 (2000).

³⁸ YDD also notes that if a youth consents for themselves, there is always an increased risk of the youth exposing themselves to unknown legal ramifications or additional unnecessary services interventions.

³⁹ YDD HANDBOOK, *supra* note 22, at 30.

⁴⁰ *Id.*

⁴¹ Baik et al., *supra* note 35, at 13.

⁴² *Id.* at 60-63.

⁴³ *Id.*

⁴⁴ Wilson & Hoge, *supra* note 24, at 498-99.

⁴⁵ CAL. WELF. & INST. CODE § 5328(a) (West 2022); Template Partnership Agreement from the Div. of Youth Dev. & Diversion for CBO providers and LEAs 10-11, §§ 8-10 (2022) (on file with the Youth Development and Diversion division) [hereinafter Template MOU].

⁴⁶ Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d-2 (West); 42 U.S.C. § 290dd-2 (West 2020); CAL. WELF. & INST. CODE § 5328(a) (West 2022); CAL. HEALTH & SAFETY CODE § 11845.5(a) (West 2022).

⁴⁷ Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g(b)(1) (West).

⁴⁸ For more information on when confidentiality can be waived pursuant to California’s mandated reporting law, see the Child Abuse and Neglect Reporting ACT (CANRA), CAL. PENAL CODE § 11164 et seq. (West 2022).

⁴⁹ CAL. WELF. & INST. CODE § 827.95(a)(1)(A) (West 2022).

⁵⁰ YDD HANDBOOK, *supra* note 22, at 9.

⁵¹ Authorization for Disclosure of Information from the Div. of Youth Dev. & Diversion for CBO Providers (2022), see *Appendix A*.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ CAL. EVID. CODE § 1014 (West 2022). Additionally, in California, “[t]he psychotherapist-patient privilege has been recognized as an aspect of the patient’s state constitutional right to privacy.” People v. Stritzinger, 34 Cal.3d 505, 511 (1983); *see also* People v. Hammon, 15 Cal.4th 1117, 1127 (1997).

⁵⁵ According to the partnership agreement, “statements made by youth in the course of the diversion process” means information gathered by the CBO provider or disclosed to the provider while receiving diversion services. Template MOU, *supra* note 45, at 10, § 8.

⁵⁶ *Id.*

⁵⁷ CAL. WELF. & INST. CODE § 827.95(a)(1)(A) (West 2022).

⁵⁸ *Id.* at § 827.95(b)(1)(D)(2), (c)(1).

⁵⁹ Kelley Fong, *I Know How it Feels: Empathy and Reluctance to Mobilize Legal Authorities*, 2022 SOC’Y FOR STUDY SOC. PROBS. 1, 4-5, <https://doi.org/10.1093/socpro/spab079> [<https://perma.cc/DQ3K-A3UK>].

⁶⁰ REIMAGINE CHILD SAFETY COAL., *End Detentions of Children Based on Allegations of Neglect*, in REIMAGINE CHILD SAFETY: A SET OF DEMANDS AND POLICY RECOMMENDATIONS TO HELP END STATE SANCTIONED KIDNAPPING THROUGH RIPPING APART OF FAMILIES UNDER THE GUISE OF CHILD SAFETY 12 (2022), <https://drive.google.com/file/d/1qZ3Wd9W6tj7GjajneB9vp5r5MrvOs3n/view> [<https://perma.cc/W23A-ZXDF>].

⁶¹ Frank Edwards et al., *Contact with Child Protective Services is Pervasive but Unequally Distributed by Race and Ethnicity in Large US Counties*, 118 PROC. NAT’L ACAD. SCIENCES, no. 30, July 2021, at 1, 2, <https://www.pnas.org/content/118/30/e2106272118> [<https://perma.cc/F7EB-2LVX>].

⁶² SHAMINI GANASARAJAH ET AL., NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, DISPROPORTIONALITY RATES FOR CHILDREN OF COLOR IN FOSTER CARE (FISCAL YEAR 2015) 3 (2017), https://www.ncjfcj.org/wp-content/uploads/2017/09/NCJFCJ-Disproportionality-TAB-2015_0.pdf [<https://perma.cc/4CZN-HSB9>].

⁶³ FPM Editors, *Eight Tactics to Identify and Reduce Your Implicit Biases*, QUICK TIPS: A BLOG FROM FPM J. (Aug. 16, 2019), https://www.aafp.org/pubs/fpm/blogs/inpractice/entry/implicit_bias.html [<https://perma.cc/KB7H-ARMW>].

⁶⁴ ELENA GORMLEY ET AL., ALTERNATIVES TO CALLING DCFS (2020), https://www.povertylaw.org/wp-content/uploads/2020/12/Before-you-call-DCFS_FINAL-2.pdf [<https://perma.cc/VR49-82CQ>].

⁶⁵ A ROADMAP FOR ADVANCING YOUTH DIVERSION, *supra* note 3, at 12; CTR. FOR CHILD.'S LAW & POL'Y, *supra* note 30, at 2; NAT'L JUV. JUST. NETWORK, REDUCING YOUTH ARRESTS: PREVENTION AND PRE-ARREST DIVERSION 2 (2020), https://www.njjn.org/uploads/digital-library/Reducing%20Youth%20Arrests%20Prevention%20and%20Pre-Arrest%20Diversion%20Jan%202020_1.pdf [<https://perma.cc/3X82-BAW3>].

⁶⁶ CTR. FOR CHILD.'S LAW & POL'Y, *supra* note 30, at 2; NAT'L JUV. JUST. NETWORK, *supra* note 65, at 2.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ A ROADMAP FOR ADVANCING YOUTH DIVERSION, *supra* note 3, at 12; Rodney Funk et al., *Substance Use Prevention Services in Juvenile Justice and Behavioral Health: Results from a National Survey*, 8 HEALTH & JUST., no. 11, 2020, at 1, 2, <https://healthandjusticejournal.biomedcentral.com/articles/10.1186/s40352-020-00114-6> [<https://perma.cc/J9DH-QMEX>].

⁷⁰ NAT'L JUV. JUST. NETWORK, *supra* note 65, at 1.

⁷¹ ESTEP & ROBIN-D'CRUZ, *supra* note 26, at 15.

⁷² CARUTHERS INST., *supra* note 33, at 7, 15. In a comparison of local jurisdictions implementing Florida's civil citation program, Miami-Dade County has a policy that presumes law enforcement should divert in all eligible instances and trains their officers on this policy, while the Third Circuit's MOU contains language that is more deferential to law enforcement discretion. The utilization rate of diversion in the Third Circuit is twenty-two percent, while Miami-Dade's utilization rate is ninety-five percent.

⁷³ *A Diversion Toolkit for Communities*, IMPACT JUST., <https://rjdtoolkit.impactjustice.org/> [<https://perma.cc/W5QY-99YQ>] (last visited May 25, 2022)

⁷⁴ *Id.* at Step 1C.

⁷⁵ The terms in Table 2 are defined for the purposes of explaining how RJ practices are used in YDD diversion, but other RJ practitioners may define them differently depending on their practice.

⁷⁶ SUJATHA BALIGA ET AL., IMPACT JUST., RESTORATIVE COMMUNITY CONFERENCING: A STUDY OF COMMUNITY WORKS WEST'S RESTORATIVE JUSTICE YOUTH DIVERSION PROGRAM IN ALAMEDA COUNTY 7 (2017), https://impactjustice.org/wp-content/uploads/CWW_RJreport.pdf [<https://perma.cc/Y5ZS-FZPV>].

⁷⁷ LIZ KROBOTH ET AL., HUM. IMPACT PARTNERS, ADVANCING RACIAL EQUITY IN YOUTH DIVERSION: AN EVALUATION FRAMEWORK INFORMED BY LOS ANGELES COUNTY 29 (2019), https://humanimpact.org/wp-content/uploads/2019/06/HIP_EvaluateYouthDiversion_2019.06.03.pdf [<https://perma.cc/EP8B-MTP9>].

⁷⁸ SUJATHA BALIGA ET AL., *supra* note 76, at 8

⁷⁹ LAWRENCE W. SHERMAN & HEATHER STRANG, SMITH INST., RESTORATIVE JUSTICE: THE EVIDENCE 23-24 (2007), <https://www.smith-institute.org.uk/book/restorative-justice-the-evidence/> [<https://perma.cc/TDV6-CTW7>]; SUJATHA BALIGA ET AL., *supra* note 76, at 16.

⁸⁰ *Id.* at 16.

⁸¹ *Id.* at 11.

⁸² Press Release, George Gascón, Dist. Att'y, Los Angeles County Dist. Att'y Off., District Attorney Gascón Announces the Launch of Pre-Filing Diversion Program for Youth (Nov. 17, 2021), <https://da.lacounty.gov/media/news/district-attorney-gascon-announces-launch-pre-filing-diversion-program-for-youth> [<https://perma.cc/6VSQ-E4C8>].

⁸³ In July 2021, Illinois enacted Senate Bill 64, which encourages the use of RJ practices by providing that participation in such practices and anything said or done during RJ is privileged and may not be used in any future proceeding unless the privilege is waived by the informed consent of the party or parties covered by the privilege. Codified at 735 ILL. COMP. STAT. 5/804.5 (West 2022). Texas provides broad protections for its Victim-Offender Mediation program open to defendants in criminal cases. TEX. REV. CIV. PRAC. & REM. CODE § 154.073 (West 2022). Vermont also provides confidentiality protections for youth in pre-conviction diversion programs. VT. STAT. ANN. TIT. 3 § 163(c)(5) (West 2022).

⁸⁴ CAL. EVID. CODE § 1115 et. seq. (also known as the California Dispute Resolution Programs Act).

⁸⁵ *Id.*

⁸⁶ *Rinaker v. Superior Court*, 62 Cal. App. 4th 155 (1998). The *Rinaker* court found juvenile delinquency court proceedings to fall within the definition of "civil non-criminal proceedings," and thus subject to the protections of the California Evidence Code. *Id.* at 164. The *Rinaker* court also implies that the Evidence Code's confidentiality provisions may not apply to mediators in adult criminal proceedings. *Id.*

⁸⁷ "Legal issues" means the category of legal matter referred to CJP. Sometimes one client or family needed help with more than one legal issue. Multiple legal issues are counted separately.

⁸⁸ Because multiple charges legal issues comprised the majority of referrals, they are discussed further in their own section, **Multiple Charges**.

⁸⁹ You can find more information about youth and families evaluating their legal options in the *Obtaining Legal Support for Diversion Referrals* section.

⁹⁰ You can find more information about consent and confidentiality legal issues in the *Consent* and *Confidentiality* sections.

⁹¹ LEAH GASSER-ORDAZ, UCLA SCH. OF LAW, A CLOSER LOOK AT LOS ANGELES COUNTY PROBATION'S CITATION DIVERSION PROGRAM (2021), <https://law.ucla.edu/sites/default/files/PDFs/Criminal%20Justice%20Program/A%20Closer%20Look%20at%20Los%20Angeles%20County%20Probations%20Citation%20Diversion%20Program.pdf> [<https://perma.cc/TR45-C9DR>].

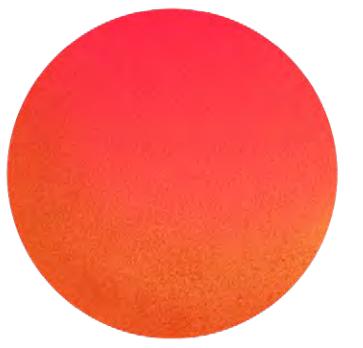
⁹² CAL. WELF. & INST. CODE § 827.95 (effective Jan. 1, 2021).

⁹³ *Id.* See also *Appendix B* for a flyer CJP made about the record sealing protocol.

⁹⁴ L.A. County, Cal., Strengthening Oversight of School Law Enforcement Services (June 8, 2021), <http://file.lacounty.gov/SDSInter/bos/supdocs/158923.pdf> [<https://perma.cc/79YD-5JAV>].

⁹⁵ NAT'L JUV. JUST. NETWORK, POLICE-FREE SCHOOLS (2021), <http://file.lacounty.gov/SDSInter/bos/supdocs/158923.pdf> [<https://perma.cc/79YD-5JAV>].

⁹⁶ *Id.* at 1; Joss Greene, *Policing in LGBTQ Youth of Color IMPACTED BY THE CHILD WELFARE AND JUVENILE JUSTICE SYSTEMS: A RESEARCH AGENDA*, 37, 37-38 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-YOC-Social-Services-Jul-2019.pdf> [<https://perma.cc/WEE5-VWM2>].



Appendix A: Authorization for Disclosure of Information (YDD)

YDD AUTHORIZATION FOR DISCLOSURE OF INFORMATION

About the Youth Diversion and Development (YDD) Program:

The goal of the YDD Program is to connect you to activities and services that will build on your strengths, help you reach your goals, and keep you from being involved in the justice system. These can include health, mental health, and substance use disorder treatment, educational support, and other social services or youth development activities. Communication between your program providers will help coordinate the activities and services offered to you.

YDD Organizations that share information and work together to offer services include:

- Los Angeles County Department of Health Services, Department of Mental Health, Department of Public Health, Department of Arts and Culture and their contractors.
- The Children's Law Center or University of California School of Law's Youth Justice Fellow if additional support is needed.

If you choose to sign this form, you authorize YDD Organizations to share information to:

- Coordinate your care and communicate with other organizations providing services related to your YDD program goals
- Refer you to other organizations or services that will help you meet your goals or support your health, education, employment or social wellbeing
- Evaluate the YDD program to learn how to improve the program

Before signing below, you can choose whether or not you want to share certain types of information. Check and initial the type of information you agree to share.

- Physical health treatment information _____ (initial)
- Mental health treatment information _____ (initial)
- Substance use treatment information _____ (initial)
- Education information _____ (initial)

By signing below, you agree YDD Organizations may share the information listed above for the purposes described above. Signing below shows you agree to the following:

- a. I authorize my health, mental health, substance use, educational and social services information to be shared through a health information exchange or similar electronic system that allows YDD Organizations to share information.
- b. I understand that if I am over the age of 12, I may have the right to consent to specific types of information and services without the consent of a parent or legal guardian.

I have read this authorization or a YDD representative has read it to me.

I authorize the use and sharing of my information as described above.

Youth Name

Youth Signature

Date

Parent or Guardian Name

Parent or Guardian Signature

Date

Details About Your Information and This Authorization Form:

1. If I sign this form, what types of information about me can YDD Organizations share? How can my information be used?



Data Shared for Care Provision and Coordination

- In order to provide you with services and coordinate activities and services for you, YDD Organizations may share your demographic information and information including diagnosis, treatment, and medications related to your health, mental health and substance use disorder conditions, education and social services you need and/or receive.
- YDD Organizations may **not** share information about your referral to the YDD program, including the alleged offense connected to your referral.



Data Shared with the Division of Youth Diversion and Development

- YDD organizations can share the following information with each other
 1. Your demographic information such as information about your age and gender identity;
 2. Your answers to questions about your strengths, needs, and goals, which may include your health, mental health, substance use, education and social services information; and
 3. Information about the activities and services you receive as part of your program plan, which may include your health, mental health, substance use, education and social services information
- The central coordinating office may share this information with an evaluator to help us improve the program but will **not** share identifiable information with any other party.



Data Shared with Law Enforcement

- Signing this form does not increase the amount of information that can be shared with law enforcement.
- **To learn about information shared with law enforcement, ask your YDD organization or see YDD's consent for program participation form.**

2. Are there consequences if I do not sign this form?

- Authorizing this disclosure of your health, mental health, substance use disorder and social services information is voluntary. You have the right to refuse to sign this authorization. However, if you refuse, limit, or cancel your authorization, your participation in the YDD program may be limited and you may not be able to receive full care coordination services.

3. How long does my authorization last?

- This Authorization to share information for purposes of care coordination will be valid until the end of my participation in the YDD program unless you cancel your authorization before then.

4. Can I cancel this authorization?

- You may cancel this authorization at any time. To request to cancel this authorization, ask your YDD Organization. This authorization will be canceled after receipt of a written notification and will only apply to information shared after you notify your YDD Organization of the cancellation.

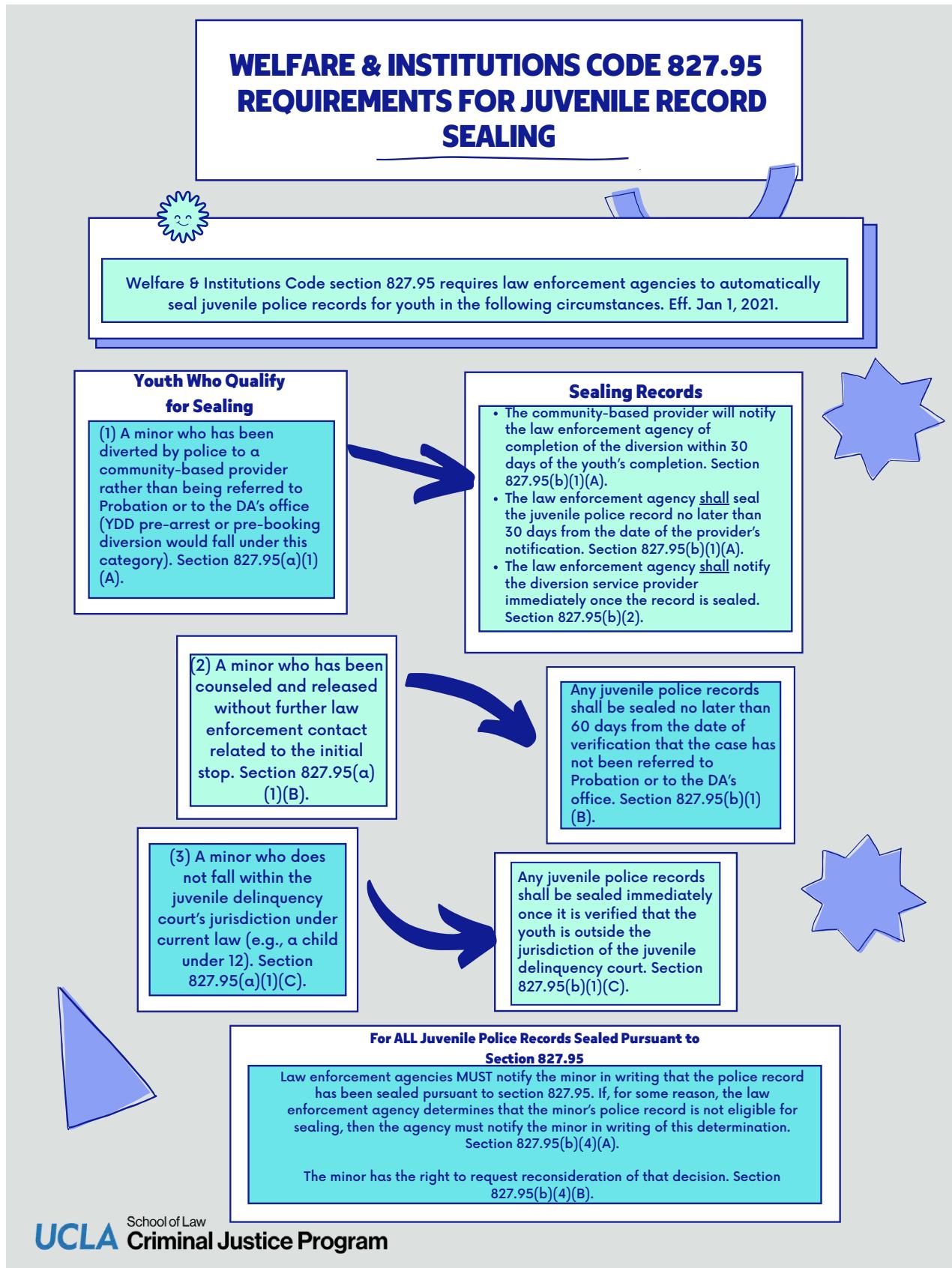
5. Can YDD Organizations re-share my information?

- State and Federal laws already allow health care organizations to share your health information for treatment, obtaining payment, and running their operations. When your health information is shared, there is a chance it will be re-shared with others to the extent such sharing is permitted by law.

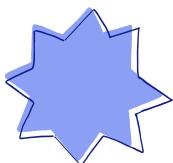
6. Can I get a copy of this form?

- Yes, you have the right to receive a copy of this authorization form from your YDD Organization. You also have the right to inspect or get a copy of the information authorized to be shared by this form.

Appendix B: Welfare & Institutions Code 827.95 Requirements for Juvenile Record Sealing



SEALING THE JUVENILE POLICE RECORD



Your department should have a process for sealing records pursuant to Welfare & Institutions Code section 781.5. Consult with your department's record sealing section to develop an interim sealing process for youth who complete diversion.

The suggested sealing process below is adopted from one YDD law enforcement partner that is currently sealing records for youth who have successfully completed diversion.

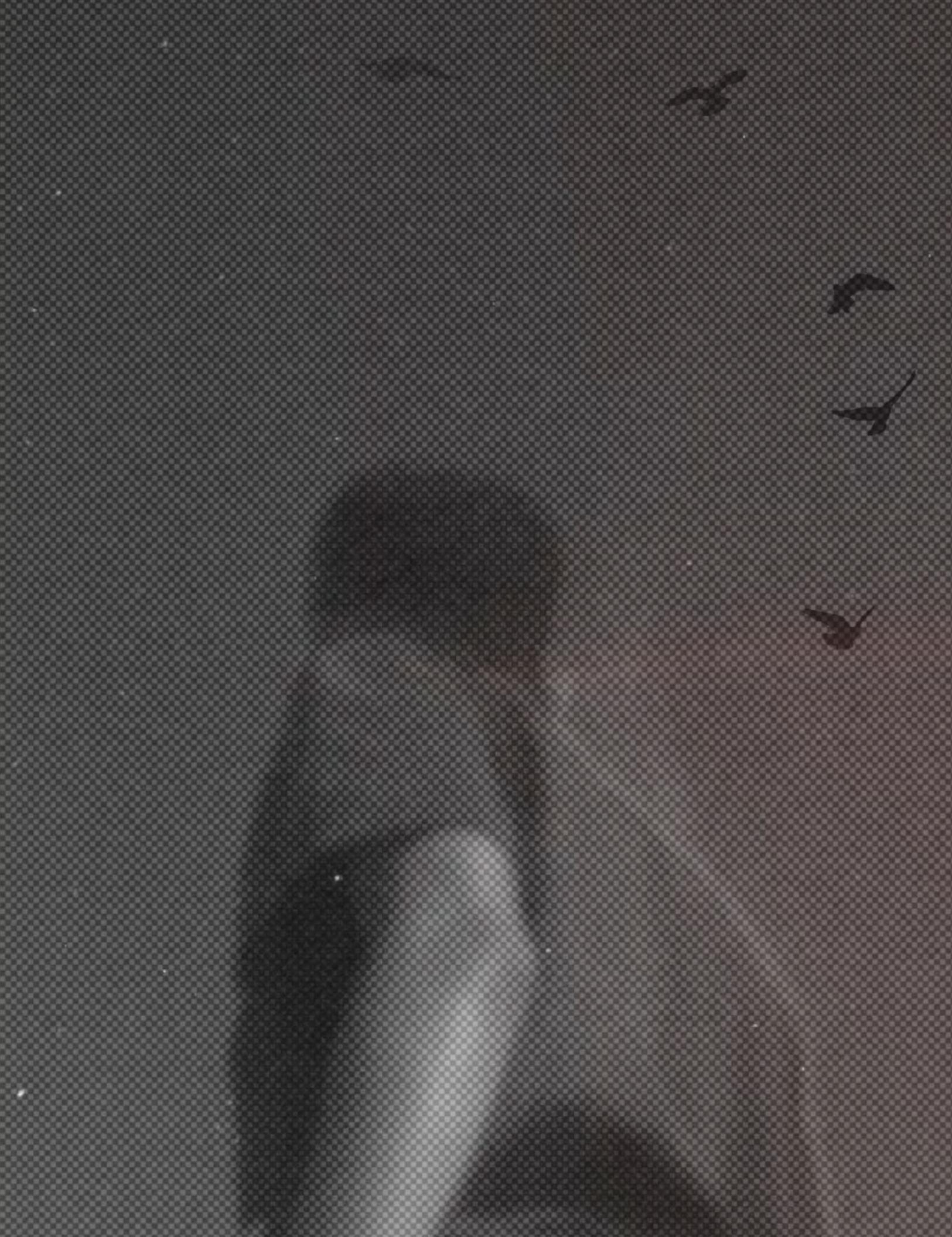
STEPS	SUGGESTED INTERIM RECORD SEALING PROCESS (TO BE USED UNTIL JAN 1, 2022)
1	YDD provider reports to law enforcement agency (LEA) that youth completes diversion or was found to not fall within the juvenile delinquency court's jurisdiction under current law (e.g., a child under 12 per SB 439)
2	LEA redacts police report removing any identifying information about the young person including their name, parent/guardian names, citation numbers, DOB, etc.
3	LEA fills out Petition to Seal and Destroy Juvenile Arrest Records (Department of Justice Form BCII 8271) and sends that completed form, along with a cover letter, to the State of CA DOJ Bureau of Criminal Identification, Record Sealing and Dismissal Unit , P.O. Box 903417, Sacramento, CA 94203-4170
4	LEA runs a search by young person's name in their system to confirm young person is no longer searchable
5	LEA notifies YDD provider and youth/family in writing that the police record has been sealed
6	LEA may hold onto the record (paper file only, not publicly accessible) until young person turns 18. Once young person turns 18, LEA destroys record.

It is suggested that all YDD partnered LEAs consult the Judicial Council and other legal authorities to develop a record sealing process in accordance with Welfare & Institutions Code section 827.95.

The free bird leaps
on the back of the wind
and floats downstream
till the current ends
and dips his wings
in the orange sun rays
and dares to claim the sky.

Maya Angelou







UCLA

School of Law

Criminal Justice Program