

Guide To Developing Pre-Adjudication Diversion Policy And Practice In Pennsylvania

Prepared by the
Diversion Subcommittee of the
Mental Health/Juvenile Justice
state work group of
the Models for Change Initiative in Pennsylvania

ModelsforChange
Systems Reform in Juvenile Justice

Models for Change

Models for Change is an effort to create successful and replicable models of juvenile justice reform through targeted investments in key states, with core support from the John D. and Catherine T. MacArthur Foundation. Models for Change seeks to accelerate progress toward a more effective, fair, and developmentally sound juvenile justice system that holds young people accountable for their actions, provides for their rehabilitation, protects them from harm, increases their life chances, and manages the risk they pose to themselves and to the public. The initiative is underway in Illinois, Pennsylvania, Louisiana, and Washington, and through action networks focusing on key issues, in California, Colorado, Connecticut, Florida, Kansas, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Texas, and Wisconsin.

Guide To Developing Pre-Adjudication Diversion Policy And Practice In Pennsylvania

September 2010

Prepared by the
Diversion Subcommittee of the
Mental Health/Juvenile Justice
state work group of
the Models for Change Initiative in Pennsylvania

Table of Contents

Introduction and Background	6
I. Definition of Pre-Adjudication Diversion	7
II. Statutory Basis and Role of Pre-Adjudication Diversion in the Juvenile Justice System.....	7
III. Youth Eligible for Diversion.....	7
IV. Preventing Net-Widening.....	8
V. Diversion and Summary Offenses	8
VI. Diversion Activities and Balanced and Restorative Justice.....	8
VII. Collaboration and the Identification/Development of Effective Diversion Programs	9
VIII. Elements of Effective Programs and Written Agreements	9
a. Referral and Eligibility.....	9
b. Written Agreements.....	9
c. Bar on Future Prosecution for the Same Offense.....	10
d. Expungement	10
IX. Family Involvement and Support Systems	10
X. Special Considerations for Diversion by Law Enforcement.....	11
XI. Special Considerations for Diversion by Intake Juvenile Probation Officers.....	11
XII. Special Considerations for Diversion of Youth Who Commit School-Based Offenses	12
XIII. Outcome Measurement	13
Appendix A: Principles of Pre-Adjudication Diversion in Pennsylvania	15
Appendix B: Diversion Subcommittee Members	18
Appendix C: Youth Behavior Performance Review Checklist	19

Introduction and Background

In 2006, the Commonwealth of Pennsylvania issued a Mental Health/Juvenile Justice Joint Policy Statement (the “Joint Policy Statement”)¹ as a blueprint for creating a model system that responds appropriately to youth with mental health needs who may or do become involved in the juvenile court. The Joint Policy Statement, promulgated as part of Pennsylvania’s participation in the Models for Change systems reform initiative, sets out a vision of a comprehensive model system that: (1) prevents the unnecessary involvement of youth who are in need of mental health treatment, including those with co-occurring substance abuse disorders, in the juvenile justice system; (2) allows for the early identification of youth in the system with mental health needs and co-occurring disorders; and (3) provides for timely access by identified youth in the system to appropriate treatment within the least restrictive setting that is consistent with public safety needs.

A key component of the Joint Policy Statement’s vision of a model system is **pre-adjudication diversion**² – providing opportunities for youth who would otherwise face formal processing in the court system to avoid an adjudication of delinquency or conviction for a summary offense and instead directing them into an alternative program, including treatment when appropriate. The Diversion Subcommittee of the state Mental Health/Juvenile Justice work group for the Models for Change initiative in Pennsylvania was formed with the mandate of implementing the Joint Policy Statement’s vision with respect to diversion. The Diversion Subcommittee developed a set of fundamental principles or values that should underpin any pre-adjudication diversion policy and protocol developed in Pennsylvania, whether at the state or county level. The Principles have been endorsed by many key stakeholders in the Commonwealth. (See **Principles of Pre-Adjudication Diversion in Pennsylvania**, Appendix A.) The Diversion Subcommittee also developed this **Guide to Developing Pre-Adjudication Diversion Policy and Practice** to assist counties in *crafting county-specific pre-adjudication diversion policies and protocols to guide local practice*.

The **Principles** and **Guide** were developed in direct response to two key findings of a survey conducted in 2007 of county juvenile justice stakeholders, including judges, prosecutors, defense attorneys and juvenile probation officers. First, although Pennsylvania’s Juvenile Act provides a statutory basis for diversion, most Pennsylvania counties currently do not have a formal written policy on diversion. Second, there is a need for statewide standards regarding diversion in order to ensure that diversion is made available to all eligible youth throughout the Commonwealth and is fairly administered. The **Principles** and **Guide** are provided as resources to assist counties in developing local policies and protocols that are consistent with the mandates of current law and best practice standards.

Diversion is both a process (i.e., providing alternatives to adjudications for alleged juvenile offenders) and a program (i.e., the services the youth receives in place of a formal adjudication). This **Guide** addresses both aspects of diversion, and stakeholders similarly should address both aspects as they craft their own diversion policies and protocols.³

¹ The Joint Policy Statement was signed by the Pennsylvania Departments of Public Welfare and Education, Pennsylvania Juvenile Court Judges’ Commission, Pennsylvania Council of Chief Juvenile Probation Officers, Pennsylvania Commission on Crime and Delinquency, Mental Health/Mental Retardation Program Administrators Association of Pennsylvania, and Mental Health Association in Pennsylvania.

² The Joint Policy Statement also recognizes that diversion encompasses efforts to prevent youth who have already been adjudicated delinquent from penetrating deeper into the juvenile justice system, and encourages the development of diversion mechanisms at all key decision-making points in the juvenile justice continuum. This document focuses on the pre-adjudication part of that continuum.

³ In this document, the term “policy” refers to a set of general principles governing pre-adjudication diversion. The term “protocol” refers to a description of the operating procedures and practices for carrying out diversion. A county’s policy and protocols can be contained in one document or separate documents.

I. Definition of Pre-Adjudication Diversion

Pre-adjudication diversion is defined as providing opportunities for youth who would otherwise face formal processing in the court system so that they can avoid an adjudication of delinquency or conviction for a summary offense and instead directing them into an alternative program, including treatment when appropriate.

Pre-adjudication diversion can occur at various decision-making points in the juvenile justice system. It can provide alternatives for youth who have not yet entered the juvenile justice system but who are at imminent risk of being charged with a delinquent act, and can also channel youth who have been alleged to be delinquent away from formal court processing that could result in an adjudication of delinquency. Pre-adjudication diversion can occur at the school, law enforcement, magisterial district judge, and juvenile court levels.

Examples of pre-adjudication diversion include a referral for service in lieu of the filing of a written allegation, various types of community accountability boards such as peer courts and youth aid panels, family/restorative group conferencing, informal adjustment and consent decree dispositions, summary offense alternative adjudication programs, and an adjudication of dependency in lieu of a delinquency adjudication.

II. Statutory Basis and Role of Pre-Adjudication Diversion in the Juvenile Justice System

The Pennsylvania Juvenile Act and Rules of Juvenile Court Procedure provide mechanisms to divert youth away from further formal processing within the justice system. Thus, both our legislature and state supreme court endorse the fundamental principle that pre-adjudication diversion is appropriate in certain circumstances.

- **Informal adjustment.** 42 Pa. Cons. Stat. § 6323 and Rule 312 specifically provide for informal adjustment as an alternative to filing a delinquency petition and proceeding to adjudication when doing so would be in the best interest of the public and the child, and when the juvenile and his guardian consent.
- **Consent decrees.** 42 Pa. Cons. Stat. § 6340 and Rule 370 permit the court to enter a consent decree, with the consent of the Commonwealth and the juvenile, after the filing of a delinquency petition and before adjudication to place the juvenile under court supervision as an alternative to adjudication.

- **Deferred Adjudication.** 42 Pa. Cons. Stat. § 6341b and Rule 409(b) allow the court to release the juvenile from the court's jurisdiction, if it does not find that the child needs supervision, treatment, or rehabilitation.

In addition, a Pennsylvania statute provides for alternatives to convictions for summary offenses, as magisterial district judges may divert youth accused of summary offenses to community service or self-improvement programs. See 42 Pa. Cons. Stat. § 1520.

III. Youth Eligible for Diversion

Certain youth, who would otherwise face formal processing in the juvenile justice system, should be considered for pre-adjudication diversion. These include:

- First time offenders;
- Youth referred by magisterial district judges for failure to comply with a lawful sentence in summary offense cases; and
- Youth charged with misdemeanor/non-violent offenses.

Any diversion policy and protocol enacted by a county should clearly spell out which youth will and will not be eligible for diversion, and who will be responsible for determining eligibility.

Diversion is especially important for special needs populations – those with mental health disorders, substance abuse treatment needs, or developmental disabilities. The large influx of youth with mental health problems and other special needs has raised concerns that the juvenile court has become the de facto treatment system for too many youth. This underscores the need for collaboration between the juvenile justice system and other youth service agencies to ensure that youth receive the treatment they need while ensuring public safety.

A youth's participation in a diversion program should be voluntary. Success will depend on the youth's willingness to accept services and sanctions voluntarily. Participation should be made available to all youth no matter the youth's race, ethnicity, gender, sexual orientation, or legal representation.

IV. Preventing Net-Widening

It is critical that pre-adjudication diversion policies and practices incorporate safeguards to prevent “net-widening” – instead of reducing the number of youth formally processed through the justice system, diversion programs may actually subject more youth to formal justice system intervention than would be the case in the absence of these initiatives. Diversion policies and protocols must therefore focus on those youth who would otherwise be subject to an adjudication of delinquency or conviction for a summary offense within the justice system but for an intervention.

V. Diversion and Summary Offenses

The Juvenile Act excludes summary offenses from its definition of delinquent acts. 42 Pa. Cons. Stat. § 6302(2)(iv). This exclusion means that individuals under the age of 18 charged with a summary offense are tried in adult court and face convictions rather than adjudications of delinquency. Examples of summary offenses include underage drinking, disorderly conduct, and retail theft.

Until recently, summary convictions, unlike juvenile adjudications, could not be expunged. Although Act 134 of 2008, which became effective January 25, 2009, now allows for expungement five years after the summary conviction (18 Pa. Cons. Stat. § 9122(b)(3)), an unintended harm may still result for youth. Because the Juvenile Act does not apply to summary convictions, the provisions in the Act controlling public availability of juvenile records do not apply. Consequently, the record of a youth arrested and convicted for a summary offense is an open public record, while an adjudication for much more serious offenses are not. Therefore, a summary offense can be a serious impediment to future employment and academic pursuits. Counties should assure that diversion policies and programs adequately address this population of youth to avoid unnecessary entries into the system. Pennsylvania statutes and rules provide mechanisms for youth accused of summary offenses to avoid a conviction. Magisterial district judges may divert youth accused of summary offenses to community service or self-improvement programs (42 Pa. Cons. Stat. § 1520) or a youth may be eligible for Accelerated Rehabilitative Disposition (Pa. R. Crim. P. 300).

VI. Diversion Activities and Balanced and Restorative Justice

Any pre-adjudicatory diversion effort should be carefully aligned with the principles of Balanced and Restorative Justice, which are the foundation of Pennsylvania’s juvenile justice system. These principles include holding offenders accountable to victims, providing competency development for offenders, and ensuring community safety. All programmatic protocol and components should address these principles as follows:

- Youth considered for diversion should be held accountable to the victims of their alleged misconduct. Full restitution should be achieved, whenever possible, and victims should have input into the content of any written agreement or diversion decision, consistent with the provisions of the Pennsylvania Victims Bill of Rights, 18 Pa. Stat. §11.201, and relevant provisions of the Pennsylvania Rules of Juvenile Court Procedure. Eligible youth should be helped to understand the harm they have caused, be given the opportunity to learn the impact of their misconduct, and be required to make reparation to the affected victim. Where no individual victim is identified, eligible youth should be assisted in recognizing their “community” as the victim. If the diversion decision includes a community service component, such service should be an effort of “value” and should be tailored to the youth’s individual strengths and needs.
- Information should be obtained about the eligible youth, through an interview or assessment process, to ensure that any diversion effort will deliver competency development activities designed to decrease the likelihood of future arrests and referrals to juvenile court. Activities should be easily accessible to eligible youth and families, and should be individualized as much as possible. Stakeholders should collaborate to establish appropriate competency development activities and treatment services if they are not currently available.
- By limiting eligible youth to only first-time offenders and those who have been charged with misdemeanor/non-violent infractions of the law, the pathway to ensure community safety has begun. Effective accountability and competency development activities should further heighten this principle. Finally, systematic program/contract monitoring must be in place to ensure compliance. It is recommended that any diversion program/effort also have a clear protocol to deal with the issue of non-compliance, keeping in mind that normal adolescence itself is often characterized by non-compliance. Programs should therefore offer a range of interventions for non-compliant youth in order to avoid formal processing.

VII. Collaboration and the Identification/Development of Effective Diversion Programs

Successful diversion programs depend on long-term involvement, commitment, and support from many key stakeholders, including the following:

- Law enforcement departments
- Probation departments
- Courts (including Magisterial District Judges)
- Prosecutor's offices
- Public Defender's offices
- Children and Youth agencies
- Managed care organizations
- Schools and public education agencies
- Families and youth
- Child advocates
- Victim advocates
- Community organizations
- Mental Health/Retardation Agencies
- Drug & Alcohol Abuse Agencies
- Community members

In order to successfully divert youth, including those with mental health disorders, substance abuse problems, and/or developmental disabilities, the entities listed above should identify and, when necessary, work together to develop effective community-based services and programs. The programs should be culturally competent, and options for diversion should be available to eligible youth regardless of their age, race, ethnicity, gender, or sexual orientation. Counties should assess what services and programs exist and those that are lacking or absent. Ideally, counties should then create formal written agreements with service providers and educational agencies to provide services and programs to fill any identified gaps. To the extent possible, counties should divert youth into evidence-based programs as needed. Unfortunately, many diversion models have not been studied and evaluated for effectiveness, making it all the more important that the collaborative entities collect data and analyze outcomes for youth who are diverted into community-based programs.

VIII. Elements of Effective Programs and Written Agreements

a. Referral and Eligibility

Referrals to diversion programs should conform to written guidelines developed by individual counties. These guidelines set forth a formal referral process, including who is responsible for making referrals (i.e., school officials, law enforcement, probation officers, prosecutors, etc.), the screening and assessment tool(s) to be used, clearly articulated eligibility requirements, criteria for acceptance, and available community resources and other alternatives to prevent further processing into the juvenile justice system. Referrals should be made on a case-by-case determination of whether the youth meets the established eligibility requirements and criteria for acceptance.

b. Written Agreements

The conditions of any diversion program should be clearly and completely reflected in a formal written agreement between the youth, the family, and the diversion program. The agreement should be individually tailored to a youth's specific risk factors and needs in order to maximize his/her ability to successfully complete the program requirements. All written agreements should contain the following:

- Measurable objectives/conditions to be met by the youth (e.g., hours of work, amount of restitution to be paid), rather than vague conditions or obligations (e.g., "show respect"). These items should be described in detail with a timeline for completion, and should specifically correlate to identified risks and needs.
- Identification of other persons (aside from the youth) who are responsible for taking specific actions to help complete the written agreement. Their actions should be described in detail with a timeline for completion.
- A formal process for reviewing and monitoring compliance with the agreement. This process should include identification of personnel and methods (office visits, phone contacts, home visits, etc.) to monitor compliance.
- A system of rewards for compliance and consequences to the youth if he/she fails to satisfy the measurable objectives or comply with the terms of the agreement, including whether charges may be filed/re-filed. Consequences should include graduated sanctions, i.e., consequences short of expulsion from the diversion program.

- A statement of the definite, limited duration of the agreement. Agreements should provide for closure of the case once the youth has satisfied all requirements.
- Verification that victim input was sought and taken into account when the written agreement was completed. Victim impact statements, if received, should be considered in any written agreement. Whenever appropriate, participation in a Victim Awareness curriculum should be part of the written agreement.
- Informed consent indicating that the youth was notified of his/her right to refuse diversion and to request a hearing before a judge or master. The agreement should also make clear that the youth may terminate the agreement at any time and request a hearing.
- Demonstrated family involvement in the design and implementation of the diversion program. This should include attendance at planning meetings, provision of information regarding rights and logistics, and opportunities to provide relevant information and concerns. Existing programs should encourage family involvement by parents, guardians, adult biological relatives, and other supportive adults defined as family members by the youth, such as neighbors or clergy members.

c. Bar on Future Prosecution for the Same Offense

If a youth successfully completes the conditions of a diversion agreement/program, he/she should not be proceeded against or prosecuted for the same offense in the future.

d. Expungement

Pursuant to 18 Pa. Cons. Stat. § 9123, a youth's delinquency record, including both police and court documents, may be expunged in a number of situations, including when a complaint is not substantiated, the petition is dismissed by the court or not filed, or a consent decree is successfully completed. Successful diversion should lead to one of these qualifying results. Youth who successfully complete diversion programs should, therefore, be encouraged to pursue the expungement of their juvenile court and law enforcement records. As part of their diversion programs, counties should assist youth in getting their records expunged, preferably at minimal or no cost to the youth and family.

IX. Family Involvement and Support Systems

For purposes of this **Guide**, the term "family" may include parents, guardians, adult biological relatives, and other adults defined as family members and supportive adults by the youth, such as neighbors or clergy members. Families should have access to sufficient information and supports in order to make informed decisions and participate effectively with juvenile justice authorities and other participating agencies in the planning and implementation of diversion plans. Families should be provided opportunities to participate in setting goals, identifying supports and services, selecting providers, monitoring outcomes, and creating follow-up plans.

Juvenile justice authorities should be trained in how to effectively elicit family participation, including developing mutual trust and respect, honoring the cultural diversity of families, and establishing collaborative processes and policies. Specific activities that promote family involvement include: meeting at times that are convenient for families; providing bi-lingual staff or interpreters when necessary; providing access to programs that align with a family's culture and experience; and offering peer support and advocacy resources.

When appropriate, families that are unable, unwilling, or unavailable to play a major role in diversion planning and implementation should be offered assistance in identifying supports and resources to facilitate their participation. However, it is important that youth not be excluded from diversion because they do not have families who are immediately available to participate in this process. For youth who are also involved in the dependency system, juvenile justice authorities should, where appropriate, encourage and facilitate the participation of county children and youth agencies and/or foster families in diversion planning and implementation.

X. Special Considerations for Diversion by Law Enforcement

Consistent with local policies, law enforcement agencies should develop written protocols to aid officers in making appropriate decisions about diversion, based on the nature of the incident, prior police contact and community protection issues, the behavior of the youth, and available community resources and alternatives to the juvenile justice system. Law enforcement officials' utilization of these protocols will help to ensure that eligible youth are diverted from the juvenile justice system.

In addition, all law enforcement personnel should receive basic training about mental illness, substance abuse problems, and developmental disabilities and appropriate responses to youth with these special needs.⁴ A cross-section of police officers should also receive specialized training on how to utilize a non-adversarial, crisis-intervention approach to safely gain control of situations involving these youth in order to prevent unnecessary juvenile justice system involvement. Whenever possible, mental health workers and substance abuse counselors should participate in these training sessions to encourage collaboration and cross-system education. Ideally, each law enforcement agency will have enough trained staff and police officers available to cover all time shifts and geographical districts within their jurisdiction. Specialized training should, at a minimum, cover the following topics:

- Signs and symptoms of mental illnesses, substance abuse, and developmental disabilities
- The impact of special needs on youth, families, and communities
- Stabilization and de-escalation techniques
- Diversion programs and other alternatives to arrest/processing
- Community resources including crisis response services, and inpatient and outpatient treatment options

Call-takers and dispatchers also should receive training to prepare them to quickly collect the most pertinent information to determine whether mental illness, substance abuse, and/or developmental disabilities may be a factor in calls for service, and to subsequently dispatch calls to selected responders.

⁴ For example, Allegheny County, Pennsylvania, was one of three jurisdictions to help develop and pilot the Crisis Intervention Teams For Youth (CIT-Y) curriculum for law enforcement officers as members of the Models for Change Mental Health/Juvenile Justice Action Network. The final CIT-Y training curriculum will be available in the summer 2010 for use by other jurisdictions. For more information, contact the National Center for Mental Health and Juvenile Justice at <http://www.ncmhjj.com/>.

XI. Special Considerations for Diversion by Intake Juvenile Probation Officers

The intake process is one of the most significant events for youth and families referred to the juvenile justice system. Conducting the intake conference with respect and competence can affect the outcome of this process in a positive fashion. As one of the initial points of formal contact with the juvenile justice system, the intake conference is an ideal setting for the screening, identification, and diversion of eligible youth from penetration into the juvenile justice system. Probation officers should collect information relevant to the case in a systematic yet sensitive manner, while balancing the interests of the youth, the victim, and the safety of the community.

The use of a standardized risk (of re-offending) assessment, along with an assessment of whether there is sufficient evidence to proceed, helps to determine whether a case should be dismissed, diverted, or formally referred to juvenile court. Mental health and substance abuse screening instruments can then help to determine if further assessment of a youth is necessary to determine a youth's service needs. Caution should be exercised that youth who otherwise would be eligible for diversion due to the low-level nature of the offense and their low risk to reoffend are not excluded from diversion programs simply because their mental health screening and assessment indicate a high need for services. If a screening and assessment tool is used, the tool should be standardized, scientifically-sound, and contain strong psychometric properties, as set forth in the *Mental Health/Juvenile Justice Joint Policy Statement* of the Mental Health/Juvenile Justice state work group of the Models for Change initiative in Pennsylvania. Instruments should also demonstrate reliability and validity for identifying the needs of youth, and all personnel who administer screening and assessment instruments must be appropriately trained and supervised.

Intake probation officers should be well acquainted with the range of diversion programs available as alternatives to formal processing in the juvenile justice system. They should also receive training to enable them to recognize signs and symptoms of mental illnesses, substance abuse disorders, and developmental disabilities. Written protocols about eligibility requirements and diversion programs available in the community should be developed to provide an objective, consistent framework to guide probation officers in making referrals/recommendations to the court. To expand accountability and improve future service delivery, intake probation offices should develop standardized tracking forms, or similar mechanisms, to keep clear records of actions completed and decisions made in all cases.

XII. Special Considerations for Diversion of Youth Who Commit School-Based Offenses

The educational mission of schools is critical to the development of productive and law-abiding adults. Schools can serve as a first line of prevention, intervention, and diversion by providing in-school services targeted at promoting healthy student behaviors that in turn support academic achievement and a positive school climate. By partnering with other child-serving systems, schools can help ensure seamless service for the educational needs of the student, while supporting effective responses to unacceptable behavior. In order to ensure those effective responses, public school entities should be encouraged to develop a written protocol, *consistent with applicable federal and state laws*, that outlines the procedures to follow when a student commits an offense on school property during school hours. These protocols should reflect the **Principles** at Appendix A by providing a mechanism for referral to resources other than law enforcement, while also including provisions designed to aid and protect victims who may attend the youth's school. Overall, the protocol should be designed to help the school entity to continue to be involved in and meet the student's educational needs as opposed to simply informing law enforcement officials about offenses.

School protocols should outline which school personnel have the authority to decide whether or not to contact law enforcement officials and under what circumstances. It should be noted that current Pennsylvania law only requires school personnel to report the discovery of prohibited weapons on school grounds and does not require the reporting of other offenses committed on school property (24 Pa. Stat. § 13-1317.2).⁵ This fact creates an opportunity for a more flexible approach to the handling of other behaviors. In addition to coordinated referrals to community-based services, in-school resources should be identified and established for this purpose. These efforts could include, but not be limited to, the following:

- Bullying Prevention Programs
- Community and School-Based Youth Aid Panels
- Peer Councils/Courts/Juries
- Guidance Department Services
- Volunteer Programs/Mentoring/Tutoring
- Restorative Conferencing Services
- Student Assistance Programs

In addition, school protocols should specify procedures to follow when the student may have a special need such as a mental health disorder, substance abuse problem, and/or a developmental disability. For example, a school-based offense may be a manifestation of a disability and thus provides an opportunity to identify a special education need. Schools have a responsibility under the federal Individuals with Disabilities Education Improvement Act (IDEA), at 20 U.S.C. § 1412(a) (3), and state law, to identify students who might qualify for special education services. The protocol should suggest that the school entity utilize a behavior performance review tool to determine if the student may have a disability that entitles him/her to special education and related services that can be designed and provided to address the student's educational and behavioral needs. This process may alleviate or eliminate the need to refer the student to law enforcement authorities. An example of such a review tool, the "Youth Behavior Performance Review Checklist: Seven (7) Questions for Juvenile Justice and Mental Health Professionals to Ask", is included at Appendix B. For students with disabilities who already have a positive behavior support plan in place at the time of the incident, the protocol should incorporate existing state law requirements by instructing school officials to conduct a new functional behavior assessment and update the positive behavior support plan following any referral to law enforcement. 22 Pa. Code § 14.133(h).

⁵ At the time this publication went to press, Senate Bill (SB) 56 was pending in the Pennsylvania General Assembly. If enacted into law, SB 56 would significantly change the requirements on schools to contact the police when offenses occur on school grounds. Readers are advised to consult the website of the Pennsylvania General Assembly at <http://www.legis.state.pa.us/> to learn the status of SB 56. (Type in "SB 56" in the legislation finder.)

On the law enforcement side, the fact that a school official contacts law enforcement authorities does not necessarily require the filing of charges. Law enforcement officials should exercise discretion in determining whether to process and arrest youth with special needs that may have played a role in the offending behavior, particularly if there are available community resources and alternatives to the juvenile justice system. For example, law enforcement officials should consider the results of any “manifestation determination” for a youth with an Individualized Education Program (IEP), as defined in the IDEA, made by the school entity regarding the incident.⁶

Effective, evidence-based practices that support the wellness and resiliency of youth in the school and community settings are emerging. The stakeholders listed at Part VII can partner to implement practices which enhance academic performance and increase graduation rates, decrease disciplinary referrals, and provide in-school services and supports for students with special needs. An example of such an approach is School-Wide Positive Behavior Support. This practice is gradually expanding in Pennsylvania through a partnership of the Departments of Education, Public Welfare, and Health, and Intermediate Units, schools, Behavioral Health Managed Care Organizations, community-based providers, and others. This is an evidence-based practice that has demonstrated significant positive outcomes in academic, social, and emotional sectors.

XIII. Outcome Measurement

Any diversion protocol should include an outcome measurement component to track outcomes and evaluate the effectiveness of diversion policies and practices. At a minimum, outcome measurement should include: demographic characteristics of diverted youth (i.e., youth’s race, ethnicity, gender) to ensure that diversion is made available to all eligible youth and is fairly administered; completion rates of youth; re-arrest and recidivism rates of youth who are diverted; the degree to which the victims of diverted youth are satisfied with the diversion process; and the degree to which collaboration between all key stakeholders has been accomplished through multi-agency memoranda of understanding, protocols, and trainings.

⁶ A “manifestation determination” is a determination that must be conducted within 10 school days of any decision to change the placement of a child with a disability (i.e., remove the child from his/her current educational placement for more than 10 consecutive school days or more than 15 cumulative school days in a school year) because of a violation of a code of student conduct. As a part of this determination, the school entity, the parent, and relevant members of the child’s IEP Team must review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by or had a direct and substantial relationship to the child’s disability, or if the conduct was the direct result of the school entity’s failure to implement the IEP. 20 U.S.C. § 1412(k)(1)(E).

This Guide is based, in part, on principles and recommendations found in the following documents:

Section 4 of *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System* (2007), which was developed by The National Center for Mental Health and Juvenile Justice and can be found at <http://www.ncmhjj.com/Blueprint/pdfs/Blueprint.pdf>.

Criminal Justice/Mental Health Consensus Project Report (June 2002), which was coordinated by the Council of State Governments and can be found at http://consensusproject.org/the_report/toc/

Chapter 6 of *The Desktop Guide to Good Juvenile Probation Practice* (June 2002), which was developed by the National Center for Juvenile Justice with funding from the Office of Juvenile Justice and Delinquency Prevention, and can be found at <http://ncjj.servehttp.com/NCJJWebsite/pdf/Chapter06.pdf>.

Improving Responses to People with Mental Illnesses: The Essential Elements of a Specialized Law-Enforcement Based Program (2008), which was prepared by the Council of State Governments Justice Center in partnership with the Police Executive Research Forum, and can be found at <http://consensusproject.org/downloads/le-essentialelements.pdf>.

Mental Health/Juvenile Justice work group of the Pennsylvania MacArthur Foundation Models for Change initiative's *Mental Health/Juvenile Justice Joint Policy Statement* (September 2006), which can be found at <http://www.modelsforchange.net/pdfs/MH-JJ%20Policy%20Statement.pdf>.

Appendix A: Principles of Pre- Adjudication Diversion in Pennsylvania

Prepared by the Diversion Subcommittee of the Mental Health/Juvenile Justice state work group of the Models for Change Initiative in Pennsylvania January 2010

In 2006, the Commonwealth of Pennsylvania issued a Mental Health/ Juvenile Justice Joint Policy Statement (the “Joint Policy Statement”)⁷ as a blueprint for creating a model system that responds appropriately to youth with mental health needs who may or do become involved in the juvenile court. The Joint Policy Statement, promulgated as part of Pennsylvania’s participation in the Models for Change systems reform initiative, sets out a vision of a comprehensive model system that: (1) prevents the unnecessary involvement of youth who are in need of mental health treatment, including those with co-occurring substance abuse disorders, in the juvenile justice system; (2) allows for the early identification of youth in the system with mental health needs and co-occurring disorders; and (3) provides for timely access by identified youth in the system to appropriate treatment within the least restrictive setting that is consistent with public safety needs.

A key component of the Joint Policy Statement’s vision of a model system is **pre-adjudication diversion**⁸ – providing opportunities for youth who would otherwise face formal processing in the court system to avoid an adjudication of delinquency or conviction for a summary offense and instead directing them into an alternative program, including treatment when appropriate. This document sets forth fundamental principles or values that should underpin any pre-adjudication diversion policy and protocol developed in Pennsylvania, whether at the state or county level, as follows:

1. Pre-adjudication diversion efforts should be consistent with the principles of Balanced and Restorative Justice – holding offenders accountable to victims, providing competency development for offenders, and ensuring community safety.
2. Pre-adjudication diversion as an alternative to formal processing in the justice system in appropriate cases can serve many desirable goals, including avoiding stigma and a permanent record for the youth. By enacting legislation and promulgating court rules that create several diversion mechanisms within the justice system (see number five below), the Pennsylvania General Assembly and Pennsylvania Supreme Court, respectively, have endorsed the fundamental principle that pre-adjudication diversion is appropriate in certain circumstances.
3. Pre-adjudication diversion is especially important for special needs populations – those with mental health disorders, substance abuse treatment needs, or developmental disabilities. Certain stakeholders, particularly law enforcement and intake juvenile probation officers, should receive specialized training regarding these populations. Effective community-based services and programs should be identified and, when necessary, developed for these youth.
4. Pre-adjudication diversion policies and practices should incorporate safeguards to prevent “net-widening” – subjecting more youth to formal justice system intervention than would be the case in the absence of these initiatives. Diversion programs must therefore focus on those youth who would otherwise be subject to an adjudication of delinquency or conviction for a summary offense within the justice system but for an intervention.
5. Pre-adjudication policies and practices should build on the mechanisms already provided in Pennsylvania statutes and court rules to divert youth away from formal processing within the justice system. These include informal adjustment (42 Pa. Cons. Stat. § 6323 and Pa.R.J.C.P. 312), consent decrees (42 Pa. Cons. Stat. § 6340 and Pa.R.J.C.P.370), and deferred adjudications (42 Pa. Cons. Stat. § 6341b and Pa.R.J.C.P.409(b)) in the delinquency court, as well as conviction alternatives for summary offenses (42 Pa. Cons. Stat. § 1520).

⁷ The Joint Policy Statement was signed by the Pennsylvania Departments of Public Welfare and Education, Pennsylvania Juvenile Court Judges’ Commission, Pennsylvania Council of Chief Juvenile Probation Officers, Pennsylvania Commission on Crime and Delinquency, Mental Health/Mental Retardation Program Administrators Association of Pennsylvania, and Mental Health Association in Pennsylvania.

⁸ The Joint Policy Statement recognizes that diversion also encompasses efforts to prevent youth who have already been adjudicated delinquent from penetrating deeper into the juvenile justice system, and encourages the development of diversion mechanisms at all key decision-making points in the juvenile justice continuum. This Principles document focuses on the pre-adjudication part of that continuum.

6. Certain youth who would otherwise face a delinquency adjudication or conviction for a summary offense should be considered for pre-adjudication diversion. These include:
 - a. First time offenders;
 - b. Youth referred by magisterial district judges for failure to comply with a lawful sentence in summary offense cases; and
 - c. Youth charged with misdemeanor/non-violent offenses.
7. Because summary offenses are a conduit into the juvenile justice system, local jurisdictions should ensure that diversion policies and programs adequately address this population of youth, to avoid unnecessary entries into the system.
8. Local jurisdictions should ensure that pre-adjudication diversion is made available to all eligible youth no matter the youth's race, ethnicity, gender, sexual orientation, or legal representation; is fairly administered; and that youth participation in diversion is voluntary.
9. Families should have access to sufficient information and supports in order to make informed decisions and to actively participate with juvenile justice authorities and other agencies that administer diversion programs in the planning and implementation of diversion plans. Alternatives should be available to youth whose families are unable, unwilling or unavailable to participate.
10. There must be clarity and accountability in the administration of pre-adjudication diversion programs. Consequently, each county diversion policy should have written guidelines that set forth a formal referral process (including who is responsible for making referrals), the screening and assessment process, clearly articulated eligibility requirements, criteria for acceptance, procedures for non-compliance, and available community resources that can serve as alternatives to formal court processing.
11. The conditions of any diversion program should be clearly and completely reflected in a formal written agreement between the youth, parent(s)/legal guardian(s), and the diversion program. Each written agreement should be tailored to an individual youth's particular strengths and needs, to maximize his/her ability to successfully complete the program.
12. As these written agreements are developed, victims should have the opportunity to provide input. Victim impact statements, if received, should be considered in any written agreement, and, whenever appropriate, participation in a Victim Awareness curriculum should be part of the written agreement. Making full restitution to the victims should be included in the written agreements whenever possible.
13. A youth must not be prosecuted for the original offense in the future if the conditions of the diversion agreement/program have been successfully completed.
14. As part of their pre-adjudication diversion policies and protocols, counties should assist youth in getting their delinquency records expunged in conformance with 18 Pa. Cons. Stat. § 9123, and their summary convictions expunged pursuant to Act 134 of 2008, preferably at minimal or no cost to the youth.
15. Counties should include in their pre-adjudication diversion policies and protocols an outcome measurement component to track both youth and program outcomes in order to evaluate the effectiveness of their diversion policies and practices. Counties should also measure and evaluate victims' satisfaction with the diversion programs.
16. Many youth who come into contact with the justice system have themselves been victims of trauma and/or abuse, and diversion programs should be sensitive and responsive to the potential for past trauma and victimization.
17. Successful pre-adjudication diversion programs depend on long-term involvement, commitment, and support from all key stakeholders.

Principles Of Pre-Adjudication Diversion In Pennsylvania Endorsements Received⁹

County Commissioners Association of Pennsylvania's
Human Services Committee

Juvenile Defenders Association of Pennsylvania

Mental Health Association in Pennsylvania

Office of Children, Youth and Families, Pennsylvania
Department of Public Welfare

Office of Mental Health and Substance Abuse Services,
Pennsylvania Department of Public Welfare

Pennsylvania Community Providers Association

Pennsylvania Council of Chief Juvenile Probation Officers

Pennsylvania Department of Education

Pennsylvania District Attorneys Association

Pennsylvania Juvenile Court Judges' Commission

Pennsylvania Juvenile Justice and Delinquency
Prevention Committee

⁹ As of the date of publication of the Diversion Guide.

Appendix B: Diversion Subcommittee of the State Mental Health/Juvenile Justice state work group for the Models for Change Initiative

Members as of June 2010

Elton Anglada

Defender Association of Philadelphia

Michael Chambers

Mental Health/Mental Retardation Program Administrators of Pennsylvania

Bruce Clash

Fight Crime: Invest in Kids (PA)

Arleathia Davis-Yellock

Bureau of Juvenile Justice Services,
Pennsylvania Department of Public Welfare

Kristen DeComo

Allegheny County Department of Human Services

Barbara Chayt

Council of Juvenile Correctional Administrators

Crystal Doyle

Bureau of Children's Behavioral Health Services, Office of
Mental Health & Substance Abuse Services, Pennsylvania
Department of Public Welfare

Mary Gaspari

Chester County Juvenile Probation

Nancy A. Hubley

Education Law Center - Pennsylvania

Leah Kissick

Pennsylvania Department of Education

Wendy Luckenbill

Mental Health Association in Pennsylvania

Sallie Lynagh

Disability Rights Network -- Pennsylvania

Shari A. Mamas

Disability Rights Network -- Pennsylvania

Derin Myers

Pennsylvania Commission on Crime and Delinquency

George D. Mosee, Jr.

Philadelphia District Attorney's Office

Lourdes M. Rosado

Juvenile Law Center

Scott Suhring

Capital Area Behavioral Health Collaborative, Inc.

Gary J. Soltys

Adelphoi Village

Scott G. Talley

Bureau of Children's Behavioral Health Services, Office of
Mental Health & Substance Abuse Services, Pennsylvania
Department of Public Welfare

Appendix C: Youth Behavior Performance Review Checklist

Seven Questions for Juvenile Justice and Mental Health Professionals to Ask

If the answer to ANY of the following questions is YES, the student may be entitled to *individualized special education and related services* through his/her public school entity. Special education and related services can be designed and provided to address a student's educational and behavioral needs and, consequently, alleviate or eliminate the need to access services through the JJ system. The student's school entity has an affirmative legal duty to identify all children residing within the district who are in need of special education and related services and to provide an Individualized Education Program ("IEP") that meets his/her needs. A student's "parent"¹⁰ can request a multi-disciplinary evaluation to determine special education eligibility by signing a "Permission to Evaluate" form.

1. Has the parent of the student requested a special education evaluation and/or expressed written or oral concern to a principal, teacher, or other school personnel that the student is in need of special education or related services?
 No Yes
2. Has the parent of the student expressed written or oral concern to a principal, teacher, or other school personnel that the student's behavior is impeding his/her learning or that of others?
 No Yes
3. Has the parent of the student expressed written or oral concern to a principal, teacher, or other school personnel that the student has experienced a significant decline in academic performance?
 No Yes

4. Has a current or past teacher(s) of the student or other school personnel expressed specific concerns about a pattern of behavior or academic performance demonstrated by the student?
 No Yes
5. Does a review of the student's education records (including the Permanent Record File and Disciplinary File(s)) reveal a series of suspensions for the same or similar behavior that negatively impacts the student's academic performance? Please consider the following information in making this determination:
 - a. The total number of school days the student has been suspended in the current school year. _____
 - b. The total number of school days the student has been suspended in the previous school year. _____
 - c. The number of unexcused absences in the current school year. _____
 - d. The number of grade retentions. _____
 No Yes
6. Do school personnel have knowledge of any student history of inpatient hospitalization(s) or outpatient treatment for mental health issues or concerns, and does evidence exist that the student's underlying behavior is or has been impacting negatively on the student's educational performance?
 No Yes
7. Has the documented behavior of the student indicated:
 - a. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, or
 - b. inappropriate types of behavior or feelings under normal circumstances, or
 - c. a general pervasive mood of unhappiness or depression, or
 - d. a tendency to develop physical symptoms or fears associated with personal or school problems, and
 - e. any or all of these characteristics have been exhibited over a long period of time and to a marked degree and have adversely affected the student's educational performance.
 No Yes

¹⁰In Pennsylvania, a "parent" means a biological or adoptive parent; a foster parent; a guardian who is authorized to act as the child's parent or to make educational decisions for the child; an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child resides, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed by the child's school district or charter/cyber school.

