



OFFICE OF THE HENNEPIN COUNTY ATTORNEY

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Title: Policy on Youth Diversion

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I. Introduction:

The Hennepin County Attorney's Office diversion work is critical to our vision of a safe, equitable and just Hennepin County.

The goal within the Youth Prosecution Division (YPD) is to improve community safety and wellbeing through both individual and system accountability that leads to positive outcomes for youth, families, and our communities, while simultaneously centering victims and their healing. The focus is on healing present harm and preventing future harm, as opposed to punishment.

II. Purpose & Goals:

The purpose of this manual is to outline the policies and procedures of the Hennepin County Attorney's Office, Youth Prosecution Division's Diversion Programming. Extensive evidence has demonstrated that any justice system involvement in adolescence – from having law enforcement contact to a delinquency case filed in juvenile court – has a negative impact on young people's futures and increases the risk of subsequent involvement in the justice system.

a. Research and Methodology

HCAO partnered with the University of Minnesota to statistically analyze the office's juvenile cases dating back 10 years to inform decisions on how to develop more effective responses to youth referred to the office for consideration of criminal charges. These youth diversion policies are informed by the results from the analysis, as well as evidence from criminology, youth development, system-based thinking and behavioral psychology.

b. Person-focused

Research shows it has been ineffective to build policy and practice based primarily on the offense type or severity-level. The seriousness of an offense is not predictive of a youth's rehabilitation potential. Instead, policies that seek to achieve improved youth outcomes and public safety must focus on the individual person, their strengths and needs, and accountability tied to these factors and repair of harm.

HCAO aims to incorporate the following evidence-based, person-focused principles: 1) Youth need to have the opportunity to make things right after they have caused harm; 2) Victims deserve

to have government responses that demonstrate care for them and the community; 3) Accountability for youth should be informed by brain development;¹ 4) Responses should be based on escalating supports rather than escalating consequences; and 5) There should be pathways for youth to receive appropriate services without triggering the widely accepted negative impact of court-system involvement.

III. Diversion Options:²

YPD uses a spectrum of diversionary responses depending on the youth's overall needs. All of the diversion options can be utilized prior to formal charges ("pre-charge") and most of the diversion options can be utilized after charges have been filed ("post-charge").

A youth may choose not to enter into diversion programming, in which case the case will be filed with the court. If the youth is willing to participate in diversion programming but the youth's parent or guardian is not, the attorney should consult with their supervisor to determine the appropriate next steps.

a. Letter Diversion

Letter Diversion is a unique opportunity to provide support to parents and caregivers. Letter Diversion is an advisory (letter) mailed to the youth's parent or guardian asking the family to address the youth's behavior that brought the youth to our attention, along with resources related to parent, youth and family support. This includes a follow-up letter and a phone call to the parent or guardian.

b. Curfew & Petty Drug Diversion

Historically, curfew violation cases were referred to the agency operating the Youth Connection Center for services, and petty drug and alcohol offenses were addressed through a diversion program operated by Third Millenium, which provided an online chemical health course. Under these new guidelines, these offense types will be diverted by letter.

c. Referral to County Partner

For youth who are already engaged with social services or probation and in cases that do not require delinquency system involvement to address the youth's behavior, we can refer the new incident to those system partners.

¹ Research about adolescent brain development indicates that, regardless of the seriousness of the offense, youth are less able to regulate their own behavior in emotionally-charged contexts, less able to make informed decisions that require consideration of long-term impacts, and that risk-taking is age-appropriate, and that when given opportunities to do it safely (e.g., sports, extracurriculars), youth learn valuable skills.

² See Appendix for list of current diversion providers with brief descriptions of services offered.

d. Light-Touch Diversion

“Light-Touch” interventions are used for youth who require less intrusion into their lives to get them back on track. This evidence-based approach prevents net-widening and limits system contact to avoid the harmful consequences of system involvement.

In this program, the youth is referred to one of HCAO’s diversion service providers within the community for an intake assessment and program referrals. Light-Touch diversion programming is typically 3 months or less. Light-Touch diversion programming is primarily handled by The Link but may also include referrals to Center for Multicultural Mediation (CMM). Some youth who require less intrusion may benefit from Restorative Justice Diversion.

e. Restorative Justice Diversion

Restorative Justice is a diversion option that utilizes restorative justice practices to repair harm, build an accountability plan, and prevent future harm. If there is a victim in the case, they will be contacted by the provider and offered an opportunity to participate, but their agreement to participate in restorative justice programming is not required for the youth to participate in this diversion. The providers for this type of diversion are members of the Restorative Justice Collaborative: Legal Rights Center (LRC); Community Mediation Restorative Services (CMRS); Conflict Resolution Center (CRC); or Restorative Justice Community Action (RJCA).

f. Assessment & Intervention Diversion

Assessment & Intervention Diversion programming can be used for youth with more significant needs. Youth and their parent or guardian participate in an intake assessment with a diversion provider and are referred to programming aimed at providing tailored, more intensive support to the youth and their family. This type of diversion programming typically lasts 6 months. Providers for this type of diversion include The Link, Kente Circle, NorthPoint, and Center for Multicultural Mediation (CMM).

g. Family Violence Diversion

Youth Family Violence Diversion (“YFVD”) is a focused diversion program for youth submitted on interfamilial domestic violence cases (intimate partner violence cases are not eligible for diversion). YFVD seeks to support youth and their families in repairing relationships and preventing future incidents. The victim or the youth’s parent or guardian must agree to participate in this type of diversionary program. The provider for YFVD is primarily The Link but may also include referrals to Center for Multicultural Mediation (CMM) or a member of the Restorative Justice Collaborative.

h. Sexual Harm Diversion

PIPFASO (Preteen Intervention Program for Alleged Sexual Offending) is a diversionary program through the Hennepin County Human Services and Public Health Department (HSPHD) that allows for assessment, treatment, and case management services for youth who committed a sex-

related offense. Eligibility is jointly determined by HCAO and HSPHD and is generally limited to youth between the ages of 10-14 who live in Hennepin County.

The program's goals are to protect public safety and prevent further inappropriate sexual behavior, while also ensuring the youth's treatment and other needs are met. Once a youth is referred to PIPFASO, jurisdiction transfers to HSPHD, which may bring a Child Protection petition to court if the youth is unsuccessful in programming.

IV. Policy on Youth Diversion:

Referrals to diversion options are based on the youth's number of "contacts" with the system and not the type of offense committed, with certain exceptions. "Contact" is generally defined as a referral from law enforcement for consideration of criminal charges (i.e., "case submission"). Multiple incidents that occur within 7 days of each other count as one "contact" or "case submission" for purposes of diversion referral. Previously declined cases or cases that were dismissed based on sufficiency of the evidence are not considered "contacts" or "case submissions" for purposes of diversion eligibility.

The below-listed offense types are ineligible for diversion referrals. Exceptions may apply with Managing Attorney approval.

- Murder
- Attempted Murder
- Criminal Vehicular Homicide
- Manslaughter
- Assault in the First Degree
- Assault in the Second Degree
- Aggravated Robbery in the First Degree
- Aggravated Robbery in the Second Degree
- Carjacking
- Burglary in the First Degree
- Riot in the First Degree
- Arson in the First Degree
- Domestic Assault by Strangulation
- Intimate-Partner Domestic Violence cases
- Firearm offenses involving machine guns, ghost guns, and guns with automatic firing capacity
- Certain CSC cases (see CSC Senior Attorney for eligibility)

a. First Case Submission

i. Definition

"First case submission" is defined as the first time a youth is referred by law enforcement to HCAO for a delinquency or petty offense where sufficient evidence exists to charge. For purposes of

diversion referral, the “first case submission” includes multiple incidents that occur within 7 days of the very first incident. There is also a reset period: If one year has passed since the youth’s “first case submission,” any subsequent case submission is considered a “first case submission.”

ii. Presumptive Diversion

For youth who are coming into contact with the juvenile justice system for the first time, research showed there are not large differences in overall rates of new case submissions and recidivism and that 90% of youth have no additional charged cases within one year. Youth who are coming into contact with the system at age 14 or under are likely to have a higher risk to recidivate and need more intensive intervention. Responses should be tailored to the youth’s needs, but if little is known about the youth or other risk factors are not present, **general guidance** is as follows:

- Petty offenses (including curfew & PDA offenses), misdemeanor, and gross misdemeanor offenses for youth ages 15+ --> Letter Diversion
- Petty offenses, misdemeanor, and gross misdemeanor offenses for youth ages 13-14 --> Light-Touch Diversion
- Eligible felony offenses for youth ages 13+ --> Light-Touch Diversion or Restorative Justice Diversion
- Eligible felony offenses for youth ages 13+ with demonstrated higher needs --> Assessment and Intervention Diversion
- Eligible CSC offenses --> Sexual Harm Diversion
- Eligible family violence offenses --> Youth Family Violence Diversion

iii. Presumptive Court

Cases involving offense types that are ineligible for diversion referrals.

b. Second Case Submission

i. Definition

Excluding any incident or referral included in the group labeled as the “first case submission,” a “second case submission” refers to a second incident or series of incidents for which there is sufficient evidence to support charges against a youth. This “second case submission” must be more than 7 days after the “first case submission” incident. There is also a reset period: If one year has passed since the youth’s “first case submission,” the next case submission is considered a “first case submission,” not second.

ii. Presumptive Diversion

For second cases, research showed there were no factors that were consistently protective or risky for a new case submission within 6-months and 12-month recidivism. There is indication that non-system responses are more effective than charging after a second case submission. Research shows that adolescents will make repeated mistakes and may not be able to apply lessons learned in one context to another context right away. A goal through diversion is to support the community’s

ability to provide additional prosocial supports to meet the youth's basic and/or developmental needs.

“Second case submissions” should offer escalated supports from what was initially offered, or a second attempt with the same supports, when possible, to provide an opportunity to maintain or strengthen the community-based relationship. Diversion referrals should look like, in reference to the “first contact” guidance:

- Letter Diversion --> Light-Touch Diversion
- Light-Touch Diversion --> Assessment and Intervention Diversion
- Restorative Justice Diversion --> Restorative Justice Diversion (consider adding Assessment & Intervention)
- Assessment and Intervention Diversion --> Assessment and Intervention Diversion
- Sexual Harm Diversion --> Sexual Harm Diversion
- Family Violence Diversion --> Assessment and Intervention Diversion

iii. Presumptive Court

Cases involving offense types that are ineligible for diversion referrals.

c. Third Case Submission

i. Definition

A “third case submission” refers to a third incident or series of incidents for which there is sufficient evidence to support charges against a youth. This “third case submission” must be more than 7 days after the “second case submission” incident. There is also a reset period: If one year has passed since the youth’s “second case submission,” any subsequent case submission is considered a “second case submission,” not “third.”

Research shows that escalating behavior is an indicator of unmet needs, which requires more intensive interventions (but does not necessarily correspond with a response of what might commonly be considered escalating consequences). The goal is to focus on better understanding what is contributing to the youth’s behavior and to respond with appropriate and necessary supports (i.e., how can we provide supports to meet the youth’s needs in a safer way).

ii. Presumptive Diversion

Review of HCAO diversion data and outcomes indicated that too few youth were receiving the meaningful opportunity for diversion upon their third contact. Adolescents will make repeated mistakes and may not be able to apply lessons learned in one context to another. Accountability plans should include a focus on system accountability to provide more prosocial interventions to meet youth’s developmental needs. A youth demonstrating escalating behavior on their third contact may need to shift to court intervention.

For “third case submissions,” referrals should be determined collaboratively, along with previous service providers, if possible. Supports should be maintained or escalated, if necessary, and should draw from existing relational supports. Diversion referrals may look like:

- Light Touch Diversion --> Assessment and Intervention Diversion
- Restorative Justice Diversion --> Restorative Justice Diversion + Assessment and Intervention Diversion
- Assessment and Intervention Diversion --> Assessment and Intervention Diversion
- Sexual Harm Diversion --> Assessment and Intervention Diversion (only if new case submission is not a subsequent sexual harm incident)
- Family Violence Diversion --> Assessment and Intervention Diversion

iii. Presumptive Court

Cases involving offense types that are ineligible for diversion referrals.

Youth who have had no meaningful engagement with service providers after two diversion referrals.

d. Fourth-Plus Case Submission(s)

i. Definition

Excluding any incident or referral included in the “first,” “second,” or “third case submissions,” any additional incident or series of incidents referred by law enforcement for which there is sufficient evidence to support charges against a youth.

ii. Presumptive Court

Youth who are receiving a fourth case submission should presumptively be referred to court, except those listed below under “Opportunities for Diversion.”

iii. Opportunities for Diversion

Review of HCAO data showed that court-involved processes, compared to declinations, remain a risk factor for youth at this stage. Youth who have been referred to HCAO four times or more while still under the age of 15 are at higher risk for re-referral and recidivism

Historically, youth at this stage have not had opportunities for diversion. The below recommendations are based on developmental science suggesting diversion may be appropriate under the following circumstances:

- The youth has never had an opportunity to engage in Restorative Justice Diversion and this is the first “person” offense.
- It has been less than 3 months since the youth started Assessment and Intervention Diversion.

- All prior case submissions have been relatively minor/low impact.
- It has been less than 6 months since the youth exited from services, they are now 15-17 years old, and all previous case submissions were at younger ages.

V. Considerations:

a. Residency

Hennepin County residency is not a requirement for youth to participate in HCAO diversion programs but it can be an impediment to a youth's successful completion of a program. For non-residents, HCAO will first contact the youth's county of residence to determine if the youth is eligible for diversion programming in their home county where services would be provided. Transfer of Venue (TOV) cases are excluded from HCAO diversionary programming because the youth has already entered a plea in another county and the mechanism for post-charge diversion is a continuance without a plea.

b. Admission of Facts

A youth is not required to make a factual admission as part of participation in a HCAO diversionary program. Restorative practices should be prioritized over admission of facts. Participating in a diversionary program is a way of taking accountability for one's actions. Any factual admissions made by a youth during diversionary programming will not be used against them if the case were later charged or litigated (i.e., if diversion was unsuccessful).

c. Victim's Rights

A prosecutor shall make every reasonable effort to notify and seek input from the victim prior to referring a person into a pretrial diversion program in lieu of prosecution for the offenses specified in statute. *See Minn. Stat. § 611A.031.*

d. Restitution

A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent. Minn. Stat. § 611A.04, subd. 1(a). There is no legal requirement to request restitution on a case that has been referred to diversion, although restitution can be considered part of the rehabilitative process. The youth's ability to pay restitution should be considered and payment of restitution should not be determinative of successful diversion. A victim is not precluded from filing a civil claim against a youth if restitution is not included or paid as part of the youth's diversionary programming.

HCAO received a grant through the Minnesota Office of Justice Programs Restorative Practices for a "restitution fund" that will be used to reimburse victims for economic loss and harm resulting from offenses committed by young people.

e. Firearm Offenses

State law requires that a youth found delinquent of a firearm offense serve at least 100 hours of community work service. *See Minn. Stat. § 260B.198, subd. 2.* This statute does not apply to youth who are diverted.

f. Police Diversion Cases

Many police jurisdictions operate their own youth diversion programs. If law enforcement is making a referral for charging, they should provide information to the HCAO about a youth's prior involvement in a police diversion program, including whether there was any participation and to what extent, if/when that case is referred to HCAO for consideration of criminal charges.

VI. Review & Referral Process:

A citation referral or lower-level petition may be reviewed by a charging paralegal. Higher-level petitions are reviewed by the charging desk attorneys.

The initial threshold is always whether admissible evidence is sufficient to support a conviction beyond a reasonable doubt, and whether proceeding with the case is in the interests of justice. It may be that a decline is more appropriate than a referral to a diversionary program.

Ethical obligations exist when deciding whether to charge a case, including “whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender;” and “whether the public’s interests in the matter might be appropriately vindicated” by other means.

In making the decision to refer to a specific provider, the following should be reviewed, to the extent possible, and considered:

- The youth’s programming history
- Underlying causes that may have contributed to the youth’s behavior
- The harm that was caused and who was impacted by the harm
- The youth’s connections to school, the community, and caring adults
- Documented needs for the youth and their family

A youth’s prior history should not be a bar to future opportunities for diversion. The selected provider should take into consideration the programming available and the youth’s needs, if known, applying the Presumptive Diversion criteria listed above.

VII. Post-Referral Process:

a. DIVNET and case management expectations

Providers will document efforts related to engagement with the diversion process in a case management system maintained by HCAO, called “DIVNET.” The purpose of documentation in DIVNET is to show the success, or lack thereof, of the youth’s engagement with diversion generally and their progress in meeting program requirements. Documentation in DIVNET will be made available to the youth in accordance with discovery obligations. Providers will maintain their own internal records according to their own policies and procedures. Information learned about the youth in diversion programming will not be used in further court proceedings.

b. Successful completion & expungement process

If the youth is offered diversion in a case that is not charged in court, and the youth completes the requirements of the agreement, the matter will be considered addressed and HCAO’s case file will be closed.

In matters that are charged in court, if the youth is offered diversion and completes the requirements of the agreement, HCAO will automatically dismiss the case. Further, HCAO will draft a proposed order for expungement of court records pertaining to the case. The proposed order will be filed without additional requirements of the youth or the family.

c. Unsuccessful completion/diversion return process (and conditions)

If the youth is offered diversion in a case that is not charged in court, and the youth does not complete the requirements of the agreement, the case will be re-reviewed by the attorney of record. Whether the case is subsequently charged in court will require consideration of: the facts of the case, the current state of admissible evidence, any programming the youth has received while the case has been pending, and the reason that diversion was not successful. “Re-referral,” where the youth is offered a different provider, will always be considered.

RESOURCES:

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