

APPROVED BY JJPAD COMMUNITY-BASED INTERVENTIONS SUBCOMMITTEE
ON APRIL 8, 2019

Office of the Child Advocate
Community Interventions Subcommittee
March 1st, 2018

Council Members or Designees Present:

- Maria Mossaides (OCA)
- Nancy Connolly (DMH)
- Matthew Broderick (DMH)
- Michael Glennon (MDAA)
- Brian Jenney (DPH)
- Chief Kevin Kennedy (Chiefs of Police)
- Thomas Capasso (Juvenile Court)
- Sana Fadel (Citizens for Juvenile Justice)
- Barbara Wilson (Family Continuity, Children's League of Massachusetts)
- Thula Sibanda (DYS)
- Gretchen Carleton (DCF)

Other Attendees:

- Melissa Threadgill (OCA)
- Lindsay Morgia (OCA)
- Erin Freeborn (Communities for Restorative Justice)
- Joshua Dankoff (Juvenile Justice Leadership Forum)
- Alice Casey (Middlesex District Attorney's Office)
- Other members of the public

Meeting Commenced: 2:07PM

Welcome and Introductions from the Child Advocate

Minutes:

Ms. Threadgill began the meeting with the motion to approve the minutes from the last meeting. Chief Kennedy voted to approve the minutes, seconded by Mr. Glennon. Remaining members voted "yea" and the minutes were approved.

JJPAD Update:

Ms. Threadgill shared an update with the committee regarding the full Juvenile Justice Data and Policy Board (JJPAD) meeting that occurred on Wednesday, February 27th. At the JJPAD meeting, Ms. Threadgill presented a draft document to the JJPAD that details how the group may want to measure the impact of statutory measures, which is one of the board's mandates. This draft included the data sources and types of outcome measures the JJPAD may want to consider as they consider the impact of new statutes, such as raising the age of juvenile justice jurisdiction from seven years old to twelve. The survey that the CBI committee is sending out, as well as the Childhood Trauma Task Force mapping project, could be helpful in providing data for these statutory assessments.

Presentations on Police Diversion in Massachusetts:

There were four presentations regarding police diversion programs. The first presentation by Chief Kennedy was regarding practices in the Lincoln police department. Chief Kennedy said the culture in Lincoln has always been towards diversion, even when no formal program was in place. The expectation from all officers is to ask themselves why they are arresting a youth before doing so. This culture towards diversion has helped to build stronger community-police relations.

The police department in Lincoln has its own juvenile justice diversion policy. First, police must protect the rights of youth, which is referred to as constitutional policing. Youth should also not be detained in the police station for any longer than necessary. Officers must take measures to effect positive change for juvenile offenders. The department is committed to the development and perpetuation of programs designed to prevent and control juvenile delinquency

Regarding delinquent youth, Chief Kennedy states that the Lincoln police take the position that for a child's first offense misdemeanor, they do not arrest or file a delinquency complaint against the child. This is in keeping with the current law. Chief Kennedy reviewed the most common misdemeanor offenses, including disorderly conduct, disturbing the peace, trespassing, and driving without a license. He said that these are cases that would previously be eligible for diversion, but due to the 2018 changes in the criminal justice reform law these cases typically no longer result in a diversion process.

Diversion options for youth include a referral to Communities for Restorative Justice (C4RJ), the Middlesex DA diversion program, or the jail diversion coordinator. In some cases, the Jail Diversion coordinator works with the lieutenant involved in the case, and they make an assessment about the best places to refer the youth. C4RJ programs are not appropriate for all youth. Chief Kennedy reviewed the list of goals for admission to the diversion programs, which includes youth from 12-18 years old and young adults 18-25 years old:

- Youth takes responsibility for their actions and accepts consequences

- Education
- Address the root causes of the behaviors
- Repair harm to the victim
- Restore good standing in community
- Prevent future criminal conduct and the creation of a criminal record.

Chief Kennedy discussed the challenges of using existing data sources in tracking diversion. First, the NIBRS and the Uniform Crime Reporting data have different response options for race and ethnicity, making it challenging to track by these measures. In addition, in the disposition field, there is no option to select “diversion.” To address these challenges, the Middlesex County DA’s office tracks data on diversion and helps with coordination of services.

Mr. Jenney asked if the Lincoln PD’s juvenile justice policy has been adopted statewide. Chief Kennedy replied that not all departments follow the same standards.

Mr. Capasso asked if Chief Kennedy had any sense if other departments were following Lincoln’s definition of a first offense. Chief Kennedy stated that more often than not, they are following the same definition due to concerns about liability if they were to make an arrest. Mr. Capasso stated that the position of the Juvenile Court is that the arrest should be made and the court should review and determine if it is a first offense, and Chief Kennedy states that this was the issue being addressed in an appeal currently pending before the court

Ms. Threadgill explained to the rest of the group that there are disagreements on the meaning of “first offense” under the 2018 legislation and that the matter is currently before the courts. Chief Kennedy noted that the confusion is how to differentiate a first time charge from a first time arrest.

Mr. Capasso presented a scenario in which someone keeps appearing in court for the same offense. The local police department may not know this, as they would not have the records for previous arrests or charges, but the court would have a record of the person’s number of court appearances. This is the argument for leaving this decision to the juvenile court. He also reported getting many calls about the court’s opinion on the case, and said that he will share a document that he put together regarding the appeal.

Ms. Fadel asked if youth involved in a domestic violence situation are offered services. Chief Kennedy said yes, they are eligible for diversion and services. This can be done prior to arraignment.

Mr. Glennon asked how police determine, on the scene, the age of the youth, in regards to not arresting youth under 12. Chief Kennedy said that they ask. Mr. Glennon responded by saying

that no one really knows the age of the child until the parents show up, as children don't have IDs.

Mr. Capasso asked if there was any data on the number of youth under 12 who were followed up on with a CRA. Chief Kennedy noted that in these types of cases, the school is taking care of the needs of the child, but it is an open question what happens over the summer. He also reminded the group that law enforcement cannot file a CRA.

Mr. Capasso mentioned that the juvenile court has been in discussions about creating a mechanism for tracking individuals who appear in the trial court so that judges can have needed information without that information appearing on a formal criminal record that can have longer term consequences.

Ms. Mossaides stated that a similar issue emerged regarding DCF. DCF had not been tracking information related to parental use of opioids and overdoses, and if they had there may have been an early warning with regards to the opioid crisis.

Mr. Capasso expressed concern that the expungement law will lead to missing data that we may need in the future. Ms. Mossaides reminded the group that the Commonwealth Archives could hold this information, and that we can create vehicles for ensuring that information is kept.

Ms. Fadel noted that CSG provides technical assistance for judicial diversion, and that there are states with expungement laws that require de-identified records to be held and used for research purposes only. She said she could share that language with the group.

Ms. Freeborn gave the second presentation about Communities for Restorative Justice (C4RJ). Ms. Freeborn began the presentation with the state's definition of restorative justice (MGL ch. 27, section 6B). Restorative justice is voluntary, identifies the harms, needs, and obligations for offenders to help them understand the impact of the crime, and serves as reparation to the victim.

Ms. Freeborn explained that from a traditional legal perspective, attorneys start with the offender and ask the following questions:

- What law was broken?
- Who did it?
- What should we do next for punishment?

Restorative justice starts with the victim and asks the following:

- Who has been hurt/affected by the incident?
- What are the victims' needs?
- Who is responsible for meeting victims' needs?

Victim and offender language is a somewhat controversial topic in the restorative justice community, but Ms. Freeborn stated that this is the language she will use throughout the presentation as it is consistent with what is used in the courts.

Ms. Freeborn shared that C4RJ is 19 years old, and its mission is to bring restorative justice into the juvenile justice system. The group works with law enforcement and helps to give victims a voice, help the offender understand their impact, how the community can support the parties and increase community accountability, and get to the root causes of behaviors to reduce recidivism.

Ms. Freeborn provided the history of how the organization grew to now include 24 cities and towns in the Commonwealth. The organization is an independent nonprofit with a small staff, but benefits greatly from its volunteers. C4RJ provides services for youth and adults, and referrals are different depending on the police department. Some departments refer juveniles only, while others refer adults as well. Approximately 16% of their referrals involved youth under 12 years old.

Mr. Dankoff asked if there is an option to opt-in to C4RJ even without a referral from a police department or District Attorney office. Ms. Freeborn replied that they will take cases that come to them that way, but they often are not able to identify or connect with potential participants without the referral from law enforcement. Ms. Freeborn said that C4RJ works with the Middlesex and Suffolk District Attorneys' Offices, and over time, referrals have expanded to include cases that are not first time offenses.

Ms. Freeborn described the elements of a "good referral" to C4RJ:

- Offender takes responsibility for actions
- The victim is willing to move forward – if the victim is looking for more severe punishments, C4RJ is not the right place. Victims have multiple options for interacting with the offender, such as face to face meetings, use of surrogate victims, and letters.
- C4RJ can reasonably assure a safe process -- if there are concerns regarding threats of harm or the offenders' mental health or substance use, assessments are done first to reasonably assure safety. There is a police officer in every circle that they do, and the officer has a specific role to play.

Ms. Freeborn described the C4RJ process as follows:

- The process typically lasts about six months
- Referrals come from the police, district attorneys' offices, or the courts
- At the opening circle, the group discusses what happened in order to identify needs, and what the group will do moving forward, which turns into the agreement.
- There is some time for thinking in advance of the opening circle.

- There are meetings with the offender weekly for 2-3 months to check in on the progress of the agreement
- When the elements of the agreement are completed, the group does a closing circle.

Ms. Freeborn explained the different ways that police are involved with the organization. Chiefs of police in participating cities/towns served are all on board with the mission. There is a Chiefs Council to work on C4RJ policies and practices. The police can veto the agreement, and the police can send cases back to the referring department if the victim is unsatisfied, the offender does not take responsibility, or if the safety/well-being of the parties cannot be guaranteed.

Ms. Freeborn showed the group a map of participating police departments. The two communities participating from Suffolk County are Chelsea and Winthrop. A second map showed that volunteers come from many parts of the regions, and not all are from partner communities. She also shared the types of charges that have gotten referred to C4RJ, including larceny, assault and battery, shoplifting, and fireworks charges.

Ms. Freeborn explained that MGL Ch. 27 Section 6B created an option for restorative justice in the criminal courts, which can now be done post arraignment. It guarantees confidentiality for participants and created an Advisory Committee of 17 people - 11 from the criminal justice system and six restorative justice practitioners. Their purpose is to monitor and support systems throughout the state. The Advisory Council is looking at different models and best practices to share with the rest of the state.

Ms. Fadel asked if the entire state is covered. Ms. Freeborn responded that there are gaps. There are people who are practicing restorative justice in other communities, but not in partnership with the courts. The hope is that the law will change that.

Ms. Fadel asked how many organizations work with the courts. Ms. Freeborn said that C4RJ is the only program in the state that works with the courts. The hope is that schools and other organizations may want to join in the future. They are currently engaged in a 3 year pilot with a high school with the goal of creating a Restorative Schools guide. That school is currently fielding questions from other districts who are interested.

Ms. Fadel asked if any volunteers had ever been turned away due to having a CORI. Ms. Freeborn responded that C4RJ runs CORIs themselves, and they have never turned anyone away.

Mr. Glennon asked if there was any data on recidivism for the offenders who participated in the program. Erin said that they did a study in 2010 that revealed a 16% recidivism rate. They are doing an update on that study with better data collection on demographics. Less than 5% of their cases end up going back to court.

Ms. Freeborn shared that in the packets there were two slides with links to videos, including local news coverage and police perspectives. There are also data questions in the packet.

Ms. Casey from the Middlesex County DA's Office gave the third presentation. The Middlesex County DA's Office has diversion for youth between the ages of 12-18 and is offered pre-arraignment.

Some charges are not eligible for diversion, such as sex offenses and assault and battery. The office does its best to keep it open for other charges, such as assault and battery on a parent or sibling, larceny, etc.

Ms. Casey said that they will consider diverting a case even if the youth has a previous offense or previously participated in a diversion program. The DAs go through a process to learn how to identify appropriate cases for diversion and file for a continuance. The cases go to the Diversion Coordinator, and if at intake, the youth accepts responsibility, then they create a diversion contract. The Family Resource Centers have been a very useful resource for creating these contracts. If the youth completes the contract in six months, the case is dismissed, though the end date is extended as needed.

Ms. Casey reported that the DA's office made 366 juvenile referrals and diverted 245 cases in 2018. They are looking to expand diversion options to 18-25 year olds, based on what we now know about brain development.

Mr. Dankoff gave the final presentation on Citizen for Juvenile Justice's (CfJJ) and the Massachusetts Chiefs of Police Association police diversion report. This report was inspired by a previous report from the Juvenile Justice Advisory Committee (JJAC) on DA diversion. The primary question for this report is who is doing what regarding police diversion. The data collection was finished at the end of 2016, and the report was published in 2018.

Mr. Dankoff said that they collected information from 95 cities and towns, and the majority of responses came from Middlesex and Worcester County. The survey revealed that there are a wide variety of practices, from informal to formal, and that some police departments have no diversion at all. In addition, there are a wide range of definitions of "diversion." Some departments consider a warning as a type of diversion, while others have a written policy. Mr. Dankoff stated that the variety is due to a lack of policy guidance on the subject. Larger police departments tend to have more formal programs.

Ms. Mossaides asked if any variables in the report addressed incomes or resources in a community. Mr. Dankoff replied that diversion is more available in affluent communities.

Mr. Dankoff shared that eligibility criteria for diversion also varies. Four departments have a screening tool that they use, more than half said that youth are eligible as long as they accept responsibility for their actions, and others have automatic eligibility for certain offenses, such as school based or status offenses. Models for diversion include C4RJ, Cambridge Police Safety Net, the MASTLE tool, and the Brookline Police. These models have helped reduce arrest rates and racial disparities. Most diversion programs are funding through local police departments, but some have successfully applied for state or federal funding.

Mr. Dankoff moved into the next section of the report, which he described as the “contours of diversion.” Departments were asked about the kinds of activities involved in diversion programs, such as community service, education, and writing letters to victims. Most police departments are unaware that CPCS attorneys can advise on diversion issues. Not many departments are collecting data on positive outcomes.

Mr. Glennon asked if the data collected could be linked to a specific person. Mr. Dankoff replied that he did not know. However, 20% of police departments said that previous information about diversion participation can be used in a subsequent criminal complaint.

Mr. Dankoff shared that many police departments look to their peers for guidance on diversion. One of the recommendations in this report is to create a committee on youth diversion to ensure similar youth get equal access to diversion programs. The Attorney General’s office could provide guidelines for local police about diversion, and the legislature could provide increased funding and incentives for diversion. More research is needed, but the current report is available on CfJJ’s website.

Mr. Glennon commented that there is a community aspect to diversion - how do we take into account the community’s views on what is acceptable for diversion? How do we account for that in legislation?

Mr. Dankoff noted that one limitation is that police chiefs don’t know what else is out there. There is interest in learning more, but the next steps are a challenge. One remedy may be to educate police chiefs on the different options.

The group then discussed Middlesex County’s process and noted that the community police departments don’t necessarily know how to track things in a consistent way like the District Attorney’s office does. There is a tension between being flexible enough for local needs while also ensuring consistent access and opportunity across the state. Ms. Mossaides said that if the best model is a DA conduit, the legislature can make the decision to choose that model, and data collection would help identify whether or not it’s working for that community.

Ms. Fadel stated that community needs vary widely by geography. A needs analysis in each community would help clarify those needs and the best ways to address them. Mr. Glennon responded that community voice is accounted for via the election of district attorneys and those who appoint police chiefs. .

Ms. Mossaides said that these are issues that need to be addressed by the JJPAD. The group needs to look at the availability of needed services and that diversion programs match the needs of the community. Ms. Threadgill noted that the tension between local needs and statewide consistency stretches across many policy areas. There were only a few minutes left to the meeting, so the group decided to postpone the prepared discussion questions until next time. Ms. Threadgill thanked the presenters.

Community-Based Interventions Survey Drafts:

Ms. Threadgill distributed copies of the referral survey and the provider survey to the group. She reminded the group that the goals for the referral surveys are to better understand referral policies, gaps in services, and obtaining lists of community-based interventions. This survey is for police departments, prosecutors, and defense attorneys. The provider survey asks providers who they are serving, what the requirements are for receiving services, and what gaps and barriers exist. Ms. Threadgill asked members to provide feedback on the survey and that the goal is to get both surveys out in March.

Diversity and Inclusion Committee:

Ms. Threadgill updated the group on the most recent meeting of the diversity and inclusion committee. The purpose of this group is to ensure the voices of youth and families across JJPAD projects. The committee decided to convene a meeting and invite youth-serving organizations and youth leadership groups. At the meeting, we will solicit input on meaningful ways to include youth and family voice in the CBI subcommittee. The group also talked about the possibility of creating an advisory committee. All members will be invited to the meeting.

Closing Remarks:

Ms. Threadgill reminded the group that the next meeting is on April 8th, 2019, location TBD. The group will talk about DA diversion and will have time to discuss the issues arising in police and DA diversion programs.

Meeting Adjourned: 4:00PM