

Youth Justice in the COVID-19 Pandemic
Maryland

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Maryland

Over the past two decades, the state of Maryland has made significant progress in modernizing its approach to youth justice. Stakeholders entered the pandemic with a reform mindset that positioned them well to accelerate changes to youth incarceration policy and practice in response to the public health crisis. Following the onset of COVID-19, the Maryland Department of Juvenile Services (DJS), State's Attorneys' Offices, Office of the Public Defender, and the Chief Judge each advanced strategies to reduce youth incarceration across the state and better support young people at home in their communities. Among others, these included an administrative order from the Chief Judge to review all detained youths and consider health risks in detention and placement decisions, prompted by litigation from the public defender's office; individual case reviews of all incarcerated youth by DJS, with a focus on expediting release and increasing use of detention alternatives; and expanded eligibility for community-based services to all justice-involved youths. In Baltimore City, prosecutors and law enforcement worked together to limit arrests and prosecution for minor offenses, a policy that has already been made permanent even as the pandemic continues. Many of these policy and practice changes were still in effect in 2022, and stakeholders have embraced several of them as a "new normal" in their approach to youth justice in Maryland.

In July 2022, the youth detention population in Maryland was 65 percent lower and the post-adjudication commitment population was 63 percent lower than they were in July 2019. While

METHODOLOGY

This project is a collaborative effort of the Center for Children's Law and Policy, Justice for Families, the Justice Policy Institute, and the National Juvenile Justice Network. The project team collected information for this report using the following methods:

- Analysis of aggregate data on youth justice trends in each site;
- A roundtable with approximately 20 family members directly impacted by the youth justice system in jurisdictions across the country;
- Individual interviews with family members directly impacted by the youth justice system;
- A survey of National Juvenile Justice Network members to explore policy and practice changes during the pandemic;
- Focus groups with advocates in each site; and,
- Semi-structured interviews with system stakeholders in each project site.

Findings not cited to a specific written source were drawn from insights collected through qualitative data collection activities.

both the detention and commitment populations have fluctuated over the past couple of years, the average daily population remained well below pre-pandemic rates through the first half of 2022. While this represents great progress and suggests Maryland may have found a sustainable approach to reduce youth incarceration, significant racial and ethnic disparities persist, and the safety and well-being of incarcerated youths must continue to be a priority. This report summarizes changes in youth incarceration following the onset of COVID-19, the key factors that drove and supported Maryland's shift away from incarceration, and work that the jurisdiction still must do to sustain and build on these early successes.

YOUTH INCARCERATION DECLINED FOLLOWING THE ONSET OF COVID-19

Following the onset of the COVID-19 pandemic, Maryland saw a significant decline in the number of young people referred to the justice system, detained, and committed to state custody. Though numbers began to creep back up in 2021, youth referrals, detentions, and commitments remained below 2019 numbers through the first half of 2022.

FEWER YOUTHS ENTERED THE MARYLAND COURT SYSTEM

Between 2019 and 2020, Maryland saw a significant decline in the number of young people referred to the court system (Figure 1). There were 46 percent fewer referrals in 2020 than in 2019 and 25 percent fewer in 2021 than in 2020. However, preliminary data through July 2022 suggest that referrals are on the rise, as DJS saw nearly as many young people at intake in the first seven months of 2022 as the entire year of 2021.



FIGURE 1

YOUTH REFERRALS TO INTAKE BY YEAR

2018-JULY 2022

Source: Maryland Department of Juvenile Justice Services Performance Reports, December 2021, August 2022.

In addition, there was an increasing trend in the proportion of cases that were closed or handled informally rather than referred to the State's Attorney (Figure 2).

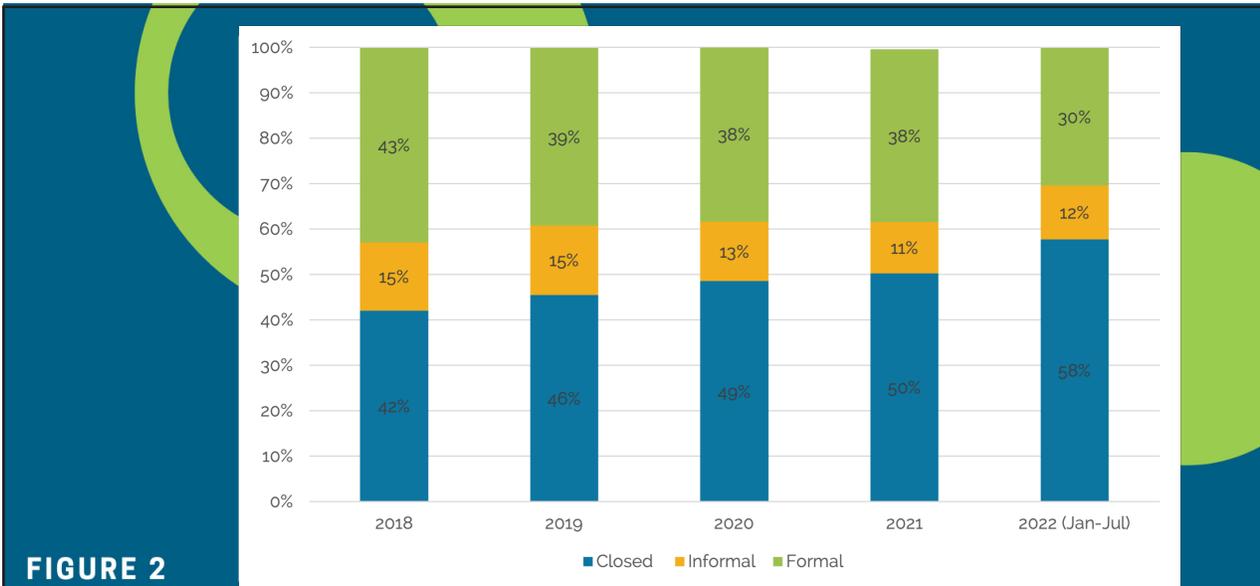


FIGURE 2

INTAKE DECISIONS BY YEAR

2018-JULY 2022

Source: Maryland Department of Juvenile Justice Services Performance Reports, December 2021, August 2022.

Note: Informal cases receive informal pre-court supervision to divert youths away from formal system involvement. All formal cases were forwarded to the State's Attorney for consideration.

FEWER YOUNG PEOPLE WERE DETAINED AND INCARCERATED IN MARYLAND FOLLOWING THE ONSET OF COVID-19, BUT THEY SPENT LONGER IN DETENTION

Maryland also saw a significant decline in the number of young people detained and committed to state custody between 2019 and 2022. Though the average daily population has fluctuated over the course of the pandemic, numbers remained lower in 2021 and 2022 than 2019. Between July 2019 and July 2022, there was a 65 percent drop in the average number of young people detained and a 63 percent drop in those committed to state placement in Maryland.

Yet, while the number of young people in detention has remained low, youths were staying longer on average between 2020 and 2022 than they were in the second half of 2019. Though we do not have a long pre-pandemic history to refer to, and trends must be interpreted with caution given the variation in length of stay month to month, young people were staying in detention about 31 days on average in the first seven months of 2022, compared to 20 days during the last six months of 2019. Anecdotally, interviewees noted that longer lengths of stay in detention were driven by several factors, including backlog in the courts during the pandemic closure period, delayed

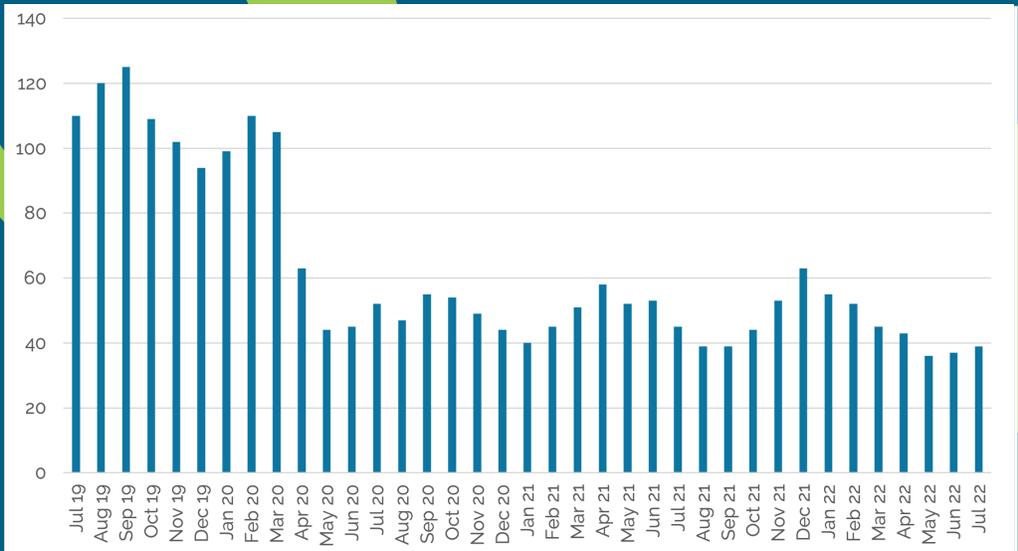


FIGURE 3
AVERAGE DAILY POPULATION IN DETENTION (PRE-DISPOSITION) BY MONTH
 JULY 2019-JULY 2022

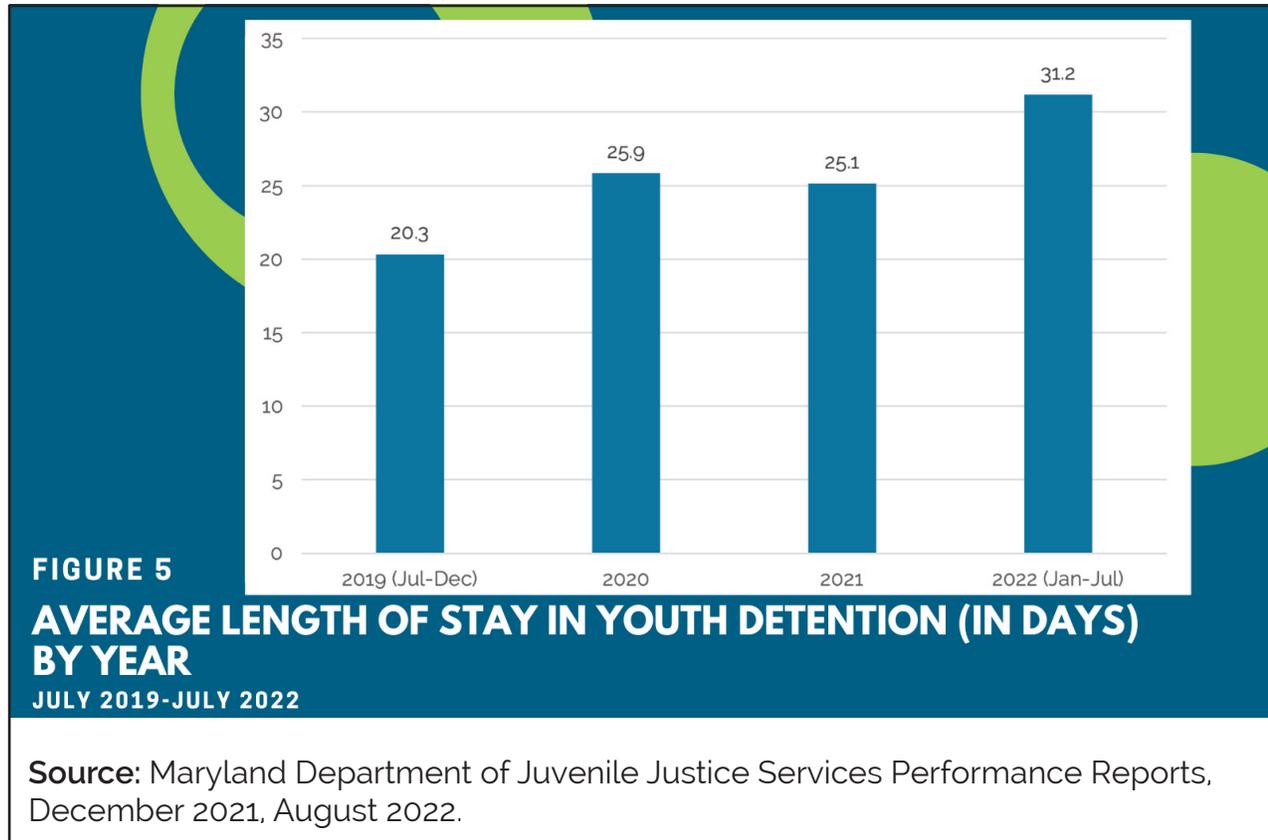
Source: Maryland Department of Juvenile Justice Services Performance Reports, December 2021, August 2022.
Note: Does not include young people detained on adult charges.



FIGURE 4
AVERAGE DAILY POPULATION IN COMMITTED, OUT-OF-HOME PLACEMENTS (POST-DISPOSITION) BY MONTH
 JULY 2019-JULY 2022

Source: Maryland Department of Juvenile Justice Services Performance Reports, December 2021, August 2022.

hearings due to COVID illness, and delayed transfer to post-adjudication placement facilities due to COVID outbreaks. Notably, this trend was not observed in committed placements, where length of stay has fluctuated, but it remained generally consistent before and after the onset of COVID-19.



MARYLAND'S YOUTH JUSTICE SYSTEM CONTINUES TO DISPROPORTIONATELY IMPACT YOUNG PEOPLE OF COLOR

It is important to underscore that the disproportionate impact of COVID-19 generally, and the youth justice system's response to it more specifically, on young people and families of color, particularly those residing in historically under-resourced communities, persisted unabated. The latest data suggest young people who are Black, Latino, or American Indian continue to be at greater risk of hospitalization and death from COVID-19 compared to white people.¹ Young people of color – particularly Black youths – are also disproportionately impacted by the youth justice system, in that they are more likely than white youths to be arrested, referred to court, petitioned in court, and placed out of their homes.²

¹ "Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity," Centers for Disease Control and Prevention, updated Nov. 8, 2022, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

² "Racial and Ethnic Disparity in Juvenile Justice Processing," U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention, accessed August 3, 2022, <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity>.

This held true in Maryland, where examining trends in youth detention by race revealed persistent and significant disparity across the full period. In the first seven months of 2022, young people of color comprised 72 percent of cases referred to intake but 80 percent of those that were formally referred to the State’s Attorney and 80 percent of committed cases (Figure 6). Though there was a decline in the proportion of youths of color in state commitment between March and October 2020, the proportion rebounded through the first half of 2022, returning to pre-pandemic levels. Disproportionality rates in detention remained high over the full three-year period.

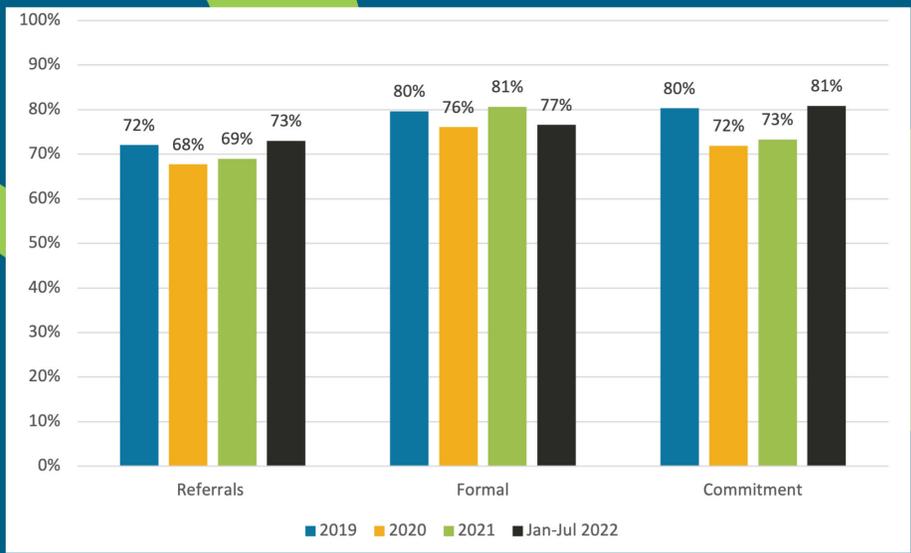
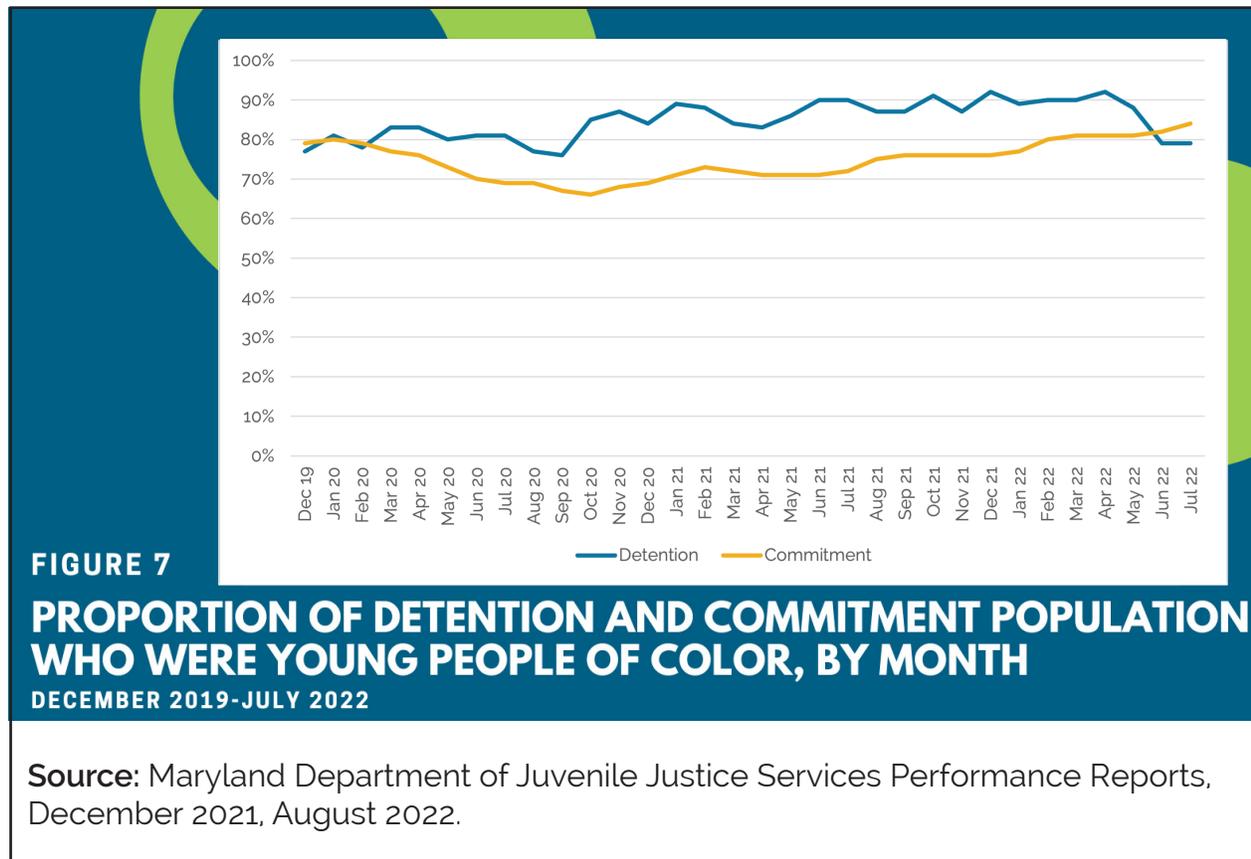


FIGURE 6

PROPORTION OF REFERRALS TO INTAKE, FORMAL COURT REFERRALS, AND COMMITMENT DISPOSITIONS OF YOUTHS OF COLOR

2019-JULY 2022

Source: Maryland Department of Juvenile Justice Services Performance Reports, December 2021, August 2022.



On average, almost 9 out of 10 detained youths and more than 8 out of 10 committed youths in Maryland in 2022 were young people of color (Figure 7).

WHAT DROVE CHANGES IN YOUTH INCARCERATION DURING THE PANDEMIC?

Like many jurisdictions, Maryland was in a period of youth justice reform prior to the onset of COVID-19 that informed changes in youth incarceration practices during the pandemic. Under the leadership of Secretary Sam Abed, the state Department of Juvenile Services implemented a number of reforms over the past decade, including developing and implementing a graduated response initiative (Accountability Incentives Management) for youths on supervision and Positive Behavior Interventions and Supports for young people in facilities; creating an Office of Family Engagement and Office of Equity and Systems Reform; launching a Family Peer Support Program; improving educational services for incarcerated youths; and closing several facilities.³ In addition, House Bill 606 (2019) established a Juvenile Justice Reform Council and charged it with using a data-driven approach to study youth justice trends and make recommendations

³ Maryland Department of Juvenile Services, "Data Resource Guide Fiscal Year 2021," December 2021, https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2021.pdf.

for reducing recidivism and improving public safety.⁴ In short, stakeholders in Maryland entered the pandemic with a reform mindset and were poised for change, which accelerated sharply after COVID-19 hit the United States. As one official noted, “while culture change doesn’t occur overnight, culture change definitely accelerated during the pandemic.” While officials noted the risk in reverting to past practices as the agency began resuming more normal operations, many believed that the agency had demonstrated its ability to realize the possibilities of reforms that would have otherwise seemed to be either unworkable or very long-term goals prior to the pandemic.

Conversations with system stakeholders and advocates revealed a few key drivers of the decline in youth incarceration prior to and during the COVID-19 pandemic.

- **Aggressive advocacy by the Maryland Office of the Public Defender (OPD) prompted statewide action to reduce youth incarceration following the onset of COVID-19.** On April 2, 2020, OPD filed an application for immediate and extraordinary relief, asking the Maryland Court of Appeals to exercise its authority to reduce the number of youths in confinement, specifically asking for the release of all youths charged with a misdemeanor or non-violent felony as well as those with medical conditions that posed a higher risk for severe illness from COVID-19. OPD also requested an immediate review of all youths held in jails, as well as a requirement that juvenile and criminal courts consider the health risk of COVID-19 in determining youth justice dispositions. While that request was denied, it was due in part to a forthcoming administrative order from the Chief Judge which was issued just a few days after the request.
- **An administrative order by the Chief Judge directed localities to reduce the use of youth incarceration.** On April 13, 2020, Chief Judge Mary Ellen Barbera of the Maryland Court of Appeals issued an administrative order encouraging the court to decrease the number of young people incarcerated, through a series of recommendations that closely tracked the original OPD request.⁵ The order directed judges to review and identify youths who could be safely released into the community, to release youths with pre-existing health conditions that put them at higher risk of severe illness and youths exhibiting signs of COVID-19 or who tested positive, and to implement additional steps to ensure released youths had a plan in place to meet their basic needs.⁶ The order further instructed judges to communicate with juvenile justice system stakeholders to figure out whether a youth’s release was in the interest of justice.⁷ In addition, for children who were

⁴ Maryland House Bill 606 (2019), <https://mgaleg.maryland.gov/2019RS/bills/hb/hb0606f.pdf>. Notably, legislation passed in April 2022 codified several of the recommendations. Effective June 1, 2022, Maryland set the minimum age of juvenile court jurisdictions at 13 (with exceptions for serious violent offenses); prohibited the use of detention or commitment for technical violations of probation and misdemeanor offenses (with exceptions for handgun violations and repeat misdemeanor offenses); expanded diversion; and limited probation term limits. See this Annie E. Casey Foundation summary for discussion: <https://www.aecf.org/blog/maryland-enacts-sweeping-youth-justice-reforms>.

⁵ Administrative Order Guiding the Response of the Circuit Courts Sitting as Juvenile Courts to the COVID-19 Emergency as It Relates to Those Juveniles Who Are Detained, Committed Pending Placement or in Commitments (“Administrative Order”) at 3-4, J.B., 226 A.3d 935.

⁶ Ibid. This is close to exact language from the OPD application. See also Application for Immediate and Extraordinary Relief at 38-43, J.B., 226 A.3d 935.

⁷ Ibid. at 4.

determined not to be eligible for release back home or into community detention, the court was directed to review their status on an ongoing basis at least once every 14 days.⁸

- [The Maryland Department of Juvenile Services \(DJS\) launched a multi-pronged approach to reduce youth incarceration following the onset of COVID-19, instituting individual case reviews for all youths in custody, expediting release of youths with court approval, and expanding and strengthening alternatives to detention.](#) Shortly after the onset of the pandemic, DJS implemented weekly individual case reviews and officially started considering youth well-being in detention decisions. DJS approached that process with a focus on race equity, noting that while detention and placement numbers had been going down prior to the pandemic, disproportionality rates had risen. During the weekly reviews, DJS regional directors would present cases to peers, explaining what alternatives had been considered or attempted. The case reviews were an opportunity to brainstorm possibilities that had not been considered, and some noted that they led to more individualized approaches and attention to youths' needs and well-being. As one official noted, "If we really want to see long-term changes in equity, we need to look at individual kids and individual needs," particularly for the toughest cases. DJS plans to continue including youth well-being in the decision-making calculus for detention decisions going forward, and they are formalizing the approach to case reviews to promote consistency and equity across regional offices.

In addition, DJS intensified detention diversion efforts during the pandemic, with a particular focus on Black youths referred on less serious misdemeanor offenses and expanded community supports. The agency implemented changes to the Detention Risk Assessment Instrument and significantly reduced the number of automatic detention categories. As noted above, DJS officials also expanded the factors considered in detention and implemented strategies to allow youths at risk of reoffending to return home with additional support. DJS also changed policy to make its entire continuum of services available to any youth referred to DJS and implemented virtual options to reach more remote areas, including the Eastern Shore and western parts of the state. This increased the availability of services, including family support services and evidence-based programs for youth supervised in the community and returning home from incarceration

- [In Baltimore City, prosecutors and law enforcement worked together to reduce youth referrals into the justice system.](#) On March 18, 2020, in an effort to reduce the number of people entering the criminal justice system in Baltimore, the Baltimore City State's Attorney's Office (SAO) stopped prosecuting minor offenses, including drug possession and sex work.⁹ The Baltimore Police Department (BPD) saw that these minor offenses

⁸ Ibid. at 5.

⁹ "Baltimore City State's Attorney Mosby Eliminates 829 Additional Warrants," Office of the State's Attorney for Baltimore City, Feb. 25, 2020. As of March 26, 2021, these minor offenses include drug possession, attempted distribution CDS, paraphernalia possession, prostitution, trespassing, minor traffic offenses, open container, rogue and vagabond, and urinating or defecating in public. "State's Attorney, Mayor's Office, and Community Partners Announce Success of Covid Criminal Justice Policies," Office of the State's Attorney for Baltimore City, March 26, 2021. Accessed July 6, 2022

were no longer being prosecuted and advised its officers to use discretion in the arrests of individuals for minor offenses.¹⁰ On March 26, 2021, SAO made this policy permanent in an effort to address systemic inequity in its communities.¹¹ As a part of the Covid Criminal Justice policies, the State's Attorney's office also collaborated with the BPD and Baltimore Crisis Response, Inc. (BCRI) to reduce unnecessary contact with law enforcement for low-level offenses. In place of arrests, BCRI provides resources for mental health, housing, and substance abuse, as well as collaborating with community organizations to support sex workers.¹²

CHALLENGES AND NEXT STEPS

Maryland implemented several creative solutions to limit youth incarceration during the pandemic, but significant work remains to ensure that policy and practice changes are sustained in the long term and to address persistent and worsening racial and ethnic disparities. Interviewees for the study noted several areas in need of attention:

- **Ensure safe and supportive environment for young people in detention and placement.** Though we are now in year three of the pandemic, the virus is still a significant threat, particularly for unvaccinated young people in congregate care. At the same time, strategies to mitigate the harm of the virus (e.g., suspending family visits, isolation, etc.) can also be harmful and inflict trauma on young people. Staffing shortages have also left many facilities short-staffed, which poses additional safety concerns. Moving forward, it will be critical to ensure that Maryland (and all jurisdictions) limits the use of isolation, improves accessibility for parents and family members, and finds opportunities to promote education and connection within social distancing requirements.
- **Address racial disparities.** As is often the case, we observed continuing racial and ethnic disparity in Maryland that must be addressed. While DJS and stakeholders are committed to reducing disparities, young people of color are far more likely to be prosecuted, detained, and incarcerated post-adjudication than their white counterparts. It will be important to continue working to develop and implement strategies to support youths of color in their home communities.
- **Develop and implement strategies to sustain declines in youth incarceration.** Though they declined in the months following the onset of COVID-19, detention populations have fluctuated and were on an upward trend in 2022. Maryland should analyze what is driving those increases and develop targeted strategies to address them and build momentum for continued reduced reliance on congregate care options for youth. The state made good

¹⁰ Ibid. In an internal memo BPD circulated, officers were advised to “[c]onsult with a Lieutenant or above to determine whether seeking criminal charges through an arrest warrant application is appropriate while balancing resource constraints and public harm.” Jessica Anderson, “Baltimore Police officers to use discretion for low-level arrests to limit coronavirus exposure,” Baltimore Sun, March 29, 2020, <https://www.baltimoresun.com/coronavirus/bs-md-police-coronavirus-policy-20200319-7iz2zuwmnbdz5pnrkbiq2r4dre-story.html>.

¹¹ Ibid.

¹² Ibid.

progress toward that end in June 2022 with the passage of House Bill 459, which codified several of the Juvenile Justice Reform Council recommendations.¹³ Through that legislation, Maryland raised the minimum age of juvenile court jurisdiction to 13, prohibited use of secure placements for technical supervision violations and misdemeanor offenses, and removed barriers to diversion.¹⁴

¹³ Maryland House Bill 459 (2022), <https://mgaleg.maryland.gov/2022RS/bills/hb/hb0459E.pdf>.

¹⁴ "Maryland Enacts Sweeping Youth Justice Reforms," The Annie E. Casey Foundation, June 21, 2022, <https://www.aecf.org/blog/maryland-enacts-sweeping-youth-justice-reforms>.

FAMILY RECOMMENDATIONS TO BETTER SUPPORT JUSTICE-INVOLVED YOUNG PEOPLE AND THEIR FAMILIES

In September 2021, a diverse group of parents came together from across the United States to discuss the impact of the COVID-19 pandemic on their justice-involved children. Their insights and recommendations were captured in a separate brief, *Youth Incarceration During the COVID-19 Pandemic: Insights from Impacted Families*, but an abbreviated list of their specific suggestions is included here for quick reference, given the central importance of their ideas for improved policy and practice:

- Strengthen services, supports, and connection for young people in congregate care facilities. Families recommended that facility administrators create a family liaison position, prioritize in-person visitation, increase medical personnel, and strengthen oversight and accountability to ensure that young people's needs are met and to better support connection with caregivers, siblings, and other support people.
- Maximize opportunities for, and expedite release from, facilities. Given the added public health risk to people in congregate settings during this pandemic as well as other less widespread crises, parents unanimously called on agencies to explore all opportunities to promote and expedite release, with individualized and robust support, of young people from facilities, particularly those who have not yet been adjudicated and proven to have committed a crime.
- Expand community-based mental health, trauma, and healing supports for youth and families. Families noted that the COVID-19 pandemic exacerbated existing issues and increased the need for mental health, trauma, and healing supports for justice-involved young people and their families. They recommended multisensory and culturally responsive approaches to trauma healing, resilience and well-being for all family members to ensure that everyone's needs are met, and caregivers are best positioned to support their young people who might be struggling.

In 2020, four national research and advocacy organizations — the *Center for Children's Law and Policy*, *Justice for Families*, the *Justice Policy Institute*, and the *National Juvenile Justice Network* — came together to study state and local policy and practice changes that effectively reduced reliance on youth incarceration during the COVID-19 pandemic. The collaborative released a series of publications illustrating how agencies across the country can safely reduce reliance on youth incarceration and invest in more effective community-based strategies to support justice-involved youth and families.

