



Assessing Juvenile Diversion Reforms in Kentucky

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In 2014, Kentucky fundamentally transformed its juvenile justice system with the goal of improving outcomes for youth and families, protecting public safety, and controlling youth corrections costs. Among other changes, comprehensive reform legislation (Senate Bill 200) expanded and enhanced the state’s precourt diversion process administered by the Administrative Office of the Courts (AOC).¹ The new law required that AOC and county attorneys offer all youth referred to intake on first-time misdemeanor complaints an opportunity to be diverted from court, strictly limited county attorneys’ authority to override diversion decisions for youth meeting the criteria for a mandatory diversion offer, and made diversion possible for youth referred to intake on first-time felonies not involving sexual offenses or deadly weapons. It also directed AOC to implement evidence-based supervision practices in diversion and establish Family Accountability, Intervention, and Response (FAIR) teams in every judicial district to provide enhanced case management for youth with behavioral health or unmet service needs.

The Urban Institute examined how Senate Bill 200 diversion reforms impacted case decisionmaking and outcomes for youth referred to intake on less serious offenses. Findings indicated not only that more youth were diverted from formal court involvement compared with before reform, but also that the state maintained its high diversion success rates (nearly 9 out of 10 youth completed diversion) and had no statistically significant change in recidivism in any eligible complaint category.

Key Findings

In this brief, we summarize findings and implications from Urban’s analysis of Kentucky’s juvenile diversion reforms. Key findings include the following:

- **The rate of diversion increased for all youth after Senate Bill 200.** Between 2014 and 2018, the proportion of all complaints not dismissed at intake that entered into diversion agreements increased from 45 to 58 percent. Increases were observed across all complaint types (including felonies), for boys and girls, and for youth living in every region of the state.
- **Youth referred to intake on first-time misdemeanor complaints—who had to be offered diversion after Senate Bill 200—were more likely to be diverted after reform and equally successful.** Compared with a matched group prereform, youth referred to intake on first-time misdemeanor complaints after reform were
 - » roughly twice as likely to be diverted,
 - » significantly less likely to be detained or referred to court,
 - » equally likely to complete diversion, and
 - » returned on a new complaint within a year at comparable rates.
- **Youth eligible for discretionary diversion were also more likely to be diverted and equally likely to complete diversion, with no statistically significant change in recidivism.**
- **Racial and ethnic disparities in diversion were significant and persisted, particularly for Black youth.** However, Urban found that **the gap between white and Black youth narrowed in some cases.** For example, increases in diversion were steeper for Black youth than white youth, and decreases in formal court processing of Black youth referred to intake on a status complaint were steeper than for white youth. In addition, county attorney overrides of diversion declined more for Black youth than white youth.
- **Diversion increased significantly for youth referred to intake on school-related complaints.** In 2018, roughly one-quarter of complaints that went on to court for formal processing were school related, down from roughly half in 2014.
- **The vast majority of youth entering diversion completed their agreements and avoided formal court referrals.** Nearly 9 out of 10 youth completed diversion.
- **Despite progress, research indicated three key areas for further attention.** Findings revealed that in 2018,
 - » roughly 20 percent of youth referred on a first-time misdemeanor or status complaint not dismissed at intake did not enter into a diversion agreement,
 - » roughly 10 percent of youth referred to intake in Kentucky were detained, including 1 out of 10 youth referred on a status complaint (an offense not considered a crime if committed by an adult), and
 - » racial disparities in diversion and court referrals persisted, particularly for Black youth.

Background on Juvenile Justice in Kentucky

In 2012, inspired by successful adult criminal justice system reforms, the Kentucky General Assembly established a bipartisan, interbranch task force to comprehensively review the state's juvenile justice system. The resulting Task Force on the Unified Juvenile Code, which comprised a diverse group of juvenile justice stakeholders, was charged with fully investigating state policies and practices with the goal of identifying policy strategies, building consensus, and developing recommendations for reform (Pew 2014). The task force found that a significant number of youth entering the juvenile justice system were being charged with less serious offenses (e.g., status offenses, misdemeanors, or Class D felonies) and that more than half of youth in secure facilities were being held for misdemeanors or court-order violations. In addition, it noted that more than half of Kentucky's juvenile justice resources were being invested in residential facilities (costing an average of \$87,000 a bed a year), while access to and funding for community-based youth services were scarce even though such services are often more effective and cost-efficient than out-of-home placement (Fabelo et al. 2015; LRC 2013; Ryon et al. 2013). In short, Kentucky was spending millions annually on out-of-home placements for youth who had committed minor offenses. To address this, the task force made comprehensive recommendations for reform, most of which were codified in Senate Bill 200.

Senate Bill 200 Reforms and the Court Designated Worker Program

Enacted in 2014, Senate Bill 200 fundamentally transformed Kentucky's juvenile justice system, requiring sweeping changes to the policies and practices of AOC and the Department of Juvenile Justice and minor changes to some other agencies, including the Department for Community Based Services, the Division of Developmental and Intellectual Disabilities, and the Department of Education. Among other changes, the legislation prohibited courts from committing youth adjudicated for misdemeanor or Class D felony complaints or returning for probation violations to the Department of Juvenile Justice, limited how long youth could be placed out of home and on community supervision, and required that risk and needs assessments and graduated responses be used to guide decisions about youth supervised in the community.²

Senate Bill 200 also significantly changed the state's Court Designated Worker (CDW) program, which is intended to help youth avoid formal court system involvement.³ In Kentucky, CDWs review every complaint filed against a person younger than 18 before formal court action is taken.⁴ They assist law enforcement with the custody process and conduct preliminary interviews and investigations of complaints. They also offer youth who meet certain criteria an opportunity to avoid formal court involvement by entering into diversion agreements with specific requirements (e.g., requirements to participate in counseling or treatment, attend school, complete community service activities, abide by curfew, or pay restitution). They then monitor youth throughout the diversion process. If a youth completes the requirements outlined in their agreement, their case is closed without formal court action or record. Youth who are not eligible for diversion and those who opt not to engage in the diversion process are typically referred to the county attorney for formal processing. Although

additional supports were added after Senate Bill 200 for youth who do not make progress on diversion, they are still ultimately referred to the county attorney as well if they do not complete the program.

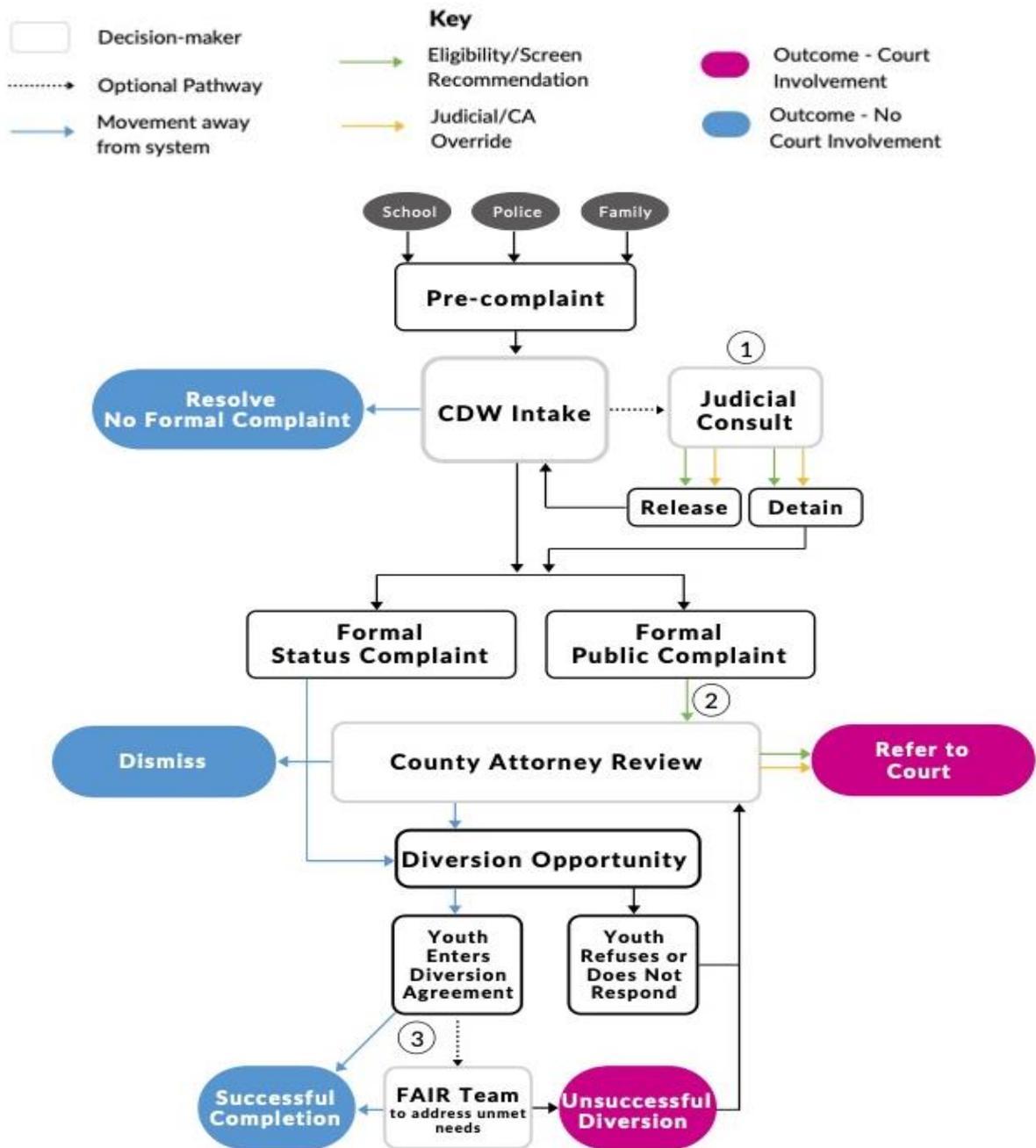
To expand and enhance diversion opportunities for youth, Senate Bill 200 mandated numerous changes to the CDW program. Analyses during the legislative process revealed that 43 percent of court filings for public complaints (i.e., actions considered crimes if committed by adults) and 29 percent of those for status complaints (i.e., actions not considered crimes if committed by adults) involved youth who were eligible for diversion but went to court because of an override by the judge or county attorney (Pew 2014). The new law required that any youth charged with a first-time misdemeanor complaint be offered diversion, and specified that a “county attorney may not file a petition if the complaint is a misdemeanor and the child...has no prior adjudications and no prior diversions.”⁵ Though the legislation did not create exceptions to that requirement, some county attorneys continued to refer first misdemeanor complaints to court after reform.

In addition, Senate Bill 200 expanded diversion eligibility through the CDW program. Previously, CDWs had the authority to divert a youth charged with a misdemeanor or status complaint up to two times. Senate Bill 200 extended that eligibility to third-time misdemeanor and first-time felony complaints (excluding sex offenses and offenses involving a weapon) with approval from the county attorney.⁶ Put simply, Senate Bill 200 mandated that diversion be offered to any youth referred to intake on a first-time misdemeanor and expanded diversion eligibility to up to four separate instances. The legislation was therefore expected to significantly increase the number of youth entering into diversion agreements and to decrease court referrals and, relatedly, the use of preadjudication detention (figure 1 offers a map of the diversion process after the Senate Bill 200 reforms were implemented).

Furthermore, Senate Bill 200 mandated that AOC implement evidence-based practices for youth supervised on diversion or postadjudication, requiring it to use risk and needs assessments to guide case decisionmaking and supervision decisions, to use graduated responses, and to implement an enhanced case management process for youth with complex needs. It required every judicial district to establish a multidisciplinary FAIR team. FAIR teams were implemented on a rolling basis starting in 2015, with all in place by the end of 2016 (see Kaasa and coauthors [2019] for an in-depth discussion of the implementation process). Each team consists of up to 15 members, is led by a Court Designated Specialist, and includes representatives of community-based services, the county attorney’s office, a local public school, law enforcement, the Department for Community Based Services, and other community partners or child-serving agencies (among others). Although the bill allowed judicial districts to use FAIR teams broadly, AOC initially directed staff to only refer youth who were presented on status complaints and were identified as high needs, who failed to appear for their initial appointment, or who were not progressing toward completing diversion.⁷ In 2017, AOC expanded eligibility for FAIR team referrals to youth presenting on public complaints who were assessed as high needs and/or were not progressing toward diversion completion.⁸ FAIR teams collaborate with community providers to connect youth and families to resources in their communities and help them complete diversion requirements and avoid formal court involvement. Stakeholders expected this enhanced process to

significantly increase the number of youth completing diversion and decrease recidivism for diverted youth.

FIGURE 1
Kentucky Referral to Court System Map



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Notes: CA = county attorney; CDW = Court Designated Worker; FAIR = Family Accountability, Intervention, and Response.

The above graphic captures Kentucky’s court system process from the point of referral to either diversion completion or formal court referral. Please note additional context at the following three points:

1. Sometimes, the results of a detention screening assessment or the circumstances of a particular case require a CDW to consult with the judge about whether to release or detain a youth. When this occurs, the CDW reports the screening results and the circumstances of the case to the judge with a custody recommendation, and the judge considers and determines whether to detain or release the youth. When a judge overrides release for a youth who is eligible and detains them, this is referred to as “**judicial override.**”
2. Similarly, when a youth receives a formal public complaint, the CDW refers the case to the county attorney to be reviewed based on the facts of the case. The county attorney reviews all formal public complaints and decides whether to dismiss, divert, or refer the case to court for formal processing. In this brief, we often focus on the legislative requirement to offer diversion for all first-time misdemeanor complaints and we refer to any instance whereby a county attorney refers such a case to court as a “county attorney override.” Importantly, however, any time a diversion-eligible complaint is overridden by the county attorney it is identified here and in Kentucky as a county attorney override, not just in cases involving first-time misdemeanors.
3. FAIR teams are local multidisciplinary bodies that collaborate to address the unmet needs of youth who are referred to intake on status complaints or who are not progressing toward diversion completion. All youth receive a brief screen called the Global Appraisal of Individual Needs-Short Screener at intake to identify any mental health or substance abuse treatment needs. Those that score higher than a defined cutoff are referred for more comprehensive assessment and, where appropriate, are referred to the FAIR team for additional support.

Assessing Senate Bill 200 Diversion Reforms

Given the scope and scale of Kentucky’s juvenile diversion reforms, research on their impact can provide critical insight into their efficacy for keeping youth out of the system and improving outcomes for youth and families. Juvenile diversion policies and practices impact thousands of youth and families in Kentucky each year and disproportionately impact youth of color, who made up just 22 percent of the state’s youth population but received 34 percent of filed complaints in 2017 (AOC 2019; Kentucky Youth Advocates 2019). Moreover, the negative impact of juvenile justice system involvement and incarceration on youth is well documented,⁹ and policymakers across the US are increasingly working to divert youth from the system where appropriate, reduce reliance on incarceration, and shift investments to community-based supervision and supports.¹⁰ In addition to Kentucky, Kansas, South Dakota, Utah, and West Virginia have implemented front-end juvenile diversion reforms using a similar legislative approach (Durnan, Olsen, and Harvell 2018).¹¹ Understanding how juvenile justice processes have changed in Kentucky postreform and the outcomes they have produced is valuable for state stakeholders (who can use such information to modify reform efforts) and for stakeholders in other jurisdictions looking for effective front-end diversion models.

Using quantitative data from the AOC CDW case management system and interviews with key stakeholders (box 1), Urban assessed changes to practice and outcomes in Kentucky’s juvenile diversion process after the implementation of Senate Bill 200. Urban examined what happened to youth entering CDW intake on status complaints, misdemeanor complaints, and first-time felonies before and after reform to assess whether the legislation was working as intended (e.g., whether more youth were being diverted and whether fewer youth were being detained and referred to court). Furthermore, because the legislation’s purpose was to reduce formal court referrals and recidivism, Urban also examined whether youth referred to CDW intake on less serious offenses were less likely to return to the system postreform than similarly situated youth prereform, as well as whether those who were diverted were more likely to complete diversion. The research team focused on five categories of less serious complaints, guided by the criteria for diversion noted above (i.e., status complaints, first-time misdemeanors, second-time misdemeanors, third-time misdemeanors, and first-time felonies; table 1 offers a snapshot of eligibility changes enacted through Senate Bill 200). Specifically, Urban researchers sought to answer the following three research questions:

- What changes were observed in case decisionmaking (e.g., diversion, detention, and referrals to court) after Senate Bill 200 was implemented?
- Are outcomes for youth who meet the criteria for a mandatory diversion offer (i.e., first-time misdemeanor complaints) different postreform compared with a matched group prereform?
- Are outcomes for other youth eligible for discretionary diversion (i.e., status complaints, second-time misdemeanors, third-time misdemeanors, and first-time felonies) different postreform compared with a matched group prereform?

The research team examined changes in three case decision points: diversion, detention, and referral to court. It also investigated differences before and after reform for two case outcomes: (1) diversion completion (for diverted youth), and (2) return with a new complaint within a year of referral.

TABLE 1
Court Designated Worker Program Diversion Eligibility Changes Enacted through Senate Bill 200

Complaint	Prereform	Postreform
First misdemeanor	Diversion eligible	Mandatory diversion offer
Second misdemeanor	Diversion eligible	Diversion eligible
Third misdemeanor	Not diversion eligible	Diversion eligible
First felony	Not diversion eligible	Diversion eligible, with written county attorney approval
Status	Diversion eligible	Diversion eligible

Source: An Act Relating to the Juvenile Justice System and Making an Appropriation Therefor, Ky. Senate Bill 200 (passed April 14, 2014).

BOX 1

Methodology

Urban used a mixed-methods research approach, including quantitative analysis of individual-level data and a small sample of interviews with key stakeholders.

For its **quantitative analysis**, Urban collected and analyzed individual-level data from the AOC CDW case management system, which included all complaints filed between January 1, 2010, and March 31, 2019. Throughout this brief, the unit of analysis is the most serious complaint for each youth filed in one day, which we refer to as a “case.” In analyses where we calculate diversion as a proportion of cases, we use the term “nondismissed cases” to indicate that the analyses excluded cases that were dismissed at intake and therefore could not be diverted. The research team analyzed descriptive yearly trends from 2010 to 2018 for overall complaints filed, first-time misdemeanor complaints, diversion, and prosecutorial overrides. All descriptive comparisons of pre-/postreform compare data in 2018 with data in 2014; Senate Bill 200 was enacted in April 2014, but most changes to law took effect in July 2015.

The team also used propensity score matching models to examine several group differences at three case decisionmaking points (diversion, detention placement, and court referral) and two case outcomes (diversion completion and return with a new complaint within a year of referral to intake). In outcome analyses we used July 1, 2015, as the intervention date. Postreform samples included youth whose complaint referral dates were between July 1, 2015, and March 31, 2018, with case closure dates before March 31, 2019. We matched an equivalent prereform sample to the postreform sample using propensity score matching (Rosenbaum and Rubin 1983). The prereform sample included youth whose complaint referral dates were between October 1, 2012, and June 30, 2015. To focus on the impact of the policy change itself, we made group comparisons between all youth meeting diversion eligibility criteria in the pre- and postreform periods, not just those actually diverted before or after Senate Bill 200. The variables we included in the propensity score matching and regression models were race and ethnicity; sex; age at referral; whether the youth was enrolled in school; whether the referral was made through a school official; the referring county; and the number of prior status, misdemeanor, or felony referrals. Technical appendix A offers additional details about the propensity score matching models, and technical appendix B offers tables containing full regression results (these are available in [Assessing Juvenile Diversion Reforms in Kentucky: Technical Appendixes](#)).

To contextualize and supplement the quantitative analysis, Urban conducted a series of **qualitative interviews** with juvenile justice system stakeholders in Kentucky, including

- AOC leadership,
- the CDW regional supervisors in 10 of the 12 program regions,
- two county attorneys, and
- one judge.

Given the limited sample of interviewees, we only use information from these conversations to contextualize findings. We arrived at all findings in this brief through the quantitative analysis.

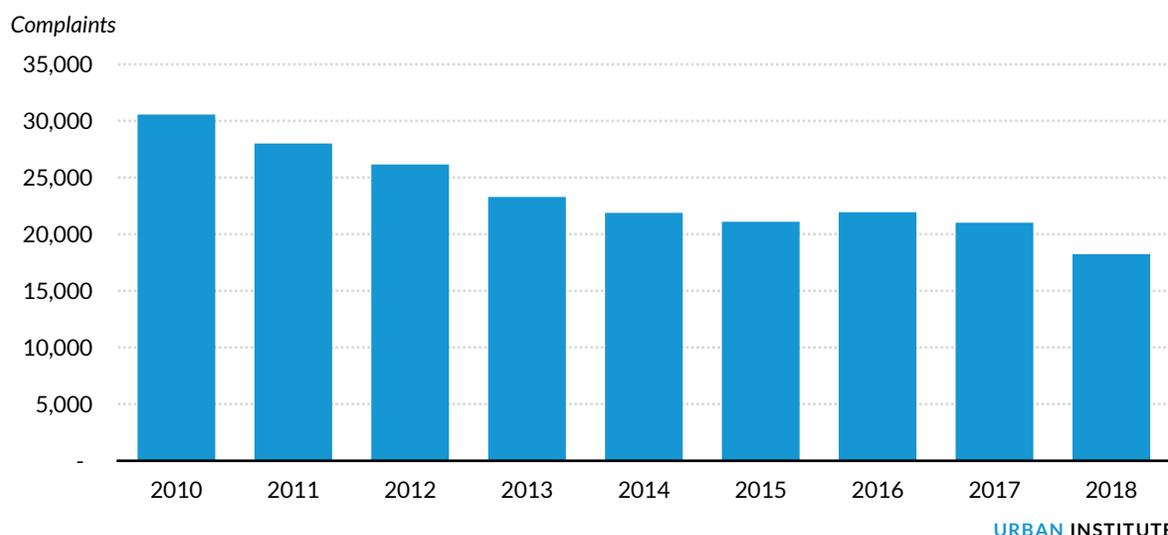
How Case Decisionmaking Changed after Senate Bill 200 Reforms Were Implemented

As noted above, Urban was interested in examining what changes were observed in case decisionmaking for youth entering CDW intake on less serious complaints, including status, misdemeanor, and first-time felonies. We wanted to see whether the legislation was working as intended and whether more youth were being diverted and fewer detained or referred to court.

The Number of Complaints Filed Decreased, but Most Still Involved Less Serious Offenses

Between 2010 and 2018, Kentucky experienced a significant (40 percent) decrease in complaints referred to the intake point of the juvenile justice system (figure 2). The number of complaints referred to intake fluctuated after Senate Bill 200 but were down 17 percent in 2018 compared with 2014. Although that decrease was driven by a 30 percent decline in misdemeanor complaints, decreases were observed across status complaints as well. However, felony complaints increased 11 percent between 2014 and 2018. It is not uncommon for justice system actors to respond to policy changes by adjusting charging practices or other decisions. Interviews with stakeholders in Kentucky suggested that that phenomenon was likely occurring there, which may have contributed to the increase in felony complaints. Trends were similar for girls and boys, and for white and Black youth. This context is important for interpreting trends; most findings in this brief are reported as a proportion of relevant cases rather than raw numbers to account for the decline in the overall number of cases referred to intake.

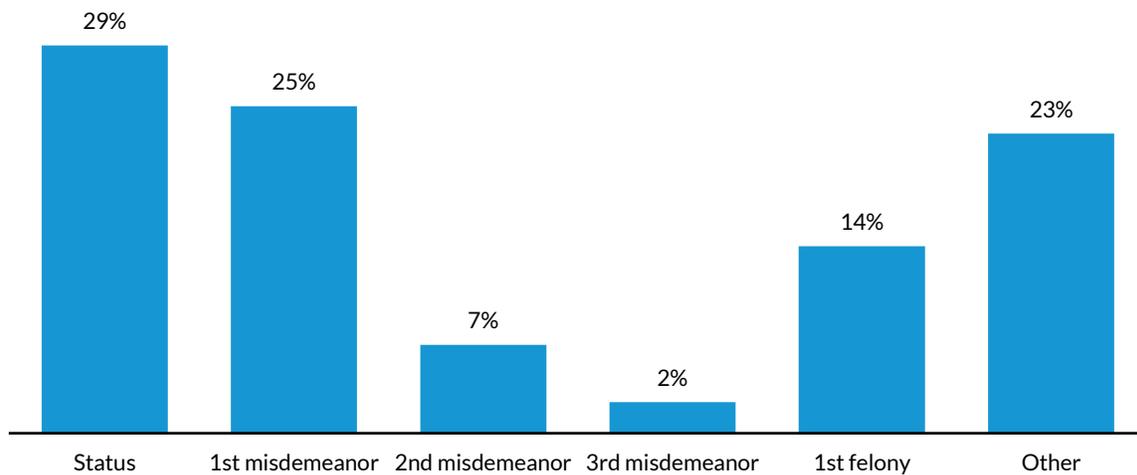
FIGURE 2
Complaints Referred to Juvenile Justice Intake Decreased 40 Percent between 2010 and 2018



Source: Urban analysis of Administrative Office of the Courts data.

As the task force noted in its 2013 report, a significant proportion of complaints entering CDW intake in Kentucky prereform were for less serious complaints (LRC 2013). That remained true postreform. Though complaints declined overall, most continued to be for less serious offenses. In 2018, three out of four complaints entering CDW intake were for status or misdemeanor offenses (figure 3), and one in four were for first-time misdemeanors, eligible for the mandatory diversion opportunity created by Senate Bill 200. An additional 14 percent were for first-time felony complaints.

FIGURE 3
More Than Half of Complaints Referred to Intake in 2018 Involved Status Offenses or First-Time Misdemeanor Offenses



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Source: Urban analysis of Administrative Office of the Courts data.

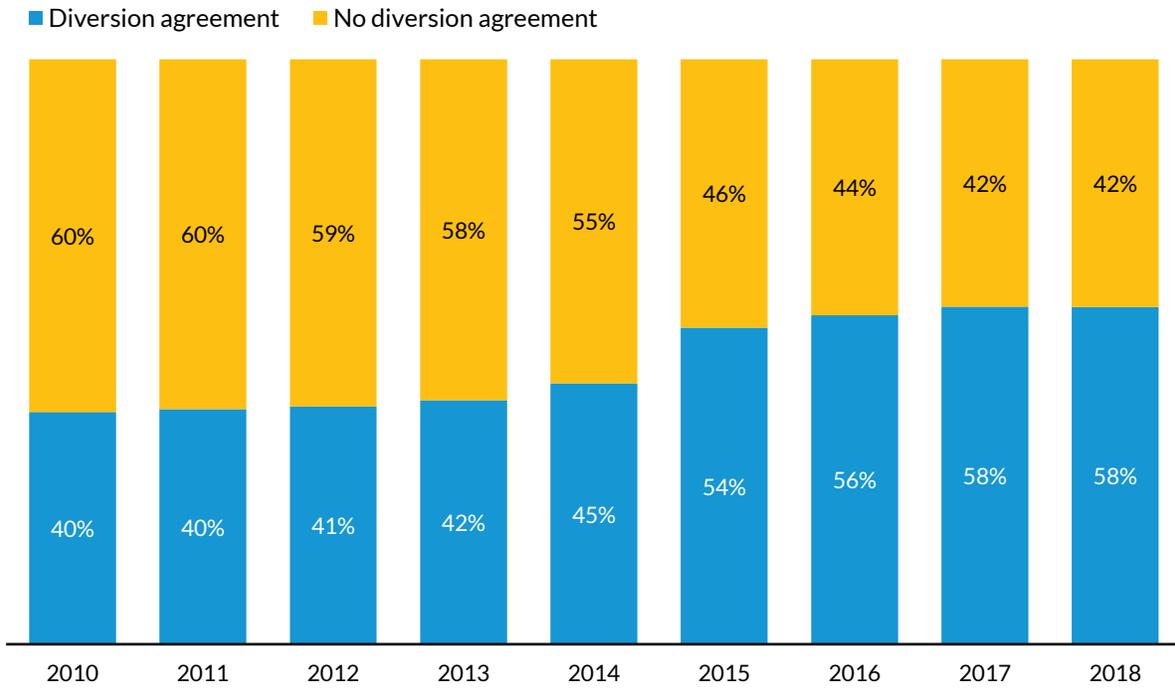
Note: "Other" offenses include any complaint with four or more prior misdemeanors or two or more prior felonies.

Diversification Rates Increased after Senate Bill 200

Between 2014 and 2018, the proportion of complaints not dismissed at intake (hereafter referred to as nondismissed complaints) that were diverted increased (figure 4). In 2018, 58 percent of such complaints entered into diversion agreements, up from 45 percent in 2014. Again, Senate Bill 200 only impacted a subset of overall complaints, so this trend is notable. Trends in diversion were consistent for boys and girls and for white youth and youth of color (figure 5), though significant disparities persisted among some youth of color, particularly Black youth.¹² In 2018, 62 percent of nondismissed complaints involving white youth and 62 percent of those involving Latinx youth entered into diversion agreements, compared with only 44 percent of those involving Black youth. However, the gap in complaints involving diversion between white and Black youth did decrease from 23 percentage points in 2014 to 18 percentage points in 2018.

FIGURE 4

Diversion Agreement Rates Increased from 45 to 58 Percent of all Nondismissed Complaints between 2014 and 2018



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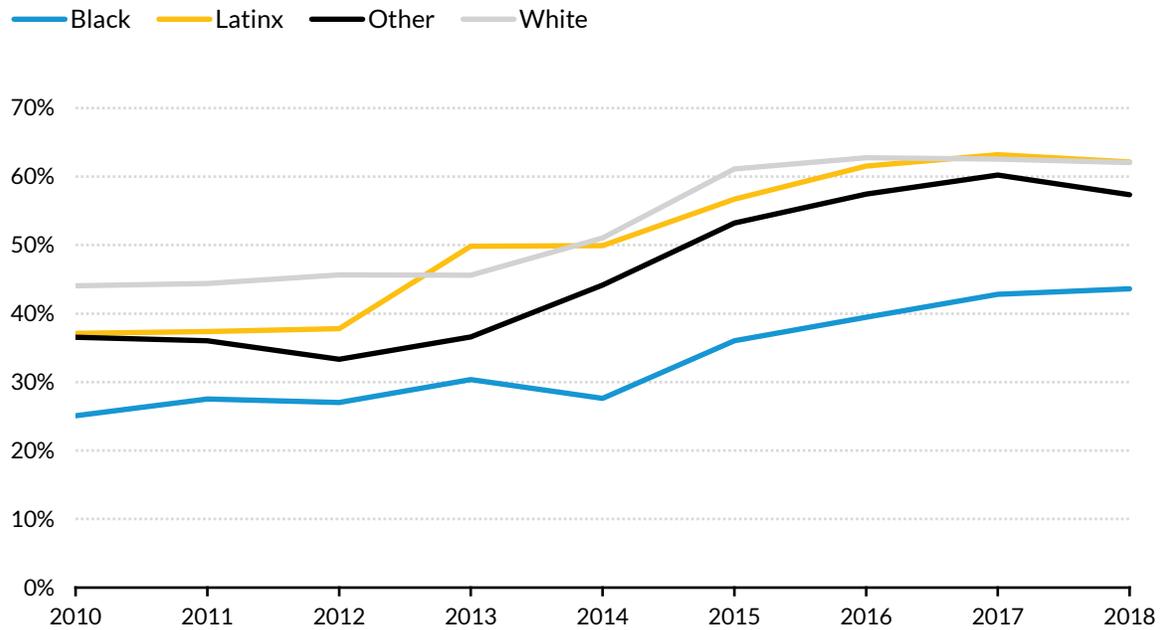
Source: Urban analysis of Administrative Office of the Courts data.

Note: Senate Bill 200 was enacted in 2014.

FIGURE 5

Diversion Rates Increased for All Youth after Senate Bill 200 but Remained Disproportionate

Yearly proportion of complaints with diversion agreements



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Source: Urban analysis of Administrative Office of the Courts data.

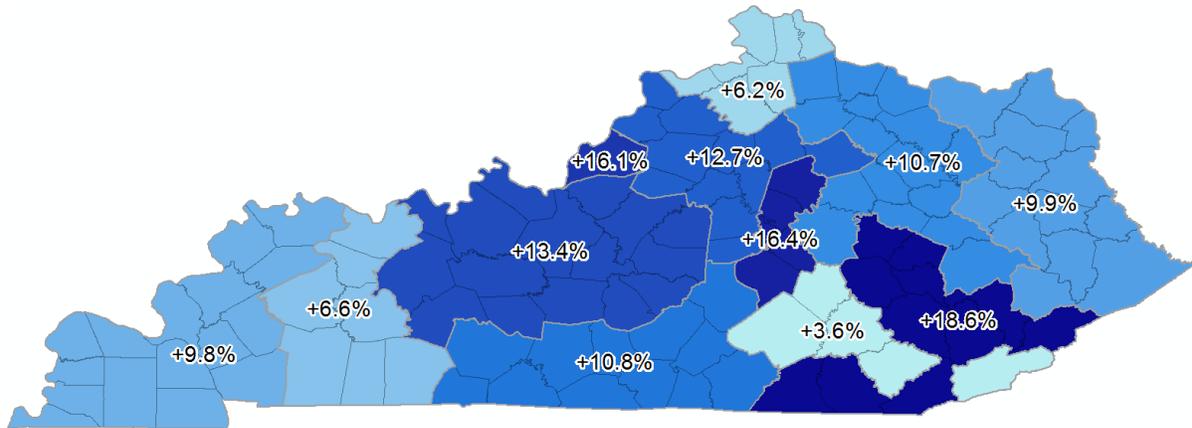
Notes: "Other" includes youth of Asian, Native American, multiracial, unknown, or other descent. This category comprised between three to seven percent of youth each year between 2010 and 2018.

Furthermore, use of diversion increased in every region of the state (figure 6; see this brief's appendix for additional detail on the 12 CDW supervisor regions) and across all complaint types (figure 7). However, there was wide variance in these changes by region, which experienced increases ranging from 3 to 16 percentage points. It is important to note that figure 6 captures the change only and does not account for baseline diversion rates (see table A.1 in the appendix for diversion rates by region in 2014 and 2018). Regions that were already diverting a large share of complaints would be expected to experience smaller increases than those that diverted a smaller share of cases in 2014.

FIGURE 6

Diversion Increased in Every Region of the State

Change in proportion of nondismissed complaints diverted by region between 2014 and 2018



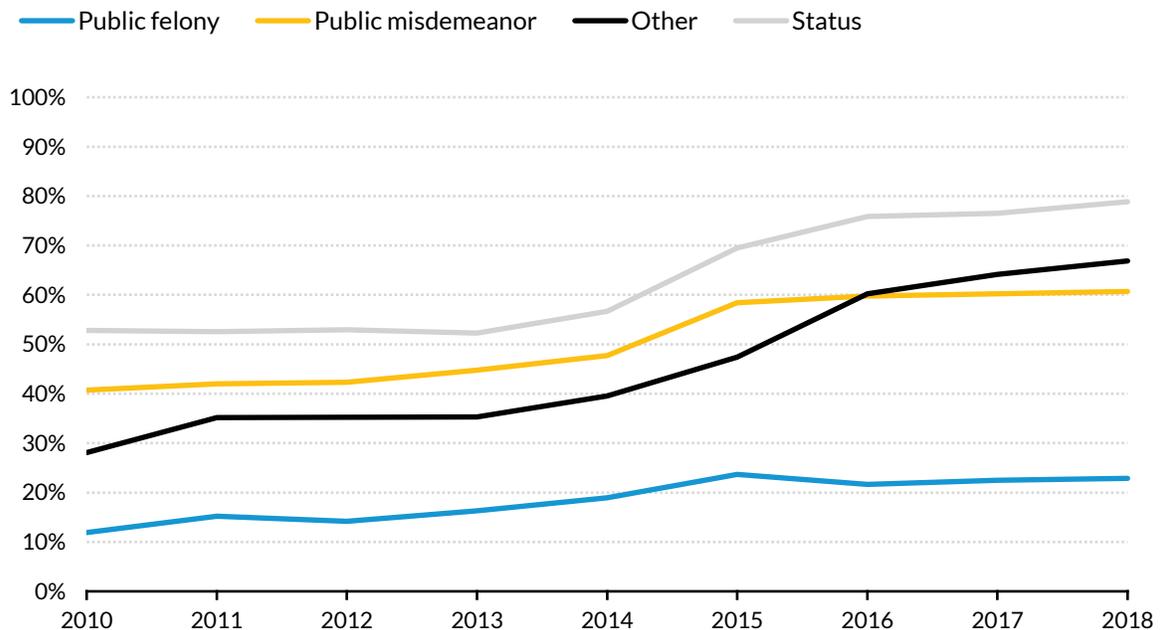
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Source: Urban analysis of Administrative Office of the Courts data.

FIGURE 7

Diversion Agreements Increased for all Nondismissed Complaint Types, Particularly Status Complaints

Proportion of nondismissed complaints with diversion agreements



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Source: Urban analysis of Administrative Office of the Courts data.

Note: "Other" includes public violations, violations of local ordinances, and "unknown."

Diversion Rates Increased for Youth Eligible for Both Mandatory and Discretionary Diversion after Senate Bill 200

Examining complaints filed in Kentucky’s juvenile justice system for less serious offenses, Urban observed that the share of complaints entering diversion increased across status complaints; first-, second-, and third-time misdemeanors; and first-time felonies (table 2).

TABLE 2

Proportion of Nondismissed Complaints Entering Diversion Increased across All Less Serious Offenses

	Status complaints	First-time misdemeanor	Second-time misdemeanor	Third-time misdemeanor	First-time felony
Year					
2010	51%	58%	37%	16%	17%
2011	51%	61%	34%	15%	20%
2012	51%	61%	37%	16%	19%
2013	51%	64%	38%	17%	22%
2014	55%	67%	45%	21%	25%
2015	68%	76%	59%	40%	33%
2016	75%	78%	63%	42%	33%
2017	76%	79%	61%	40%	33%
2018	78%	80%	58%	39%	34%

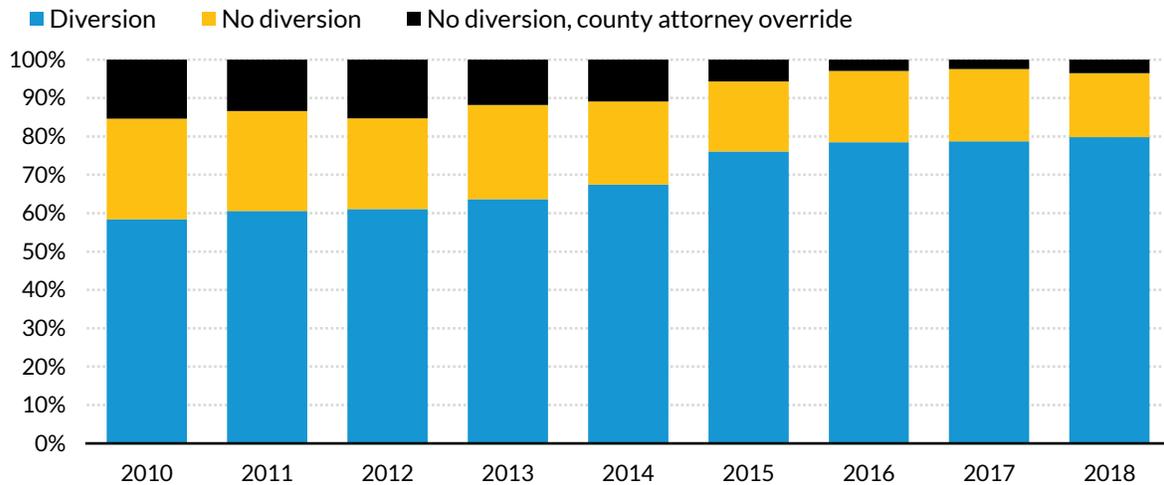
Source: Urban analysis of Administrative Office of the Courts data.

After reform, the share of youth with nondismissed first-time misdemeanor complaints entering into diversion agreements increased from 67 percent in 2014 to 80 percent in 2018 (figure 8). Again, the upward trends in diversion for first-time misdemeanor complaints were similar for boys and girls and for white youth and youth of color, though disparities also persisted in this category. In 2018, 81 percent of white youth and 82 percent of Latinx youth referred on nondismissed first-time misdemeanor complaints were diverted, compared with 77 percent of Black youth and other youth of color. Court referrals for these cases also fell significantly, in terms of raw numbers and the proportion of cases ending in a court referral (figure 9). County attorney overrides of diversion eligibility across all complaints fell from 15 percent in 2014 to 9 percent in 2018, and fell from 11 percent to 4 percent for first-time misdemeanors during the same period. The increase in the share of diverted complaints was even larger for status offenses, which increased from 55 percent in 2014 to 78 percent in 2018.

FIGURE 8

Between 2014 and 2018, the Share of First-time Misdemeanor Complaints Involving Diversion Increased from 67 to 80 Percent

Share of first-time misdemeanor complaints with diversion, no diversion, and county attorney override

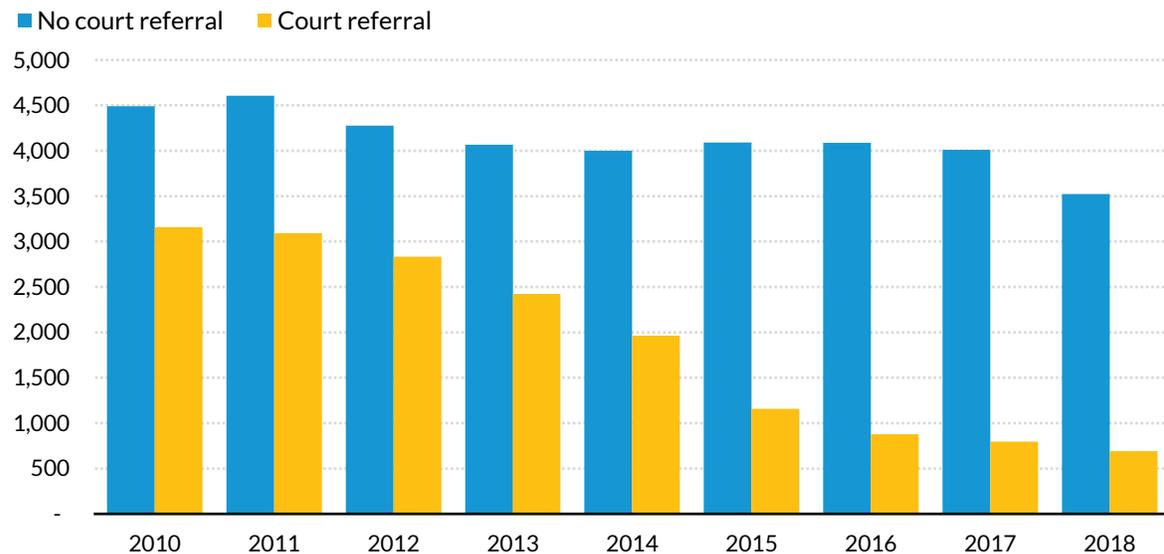


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Source: Urban analysis of Administrative Office of the Courts data.

FIGURE 9

Between 2014 and 2018, the Number of First-time Misdemeanor Complaints Not Dismissed at Intake Ending in Formal Court Processing Decreased



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Source: Urban analysis of Administrative Office of the Courts data.

Notes: In 2018, 121 cases were still active. Most cases in the “No court referral” category were diverted but a small percentage were dismissed by the county attorney. This percentage ranged from 7 to 11 percent of cases not referred to court over the observation period.

Matched group comparisons of youth referred to CDW intake within each complaint type before and after reform found that youth referred to intake after Senate Bill 200 were significantly more likely to enter into diversion and significantly less likely to be referred to court. Youth referred on first- and second-time misdemeanor complaints were also significantly less likely to be detained compared with a matched group prereform.

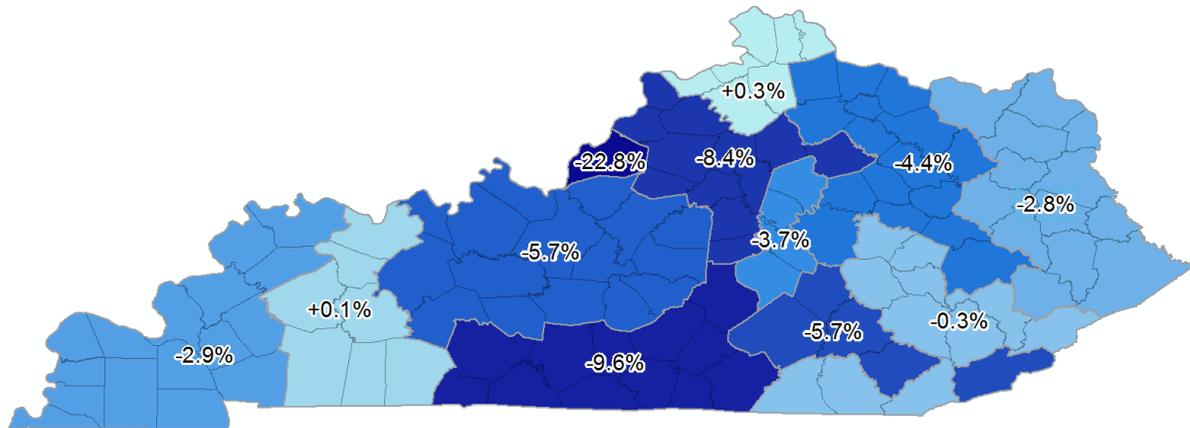
However, despite the requirement that diversion be offered to youth entering intake on first-time misdemeanors, one in five youth entering intake on a nondismissed first-time misdemeanor complaint in 2018 did not enter into a diversion agreement. Those not entering into diversion may have declined to participate, or a county attorney may have overridden their diversion eligibility (among other reasons). Analyses suggest that between 2014 and 2018, 21 to 28 percent of first-time misdemeanor complaints that did not enter into diversion agreements involved a youth who either requested a formal referral to court or failed to appear for their preliminary inquiry or diversion conference appointment, which can result in a referral. Other reasons a youth would not enter into diversion include judicial overrides (these fluctuated between 2014 and 2018 but fell overall from 17 to 12 percent); the youth being detained at intake; and the overriding of diversion eligibility by a county attorney based on the nature of the complaint, circumstance of the case, or other reasons.

After reform, county attorneys overrode diversion less for youth eligible for mandatory diversion, though the use of overrides continued. In 2018, 4 percent of all nondismissed first-time misdemeanor complaints were referred to court on a county attorney override, down from 11 percent in 2014. Analyses indicated that declines in the proportion of closed nondismissed complaints involving county attorney overrides were consistent among boys and girls. Furthermore, the proportion of closed nondismissed complaints involving county attorney overrides declined across all four racial and ethnic categories and were actually steeper for Black youth than white youth. However, changes in the use of overrides differed dramatically by region (figure 10), and 2 of the 12 regions actually saw an increase in the share of first-time misdemeanor complaints referred to court on a county attorney override (see appendix table A.2 for mandatory diversion offers overridden by county attorneys by region in 2014 and 2018).

One in five first-time misdemeanor cases referred to CDW intake in 2018 did not involve diversion.

FIGURE 10

Changes in the Share of Mandatory Diversion Offers Overridden by County Attorneys between 2014 and 2018 Varied by Region



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Source: Urban analysis of Administrative Office of the Courts data.

BOX 3

A Fundamental Shift in Jefferson County

Though the impact of Senate Bill 200 has been felt across Kentucky, juvenile diversion has particularly changed in Jefferson County (which includes Louisville). Between 2014 and 2018, the proportion of nondismissed first-time misdemeanor cases entering diversion in the county increased 14 percentage points, and the proportion of complaints eligible for mandatory diversion that were overridden and referred to court by the county attorney decreased from 24 to 1 percent. Interviews suggested these changes resulted from a coordinated effort between the county attorney's office, judges, CDWs, and community partners; a philosophical shift in how justice stakeholders viewed and used diversion; and a commitment to address youth needs in the community when possible. After Senate Bill 200, opportunities for diversion grew and community programming expanded. Currently, CDWs refer youth to workshops delivered by local law enforcement, faith-based organizations, work-readiness organizations, the University of Louisville, and CDWs themselves. Restorative justice programming has also expanded since Senate Bill 200 and is a viable alternative to formal court involvement. Jefferson County has worked hard to keep improving diversion services and supports by holding "booster" sessions where the FAIR team examines data and reviews available community supports. The county attorney's office reviews court data frequently to monitor diversion trends and ensure diversion-eligible cases are closed correctly.

The Vast Majority of Youth Completed Diversion and Avoided Formal Court Processing

Notably, although the number of complaints involving diversion agreements increased significantly, average completion rates across all complaint types have held steady. Every year between 2010 and 2018, nearly 9 out of 10 youth completed diversion and avoided formal court processing. For youth referred to intake on a first-time misdemeanor complaint in 2018, that success rate was 94 percent.

Nearly 9 out of 10 youth diverted in Kentucky completed their agreements and avoided formal court involvement.

Detention Rates Were Consistent Overall, Though Judicial Overrides Declined

Although Senate Bill 200 did not explicitly limit or change judicial overrides, interviews with local stakeholders suggest that its overall intent and its commitment to limiting formal court processing for youth referred on less serious offenses affected judges' use of overrides. In Kentucky, only a judge can order detention or placement of youth, meaning for those referred to intake on less serious complaints, judicial overrides come into play at intake in detention decisions. We expected detention of youth entering intake on less serious complaints to have decreased postreform, and descriptive trend analyses suggest that the use of judicial overrides in first-time misdemeanor cases did decrease. However, the use of judicial overrides varied geographically, and the use of judicial overrides for Black youth increased. Between 2014 and 2018, the proportion of closed nondismissed complaints referred to court via a judicial override did not vary significantly for white youth, Latinx youth, or other youth of color, but it increased 5.8 percent for Black youth. In addition, in 2018, the proportion of closed complaints formally processed in court on a judicial override was between 7 and 8 percent for white youth and for Latinx youth and other youth of color, whereas it was nearly 14 percent for Black youth. Because Senate Bill 200 did not limit or change judicial overrides, Urban did not investigate these trends further, but we note here that they warrant additional attention.

Furthermore, detention rates were generally consistent overall, though they were lower and declined for youth referred to intake on first misdemeanor complaints. Each year between 2010 and 2018, approximately 10 percent of youth referred to intake were detained, which was consistent for youth referred on public and status complaints (again, public complaints are considered crimes if committed by an adult, whereas status complaints are not). Rates were lower for youth referred to intake on first misdemeanor complaints and declined slightly between 2014 and 2018 (3 percent in 2018, down from 4 percent in 2014). Trend analyses found that nearly all status complaints resulting in detention in 2017 and 2018 involved youth running away from home. Interviews suggest that many parts of Kentucky had few or often no alternative placement options for these youth. Similarly, nearly

all first-time misdemeanor complaints resulting in detention in 2017 and 2018 were assault related, many of which involved cases of domestic violence. Again, interviews suggest that limited placement alternatives for youth who may simply need a safe place to stay for a day or two before returning home likely contributed to these placements. This issue seemed prevalent across the state and demands further attention, problem solving, and creative thinking.

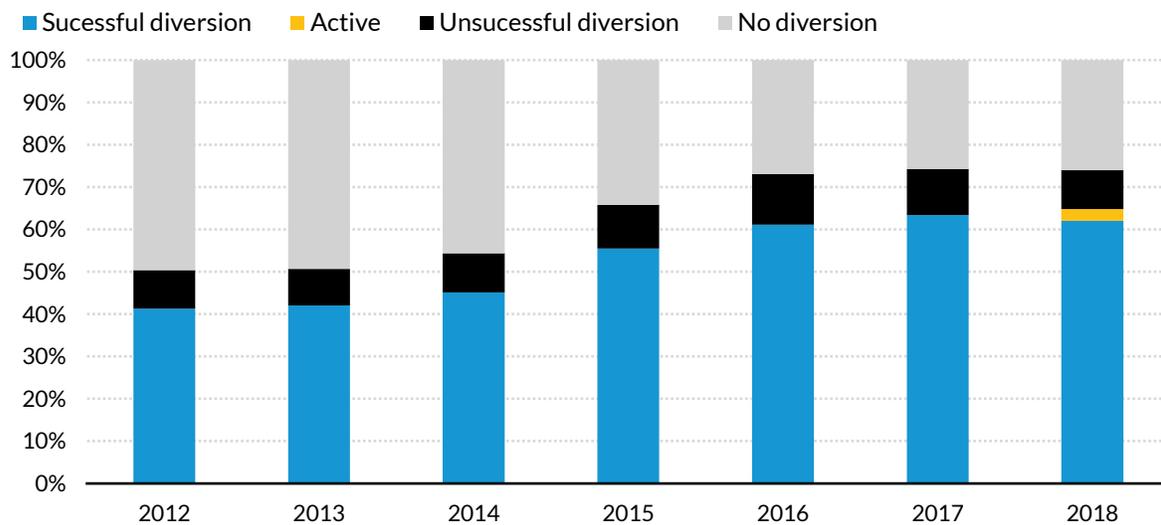
School-Related Complaints, Diversions, and Completions Increased

As the task force noted in its 2013 report, a significant proportion of complaints in Kentucky are school related, and that share increased postreform. Though the number of school-related complaints in 2018 was lower than in 2014, the proportion of complaints that were school related increased from 37 to 44 percent. During that period, diversions for school-related complaints increased significantly, particularly for truancy cases. Between 2014 and 2018, the proportion of youth with truancy cases who entered into diversion agreements rose from 60 to 85 percent. Rates of successful completion also increased during that period for school-related complaints overall (figure 11) and for truancy complaints specifically. In 2018, 70 percent of closed truancy complaints ended in a diversion completion, up from 43 percent in 2014. The net impact of these collective changes was fewer youth referred to court from the point of intake on school-related complaints. That number dropped steadily from 4,108 court referrals in 2014 (51 percent of nondismissed complaints) to 2,017 court referrals in 2018 (26 percent of nondismissed complaints).

FIGURE 11

Diversion Completions Increased for School-Related Complaints between 2012 and 2018

Share of nondismissed school-related complaints that were still active in 2018 or had ended in diversion, unsuccessful diversion, or no diversion



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Source: Urban analysis of Administrative Office of the Courts data.

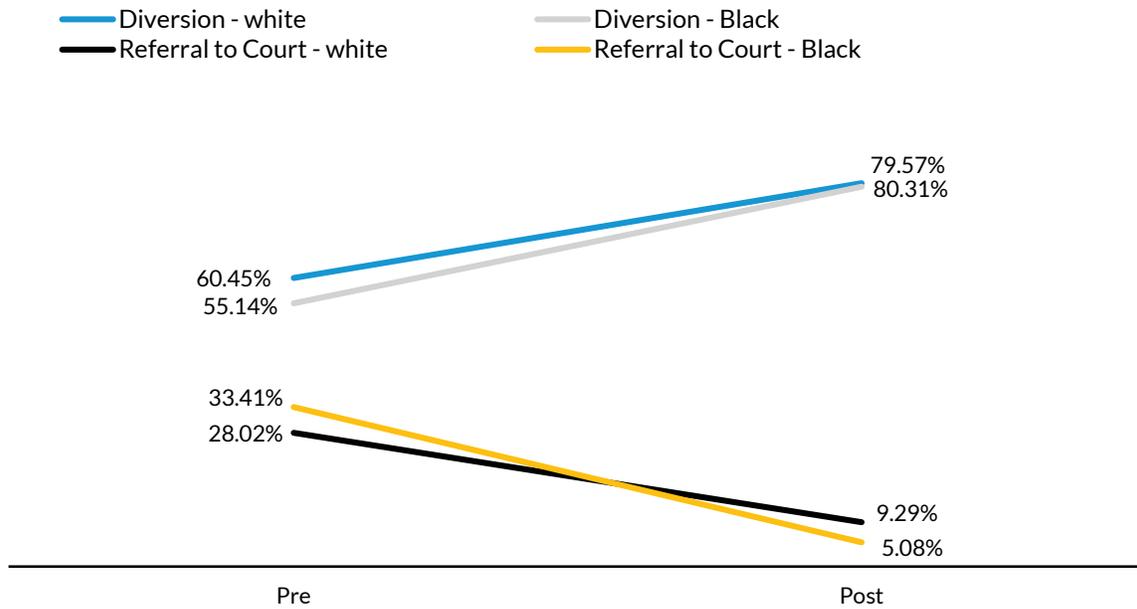
Senate Bill 200 Reforms Highlighted Persistent Racial and Ethnic Disparities That Kentucky Is Working to Address

Although Senate Bill 200 improved case decisionmaking for youth, Kentucky stakeholders noted early on that significant racial and ethnic disparities remained after reform, a conclusion supported by our assessment. As noted above, descriptive analyses show that diversion increased and that detention and referrals to court decreased for white youth and youth of color, but outcome analyses show that disparities persisted. With few exceptions, Black youth were less likely to be diverted and more likely to be referred to court than white youth both before and after reform. However, notable exceptions included decisionmaking for youth referred on status complaints as well as the use of county attorney overrides, which declined more steeply for Black youth than for white youth (as noted above).¹³

Analyses showed that although the overall number of status complaints referred to intake dropped significantly more for white than for Black youth, disparities in case decisionmaking between Black and white youth narrowed after reform. Figure 12 shows how disparities between white and Black youth referred to intake on status complaints changed. A regression analysis comparing matched groups before and after reform indicated that the gap in the likelihood of diversion between white and Black youth charged with status complaints prereform was 5.3 percent and fell to 0.7 percent postreform. Regarding referrals to court, the gap between white and Black youth prereform was 5.4 percent—not only did this gap fall to 4.2 percent, but Black youth were actually less likely to be referred to court for status complaints than white youth in the postreform period.

FIGURE 12

The Gap between White and Black Youth in the Likelihood of Being Diverted or Referred to Court on a Status Complaints Narrowed Following Implementation of Senate Bill 200



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Source: Urban analysis of AOC data.

Notes: The prereform sample included youth whose complaint referral dates were between October 1, 2012, and June 30, 2015. Postreform samples included youth whose complaint referral dates were between July 1, 2015, and March 31, 2018, with case closure dates before March 31, 2019.

Although more research is needed, these findings suggest that system changes occurring after Senate Bill 200 may be reducing racial disparities in case decisionmaking for youth entering intake on status complaints. This would be welcome news in Kentucky, where AOC has continued to address racial disparities in case decisionmaking and outcomes. Improved data collection resulting from the reform process brought these disparities into crisp focus,¹⁴ and the agency has developed and implemented a strategic plan to reduce them. Efforts have included widespread training for all staff on a range of racial equity topics, including implicit bias; cultural collisions; culturally inclusive attitudes, behaviors, and goals; and review and modification of agency policies. For example, data analyzed by AOC suggested that Black youth were overrepresented in the population of youth failing to appear for their initial appointment with a CDW (which can result in court referral), and that appointment scheduling was a concern. The CDW program changed its appointment scheduling policy to be conducted collaboratively with the youth and family rather than assigned. Trend data analyzed by AOC suggested that the policy change reduced overall failure-to-appear rates by 40 percent and reduced Black overrepresentation in that group from 48 to 42 percent of all youth and families who missed their initial CDW appointments.¹⁵

BOX 4

Preliminary Data Suggest the Share of FAIR Team Cases Being Successfully Diverted Was Rising Postreform

A cornerstone of Kentucky's reforms was the implementation of FAIR teams in every judicial district to offer enhanced case management for youth assessed as having significant needs (e.g., substance use, mental health, or other service needs). Each FAIR team is led by a local CDW and includes representatives from multiple disciplines, including education and mental health professionals in addition to juvenile justice officials. After teams were implemented, youth entering intake on a status complaint who were identified as having unmet service needs or who were not making progress on diversion were referred to FAIR teams in an effort to address underlying needs without formal court involvement. Starting in 2017, youth entering intake on public complaints who were identified as having unmet service needs or who were not making progress on their diversion plan could be referred to FAIR teams before being referred to court. State-level quantitative data are limited, but descriptive analyses conducted for this project suggest that a growing proportion of complaints involving a FAIR team referral were being successfully diverted (56 percent in 2018 compared with 45 percent in 2015).

How Outcomes for Youth Eligible for Mandatory Diversion Compare with a Matched Group Prereform

As noted above, Urban was primarily interested in examining whether the following two key outcomes differed *for youth eligible for a mandatory diversion offer* (i.e., those referred to intake on first-time misdemeanor complaints) before and after Senate Bill 200 was implemented:

- diversion completion (for diverted youth)
- rate of return on a new complaint in one year

Youth Referred to Intake on First-Time Misdemeanors Were Equally Likely to Complete Diversion and Return With a New Complaint within One Year

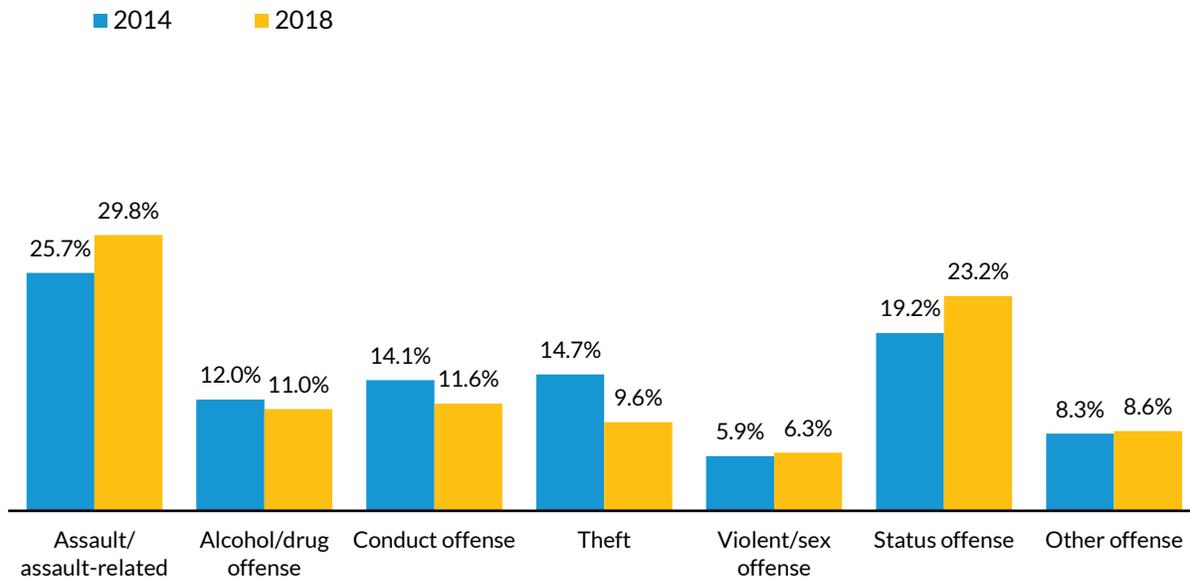
Findings indicate that youth referred to intake on a first-time misdemeanor complaint after Senate Bill 200 were slightly more than twice as likely to be diverted compared with a matched group prereform. Analysis of case outcomes found that these youth were equally likely to complete diversion, and there were no statistically significant differences in the likelihood of return with a new complaint within one year of referral compared with a matched group prereform (rates were 24 percent for the prereform group and 25 percent for the postreform group). Consistent with prior research, diverted youth were less likely to return than similarly situated youth not diverted (the return rate was 24 percent for diverted youth and 27 percent for those not diverted). Urban also examined the types of complaints that youth returned with, observing few differences between 2014 and 2018. Figure 13 shows the share of youth referred on a first-time misdemeanor in 2014 and 2018 who returned with a new complaint by type of offense within one year of referral. Only roughly six percent of returns were for

violent or sex offenses in both years. In short, Kentucky significantly increased the number and proportion of youth diverted from formal court involvement, with almost no change in the number or types of offenses returning to the system.

FIGURE 13

Percent of Complaints by Offense Type for Youth Who Were Referred on a First-time Misdemeanor and Returned with a New Complaint within One Year in 2014 and 2018

2014 and 2018 complaints by offense type



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Source: Urban analysis of Administrative Office of the Courts data.

How Outcomes for Youth Eligible for Discretionary Diversion Compare with a Matched Group Prereform

Urban was also interested in examining how outcomes differed for youth entering intake on less serious complaints *not* subject to a mandatory diversion offer. By law, CDWs had discretion to divert *up to two* status or misdemeanor complaints for a youth. Senate Bill 200 expanded that discretion to include one additional misdemeanor complaint and one felony complaint (excluding complaints involving the commission of a sexual offense or use of a deadly weapon) with written approval of the county attorney. Interviews with state stakeholders suggested that the mandatory diversion offer was the primary driver of reduced court caseloads and a new approach to justice that prioritized diversion where appropriate. Many reported that in practice, youth coming in on second-time misdemeanors were often treated the same as those entering on a first complaint. In other words, juvenile justice practitioners more

frequently allowed other eligible youth to participate in diversion in addition to those eligible for a mandatory diversion offer.

To explore outcomes for youth entering intake on less serious complaints other than first-time misdemeanors, we examined differences between matched groups on the same two outcomes (diversion completion and return on a new complaint) in the following four “discretionary diversion” groups:

- second-time misdemeanors
- third-time misdemeanors
- first-time felonies¹⁶
- status complaints

Youth Referred to Intake after Senate Bill 200 Who Were Eligible for Discretionary Diversion Were Equally Likely to Complete Diversion, With No Statistically Significant Change in Likelihood of Return to the System

Analysis of discretionary diversion groups found that all public complaint groups (i.e., second- and third-time misdemeanor and first-time felony complaints) were equally likely to complete diversion before and after reform. Youth referred on status complaints were actually more likely to complete diversion after reform compared with a matched group prereform. Findings on return to the system were similar. For all public complaint groups and for youth referred on status complaints, there were no statistically significant differences in return on a new complaint pre- and postreform. Again, Kentucky significantly increased diversion for youth referred on less serious offenses and maintained high success rates with little change in their likelihood of returning to the system.

Urban also examined how outcomes differed for youth in these groups who actually were diverted, and findings were mixed. Like the first-time misdemeanor group, diverted youth who were entering intake for second-time misdemeanors and first-time felonies were significantly less likely to return on a new complaint than those who were not diverted. Furthermore, youth entering intake on first-time felonies who were diverted were significantly less likely to return on a new complaint compared with youth who were not diverted, though substantive changes were small. We observed no differences for youth with third-time misdemeanor or status complaints who were diverted compared with those who were not over the observation period.

Conclusion

In 2014, Kentucky fundamentally overhauled its approach to juvenile justice, particularly for youth referred to intake on less serious complaints. Through Senate Bill 200, it mandated diversion offers for all youth referred to intake on first-time misdemeanor complaints, expanded eligibility for diversion to youth entering intake on third-time misdemeanor or first-time felony complaints (with county attorney

approval), and significantly enhanced case management for youth with behavioral health or unmet service needs. Urban’s analysis found that Kentucky has significantly increased the proportion of youth diverted from formal system involvement while maintaining a high success rate (nearly 9 out of 10 diversion agreements are successfully completed) and low rates of recidivism (24 to 25 percent across the full period examined).

Diversion in Kentucky has increased significantly. Urban observed increases for all youth—that is, for boys and girls, white youth and youth of color, and youth charged with a wide range of complaints, though racial and ethnic disparities are significant and persist, particularly for Black youth. Diversion rates for first-time misdemeanor complaints not dismissed at intake—which Senate Bill 200 mandated receive diversion offers—increased from 67 percent to 80 percent, and rates for youth referred to intake on status complaints increased from 55 to 78 percent. Furthermore, county attorney overrides also declined: overrides across all charges dropped from 15 percent in 2014 to 9 percent in 2018, and fell from 11 percent to 4 percent for first-time misdemeanor complaints during that period. However, Urban observed significant geographic differences in the use of county attorney overrides for first-time misdemeanor referrals.

Outcome analyses suggest that in addition to significantly expanding diversion, Kentucky maintained high diversion success rates without an increase in recidivism. Youth referred to intake after Senate Bill 200 who were eligible for mandatory diversion were roughly twice as likely to be diverted, significantly less likely to be detained or referred to formal court, equally likely to complete diversion, and no more likely to return on a new complaint within one year compared with a matched group prereform. The types of offenses youth returned with were similar before and after reform, with only six percent returning on a violent or sex offense. Similarly, youth entering intake on a second-time misdemeanor, third-time misdemeanor, or first-time felony complaint postreform were equally likely to complete diversion and no more likely to return on a new complaint within one year compared with a matched group prereform. Youth entering intake on a status complaint were more likely to complete diversion, but were also no more likely to return on a new complaint within one year compared with a matched group prereform.

Moreover, though additional research is needed, some findings suggest that diversion strategies may be helping to reduce persistent racial and ethnic disparities in case decisionmaking, particularly for youth referred to intake on status complaints. With few exceptions, Black youth were less likely to be diverted and more likely to be referred to court than white youth both before and after reform. However, notable exceptions included decisionmaking for youth referred on status complaints as well as the use of county attorney overrides, which declined more steeply for Black youth than for white youth.

Despite progress, Urban’s analysis identified several areas requiring further attention. First, in 2018, 20 percent of youth eligible for mandatory diversion opportunities did not enter into diversion agreements. As noted above, this could owe to several reasons, including the use of detention and judicial overrides, the use of overrides by county attorneys based on the circumstances of the case, and/or youth or parents requesting formal court hearings. Regardless, Kentucky should continue trying

to increase the proportion of youth who are diverted from formal court involvement. Second, 10 percent of youth, including 10 percent of those referred to intake on status complaints, were detained. Interviews with juvenile justice practitioners suggest that many youth are forced into detention because there are limited residential alternatives for addressing runaway or domestic violence situations. A real need exists for dedicated attention and creative thinking for that population. Third, significant racial and ethnic disparities persist at each decision point in the front end of Kentucky's juvenile justice system. Youth of color, particularly Black youth, are generally less likely to be diverted from the system and more likely to be pushed deeper into it and the state should continue to implement strategies to close this troubling gap.

Recommendations

Kentucky has made substantial progress, but findings suggest opportunities to build on early successes. Our findings support additional efforts to do the following:

- Expand eligibility criteria for mandatory diversion to include additional misdemeanor complaints and, potentially, first-time felony complaints.
- Identify and address barriers to diversion for youth who enter the juvenile justice system on a first-time misdemeanor complaint and are not diverted (one in five youth).
- Identify residential placement alternatives to detention for youth who need a “cooling off” period after domestic violence incidents.
- Connect with and/or build supports and services outside the justice system to support youth who have run away from home.
- Continue strategizing to address racial, ethnic, and geographic disparities in case decisionmaking; consider local-level, cross-agency collaborations or workgroups to monitor data and develop solutions.
- Implement strategies to further enhance diversion services, supports, and case planning to improve outcomes for youth moving forward.
- Implement strategies to strengthen school-justice partnerships, including, for example, building diversion programs in schools.

Appendix. Diversion and County Attorney Override Rates by Region, 2014 and 2018

TABLE A.1

Percentage of Nondismissed Complaints Diverted by Region, 2014 and 2018

Region	Percentage of cases diverted 2014	Percentage of cases diverted 2018	Percentage point difference, 2014 to 2018
1	47.31	57.07	9.75
2	49.15	55.71	6.57
3	50.13	63.50	13.37
4	58.04	68.81	10.77
5	26.95	43.01	16.06
6	46.51	59.17	12.66
7	42.40	58.74	16.35
8	55.01	58.63	3.62
9	45.38	64.01	18.63
10	49.23	55.44	6.22
11	51.01	61.70	10.69
12	55.63	65.58	9.94

TABLE A.2

Percentage of Overridden Mandatory Diversion Offers by Region, 2014 and 2018

Region	Percentage of cases overridden 2014	Percentage of cases overridden 2018	Percentage point difference, 2014 to 2018
1	6.19	3.29	-2.90
2	1.95	2.07	0.12
3	11.50	5.85	-5.65
4	12.69	3.07	-9.62
5	23.73	0.94	-22.79
6	14.01	5.65	-8.36
7	6.09	2.38	-3.71
8	7.96	2.23	-5.73
9	8.75	8.47	-0.28
10	3.97	4.29	0.31
11	8.42	4.00	-4.42
12	10.68	7.92	-2.76

Notes

- ¹ An Act Relating to the Juvenile Justice System and Making an Appropriation Therefor, Ky. Senate Bill 200 (passed April 14, 2014).
- ² An Act Relating to the Juvenile Justice System and Making an Appropriation Therefor, Ky. Senate Bill 200 (passed April 14, 2014).
- ³ “Court Designated Worker Program,” Kentucky Administrative Office of the Courts, accessed August 21, 2020, <https://kycourts.gov/resources/publicationsresources/Publications/P20CDWProgramBrochure.pdf>.
- ⁴ “Court Designated Workers,” Commonwealth of Kentucky Court of Justice, accessed August 21 2020, <https://kycourts.gov/aoc/familyjuvenile/pages/cdw.aspx>.
- ⁵ An Act Relating to the Juvenile Justice System and Making an Appropriation Therefor, Ky. Senate Bill 200 (passed April 14, 2014); Senate Bill 200 placed limits on the use of overrides by county attorneys but did not address judicial overrides. However, interviews with Kentucky stakeholders suggest that judges’ use of overrides has changed after the reform and after the statewide commitment to reduce the flow of youth into the system. For that reason, this assessment focuses primarily on county attorney overrides, though it does explore changes in judicial overrides.
- ⁶ Senate Bill 200 specifies that a Court Designated Worker may “dispose of complaints limited to a total of three (3) status or nonfelony public offense complaints per child and, with written approval of the county attorney, one (1) felony complaint that does not involve the commission of a sexual offense or the use of a deadly weapon.”
- ⁷ Urban interview with Kentucky stakeholder, April 17, 2020.
- ⁸ Urban interview with Kentucky stakeholder, April 17, 2020.
- ⁹ See, for example, Aizer and Doyle Jr. (2013), Dick and coauthors (2004), Fabelo and coauthors (2015), Hjalmarsson (2008), Huizinga and coauthors (2003), Loeb, Waung, and Sheeran (2015), Nagin, Cullen, and Jonson (2009), Bonnie and coauthors (2013), Ryon and coauthors (2013), Villetaz, Killias, and Zoder (2006), and Western and Beckett (1999).
- ¹⁰ See, for example, Durnan, Olsen, and Harvell (2018) and Harvell and coauthors (2019).
- ¹¹ Front-end justice reforms are reforms that target decision points early in the justice system process, including arrest, diversion, adjudication, and sentencing.
- ¹² Kentucky’s Court Designated Worker Case Management System includes eight race/ethnicity identifiers: African American, Asian, Caucasian, Hispanic, Multi-Racial, Native American, Unkown, and Other. Throughout this brief, we focus primarily on white (Caucasian), Black (African American) and Latino (Hispanic) youth and combine youth of Asian, Native American, multiracial, unknown, or other descent into an “other” category. This category comprised between three to seven percent of youth each year between 2010 and 2018.
- ¹³ To clarify, overall use of detention declined more steeply for Black youth than for white youth, while judicial overrides of diversion for youth entering on first misdemeanors—exerted through the judge’s decision to detain a youth—actually increased for Black youth and decreased for white youth.
- ¹⁴ See, for example, <https://kycourts.gov/aoc/familyjuvenile/Pages/FJSDDataAnalysis.aspx>.
- ¹⁵ “Addressing RED during COVID-19,” Kentucky Court Designated Worker Program, forthcoming webinar to be presented by Pastor Edward Palmer and Rachel Bingham.
- ¹⁶ By law, two types of felonies are excluded from diversion eligibility: sex and weapon offenses. Urban was not able to isolate and exclude these cases, but they comprised less than eight percent of the total sample of first felony offenses over the observation period.

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