

APPENDIX TO POLICY 2

Investigatory Stops, Non-custodial Interviews, and Search and Seizure of Youth

Strategies for Youth has created [12 Model Law Enforcement Policies for Youth Interaction](#) to provide law enforcement agencies and officers with guidance on how to interact with youth in developmentally appropriate, trauma-informed, equitable ways that comply with the law. This appendix contains additional source and background information for [Policy 2: Investigatory Stops, Non-Custodial Interviews, and Search and Seizure of Youth](#).

Diversion Programs and Approaches, and Avoiding Formal Processing for Youth

BALTIMORE POLICE DEP'T, POLICY 1202 INTERACTIONS WITH YOUTH 2 (2022)

<https://www.baltimorepolice.org/transparency/bpd-policies/interactions-with-youth>

“Research has shown that many youth, particularly those accused of low-level offenses, achieve better life outcomes and are less likely to commit future offenses when given an appropriate level of intervention that promotes pro-social behavior while protecting public safety.”

***Diversion Programs*, YOUTH.GOV**

<https://youth.gov/youth-topics/juvenile-justice/diversion-programs>

This document describes “typical services” for youth and families through diversion programs, and notes among other things that for youth who have committed minor offenses, diversion away from the juvenile criminal system and toward community-based services for the youth and their family “is a more appropriate response than confinement” because it offers “a more productive way of addressing and preventing future delinquency, thus reducing recidivism.” This document also asserts that formal processing “does more harm than good by perpetuating delinquency through a stigmatizing ‘labeling’ process,” and argues that because community-based and diversion programs cost “significantly less” than incarceration or other out-of-home placement, diversion “reduces system costs and preserves necessary public resources for the handling of more serious crimes.” *See id.*

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MASS. JUV. JUST. POL'Y (JJPAD) Bd. COMMUNITY-BASED INTERVENTIONS SUBCOMMITTEE, MASSACHUSETTS YOUTH DIVERSION PROGRAM: MODEL PROGRAM GUIDE (2021),

<https://www.mass.gov/doc/jjpad-cbi-subcommittee-2021-report-massachusetts-youth-diversion-program-model-program-guide/download>

This guide recommends strategies for design and delivery of diversion programs.

N.J. ATT'Y GEN. L. ENF'T DIRECTIVE No. 2020-12, DIRECTIVE ESTABLISHING POLICIES, PRACTICES, AND PROCEDURES TO PROMOTE JUVENILE JUSTICE REFORM 2-3 (2020)

https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2020-12_Juvenile-Justice-Reform.pdf

This directive outlines “five mechanisms available to police officers and prosecutors to divert youth from the juvenile justice system and limit the likelihood of unnecessary detention,” including: (1) Curbside warnings, defined as “an informal ‘talking to’ by a law enforcement to youth in the community, which ‘typically arises when an officer observes a juvenile engage in some minor act of delinquency.... Curbside warnings demonstrate to juveniles that officers are present to give guidance, direction, and assistance, and not simply to take them into custody’”; (2) Stationhouse adjustments, where “an officer typically asks the juvenile and a parent or guardian/caregiver/designee to come to the police station to discuss an alleged offense and work together to develop an appropriate resolution, which is then memorialized in a written agreement.... The goal is to engage the parent or guardian/caregiver/designee—and, where appropriate, the victim—in any resolution, allowing the family and community resources to address the violation rather than the courts’”; (3) Use of “complaint-summonses,” as the default charging document for youth, which allow the youth to remain in the community until an initial court appearance, rather than “complaint-warrants,” where the officer can take custody of the youth and detain them; (4) implementing a presumption against pretrial juvenile detention; and (5) prosecutors’ use of “post-charge diversion” for youth. *See id.*

THE SENT'G PROJECT, DIVERSION: A HIDDEN KEY TO COMBATING RACIAL AND ETHNIC DISPARITIES IN JUVENILE JUSTICE 10 (2022)

<https://assets.aecf.org/m/resourcedoc/sentencingproject-diversion-2022.pdf>

The report asserts that “the early stages of the process in youth justice, and specifically diversion from formal processing in juvenile court (and ideally diversion from arrests), are key” to addressing racial and ethnic disparities in youth confinement. The report also summarizes information, data and research on diversion, including with respect to racial and ethnic disparities, identifies “promising strategies,” and offers recommendations for reform. *See id.* at 1-4.

ANNIE E. CASEY FOUND., INCREASE SUCCESSFUL DIVERSION FOR YOUTH OF COLOR (2022)

<https://assets.aecf.org/m/resourcedoc/aecf-increasesuccessfuldiversion-2022.pdf>

“This brief presents powerful research showing that youth of color are substantially more likely than non-Hispanic white youth with similar case histories to be arrested and, following arrest, to face formal charges in juvenile court—despite similar delinquency rates.” Research shows that “[w]hite youth are far more likely to be diverted and have their cases handled informally outside the court system. The brief also presents evidence that fewer opportunities for diversion for youth of color play a central role in perpetuating and exacerbating unequal outcomes in later stages of the justice process.” *See id.* at 1.

Appendix to Policy 2 (cont'd)

STRATEGIES FOR YOUTH, FORGING PARTNERSHIPS: A GUIDE TO JUVENILE DETENTION REFORM (2021)

<https://strategiesforyouth.org/sitefiles/wp-content/uploads/2021/04/Forging-Partnerships-Report-Apr2021.pdf>

This report urges the inclusion of law enforcement in Juvenile Detention Alternatives Initiatives (JDAI) work, which works to improve the juvenile legal system, and to make that system more equitable. The authors assert that inclusion of law enforcement in these efforts can help reduce unnecessary arrests, ensure smoother implementation of objective screening for whether youth should be detained, help JDAI sites craft “creative approaches to serving youth involved in domestic disputes or reducing arrests at school for disruptive but non-dangerous behaviors,” and make JDAI efforts more sustainable and permanent. *See id.* at 5.

AARON BETSINGER ET AL., BEST PRACTICES IN YOUTH DIVERSION (2018)

<https://theinstitute.umaryland.edu/media/ssw/institute/md-center-documents/Youth-Diversion-Literature-Review.pdf>

This report summarizes youth diversion programs and practices, including best practices in youth diversion at arrest.

Impact of Developmental Immaturity on Youth Comprehension and Exercise of Rights

J.D.B. v. North Carolina, 564 U.S. 261, 272 (2011)

The Supreme Court stated that it had previously “observed that children ‘generally are less mature and responsible than adults;’ that they ‘often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them;’ that they ‘are more vulnerable or susceptible to ... outside pressures’ than adults; and so on.” *See id.* at 272.

NAT’L RSCH. COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 128-30 (WASHINGTON, DC, THE NATIONAL ACADEMIES PRESS N.D.) (2013)

<https://doi.org/10.17226/14685>.

- Juveniles’ “developmental immaturity ... may affect their ability to exercise their rights and to participate competently” in juvenile and adult proceedings. *See id.*, at 128.
- Adolescents’ “reduced capacity for reasoning and understanding and psychosocial immaturity” may make them “less capable of exercising their rights than are adults,” and research shows that youth are “far more likely” than adults to waive their right to remain silent and to confess to crimes (and even to make false confessions). *See id.*, at 129.
- Youth under 15 and 15- and 16-year-olds with below-average intelligence have a poorer comprehension of their right to remain silent, and youth are more likely to waive their right to an attorney than are adults charged with crimes, despite the fact that they are less capable than adults of protecting their own interests in the justice system. *See id.*, at 129.

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- Research indicates that, due to developmental immaturity, about 33% of 11- to 13-year-olds and 20% of 14- and 15-year-olds may not be competent to stand trial under the standard applied to adults, that many younger teens “may simply lack the capacity for understanding and reasoning” to comprehend a trial and its consequences and to assist in their defense, and that even older adolescents may be less capable of making decisions that criminal defendants must make, such as deciding whether to accept a plea offer. See *id.*, at 129.

Barbara Kaban & Judith C. Quinlan, *Rethinking A “Knowing, Intelligent, and Voluntary Waiver” in Massachusetts’ Juvenile Courts*, 5 J. CTR. FOR FAMILIES, CHILD. & CTS. 35, 42, 47-48 (2004).

In a study about minors’ comprehension of waiving their right to trial, a group of 50 juveniles, with an average age of 15 years, could correctly define only 5.5% of the common legal terms used in the plea colloquy. See *id.*, at 42. As the study’s authors concluded, this research indicated that “colloquies and waiver forms routinely used in Massachusetts’ juvenile courts are replete with words and phrases that court-involved children do not understand.” See *id.* at 47-48.

Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 169-70 (1997).

“Studies of delinquent youths’ understanding of the trial process and capacity to assist counsel have found important deficiencies, often distinguishing these juveniles from adults and from ‘average’ adolescents. Compared to adults, both delinquent and non-delinquent adolescents who have lower intelligence test scores, problematic educational histories, learning disabilities, and mental disorders have shown poorer comprehension of basic information about the legal process. Other evidence has suggested that delinquent youths’ experience with courts, attorneys, and law enforcement officers does not reliably compensate for these tendencies toward poorer understanding of information related to the trial process and rights.” *Id.*

KRISTIN HENNING, *THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH* 153-54 (2021)

“Adolescents are more likely than either children or adults to respond impulsively rather than retreat or remain silent, even when specifically instructed not to respond.”

Youth Responsiveness to Peer Presence

Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEVELOPMENTAL PSYCH. 625, 625-35 (2005)

The findings of this study indicate that the presence of peers makes adolescents and youth, but not adults, more likely to take risks and make risky decisions.

Youth Reactions to Being Stopped, Questioned, or Searched by Law Enforcement Officers

Dylan B. Jackson et al., *Unpacking Racial/Ethnic Disparities in Emotional Distress Among Adolescents During Witnessed Police Stops*, 69 J. ADOLESC. HEALTH 248, 248-54 (2021)

This study found significant racial/ethnic disparities among youth in feeling angry and unsafe during witnessed police stops emerged, with youth of color more likely to report emotional distress, largely due to the officer intrusiveness and perceived injustices that characterize these stops.

Donna M. Bishop & Michael J. Leiber, *Racial and Ethnic Differences in Delinquency and Justice System Responses*, in THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE 444, 460 (Barry C. Feld & Donna M. Bishop eds., 2011).

“Because most juvenile crime involves group offending, encounters with juveniles routinely occur in situations where youths are ‘on stage’ before an audience of their peers. In such settings, ‘copping an attitude’ of toughness or hostility may be a face-saving tactic rather than a harbinger of danger. A hostile attitude may also be a response to real or perceived police prejudice, especially if police concentrate surveillance on underclass areas and differentially stop minority youths. Such practices generate antagonism and perpetuate a vicious cycle.”

Jacinta Gau & Rod Brunson, *Procedural Justice and Order Maintenance Policing: A Study of Inner-City Young Men’s Perceptions of Police Legitimacy*, 27 JUST. QUARTERLY 255, 225-79 (2010)

Based on interviews of urban youth, this study found that youth believed their “socioeconomic status and/or race made them de facto ‘suspicious persons’ in the eyes of officers and that as a result, they were subjected to heightened—and unwarranted—levels of police scrutiny.” The study reported that “participants perceived officers’ widespread use of stop-and-frisks for suspected disorderly behavior as a form of harassment because they sometimes felt that they had done nothing that merited such treatment.... The fact that many of the youths’ experiences analyzed in the present study involved stops, frisks, and other activities that fell short of formal arrest is no reason to take these young men’s accounts less seriously. Stops and frisks that do not result in arrest may seem harmless because the citizen is not subjected to formal sanctions. Formal sanctions, however, are but one potential consequence of stops and frisks—there also are a host of informal outcomes such as shame, embarrassment, anger, and feelings that one’s personal integrity has been violated.... Overall, young men reported feeling that they were perpetually under officers’ gaze.” See *id.* at 272.

Michelle Fine et al., *Anything Can Happen with Police Around: Urban Youth Evaluate Strategies of Surveillance in Public Places*, 59 J. SOC. ISSUES 141, 141-58 (2003).

In a study of New York City youth, Black and Latino males had the highest rates of adverse interactions and mistrust of police and felt the least safe. See *id.*, at 155. Most young people reported that the cumulative impact of adverse interactions with police, security guards or teachers left them with a sense of betrayal by adults and powerless to challenge the behavior of these adult authority figures. See *id.*, at 155.

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HENNING, *supra* at 153-54

“What many officers perceive as disrespect is often just teenagers showing off, enjoying the thrill of a new risk, or deflecting stress, anxiety, and other emotions.....” Even when children know it is dangerous to talk back to the police, they often can’t help it, especially in fast-paced, emotionally charged situations like those that occur on the street.... The stress, fear, and anger commonly associated with police contact undermines adolescents’ capacity to control their responses, especially when they have been victimized by or threatened with police violence.” *Id.*

Youth and Consent to Searches by Law Enforcement

Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973)

The Supreme Court held that the determination of whether a consent to search was truly voluntary involves analysis of “the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation,” including the accused’s age, education, intelligence, experience with the law, and features of the context in which consent was given.

WASH REV. CODE § 13.40.740(1)(c)

The Washington State statute requires that law enforcement agencies allow youth the opportunity for in-person, telephone, or videoconference access to an attorney before the youth waives any constitutional rights if a law enforcement officer requests that the youth consent to a search of the youth, the youth’s property, the youth’s dwellings, or vehicles under the youth’s control.

Megan Anitto, *Consent Searches of Minors*, 38 N.Y.U. REV. OF L. & SOC. CHANGE 1, 6, 16 (2014)

This article describes the concept of a consent search as “a legal fiction as to minors and adults alike,” and argues that courts must “meaningfully consider age when deciding whether a minor gave consent [to search].” The article argues that the court is required to recognize “that age may be determinative in some cases and that the government must demonstrate that officer behavior was reasonable in light of the accused’s status as a minor.” *See id.* at 6.

HENNING, *supra* at 160-63

The author asserts that Black youth comply with law enforcement requests to be searched out of fear for their physical safety and out of a sense of futility about being able to tell an officer no and walk away.) In an interaction between law enforcement and the author’s teenage client, although officers insisted that the youth had “consented” to the search, officers “failed to appreciate that ‘voluntary’ isn’t quite so voluntary if a child thinks he will get shot if he refuses.” *See id.* at 162.

Assumptions that Certain Behaviors, In and Of Themselves, Are Indicative of Guilt

Illinois v. Wardlow, 528 U.S. 119, 124-25 (2000)

The Supreme Court stated: “Our cases have also recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion, ...[h]eadlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.”

Brown v. Texas, 443 U.S. 47, 52 (1979)

In *Brown*, the Supreme Court held that the officer violated the Fourth Amendment in stopping a man to demand that he identify himself, even though the officer had no objective, specific basis for believing the man was involved in criminal activity. The Court stated, “When such a stop is not based on objective criteria, the risk of arbitrary and abusive police practices exceeds tolerable limits.” *See id.* at 52.

Commonwealth v. Warren, 58 N.E.3d 333, 341-42 (Mass. 2016)

Warren explained that unprovoked flight in a high-crime area is only one factor in the reasonable suspicion analysis. Judges should use their discretion to determine whether the flight may have been an innocent and understandable response to police presence. *See also id.*, at 342 (a pattern of racial profiling by police directed at Black men in Boston “suggests a reason for flight totally unrelated to consciousness of guilt. Such an individual, when approached by the police, might just as easily be motivated by the desire to avoid the recurring indignity of being racially profiled as by the desire to hide criminal activity.”)

State v. Hicks, 488 N.W.2d 359, 362 (Neb. 1992)

Hicks held that flight from a police officer is sufficient to justify an investigatory stop only when coupled with specific knowledge connecting the person to involvement in criminal conduct.

State v. Nicholson, 188 S.W.3d 649, 660-61 (Tenn. 2006)

Nicholson explained that there are innocent reasons for unprovoked flights from police, and running from police, even in a high-crime area, does not necessarily give rise to reasonable suspicion.

Gaddie v. State, 10 N.E.3d 1249, 1255-56, (Ind. 2014)

Gaddie found that when there was no evidence the defendant was involved in a crime, defendant’s walking away from police when asked to stop does not give rise to reasonable suspicion.

Washington v. State, 287 A.3d 301 (Md. 2022)

“[T]he circumstances that people, particularly young African American men, may flee police for innocent reasons may be considered in the Fourth Amendment reasonable suspicion calculus.”

State v. Rosario, 162 A.3d 249 (N.J. 2017)

Rosario held that a suspect’s furtive gestures were insufficient to give rise to reasonable suspicion.

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State v. Gatewood, 182 P.3d 426 (Wash. 2008)

Gatewood held that a suspect's startled reaction to police and furtive movements did not amount to reasonable suspicion.

State v. Weyand, 399 P.3d 530 (Wash. 2017)

Weyand held that police claims that the suspect looked "furtive" and was seen leaving an apartment whose residents had been previously convicted for drug offenses did not amount to reasonable suspicion.

How Investigatory Stops Can Become Custodial for Fifth Amendment Purposes

Griffin v. United States, 878 A.2d 1195, 1199 (D.C. 2005)

Griffin summarized court decisions finding that even a stop that has not yet proceeded to a frisk or arrest can be custodial for *Miranda* purposes, especially when it is accompanied by a show of police force and explicit police questioning.

In re I.J., 906 A.2d 249, 257, 263-64 (D.C. 2005)

"[T]he fact that an encounter may be a *reasonable* seizure within the scope of *Terry* for Fourth Amendment purposes does not automatically and necessarily remove it from *Miranda's* Fifth Amendment protections." The court explained that the "Fourth Amendment's ultimate focus is on the reasonableness of police conduct in detaining a person, while, in the Fifth Amendment analysis, the guiding inquiry is directed to 'how a reasonable person in the suspect's situation would perceive his circumstances,' because the overarching value is the protection of the privilege against compelled self-incrimination safeguarded by *Miranda* warnings." See *id.*, at 257 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 662 (2004)). Under this analysis, a youth who was questioned by police in a shelter house about alleged possession of marijuana was under custody for Fifth Amendment purposes. The youth was in "an environment with considerable overtones of authority and control, ...there were no words or actions on the part of the officer to mitigate the compulsive atmosphere," ...there was no "protective adult or parental presence that, arguably, could have served to mitigate the coercive environment," the questioning took place "in a private office away from public view," and the youth was confronted with "obvious evidence" of his guilt. See *id.* at 262-64.

Pat Frisks

Terry v. Ohio, 392 U.S. 1, 24, 26 (1968)

In *Terry*, the Supreme Court held that although officers may, based on reasonable suspicion, conduct a protective search for weapons while investigating an individual at close range to determine whether the individual is "armed and presently dangerous to the officer or to others," the search is "limited to that which is necessary for the discovery or weapons which might be used to harm the officer or others nearby."

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Smith v. Ohio, 494 U.S. 541, 542-43 (1990)

In *Smith*, the Supreme Court held that where an officer's reaching for and searching a bag carried by defendant was not a "self-protective action necessary for the officer's safety," the search of the bag was unlawful, and the fruits of the search could not be used to justify the defendant's subsequent arrest.

Minnesota v. Dickerson, 508 U.S. 366, 373 (1993)

In *Dickerson*, the Supreme Court stated that officers "overstepped the bounds of the strictly circumscribed search for weapons allowed under *Terry*" in a "continued exploration" of defendant's pockets after determining that defendant did not have a weapon. The Court concluded that "the officer determined that the defendant had a lump of crack cocaine only after 'squeezing, sliding and otherwise manipulating the contents of the defendant's pocket'" in a search that was "unrelated to 'the sole justification the search [under *Terry*] ...the protection of the police officer and others nearby.'" See *id.*, at 378 (quoting *Terry*, 392 U.S. at 29). Finally, the Court held, "[i]f the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed." See *id.*, at 366.

In re Interest of S.J., 713 A.2d 45, 48 (Pa. 1998)

S.J. held that although the officer had reasonable suspicion to conduct an investigatory stop, the subsequent frisk was unlawful, because the officer had no reason to believe the person he stopped was armed and dangerous.

Investigatory Detention

Florida v. Royer, 460 U.S. 491, 500 (1983)

The Supreme Court held that an "investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." The Court stated "the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. It is the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure."

Data Collection

Traffic Stop Data, NAT'L CONF. OF STATE LEGISLATURES

<https://www.ncsl.org/civil-and-criminal-justice/traffic-stop-data>

NCSL reported that 23 states have enacted legislation for the purpose of identifying possible ethnic and racial profiling, and to inform officials on current law enforcement practice). The four states that have mandated the most comprehensive data collection for traffic stops are [California](#), [Connecticut](#), [Illinois](#), and [New Jersey](#). See *id*, California also requires the collection of such data for stops of pedestrians in its Stop Data Collection System. See *id*. Across these four states, authorizing legislation directs officers to document the “perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped.” See *id*.

CTR. FOR POLICIING EQUITY & POLICING PROJECT AT N.Y.U L. SCH., COLLECTING, ANALYZING, AND RESPONDING TO STOP DATA: A GUIDEBOOK FOR LAW ENFORCEMENT AGENCIES, GOVERNMENT, AND COMMUNITIES (2020)

https://policingequity.org/images/pdfs-doc/COPS-Guidebook_Final_Release_Version_2-compressed.pdf

This publication describes the implementation of California’s Racial and Identity Profiling Act (RIPA), which requires every law enforcement agency in the state to collect data on all vehicle and pedestrian stops, including all citations, searches, arrests, and uses of force.