

A SUMMARY OF TWO EVALUATIONS OF THE MISDEMEANOR DIVERSION PROGRAM IN DURHAM COUNTY, NORTH CAROLINA

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This report was created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails. Core to the Challenge is a competition designed to support efforts to improve local criminal justice systems across the country that are working to safely reduce over-reliance on jails, with a particular focus on addressing disproportionate impact on low-income individuals and communities of color.

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We are grateful to our partners at the Durham County Criminal Justice Resource Center, without whose partnership on our process and impact evaluations of the Misdemeanor Diversion Program this report would not have been possible. We would like to thank the stakeholders in Durham County, North Carolina, staff at the Institute for State and Local Governance, and staff at the MacArthur Foundation for their comments and considerations. We also thank our colleagues at the Urban Institute, Storm Ervin and Rudy Perez, for being core members of the research team and conducting components of our process and impact evaluations of the Misdemeanor Diversion Program, respectively.

A Summary of Two Evaluations of the Misdemeanor Diversion Program in Durham County, North Carolina

Before the Juvenile Justice Reinvestment Act was implemented in December 2019, North Carolina was the last state that still automatically charged 16- and 17-year-olds as adults in its criminal legal system. In March 2014, led by then-chief district court judge Marcia Morey, a group of stakeholders from Durham County, North Carolina, started the Misdemeanor Diversion Program (MDP) to prevent 16- and 17-year-olds from entering the criminal legal system. The first of its kind in North Carolina, the program provides services including life skills courses, restorative justice efforts, and behavioral health treatment over a 90-day period and has expanded to include adults of all ages. It has also been replicated in certain counties throughout the state. The MDP enables law enforcement officers in Durham County to redirect people accused of committing their first misdemeanor crime(s) to community-based services in lieu of charge, citation or arrest. The purpose is to diminish unnecessary arrests and jail time and the collateral consequences of being charged with and convicted of a crime. A central feature of this program is that it occurs prearrest and precharge, meaning someone law enforcement officers believe may have committed a crime will not be arrested or charged and will not formally enter the justice criminal legal system in any way.

In 2020 and 2021, with support from the John D. and Catherine T. MacArthur Foundation's Safety and Justice Challenge Research Consortium, the Urban Institute conducted in-depth process and impact evaluations of the MDP, the findings of which we summarize in this report. By conducting both types of evaluations, the research team was able to better understand the processes and context that led to observed impacts. In addition, this is the first time a third-party research organization has evaluated the program's impact, and such an evaluation is critical to demonstrating the program's usefulness. Key takeaways from the process evaluation (*A Process Evaluation of the Misdemeanor Diversion Program in Durham County, North Carolina*) and the impact evaluation (*An Impact Evaluation of the Misdemeanor Diversion Program in Durham County, North Carolina*) are detailed in **box 1**.

BOX 1

Key Takeaways from Urban’s Process and Impact Evaluations of Durham County’s Misdemeanor Diversion Program

The MDP needs law enforcement to buy in to and be aware of the program, as many eligible people were not referred to it by officers. Buy-in and support from local law enforcement and its officers are critical to the program’s success but have proven difficult to obtain. We found that 2,418 people who were eligible for the MDP with a first-time misdemeanor incident—or 77 percent of all eligible people—were not referred to and therefore not enrolled in the program. This is a challenge of developing and implementing a program that relies on law enforcement officers to make referrals and not charge people with crimes in the first place. Officers *must* make the referrals for people to benefit from diversion, but they often do not, for various reasons.

The MDP has had very high successful-completion rates, and participants have had fewer new arrests, convictions, and jail admissions. Of the 738 MDP participants in this study, 95 percent successfully completed the program. Results indicate that, depending on the period examined and age group, rates of new arrests among MDP participants were 10.4 to 19.4 percentage points lower than among comparison groups, rates of new convictions were 5.4 to 6.2 percentage points lower, and rates of new jail admissions were 5.4 to 7.9 percentage points lower. These findings demonstrate positive outcomes associated with program participation and with being diverted from being charged with a crime.

The MDP has reduced disparities in new arrests, convictions, and jail admissions among 16- and 17-year-old Black participants. Disparities in rates of new arrests within two years between young Black people and young non-Black people fell by 20.8 percentage points, making the differences in rates of new arrests between these two groups much more equivalent than among those who did not participate. Participation also reduced disparities in new convictions and jail admissions within six months between young Black people and young non-Black people by 3.5 percentage points and 5.2 percentage points, respectively.

Eligibility requirements limit the program’s potential impact. Many stakeholders feel the MDP’s impact is limited because of its restrictive eligibility requirements. Someone is only eligible if the potential charge is their first and only if it is for a nonviolent misdemeanor or a lesser offense. These criteria are particularly limiting because by using arrest history, the program is using eligibility criteria that already have built-in racial disparities (The Sentencing Project 2018). Several stakeholders want to change the eligibility criteria—particularly to increase the number of eligible people—but have been unable to do so because of a lack of law enforcement support.

The MDP is not a one-size-fits-all model. Staff and stakeholders said they do not follow a particular program model and would encourage other jurisdictions to be flexible when developing and implementing models for similar diversion programs. Instead of a one-size-fits-all approach, the MDP connects people to services based on their specific needs and interests. It has served different age ranges (first ages 16 and 17, then ages 16 to 21, and currently ages 18 to 26 and older than 26 on a case-

by-case basis), and its flexible approach to connecting participants to services based on their needs and circumstances is supported by evidence that people across these age ranges have different needs, risk behaviors, and decisionmaking approaches that require care to be provided differently (Cauffman et al. 2010).

The theory of change is key to the program’s success. The MDP was founded on the theory of change that keeping people out of the criminal legal system entirely can positively impact people’s lives without risking community safety. This theory is supported by evidence on best practices for responding to adolescents (people ages 15 to 17) and emerging adults (people ages 18 to 25), who constitute the vast majority of people the program has served.^a

Staffing for the program coordinator role is critical. Stakeholders and participants repeatedly highlighted the coordinator’s compassion, engagement, detail-oriented approach, and community connections as essential to the program’s success.

The MDP has not affected system-level arrests, convictions, or jail admissions. Analyses of Durham County arrests, convictions, and jail admissions indicate downward trends in the years before and after the MDP was implemented. Throughout the county, the slopes of the postimplementation trends have been similar to those occurring before MDP implementation, indicating that the program has not resulted in countywide reductions of these events. One reason the MDP may not have had system-level impacts—despite its positive outcomes for participants—may be that law enforcement has not referred the majority of eligible people to the program, limiting its countywide impact.

More prearrest diversion opportunities are needed in Durham County. Most stakeholders feel that people—youth in particular—usually do not need to be arrested and deserve “a second chance,” as some put it, if they do not pose a threat to public safety. But most interviewees believe there are not enough diversion options available for people in Durham County, even with the MDP, even though many also stated that the county has more diversion options than most other jurisdictions in North Carolina.

^a Lael E. H. Chester “Emerging Adults Need a Justice System Guided by Facts,” July 8, 2021, The Imprint, <https://imprintnews.org/opinion/emerging-adults-need-a-justice-system-guided-by-facts/56718>.

The Process Evaluation

In June 2020, Urban began a process evaluation of the MDP to document its implementation and stakeholders' perceptions of it, including satisfaction and perceived impact. To conduct this process evaluation, the Urban research team reviewed program materials; held semistructured interviews with program staff, program partners, community stakeholders, and program participants; and worked with MDP personnel to review and refine findings and materials developed during the evaluation. The research team interviewed 23 people, including MDP staff, MDP participants, and county stakeholders, who represented various perspectives, roles, and experiences related to the program. Stakeholders' and participants' reported perceptions were largely consistent, and the research team identified a clear narrative about the program throughout the interviews.

Through the interviews, we found that community stakeholders and MDP participants believe the program is impactful, particularly in that it diverts people from being charged with crimes and entering into the criminal legal system. Interviewees also generally believe the program was deeply needed in Durham County because too many people were being unnecessarily arrested and incarcerated. Some stakeholders critiqued the program for insufficiently addressing the need for diversion, reporting that its eligibility requirements are too restrictive and that it allows too few people access to it, access they consider essential to diverting people from the criminal legal system precharge. Others noted that local law enforcement's support for and awareness of the program has been limited, resulting in many people who have been eligible for the program not being referred to it. Still, interviewees believe the program is impactful, and many believe other communities would benefit from implementing similar programs to divert people from the criminal legal system.

Key Findings from the Process Evaluation

Although certain elements of the MDP may make it difficult to replicate, six key takeaways from its implementation could be helpful for jurisdictions interested in developing prearrest diversion programs. First, buy-in from law enforcement is critical. Second, a highly adaptable program model has enabled the MDP to achieve its goals despite changes to the target population resulting from changes to the law (i.e., the passage of the Juvenile Justice Reinvestment Act in North Carolina). Third, a philosophy of keeping people out of the criminal legal system altogether is critical to the program's success. Fourth, having qualified program staff with deep community connections is essential. Fifth, restrictions on eligibility requirements for program participants limit the program's impact. And sixth,

Durham County stakeholders and MDP participants feel the county still needs more prearrest and precharge diversion programs like the MDP.

LAW ENFORCEMENT BUY-IN IS NEEDED

Because the MDP is a prearrest diversion program that relies on law enforcement to refer eligible people, it is unsurprising that buy-in and support from law enforcement is necessary for its success. Stakeholders and participants mentioned this repeatedly in different ways. For example, a participant said, “If the officer hadn’t told me about this program, I would’ve had no idea about it, and I was obviously excited for the opportunity.”

At first, informal support for the MDP was challenging to acquire and officers’ lack of awareness of the program became another issue. Program staff responded by implementing formal trainings and conducting informal outreach to officers via phone calls and in-person check-ins. Word of mouth from officers and criminal justice stakeholders (i.e., prosecutors and judges) who had had positive experiences with the program was also beneficial to creating awareness and buy-in for the MDP. In addition, stakeholders needed to build formal support for the program among law enforcement, support they received when the chief of the Durham Police Department issued a general order making the referral of eligible people nondiscretionary. Still, interviewees considered awareness of and support for the MDP among local law enforcement a challenge as of the time of the interviews.

THE MDP IS NOT A ONE-SIZE-FITS-ALL MODEL

Staff and stakeholders said they do not follow a particular program model and would encourage other jurisdictions to also be flexible in similar diversion programs. This is because a highly adaptable program model has enabled the MDP to achieve its goals despite changes in the target population resulting from the passage of the Juvenile Justice Reinvestment Act in North Carolina. It also enables the program to meet the specific needs of each participant without having to providing programming that may not be relevant to them. For example, the MDP coordinator performs an intake assessment that is not a traditional needs assessment but more of “a guided conversation,” as they put it, that helps them understand each person’s goals and challenges. The coordinator uses information gathered during this assessment to refer people to community services, which have constantly shifted and evolved: whereas some programs were created specifically for the MDP, many already existed and were identified and cultivated through informal relationships with program providers.

The program’s only two core components that have remained consistent since it launched are the MDP coordinator, who provides individualized care and coordination with participants and relevant

stakeholders, and mock court sessions where participants observe what would happen if they were charged with a crime. Much of the MDP's success has owed to the coordinator making connections in the community and individually supporting participants, and it may be difficult for other jurisdictions to replicate this approach without such a dedicated coordinator. In addition, because of the adaptable program model, people entering the program may have had dramatically different experiences, especially people entering in different years and at different ages. The program transitioned to serving only adults in 2019, thereby excluding 16- and 17-year-olds (though there are other diversion options available specifically for the juvenile population in Durham County), and the Urban research team is hopeful that it can continue to adapt to the needs of people in the target population.

THE THEORY OF CHANGE IS THE KEY TO SUCCESS

The MDP was founded on the principle that involvement in the criminal legal system at any level can have a profoundly negative impact on someone's life. Its theory of change is simple: keeping people out of the criminal legal system entirely can have a positive impact on people's lives without risking community safety. As such, it distinguishes itself from other diversion programs in that participants who complete it are never charged with a crime, arrested, or incarcerated, and they avoid the collateral consequences of these events. The program was also founded on the idea that the services it provides should not be burdensome for participants and should instead be useful for them. Finally, the program is operated under the belief that once a person completes the program, their involvement should not be part of public record (indeed, participation never has been part of public record) and there should be no expectation that they will engage with the program after completion. Stakeholders believe this philosophy of minimizing expectations and requirements is one reason it is successful. Stakeholders recommend that other jurisdictions looking to replicate the MDP model start with this principle of minimal expectations and requirements.

STAFFING FOR THE PROGRAM COORDINATOR ROLE IS CRITICAL

The feedback stakeholders and participants gave most frequently is that they associate the MDP with its coordinator. Stakeholders and participants repeatedly highlighted the coordinator's compassion, engagement, detail-oriented approach, and community connections. Because the coordinator is the MDP's only full-time staff member and has been for most of the program's lifespan, the program's success has relied almost completely on its having hired and retained someone who understands the program's mission and theory of change and is willing to devote the time and effort to implement them appropriately.

ELIGIBILITY REQUIREMENTS LIMIT POTENTIAL IMPACT

Many stakeholders who support the MDP feel its eligibility requirements have always been too restrictive. Importantly, though, these stakeholders also decided that to start the program and continue it with support from law enforcement, eligibility had to be limited to people meeting criteria officers approved of, which meant people who had been accused only of certain misdemeanors and had no previous charges. Many feel the program's impact is limited because people who could benefit from being diverted from arrest cannot access it, even though it could easily support them. Many stakeholders consider this a missed opportunity.

MORE PREARREST DIVERSION OPPORTUNITIES ARE NEEDED IN DURHAM COUNTY

The need for a program like the MDP in Durham County was well articulated by stakeholders and participants. All stakeholders expressed that people—youth in particular—do not need to be arrested and deserve “a second chance,” as some put it, if they do not pose a threat to public safety. Interviewees from law enforcement believe the program has been useful and impactful. Again, though, many stakeholders believe that it has not gone far enough by expanding eligibility criteria to more people and that the community needs more prearrest diversion opportunities. In particular, participants and stakeholders note that people of color in Durham County are disproportionately arrested, incarcerated, and involved in the MDP, and many want the county's diversion options to be expanded to address this racial disparity.

The Impact Evaluation

Using data from January 2012 to February 2020 collected from the State of North Carolina Administrative Office of the Courts, the MDP, the Durham Police Department, and the Durham County Sheriff's Office, the research team examined five things: (1) MDP enrollment; (2) MDP completion rates; (3) the program's impact on new arrests, convictions, and jail admissions for program participants; (4) its impact on disparities by race and ethnicity, sex, and age; and (5) its impact on system-level arrests, convictions, and jail admissions.

We conducted analyses for two groups of people based on the MDP's age-specific eligibility periods: people who were 16 to 17 years old from March 2014 to November 2019 and people who were 18 to 21 years old from October 2015 to February 2020. We used propensity score matching to statistically match these groups to comparison groups of people who were concurrently eligible for the

MDP but did not participate in it. The outcome analyses assessed the differences between these groups on new arrests, convictions, and jail admissions.

Key Findings from the Impact Evaluation

The impact evaluation produced five key findings about the use and impact of the MDP in Durham County. First, the majority of people eligible for the MDP were not referred to the program during the examined period, March 2014 to November 2019. Second, among those who participated, the completion rate was 95 percent. Third, MDP participants had significantly lower rates of new arrests, convictions, and jail admissions than comparison groups after six months, one year, and two years. Fourth, MDP participation significantly reduced disparities in new arrests within two years and new convictions and jail admissions within six months between 16-to-17-year-old Black people and non-Black people, making differences in levels of new arrests between Black people and non-Black people much more equivalent than between Black and non-Black people who did not participate. Fifth, the MDP did not impact countywide rates of arrests, convictions, or jail admissions for the two age groups.

MOST ELIGIBLE PEOPLE WERE NOT REFERRED TO THE MDP BY LAW ENFORCEMENT

From March 2014 to November 2019, 433 16- and 17-year-olds participated in the MDP, and from October 2015 to February 2020, 305 18-to-21-year-olds participated. The research team identified 822 additional 16- and 17-year-olds and 1,596 additional 18-to-21-year-olds who were eligible for the program but were not referred by law enforcement officers. As such, the majority of people who should have been referred to the program (65 percent of 16- and 17-year-olds and 84 percent of 18-to-21-year-olds) were not, supporting findings from the process evaluation that law enforcement agencies are crucial partners in the success of diversion programs.

THE MDP HAD VERY HIGH RATES OF SUCCESSFUL COMPLETIONS

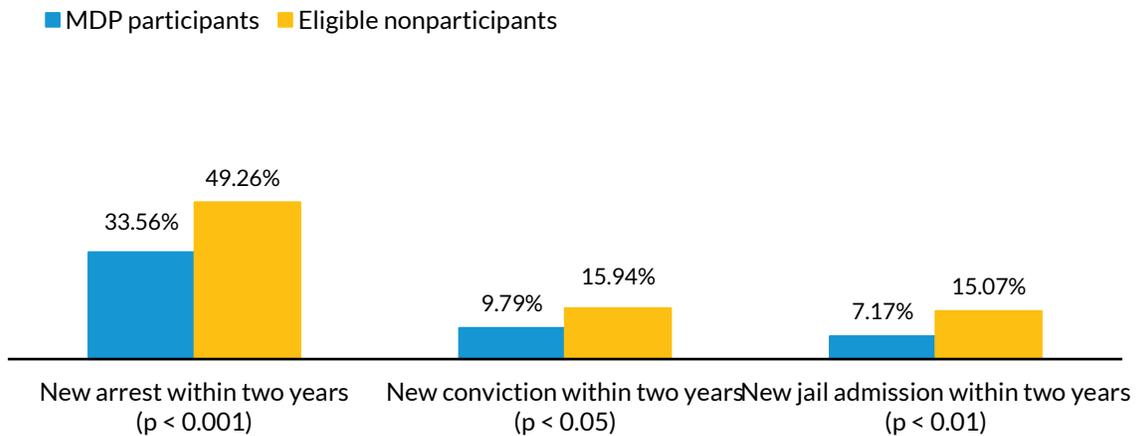
Analyzing MDP data, we found that of the 738 people who went through the MDP, the program marked only 6 as having failed the program with a new charge or arrest, resulting in a 99 percent completion rate. But analyzing the county's criminal justice administrative data, we identified an additional 29 people who had enrolled in the program and had a new arrest within 90 days of being referred by law enforcement. Furthermore, we found that one person the MDP marked as having received a new charge or arrest did not have a new arrest reflected in the administrative data. As such, we identified 34 people as having violated the program requirements, leading to a (still very high) 95 percent completion rate. Completion rates were similar for 16- and 17-year-olds ($n = 411$, 94.9 percent) and 18-- to-21-year-olds ($n = 293$, 96.1 percent).

MDP PARTICIPANTS HAD FEWER NEW ARRESTS, CONVICTIONS, AND JAIL ADMISSIONS

Figures 1 and 2 provide the rates of new arrests, convictions, and jail admissions within two years of the first-misdemeanor incidents among 16- and 17-year-old MDP participants and eligible nonparticipants and 18-to-21-year-old participants and eligible nonparticipants. Analyzing the MDP's impact on new arrests, we found that participants had significantly fewer rearrests than the comparison groups. New arrests of 16- and 17-year-old participants were 19.4, 16.7, and 15.7 percentage points lower after six months, one year, and two years, respectively, than among statistically matched groups of eligible nonparticipants. Among people who had new arrests within two years, MDP participants' new arrests occurred roughly 286 days, on average, after their initial misdemeanor incidents; new arrests of nonparticipants occurred roughly 198 days after their initial incidents, roughly 88 days sooner.

FIGURE 1

Rates of New Arrests, Convictions, and Jail Admissions within Two Years for 16- and 17-Year-Old MDP Participants and Eligible Nonparticipants



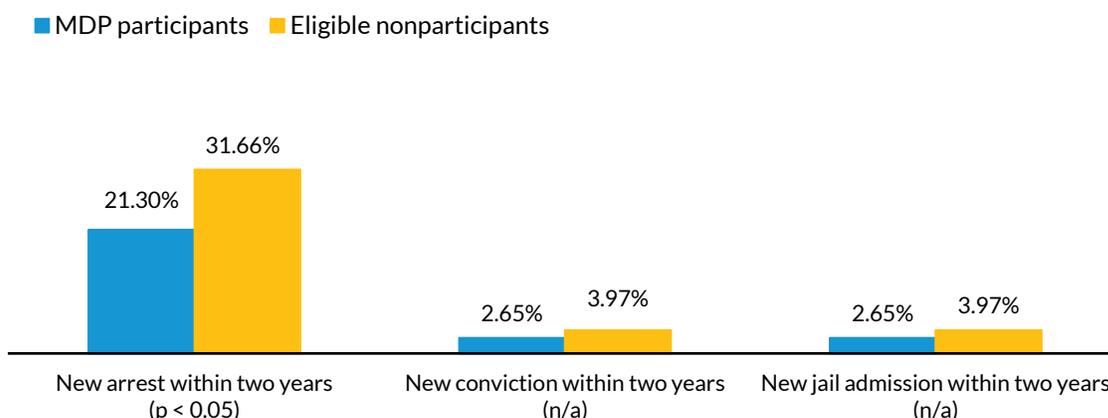
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Source: Urban's analysis of Durham County, North Carolina data.

Note: MDP = Misdemeanor Diversion Program.

FIGURE 2

Rates of New Arrests, Convictions, and Jail Admissions within Two Years for 18-to-21-Year-Old MDP Participants and Eligible Nonparticipants



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Source: Urban analysis of Durham County, North Carolina, data.

Notes: MDP = Misdemeanor Diversion Program. The models with “n/a” are raw percentages, not rates determined through regression models (that is, predicted margins), as regression models were not possible owing to low recidivism levels.

Results indicate that new arrests for 18-to-21-year-old MDP participants were 13.9, 13.2, and 10.4 percentage points lower after six months, one year, and two years, respectively, than for statistically matched groups of eligible nonparticipants. We observed no differences in the number of days to a new arrest within two years between 18-to-21-year-old MDP participants and nonparticipants.

We also found no differences in new arrests resulting in convictions within six months between 16- and 17-year-old participants and nonparticipants. But results indicate that new convictions for 16- and 17-year-old participants were 5.4 percentage points lower after one year and 6.2 percentage points lower after two years than for nonparticipants.

Similarly, we found no differences in new arrests resulting in jail admissions within six months between 16- and 17-year-old participants and nonparticipants, but new jail admissions for 16- and 17-year-old participants were 5.4 percentage points lower after one year and 7.9 percentage points lower after two years than for nonparticipants.

Among 18-to-21-year-olds, new arrests resulting in new convictions within two years only occurred in 10 cases, 4 of which were MDP participants and 6 of which were nonparticipants. As such, more detailed and rigorous regression analyses examining the differences in convictions and new jail admissions were not possible for 18-to-21-year-olds, although we report descriptive differences.

THE MDP REDUCED DISPARITIES IN NEW ARRESTS, CONVICTIONS, AND JAIL ADMISSIONS AMONG 16- AND 17-YEAR-OLD BLACK PARTICIPANTS

We found significant reductions in disparities in new arrests by race among 16- and 17-year-olds. The MDP significantly reduced disparities in new arrests within two years between Black and non-Black participants by 20.8 percentage points, making the difference in rates of new arrests between Black and non-Black participants much more equivalent compared with the differences between Black and non-Black nonparticipants. But among Hispanic males and non-Hispanic males, new arrests within one and two years were higher among MDP participants than nonparticipants—these disparities increased 9.9 percentage points within one year and 13.2 percentage points within two years.

Program participation reduced disparities in new convictions within six months between 16- and 17-year-old Black people and non-Black people by 3.5 percentage points, and disparities in new jail admissions within six months by 5.2 percentage points. These improvements for Black youth were not observed for new convictions or jail admissions after one year and two years.

Lastly, we observed no significant interaction between program participation and race/ethnicity, sex, and age for new arrests, convictions, or jail admissions among 18-to-21-year-olds.

THE MDP DID NOT AFFECT SYSTEM-LEVEL ARRESTS, CONVICTIONS, OR JAIL ADMISSIONS

System-level analyses of arrests, convictions, and jail admissions in Durham County for both the 16--to-17-year-old and 18-to-21-year-old populations indicate a downward trend in the years before and after the MDP was implemented. On average, there were 33 percent fewer arrests, 32 percent fewer convictions, and 26 percent fewer jail admissions among 16- and 17-year-olds in the months following MDP implementation. But results from interrupted time series analyses showed that the postimplementation trends in the county were similar to the trends occurring before implementation, indicating that the reductions likely did not owe to the MDP. In the months after implementation, for 18-to-21-year-olds, arrest levels were 29 percent lower, convictions were 45 percent lower, and jail admissions were 49 percent lower. The pre- and postimplementation jail admission trends were statistically equal for this age group, but results indicate that arrests and convictions were not declining as steeply after the MDP was implemented as before it was implemented.

Recommendations

The results of our in-depth impact evaluation of Durham County's Misdemeanor Diversion Program show that during the period we analyzed, law enforcement officers in the county failed to refer the

majority of people eligible to be diverted to the MDP, though when they did, the program had positive impacts, resulting in fewer new arrests, convictions, and jail admissions within two years. The program's success is further exemplified by findings that racial disparities were reduced among program participants, especially 16- and 17-year-old Black participants. Drawing on these findings, the research team makes the following recommendations for the MDP and Durham County.

Get law enforcement to buy in to the MDP and make sure law enforcement officers are aware of it. Because the MDP is a prearrest diversion program, it is unsurprising that buy-in and support from law enforcement is necessary for its success. The findings of our impact evaluation demonstrate that many people who are eligible for the program are not being referred to it. Durham County law enforcement officers must refer eligible people to the program for it to have any impact, but many are not. Findings from our process evaluation suggest this is likely because some law enforcement officers do not support the program and because others are not aware of it or of their ability to refer people to it.

Identify ways to scale the MDP. The program's impact and the success of MDP participants is clear. But there are ways its impact can be increased. First and foremost, the county (and law enforcement in particular) should focus on getting all eligible people referred to the program. This is the simplest way to scale the program up without changing policies or approaches. Next, expand the eligibility requirements. Several stakeholders we interviewed for the process evaluation would like eligibility to be expanded to people who have previously been charged with crimes—that is, they want to relax the requirement that an incident be someone's first misdemeanor charge, to allow officers to refer people who have committed a second misdemeanor charge, or to eliminate criminal history as an eligibility requirement entirely. These changes would allow for more people to be referred to and enter the program, which could increase its impact and keep more people out of the criminal legal system. Stakeholders report that they have been unable to make these changes because of a lack of law enforcement support. Stakeholders also suggested that other jurisdictions developing similar programs should not include criminal history among eligibility criteria.

Improve data collection practices in North Carolina. Although the MDP has been operational since 2014 and has collected programmatic data since then, this is the first time a third-party research organization has conducted an impact evaluation of the program. The complexity of North Carolina's Administrative Office of the Courts data makes it difficult for us to measure key program outcomes, such as rearrest, reconviction, and reincarceration. A leading challenge is that data systems in the state do not work together. The MacArthur Foundation grant that supported the research team enabled us to use different methods to collect, clean, and analyze these data, all of which were time consuming and

difficult to replicate. Improved data management systems at the state level would enable local and national evaluators to better assess the MDP's impact, as well as the impact of other state and county programs, and would help the county identify areas for improvement.

Continue local support for the MDP model. We found widespread support for the program among stakeholders and participants through our process evaluation, and we found positive outcomes associated with the program through our impact evaluation. The research team is hopeful that local elected officials, service providers, law enforcement, and other actors will continue to support the program, and that stakeholders will consider our recommendations as the program grows and matures.

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