



OFFICE OF THE HENNEPIN COUNTY ATTORNEY

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April 2, 2024

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Minnesota Legislative Reference Library
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RE: Biennial pretrial diversion program report for the years 2021 and 2022

Purpose of the report:

This report is made pursuant to Minnesota Statute §401.065, Subd. 4, which mandates that county attorneys report to the state court administrator and the legislature on the operation of their pretrial diversion programs. This report includes information about the Hennepin County Attorney's Office's (HCAO) youth and adult pretrial diversion programming.

Description of HCAO Youth Pretrial Diversion Programming:

HCAO Pretrial Youth Diversion serves young people 17 and younger. The HCAO uses a spectrum of diversionary responses to seek an appropriate fit given the young person's needs and the circumstances of the alleged offense. That includes pre-charge diversion¹ and post-charge diversion using several different points of entry and programmatic responses:

- Informal pre-Charge diversion with no required programming.
 - *Letter diversion*: Advisory to parent/guardian asking family to address their young person's behavior. Letter diversion is used in situations where the young person has no history with the criminal legal system and is alleged to have committed a very minor offense.
 - *Curfew Diversion*: Curfew violations are not filed with the court unless the young person has a pending charge in court for a non-curfew delinquency offense. Most curfew diversion cases are referred for intervention to a community-based youth-serving agency that reaches out to the young person's family to share information about the curfew law and to offer voluntary supportive services.
 - *Referrals to Hennepin County Health and Human Services*: If a young person involved with a case submitted to the HCAO has recently been found by the court to be incompetent or has an active Child in Need of Protective Services case, the submitted case can be referred to Hennepin County Health and Human Services instead of filing charges.
- Pre-Charge Diversion with required programming

¹ Diversion is only used for chargeable cases. Cases that are not considered chargeable by the HCAO are not diverted by the HCAO; they are deferred or declined.

- *Petty Drug and Alcohol Diversion*: Available for young people who have been referred for marijuana or alcohol-related offenses.
- *Juvenile Family Violence Diversion*: Used for cases that involve family domestic violence (e.g., disorderly conduct, assault, domestic assault, and property damage).
- *Formal Pre-Charge Diversion to Provider*: Young people with little to no history who are referred for a juvenile petty offense, a misdemeanor offense, some gross misdemeanor offenses, some felony property offenses, and some felony drug possession offenses. Participating young people are referred to a community-based provider for an intake screening, which includes screening for trauma, mental health needs, chemical health concerns, and the presence of risk and protective factors. From there, a diversion contract is developed. Diversion contracts typically include one or more elements such as no additional unlawful activity, no unexcused absences from school, payment of restitution when applicable, community service, restorative practices, groups, educational opportunities, and mental or chemical health services. Additionally, individualized, strengths-based services may be provided by a community-based diversion provider to address the young person's unique needs.

In cases where the young person is successful with pre-charge diversion, no charges are filed against the young person for the submitted case.

Beyond pre-charge diversion, cases on the juvenile petty offense calendar and the juvenile delinquency first appearance calendar are reviewed for post-charge diversion eligibility. Person felonies are excluded from consideration, but all other cases—juvenile petty offenses cases, all misdemeanor cases, all gross misdemeanor cases, and some felony cases²—are reviewed for eligibility. Young people participating in post-charge diversion are referred to a community-based provider for an intake screening. From there, a diversion contract is developed. Strengths-based services may be provided by a community-based diversion provider to address the young person's identified needs. In cases where the young person is successful with post-charge diversion and restitution is completed, the State files motions to seal court records related to the charge.

In both pre-charge diversion and post-charge diversion, HCAO youth diversion programming includes victim input, restitution, and victim request for no-contact orders.

HCAO youth diversion programming is overseen by HCAO staff, with community-based services provided by numerous contracted diversion providers.

HCAO Youth Pretrial Diversion Programming Data:

- In 2021, 702 young people participated in HCAO youth pretrial diversion.
 - Among those, 55% were identified as male and 44% female.
 - 52% were identified as African American, 26% as white, 4% as Native American, 1% as Asian, and for 14% race was not reported as known. 3% were identified as Hispanic or Latine.
- For the 2021 diversion cases, 507 are classified as successful, 157 as unsuccessful, 36 as pending, and 3 as in progress.

² Eligible felonies include: theft, financial transaction card fraud, receiving stolen property, motor vehicle theft, damage to property, and drug offenses. Ineligible felonies include burglary cases, robbery (simple and aggravated), felony level assault, felony gun cases, fleeing in a motor vehicle, and felony criminal sexual conduct.

- Among the 2021 cases classified as successful, 57% were identified as male and 42% female. 50% were identified as African American, 27% as white, 3% as Native American, 1% as Asian, and for 16% race was not reported as known. 3% were identified as Hispanic or Latine.
- Among the 2021 cases classified as unsuccessful, 54% were identified as male and 46% female. 66% were identified as African American, 18% as white, 8% as Native American, and for 6% race was not reported as known. 3% were identified as Hispanic or Latine.
- In 2022, 934 young people participated in HCAO youth pretrial diversion.
 - Among those, 62% were identified as male and 38% female.
 - 61% were identified as African American, 23% as white, 2% as Native American, 1% as Asian, and for 10% race was not reported as known. 2% were identified as Hispanic or Latine.
- For the 2022 diversion cases, 589 are classified as successful, 300 as unsuccessful, 25 as pending, and 22 as in progress.
 - Among the 2022 cases classified as successful, 65% were identified as male and 35% female. 55% were identified as African American, 28% as white, 2% as Native American, 1% as Asian, and for 11% race was not reported as known. 3% were identified as Hispanic or Latine.
 - Among the 2022 cases classified as unsuccessful, 55% were identified as male and 45% female. 76% were identified as African American, 11% as white, 4% as Native American, and for 6% race was not reported as known. 2% were identified as Hispanic or Latine.

A note about diversion case counts: post-charge diversion cases are initially marked as charged and are counted as charged cases until a diversion agreement is entered in court. Because that process can be lengthy and stretch out over many months, cases from previous years can move from charged to diverted over time. Therefore, at the time of this analysis, diversion cases may still be undercounted and charged cases still overcounted for 2022.

Description of HCAO Adult Pretrial Diversion Programming

HCAO adult pretrial diversion programming includes both pre- and post-charge diversion for some property, drug, child abuse, and election fraud offenses.

Generally, diversion for property offenses is most often used in the following circumstances:

- Theft under \$1,000
- Some cases with theft under \$5,000
- Public assistance theft under \$10,000
- Some "trespass" burglary cases
- Some domestic property cases

The property diversion program typically lasts for 12 months. It includes coursework, community service and/or restorative practices, monitoring of restitution payment, and regular check-ins with the diversion provider.

Generally, diversion for drug offenses is most often used in the following circumstances:

- 4th and 5th degree possession
- 3rd degree possession with no criminal history
- Some 4th and 5th degree sale cases

The drug diversion program typically lasts for 6-12 months. It includes coursework, community service and/or restorative practices, a chemical health assessment, services from a social worker and access to treatment and other resources as appropriate, and regular check-ins with the diversion provider.

The child abuse diversion program typically lasts for 24 months. It includes monitoring of compliance with any existing child protective services plan, parenting classes and support, regular check-ins with the diversion provider, and other elements as needed on a case-by-case basis.

There are several factors that will or may disqualify potential diversion participation, including:

- Previous felony within the past 10 years
- Current or past case involving use of a firearm
- Prior domestic assault conviction
- DWI conviction within the past 3 years
- Prior diversion involvement
- Aggravating circumstances

HCAO adult diversion programming is overseen by HCAO staff, with community-based services provided by a contracted diversion provider. Additional services and support related to substance use disorder needs are provided by and in collaboration with Hennepin County Human Services.

HCAO Adult Pretrial Diversion Programming Data:

- In 2021, 497 people participated in HCAO adult pretrial diversion.
 - Among those, 43% were identified as white, 42% as Black or African American, 5% as Native American, and 4% as Asian. For 6%, race was not reported as known.
- For the 2021 diversion cases, 338 are classified as successful, 85 as unsuccessful, 49 as individual declined offer, 20 as in progress, and 5 as other.
 - Among the 2021 cases classified as successful, 46% were identified as white, 42% as Black or African American, 3% as Native American, and 3% as Asian. For 6%, race was not reported as known.
 - Among the 2021 cases classified as unsuccessful, 38% were identified as Black or African American, 38% as white, 11% as Asian, and 7% as Native American. For 7%, race was not reported as known.
- In 2022, 465 people participated in HCAO adult pretrial diversion.
 - Among those, 44% were identified as Black or African American, 41% as white, 4% as Native American, 3% as Asian. For 8%, race was not reported as known.
- For the 2022 diversion cases, 215 are classified as successful, 82 as unsuccessful, 68 as individual declined offer, 98 as in progress, and 2 as other.
 - Among the 2022 cases classified as successful, 49% were identified as white, 40% as Black or African American, 3% as Asian, and 1% as Native American. For 7%, race was not reported as known.
 - Among the 2022 cases classified as unsuccessful, 51% were identified as Black or African American, 32% as white, 7% as Native American, and 5% as Asian. For 5%, race was not reported as known.

A note about diversion case counts: post-charge diversion cases are initially marked as charged and are counted as charged cases until a diversion agreement is entered in court. Because that process can be lengthy and stretch out over many months, cases from previous years can move from charged to diverted over time. Therefore, at the time of this analysis, diversion cases may still be undercounted and charged cases still overcounted for 2022.

The Effect of HCAO Pretrial Diversion Programming on the Operation of the Criminal Justice System in Hennepin County

Diversion is an important part of the HCAO's efforts to progress toward our vision of a safe, equitable, and just Hennepin County. As part of our mission, we use preventive and restorative approaches—including pretrial diversion for both youth and adults—to address the complex root causes of crime and violence in pursuit of holistic community safety.

HCAO diversion is multi-faceted, balancing principles of maintaining public safety, decreasing inequity, and providing for the best interests of the people and communities we serve. Our diversion efforts are intended to promote meaningful accountability, repair harm, provide resources and supports, prevent recidivism, and help people avoid the long-lasting consequences of a criminal record.

Youth Diversion Impact

Based on initial analysis, it appears that young people who have completed HCAO Youth Diversion may have been less likely to recidivate than young people who have not successfully completed HCAO Youth Diversion. There are several important notes about this initial indication and the data behind it:

- In this case, recidivism is being defined as a new case submitted to the HCAO after the closure date of the diverted case, excluding status offenses, traffic offenses, or Child in Need of Protective Services cases.
- This data is taken from our HCAO case management system and the Minnesota Court Information System. It has not been audited at the individual case level.
- Diversion status is only one factor that may differ between young people, and many factors may contribute to whether a young person may engage in illegal activity. This analysis does not factor in other factors external to diversion status/diversion success.
- While this report is for our pretrial diversion programming in 2021 and 2022, the recidivism analysis described in this section uses cases from 2019. 2019 cases were used so that enough time has elapsed from when the cases were submitted to examine whether recidivism has occurred.
- This data was last pulled on January 2, 2024.

All Youth Cases – Diversion vs. No Diversion (see figure 1, pg. 8)

Among all 2019 youth cases that were charged and **not diverted** (n=3,322):

- 36.2% recidivated within 1 year
- 42.5% recidivated within 2 years
- 48.6% overall recidivism rate for young people charged and not diverted

Among all 2019 youth cases that were **diverted** (n=1,931):

- 23.9% recidivated within 1 year
- 28.8% recidivated within 2 years
- 34.4% overall recidivism rate for young people diverted

Diverted Youth Cases – Successful Diversion Completion vs. Unsuccessful Completion (see figure 2, pg. 8)

Among 2019 youth cases that were **diverted** where the young person was **unsuccessful** in completing diversion (n=469):

- 31% recidivated within 1 year
- 37.4% recidivated within 2 years
- 45% overall recidivism rate for young people who were diverted and unsuccessful in completing diversion

Among 2019 youth cases that were **diverted** where the young person was **successful** in completing diversion (n=1,391):

- 22.1% recidivated within 1 year
- 26.9% recidivated within 2 years
- 32% overall recidivism rate for young people who were diverted and were successful in completing diversion

Felony-level Youth Cases – Diversion vs. No Diversion (see figure 3, pg. 9)

Among 2019 felony-level youth cases that were charged and **not diverted**:

- 19.9% recidivated within 1 year
- 26% recidivated within 2 years
- 33.6% overall recidivism rate for young people charged with felony-level cases and not diverted

Among all 2019 felony-level youth cases that were **diverted**:

- 10.2% recidivated within 1 year
- 14% recidivated within 2 years
- 19% overall recidivism rate for young people diverted for felony-level cases

Felony-level Youth Cases - Successful Diversion Completion vs. Unsuccessful Completion (see figure 4, pg. 9)

Among 2019 felony-level youth cases that were **diverted** where the young person was **unsuccessful** in completing diversion:

- 17.8% recidivated within 1 year
- 24.4% recidivated within 2 years
- 31.8% overall recidivism rate for young people with felony-level cases that were diverted who were unsuccessful with diversion

Among 2019 felony-level youth cases that were **diverted** where the young person was **successful** in completing diversion:

- 8.4% recidivated within 1 year
- 11.6% recidivated within 2 years
- 16.1% overall recidivism rate for young people with felony-level cases that were diverted who were successful with diversion

Adult Diversion Impact

Based on initial analysis, it appears that people who have successfully completed HCAO Adult Diversion may have been less likely to recidivate than people who have not successfully completed HCAO Adult Diversion. There are several important notes about this initial indication and the data behind it:

- This data is taken from our HCAO case management system and the Minnesota Court Information System. It has not been audited at the individual case level.
- While this report is for our pretrial diversion programming in 2021 and 2022, the recidivism analysis described in this section uses cases from 2019. 2019 cases were used so that enough time has elapsed from when the cases were submitted to examine whether recidivism has occurred.
- This data was last pulled on January 2, 2024.

Among all 2019 adult cases that were referred to diversion or where diversion was offered (n=682):

- Regardless of diversion enrollment or outcome, 8.2% of all people who were referred to or offered diversion recidivated within 1 year
- Regardless of diversion enrollment or outcome, 11.6% of all people who were referred to or offered diversion recidivated within 2 years
- Regardless of diversion enrollment or outcome, 18.3% of all people who were referred to or offered diversion have since recidivated

Diverted Adult Cases – Successful Diversion Completion vs. Unsuccessful Completion (see figure 5, pg. 10)

Among 2019 adult cases that were diverted where the person was **unsuccessful** completing diversion (n=155):

- 21.4% recidivated within 1 year
- 27.3% recidivated within 2 years
- 39.6% overall recidivism rate for adults who were unsuccessful with diversion

Among 2019 adult cases that were diverted where the person **declined** the offer of diversion (n=48):

- 16.7% recidivated within 1 year
- 22.9% recidivated within 2 years
- 27.1% overall recidivism rate for adults who were unsuccessful with diversion

Among 2019 adult cases that were diverted where the person was **successful** in completing diversion (n=474):

- 3.0% recidivated within 1 year
- 5.3% recidivated within 2 years
- 10.4% overall recidivism rate for adults who were successful with diversion

Restitution

Among 2019 adult cases that were diverted, a total of \$97,960.42 was due in restitution. Of that, \$93,255.32 has been collected.

Figures

For Figures 1-5, see next pages.

Figures

Figure 1: Youth Diversion Recidivism – Diversion vs. No Diversion

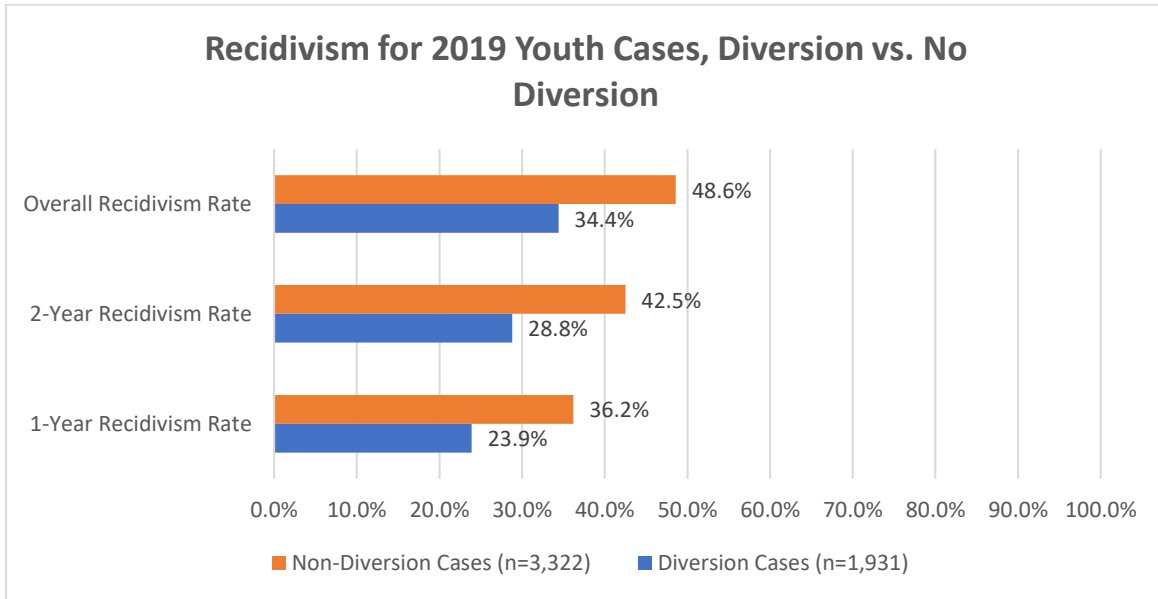


Figure 2: Youth Diverted Cases Recidivism – Successful Diversion Completion vs. Unsuccessful Diversion Completion

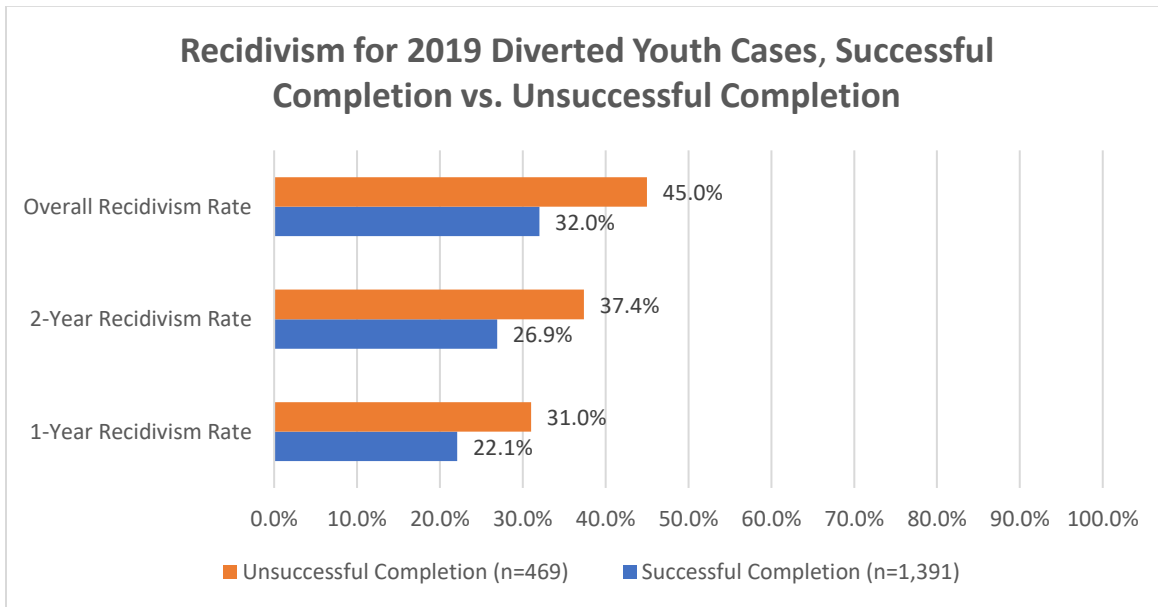


Figure 3: Youth Felony-level Cases Recidivism – Diversion vs. No Diversion

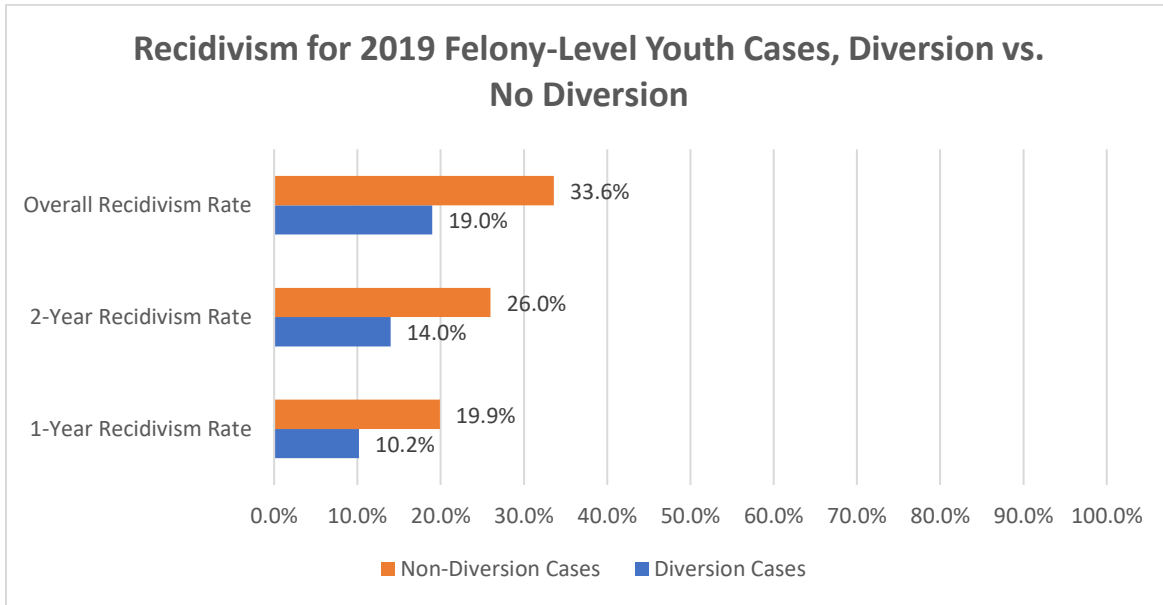


Figure 4: Youth Felony-level Cases Recidivism - Successful Diversion Completion vs. Unsuccessful Diversion Completion

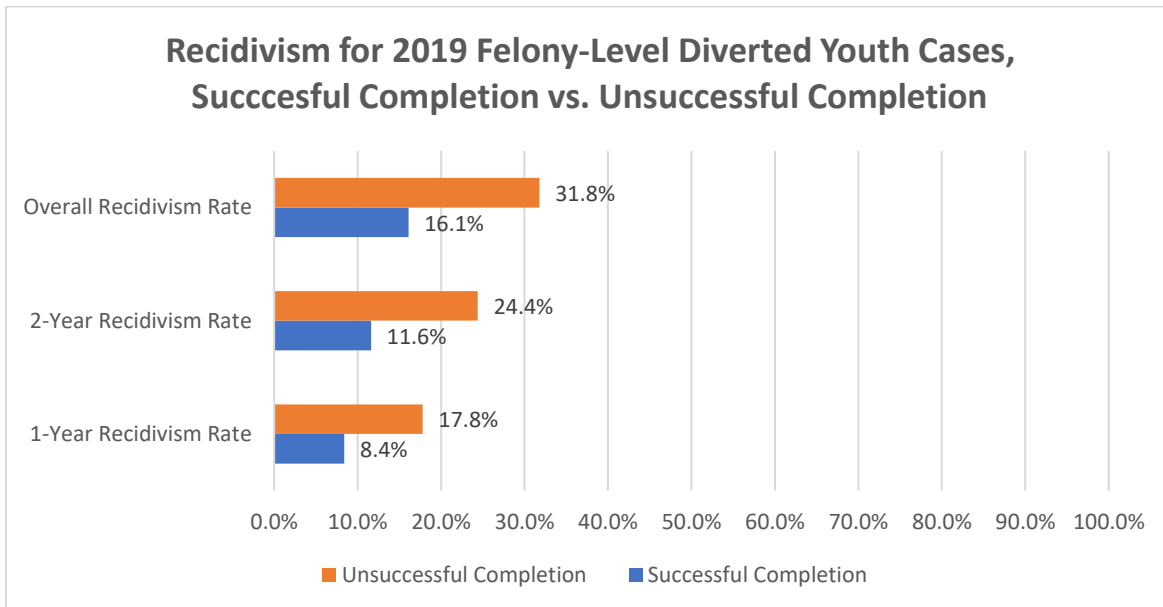
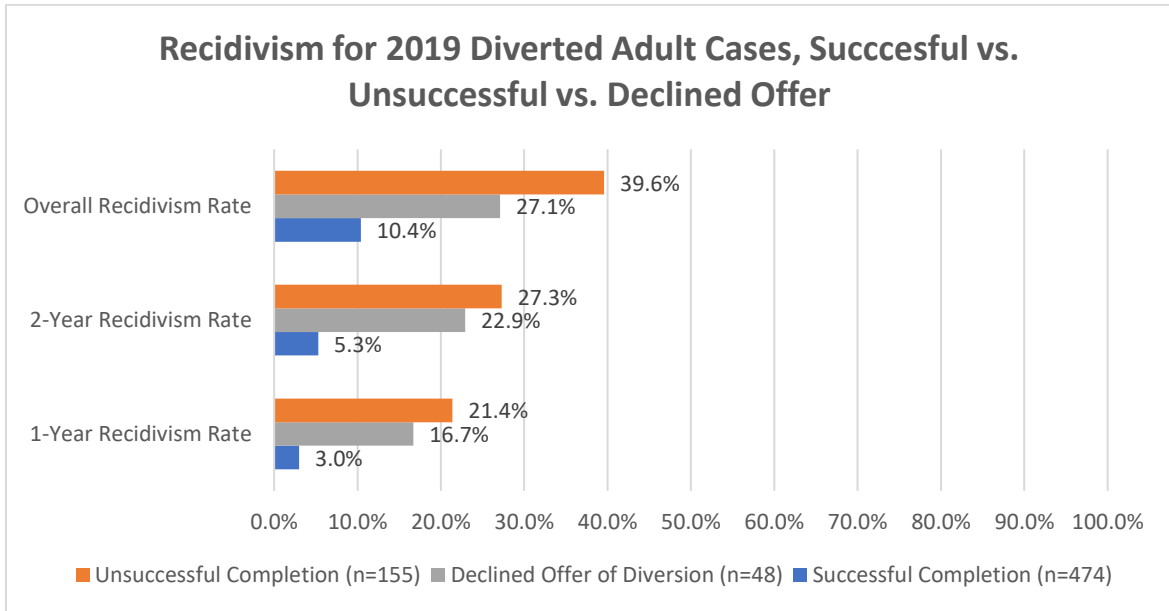


Figure 5: Diverted Adult Cases – Successful Diversion Completion vs. Unsuccessful Diversion Completion



Sincerely,

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