

DIVERTED INTO DEPORTATION:

THE IMMIGRATION CONSEQUENCES OF DIVERSION PROGRAMS IN MARYLAND



AMERICAN  UNIVERSITY
WASHINGTON
COLLEGE OF LAW

 **ACLU**
AMERICAN CIVIL LIBERTIES UNION
of MARYLAND



TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	3
METHODOLOGY	4
I. BACKGROUND: DIVERSION PROGRAMS AND IMMIGRATION ENFORCEMENT IN MARYLAND	5
II. DIVERSION PROGRAMS IN THE NATIONAL LANDSCAPE.....	9
III. FINDINGS IN MARYLAND	11
IV. RECOMMENDATIONS	14
V. CONCLUSION	15
APPENDIX A: SELECT MARYLAND CRIMINAL AND TRAFFIC OFFENSES RELATING TO DRUGS AND ALCOHOL.....	16
APPENDIX B: COUNTY-BY-COUNTY FACT SHEETS.....	20
APPENDIX C: TEXT OF MARYLAND PUBLIC INFORMATION ACT REQUESTS.....	32
APPENDIX D: TEXT OF FREEDOM OF INFORMATION ACT REQUEST SENT TO ICE.....	33

Acknowledgments:

This report has been a joint project of the American University Washington College of Law Immigrant Justice Clinic (“the Clinic”) and the American Civil Liberties Union (ACLU) of Maryland. The primary authors of the report are Alejandra Aramayo, Whitney-Ann Mulhauser, Matthew Sutton, and Caitlin Whaley, all students in the Clinic during the 2015-2016 academic year. The report was conceived and edited by Sirine Shebaya, formerly a Staff Attorney with the ACLU of Maryland,¹ and Jayesh Rathod, Professor of Law and Director of the Immigrant Justice Clinic. Nick Steiner, Litigation and Policy Fellow at the ACLU of Maryland, also reviewed and edited the report. Thanks to Emily Datnoff for her helpful review and comments as well.

Special thanks goes to Dean Emeritus Claudio Grossman and American University Washington College of Law for providing financial support for this project.

EXECUTIVE SUMMARY

Diversion programs, also commonly referred to as alternative sanctions, are programs intended to help people charged with certain offenses avoid jail time, convictions, and associated costs. These programs are commonly used for individuals who have been charged with an offense that is related to an underlying substance abuse problem. For these individuals, diversion programs offer opportunities for rehabilitation and enrollment in community-based treatment programs as an alternative to incarceration. Successful completion of a diversion program usually results in dismissal of the criminal charges that brought the individual before the justice system or in expungement of any conviction that resulted from those charges.

Depending on how a diversion program is structured, an individual can enter the program either before the disposition of the underlying charge or after a plea is entered.² In Maryland, most diversion programs require individuals to enter a guilty plea or accept a Probation Before Judgment (PBJ)—a disposition that the state of Maryland does not consider to be a criminal conviction—in order to participate in the program. This is problematic in the immigration context because of the relationship between these dispositions and grounds of removability under immigration law: a guilty plea or a PBJ is enough to count as a “conviction” for immigration purposes, even if the state court never enters a finding of guilt. Most controlled substance offense convictions automatically trigger removal proceedings, and can lead to harsh consequences, such as deportation and prolonged mandatory detention. Thus, participation in a controlled substance diversion program puts members of Maryland’s large noncitizen community at risk of prolonged detention and possible deportation. That result is punitive and inconsistent with the rehabilitative and community-oriented goals of diversion programs.

A number of other states, including Connecticut and Florida, have diversion programs in place that avoid such harsh immigration consequences. These programs could provide a useful model for Maryland. Notably in Maryland, Howard County and Washington County have diversion programs that do not require an individual to accept a guilty plea in order to participate, and therefore do not result in a conviction for immigration purposes. These two counties—especially Washington County because of the more expansive number of qualifying offenses for participation in its diversion programs—can therefore provide a model diversion program for other Maryland counties. Maryland, and specific counties within Maryland with high noncitizen populations, should examine and restructure diversion programs so as not to impose convictions on successful diversion program participants.

METHODOLOGY

To obtain more information about diversion programs in Maryland and about the individuals participating in those programs, the authors of this report sent Maryland Public Information Act (MPIA) requests to eight jurisdictions: Baltimore City, Frederick County, Harford County, Howard County, Montgomery County, Prince George's County, Washington County, and Worcester County.³ The MPIA requests focused primarily on Maryland jurisdictions with large noncitizen populations, but also tried to incorporate some geographic diversity across the state.⁴ Each of the jurisdictions researched saw an increase in overall population and in racial diversity between the 2000 and the 2010 U.S. Census.⁵ The MPIA requests also reflect a regional balance throughout Maryland with the goal of representing both urban, high population-density jurisdictions such as Baltimore City, Prince George's County, and Montgomery County, as well as smaller, more rural, or less dense jurisdictions such as Harford County, Washington County, and Worcester County.

All MPIA requests sought information on diversion programs and/or alternative sanctions for persons charged on or after January 1, 2013 with any drug or alcohol-related offenses. In particular, the MPIA requests sought detailed information about: eligibility criteria based on citizenship or immigration status; qualifying crimes; country of origin and citizenship status of recent participants; and whether a guilty plea is required for participation in the program. The MPIA requests also sought to determine the extent to which diversion programs were uniform across different jurisdictions in Maryland, including who determines eligibility criteria for participation in the programs in each county. Additional information about diversion programs in each of the jurisdictions was gathered from publicly available sources such as official county websites. Finally, a Freedom of Information Act (FOIA) request was sent to U.S. Immigration and Customs Enforcement (ICE), in an attempt to obtain a clearer picture of how many noncitizens in Maryland were placed in removal proceedings as a result of drug and alcohol convictions.⁶ The findings below are based on responses to the MPIA requests from the Maryland Administrative Office of the Courts, county sheriffs, and publicly available information. At the time of writing, ICE had yet to respond to our FOIA request even though more than eight months had elapsed.



I. BACKGROUND: DIVERSION PROGRAMS AND IMMIGRATION ENFORCEMENT IN MARYLAND

In the criminal justice system, “diversion” is a term used to refer to a broad range of programs initiated at any time after an individual is arrested and before that individual is subjected to incarceration.⁷ The purpose of a diversion program—also known as alternative sanctions—is to allow individuals caught in the criminal justice system to avoid obtaining a criminal record, and to address problems such as substance abuse or mental health issues that may be underlying causes of criminal behavior. By addressing these underlying causes, diversion programs seek to reduce recidivism and minimize court and jail expenses.⁸ These programs can have significant community benefits because individuals whose incarceration likely would not result in rehabilitation and therefore would be counterproductive are able to avoid jail time and criminal records, and focus on addressing underlying difficulties to become more productive members of society.

Diversion programs also reduce costs. By addressing the underlying problems through substance abuse treatment or community service, instead of subjecting individuals who have been charged for the first time with criminal offenses to incarceration, the programs keep individuals out of the prison system and reduce recidivism.⁹ Individuals who are given the opportunity to participate in diversion programs as an alternative to incarceration have been found significantly less likely to reoffend.¹⁰ While diversion programs share a common purpose, the nature, scope, and structure of these programs vary widely across the United States. Even within each state, individual jurisdictions have adopted their own unique approach to diversion programs to address local substance abuse, mental health, or other similar issues.

In 1996, Congress passed the Narcotic Addict Rehabilitation Act of 1996, which gave courts “authority to sentence drug addicts who violated Federal criminal laws to treatment programs as an alternative to imprisonment.”¹¹ Several states have since developed their own diversion programs to help individuals with drug addiction recover and reintegrate into society. Although Maryland does not have a statewide diversion program, many jurisdictions within Maryland have developed their own programs, mostly for persons with a first offense. As the findings below will demonstrate, these programs are far from uniform, and the ability of noncitizens to access those programs or to avoid harsh immigration consequences after completion of those programs varies widely from county to county.¹²

In addition to problems with access to diversion programs for noncitizens in certain Maryland jurisdictions, noncitizens face a larger problem because of the disposition of underlying offenses that accompany entry into diversion programs. As discussed in this report, many of those dispositions count as convictions for federal immigration purposes, even when they are not considered convictions for state purposes. Several dispositions that are not considered convictions for state purposes are available in Maryland, including: deferred judgment, probation before judgment (PBJ), deferred prosecution, or obtaining a STET disposition. Significantly, a deferred judgment is considered a conviction for immigration purposes if the individual must plead guilty to receive the deferred judgment.¹³ Similarly, a PBJ, in which an individual is placed on probation before a judgment is entered,¹⁴ is still a conviction for immigration purposes,¹⁵ despite Maryland law clearly stating that a PBJ should not be considered a conviction under state law.¹⁶ Thus, even if a noncitizen completes an alternative sanction program, a guilty plea prior to enrolment in the program still has serious immigration consequences including possible removal from the United States.

By contrast, deferred prosecution likely would not lead to immigration consequences because the noncitizen would not admit guilt unless the deferred prosecution is violated.¹⁷ Maryland has a STET disposition, which functions like a deferred prosecution. A STET disposition indefinitely postpones adjudication, thereby avoiding conviction.¹⁸ Thus, diversion programs that allow noncitizens to enroll in the program without pleading guilty, and only require the noncitizen to plead guilty if the alternative sanction program terms are violated are preferable because they do not trigger immigration consequences.

Chart 1. Summary of Types of Dispositions and Corresponding Immigration Consequences

Type of Disposition	Definition of Disposition	Guilty Plea Required	Immigration Consequence
Deferred Judgment	An individual must initially plead guilty to criminal charges in exchange for completing a probationary period before sentencing.	Yes	Considered a conviction for immigration purposes and may lead to removal proceedings.
Probation Before Judgment (PBJ)	An individual must plead guilty and is placed on probation before a judgment is entered.	Yes	Considered a conviction for immigration purposes and may lead to removal proceedings.
Deferred Prosecution	The prosecutor agrees to delay charges for a certain period of time in exchange for certain conditions, often community service.	No	No immigration consequences.
STET Disposition	The government agrees to suspend prosecution of charges for a period of time, and if the individual meets certain terms the charges are dismissed.	No	No immigration consequences.

Why Diversion Programs Matter for Noncitizens

Since noncitizens are uniquely affected by drug charges,¹⁹ they are among the populations that can benefit the most from diversion programs to avoid the stain of a conviction on their criminal records.²⁰ However, depending on how a diversion program is structured—most notably, whether a guilty plea is required for participation—these programs often fail to avoid unintended negative effects on noncitizens. This is because federal immigration law defines the term “conviction” very broadly to include:

- (A) The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court, or if adjudication of guilt has been withheld, where-
 - (i) a judge or jury has found the alien guilty or *the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt*, and
 - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.²¹

Based on the language of this statute and case law interpreting it,²² noncitizens who participate in diversion programs to avoid a state criminal conviction may still have a conviction for immigration purposes. Take, for example, a person who is arrested for possession of marijuana and wishes to enroll in a diversion program. If that individual must admit that s/he possessed marijuana to enter the program and serve a supervised release or probation term, then that person would have a conviction for immigration purposes under Immigration and Nationality Act § 101(a)(48)(A) because the individual admitted guilt, and the supervised release is considered a restraint on his or her liberty. A U.S. citizen who successfully participates in a diversion program under that scenario would have no criminal conviction on his/her record after completing the program and can avoid further adverse consequences, whereas a noncitizen could end up being deported despite completing and eliminating any guilty plea from his or her record.

Almost any “conviction” for a controlled substance offense triggers severe immigration consequences for noncitizens, such as making an individual inadmissible to or deportable from the United States.²³ Any conviction for a DUI offense triggers ICE’s enforcement priorities.²⁴ Therefore, jurisdictions with large noncitizen populations that offer diversion programs as a way to avoid a criminal record and to help achieve rehabilitation should be mindful of

structuring those programs so that noncitizens do not face negative immigration consequences as a result of their participation. Such consequences are inconsistent with the goals of diversion programs, which are typically to offer a second chance and to focus on community-based rehabilitation rather than separation and incarceration. The present survey of a representative sample of jurisdictions in Maryland, where roughly one in seven individuals who live in the state are foreign-born, reveals that most noncitizens who end up in diversion programs in Maryland will still be at risk of severe immigration consequences, even if they avoid a conviction for state purposes.²⁵

Noncitizen Migration to Maryland During the Last Twenty Years

Over the last 20 years, the number of foreign-born residents in Maryland has vastly increased.²⁶ A 2015 report stated that roughly one in seven Marylanders is an immigrant, and about half of these immigrants are naturalized.²⁷ The foreign-born population grew from 6.6% in 1990 to 9.8% in 2000 to 14.2% in 2013.²⁸ In 2012, undocumented immigrants accounted for about 250,000 (or 4.3%) of the population in Maryland.²⁹ Specifically, Maryland has a sizeable immigrant population from Central America. According to the 2010 Maryland Census, Salvadorans were the largest Hispanic group in Maryland, accounting for nearly 124,000 people.³⁰

The table below captures demographics of the foreign-born (FB) population³¹ in Maryland, including undocumented individuals, in the year 2014:

Chart 2: Summary of Foreign-Born Population in Maryland (as of 2014)

FB Number of residents	890,439
FB Percent of total population	14.9%
FB Population change: 2000-2013	71.8%
FB Population change: 1990-2000	65.3%
FB Born in Africa	143,109 (16.1%)
FB Born in Asia	295,074 (33.1%)
FB Born in Latin America	347,627 (39.0%)
FB Naturalized Citizens	434,791 (48.8%)
FB Noncitizens	455,648 (51.2%)

Prosecution Related to Drug and Alcohol Charges and Removal Proceedings

According to the most recent Crime in Maryland Uniform Crime Report, prepared by the Maryland Department of State Police, arrests for driving while intoxicated totaled 20,792 in the year 2013.³² Arrests for drug offenses totaled 48,938, including arrests for possession, sale, and/or manufacture of a variety of drugs, such as marijuana, opium or cocaine and derivatives, synthetic narcotics, and other non-narcotic drugs.³³ It is difficult to find reliable statistics for these types of offenses, as drug and alcohol charges are not included in the “crime index offenses” list³⁴ in Maryland. Nevertheless, what is known is that communities of color are convicted and jailed at much higher rates than their white counterparts and, specifically, in 2010, Hispanic people accounted for 43% of federal felony drug convictions nationwide even though they are less likely than the average American to use drugs.³⁵ Unfortunately, we do not have an exact breakdown by race, ethnicity, or country of origin for Maryland, but it is likely that noncitizens, and Hispanic people in particular, are convicted of drug offenses at comparably higher rates than their counterparts.

It is also difficult to get statistics on removal proceedings in Maryland, as the Department of Justice (DOJ) reports on national removal proceedings yearly, and does not separate statistics by state. In 2014, the DOJ reported that the Baltimore Immigration Court received 4,632 immigration cases (a 60% increase from 2013 which only had 2,903 cases).³⁶ Out of those cases, 3,471³⁷ were based on new Notices to Appear (NTA), the charging document that signals the beginning of removal proceedings against an individual. As of September 2014, there were 8,331 cases pending before the Court.³⁸ In FY 2015, the Baltimore Immigration Court issued 2,681 removal orders.³⁹ The Court is expected to issue 1,884 removal orders in Fiscal Year 2016, and as of May 2016, the Court had already issued 1,244 removal orders.⁴⁰

Individuals in Maryland find themselves in removal proceedings in a number of ways, but most commonly because of sharing of information between state and local law enforcement authorities and federal immigration authorities. From 2009–2014, Secure Communities was fully implemented in the state. Secure Communities was an immigration enforcement program through U.S. Immigration and Customs Enforcement (ICE) that used state and local law enforcement authorities to identify undocumented immigrants.⁴¹ Under Secure Communities, and its successor program the Priority Enforcement Program, once any individual is arrested, his or her fingerprints are checked against immigration records. ICE then places an immigration detainer, or hold, against that individual if he or she is a noncitizen, in many cases even when they are lawful permanent residents. There have also been a number of instances where detainees were wrongly lodged against U.S. citizens. A detainer is a request that a state or local law enforcement agency detain an individual after he or she became eligible for release so that ICE can assume custody.⁴² This additional time in detention has been found unconstitutional by a number of federal courts, leading a number of jurisdictions to cease this practice. However, most jurisdictions in Maryland still notify ICE about release dates, resulting in custody transfers from state or local detention facilities to immigration authorities. ICE detainees have oftentimes also had the practical effect of precluding individuals from receiving bail or participating in diversion or alternative sanction programs.⁴³ Thus, noncitizens picked up by local or state police for minor offenses often face serious immigration consequences upon contact with local law enforcement.

According to an article in the *Baltimore Sun* in 2014, 40% of immigrants deported in Maryland were deported as a result of the Secure Communities program, and many of these deportations began with a simple traffic stop, even though these immigrants had no prior criminal history.⁴⁴ In November 2014, Secure Communities was replaced with the Priority Enforcement Program (PEP), which was meant to be a reformed version of Secure Communities.⁴⁵ In both PEP and Secure Communities, law enforcement submits the individual's fingerprints to ICE; under PEP, however, ICE is supposed to replace most detainer requests with notification requests, and to exercise more circumspection in its issuance of such requests, first determining whether the individual in question is a priority for removal.⁴⁶ This should mean that individuals should not be removed for minor offenses such as traffic violations.⁴⁷ However, because the enforcement priorities also include individuals whose only offense is recent unlawful border crossing and because they take no account of the age of the crime—targeting persons with a single conviction from decades ago, for example—the result has not been to protect all individuals with minor offenses. Instead, ICE appears to have continued to issue detainer requests (rather than notification only requests) against any person who meets any of the enforcement priorities enumerated in DHS Secretary Jeh Johnson's memo, including recent border crossing or a single DUI from many years ago, and against some who do not. ICE has rarely exercised prosecutorial discretion even for individuals with extremely strong equities, leading to a regime that continues to target persons with minor or no criminal histories.⁴⁸

Thus, individuals in Maryland who are arrested and convicted for even minor offenses still run a significant risk of being targeted as enforcement priorities by immigration authorities. Participation in a successful diversion program, if the program is structured in a way that does not require a conviction or result in a guilty plea, could shield at least some of those individuals from the most negative immigration consequences and could avoid subjecting lawfully present individuals to the risk of deportation. Unfortunately, almost all diversion programs in Maryland require an admission of guilt and therefore result in a “conviction” for immigration purposes. Therefore, noncitizens in Maryland who participate in diversion programs for first minor offenses and who successfully complete those programs are still at risk of prolonged detention and removal from the United States.

Immigration Consequences of Criminal Dispositions in Maryland

Criminal convictions in Maryland may have severe immigration consequences for noncitizen residents.⁴⁹ Maryland criminal law, codified under “CR,” and Maryland transportation law, codified under “TR,” regulate and criminalize drug and alcohol possession and use.⁵⁰ Maryland criminalizes the possession, sale, and use of various drugs, described in the law as “controlled dangerous substance[s],” (“CDS”), as well as some drug paraphernalia.⁵¹ Although alcohol and tobacco are not considered controlled dangerous substances under either Maryland law⁵² or immigration law, as previously discussed, DUI convictions still trigger the enforcement priorities and can be a bar to deferred action programs such as DACA or DAPA.⁵³ The chart at Appendix A lists select Maryland criminal and traffic codes related to drug and alcohol offenses and the possible immigration consequences related to each offense.⁵⁴

II. DIVERSION PROGRAMS IN THE NATIONAL LANDSCAPE

Other states and jurisdictions throughout the United States have recognized the detrimental effects of a conviction for a minor drug or alcohol offense on noncitizens, and have structured their diversion programs in a way that will not impose a conviction on a noncitizen who successfully completes the program. For example, California recently signed into law Assembly Bill 1352,⁵⁵ which allows individuals who have successfully completed drug diversion through the Deferred Entry of Judgment (DEJ) program to withdraw the guilty pleas that were required before entry into the program.⁵⁶

While California's recent legislation is a good start⁵⁷ at fixing the problem for noncitizens who are removable after successfully completing the requirements of a diversion program, other jurisdictions structure their diversion programs so as not to impose a conviction at all, unless an individual does not fulfill the requirements of the diversion program. The diversion programs highlighted in this section set forth a few notable best practice approaches in other jurisdictions.

Federal Pretrial Diversion Program

Certain individuals arrested on federal charges who have not committed two or more felonies and who are not in public trust positions have the opportunity to participate in the Federal Pretrial Diversion Program.⁵⁸ This program usually diverts individuals at the “pre-charge stage,” but can go into effect at any time before trial.⁵⁹ An individual who meets the eligibility requirements for the Federal Pretrial Diversion Program signs a contract to “waive his or her right to speedy trial and presentment of his or her case within the statute of limitations.”⁶⁰ Upon satisfactory completion of the program requirements, “the U.S. Attorney will formally decline prosecution.”⁶¹ This means that individuals who successfully complete the Federal Pretrial Diversion Program will usually avoid a conviction altogether.

Connecticut

Connecticut has many diversion programs in which individuals can participate without a resulting conviction. Notably, the Accelerated Pretrial Rehabilitation⁶² program allows individuals charged with motor vehicle violations, misdemeanors, and even certain non-serious felony crimes to participate in the program without any admission of guilt. An individual is precluded from the program if he or she has ever participated in the same program previously, or if the underlying offense for which the individual was placed in the criminal justice system involves violence against another person.⁶³ While the individual participates in the program, the statute of limitations for the underlying offense is tolled, and the participant waives his or her right to a speedy trial.⁶⁴ Upon successful completion of the program, the court may dismiss the charges for the underlying offense.⁶⁵

Florida

Florida runs a Pretrial Intervention Program⁶⁶ which allows eligible individuals to participate in the program while their underlying criminal charges are continued.⁶⁷ Individuals charged with felony crimes of the second degree or higher are categorically precluded from participating in the program.⁶⁸ Upon successful completion of the program—which includes substance abuse education and treatment for a minimum ninety days and up to a total of 180 days—the underlying criminal charges are dismissed without prejudice.⁶⁹ The Board of Immigration Appeals decided that participation in this specific diversion program does not result in a conviction for immigration purposes.⁷⁰

New Jersey

The State of New Jersey offers a Pretrial Intervention (PTI) program⁷¹ that allows individuals to avoid convictions and to deter future crimes by offering rehabilitation to address the “social, cultural, and economic conditions [that] often result in a defendant's decision to commit crime.”⁷² If an individual successfully completes all of the conditions of PTI, the original charges are dismissed and there is no record of conviction.⁷³ This means that noncitizens in New Jersey who participate in and successfully complete PTI will not have a conviction, and participation in the program will allow noncitizens to return to their families and communities without becoming removable from the United States.

Vermont

In Vermont, the Adult Court Diversion Program⁷⁴ allows a defendant to enter into a diversion contract with the prosecutor in his or her case.⁷⁵ Participation in this program is voluntary, and participants “meet with a board of community volunteers and complete a contract designed to repair the harm done to the victim and the larger community, and address underlying factors in the individual’s life that contributed to the crime.”⁷⁶ After successful participation in the program, the court case is dismissed and there is no record of conviction.⁷⁷ Further, within thirty days of the two-year anniversary of successful completion of the program, the court provides notice to all parties and seals the record, so long as the participant has not been convicted of a subsequent felony or misdemeanor during the two-year period.⁷⁸

* * *

In each of these diversion programs, adjudication of guilt is deferred until after the individual completes or fails to complete the requirements of the program. This way, individuals who successfully complete the program can avoid obtaining a criminal record and obtain help in addressing controlled substance issues and reintegrating into their communities. Noncitizens who successfully complete these programs are usually also able to avoid negative immigration consequences, consistent with the rehabilitative and community reintegration goals of the programs. Given the size of the noncitizen population in Maryland and its significant contributions to the economic, social, and cultural life of the state,⁷⁹ jurisdictions in Maryland should consider restructuring their diversion programs to better serve their residents, reduce the burdens on courts, and address the underlying issues that lead to criminal behavior, in line with some of the national models outlined in this section.

III. FINDINGS IN MARYLAND

This section sets out the specific findings of our Maryland survey. Notably, of the eight jurisdictions we surveyed, a number did not have any kind of diversion program at all. The jurisdictions that do offer diversion programs vary widely with respect to participation requirements, qualifying offenses, and other conditions. Not all Maryland residents have an equal opportunity to take advantage of diversion programs, and with the notable exceptions of Howard County and Washington County, and the IPSA program in Montgomery County, noncitizens will still suffer adverse immigration consequences for participation in most diversion programs in Maryland, despite the rehabilitative, non-punitive goals of such programs.

Diversion programs in the jurisdictions we surveyed generally provide enrolled persons a program of supervision and treatment, including substance abuse treatment, education, and rehabilitative services. In some jurisdictions, such as Washington County and Howard County, defendants are not required to plead guilty prior to enrollment into a diversion program.⁸⁰ Their programs are in part designed to help individuals who have been charged for the first time with criminal offenses avoid a record of conviction.⁸¹ If a defendant enrolls, the case is removed from an active criminal status and made inactive. Upon successful completion of the program, the case is dismissed.⁸²

Conversely, in other jurisdictions, such as Frederick County, the Drug Treatment Court (DTC) diversion program is a post-plea pre-sentence program available to individuals with non-violent drug-related charges.⁸³ To participate in the diversion program, the defendant must plead guilty to the offense and only the sentencing is deferred. The deferred sentencing is then determined based upon graduation or termination from DTC due to failure to complete the requirements. Harford County has a similar diversion approach through the Harford County Adult Drug Court Program in the District Court but with one significant variation. A defendant must voluntarily enter the program by way of a guilty plea, but has the opportunity to avoid a final conviction for state purposes.⁸⁴ The initial guilty verdict is held *sub curia* while the defendant participates in the program.⁸⁵ A probation before judgment is granted at graduation when the defendant successfully completes the program. A defendant who maintains abstinence, completes all assignments in a timely manner, and attends all court dates, probation appointments and counseling sessions may then be eligible for a not guilty finding.⁸⁶ Some offenses such as drunk and drugged driving may be considered for participation in the program; however, such charges are not eligible for a finding of not guilty.⁸⁷ Regardless, because each of these programs require a guilty plea to start, they all fail to save participants from harsh immigration consequences such as lengthy detention, deportation, and disqualification from many forms of relief from removal.

Some jurisdictions take a firmer stance against substance abuse and offer no or limited diversion programs. Allegany County and Garrett County do not offer diversion programs. Charles County and Dorchester County do not have diversion programs, but the judge can refer individuals who have been charged for the first time with criminal offenses to the Health Department Drug Courts for judicial supervision. In Howard County, Saint Mary’s County, Talbot County, and Worcester County, the alcohol diversion programs accept defendants with minor alcohol offenses but preclude individuals charged with Driving While Intoxicated or Driving Under the Influence. In Worcester County, individuals who have been charged for the first time with criminal offenses for driving under the influence typically receive probation before judgment (“PBJ”), which follows a finding of guilt by the court.⁸⁸ If defendants complete their probation successfully, they do not have a criminal conviction under Maryland law, but they have a PBJ on their record because PBJs for DUIs cannot be expunged.⁸⁹ And because of their guilty plea, they also have a “conviction” for immigration purposes. In Washington County, qualifying cases can be diverted to an inactive docket, while the defendant enrolls in drug or alcohol treatment. Upon completion, it is changed to *nolle prosequi*.⁹⁰

Chart 4: Summary of Data on Diversion Programs, by County.⁹¹

	Baltimore City D. Court	Baltimore City Cir. Court	Frederick Cty.	Harford Cty.
Fee Required (Amount)	No fee	No fee	\$80	No fee
Guilty Plea Required?	Yes	Yes	Determined by State's Attorney's Office	Yes
Victim Consent Required?	Yes, if applicable	Unknown	Unknown	Unknown
Citizenship Required?	No	Yes	Not captured	No
Lawful Immigration Status Required?	Not captured	Yes	Not captured	No
Offenses/Qualifying Charges	Possession, theft, distribution, and attempted distribution.	Possession, distribution, manufacturing of CDS or equipment for CDS; Creation or distribution of, or intent to distribute a, counterfeit CDS or equipment for counterfeit CDS; Attempt/distribution/possession of a non-CDS by representing item as a CDS. Burglary, breaking and entering, malicious destruction of property.	Determined by State's Attorney's Office.	Drunk or drugged driving offenses; Drug possession offenses; Theft offenses associated with drug use.
Charges Categorically Excluded	Felony charges, assault with a deadly weapon within past 5 years, pending charges in other jurisdiction, previous rape, murder, or sexual assault charges; presence on sexual accused person list.	Various; see p. 31.		Prior contact with the criminal justice system, including any convictions or PBJs; violent offenses.
Number of Individuals who Qualified but did not Enroll	Not captured	228	Not captured	Not captured
Country of Origin of Individuals Enrolled	Not captured	Not captured	Not captured	Not captured
Number of Individuals with a Qualifying Charge but who did not Qualify for Program	Not captured	2,294	Not captured	Not captured
Number of Individuals who Qualified and Enrolled	Not captured	434	765	Not captured
Number of individuals who Completed	Not captured	416	605	Not captured

Of the jurisdictions surveyed for this report, Washington County has the most inclusive program because it does not require a guilty plea or finding of guilt, and has generous participation criteria.⁹³ The Howard County program also does not require a guilty plea, although the list of qualifying offenses is very limited.⁹⁴ These programs provide a model for other jurisdictions in Maryland to consider, as they fully achieve the rehabilitative and community integration goals of diversion programs by also helping to avoid negative immigration consequences.

Howard Cty.	Montgomery Cty.	Prince George's Cty.	Washington Cty.	Worcester Cty.
Fees waived if client attends required education & treatment	No fee	Adult: can't be determined before sentencing; Juvenile: no fee	\$15.45 Insurance Fee + any fees associated with individual case programs and conditions	No fee
No	Yes	Adult: yes; Juvenile: must be an "adjudicated offender"	No	Yes
No crimes with victims	Unknown	Unknown	Cases may require involvement/ input from the victim/witness unit at the District Court for appropriate follow-up	Unknown
No	No	No	No	Not captured
Not captured	No	Unknown	Not captured	Not captured
Possession of Marijuana, ⁹² Possession of Paraphernalia, possession of alcohol under the age of 21.	Crimes against property and almost all controlled substance offenses.	Non-violent accused persons.	Alcohol related crimes, business regulation crimes, controlled substance crimes, crimes against property, theft and related crimes, bad check/credit card offenses, crimes against public health, prescription fraud, education offenses.	All crimes except crimes of violence by MD code/statute; burglary offenses.
	Crimes against persons that are sexual or violent in nature. Possession with intent to distribute heroin.	Various; see p. 39.		
704 (January 1, 2013-October 31, 2015)	22 (January 1, 2015 - November 1, 2015)	Adult: 0; Juvenile: 8	Not captured	Not captured
Not captured	United States, Iran	Adult: 16% either from "Africa or South America"; Juvenile: all USCs	Not captured	Not captured
24	7 (January 1, 2015 - November 1, 2015)	Adult: 7; Juvenile: 64	Not captured	Not captured
1,115	75 (January 1, 2013 - November 1, 2015)	Adult: 84; Juvenile: 28	535 (7/19/12-9/22/15)	94
962	57 (January 1, 2013 - November 1, 2015)	Adult: 367 (but this # includes since program's inception in 2002); Juvenile: 19	Not captured	35

IV. RECOMMENDATIONS

- **Diversion programs should not require a guilty plea, admission of guilt, or a finding of guilt before participation.** Prosecution should be deferred while an individual participates in a diversion program. A guilty plea or conviction should only be entered if the individual fails to successfully complete the diversion program without good cause.
- **Diversion programs should be more widely available.** Every Maryland County should have diversion or alternative sanction programs, at least for any offense or charge that is related to an underlying substance abuse issue. This would ensure that all Marylanders have an opportunity to avoid obtaining a criminal record and to seek rehabilitation for certain offenses.
- **Citizenship or lawful status should not be required for participation in diversion programs.** Recognizing that substance abuse is a public health issue and more appropriately addressed through treatment than incarceration, all Maryland residents should have access to diversion programs, regardless of their immigration status.
- **Consider expanding the scope of diversion programs to cover more crimes.** Maryland jurisdictions should look to Washington County as an example of a diversion program that has minimal restrictions on participation. Minimally-restricted diversion programs can provide the greatest benefits to citizens and noncitizens alike by giving more people a chance to seek rehabilitation. An expansive diversion program takes into account that substance abuse is not the only problem that leads to criminal behavior. Criminal behavior can also be a byproduct of poverty, socio-economic status, or mental health issues, so diversion programs that have less rigid standards for participation can better address all of the needs of the community that may cause individuals to commit crimes.
- **Diversion programs should not have a fee. Alternatively, any fees associated with the program should have generous waiver policies.** Diversion programs seek to rehabilitate and reintegrate individuals with substance abuse issues back into society. Financial considerations should therefore not be a prohibitive factor to participating in such programs. Diversion programs should be free to participants in order to allow broader participation and to ensure that individuals with substance abuse issues are able to get the help they need regardless of their socio-economic status. If fees are needed to maintain the program, individuals should be granted a fee waiver if they meet the income eligibility criteria to qualify for a public defender.
- **More actors should be able to refer individuals to participate in a diversion program.** Judges, state’s attorneys, public defenders, prosecutors, defense attorneys, mental health professionals, and medical professionals should all be able to refer individuals for participation in diversion programs. Further, individuals with substance abuse issues should be able to make self-referrals to participate in diversion programs. While the office or individual overseeing the diversion program may review these referrals to ensure that the candidates meet the eligibility requirements for participation, the referrals should come from a variety of actors to encourage broader participation.

V. CONCLUSION

Maryland is a state with a large noncitizen population, which means that the availability of diversion programs to noncitizens in Maryland is extremely important to further the goals of these programs.⁹⁵ Such diversion programs should be structured in a way that ensures the broadest participation and avoids not only criminal consequences but also immigration consequences for those who successfully complete the programs.

Our research has shown that most surveyed jurisdictions either do not require United States citizenship or do not track the citizenship status of participants in diversion programs. A diversion program that does not discriminate on the basis of an individual’s immigration status should be encouraged in all counties across Maryland, to ensure that noncitizens are not excluded from such programs. As currently structured, most diversion programs do not help noncitizens avoid a “conviction” for immigration purposes and therefore can result in drastic immigration consequences, including deportation and prolonged detention. Instead, diversion programs should model themselves after the structure adopted by Washington County and Howard County, by not requiring a guilty plea and allowing participants to have prosecution deferred until successful completion of the program.

This is critical to ensuring that the rehabilitation and community integration goals of diversion programs are not undermined by unintended immigration consequences. It is also critical to ensuring fairness between citizens and noncitizens in the criminal justice system. All jurisdictions in the state should ensure that residents have a diversion program available to citizens and noncitizens alike. Maryland should strive for uniformity in eligibility criteria across its jurisdictions so that residents statewide have equal access to diversion programs and equal opportunity to avoid detrimental criminal convictions and negative immigration consequences. Most importantly, Maryland should structure its diversion programs so that an adjudication of guilt does not occur until after an individual fails to satisfactorily complete the requirements of the diversion program without good cause. This would help ensure that diversion programs are truly meeting the goals for which they are originally set up – to provide rehabilitation and community-based solutions and to reduce incarceration and its associated economic and social costs.

APPENDIX A: SELECT MARYLAND CRIMINAL AND TRAFFIC OFFENSES RELATING TO DRUGS AND ALCOHOL

Offense	Maryland Code Provision
CRIMINAL CODE	
Cause a life threatening injury by motor vehicle or vessel while under the influence of alcohol	CR § 3-211(c)
Cause a life threatening injury by motor vehicle or vessel while impaired by alcohol	CR § 3-211(d)
Cause a life-threatening injury by motor vehicle or vessel while impaired by drugs	CR § 3-211(e)
Cause a life-threatening injury by motor vehicle or vessel while impaired by a controlled dangerous substance	CR § 3-211(f)
Possess or administer a controlled dangerous substance; obtain or attempt to obtain a controlled dangerous substance through fraud and other means	CR § 5-601(a)
Manufacture, distribute, possess with intent to distribute, or dispense controlled dangerous substance; manufacture, distribute, or possess a machine, equipment, or other device to produce a controlled dangerous substance; create, distribute, or possess with intent to distribute a counterfeit substance; keep a "common nuisance"; false prescription with intent to distribute a controlled dangerous substance	CR §§ 5-602, 5-603, 5-604, 5-605, 5-606, 5-607, 5-608, 5-609, 5-609.1
Manufacture, distribute, dispense, or possess certain controlled dangerous substances, in large amounts as specified	CR § 5-612
Drug kingpin who conspires to manufacture, distribute, dispense, transport in, or bring into the State a controlled dangerous substance in an amount listed in § 5-612	CR § 5-613
Import certain controlled dangerous substance(s) into State	CR § 5-614
Distribute, attempt to distribute, or possess with intent to distribute a noncontrolled substance (faked controlled substance)	CR § 5-617
Possess or purchase a non-controlled dangerous substance reasonably believed to be a controlled dangerous substance	CR, §5-618
Drug paraphernalia - use or possess with intent to use, but not involving marijuana	CR § 5-619(c)
Drug paraphernalia - deliver or sell, or manufacture or possess with intent to deliver or sell	CR § 5-619(d)
Advertise to promote the sale or delivery of drug paraphernalia	CR § 5-619(e)
Obtain or attempt to obtain controlled paraphernalia by fraud and other means; possess or distribute controlled paraphernalia	CR § 5-620
Offenses involving proceeds derived from a drug crime	CR § 5-623
Administer a controlled dangerous substance or other drug to another without that person's knowledge, and commit either (1) a crime of violence as defined in § 14-101 or (2) a sexual offense in the third degree under § 3-307	CR § 5-624
Manufacture, distribute, or dispense a controlled dangerous substance near schools or on school vehicles	CR § 5-627
Use of a minor for manufacture, delivery, or distribution of a controlled dangerous substance	CR § 5-628

Maximum Term of Imprisonment	Maximum Fine (USD)	Immigration Consequences?
3 years	\$5,000	Possibly
2 years	\$3,000	Possibly
2 years	\$3,000	Probably
3 years	\$5,000	Probably
4 years; 1 year for marijuana	\$25,000; \$1,000 for marijuana	Probably
5 years if not otherwise specified; 20 years with respect to a Schedule I or Schedule II narcotic drug, or with respect to selected Schedule I or Schedule II hallucinogenic substances. Penalties vary for repeat offenders. Departures from mandatory minimums possible.	\$15,000 if not otherwise specified; \$20,000 with respect to selected Schedule I or Schedule II hallucinogenic substances; \$25,000 with respect to a Schedule I or Schedule II narcotic drug. Penalties vary for repeat offenders. Departures from mandatory minimums possible.	Probably
20 years; 5 year minimum	\$100,000	Yes
40 years; 20 year minimum	\$1,000,000	Yes
25 years for specified substances, including 45+ kg of marijuana; 10 years for 5-45 kg of marijuana	\$50,000 for specified substances, including 45+ kg of marijuana; \$10,000 for 5-45 kg of marijuana	Possibly
5 years	\$15,000	Probably
1 year	\$500	Possibly
2 years for subsequent violations only	\$500 for initial violation; \$2,000 for subsequent violations	Probably, if the controlled substance is identified in the record
2 years for subsequent violations only, but 8 years if paraphernalia is delivered to a minor by an adult who is at least 3 years older	500 for initial violation; 2,000 for subsequent violations; 15,000 if drug paraphernalia is delivered to a minor by an adult who is at least 3 years older	Probably, if the controlled substance is identified in the record
2 years	2,000	Probably, if the controlled substance is identified in the record
4 years; 1 year for marijuana	\$25,000; \$1,000 for marijuana	Probably
5 years for initial violation; 10 years for subsequent violations	For initial violations, \$250,000 or twice the value of the proceeds of the unlawful transaction, whichever is greater; for subsequent violations, \$500,000 or five times the value of the proceeds of the unlawful transaction, whichever is greater.	Yes
1 year	\$2,500	Yes
20 years for initial violation; 40 years for subsequent violations	\$20,000 for initial violations; \$40,000 for subsequent violations	Probably
20 years	\$20,000	Probably

Offense	Maryland Code Provision
TRANSPORTATION CODE	
Driving while under the influence of alcohol or while impaired by any controlled dangerous substance	TR §§ 21-902(a, d), 27-101(k)(1)
Driving while under the influence of alcohol or while impaired by any controlled dangerous substance, while transporting a minor	TR §§ 21-902(a, d), 27-101(q)(1)
Driving while impaired by alcohol or driving while impaired by drugs or drugs and alcohol	TR §§ 21-902(b, c), 27-101(c, f)
Driving while impaired by alcohol or driving while impaired by drugs or drugs and alcohol, while transporting a minor	TR §§ 21-902(b, c), 27-101(q)(2)

Maximum Term of Imprisonment	Maximum Fine (USD)	Immigration Consequences?
1 year for first offense; 2 years for second offense; 3 years for third or subsequent offense	\$1,000 for first offense; \$2,000 for second offense; \$3,000 for third or subsequent offense	Possibly
2 years for first offense; 3 years for second offense; 3 years for third or subsequent offense	\$2,000 for first offense; \$3,000 for second offense; \$4,000 for third or subsequent offense	Possibly
Two months; 1 year for second violation; 3 years for third or subsequent violation	\$500 for initial or second violation; \$3,000 for third or subsequent violation	Possibly
Six months for first offense; 1 year for second offense; 4 years for third or subsequent offense.	\$1,000 for first offense; \$2,000 for second offense; \$4,000 for third or subsequent offense	Possibly

APPENDIX B: COUNTY-BY-COUNTY FACT SHEETS

Baltimore City Findings

District Court of Maryland for Baltimore City

The District Court of Maryland for Baltimore City has drug treatment courts, which are “specialized court dockets that target criminal defendants and offenders who have alcohol and other drug dependency problems,” and whose goal is “to improve the quality of life by promoting positive integration of recovering individuals back into their families and their communities.”⁹⁶ The Office of Problem Solving Courts⁹⁷ administers the program for the District Court of Maryland for Baltimore City and eligibility for the program is determined by the State’s Attorney’s Office. Judges, Public Defenders, and State’s attorneys can refer individuals for the program. Individuals can also refer themselves for participation. Since January 2013, 185 individuals have entered the program and 97 individuals have completed the program. For the District Court of Baltimore City, citizenship or immigration status is neither required nor tracked by the office. There are no fees associated with this program. Of significance, a guilty plea is required to participate in this program.⁹⁸ Victim consent, if applicable, is required. The following is a breakdown of the information that we received about the program through an MPIA request:

BALTIMORE CITY DISTRICT COURT	
Fee Required (Amount)	No fee
Guilty Plea Required?	Yes, guilty plea required
Victim Consent Required?	Yes, if applicable
Citizenship Required?	No
Lawful Immigration Status Required?	Not captured
Offenses/Qualifying Charges	Possession, theft, distribution, and attempted distribution.
Charges Categorically Excluded	Pending felony charges, assault with a deadly weapon within the past 5 years, open charges in any other counties, previous rape, murder, or sexual assault charges, presence on the sexual offender list.
Number of Individuals who Qualified but did not Enroll	Not captured
Country of Origin of Individuals Enrolled	Not captured
Number of Individuals with a Qualifying Charge but who did not Qualify for Program	Not captured
Number of Individuals who Qualified and Enrolled	Not captured
Number of individuals who Completed	Not captured

Baltimore City Circuit Court

The Circuit Court for Baltimore City Adult Drug Treatment Court “provide[s] intensive supervision, substance abuse treatment and comprehensive judicial monitoring to offenders whose crimes are non-violent and related to substance abuse.” The drug court also provides “vocational, educational, and life skills training and other services to address issues that contribute to substance abuse and criminal behavior.” This court is administered by the Circuit Court for Baltimore City and eligibility is determined by the designated Assistant State’s Attorney for Drug Treatment Court. Significantly, this program does require United States citizenship or “lawful immigration” to participate in the program.⁹⁹ It is unclear from the MPIA response whether “lawful immigration” connotes United States citizenship, or any lawful immigration status, such as permanent residence. In one section of the response received, the response for eligibility is “lawful immigration,” but in response to the question of “country of origin or citizenship of participants in the program,” the response says “United States,” which indicates that the eligibility may actually be citizenship rather than some other lawful immigration status.¹⁰⁰ This discrepancy is significant because lawful immigration status would include anyone who enters the United States legally, presumably including nonimmigrant tourist visas, and would be a much larger group of eligible participants than just United States citizens. Referrals for the program can come from attorneys, judges, and other members of the Drug Treatment Court team.¹⁰¹ There are no fees associated with this program; however, a guilty plea is required. The following is a breakdown of the information that we received about the program through an MPIA request:

- Charges that categorically preclude an individual from the alternative sanction program (unless the conviction was 10 years before the date of the current offense and any sentence was completed at least 5 years before the date of the current offense). Any conviction not automatically ineligible but that includes a crime of violence is reviewed on a case-specific basis.
 - Murder or manslaughter
 - Rape
 - Abduction or kidnapping
 - First-degree assault or other serious violent crimes
 - Sex offense in the first, second, or third degree
 - Child abuse (physical or sexual)
 - Armed robbery or other cases involving handguns
 - Arson
- Additional eligibility criteria include: having no open cases that are not resolved by the plea to the Drug Treatment Court, having no open cases in any other jurisdiction other than Baltimore City, cannot be on probation unless the Circuit Court judge to whom the defendant is on probation agrees to transfer the supervision of that probation to the Drug Treatment Court. If on District Court probation, the judge agrees to hold any violation of probation in abeyance unless the defendant has been terminated from Drug Treatment Court because of a violation of probation.

BALTIMORE CITY CIRCUIT COURT	
Fee Required (Amount)	No fee
Guilty Plea Required?	Yes, guilty plea required
Victim Consent Required?	Not to our knowledge
Citizenship Required?	Yes, U.S. Citizenship or “Lawful Immigration Status”
Lawful Immigration Status Required?	Yes
Offenses/Qualifying Charges	Possession, distribution, manufacturing, of a controlled dangerous substance, including the manufacturing, distribution, or possession of production equipment for controlled dangerous substances or creation or distribution of, or intent to distribute a, counterfeit controlled dangerous substance, including the possession or production of equipment for a counterfeit controlled dangerous substance. Attempt/distribution/possession of a non-controlled substance by representing the item as a controlled dangerous substance. Burglary, breaking and entering, malicious destruction of property.

BALTIMORE CITY CIRCUIT COURT	
Total Number of Individuals who Qualified	585
Number of Individuals who Qualified but did not Enroll	228
Country of Origin of Individuals Enrolled	Not captured
Number of Individuals with a Qualifying Charge but who did not Qualify for Program	2,294; reasons for not entering program include, but are not limited to: on parole, owes restitution, co-defendants in the case were not severable, facts of the case indicate a dealer versus user, open case in another jurisdiction, assigned ASA is not referring due to additional police information, individual lives outside Baltimore City.
Number of Individuals who Qualified and Enrolled	434
Number of individuals who Completed	416

Frederick County Findings

The Frederick County Drug Treatment Court (DTC) is a post-plea, pre-sentence program available to individuals with non-violent drug-related charges who have pled guilty.¹⁰² The DTC serves as a non-adversarial judicial response and requires that the individual fully participate with the prescribed treatment. The program provides substance abuse treatment, education, vocational, and rehabilitative services. After the individual finishes and graduates from the program, sentencing will take place.¹⁰³ The individuals are given a suspended sentence including two years of probation or reduced probation.¹⁰⁴ Coming into the program, many individuals face twenty to forty years of sentencing, and with the DTC the judge is able to give an individual a suspended sentence.¹⁰⁵ To qualify for this program, individuals must be residents of Frederick County and citizenship status, for immigration purposes, is not asked for or never arises.¹⁰⁶

In addition to the DTC, there is also an “Alternative Sentencing Program,” (ASP) which is administered by the Frederick County Sheriff’s Office.¹⁰⁷ The Frederick County State’s Attorney’s Office determines who is eligible to participate in the program and also recommends individuals, along with the Frederick County Judiciary. The ASP does not ask immigration or citizenship questions and there is a fee of \$80.00 to participate in the program. The Frederick County State’s Attorney’s Office determines the qualifying charges or offenses, the disqualifying charges or offenses, and whether a guilty plea is required to participate.¹⁰⁸ The ASP does not capture the number of individuals who have qualified for the program since January 1, 2013, who had a qualifying charge but did not qualify for other reasons, reasons for not qualifying, who qualified and opted out, and these individuals’ country of citizenship or origin.

There is no similar information available online for the DTC. The following is a breakdown of the information that we received about the ASP program through an MPIA request:

FREDERICK COUNTY ASP	
Fee Required (Amount)	\$80
Guilty Plea Required?	Determined by State’s Attorney’s Office
Victim Consent Required?	Not captured
Citizenship Required?	Not captured
Lawful Immigration Status Required?	Not captured
Offenses/Qualifying Charges	Determined by State’s Attorney’s Office
Total Number of Individuals who Qualified	Not captured
Number of Individuals who Qualified but did not Enroll	Not captured
Country of Origin of Individuals Enrolled	Not captured
Number of Individuals with a Qualifying Charge but who did not Qualify for Program	Not captured
Number of Individuals who Qualified and Enrolled	765
Number of individuals who Completed	605

Harford County Findings

The Harford County Adult Drug Court program operates in the District Court for Harford County. Individuals living in Harford County who have no prior record or contact with the criminal justice system are eligible to participate in the program.¹⁰⁹ Individuals must participate in the program for a minimum of six months, and those who elect to participate in the program do so “by way of a guilty plea.”¹¹⁰ Probation before judgment is granted when an individual successfully completes the program, though a not guilty finding may be given at the discretion of the Drug Court.¹¹¹ If an individual is participating in the program because of a drunk or drugged driving offense, however, that individual is not eligible for a not guilty finding upon successful completion of the program.¹¹² This means that almost all individuals who successfully complete the Harford County Adult Drug Court program—except for those given a discretionary not guilty finding—will have a conviction for immigration purposes.¹¹³ All information about the Adult Drug Court in Harford County was obtained through the county’s website. The custodian of records in Harford County denied providing detailed information as requested under the MPIA without imposing a fee because he did not believe that disclosure of information would be in the public interest.¹¹⁴ The following is a breakdown of information available on the Harford County official website:

HARFORD COUNTY	
Fee Required (Amount)	No participation fee. Participant is responsible for fees associated with drug testing.
Guilty Plea Required?	Yes
Victim Consent Required?	Unknown
Citizenship Required?	No
Lawful Immigration Status Required?	No
Offenses/Qualifying Charges	Drunk or drugged driving offenses. Drug possession offenses. Theft offenses associated with drug use.
Categorial Exclusions	Prior contact with the criminal justice system, including any convictions or PBJs; violent offenses.
Total Number of Individuals who Qualified	Not captured
Number of Individuals who Qualified but did not Enroll	Not captured
Country of Origin of Individuals Enrolled	Not captured
Number of Individuals with a Qualifying Charge but who did not Qualify for Program	Not captured
Number of Individuals who Qualified and Enrolled	Not captured
Number of individuals who Completed	Not captured

Howard County Findings

The Howard County Alcohol Diversion Program of the State’s Attorney’s Office is open to individuals 18 years of age and older who have been charged for the first time with minor alcohol offenses.¹¹⁵ It is designed to give eligible individuals the opportunity to avoid a criminal conviction. However, Driving While Intoxicated and Driving Under the Influence cases are excluded from the program.¹¹⁶ In order to be eligible for the program the individual may not have any prior convictions, no pending cases, no Probation Before Judgment dispositions, and must be a first time participant in the program. U.S. citizenship is not a requirement to be eligible for the program.¹¹⁷ After an eligibility screening, the diversion program participant is offered the chance to accept alcohol education or treatment.¹¹⁸ No admission of guilt is required.¹¹⁹ If the participant accepts education or treatment, then the case is removed from an active criminal status and made inactive. Upon successful completion of the program, the case is dismissed, thereby allowing the participant to clear his or her police and court records.¹²⁰ If the participant does not successfully complete the program, the case is made active and scheduled for trial. The following is a breakdown of the information that we received pertaining to the Howard County Drug and Alcohol Diversion Program received from the State’s Attorney’s Office:

HOWARD COUNTY	
Fee Required (Amount)	Fees are waived if client attends required education and treatment. The fee for 12-hour drug/alcohol education class is \$170 plus the cost of urinalysis testing ranging from \$15-40
Guilty Plea Required?	No
Victim Consent Required?	No crimes with victims
Citizenship Required?	No
Lawful Immigration Status Required?	Not considered
Offenses/Qualifying Charges	Possession of Marijuana, Possession of Paraphernalia, possession of alcohol under the age of 21
Total Number of Individuals who Qualified	1,876 (January 1, 2013-October 31, 2015)
Number of Individuals who Qualified but did not Enroll	704 (January 1, 2013-October 31, 2015)
Country of Origin of Individuals Enrolled	Not captured
Number of Individuals with a Qualifying Charge but who did not Qualify for Program	24 (January 1, 2013-October 31, 2015)
Number of Individuals who Qualified and Enrolled	1,115 (January 1, 2013-October 31, 2015)
Number of individuals who Completed	962 (January 1, 2013-October 31, 2015)

At the Circuit Court level in Howard County, where individuals accused of felony drug offenses are prosecuted, the State’s Attorney’s Office targets individuals who have had multiple run-ins with the criminal justice system.¹²¹ However, at the District Court level, where misdemeanor drug cases are heard, the State’s Attorney’s Office advocates for drug abuse assessment and treatment for individuals whose charges may be related to an underlying problem with drugs or alcohol. The Howard County Adult DUI/Drug Court (HCADDC) is a distinct court system dedicated to changing the behavior of alcohol/drug dependent individuals. The HCADDC serves alcohol and drug involved individuals who are charged with a non-violent crime. HCADDC operations team consists of the Judge, Drug Court Coordinator, Clinical Case Manager—drug court, DUI Case Manager, Assistant State’s Attorney, and Assistant Public Defender.¹²² The HCADDC team makes all policy decisions for the drug court.

Eligibility for the program is determined by the court after consideration of a number of factors, including but not limited to: the seriousness and circumstances of the pending case, the individual’s prior record, dates of prior offenses, amenability to treatment, public safety, and after conducting an eligibility hearing at which the state and defendant may present any information or arguments regarding eligibility for drug/DUI court.¹²³ Eligibility for the HCADDC program is determined initially by the State’s Attorney’s Office and ultimately by the drug/DUI court judge, after consideration of the relevant factors. The HCADDC is a post-plea, post-conviction program. Until 2007, the HCADDC was a pre-sentence program, meaning that an individual would plead to a charge, but was not sentenced until the end of the program. However, beginning in 2007, individuals plead guilty in front of the drug court judge and are sentenced at the beginning of the program. If they do well, their sentence may be reduced.¹²⁴ A Modification of Sentence is signed by the attorney and kept on file by the judge. For example, at graduation, the judge may take the 3-year probation and change it to 6 months.¹²⁵

Montgomery County Findings

The Montgomery County Circuit Court oversees the Adult Drug Court program, which is a treatment program for adults with serious drug and/or alcohol dependency issues in Montgomery County.¹²⁶ The program lasts a minimum of 20 months and is designed to address the cause of the participant's addiction through "intensive treatment, monitoring, and direct attention from the court."¹²⁷ Participation in this program is completely voluntary, and individuals are admitted into the program after multiple parties' approval. First, the State's Attorney's Office approves the individual—usually as part of a plea agreement. Then, the Drug Court Coordinator screens the individual, and the Judge makes a final determination of approval.¹²⁸ Montgomery County does not require that a participant in the Adult Drug Court Program be a United States Citizen nor does it require the participant to hold lawful immigration status.¹²⁹ Individuals who have been charged with crimes falling under the category of "crimes against persons" that are sexual or violent in nature," as well as those who have been charged with "Possession with Intent to Distribute—Heroin" are ineligible to participate in the Adult Drug Court Program.¹³⁰ Seventy-five individuals in Montgomery County qualified for and entered the Adult Drug Court Program between January 1, 2013 and November 1, 2015, and fifty-seven of those individuals successfully completed the program.¹³¹ Of note, the Montgomery County Adult Drug Court program requires that an individual plead guilty in order to participate in the program, meaning that even after successful completion of the program, an individual will have a conviction for immigration purposes.¹³² The following is a breakdown of the information that we received about the program through an MPIA request:

MONTGOMERY COUNTY	
Fee Required (Amount)	No
Guilty Plea Required?	Yes
Victim Consent Required?	Unknown
Citizenship Required?	No
Lawful Immigration Status Required?	No
Offenses/Qualifying Charges	Charges listed under the category "crimes against property," and almost all listed drug offenses.
Crimes Categorically Excluded	Crimes against persons that are sexual or violent in nature are precluded. Possession with intent to distribute heroin is also precluded. Also, charges listed under Maryland Criminal Law section 14-101 (crimes of violence).
Total Number of Individuals who Qualified ¹³³	28 (January 1, 2015 - November 1, 2015)
Number of Individuals who Qualified but did not Enroll	22 (January 1, 2015 - November 1, 2015); reasons for not entering program include, but are not limited to: individual declined to participate, the case was resolved with minor incarceration, the individual was determined to be a drug dealer based on criminal history, the individual was affiliated with a gang
Country of Origin of Individuals Enrolled	United States, Iran
Number of Individuals with a Qualifying Charge but who did not Qualify for Program	7 (January 1, 2015 - November 1, 2015)
Number of Individuals who Qualified and Enrolled	75 (January 1, 2013 - November 1, 2015)
Number of individuals who Completed	57 (January 1, 2013 - November 1, 2015)

In addition to the Adult Drug Court Program, Montgomery County also has a diversion program for substance abusers which is jointly managed by the Montgomery County Department of Correction and Rehabilitation and the Montgomery County State's Attorney's Office.¹³⁴ This program, called the Intervention Program for Substance Abusers (IPSA), allows individuals meeting the eligibility criteria¹³⁵ to participate in drug education and treatment in lieu of criminal prosecution. While the individual is completing IPSA, his or her case is given a STET¹³⁶ disposition for one year. Following successful completion, the charges are not pursued and individuals may have the STET disposition expunged from their record.¹³⁷ This means that noncitizens who successfully complete IPSA will not have a conviction for immigration purposes.¹³⁸ The following is a breakdown of information on IPSA from the Montgomery County official website:

Fee:  YES	Victim Consent:  UNKNOWN	Guilty plea required:  NO	Citizenship required:  UNKNOWN	In general, the following charges qualify for IPSA:  MINOR DRUG OFFENSES AND RELATED ACTS
The following precludes an individual from participating in IPSA:  <ul style="list-style-type: none"> • PRIOR FELONY CONVICTIONS WITHIN THE LAST 10 YEARS • SERVING MORE THAN 30 DAYS IN JAIL WITHIN THE LAST 10 YEARS • PARTICIPATION IN THE IPSA PROGRAM FOR A CRIMINAL MISDEMEANOR DRUG CHARGE IN THE PAST 	Total number who qualified for the program between January 1, 2015 and November 1, 2015: UNKNOWN 	The number of individuals who had qualifying charges, but for some reason did not qualify for program between January 1, 2015 and November 1, 2015: UNKNOWN 	Number of individuals who successfully completed the program between January 1, 2013 and November 18, 2015: UNKNOWN 	
Number of individuals who qualified but opted out of the program between January 1, 2015 and November 1, 2015: UNKNOWN 	Number of individuals who qualified and enrolled in program between January 1, 2013 and November 1, 2015: UNKNOWN 			

Prince George's County Findings

There are five diversion programs available in Prince George's (PG) County.¹³⁹ Diversion programs apply to individuals¹⁴⁰ who have been charged for the first time with criminal offenses for misdemeanor cases. If they successfully complete the program, the charges may be dropped and the case might not be prosecuted. Of those five programs, at least one¹⁴¹ is somewhat relevant to drug diversion programs offered in the county:

Marijuana Diversion Program: First-time accused persons who have been charged with possession of less than 10 grams of marijuana can either do 24 hours of community service or attend a 6-hour class; individuals must remain drug-free and are subject to random urinalysis; individuals must have a minimal prior record without DUI convictions. Noncitizens cannot participate in this program.¹⁴²

The office of the State's Attorney determines whether a person is eligible for a diversion program.¹⁴³

Diversion Courts

In addition to the diversion program listed above, PG County also has several Problem Solving Courts, which are administered through the Problem Solving Courts Division of the PG County Circuit Court.¹⁴⁴ The four courts are the Adult Drug Court, Re-Entry Court, Juvenile Drug, and Veterans Court. However, for purposes of addressing the issue of drug diversion programs, only the Adult and Juvenile Drug Courts are relevant.

1) Adult Drug Court

Eligibility for the Adult Drug Court is determined by a three-step process: a report (via referral) sent from either a defense attorney, assistant state's attorney, or probation agent, to the State's Attorney's office, a mailing of the eligibility form (if the individual qualifies), and a residency verification to ensure the individual is a resident of the County. Defense attorneys make the most referrals to the Drug Court.¹⁴⁵ U.S. citizenship is *not* required to participate in the Adult Drug Court.¹⁴⁶ The Court allows only individuals with non-violent criminal offenses to participate and has a long list of ineligible crimes.¹⁴⁷ A guilty plea is required to participate and the fees cannot be determined before sentencing and depend on insurance coverage, since the program requires outpatient substance abuse treatment in order to graduate. Of the known individuals who participated in this program since January 1, 2013, approximately 84% were United States citizens and 16% "have a country of origin of either Africa or South America."¹⁴⁸ Of the individuals, known, that qualified in this program, whether enrolled or not, again, 84% were United States citizens and 16% were from either "Africa or South America."¹⁴⁹

2) Juvenile Drug Court

The Juvenile Drug Court Coordinator determines eligibility for the program, and the Maryland Department of Juvenile Services, attorneys, and judges recommend individuals to the program. U.S. citizenship is *not* required to participate in the Juvenile Drug Court.¹⁵⁰ The Court allows only individuals charged with a non-violent offense to participate and precludes from participation anyone with charges of "controlled dangerous substance distribution." This program accepts individuals with drug or alcohol-related offenses and non-violent offenses. Although there are no fees to participate in the program, the individual participating must be classified as an "adjudicated offender."¹⁵¹ Of the individuals, known, that participated in this program since January 1, 2013, all of them were United States citizens. Of the individuals, known, that qualified in this program, whether enrolled or not, again, all of them were United States citizens.

The following is a breakdown of the information that we received about the drug courts through an MPIA request.

PRINCE GEORGE'S COUNTY	
Fee Required (Amount)	Adult: can't be determined before sentencing; Juvenile: no fee
Guilty Plea Required?	Adult: yes; Juvenile: must be an "adjudicated offender"
Victim Consent Required?	Not captured
Citizenship Required?	No
Lawful Immigration Status Required?	Not captured
Offenses/Qualifying Charges	Individuals charged with a non-violent offense
Categorical exclusions:	Adult - prior convictions: current charge, any attempt, conspiracy to commit, or accessory before or after the fact); abduction, voluntary or involuntary manslaughter, arson in the first degree, carjacking, burglary in the first degree (intent to commit crime of violence), murder in the first or second degree, domestic violence (within the past 5 years), rape in the first or second degree, escape in the first degree, robbery, firearm offense, robbery with a deadly weapon, kidnapping, sexual offense in the first, second, or third, maiming, mayhem Juvenile - individuals charged with a non-violent offense and no Controlled Dangerous Substance Distribution Charges
Total Number of Individuals who Qualified	Adult: 91 (based on referrals received); Juvenile: 114 (but also includes individual offenses that are not just drug or alcohol-related)
Number of Individuals who Qualified but did not Enroll	Adult: 0; Juvenile: 8
Country of Origin of Individuals Enrolled	Adult: 16% either from Africa or South America; Juvenile: all USCs
Number of Individuals with a Qualifying Charge but who did not Qualify for Program	Adult: 7; Juvenile: 64
Number of Individuals who Qualified and Enrolled	Adult: 84; Juvenile: 28 (reflects only drug and alcohol-related offenses)
Number of individuals who Completed	Adult: 367 (but this number includes since program's inception in 2002); Juvenile: 19 (just drug and alcohol-related)



Washington County Findings

The Washington County Circuit Court provides diversion through the Office of the State’s Attorney and Office of Alternative Sanctions.¹⁵² Goals of the diversion program include the ability to enable individuals charged for the first time to avoid a criminal record, to draw their attention to the impact of a criminal record, and to provide judicial and prosecutorial efficiency.¹⁵³ The prosecutor pre-screens every case and forwards eligible cases to the Alternative Sanctions office if the defendant is charged with a qualifying nonviolent crime and does not have a record.¹⁵⁴ U.S. citizenship or lawful immigration status is not recorded for participation in the program.¹⁵⁵ Once an individual is determined eligible, the court can divert the case to an inactive docket, while the defendant enrolls in drug or alcohol treatment, anger management or other required programs within the Alternative Sanctions program. Eligible alcohol related offenses for individuals charged for the first time include: Disorderly Intoxication; Consume Alcohol; Open Container; and Minor in Possession.¹⁵⁶ Eligible controlled substance related offenses for individuals charged for the first time include: Possess CDC: Marijuana; Paraphernalia; and Inhale Harmful Substance. Some other controlled substance cases may be eligible with conditions based on the facts of the case but many offenses are ineligible including DUI/DWI for alcohol or drugs.¹⁵⁷ Washington County does not record the citizenship of those who are enrolled but participants must be a resident of the county. Upon successful completion of the program it is plea of Nolle Prosequi.¹⁵⁸ A decision or ruling of Nolle Prosequi does not meet the definition of conviction for immigration purposes.¹⁵⁹ The following is a breakdown of the information that we received about the program through an MPIA request:

WASHINGTON COUNTY	
Fee Required (Amount)	\$15.45 Insurance Fee + any fees associated with individual case programs and conditions
Guilty Plea Required?	No.
Victim Consent Required?	Cases may require involvement/input from the victim/witness unit at the District Court for appropriate follow-up
Citizenship Required?	No
Lawful Immigration Status Required?	Not captured
Offenses/Qualifying Charges	Alcohol related crimes, business regulation crimes, controlled substance crimes, crimes against property, theft and related crimes, bad check/credit card offenses, crimes against public health, prescription fraud, education offenses
Total Number of Individuals who Qualified	Not captured
Number of Individuals who Qualified but did not Enroll	Not captured
Country of Origin of Individuals Enrolled	Not captured
Number of Individuals with a Qualifying Charge but who did not Qualify for Program	Not captured
Number of Individuals who Qualified and Enrolled	535 (7/19/12-9/22/15)
Number of individuals who Completed	Not captured

Worcester County Findings

The Worcester County Circuit Court Drug Court Division operates three programs: Juvenile Drug Court, Adult Drug Treatment Court, and Family Recovery Court. “All programs are designed to help those battling substance abuse and address their related criminal offenses or child welfare matters.”¹⁶⁰

The Juvenile Drug Court is a “post-adjudication, post-disposition, court-managed, drug and alcohol treatment program for youth who are committing crimes due to problems with substance use/abuse.” The program lasts ten to fifteen months and involves actors from the Circuit Court, State’s Attorney’s Office, Office of the Public Defender, Worcester County Health Department, Worcester County Board of Education, Department of Juvenile Services, and local law enforcement.¹⁶¹ The mission of the Juvenile Drug Court is to “reduce crime and eliminate alcohol and drug use among youth . . . to improve juvenile and family functioning, and to increase community safety.”¹⁶²

The Family Recovery Court is a “treatment-based program that offers intensive rehabilitation services to participants” whose cases indicate substance abuse. The program is a twelve- to eighteen-month program and involves actors from the Circuit Court, Worcester County Department of Social Services, Worcester Youth and Family Counseling Services, Office of the Public Defender, Worcester County Health Department, Lower Shore CASA, and Division of Parole and Probation.¹⁶³ The mission of the Family Recovery Court “is to provide the opportunity for families to access, participate, and benefit from strength-based services through increased judicial oversight and support . . . to increase the likelihood that children in [the] community will remain or be reunified in a safe stable family environment.”¹⁶⁴

The Adult Drug Treatment Court’s goal is to “decrease substance abuse and related criminal behavior of non-violent habitual offenders.” The Adult Drug Treatment Court is administered by the Worcester County Circuit and District courts and eligibility is determined by the Worcester County Health Department in conjunction with the State’s Attorney’s Office for Worcester County. Additionally, anyone may recommend individuals to the program. The Drug Treatment Court is a “post-plea treatment-based program that offers intensive rehabilitation services to criminal defendants whose crimes are driven by their addiction.”¹⁶⁵ The program is twelve to eighteen months for adults who have committed nonviolent crimes and are residents of Worcester County. Actors involved in the program include the District Court, Circuit Court, State’s Attorney’s Office, Office of the Public Defender, Worcester County Health Department, Worcester County Jail, Division of Parole and Probation, and local law enforcement.¹⁶⁶

The information below applies only to the Adult Drug Treatment Court program. Since January 2013, 94 individuals have been enrolled in the program and 35 individuals have successfully completed the Adult Drug Court Treatment program. Citizenship or lawful immigration status is not captured by the program and presumably not required to participate. There are no fees to participate in this program; however, a guilty plea is required to participate in this program. The following is a breakdown of the information that we received about the program through an MPIA request:

WORCESTER COUNTY	
Fee Required (Amount)	No
Guilty Plea Required?	Yes
Victim Consent Required?	Not captured
Citizenship Required?	Not captured
Lawful Immigration Status Required?	Not captured
Offenses/Qualifying Charges	Eligible charges: all charges are eligible except those considered to be crimes of violence by MD code/statute, with the exception of burglary offenses—which are eligible.
Total Number of Individuals who Qualified	Not captured
Number of Individuals who Qualified but did not Enroll	Not captured
Country of Origin of Individuals Enrolled	Not captured
Number of Individuals with a Qualifying Charge but who did not Qualify for Program	Not captured
Number of Individuals who Qualified and Enrolled	94
Number of individuals who Completed	35

APPENDIX C: TEXT OF MARYLAND PUBLIC INFORMATION ACT REQUESTS SENT

Please consider this a formal request under the Maryland Public Information Act (MPIA), Md. Code Ann., Gen. Provisions Art. §§ 4-101 *et seq.* On behalf of the American Civil Liberties Union of Maryland and the American University Washington College of Law Immigrant Justice Clinic, we write to request that you provide all records in your custody and control relating to diversion programs and/or alternative sanctions for persons charged, on or after January 1, 2013, with any drug or alcohol-related offense(s), including but not limited to:

1. The name and a description of the diversion program or alternative sanction, including but not limited to:
 - a. Which office administers the program;
 - b. Who determines eligibility; and
 - c. Who recommends individuals to the program;
2. The eligibility requirements to participate in any such program, including but not limited to:
 - a. Whether United States citizenship or lawful immigration status is required to participate in the program;
 - b. The description and offense codes of any qualifying charges;
 - c. The description and offense codes of any charges that are categorically precluded from the program;
 - d. Whether a guilty plea is required to participate in the program;
 - e. Whether there are any associated fees to participate in the program;
3. Information regarding persons charged with any drug or alcohol-related offense(s) on or after January 1, 2013 who potentially qualified for each diversion program, including but not limited to:
 - a. The total number of individuals who qualified for the diversion program, regardless of actual enrollment in the program;
 - b. The number of individuals who had a qualifying charge but ultimately did not qualify for the program for other reasons;
 - c. The reason the individuals in b. did not qualify;
 - d. The number of individuals, if any, who qualified but opted against the diversion program;
 - e. The number of individuals who qualified for and enrolled in the program;
 - f. The number of individuals who successfully completed the program;
 - g. The country of origin and citizenship, if known, of those who participated in the program;
 - h. The country of origin and citizenship, if known, of each individual who qualified for a program regardless of enrollment or participation in the program;
 - i. For those individuals with qualifying charges who did not participate in the program, a breakdown of the specific sentence imposed by the court.

APPENDIX D: TEXT OF FREEDOM OF INFORMATION ACT REQUEST SENT TO ICE

The ACLU of Maryland and the Clinic . . . request the following:

1. Records regarding individuals in the state of Maryland who were placed in removal proceedings, on or after January 1, 2013, and charged with removability under Immigration and Nationality Act (“INA”) § 212(a)(2)(A)(i)(II), including:
 - a. The date upon which the individual was placed in removal proceedings;
 - b. The initial date of entry of the individual into the United States;
 - c. The location of entry of the individual into the United States;
 - d. The age of the individual in removal proceedings;
 - e. The country of origin of the individual in removal proceedings;
 - f. The county in Maryland where the individual in removal proceedings was arrested and/or convicted;
 - g. The crimes and/or violations of which the subject of removal proceedings has been accused and/or convicted; and
 - h. Whether the individual was previously in a diversion or alternative sentencing program.
2. Records regarding individuals in the state of Maryland who were placed in removal proceedings, on or after January 1, 2013, and charged with removability under INA § 212(a)(2)(C), including:
 - a. The date upon which the individual was placed in removal proceedings;
 - b. The initial date of entry of the individual into the United States;
 - c. The location of entry of the individual into the United States;
 - d. The age of the individual in removal proceedings;
 - e. The country of origin of the individual in removal proceedings;
 - f. The county in Maryland where the individual in removal proceedings was arrested and/or convicted;
 - g. The crimes and/or violations of which the subject of removal proceedings has been accused and/or convicted; and
 - h. Whether the individual was previously in a diversion or alternative sentencing program.
3. Records regarding individuals in the state of Maryland who were placed in removal proceedings, on or after January 1, 2013, and charged with removability under INA § 237(a)(2)(B)(i) or INA § 237(a)(2)(B)(ii), including:
 - a. The date upon which the individual was placed in removal proceedings;
 - b. The initial date of entry of the individual into the United States;
 - c. The location of entry of the individual into the United States;
 - d. The age of the individual in removal proceedings;
 - e. The country of origin of the individual in removal proceedings;
 - f. The county in Maryland where the individual in removal proceedings was arrested and/or convicted;
 - g. The crimes and/or violations of which the subject of removal proceedings has been accused and/or convicted; and
 - h. Whether the individual was previously in a diversion or alternative sentencing program.
4. Records regarding individuals in the state of Maryland who were placed in removal proceedings, on or after January 1, 2013, and charged with removability under INA § 237(a)(2)(A)(iii) after being convicted of a drug trafficking aggravated felony set forth in INA 101(a)(43)(B), including:
 - a. The date upon which the individual was placed in removal proceedings;
 - b. The initial date of entry of the individual into the United States;
 - c. The location of entry of the individual into the United States;
 - d. The age of the individual in removal proceedings;
 - e. The country of origin of the individual in removal proceedings;
 - f. The county in Maryland where the individual in removal proceedings was arrested and/or convicted;
 - g. The crimes and/or violations of which the subject of removal proceedings has been accused and/or convicted; and
 - h. Whether the individual was previously in a diversion or alternative sentencing program.

5. Records regarding individuals in the state of Maryland who were apprehended by Immigrations and Customs Enforcement (“ICE”) for any alcohol-related “significant misdemeanor” as defined in the November 2014 Department of Homeland Security “Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants” memorandum and placed in removal proceedings, on or after January 1, 2013, including:
- The date upon which the individual was placed in removal proceedings;
 - The initial date of entry of the individual into the United States;
 - The location of entry of the individual into the United States;
 - The age of the individual in removal proceedings;
 - The country of origin of the individual in removal proceedings;
 - The county in Maryland where the individual in removal proceedings was arrested and/or convicted;
 - The crimes and/or violations of which the subject of removal proceedings has been accused and/or convicted;
 - The ultimate ground(s) of removability with which the individual was charged; and
 - Whether the individual was previously in a diversion or alternative sentencing program.

¹ Sirine Shebaya is no longer with the ACLU of Maryland. She can now be reached at sirine.shebaya@aya.yale.edu.

² The term “diversion program” is sometimes reserved to describe only those programs that avoid entry of a plea, and sometimes used to include post-plea alternative sanctions programs such as the ones described in this report as well. For purposes of simplicity, throughout this report we are using the term “diversion” to refer broadly both to pre- and post-plea programs as well as programs that involve deferred dispositions.

³ For the complete text of the MPIA requests sent to each of the jurisdictions highlighted in this report, see Appendix C.

⁴ See generally U.S. CENSUS BUREAU, MARYLAND COUNTY SELECTION MAP, <http://www.census.gov/quickfacts/table/PST045215/00> (last visited Apr. 27, 2016) (showing a map of jurisdictions in Maryland with relevant statistics on population and demographics from most recent census). The jurisdictions with the largest noncitizen population (over 10%) include Baltimore (11.1%), Howard (18.2%), Montgomery (32.2%), and Prince George’s (20.2%). See *id.*

⁵ The only jurisdiction that actually saw a decrease was Baltimore City. See *Diversity Grows with Population in Maryland*, USA TODAY (2011), <http://usatoday30.usatoday.com/news/nation/census/profile/MD> (listing the jurisdictions in Maryland based off of the 2010 Census and showing an increase or decrease in population from the previous Census).

⁶ For the complete text of the FOIA request sent to U.S. Immigration and Customs Enforcement (ICE), see Appendix D.

⁷ See THE CENTER FOR HEALTH AND JUSTICE AT TASC, NO ENTRY: A NATIONAL SURVEY OF CRIMINAL JUSTICE DIVERSION PROGRAMS AND INITIATIVES 8 (2013), <http://www2.centerforhealthandjustice.org/content/pub/no-entry-national-survey-criminal-justice-diversion-programs-and-initiatives> [hereinafter NO ENTRY] (noting that the term “diversion” has typically been used broadly to describe any program that diverts a defendant from “incarceration in jail or prison”); see also *Diversion program*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining diversion as “a pretrial program that refers certain criminal defendants . . . to rehabilitative community programs, the charges being placed on hold until, and ultimately reduced or dismissed after, benchmarks such as counseling for mental health, drug abuse, or employment are met”).

⁸ NO ENTRY, *supra* note 7, at 8, 11.

⁹ See *infra* notes 80–90 and accompanying text for an overview of the types of diversion programs offered specifically in the state of Maryland; See also *infra* notes 58–73 and accompanying text for an overview of the Federal Pretrial Diversion Program, as well as diversion programs in Connecticut, Florida, New Jersey, and Vermont; See also THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS, VERA INSTITUTE OF JUSTICE 8 (July 20, 2012), <http://www.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf> (calculating that the cost of the prison system in forty of the fifty states in fiscal year 2010 was \$38,903,304).

¹⁰ ADULT DRUG COURTS: STUDIES SHOW COURTS REDUCE RECIDIVISM BUT DOJ COULD ENHANCE FUTURE PERFORMANCE MEASURE REVISION EFFORTS, U.S. GOVERNMENT ACCOUNTABILITY OFFICE 21–22 (2011), <http://www.gao.gov/assets/590/586793.pdf> (detailing a study in which participation in drug court diversion programs across varying jurisdictions throughout the United States significantly reduced recidivism).

¹¹ *Id.*

¹² Without uniformity, problems existing within diversion programs become more difficult to identify and track, making it harder for states like Maryland to resolve issues affecting the targeted communities. See NO ENTRY, *supra* note 7, at 6 (“The diversity of existing diversion programs reflects the complex economic and behavioral issues underlying criminality, as well as the particular system, community needs and nuances, and jurisdictional politics in the areas from which they emerge.”).

¹³ *Matter of Chairez-Castaneda*, 21 I&N Dec. 44, 48–49 (BIA 1995) (finding that unless an individual may contest his or her guilt, the deferred judgment is considered a conviction for immigration purposes).

¹⁴ MD. CODE CRIM. PROC. § 6-220(b).

¹⁵ 8 U.S.C. § 1101(a)(48)(A); see also *Immigration Consequences of Maryland Offenses*, UNIV. MD. SCH. LAW (Aug. 3, 2015), <http://www.law.umaryland.edu/faculty/msweeney/immigrationconsequenceschart.pdf>.

¹⁶ See MD. CODE CRIM. PROC. § 6-220(g)(3) (stating that discharge after a probationary period where none of the conditions of the PBJ were violated “shall be without judgment of conviction and is not a conviction for the purpose of any disqualification or disability imposed by law because of convictions of a crime”).

¹⁷ *Matter of Grullon*, 20 I&N Dec. 12, 12, 14–15 (BIA 1989) (finding that participating in a pretrial intervention program in Florida did not constitute a conviction for immigration purposes because the program did not require a finding of guilt by the court to enroll; because the defendant in this case did not enter a guilty plea, successfully completed the program, and all charges were subsequently dropped the court found that there was no conviction for immigration purposes).

¹⁸ Md. Rule 4-248 (2015) (noting that when a STET disposition is entered on a charge, any outstanding warrants or detainers “that could lead to the arrest or detention of the defendant because of the charge,” are to be recalled or revoked).

¹⁹ See HUMAN RIGHTS WATCH, A PRICE TOO HIGH: U.S. FAMILIES TORN APART BY DEPORTATIONS FOR MINOR DRUG OFFENSES 20 (June 2015), https://www.hrw.org/sites/default/files/reports/us0615_ForUpload_0.pdf (noting that “the harshest immigration consequences for drug crimes came into effect . . . when U.S. legislators began to include immigration regulation as a major component of the . . . ‘War on Drugs’”).

²⁰ See, e.g., Maya Rhodan, *A Misdemeanor Conviction Is Not a Big Deal, Right? Think Again*, TIME (Apr. 24, 2014), <http://time.com/76356/a-misdemeanor-conviction-is-not-a-big-deal-right-think-again/> (analyzing the detrimental effects—also known as collateral consequences—of even a minor criminal record for drug offenses, such as the inability to secure housing, preclusion from accessing loans, and denial of certain jobs, among other things).

²¹ 8 U.S.C. § 1101(a)(48) (2012); INA § 101(a)(48) (emphasis added).

²² See generally *Crespo v. Holder*, 631 F.3d 130 (4th Cir. 2011); see also *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988).

²³ See INA § 212(a)(2)(A)(i)(II) (making inadmissible any noncitizen who violates any law or regulation—whether state, federal, or foreign—relating to controlled substances); INA § 212(a)(2)(C) (making inadmissible any noncitizen who has trafficked controlled substances); INA § 237(a)(2)(B)(i) (making deportable any noncitizen who, “at any time after admission has been convicted of a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance”); INA § 237(a)(2)(B)(ii) (making deportable any noncitizen who, “at any time after admission has been, a drug abuser or addict”).

²⁴ Memorandum from Jeh Johnson, Sec’y of Homeland Sec., on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (Nov. 20, 2014), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf [hereinafter Johnson Memo] (setting forth that individuals convicted of driving under the influence are ICE’s “second-highest priority for apprehension and removal” from the United States).

²⁵ See generally NEW AMERICANS IN MARYLAND: THE POLITICAL AND ECONOMIC POWER OF IMMIGRANTS, LATINOS, AND ASIANS IN THE OLD LINE STATE, AMERICAN IMMIGRATION COUNCIL (May 2015), http://www.immigrationpolicy.org/sites/default/files/docs/new_americans_in_maryland_2015.pdf [hereinafter NEW AMERICANS IN MARYLAND] (detailing the growing immigrant population in the state of Maryland).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Largest Hispanic Groups in Maryland Younger and More Likely to Live in a Traditional Household*, CENSUS, MARYLAND STATE DATA CENTER, http://planning.maryland.gov/msdc/census/cen2010/sf2/Hispanic%20Characteristics_SF2.pdf (last visited Feb. 9, 2016).

³¹ *Maryland Demographics and Social*, MIGRATION POLICY INSTITUTE, <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MD> (last visited Feb. 9, 2016).

³² See CRIME IN MARYLAND: 2013 UNIFORM CRIME REPORT 1, 110 (2013), http://www.goccp.maryland.gov/msac/documents/2013_Crime_in_Maryland_UCR.pdf. These numbers reflect a slight change from the 2012 report, which recorded 49,535 drug-related arrests and 20,385 driving while intoxicated arrests. See CRIME IN MARYLAND: 2012 UNIFORM CRIME REPORT 1 (2013), <http://www.goccp.maryland.gov/msac/documents/2012-Crime-In-Maryland.pdf>.

³³ *Id.* at 111–112.

³⁴ The “crime index offenses” list is a list used by law enforcement in Maryland that determines which crimes are serious in nature and categorizes them as either violent crimes (such as robbery, rape, murder) or property crimes (such as theft, breaking and entering). See CRIME IN MARYLAND: 2013 UNIFORM CRIME REPORT, *supra* note 32, at 9.

³⁵ See *Tackling Overincarceration in Maryland*, ACLU OF MARYLAND, http://www.aclu-md.org/our_work/tackling_mass_incarceration_in_maryland (last visited Feb. 27, 2016). See generally, *The New Jim Crow*, BALTIMORE SUN (June 18, 2012), http://articles.baltimoresun.com/2012-06-18/news/bs-ed-civil-rights-commission-20120618_1_criminal-justice-system-prison-system-disparities (referring to the disproportionate prison populations in Maryland).

³⁶ When the Department of Homeland Security (DHS) charges a noncitizen with violating immigration law by issuing a document called a “Notice to Appear,” the Executive Office for Immigration Review (EOIR) then has jurisdiction over such case. DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, FY 2014 STATISTICS YEARBOOK, A1, A3, A4, W2 (Mar. 2015), <http://www.justice.gov/sites/default/files/eoir/pages/attachments/2015/03/16/fy14syb.pdf>. “Immigration court receipts are defined as the total number of charging documents; bond redeterminations; and motions to reopen, reconsider, or re-calendar that the immigration courts received during that reporting period. Immigration court completions include immigration judge decisions and other completions (such as administrative closings) on cases, bond redeterminations, and motions that immigration judges did not grant.” *Id.* at A1.

³⁷ The rest of the cases were either bonds or some type of motion. See *id.* at A4.

³⁸ *Id.* at W2.

³⁹ Syracuse Transactional Records Access Clearinghouse (TRAC), *U.S. Deportation Outcomes by Charge, Completed Cases in Immigration Courts*, TRACIMMIGRATION, http://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php (last visited July 11, 2016).

⁴⁰ See *id.*

⁴¹ *Secure Communities: Get the Facts*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT available at <https://www.ice.gov/secure-communities> (last visited Feb. 19, 2016).

⁴² INA § 287(g); see also PAROMITA SHAH, NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD, UNDERSTANDING IMMIGRATION DETAINERS: AN OVERVIEW FOR STATE DEFENSE COUNSEL 3–4 (Mar. 2011), https://nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/crim/2011_May_understand-detainers.pdf; ACLU OF MARYLAND, RESTORING TRUST: HOW IMMIGRATION DETAINERS IN MARYLAND UNDERMINE PUBLIC SAFETY THROUGH UNNECESSARY ENFORCEMENT 8 (Nov. 2013), <https://immigrantjustice.org/sites/immigrantjustice.org/files/ACLU%20Maryland--Detainer%20Report.pdf> [hereinafter ACLU DETAINER REPORT].

⁴³ Cf. ACLU DETAINER REPORT, *supra* note 42, at 8–9.

⁴⁴ John Fritze, *Immigration Program Aimed at Criminal Deports Many with no Record*, BALTIMORE SUN, (Feb. 8, 2014), http://articles.baltimoresun.com/2014-02-08/news/bs-md-secure-communities-20140208_1_secure-communities-immigration-program-maryland.

⁴⁵ *Secure Communities History*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/secure-communities> (last visited Feb. 9, 2016).

⁴⁶ *Priority Enforcement Program*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/pep> (last visited Feb. 19, 2016).

⁴⁷ Johnson Memo, *supra* note 24 (listing removal priorities, including threats to national security, border security, and public safety, individuals with three more misdemeanor offenses—not including traffic violations, individuals convicted of a serious misdemeanor as defined by the Department of Homeland Security, individuals entering or reentering unlawfully who were not present in the U.S. since January 1, 2014, individuals who immigration officers determine significantly abused their visa or the visa waiver program, and individuals with a final order of removal).

⁴⁸ *Further Decrease in ICE Detainer Use: Still Not Targeting Serious Criminals*, TRACIMMIGRATION (Aug. 28, 2015), <http://trac.syr.edu/immigration/reports/402/>.

⁴⁹ See *supra* notes 23–24 for the grounds of inadmissibility and deportability for controlled dangerous substances convictions, and for ICE’s enforcement priorities for noncitizens convicted of driving under the influence.

⁵⁰ See generally MD. CODE CRIM. LAW § 5-601 (possessing or administering controlled dangerous substance); MD. CODE TRANSP. § 21-902–903 (prohibiting driving while under the influence of drugs or alcohol).

⁵¹ MD. CODE CRIM. LAW. §5-101 Definitions.

⁵² MD. CODE CRIM. LAW. §5-101(g)(2) (excluding “distilled spirits, wine, malt beverages, or tobacco”).

⁵³ DACA, or Deferred Action for Childhood Arrivals, is a program available to certain young noncitizens who meet the requisite criteria to be able to work legally in the U.S. and go to school, while having the risk of deportation temporarily halted. In November 2014, President Obama announced an expansion of DACA, or DACA+, and also introduced another program, DAPA, or Deferred Action for Parents of Americans and Lawful Permanent Residents, which essentially attempted to increase the number of people who could take advantage of DACA’s benefits. Currently, the expansion of DACA and introduction of DAPA have been halted by the courts, after Texas and several other states sued the President for not having the authority to pass these executive actions, and successfully obtained an injunction. See generally Johnson Memo, *supra* note 24, see also Elena Shore, *Immigrants Encouraged to ‘Take Action’—Apply for DACA, Get Ready for DAPA*, HUFFINGTON POST (Mar. 9, 2016), http://www.huffingtonpost.com/elena-shore/immigrants-encouraged-to-_b_9419994.html.

⁵⁴ See Appendix A; see also Appendix A, *Sentencing Guidelines Offense Table* (Updated June 1, 2015), MD. STATE COMM’N ON CRIMINAL SENTENCING POLICY (June 2015), <http://www.msccsp.org/files/guidelines/offensetable.pdf>; *Immigration Consequences of Maryland Offenses*, UNIV. MD. SCH. LAW (Aug. 3, 2015), <http://www.law.umaryland.edu/faculty/msweeney/immigrationconsequenceschart.pdf>.

⁵⁵ AB-1352 *Deferred entry of judgment: withdrawal of plea*, CALIFORNIA LEGISLATIVE INFO https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1352.

⁵⁶ Cal. Penal Code § 1000 (West 2016). See also Grace Meng, *California: Partial Drug Reform Victory for Immigrants*, HUMAN RIGHTS WATCH (Oct. 9, 2015), <https://www.hrw.org/news/2015/10/09/california-partial-drug-reform-victory-immigrants>.

⁵⁷ See Meng, *supra* note 56 (noting that participants in the DEJ program still have to plead guilty to enter into the program, which leaves noncitizens vulnerable to removal before successful completion of the program). Plea withdrawal after successful participation in a diversion program may still result in a conviction for immigration purposes. See *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003) (holding that an individual whose conviction is vacated because of rehabilitation or immigration hardships, and not because of a legal defect in the underlying conviction, still has a conviction within the definition of INA Section 101(a)(48)(A)).

⁵⁸ Title 9-22.100—Eligibility Criteria, U.S. ATTORNEYS’ MANUAL, OFFICE OF THE UNITED STATES ATTORNEYS, <http://www.justice.gov/usam/usam-9-22000-pretrial-diversion-program#9-22.100>.

⁵⁹ 712(A) Pretrial Diversion, CRIMINAL RESOURCE MANUAL, U.S. ATTORNEYS’ MANUAL, OFFICE OF THE UNITED STATES ATTORNEYS, <http://www.justice.gov/usam/criminal-resource-manual-712-pretrial-diversion>.

⁶⁰ 712(B) Pretrial Diversion, CRIMINAL RESOURCE MANUAL, U.S. ATTORNEYS’ MANUAL, OFFICE OF THE UNITED STATES ATTORNEYS, <http://www.justice.gov/usam/criminal-resource-manual-712-pretrial-diversion>.

⁶¹ 712(G) Pretrial Diversion, CRIMINAL RESOURCE MANUAL, U.S. ATTORNEYS’ MANUAL, OFFICE OF THE UNITED STATES ATTORNEYS, <http://www.justice.gov/usam/criminal-resource-manual-712-pretrial-diversion>.

⁶² CONN. GEN. STAT. ANN. § 54-56e (West 2015).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ FLA. STAT. ANN. § 948.08 (West 2015).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Matter of Grullon*, 20 I&N Dec. 12, 15 (BIA 1989).

⁷¹ N.J. STAT. ANN. § 2C:43-12 (West 2015).

⁷² *Pretrial Intervention Program*, NEW JERSEY COURTS, <https://www.judiciary.state.nj.us/criminal/crpti.htm> (last visited Feb. 26, 2016).

⁷³ N.J. STAT. ANN. § 2C:43-12.

⁷⁴ 3 VT. STAT. ANN. tit. 3, § 164 (West 2016).

⁷⁵ *Id.*

⁷⁶ *Vermont Court Diversion*, VERMONT ASSOCIATION OF COURT DIVERSION PROGRAMS, <http://vtcourtdiversion.org/court-diversion/> (last visited Feb. 26, 2016).

⁷⁷ 3 VT. STAT. ANN. tit. 3, § 164

⁷⁸ *Id.*

⁷⁹ See NEW AMERICANS IN MARYLAND, *supra* note 25 (noting that \$2.8 billion in total net business income is generated by immigrant businesses in Maryland and that Maryland would lose \$15.3 billion in economic activity if all undocumented individuals were removed from the state).

⁸⁰ Letter from Joselyn Brown, Program Administrator, Diversion Program, Office of the State’s Attorney for Howard Cnty, to Sirine Shebaya, Esquire, Am. Civil Liberties Union of Md. & Matthew Sutton, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Dec. 9, 2015) (on file with authors) (Office of the State’s Attorney for Howard County).

⁸¹ *Alcohol Diversion Program, State’s Attorney*, HOWARD COUNTY GOVERNMENT, <https://www.howardcountymd.gov/Branches/States-Attorney/Alcohol-Diversion-Program> (last visited June 6, 2016).

⁸² Letter from Joselyn Brown, Program Administrator, Diversion Program, Office of the State’s Attorney for Howard Cnty, to Sirine Shebaya, Esquire, Am. Civil Liberties Union of Md. & Matthew Sutton, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Dec. 9, 2015) (on file with authors) (Office of the State’s Attorney for Howard County).

⁸³ *Drug Treatment Court*, FREDERICK COUNTY GOVERNMENT, <https://frederickcountymd.gov/5508/Drug-Treatment-Court> (last visited Feb. 10, 2016).

⁸⁴ *Adult Drug Court, Drug & Alcohol Programs, State’s Attorney*, HARFORD COUNTY GOVERNMENT, <http://www.harfordcountymd.gov/847/Adult-Drug-Court> (last visited Feb. 10, 2016).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ E-mail from John K. Phoebus, Attorney at Law, Anthenelli, Phoebus & Hickman, LLC, to Matthew Sutton (Sept. 30, 2015, 5:44 EST) (on file with authors).

⁸⁹ *Id.*

⁹⁰ E-mail from Dennis P. Leatherman, Supervisor, Criminal Department at Washington Cnty Circuit Court, to Matthew Sutton (Sept. 23, 2015, 4:20 EST) (on file with authors).

⁹¹ See Appendix A for county-by-county fact sheets.

⁹² MD CODE ANN. CRIM. LAW § 5-601.1b. In Maryland, possession of ten or fewer grams of marijuana for personal use is a civil offense punishable by a citation and a fine of up to \$100. MD. CODE ANN. CRIM. LAW § 5-601.1(b) (West 2016). This civil offense is not a conviction for any purpose and “does not impose any of the civil disabilities that may result from a criminal conviction.” *Id.*

⁹³ See *supra* Chart 4: Summary of Data on Diversion Programs, by County; see also Appendix B for county-by-county fact sheets.

⁹⁴ *Id.*

⁹⁵ See *supra* note 6 and accompanying text.

⁹⁶ Letter from Angelita Plemmer Williams, Dir., Office of Commc’ns and Pub. Affairs, Admin. Office of the Courts, Md. Judiciary, to Sirine Shebaya, Esquire, Am. Civil Liberties Union of Md. & Whitney-Ann Mulhauser, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Dec. 22, 2015) (on file with authors) (District Court of Maryland for Baltimore City).

⁹⁷ The Office of Problem Solving Courts (OPSC) is an administrative office that is “responsible for assisting Maryland’s problem-solving courts in development, maintenance, and advancement of a collaborative therapeutic system. . . . OPSC has overseen the creation of problem-solving programs in 21 of the 24 jurisdictions in Maryland. . . . OPSC superintends the financial support for problem-solving courts and is responsible for setting and enforcing programmatic guidelines, creating a statewide management information system, and targeting new and expanding populations for problem-solving courts.” *Welcome*, OFFICE OF THE PROBLEM SOLVING COURTS, MARYLAND JUDICIARY, <http://mdcourts.gov/opsc/> (last visited Feb. 19, 2016).

⁹⁸ Letter from Angelita Plemmer Williams, Dir., Office of Commc’ns and Pub. Affairs, Admin. Office of the Courts, Md. Judiciary, to Sirine Shebaya, Esquire, Am. Civil Liberties Union of Md. & Whitney-Ann Mulhauser, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Dec. 22, 2015) (on file with authors) (District Court of Maryland for Baltimore City).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Letter from Angelita Plemmer Williams, Dir., Office of Commc’ns and Pub. Affairs, Admin. Office of the Courts, Md. Judiciary, to Sirine Shebaya, Esquire, Am. Civil Liberties Union of Md. & Whitney-Ann Mulhauser, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Dec. 22, 2015) (on file with authors) (Baltimore City Circuit Court).

¹⁰² *Drug Treatment Court*, FREDERICK COUNTY GOVERNMENT, <https://frederickcountymd.gov/5508/Drug-Treatment-Court> (last visited Feb. 9, 2016).

¹⁰³ For more information, one can contact the DTC Coordinator, Paul Wolford, at 301-600-2978.

¹⁰⁴ Telephone call with Paul Wolford, DTC Coordinator (Mar. 1, 2016).

¹⁰⁵ *See id.*

¹⁰⁶ *See id.*

¹⁰⁷ Letter from Captain Timothy Selin, Frederick Cnty. Sheriff’s Office, to Alejandra Aramayo, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Nov. 6, 2015) (on file with authors) (Frederick County).

¹⁰⁸ *See id.*

¹⁰⁹ *Adult Drug Court, Drug & Alcohol Programs, State’s Attorney*, HARFORD COUNTY GOVERNMENT, <http://www.harfordcountymd.gov/847/Adult-Drug-Court> (last visited Feb. 22, 2016).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See *Yanez-Popp v. INS*, 998 F.2d 231, 234–37 (4th Cir. 1993) (holding that a probation before judgment under Maryland law “is a final conviction for immigration purposes”).

¹¹⁴ Letter from Joseph Ryan, Manager, Harford Cnty Office of Drug Control Policy, to Caitlin Whaley, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Jan. 15, 2016) (on file with authors) (Harford County).

¹¹⁵ *Alcohol Diversion Program, State’s Attorney*, HOWARD COUNTY GOVERNMENT, <https://www.howardcountymd.gov/Branches/States-Attorney/Alcohol-Diversion-Program> (last visited June 6, 2016).

¹¹⁶ *Id.*

¹¹⁷ Letter from Joselyn Brown, Program Administrator, Diversion Program, Office of the State’s Attorney for Howard Cnty, to Sirine Shebaya, Esquire, Am. Civil Liberties Union of Md. & Matthew Sutton, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Dec. 9, 2015) (on file with authors) (Office of the State’s Attorney for Howard County).

¹¹⁸ As of October 1, 2014, the State of Maryland revised the law as it relates to marijuana less than 10 grams. As a result of these offenses now being only punishable by fine and without possible jail time, Howard County no longer processes those cases for consideration for the Diversion Program. As a result of this amended law, the name of the Diversion Program was changed from the Howard County Drug and Alcohol Program to simply the Howard County Alcohol Diversion Program, as Howard County continues to process possession of alcohol under the age of 21 cases. *Id.*

¹¹⁹ *Id.*

¹²⁰ *Alcohol Diversion Program, State’s Attorney*, HOWARD COUNTY GOVERNMENT, <https://www.howardcountymd.gov/Branches/States-Attorney/Alcohol-Diversion-Program> (last visited June 6, 2016).

¹²¹ *Id.*

¹²² Gray Barton, *Howard County Adult Drug/DUI Court (District Court) Process Evaluation*, NPC RESEARCH, 1, 5 (Aug. 2008), http://npcresearch.com/wp-content/uploads/Howard_Adult_Drug_DUI_Process_08082.pdf.

¹²³ *Id.* at 6.

¹²⁴ *Id.*

¹²⁵ *Id.* at 9.

¹²⁶ Letter from Angelita Plemmer Williams, Dir., Office of Commc’ns and Pub. Affairs, Admin. Office of the Courts, Md. Judiciary, to Sirine Shebaya, Esquire, Am. Civil Liberties Union of Md. & Whitney-Ann Mulhauser, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Dec. 22, 2015) (on file with authors) (Montgomery County Circuit Court).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ The program coordinator did not track information about individuals who qualified for the program—regardless of whether those individuals participated in the program—for the years 2013 and 2014. See Letter from Angelita Plemmer Williams, Dir., Office of Commc’ns and Pub. Affairs, Admin. Office of the Courts, Md. Judiciary, to Sirine Shebaya, Esquire, Am. Civil Liberties Union of Md. & Whitney-Ann Mulhauser, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Dec. 22, 2015) (on file with authors) (Montgomery County Circuit Court).

¹³⁴ See generally INTERVENTION PROGRAM FOR SUBSTANCE ABUSERS (IPSA), MONTGOMERY COUNTY DEPARTMENT OF CORRECTION AND REHABILITATION, PRE-TRIAL SERVICES DIVISION, <http://www.montgomerycountymd.gov/COR/Resources/Files/ipsabrochure.pdf>.

¹³⁵ Eligible individuals are those who have been charged with a minor drug offense or related acts, those who have served no more than thirty days in jail in the past ten years, and those who do not have any prior felony convictions within the past ten years. See *id.*

¹³⁶ See MD. Rule 4-248 (authorizing the court to “indefinitely postpone trial of a charge,” and instructing the clerk of the court to take “action necessary to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of the defendant because of the charge”).

¹³⁷ See generally INTERVENTION PROGRAM FOR SUBSTANCE ABUSERS (IPSA), MONTGOMERY COUNTY DEPARTMENT OF CORRECTION AND REHABILITATION, PRE-TRIAL SERVICES DIVISION <http://www.montgomerycountymd.gov/COR/Resources/Files/ipsabrochure.pdf>.

¹³⁸ A STET disposition is not a conviction for immigration purposes because there has not been a finding or admission of guilt, nor has any punishment been imposed. See INA § 101(a)(48).

¹³⁹ *State’s Attorney Diversion Programs*, PRINCE GEORGE’S COUNTY, <http://www.princegeorgescountymd.gov/sites/StatesAttorney/Resources/criminal-justice/Pages/diversion-program.aspx> (last visited Feb. 9, 2016).

¹⁴⁰ These programs are eligible for people with limited to no criminal history. See *id.*

¹⁴¹ The other four programs are as follows: driving diversion program, theft diversion program, bad check program, and mediation program. See *id.*

¹⁴² Note that this program will likely change now that possession of ten or fewer grams of marijuana for personal use in Maryland is a civil offense punishable by a citation and a fine of up to \$100. MD. CODE ANN. CRIM. LAW § 5-601.1(b) (West 2016). This civil offense is not a conviction for any purpose and “does not impose any of the civil disabilities that may result from a criminal conviction.” *Id.*

¹⁴³ *State’s Attorney Diversion Programs*, PRINCE GEORGE’S COUNTY, <http://www.princegeorgescountymd.gov/sites/StatesAttorney/Resources/criminal-justice/Pages/diversion-program.aspx> (last visited Feb. 9, 2016).

¹⁴⁴ Letter from Angelita Plemmer Williams, Dir., Office of Commc’ns & Pub. Affairs, Admin. Office of the Courts, Md. Judiciary, to Sirine Shebaya, Esquire, Am. Civil Liberties Union of Md. & Whitney-Ann Mulhauser, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Jan. 5, 2016) (on file with authors) (Prince George’s County) [hereinafter Prince George’s County Letter].

¹⁴⁵ However, the State’s Attorney’s Office, judges, and probation officers can also make referrals.

¹⁴⁶ See Prince George’s County Letter, *supra* note 144.

¹⁴⁷ The ineligible crimes are as follows: abduction, voluntary or involuntary manslaughter, arson in the first degree, carjacking, burglary in the first degree (intent to commit crime of violence), murder in the first or second degree, domestic violence (within the past 5 years), rape in the first or second degree, escape in the first degree, robbery, firearm offense, robbery with a deadly weapon, kidnapping, sexual offense in the first, second, or third, maiming, and mayhem. *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See *id.*

¹⁵¹ *Id.*

¹⁵² E-mail from Dennis P. Leatherman, Supervisor, Criminal Dep’t at Washington Cnty Circuit Court, to Matthew Sutton (Sept. 23, 2015, 4:20 EST) (on file with authors).

¹⁵³ Letter from Charles P. Strong, Jr., State’s Attorney, Office of the State’s Attorney for Washington Cnty, Washington Cnty Office Bldg., to Sirine Shebaya, Esquire, Am. Civil Liberties Union of Md. & Matthew Sutton, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Dec. 2, 2015) (on file with authors) (Washington County).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* One may infer that this means U.S. citizenship or lawful immigration status is not required to participate in this program.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ U.S. Citizenship & Immigration Servs., Policy Manual, Volume 12 (Part F)(Chapter 2)(C)(4), *Deferrals of Adjudication*, (Nov. 10, 2015), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter2.html#S-C> (“A decision or ruling of nolle prosequi does not meet the definition of conviction.”).

¹⁶⁰ Letter from Angelita Plemmer Williams, Dir., Office of Commc’ns and Pub. Affairs, Admin. Office of the Courts, Md. Judiciary, to Sirine Shebaya, Esquire, Am. Civil Liberties Union of Md. & Whitney-Ann Mulhauser, Student Att’y, Am. U. Wash. Coll. of Law Immigrant Justice Clinic (Dec. 22, 2015) (on file with authors) (Worcester County District and Circuit Courts).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

Photo Credits

Front Cover:

Adobe Stock: Prisoner in handcuffs clenching fists

By WavebreakmediaMicro

Table of Contents:

Adobe Stock: Fingerprinting

By Marina Krasnovid

Page 4:

Operation Cross Check: ICE.XCheckII.arrest

U.S. Immigration and Customs Enforcement (Department of Homeland Security)

Page 29:

Shutterstock: View of Inner Harbor area in downtown Baltimore Maryland USA

By f11photo

Back Cover:

123RF: Judge and lawyer discussing the sentence for prisoner in the court room

By Wavebreak Media Ltd



AMERICAN UNIVERSITY
WASHINGTON COLLEGE OF LAW
4300 NEBRASKA AVENUE, NW
WASHINGTON, DC 20016

ACLU OF MARYLAND
3600 CLIPPER MILL RD
SUITE 350
BALTIMORE, MD 21211