

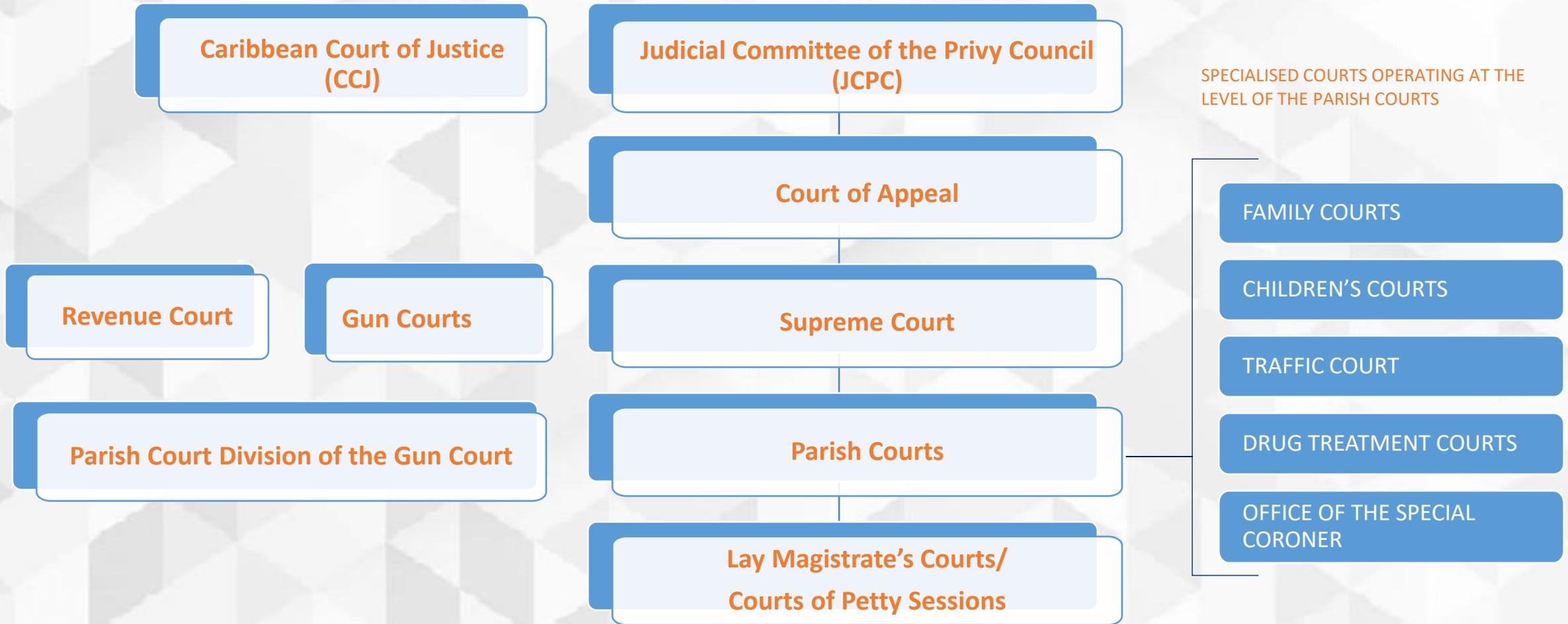
# JAMAICA JUDICIARY DISPUTE RESOLUTION PRACTICES



# GOVERNANCE AND LEGAL SYSTEM

- Jamaica is a constitutional parliamentary democracy.
- Governance system is based on the British Westminster Model, with the Judiciary as one of three co-equal arms of government. The Head of State of the United Kingdom is the Head of State of Jamaica.
- The Common Law legal system was inherited on independence from the United Kingdom on 6<sup>th</sup> August 1962.
  - ✓ Adversarial system where judges act as neutral arbiters between opposing parties to legal disputes.
  - ✓ Written Jamaica Constitution is the supreme law.
  - ✓ Reliance on legislation and judicial precedents in guiding legal rulings.

## JAMAICA'S HIERARCHICAL COURT STRUCTURE



## Sykes: More needs to be done to clear court backlog

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January 9, 2024



Chief Justice Bryan Sykes (right) speaks to (from left) newly appointed attorney-at-law Terrence Williams, and Justice Georgiana Fraser at Monday. (Photo: Naphtali Junior)

**C**hief Justice Bryan Sykes says, while 2023 work needs to be done” to clear the backlog each passing year”.

“On average, over the last five years we take in 13,400 cases so that tells you that there is a backlog that is being added to. We are attending a swearing-in ceremony for 12 members of the judiciary and masters-in-chambers at King’s House in St Andrew.

Justice Sykes, in quoting data showing that of the 13,400 cases (High Court Civil), only 1,899 are being disposed of coming forward each year and when you have that backlog and that is how come we are where we are today. The Civil Division of the Supreme Court there is a backlog.”

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## Chuck says Circuit Court can never clear backlog

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Published: Tuesday | September 19, 2017 | 12:00 AM



Chuck

**Edmond Campbell, Senior News Reporter**

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Urging the various stakeholders in the justice system to make use of the newly passed Plea Bargaining law, Justice Minister Delroy Chuck has said the Circuit Courts will never be able to dispose of the more than 2,000 cases waiting to be tried.

In the Home Circuit Court alone there are 861 serious offences to be tried.

In a statement to the House of Representatives this afternoon, Chuck noted that the courts cannot “try its way out of these cases in the short term” noting that even if they did, for each case disposed of, there are several new ones being filed.

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... the courts “cannot ‘try [their] way out of these cases in the short term’ ... even if they did, for each case disposed of, there are several new ones being filed.”

# PUTTING A “FACE” TO DISPUTE RESOLUTION

There is a recognition that disputes affect lives, livelihoods, relationships, and the attainment of national goals, including the goal of a safe and cohesive society.

Jamaica has accordingly adopted a sector wide approach to dispute resolution.

Whether engaged through the various courts or other justice sector parties, all dispute resolution practices in Jamaica have among these among their objectives.

Fair

Amicable

Cost-effective &

Early resolution of disputes without the need for trial.

# JUDICIARY ENGAGED DISPUTE RESOLUTION PRACTICES

**PROACTIVE JUDGE-LED CASE MANAGEMENT**

**MEDIATION BY APPROVED MEDIATORS**

**RESTORATIVE JUSTICE**

**CHILD DIVERSION**

# PROACTIVE JUDGE-LED CASE MANAGEMENT

- ✓ Preparing for hearings, including the development of case management plan which is revised as the need arises
- ✓ Early issue identification
- ✓ Identifying opportunities for resolution of issues without trial on every interaction with a case
- ✓ Encourage and facilitate resolutions other than by trial
- ✓ Discourage adjournments
- ✓ Use available technology to manage workflow
- ✓ Manage and Monitor the progress of cases through intermediate timelines
- ✓ Implement reasonable and effective trial setting policies for those matter which require trial for resolution



# PROACTIVE JUDGE-LED CASE MANAGEMENT: CIVIL

## SUPREME COURT

### **Civil Procedure Rules, 2002 (CPR)**

- Court required to further the overriding objective of dealing with cases justly, by actively managing cases.
- Applies to all civil proceedings in the Supreme Court, including Judicial Review and Constitutional Redress claims.
- Does not apply to insolvency, prize court, or other proceedings in a court instituted under statute where statutory rules regulate that court's proceedings.

### **Practice Direction No. 20 of 2021**

- Institutionalization of “Front Loaded Case Management” which is “a Judicial Officer driven process for ensuring the earlier, more effective preparation of cases to which the CPR apply. It is aimed capitalising on the opportunities which are available throughout the litigation process for the timely resolution of cases and ensuring that only those matters which are necessary to be tried are assigned trial dates.”

# PROACTIVE JUDGE-LED CASE MANAGEMENT: CRIMINAL

## CIRCUIT COURTS, GUN COURT - CIRCUIT COURT AND HIGH COURT DIVISIONS - PARISH COURTS - FAMILY COURTS - CHILDREN'S COURTS

### Judicature (Case Management in Criminal Cases) Rules, 2011

- Applies to the management of criminal proceedings in a Circuit Court.
- Court has a duty to actively manage cases.

### Practice Direction (No 6) (Criminal) of 2020

- Applies to the management of criminal proceedings in a Circuit Court, Circuit Court Division of the Gun Court, and the High Court Division of the Gun Court.
- Provides guidance to Parish Courts, Family Courts and Children's Courts in the conduct of criminal proceedings, where appropriate.
- Courts are required to deal with cases in a just, timely and efficient manner, including the early resolution of cases without a trial where appropriate.

# PROACTIVE JUDGE-LED CASE MANAGEMENT

**C**ritical to attainment of the Judiciary's strategic objective to **Improve Stakeholder Satisfaction** through the provision of efficient services, which sits at the apex of successive strategic business plans for the Jamaica Judiciary.

## ALL COURTS

- Outside of any statutory or rule-based authority, Proactive Judge-led Case Management is:
  - Required to be exercised by all Judicial Officers at all levels of the Judiciary.
  - Exercisable in all cases.
  - Exercisable on every judicial interaction with a case.

# AN EXPERIMENT IN PROACTIVE JUDGE-LED CASE MANAGEMENT

- 2021 -2022 Review of the High Court Civil Division of the Supreme Court of Judicature of Jamaica conducted.
- Final report on **Review of Core Business Processes, Systems and Structure of the High Court Civil Division** of the Supreme Court of Judicature of Jamaica issued on 26<sup>th</sup> May 2022.
- Significant recommendations were made, which had reducing delay and increasing accountability as common objectives.
- Among the recommendations was more robust case management on the adjudication side.
- The establishment of a docket system was expressly recommended as part of the approach to more robust case management.
- Docket Pilot Project commenced in February of 2024 with 1,519 negligence cases where end-to-end Pro-active Judge-led Case Management and optional formal mediation are engaged.
- Under the Pilot an **average of 60%** of the **cases were disposed of without trail as to liability and/or quantum** within **fourteen (14) months** of the pilot.
- The results of the Pilot are significant as disposition rates in the HCV Division are at a consistent low of under 30% without targeted backlog reduction initiatives which involve active management of cases by judicial officers: **Chief Justice's Annual Statistics Report on the Supreme Court.**

## MEDIATION BY APPROVED MEDIATORS

- Many judicial officers have mediation certification but mediation, deploying the practice in judge-led case management.
- Mediation by Approved Mediators is conducted at the Dispute Resolution Foundation (DRF), a civil society public organization created to facilitate and encourage the practice and application of Alternative Dispute Resolution methods.
- The Chief Justice of Jamaica is authorized to appoint approved mediators.
- Approved Mediators act as neutral third parties who facilitate and coordinate the negotiations of the parties to a dispute in both criminal and civil matters and aid them in arriving at a resolution of their dispute.
- Mediator's fees are prescribed by the Rules Committee of the Supreme Court and are payable before the scheduled mediation.
- Mediation programme currently undertaken by the Ministry of Justice and the Dispute Resolution Foundation in the Parish Courts. Under the initiative, parties are not required to pay for mediation where affordability is an issue.



# MEDIATION BY APPROVED MEDIATORS: CIVIL

## SUPREME COURT

### Civil Procedure Rules, 2002 (CPR)

- Generally applicable to all proceedings in the civil jurisdiction of the Supreme Court but does not apply to claims commenced by fixed date claim forms, administrative law proceedings, writs of Habeas Corpus, bail applications, non-contentious probate proceedings and admiralty proceedings.
- Was automatic at commencement of the CPR but referrals are now only made with the consent of the parties. This follows an amendment to the CPR in August 2023 following on from a recommendation in the final report on **Review of Core Business Processes, Systems and Structure of the High Court Civil Division**.
- Judicial officers may refer a matter to mediation at any stage of the proceedings but to be considered and discussed with the parties to the litigation at the first Case Management Conference.
- To be concluded within ninety (90) days of referral but time can be abridged or extended (thirty (30) days) by court.
- Confidential, and reports are privileged except that where agreement is reached, the court must make order in term of mediation report
- Where no agreement reached, matter proceeds in the usual way.

# MEDIATION BY APPROVED MEDIATORS: CIVIL

## PARISH COURTS AND COURTS IN WHICH JUDGES OF THE PARISH COURTS PRESIDE

### Parish Court Rules

- Referrals are discretionary where the presiding judge is of the opinion that mediation may be of assistance to the parties in the action.
- Parties referred to approved third-party mediator.
- Confidential and anything said or done in course of mediation cannot be adduced into evidence.
- Where settlement reached, the terms of settlement are endorsed on the record and binds the parties.
- Where no settlement reached the matter is determined by the court in the usual way.

# MEDIATION BY APPROVED MEDIATORS: CRIMINAL

## **Criminal Justice (Reform) Act**

- Applies to offences prescribed in the statute (usually minor offences, the most serious of which are unlawful wounding, assault, and assault occasioning actual bodily harm.
- Before commencing with the trial of the offence, the judge is required to consider, with the consent of all the parties and having regard to all the circumstances, whether matter can be dealt with by mediation.
- If matter is suitable to be dealt with by mediation, it is referred to an “approved mediator” pursuant to a “mediation order”, which suspends the trial of the offence.
- Where the matter is resolved by mediation the court is required to make an order dismissing the charge and incorporating any terms of the mediation agreement arrived at by the parties, which may include an agreement for non-molestation, restitution, compensation or other agreement approved by the court.
- Where the matter is not resolved by mediation, the court is required to proceed to try the offence.
- Information disclosed, and admissions made because of mediation proceedings (“protected information”) are confidential, inadmissible in proceedings before a court, tribunal or committee, and their disclosure or the production of documents which contain them is not compellable.

# MEDIATION BY APPROVED MEDIATORS

## (MoJ & DRF Initiative in the Parish Courts)

FY	Overall Number of Referrals
2021/2022	145
2022/2023	511
2023/2024	886
2024/2025	1183

Ministry of Justice and DRF  
Mediation Programme in the Parish  
Courts: **75% successful mediation  
resolution** since December 2021

Table 1 Number of referrals received from the Courts for the Mediation programme from 2022 – 2024.

## RESTORATIVE JUSTICE

- National initiative of the Ministry of Justice.
- The purpose of the Restorative Justice (RJ) programmes is to hold offenders accountable in a more meaningful way to the victim and to the community, where an offender accepts responsibility for an offence.
- Restorative Justice proceedings provide an opportunity for healing and the lasting reconciliation of relationships not just between the victim and an offender, but also between their families.
- Participation in restorative justice proceedings also enables the resolution of disputes before the court without the need for trial  
The proceedings



# RESTORATIVE JUSTICE

## Criminal Justice (Reform) Act

- Referral by the court to a RJ programme by way of a “Restorative Justice Order” (RJO). Can be made on own motion or on the recommendation of the Clerk of a Court or a constable.
- On every referral the courts consider possible benefits to be derived by the offender or alleged offender and the victim(s) from the process; accommodation in a RJ programme; best interests of a victim who is a minor/ person unable to give consent to participate programme; and any matter which would make referral to a RJ programme inappropriate.
- RJ proceedings conducted by approved facilitator - at Restorative Justice Centers - who submits a report to the court within the period specified in the RJO - outcome of the proceedings, restorative agreement reached, copy agreement, steps taken in performance of commitments made under the agreement, and commitments left to be performed.
- Subject to the disclosures above, information disclosed, and admissions made for the purposes of RJPs are confidential, inadmissible in proceedings before a court or tribunal. Disclosure or production of documents which contain them are not compellable.
- An alleged offender/alleged offender’s consent is required to participate in a RJ programme. Entry into or performance of any commitments made under a RJA agreement do not amount to and are not to be treated as a confession or admission of guilt for the purpose of criminal proceedings.
- RJOs can be made Pre-trial or Post-conviction.

# RESTORATIVE JUSTICE

## Pre-trial referral

- Applies to offences specified in the statute (minor offences).
- Certain offences are expressly exempted (serious offence).
- When engaged at the pre-trial stage, capable of disposing of criminal charges without need for trial.
- Victim(s) and person charged must consent to participating in a restorative justice programme.
- Court to have regard to all the circumstances in deciding appropriateness of RJ.
- Order defers commencement of the trial of the offence.
- If matter is resolved by RJ proceedings and commitments under the restorative justice agreement have been satisfactorily performed, the court must make an order dismissing the charge against the person charged.
- Where the matter is not resolved, and there is no reasonable prospect of resolution, the court is to proceed to trial.

# RESTORATIVE JUSTICE

## Post-conviction referral

- Applies where specified offence tried and resulted in a conviction.
- Referral to be made before sentence is passed.
- Victim(s) and person charged must consent to participating in a restorative justice programme.
- prescribed form.
- Operates as an adjournment of the trial of the offence.
- Where a RJA reached, the terms of the agreement and the extent to which commitments made in it have been satisfactorily performed are to be considered by the court in determining how to proceed in relation to sentence.
- Where no agreement is reached by the parties, sentencing of the offender is to proceed as if restorative justice proceedings had not occurred.

# RESTORATIVE JUSTICE

FY	Overall Number of Referrals	Number of Court Referrals	Court Contribution Percentage
2022	3265	2206	68%
2023	3126	2339	75%
2024	2574	1945	76%

**Table 2** Number of referrals received from the Courts for the National Restorative Justice programme from 2022 – 2024.

## NATIONALLY

### FY 2024/2025:

1952 Case Conferences completed  
 1523 Agreements signed  
 801 Agreements compliant after 3 months of monitoring

### Since 2016

>14,000 Case Conferences completed  
 > 11, 000 Agreements signed

Hon. D. Chuck, KC, MP, Minister of Justice, *Advancing Justice - Towards a Safer Jamaica*, Ministry of Justice Sectoral Presentation, 3<sup>rd</sup> June 2025 at p. 34.

# CHILD DIVERSION

- Goals of Child Diversion are:
  - ✓ the reduction of the number of children who are charged with offenses and exposed to the formal criminal justice system as a result; and
  - ✓ increasing the use of diversionary programmes for the rehabilitation of children as a response to crime or wrongdoing.
- Child diversion may be done by a constable before a child is charged.
- Child diversion may also be done post-charge, and when engaged by the courts, prescribed criminal offences may be determined against a child without a trial.
- On diversion, a risk assessment is conducted by a Parish Child Diversion Officer, and a treatment plan designed to divert or keep the child away from the criminal justice system is developed, approved and implemented.
- The Child Diversion Committee is required to report in writing to the court quarterly or otherwise on matters relating to the child.



# CHILD DIVERSION

## Child Diversion Act

- Applies to prescribed diversion offences (minor and serious offences are included).
- Court may also make a “*child diversion referral order*” in respect of any other offence in the interest of Justice.
- Diversion may be done by a constable before a child is charged; on recommendation of a prosecutor where child charged.
- To be diverted, the child must accept responsibility for the diversion offence without undue influence; there is a *prima facie* case against the child; the victim of the offence if identified and located, consents to the offender participating in a child diversion programme; and with the consent of the child.
- Where a child is charged and brought before the court for a diversion offence, the court is authorized to hear the case; issue a warning to the child and suspend the prosecution of the case; refer the child to the Child Diversion Committee established by the statute for the parish in which the child resides or in which the offence was committed for participation in a child diversion programme; or adjourn the case *sine die*.
- The court is also empowered to make orders for reparation, amends, and *restitution*.

# CHILD DIVERSION

- Criminal proceedings are not to be continued during the period of child's participation in the programme.
- Where a child fails to comply or complete a diversion programme the court may order modification of the child diversion programme.; and on failure to complete a modified programme, the court is permitted to continue the criminal proceedings in respect of the diversion offence.
- On completion of a child diversion programme or modified child diversion programme, the court is mandated to make an order dismissing the charge for the diversion offence.
- In the case of a child who has been convicted but not sentenced, the court is required to discontinue the trial of the diversion offence, and the trial is not to be resumed.
- In the case of a child who has been sentenced, the court is required to make a suspended sentence order, and the child is not to be detained in a lock-up, remand center, or correctional institution.
- A child can become ineligible to continue or to participate in a child diversion programme.
- Admissions, acceptance of responsibility or information given for the purposes of child diversion are to be treated as-confidential and are inadmissible in any proceedings before a court or tribunal. No person is compellable in any proceedings before a court or tribunal to disclose any such admissions, acceptance of responsibility or information, or to produce documents in those regards. A child's consent to participate in a child diversion programme does not amount to, nor is it to be treated as a confession or an admission of guilt for the purposes of any criminal proceedings for a diversion offence.

# CHILD DIVERSION

FY	Overall Number of Referrals	Number of Court Referrals	Court Contribution Percentage
2022	264	176	67%
2023	609	433	71%
2024	434	434	74%

**Table 3** Number of referrals received from the Courts for the National Child Diversion programme from 2022 – 2024.

## NATIONALLY

### FY 2024/2025:

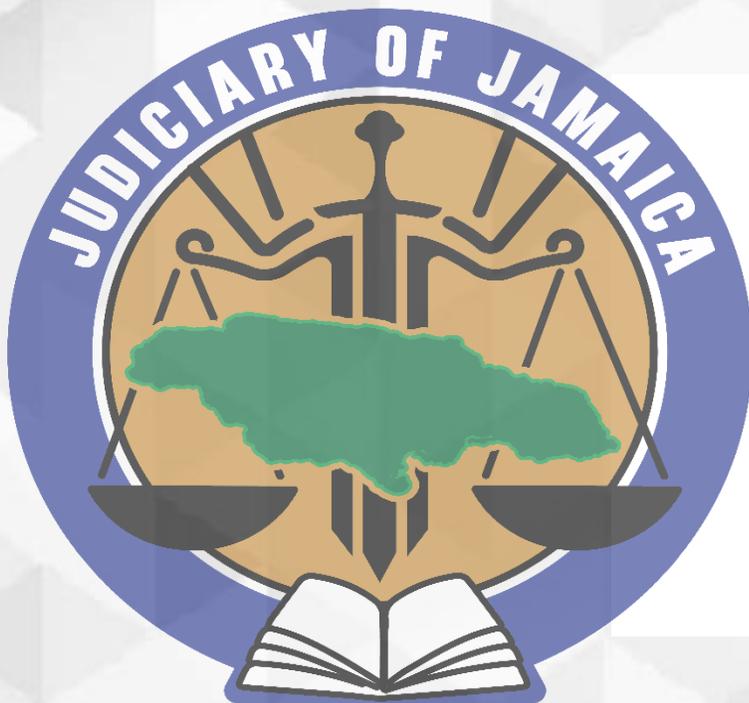
627 New children referred for whom intake assessments completed  
 1081 Children referred from formal justice system receiving treatment plans  
 338 Completed Diversion programme/intervention  
 640 Children served by Child Diversion providers  
 1564 Counselling sessions provided to children

### Since 2020:

Appx. 2300 Children referred from formal justice system  
 5000 Counselling sessions with children as beneficiaries

**ROUNTABLE DISCUSSION/Q & A**





*Thank  
you*

