



.....

PROMISING PRACTICES IN PRETRIAL DIVERSION

.....

NATIONAL ASSOCIATION OF PRETRIAL SERVICES AGENCIES



This publication was supported by Grant No. 2006-F0279-WI-DD, awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

Points of view and opinions in this document are those of the author and do not necessarily represent official positions or policies of the U.S. Department of Justice.





ACKNOWLEDGEMENTS

This important project in highlighting the most promising practices in the field of pretrial diversion is truly one of collaboration. The monograph is part of a comprehensive grant awarded to the National Association of Pretrial Services Agencies (NAPSA) and funded through the US Department of Justice's Bureau of Justice Assistance (BJA) with the goal of building a broader knowledge base of current programming in community based problem solving. The grant supported three major activities which have now been completed: a national survey of pretrial diversion programs, a revision of the NAPSA Pretrial Diversion Standards, and this monograph on the most promising practices utilized by the field. The NAPSA Board of Directors is deeply grateful for the funding to accomplish these projects as well as BJA's continued support for the field of pretrial diversion.

In writing this document, the authors incorporated the work of many sources including research findings, case law, and information gleaned from the allied grant projects. We would especially like to thank those pretrial diversion practitioners who took the time to give us thoughtful input and for their willingness to share detailed information about their programming. The authors wish to acknowledge those listed below who contributed significantly to the development of this document.

Authors and Reviewers: Spurgeon Kennedy, James Brown, Barbara Darbey, Anne Gatti, Tara Klute, Mary Pat Maher, Daniel Peterca.

Reviewed by: NAPSA Board of Directors, Peter Kiers, President.

Contributors: John Bellasai, Karen Galloway, Ann Hubbard, Carol Oeller, Julie Sayler.

Finally, we would like to acknowledge former NAPSA President Michelle R. Brown for her early support of this project and former NAPSA Diversion Committee Chair James Brown for developing the idea of a diversion monograph and working to help secure funding for the initiative.<?>





CONTENTS

INTRODUCTION 4

Background 4

Pretrial Diversion 5

Promising Practices 7

Report Organization 8

CHAPTER I: PRETRIAL DIVERSION: AN OVERVIEW 9

Program Types 10

Pretrial Diversion Programming 12

Enabling Legislation 13

Standards 14

Case Law 14

Effectiveness 16

CHAPTER II: PROMISING PRACTICES IN PRETRIAL DIVERSION 17

Promising Practices 13

Emerging Practices 30

CONCLUSION 33

Challenges and Recommendations 34

APPENDIX A: SELECTED PRETRIAL DIVERSION PROGRAMS 36

BIBLIOGRAPHY 39

Articles 39

Case Law 43





INTRODUCTION

The goal of this monograph is to inform criminal justice practitioners and state and local policy makers of:

- Promising and emerging practices in the pretrial diversion field;
- The state of pretrial diversion and major issues and findings within the field; and
- The challenges and opportunities facing diversion practitioners.

The monograph also represents collaboration between the National Association of Pretrial Services Agencies (NAPSA) and the U.S. Department of Justice, Office of Justice Programs' Bureau of Justice Assistance (BJA) to support jurisdictions implementing or considering problem-solving initiatives. Through this partnership, NAPSA intends to help advance BJA's mission to support law enforcement, courts, corrections, treatment, victim services, technology, and prevention initiatives that strengthen the nation's criminal justice system.¹

Background

Over the past few years, criminal justice practitioners have rethought their approaches to crime prevention, adjudication, and punishment. Growing corrections populations, larger court dockets, and the rising number of former prisoners returning to American communities have forced localities to be as smart about using criminal justice resources as they are tough on those who commit crimes. In the last decade, America's criminal justice systems have become laboratories for innovative programs and collaborative problem-solving approaches. A body of developing research suggests that these approaches can reduce crime, promote better victim services, and enhance public trust in the justice system.

Interestingly, many of these problem-solving approaches are based on the well-established concept of *pretrial diversion*—community-based alternatives for nonviolent defendants to better address the underlying social and psychological reasons for their criminal behavior. Specialty courts, community-based sanctions for quality-of-life crimes, and services and training for former prisoners all have at their core the idea of using methods outside of traditional case processing and sentencing to provide meaningful interventions and sanctions for criminal behavior and to help reduce future criminality.

Pretrial diversion programs have operated successfully at the federal, state, and local levels for decades providing close supervision and needed services to thousands of defendants each year. However, while its principles often are part of newer approaches, pretrial diversion programming is not well known to

¹ <http://www.ojp.usdoj.gov/BJA/about/index.html>.





many outside the pretrial field. Information on the topic is dated, with the last major analysis of the field occurring in 1982.² There have been evaluations of individual diversion programs,³ but most recent studies have focused on diversion components, specifically drug testing and treatment, not the utility of the concept as a whole. However, the willingness of criminal justice policy makers and practitioners to look beyond normal court and corrections processes for effective solutions to crime and recidivism suggests that now is an advantageous time to “re-introduce” pretrial diversion to the broader field. Doing so will give practitioners another effective strategy to address the root causes of crime and to further strengthen the foundation of future innovations.

Pretrial Diversion

Consistent with NAPSAs *Performance Standards and Goals for Pretrial Diversion/Intervention* (2008), this monograph defines pretrial diversion as any voluntary option that provides alternative criminal case processing for a defendant charged with a crime and ideally results in a dismissal of the charge(s).⁴ Pretrial diversion programs feature: (1) uniform eligibility criteria; (2) structured delivery of services and supervision; and (3) dismissal—or its equivalent—of pending criminal charges upon successful completion of the required term and conditions of diversion. This definition encompasses initiatives such as:

- Pretrial intervention (used in Florida, Georgia, New Jersey, and South Carolina);
- Deferred prosecution (Arizona, Colorado, Michigan, North Carolina, Oklahoma, Washington, and Wisconsin);
- Accelerated rehabilitative disposition (Pennsylvania);
- Accelerated pretrial rehabilitation (Connecticut);
- Suspending imposition of sentence (Alabama and South Dakota);
- Probation without verdict (Pennsylvania and Wyoming);

² Kirby, M. and Pryor, D.E. (1982). *Practices of Pretrial Diversion Programs: Review and Analysis*. Washington, DC: Pretrial Services Resource Center. NCJ 121909.

³ See for example, Schillo, B., Erickson, B., and Schauben, L. (2003). *Review of Operation DeNovo's Adult Diversion Program: Clients Who Entered the Program in 2001*. Minneapolis, MN: Council on Crime and Justice. Henry, D. A. and Kennedy, S. (1997). *Evaluating the Merrimack County Adult Diversion Program: Process and Outcome Evaluation*. Washington, D.C.: Pretrial Services Resource Center. Anglin, M. D., Longshore, D., and Turner, S. (1999). “Treatment Alternatives to Street Crime (TASC): An Evaluation of Five Programs.” In *Criminal Justice & Behavior*, Vol. 26, Issue 2:, at pp. 168-195. Mullen, J. (2007). “Pretrial Diversion – Its Impact on Recidivism,” Internet article in Online Law Library of American Law and Legal Information, Vol. 3, “Crime and Punishment in America”, at pp. 1726-27. <http://law.jrank.org/pages/1726/Pretrial-Diversion-Impact-on-recidivism.html>. Mullen, J. (2007). “Pretrial Diversion – Results of Drug Treatment, Employment and Social Services,” Internet article in Online Law Library of American Law and Legal Information, Vol. 3, “Crime and Punishment in America,” at pp. 1727-28. <http://law.jrank.org/pages/1727/Pretrial-Diversion-Results-drug-treatment-employment-social-services.html>.

⁴ National Association of Pretrial Services Agencies. (2008). *Performance Standards and Goals for Pretrial Diversion/Intervention*. Standard 1.1.





- Probation before judgment (Delaware and Massachusetts);
- Conditional discharge (Delaware and Illinois);
- Intervention in lieu of conviction (Ohio);
- Deferred disposition (Maine);

Some initiatives that are described as diversion do not meet this monograph's definition and are excluded from discussion. *Jail diversion* refers to two types of initiatives which are similar to pretrial diversion. The most commonly-known jail diversion programs connect arrestees and defendants with serious mental illnesses (and often co-occurring substance abuse issues) to community-based treatment and support services. Individuals may be “diverted” either at arrest or at various points during criminal justice processing.⁵ These programs’ *sequential intercept model*—identifying and moving mentally ill persons to alternative programming throughout the arrest, adjudication, and judgment—parallels the pretrial diversion promising practice of offering alternatives to adjudication throughout the pretrial stage. However, many jail diversion programs maintain regular case processing and cases move to traditional judgment and sentences based on the offense committed.

Jail diversion also often describes pretrial programs that target detainees who can be supervised safely in the community pending trial.⁶ These pretrial supervision programs seek to minimize the short-term risk of missing scheduled court appearances and rearrests during case processing. Since defendants under these programs remain under regular case adjudication, these are not considered true pretrial diversion.

Under *post-plea diversion*, courts hold guilty pleas or convictions in abeyance pending a defendant's completion of community-based supervision and/or treatment or service programs. Pleas and convictions are vacated following successful program completion. Post-plea diversion programs incorporate supervision, service, and treatment similar to that offered under pretrial diversion. However, these programs require a guilty plea for diversion eligibility, a practice that is inconsistent with NAPSA diversion standards.⁷

⁵ See, for example, Lattimore, P.K., Broner, N., Sherman, R., Frisman, L., and Shafer, M.S. (2003). “Comparison of Prebooking and Postbooking Diversion Programs for Mentally Ill Substance-Using Individuals with Justice Involvement,” *Journal of Contemporary Criminal Justice*. Volume:19 Issue:1, February): 2003 pp 30-64.

⁶ See, for example, Perlstein, J.J. and Henry, D.A.. (1986). *Implications of Effective Case Processing for Crowded Jails - A Manual for Prosecutors*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, NCJ 099464.

⁷ National Association of Pretrial Services Agencies. (2008). Standard 4.3. However, diversion standards differ on conditioning diversion on the defendant admitting guilt or responsibility for the offense. The National District Attorney Association's Diversion Standards favor conditional guilty pleas as an “appropriate mechanism to safeguard the prosecution of the case” if the defendant does not complete diversion. *National District Attorneys Association*. (1991). National Prosecution Standards. 44.5 (e). (Arlington, VA: National District Attorneys Association).





Promising Practices

Practitioners are just beginning to identify and catalogue promising practices in the pretrial diversion field. Independent research is now occurring in the field. For example, in a recent NAPSA survey of pretrial diversion programs, 27 percent of respondents had participated in a process or impact evaluation.⁸ The survey and the information gathered for this monograph constitute the most comprehensive information on pretrial diversion to date. The promising practices identified in this monograph have what NAPSA believes is sufficient empirical support from the sources noted above as well as other criminal justice and behavioral science fields.

Promising Practices Sources: The promising practices literature identifies three main sources for data: theory and policy, practical experience, and empirical data. The monograph's study design gathers relevant data on pretrial diversion in each of these categories from the following sources:

Theory and Policy

- Professional standards on pretrial diversion from NAPSA and the National District Attorneys Association (NDAA), and the American Bar Association's (ABA) Standards Relating to the Prosecution and Defense Function.
- Internet research on pretrial diversion programs and practices, relying on certain key words and phrases.
- A review of 88 diversion statutes from 45 states and the federal system that identified pretrial diversion features and practices commonly mandated by state legislatures and court rules.
- A review of approximately 600 appellate-level federal and state criminal cases that addressed significant issues in pretrial diversion. These were categorized into 28 issue areas that generated the most litigation and which, therefore, might demand promising practices to be developed in response.

Practical Experience

- Selected questions and responses from NAPSA's 2004–2008 survey of pretrial diversion practitioners. Promising practices were implicit in many of these questions, and a positive response by a majority of respondents could indicate practices either critical or promising to program success.
- Information from two hour-long focus groups of pretrial diversion program managers. Sessions focused on what these practitioners believed are the field's current best practices.
- Information from workshops on best practices convened at two Annual NAPSA Conferences, intended to elicit opinions from a wider range of pretrial practitioners.
- Examples from individual pretrial diversion programs regarded as well-functioning. (See Appendix A for a list of these programs).

⁸ National Association of Pretrial Services Agencies. (Forthcoming). *Pretrial Diversion in the 21st Century: A National Survey of Pretrial Diversion Programs and Practices*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance.





Empirical Data

- A bibliography of published titles relating to pretrial diversion.
- A literature review of other criminal justice efforts—such as problem-solving initiatives and the evidence-based practices literature from community corrections—and from the behavioral sciences to identify research on policies and practices similar to those in the pretrial diversion field.
- Program-specific monitoring statistics, gathered internally.

Report Organization

The monograph includes sections that discuss:

- The nature and extent of pretrial diversion programs today, as a first step to identifying the field's promising practices. This includes information on the national scope of these programs, the supervision and services they offer, enabling legislation for pretrial diversion programming, evaluations of pretrial diversion programs, and a comparison of pretrial diversion programming with problem-solving initiatives.
- A review of promising practices from the pretrial diversion field that may support community-based, problem-solving criminal justice initiatives. As noted earlier, these will come from current theory and policy, the experience of pretrial diversion practitioners, and empirical data about individual programs.
- A discussion on the state of pretrial diversion, including the major issues and findings within the field and the challenges and opportunities facing diversion practitioners.





CHAPTER I: PRETRIAL DIVERSION: AN OVERVIEW

Pretrial diversion programs have been a part of the American criminal justice system since the mid-1960s.⁹ The first program—the Citizen’s Probation Authority Program (CPA)—started in 1965 in Flint, Michigan.¹⁰ In 1967, the President’s Commission on Law Enforcement and the Administration of Justice’s report, *The Challenge of Crime in A Free Society*, recommended expansion of pretrial diversion nationwide.¹¹ In 1968, the U.S. Department of Labor’s Manpower Administration and the U.S. Department of Justice’s Law Enforcement Assistance Administration awarded funding to dozens of sites to establish pretrial diversion programs. In 1973, the National Advisory Commission on Criminal Justice Standards and Goals recommended that all jurisdictions establish pretrial diversion programs.¹²

Throughout the 1970s, numerous states passed legislation enabling pretrial diversion programs, further continuing these programs’ growth and legitimizing the concept in local justice communities. A 1974 directory listed 57 pretrial diversion programs in 22 states and the District of Columbia: by 1976, the number had grown to 148 programs in 42 states and territories.¹³ Today, NAPSA recognizes 298 pretrial diversion programs in 45 states, the District of Columbia, and the U.S. Virgin Islands.

Funding and enabling legislation for pretrial diversion programming traditionally has been permissive of the concept, but not prescriptive about its requirements or key elements. As a result, the pretrial diversion field is diverse in program design and practice and open to broad points of view on “what works” and why. Nonetheless, most pretrial diversion programs have adopted as goals (1) reducing crime by addressing the root causes of criminality—most notably, substance abuse, mental health issues, and criminogenic behavior, and (2) targeting defendants whose offenses are better addressed through community restitution than criminal sanction. There also is a developing consensus among practitioners on what successful pretrial diversion programs should include, albeit allowing for considerable local variation.

⁹ A comprehensive history of pretrial diversion programs is provided in: Bellassai, J.P. *A Short History of the Pretrial Diversion of Adult Defendants from Traditional Criminal Justice Processing*. www.napsa.org/publications/diversionhistory.pdf.

¹⁰ The Citizen’s Probation Authority exists today under the Genesee County Pretrial Services Agency.

¹¹ The President’s Commission on Law Enforcement and Administration of Justice. (1967). *The Challenge of Crime in A Free Society*. Washington, D.C.: U.S. Government Printing Office.

¹² National Advisory Commission on Criminal Justice Standards and Goals. (1973). *Report on Corrections*. Standard 3.1, pp. 73–97.. Washington, D.C.: U.S. Government Printing Office.

¹³ Bellassai, J.P. (1978). “Pretrial Diversion: The First Decade in Retrospect,” *Pretrial Services Annual Journal*. pp. 13–16. Washington, D.C.: Pretrial Services Resource Center.





Program Types

According to findings from NAPSA's 2008 survey, most pretrial diversion programs (78 percent) are county-based, with median annual budgets of about \$160,000 and median staff sizes of around six. However, the survey also found significant divergence here—for example, almost a quarter of respondent programs had yearly budgets of less than \$100,000 and 40 percent had staffs of two persons or less. Pretrial diversion programs tend to be part of larger agencies. Nearly 35 percent of survey respondents were located within a pretrial services agency, while over 27 percent were under a prosecutor's office.¹⁴ Non-profit agencies (13 percent) and probation departments and courts (both at 10.1 percent) were other common administrative locations.

Yearly defendant placements for survey respondents range from a high of 3,500 to a low of nine. Over 55 percent of the programs with 500 or more annual placements began in the 1970s and over 27 percent in the 1980s. Conversely, 40 percent of programs with annual placements of 100 or fewer began in the 1990s and 35 percent in 2000 or later.

Statewide Pretrial Diversion Systems: Several states have comprehensive pretrial diversion systems or funding options. Connecticut, Kentucky, and New Jersey administer pretrial diversion through divisions of the states' Administrative Office of the Courts (AOC). Connecticut maintains eight statewide pretrial diversion programs, the largest being Accelerated [Pretrial] Rehabilitation (AR) administered by the state's Community Support Services Division (CSSD). Connecticut Judicial Branch records show 8,017 AR cases filed statewide in Fiscal Year (FY) 2008.¹⁵ The Kentucky Administrative Office of the Courts manages misdemeanor pretrial diversion programs in 43 of the state's 120 counties, all run through its Department of Pretrial Services. Pretrial Services handled 6,609 diversion referrals in FY 2008 and actively monitored an average of 3,668 diversion clients statewide. Diversion clients completed 17,313 hours of community service volunteer work and paid \$38,576 in victim restitution.¹⁶ New Jersey's Pretrial Intervention Program (PTI) operates in each of the state's 21 counties, and is part of the State Administrative Office of the Courts' (AOC) Adult Probation Division. There were 7,257 statewide PTI enrollments from July 2007 to June 2008.¹⁷

¹⁴ Programs begun prior to 1990 most often are prosecutor-based, while those begun since 1990 generally are part of pretrial services agencies.

¹⁵ E-mail correspondence with Larry D'Orsi, Deputy Director, Criminal Matters Court Operations, Connecticut Judicial Branch, June 8, 2009.

¹⁶ Kentucky Department of Public Advocacy. (2009). *The Advocate*, Volume 31, No. 1.

¹⁷ New Jersey Administrative Office of the Courts, (2008). "Fallout Rates: The Number and Percentage of Criminal Defendants Terminated From Referral of the Complaint to the Prosecutor Through Adjudication," *AOC Monthly Report, July 2007– June 2008*. Trenton, NJ: New Jersey Administrative Office of the Courts.



Massachusetts and Pennsylvania administer statewide programming through state and county probation departments. Many of these probation divisions are under the judicial branch. In 2007, Pennsylvania's Accelerated Rehabilitative Disposition (ARD) programs handled 39,568 cases statewide.¹⁸ South Carolina's statewide pretrial diversion programs are located administratively under county prosecutors. Programs in South Carolina supplement public funding with program fees for diversion services.

Maryland, Missouri, Minnesota, Ohio, and Texas fund pretrial diversion programs through their statewide community corrections agencies. Local probation, prosecutorial, or private non-profit agencies provide diversion programming and oversight.¹⁹ Operation de Novo, a private non-profit agency, provides pretrial diversion in Hennepin County, (Minneapolis) Minnesota. In 2008, the program handled 828 felony cases collected, returned \$440,200 in victim restitution, oversaw 10,720 hours of client community service, and assisted 143 clients with expungements.²⁰

Pretrial Diversion around the World: Other countries have added pretrial diversion to their justice systems. Drawing on the American innovation, pretrial diversion in these countries has its own adaptations and body of literature. An overview of international legislation relating to diversion, in countries covered by the World Health Organization (WHO), indicates that many countries provide diversion to drug- and alcohol-dependence treatment programs.²¹ Of the 51 jurisdictions surveyed, 22 diverted persons to treatment either in lieu of arrest, pending trial, or as an alternative to incarceration following sentencing.²² In France, defendants that comply with a court-determined treatment order are not liable to prosecution; in Germany, treatment can be credited against a custodial sentence.²³ In France and Italy, following completion of voluntary treatment, "pardons" receive a certificate as evidence to protect against subsequent prosecution for offenses committed prior to treatment.²⁴

¹⁸ Administrative Office of Pennsylvania Courts. (2008). *2007 Caseload Statistics of the Unified Judicial System of Pennsylvania*. Philadelphia, PA: Supreme Court of Pennsylvania.

¹⁹ Minnesota's programs are funded under the state's Community Corrections Act. In Texas, funding comes through the Community Justice Assistance Division. Maryland funding is through the state's Department of Public Safety and Correctional Services.

²⁰ Telephone correspondence with Operation de Novo Director, James T. Brown, June 9, 2009.

²¹ Porter, L., Arif, A.E., and Curran, W.J. (1986). *The Law and the Treatment of Drug- and Alcohol-dependent Persons: A Comparative Study of Existing Legislation*. Geneva: World Health Organization.

²² *Ibid.*, p. 57.

²³ *Ibid.*, p. 171.

²⁴ Leroy, B. (1991). *The Community of Twelve and the Drug Demand. Comparative Study of Legislations and Judicial Practice*. Luxembourg: Commission of the European Community.



New Zealand began an adult pretrial diversion program in 1988 for first time arrestees, under which courts suspend adjudication pending the arrestee's completion of diversion requirements. These may include restitution, community service, counseling, and treatment.²⁵ South Africa has used community service orders as a formal sentencing option since the early 1980s. In 1992, the nation established the Pretrial Community Supervision program, which requires participants to serve a predetermined number of hours at a community-based program. Charges are dropped upon the participant completing service hours and adhering to any other court-ordered conditions.²⁶

Pretrial Diversion Programming

Risk and Needs Assessment: Consistent with criminal justice promising practices, all survey respondents reported using a risk assessment or predetermined eligibility criteria to identify appropriate individuals for diversion placement. Fifty-eight percent also use other assessments to fashion supervision plans and identify rehabilitative service needs. Since faster connection to supervision and treatment interventions can increase effectiveness and reduce recidivism,²⁷ 75 percent of survey respondents reported screening defendants following the initial arrest. NAPSA Diversion/Intervention Standards 2.1 also recommends timely diversion eligibility screening and placement:

The opportunity to apply for a pretrial diversion/intervention program should be available as soon as possible to eligible defendants from the point of the filing of formal charges through final adjudication.

Supervision and Services: Over 90 percent of respondents have standard pretrial diversion conditions, most commonly urinalysis (68.3 percent), restitution (65.1 percent), community service (61.9 percent), and counseling (60.3 percent). While not a mandatory condition, alternatives to adjudication for first-time arrestees was the most common pretrial diversion program identified by respondents (75.4 percent).²⁸

²⁵ Young, W. and Cameron, N. (1991). *Adult Pre-trial Diversion in New Zealand*. Wellington: Young & Cameron Policy & Research Consultants.

²⁶ Steyn, F. (2005). *Review of South African Innovations in Diversion and Reintegration of At-risk Youth*. Open Society Foundation for South Africa.

²⁷ Madras, B.K., Compton, W.M., Avula, D., Stegbauer, T., Stein, J. B., and Clark, H.W. (2009). "Screening, brief interventions, referral to treatment (SBIRT) for illicit drug and alcohol use at multiple healthcare sites: Comparison at intake and 6 months later," *Drug and Alcohol Dependence*, Volume 99, Issues 1-3: pp. 280-295. Payne, J. (2007). *Discrete-Time Survival Study of Drug Use and Property Offending: Implications for Early Intervention and Treatment*. Australian Institute of Criminology Technical and Background Paper, No. 24. Rempel, M. and Depies Destefano, C.D. (2001). "Predictors of Engagement in Court-Mandated Treatment: Findings at the Brooklyn Treatment Court, 1996-2000," *Drug Courts In Operation: Current Research* . pp. 91-93.

²⁸ Twenty-eight of 33 respondent programs started before 1990 (84.8 percent) offered first-time arrestee diversion services, compared to 23 of 35 (65.7 percent) of programs started since 1990. There were no differences by program age in drug court or mental health programming.



Since supervision combined with treatment and other services has been shown to reduce future rearrest,²⁹ drug court (31.9 percent), mental health services (21.7 percent), and programming for driving under the influence and other traffic charges (18.8 percent) were other prominent pretrial diversion conditions mentioned.

Over half of respondents that provided information impose sanctions short of program termination to address participant noncompliance. These included increasing community service hours, modifying the diversion contract or level of supervision, increasing drug testing or treatment requirements, requesting short-term jail placements, providing written or verbal warnings, and requiring additional counseling. This practice conforms to criminal justice and behavioral science research showing that swift, certain, and equitable responses to supervision and treatment noncompliance reduce future noncompliance and recidivism.³⁰

Consistent with NAPSA Diversion Standard 4.4, over 69 percent of survey respondents providing information have established time limits for diversion participation. These include set time limits (26 respondents), minimum and maximum times (15 programs), and differing set times for persons charged with misdemeanors or felonies (four programs). Set time periods range from three months to three years, with a median of 12 months. Median set time periods for misdemeanor and felony-charged participants are six months and 12 months, respectively. Programs with a minimum/maximum range reported a median minimum time of three months and median maximum time of 12 months.

Enabling Legislation

There are at least 80 diversion statutes on the books in 45 states. Half are less than 20 years old—15 were enacted in the 1990s and another 25 since 2000. Several statutes enacted before 1990 have been amended since 2000. Statutes for pretrial diversion are quite diverse: some are broad-brush enabling legislation

²⁹ Skeem, J.L. and Manchak, S. (2008). "Back to the Future: From Klockars' Model of Effective Supervision to Evidence-Based Practice in Probation," *Journal of Offender Rehabilitation*, Volume: 47 Issue:3, pp. 220-247. Bonta, J., Wallace-Capretta, S., and Rooney, J. (2000). "Quasi-Experimental Evaluation of an Intensive Rehabilitation Supervision Program," *Criminal Justice and Behavior*, Volume:27 Issue:3, pp. 312-329. Harrell, A., Hirst, A., Mitchell, O., Marlowe, D., Merrill, J. (2001). *Evaluation of the Breaking the Cycle Demonstration in Birmingham, Alabama: Final Report*. Washington, D.C.: The Urban Institute. San Diego Association of Governments (SANDAG) Criminal Justice Research Division. (1995). *Supervising Drug-Involved Offenders in the Community: An Integrated Approach*. San Diego, CA: San Diego Association of Governments.

³⁰ Harrell, A. and Roman, J. (2001). "Reducing Drug Use and Crime Among Offenders: The Impact of Graduated Sanctions," *Journal of Drug Issues*, Volume:31 Issue:1, pp. 207-232. Mitchell, O. and Harrell, A. (2006). "Evaluation of the Breaking the Cycle Demonstration Project: Jacksonville, FL and Tacoma, WA," *Journal of Drug Issues*, Volume:36 Issue:1, pp. 97-118. Burke, C. and Pennell, S. (2001). *What Works: San Diego County's Breaking Cycles Program*. San Diego Association of Governments (SANDAG), Criminal Justice Research Division. Marlowe, D.B. and Kirby, K.C. (1999). "Effective Use of Sanctions in Drug Courts: Lessons From Behavioral Research," *National Drug Court Institute Review*. Volume 2, Issue 1. pp. 1-31.



while others are extremely detailed prescriptive formulas. Several statutes in the latter group allow state legislatures rather than prosecutors to outline the rules and requirements for pretrial diversion.

Legislatures in nearly every state have codified pretrial diversion features and practices. Courts have upheld legislatures' activities here: no court has found a constitutional violation of the separation-of-powers doctrine arising from legislatures defining the scope and features of pretrial diversion.

Standards

Following the National Advisory Commission on Criminal Justice Standards and Goals support of pretrial diversion programming, several major criminal justice associations established standards of their own. In 1977, the National District Attorney's Association (NDAA) advocated pretrial diversion in the first edition of its *National Prosecution Standards*.³¹ This was reiterated in the Association's 1991 update:

*The diversion alternative to prosecution is an increasingly utilized and effective mechanism for dealing with offenders. Since the promulgation of the original standards in 1977, diversion has been adopted in almost every jurisdiction in the United States.*³²

NAPSA issued its first set of pretrial diversion standards in 1978 and revised them in 1995 and 2008.³³ At its 1976 annual conference, ABA passed a joint resolution favoring expansion of diversion programs, the first time the ABA formally advocated these programs. The ABA currently is drafting standards for diversion and problem-solving initiatives.

Case Law

Since the 1970s, America's state and federal appeals courts have reviewed over 600 cases related to significant pretrial diversion issues.

- **Prosecutor Discretion.** Over 200 cases from 21 states and nine federal circuits address the limits on prosecutorial discretion in diversion decision-making and whether judicial review of prosecutor decisions or legislative standards violates separations of powers.
- **Consequences for Subsequent Legal Proceedings.** Eighty cases from eight states and two federal circuits center on the use of diversion program information in other legal proceedings.

³¹ National District Attorney's Association. (1977). *National Prosecution Standards*. 44.1-44.8. *Diversion* Arlington, VA: National District Attorneys Association.

³² National District Attorney's Association. (1991). p. 138.

³³ National Association of Pretrial Services Agencies. (2008).



- Ramifications in Other Endeavors. Another 100 cases from 13 states and 10 federal circuits examine whether successful completion of diversion can later be viewed as a law violation in other contexts, such as in state licensing board revocation hearings, military recruitment or discharge proceedings, and civil and family court proceedings.³⁴

Opinions have been as varied as the courts rendering them. For example, several courts have ruled that the judiciary may overturn a prosecutor's denial of diversion placement if, in the words of the New Jersey Supreme Court, these were based on, "patent and gross abuse of discretion."³⁵ Other courts have maintained that the prosecutor's decision to grant and deny diversion is beyond judicial review.³⁶ As one author noted:

*The courts have split on the due process rights of participants facing termination; some have ruled that participants have the right to a hearing, others not. Finally, some courts have come to different conclusions regarding the use of pretrial diversion information in subsequent court proceedings or in other settings.... The cases do make clear, however, that, at minimum, prosecutors maintain substantial authority over the operations of pretrial diversion. Even in jurisdictions where the statute gives the judiciary the final say in admission and termination decisions, the courts recognize that the views of the prosecutor must be given great deference.*³⁷

The volume of opinions found show that courts are at least willing to review practices that once were viewed as strictly the domain of prosecutors. While the opinions delivered vary—usually based on the statutory rules in place for pretrial diversion—they illustrate that due process concerns permeate pretrial diversion programming; from offering or denying program admission, determining conditions of placement, use of program information, and even final termination. Court activity makes it clear that pretrial diversion practitioners must be mindful of and offer significant safeguards to participants' due process rights at each point of the process. As noted later, due process protection is a pretrial diversion promising practice.

³⁴ Clark, J. (2008). *Pretrial Diversion and the Law: A Sampling of Four Decades of Appellate Court Rulings*. Washington, D.C.: Pretrial Justice Institute.

³⁵ *State v. Leonardis*, 363 A.2d 321 (1976). See also *State v. Hemmersly*, 650 S.W.2d 352 (Tennessee, 1983).

³⁶ See *Clayton v. Lacy*, 589 N.W.2d 529 (Nebraska, 1999) and *Cleveland v. State*, 417 So. 2d 653 (Florida, 1982).

³⁷ Clark. (2008). p. VIII-1.





Effectiveness

Measured by the percentage of participants who successfully complete supervision, pretrial diversion programs are effective alternatives to traditional case processing. Respondents to NAPSA's survey averaged an 85 percent successful program completion rate, with nearly 85 percent of those responding reported success rates of 70 percent or higher. However, these figures are tempered by the very small number of programs that keep recidivism data, a key success indicator.³⁸ Only 36 percent of respondents maintained data on recidivism rates. While reported rates were low—the median recidivism rates for these respondents were five percent for new felonies, 12 percent for new misdemeanors, and one percent for new serious traffic offenses—the periods of time that respondents tracked new convictions following program completion varied greatly, from one year to five years.

There is a dearth of recent evaluations of pretrial diversion programs, and more comprehensive literature about the pretrial diversion field is dated. Developing and cataloging appropriate research designs for pretrial diversion programs are a critical challenge for the field and should be actively pursued to determine the scope and worth of this type of programming to the criminal justice community.

³⁸ The survey defined "recidivism" as the percentage of diversion participants convicted of a new offense following program completion.





CHAPTER II: PROMISING PRACTICES IN PRETRIAL DIVERSION

Using identified theory, law, and practice, the experience of practitioners, and findings from empirical evaluations as guides, the authors found nine practices that rank as the best in pretrial diversion today. NAPSA and its Board recognize these as the best of pretrial diversion programming practices and recommend them to programs and jurisdictions wishing to incorporate the most effective practices that the field has to offer.

Promising Practice #1: Formalized cooperative agreements between the pretrial diversion program and key stakeholders to assure program continuity and consistency

Promising Practice #2: Defendant access to counsel before the decision to participate in pretrial diversion.

Promising Practice #3: Specific due process protections incorporated into programming.

Promising Practice #4: Broad, equitable, and objective diversion eligibility criteria, applied consistently at multiple points of case processing.

Promising Practice #5: Uniform and validated risk and needs assessment to determine the most appropriate and least restrictive levels of supervision and services needed.

Promising Practice #6: Intervention plans tailored to individual participant risks and needs and developed with the participant's input.

Promising Practice #7: Graduated sanctions short of termination as responses to participant behavior.

Promising Practice #8: Maximum possible privacy protections for participants and program records.

Promising Practice #9: Independent program evaluations.

Promising Practice #1: Formalized cooperative agreements between the pretrial diversion program and key stakeholders to assure program continuity and consistency.

Every pretrial diversion program requires an understanding among itself, the prosecutor, the court, and other appropriate partners about program eligibility, requirements, and outcomes. The earliest diversion programs relied more on informal understandings of such details, but found these arrangements highly person-dependent and thus potentially subject to different interpretations by successive actors. Today, successful programs collaborate with partner agencies under formalized written agreements that provide more clarity and continuity. With a written agreement in place, successive prosecutors, administrative



judges, and diversion program directors are less likely to change the prescribed procedures. The defense bar prefers formal agreements since they provide transparency about the rules governing diversion and consistency in treatment of each defendant who participates.

The value of written guidelines for program eligibility is recognized by the 2008 edition of the NAPSA Diversion/Intervention Standards. Standard 3.3: states that “formal eligibility guidelines, unless dictated through legislative statute, should be established and reduced to writing after consultation among program representatives and appropriate criminal justices officials. The guidelines should be updated on a regular basis and widely distributed to all interested parties.” Standard 3.4 takes the adherence to such an agreement a step further, enjoining diversion programs that have an affirmative obligation to ensure the guidelines are consistently applied and that criminal justice professionals who are a part of that agreement also have a responsibility to ensure that the application is fair. Later in Standard 9.2, NAPSA further emphasizes the need for diversion programs to establish ongoing and effective partnerships with major criminal justice entities. Such partnerships promote the practices of consistency in application of eligibility criteria and in the processing of diversion participants.

More than a third of the NAPSA survey respondents (36 percent) indicated that they were governed by a memorandum of understanding (MOU) executed between key system actors, typically the prosecutor, the court, and the diversion program. Significantly, 34 percent of respondents (22) said they were governed by multiple sources of operating authority, i.e., some combination of interagency agreement, state statute, and court rule.

The importance of having an interagency MOU in place was also identified as a promising practice by participants in the focus groups held in the fall of 2008. In both focus groups, the issues of collaboration and communication were identified as key elements for successful diversion programs. The groups also identified that the standardization of eligibility through agreements with key actors was critical to the overall success and viability of programs.

A broad array of statewide diversion enabling statutes and court rules suggests that in many states, the issues generally described in an interagency MOU at the local level—rules and responsibilities of the prosecutor, the court and the diversion program—are often also addressed by state law. Even in states where there are statutory guidelines, many programs find that such agreements can complement those requirements and build local support and continuity.

Having an interagency governing MOU in place has been identified in the drug court policy and evaluation literature as a key program feature. This literature strongly suggests it is a promising practice in the context of drug courts. As many drug courts have a pretrial diversion track under which successful program completion results in a dismissal of all pending charges, this is clearly a useful analogy for the pretrial diversion field as a whole.





Promising Practice #2: Defendant access to defense counsel before the decision to participate in pretrial diversion.

Pretrial diversion is a legal option that, if accepted, will result in a dismissal or return to full prosecution. Either way, dispositional consequences follow the defendant's choice. Just as no court will accept a guilty plea without first assuring that the defendant fully understands the consequences of his or her admission, the consequences of participation and performance in pretrial diversion must be fully informed and the decision to enroll in such a program must be completely voluntary. Access to competent counsel assures that the defendant can discuss his/her legal options and provides the information necessary to make an informed decision as to the best route to take with the charge. For example, many pretrial diversion programs take felony charges where critical rights must be waived in order to enter the program. Without the ability to consult counsel, a defendant may not be truly informed of the consequences of such waivers.

The importance of affording a defendant access to counsel with regard to diversion-related decision-making is addressed in two sections of the 2008 NAPSA Diversion/Intervention Standards:

Standard 2.2: A potential diversion/intervention program participant should have the opportunity to consult with counsel before making the decision to apply for diversion.

Standard 4.1: Prior to making the decision to enroll in a pretrial diversion/intervention program, a potential participant should be given the opportunity to review with counsel the merits of his or her case and a copy of the general program requirements including program duration and possible outcomes.

The Commentary under each of these Standards discusses the importance of the defendant's need to fully understand all legal options available as well as the consequences of participation in a diversion intervention. The pretrial diversion process is voluntary; defendants who consider participating must give informed consent. With as many options as are available today in the criminal courts, by far, the promising practice for any diversion program is to encourage potential participants to consult with counsel prior to entering.

The ABA *Standards for Criminal Justice* require prosecutors to "be familiar with the resources of social agencies which can assist in the evaluation of cases for diversion from the criminal process."³⁹ The Standards also define for defense counsel a "duty to explore" non-criminal dispositions such as pretrial diversion on behalf of, and with, the client.⁴⁰ Commentary from the NDAA *National Prosecution*

³⁹ American Bar Association. (1993). *ABA Standards for Criminal Justice: Prosecution and Defense Function*, (3rd Edition). Standard 3-3.8. p. 69. Washington, D.C.: American Bar Association.

⁴⁰ Ibid., Standard 4-6.1(a): . p. 203.





*Standards 44.1 – 44.8 recommends that defense counsel should be aware of, and involved in, the defendant’s decision to accept diversion.*⁴¹

Statewide diversion statutes and court rules enacted in recent years have mandated transparency for eligibility determinations and due process safeguards to address arbitrary rejection from enrollment or unsatisfactory termination without an impartial review. There has been a significant amount of litigation with regard to such practices over the years. Representation by counsel for not only the initial diversion decision but also for the duration of the program addresses the concerns expressed by the courts in their decisions. Most recent state statutes have incorporated representation as a standard practice.

Several model programs identified for in-depth review demonstrate the application of promising practices in this area. The San Francisco Pretrial Diversion Program has an especially cordial and cooperative relationship with the local bar association and public defender service. This program regularly involves defense counsel in diversion eligibility reviews and related decision-making. In-house records of the program’s website “hits” demonstrate that many defense attorneys use the program’s website regularly to check program eligibility criteria and other program requirements, as well as to contact the program.

Likewise, the Pretrial Services Corporation of Monroe County (NY) Bar Association’s diversion program has a close and cooperative relationship with the local defense bar and, by policy, a participant must be represented by counsel to enter the program unless he has been specifically designated as pro se by the court.

Several of the model diversion programs singled out for in-depth focus display particular applications of promising practices in this area. The San Francisco Pretrial Diversion Program involves defense counsel at both program startup and in the event of in-program compliance problems, informing them by letter before any hearing for unsuccessful termination is scheduled. The Essex County Pre-Trial Intervention Program, like all county-based pretrial intervention programs in New Jersey, involves defense counsel at each critical stage of the program. Diversion agreements are reviewed by counsel before being signed and are presented to the court. Many of the model diversion programs report involving counsel at all phases of the diversionary process and engaging counsel in a partnership with the participant that supports individual intervention plans.

⁴¹ National District Attorneys Association. (1991). Standard 44.8: . p.137.



Promising Practices #3: Specific due process protections are incorporated into programming.

Given pretrial diversion clients' status as defendants, due process protection—the fundamental fairness of laws and legal proceedings—has been a central focus in diversion standards, case law, and programming. NAPSA's Diversion/Intervention Standards stress the importance of due process safeguards throughout the diversion process. These include the right of defendants to a review of a prosecutor's decision to deny pretrial diversion placement (Standard 4.5), written reasons for decisions to terminate pretrial diversion placements (Standard 7.2), and the defendant's right to challenge a termination action (Standard 7.3). While maintaining the prosecutor's discretion in making offers for pretrial diversion placement, the NDAA Prosecution Standards recognize the importance of protecting a defendant's due process rights at this stage. The NDAA advocates defendants' rights to consult with an attorney before accepting a diversion offer, the presence of a judicial officer to ensure that sufficient factual basis exists for a criminal charge, and to determine if the defendant's acceptance of diversion is voluntary.⁴²

Court opinions have touched upon several due process concerns. These include *procedural* due process issues,⁴³ such as judicial review of prosecutorial decisions to deny pretrial diversion placements and to terminate program participation, the appropriateness of diversion conditions, and the use of program information following termination.⁴⁴ Fewer cases have examined *substantive* due process issues,⁴⁵ however courts have considered whether prosecutors exercised discretion fairly when denying pretrial diversion and terminating agreements and whether conditions of supervision or treatment were actually proper.⁴⁶ While case law on due process concerns is mixed, the willingness of courts to examine the fairness of pretrial diversion decision-making and processing make due process an important consideration for pretrial diversion practitioners.

Several respondents to the NAPSA survey described due process protections built in to program procedures. All respondents reported that defendants could appeal decisions to exclude them from pretrial diversion: 75 percent state that defendants could appeal a denial to the court. Half of respondents answered that defendants also could appeal a decision to terminate pretrial diversion participation.

⁴² National District Attorney's Association. (1991). Standard 44.8. p.137.

⁴³ Procedural due process assumes just procedures and government actions whenever individual rights are restricted and that decision makers be impartial in regards to the matter before them. *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

⁴⁴ Clark. (2008).

⁴⁵ Substantive due process assumes that basic rights cannot be abridged without appropriate governmental justification. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

⁴⁶ Clark. (2008).



Promising Practices #4: Broad, equitable and objective diversion eligibility criteria, applied consistently at multiple points of case processing.

Most diversion/intervention programs have established eligibility criteria that include the nature and seriousness of the present offenses charged and the defendant's past criminal history, if any. While most programs look at other factors in addition to these two when determining whether to accept a given defendant into diversion, the present offense and prior history requirements are universally applied. In this regard, every existing state statute and court rule which governs pretrial diversion speaks to the degree to which program eligibility can be conditioned upon present charge and prior offenses.

Ideally, granting a defendant entry into a pretrial diversion program allows him or her to secure dismissal of the pending charges upon successful completion. As such, diversion programs dispense important benefits on behalf of the criminal justice system. Basic fairness dictates that two defendants similarly charged, and with similar criminal histories, should receive equal consideration for diversion, even if other factors such as motivation and willingness to accept responsibility for one's actions are the final determinants about acceptance into the program. For many years, courts have recognized the importance of uniform eligibility criteria, as have state legislatures which have included guidance about eligibility criteria in their statutes with regard to diversion.

The importance of offering diversion at various points along the processing of a criminal case is recognized by NAPSA as being critical for good practice. This is addressed in several places in the NAPSA Diversion/Intervention Standards, specifically in Standards 2.1 and 3.1. Both discuss the points at which diversion may be offered and encourage the broadest application of eligibility criteria.

Standard 2.1: The opportunity to apply for a pretrial diversion/intervention program should be available as soon as possible to eligible defendants from the point of the filing of formal charges through final adjudication.

Standard 3.1: Pretrial diversion/intervention program eligibility criteria should be broad enough to encompass all potential participants who are amenable to the pretrial diversion/intervention option.

There is support for this practice through a number of other models of intervention. The Sequential Intercept Model for those with serious mental illness in the criminal justice system promotes interventions at a number of points along the case processing continuum.⁴⁷ A key component under the drug court model states that eligible participants should be identified early and that written eligibility

⁴⁷ Munertz, M.D., Mark R., and Griffin, P.A. (2006). "Use of the Sequential Intercept Model as an Approach to Decriminalization of People with Serious Mental Illness" *Psychiatric Services*, Vol. 57, No. 4. p. 544.



criteria should be applied. This key component also supports the practice of having a potential participant consult counsel when considering entering drug court.⁴⁸

Several questions in the diversion program survey addressed program eligibility criteria. The responses uniformly mentioned present charge and prior criminal record as key eligibility criteria. There appears to be more variance in exclusionary criteria. Most programs limit diversion to first-time defendants charged with non-violent offenses. Most programs responding reported accepting defendants with felony or misdemeanor charges. Other frequently mentioned criteria included amenability to treatment, acceptance of responsibility, and residence in the jurisdiction.

The majority of these pretrial diversion-related state statutes and court rules are prescriptive: they mandate that diversion occurs under certain circumstances and for certain defendants, and define roles for specific system actors. The single feature that these statutes and court rules share is the description of inclusionary and exclusionary criteria for pretrial diversion in their respective states. Significantly, these eligibility criteria tend to be quite broad—though the prosecutor almost always has the option to exclude particular defendants from diversion for “good cause.” That said, statutorily defined eligibility is presumptive and the prosecutor invariably must state the reasons for exclusion. In most states, these decisions are reviewable by the court which can overrule the prosecutor if it considers the decision to be in conflict with the intent of the state statute.

Several of the model programs studied for this monograph demonstrate promising practices here. For example, the Essex County Pretrial Intervention Program, like all county PTI programs in New Jersey, adheres to statewide eligibility guidelines set out in the New Jersey Supreme Court’s rule governing PTI and in a complementary state statute. These guidelines are extremely broad, stating that “any indictable offense” is presumptively eligible for diversion. Essex County successfully diverts hundreds of cases annually, many of them felony charges. Operation de Novo in Minneapolis accepts any first-time defendant charged with a felony or misdemeanor property offense. The program has diverted felony-charged defendants for the past 37 years, and has demonstrated an impressive success rate. The Pretrial Services Corporation of the Monroe County (NY) Bar Association pretrial diversion program has for decades accepted felony offenses and high misdemeanors, with impressive success rates. While limited to first-time misdemeanors, the San Francisco Pretrial Diversion Program demonstrates promising practice by screening cases for diversion at multiple points in the pretrial system, starting with pre-arraignment lockup, extending to arraignment court and second appearance.

⁴⁸ National Association of Drug Court Professionals, Standards Committee. (1997 and 2004). *Defining Drug Courts: the Key Components*. Washington, D.C.: U.S. Department of Justice. Bureau of Justice Assistance. p. 5.





Promising Practice #5: Uniform and validated risk and needs assessment to determine the most appropriate and least restrictive levels of supervision and the types of services needed.

Standardized risk and needs assessment instruments have become standard in criminal justice.⁴⁹ These instruments, routinely used at or shortly after entry or enrollment, gather information about underlying lifestyle problems and behavioral dysfunctions such as substance abuse, mental health problems, anger management, and tendencies toward violence. Since pretrial diversion programs have reduction in criminality as a goal, risk assessment encompasses identifying the defendant's risk of future arrest and the level and type of supervision and services needed to reduce that risk.

The importance of validating these instruments is critical to assessing whether the instrument actually measures the needs and the risks of an individual. Most social service and community corrections literature caution against borrowing risk and needs assessment instruments used in one locale on one population and transferring them to another locale for use on another population without first testing them in the new setting. Most high functioning diversion programs have established the validity of their chosen assessment instrument with their own population before implementing its use.

The importance of assessing public safety risk and treatment needs for diversion participants has grown as eligibility criteria have broadened beyond first time misdemeanor charged defendants and as individuals with more serious dysfunctions such as substance abuse and mental health problems have entered diversion programs. For these reasons, the NAPSA Diversion/Intervention Standards now stress the importance of conducting a comprehensive risk and needs assessment of every new diversion enrollee, at or shortly after program enrollment. Standard 5.1 specifically addresses this practice.

All respondents in NAPSA's survey of pretrial diversion programs indicated that they conducted risk/needs assessments of program clients. Fifty-eight percent of respondents indicated using a formalized risk or needs screening instrument. The use of a standardized assessment was identified as a promising practice by participants in the focus groups convened at the 2007 NAPSA Annual Conference and Training Institute. Most participants indicated their programs used such an instrument.

⁴⁹ See, for example, Van Nostrand, M. (2007). *Legal and Evidence Based Practices: Application of Legal Principles, Laws and Research*. Washington, D.C.: National Institute of Corrections. Bonta, J., & Hanson, R. (1995). *Violent recidivism of men released from prison*. Paper presented at the 103rd Annual Convention of the American Psychological Association, New York, NY. Brizer, D. (1989). "Introduction: Overview of current approaches to the prediction of violence." In D. Brizer & M. Crowner (Eds.), *Current approaches to the prediction of violence*. Washington, D.C.: American Psychiatric Press, Inc. Cormier, R. B. (1997). "Yes, SIR! A stable risk prediction tool," *Forum on Corrections Research*, 9(1), 3-7. Gottfredson, S. (1987). "Prediction: An overview of selected methodological issues." In D. Gottfredson & M. Tonry (Eds.), *Prediction and Classification* (pp. 21-51). Chicago, IL: University of Chicago Press. Howe, E. (1994). "Judged person dangerousness as weighted averaging," *Journal of Applied Social Psychology*, 24(14), 1270-1290. Litwack, T., Kirschner, S., and Wack, R. (1993). "The assessment of dangerousness and predictions of violence: Recent research and future prospects," *Psychiatric Quarterly*, 64(3), 245-271. Wolfe, R. (2007). *Expanding the Use of Problem Solving*. Washington, D.C.: Center for Court Innovation. p. 3.



Where there exists a unified pretrial services agency that both recommends for pretrial release and screens for pretrial diversion—as is done by pretrial release and diversion programs in Kentucky, Project Remand in St. Paul, Minnesota, the Pretrial Services Corporation of the Monroe County (NY) Bar Association, and the Allegheny County (PA) ARD Diversion Program—there is a promising practice that illustrates multiple cost-savings and system efficiencies.

Uniform risk/needs assessments are employed by most of the model diversion programs singled out for in-depth attention earlier in this study. For example, both the Pretrial Services Corporation of the Monroe County (NY) Bar Association pretrial diversion program and the San Francisco Pretrial Diversion Program have devised streamlined, in-house assessment forms that include questions from validated clinical assessment instruments. Both the Maricopa County TASC Diversion Program and the Miami-Dade County Drug Court Program divert drug-dependent defendants charged with serious felonies. Each uses established, validated clinical assessment tools with all their clients.

Promising Practice #6: Intervention plans tailored to individual participant risks and needs and developed with the participant's input.

The basic requirements of a diversion plan or agreement tend to be uniform for most defendants enrolled in the diversion program—for example, admit responsibility for one's actions, keep all scheduled appointments, and make restitution payments. Beyond these standard conditions, the promising practice is to individually tailor requirements based on the needs and risks identified through the assessment instrument. Such conditions should be directly related to reducing the risk of future arrests and can include attending treatment for drug abuse, alcohol abuse, mental health problems, or other specific need. In this regard, diversion programs resemble many other community corrections programs. It flows logically from the promising practice of risk/needs assessment to have the results of those assessments reflected in the intervention plan devised for the participant. Though the broad requirements of any given diversion program remain constant and applicable to all who participate, current best thinking is to add individually-tailored services and supervision requirements that address the individual's risk/needs profile. This practice is supported in the evidence-based principle of targeted interventions to achieve risk reduction.⁵⁰

Targeted interventions consider the total person entering the program and are sensitive to cultural, gender, and trauma-related issues. Referrals for services outside the program must be competent to respond to the unique needs of the diverted individual in order to intervene meaningfully. The “responsivity principle” described by the Crime and Justice Institute suggests that programs consider individual characteristics when matching people to services.⁵¹ The NAPSA Diversion/Intervention Standards address the

⁵⁰ Crime and Justice Institute. (2004). *Implementing Evidence Based Practice in Community Corrections: the Principles of Effective Intervention*. Washington, D.C.: National Institute of Corrections. p. 4.

⁵¹ Ibid., p. 5.





importance of individually-tailored services and supervision in several places. Standards 5.2, 5.5, and 9.5 all emphasize the promising practice of designing individualized programming that addresses risk reduction through services tailored to meet criminogenic factors and ensuring that the services provided fit the participant's needs.

Standard 5.2: A pretrial diversion/intervention program should utilize individualized and realistic intervention plans, which feature achievable goals. Plan formulation should occur as soon as possible after enrollment in consultation with the participant and should be reduced to writing. The written intervention plan should contain the conditions to be met by the participant and the potential outcome for the criminal case upon successful completion or unsuccessful termination.

Standard 5.5: A pretrial diversion/intervention program should develop, identify, and partner with treatment and other types of services in their community which have demonstrated effectiveness and the ability to provide culturally competent and gender-specific programming for participants.

Standard 9.5: A pretrial diversion/intervention program should be, in all policies and actions, culturally sensitive and informed. All program policies and procedures should support the inclusion of and equal opportunity for staff and participants regardless of race, ethnic origins, gender, sexual orientation, physical ability and/or any other protected class . . .

Analogies to similar programs such as TASC and Drug Courts which intervene with drug-using defendants strongly suggest that tailored service and supervision plans are key factors in program and participant success.

A number of the model pretrial diversion programs apply this promising practice. Both the Circuit Solicitor's Pre Trial Intervention Program in Columbia, South Carolina and the Citizens' Probation Authority Deferred Prosecution Program in Flint, Michigan uniformly prepare individually-tailored intervention plans, which are presented to the participant, discussed, and then signed by all parties, supplementing the standard diversion contract entered into at enrollment time.

An equally important aspect of devising and employing individualized services and supervision requirements that address the needs/risk assessment outcome is ensuring that conditions are not excessive. Best practices literature suggests that "over-programming," especially of lower-risk defendants, often leads to more technical violations with no improvement of therapeutic outcomes.⁵²

⁵² Ibid.



Two NAPSA Diversion/Intervention Standards address aspects of this concern. Standard 5.3 recommends that pretrial diversion/intervention plans “should be the least restrictive possible to achieve agreed-upon goals and should be structured to minimize the risk of future criminal behavior.” Standard 5.6 advises that additional supervision or service requirements should be “necessary to achieve agreed-upon goals” and determined “after consultation with the participant.”

Respondents to the online program survey indicated that standard conditions were imposed in their programs, with drug testing (68 percent), restitution (65 percent), community service (62 percent), and counseling (60 percent) being imposed most commonly. Most of these conditions appear to be minimally restrictive and closely related to the core purposes of the program and to the defendant’s rehabilitation.

Several of the selected programs demonstrate applications of promising practices with regard to utilizing only the least restrictive conditions necessary to achieve successful program completion. For example, the PTI programs in East Baton Rouge, LA and Columbia, SC, the San Francisco Pretrial Diversion Program, Operation de Novo, and the Maricopa County TASC Program all employ the least restrictive diversion conditions possible.

Promising Practice #7: Graduated sanctions short of termination as responses to participant behavior.

Criminal justice and behavioral science literature suggest that swift, certain, and equitable responses to noncompliance with conditions of supervision can reduce future noncompliance and recidivism.⁵³ This practice also is well incorporated in pretrial diversion programming. For example, over 75 percent of NAPSA survey respondents impose administrative sanctions short of program termination to address participant non-compliance. These sanctions included increases in community service hours (15 responding programs), modifications to the diversion contract or level of supervision (12), and increases in drug testing or treatment requirements (10). More specifically, programs such as Operation de Novo, Project Remand, and Kentucky’s statewide programs incorporate sanctions into their approach to program compliance. Kentucky’s programs have complete discretion over administrative sanctions and have written guidelines for consistency and quality assurance.

As early as the 1978 NAPSA Diversion Standards, there have been indications that this practice should be utilized. The Standards enjoin programs to find ways to increase compliance and encourage success through altering any conditions set which might mitigate the increased risk. This practice is supported in the literature through both drug courts and community corrections. Further, the Standards have advocated that a rearrest while in program should not be cause for automatic program dismissal.

⁵³ See supra note 30.





Promising Practice #8: Maximum possible privacy protections for participants and program records.

The introduction to the 2008 NAPSA Diversion/Intervention Standards discusses at length the challenges faced by pretrial diversion programs in the “information age” of the 21st century, as they try to protect both the privacy of program records and the public fact of an arrest that ends in a dismissal upon successful completion of diversion. Web-based search engines, when combined with the mandates of open records laws in many states, has impacted the pretrial diversion program’s ability to assure participant privacy. Despite these real and formidable challenges, it is incumbent upon all diversion actors, not only program managers but the prosecution and courts officials with whom they interface, to strive to insure the maximum privacy provided by law to all facets of pretrial diversion.

This particular promising practice encompasses two aspects: privacy for the defendant as an individual and the privacy of program records. Both issues are related to the unique legal status afforded a pretrial participant. Diversion programs ask that participants take responsibility for the behaviors which brought them into the system. Such information has prosecutorial interest and, as such, should not be used to convict the participant should he/she fail the program. Diversion programs also promote the expungement of criminal records upon successful completion. The following sections of the 2008 Diversion/Intervention Standards enunciate the parameters of a promising practice in this area.

Standard 6.3: Upon successful completion of a pretrial diversion/intervention program, a participant should have his/her record sealed or expunged.

Standard 8.1: A pretrial diversion/intervention program should specify to the potential participant at the time of entry precisely what information might be released, in what form it might be released, under what conditions it might be released and to whom it might be released, both during and after participation. As a general rule, information gathered in the course of the diversion/intervention process should be considered confidential and may not be released without the participant’s prior written consent.

Standard 8.2: A pretrial diversion/intervention program should strive to guarantee, by means of interagency or intra-agency operating agreements or otherwise, that no information gathered in the course of a diversion application or participation in a diversion/intervention program will be admissible as evidence in the diverted case or in any subsequent civil, criminal or administrative proceeding.

Standard 8.3: Pretrial diversion/intervention program guidelines should be developed for determining the type of information to be contained in reports to be released to criminal justice agencies. Such reports should be limited only to information which is verified and necessary.

As would be expected, there is much reported appellate-level litigation on these various privacy issues. Seven cases have been identified that address challenges to the confidentiality of diversion agreements



and counselors' notes. Another four cases address whether a defendant who has successfully graduated from diversion and had his or her charges dismissed can keep the fact of his prior diversion participation confidential. An additional 49 federal circuit and 13 state appellate cases have been handed down that address whether admissions against interest made by a defendant during the course of a diversion interview, or in a diversion agreement, can later be used against him in other (largely non-criminal) tribunals.⁵⁴

Protections, when they can be enforced, are often embodied in interagency memoranda of understandings and commitments. Beyond that, state statutes mandating (1) confidentiality of statements made during in-program conversations or diversion interviews; and (2) expungement or sealing of records upon successful completion and ordering periodic purging of paper and online records can afford some protection. However, these mandates do not apply once an arrest is posted openly on the Internet.

Certain state statutes, such as those in Kansas, Kentucky, and South Carolina, guarantee expungement and other privacy protections to successful diversion program graduates. The model programs included here from these states use their program web sites to advise successful program graduates how to apply for expungement. The Kansas and South Carolina pretrial diversion programs post the necessary application forms for download and completion.

Staff of the Eighteenth Judicial District of Wichita, Kansas pretrial diversion program are employed by the prosecutor's office. Consequently, all counselors' notes and discussions with diverted defendants are considered part of the prosecutor's working files and are exempt from subpoena. The Kenton County (KY) Diversion Program periodically purges and destroys all manual and electronic pretrial diversion records of participants who have completed the program.

Promising Practice #9: Independent program evaluations.

The literature on evidence-based practices from community corrections, the problem-solving courts, and pretrial services all stress the importance of deriving promising practices from empirical findings. However, the pretrial diversion field has widely varying program models that make comparisons of programs and findings from different evaluations across programs difficult.

From their inception in 1978, the NAPSA Diversion/Intervention Standards have stressed the importance of commissioning independent program evaluations. The 2008 Diversion/Intervention Standards echo the earlier version in its emphasis of the value of independent evaluation.

According to results from the NAPSA survey, 87 percent of respondents maintained performance measurement data. One-third of survey respondents had participated in a study of program recidivism and 28 percent had commissioned an independent program evaluation.

⁵⁴ See Clark. (2008).





The majority of the model diversion programs have commissioned one or more outside program evaluations, although for most, these took place number of years ago. Operation de Novo is an example of a pretrial diversion program with a recent independent evaluation (2003).

Emerging Practices

NAPSA's research for this monograph also identified practices that appear to help pretrial diversion programs meet goals and objectives, but lack the empirical foundation needed to be termed "promising." However, these procedures have been demonstrated enough by hands-on experience within the field to be of potential use to other criminal justice practitioners.

Emerging Practice #1: Written policies and procedures backed by a formal mission statement.

Clearly defined and articulated mission statement, goals, and objectives are the cornerstone of effective organizations.⁵⁵ NAPSA Standards encourage diversion programs to, "have a well articulated mission statement as well as operational and program goals. The mission statement and the goals should be clearly conveyed to both staff and participants."⁵⁶ To reinforce these principles, high-performing agencies also provide staff written policies and procedures that link on-the-job performance with visioning statements. As NAPSA Diversion/Intervention Standard 9.2 notes:

A pretrial diversion/intervention program should be structured to accomplish its mission and stated goals. Program administration should provide appropriate guidance and oversight in the development of operational policies and procedures which support effective programming. . .

Several pretrial diversion programs apply these promising practices. The NAPSA survey found that over 75 percent of respondents had mission statements and close to 85 percent had written program goals. Nearly 90 percent of respondents have written policies and procedures. The Allegheny County (PA) ARD, Operation de Novo, the East Baton Rouge PTI program, the Monroe County (NY) pretrial diversion program, and the Essex County (NJ) PTI are model pretrial diversion programs with articulated mission statements, goals, and written procedures.

⁵⁵ Shields, A.C. (2006). "How to Take Control of Your Practice by Creating Vision and Mission Statements," *GP/Solo Law Trends and News, Business Law*, Vol 2, No.2. Washington, D.C.: American Bar Association. Burkhart, P. L. and Reuss, S. (1993). "Successful Strategic Planning: A Guide for Nonprofit Agencies and Organizations." Newbury Park, STATE: Sage Publications. Pointer, D. D., and Orlikoff, J. E. (2002). *The high-performance board Principles of nonprofit organization governance*. San Francisco, CA: Jossey-Bass. Allison, M. & Kaye, J. (1997). *Strategic planning for nonprofit organizations: A practical guide and workbook*. New York, NY: John Wiley and Sons, Inc. Bryson, J.M. (2004). *Strategic planning for public and nonprofit organizations: A guide to strengthening and sustaining organizational achievement*. New York, NY: Jossey-Bass Inc. Publishers, Inc.

⁵⁶ NAPSA. (2008).



Emerging Practice #2: An automated management information system that supports internal performance measurement and independent evaluation.

All high-performing organizations use information to set strategies, accomplish their mission and goals, and identify trends and needs in resources, infrastructure, programs and services, and performance. Given the scope and complexity of information gathered by criminal justice programs, the field is becoming increasingly reliant on automated information systems to collect, process, store, and disseminate data in forms necessary to satisfy management functions. Automated information systems help managers access relevant and accurate information to better ensure accurate decision making.

NAPSA Diversion/Intervention Standards strongly endorse automated information systems. Standard 9.8 encourages pretrial diversion programs to “develop and operate an accurate management information system to support data collection and presentation, compliance monitoring, case management, and program evaluation. The program should also develop and implement policies which address data sharing and information protection.” Standard 9.7 advises programs to “develop and maintain a financial management system that enables the program to account for all receipts and expenditures, to account for the collection and the dispersal of restitution payments, to prepare and monitor its operating budget, and to provide the financial information needed to support its operations and requests for funding to promote sustainability.”

Automated information systems are now commonplace in the pretrial diversion field. Seventy-three percent of NAPSA survey respondents report having computerized information systems in place. Among the model pretrial diversion programs, the Maricopa County (AZ) TASC Program, the San Francisco Pretrial Diversion Program, and the Pretrial Services Corporation of the Monroe County (NY) Bar Association’s pretrial diversion program developed in-house information systems configured to program specification. These systems are relational databases that allow staff to enter case reporting data and counselors’ notes, track progress, and generate customized reports. Each system also allows program managers to track important trend data such as recidivism rates. Pretrial diversion programs that are part of larger organizations—such as the Allegheny County (PA) ARD, the Connecticut AR programs, the Essex County (NJ) PTI Program, and the Kenton County (KY) Diversion Program—incorporate diversion-related data requirements into the larger agency’s data system.

Emerging Practice #3: Auditing of external service providers

As mandated by NAPSA Diversion/Intervention Standards, “a pretrial diversion/intervention program should develop, identify, and partner with treatment and other types of services in their community which have demonstrated effectiveness and the ability to provide culturally competent and gender-specific programming for participants.”⁵⁷ Many pretrial diversion programs refer certain outside treatment and other social services to community-based providers. Seventy-seven percent of NAPSA diversion survey

⁵⁷ NAPSA. (2008). Standard 5.5.





respondents report using community-based providers. For most programs, referring out for services is cost-effective and defers to qualified providers complex needs such as substance abuse treatment, mental health services, and education and vocational services. However, pretrial diversion programs that refer out for services retain the responsibility to ensure that providers serve clients professionally and competently and provide timely feedback on client progress.

Several pretrial diversion programs monitor the quality and timeliness of such outside services. Connecticut's APR programs contract out all counseling, treatment, and supportive services to local service providers. Service contractors must agree to regular reporting to APR programs and frequent checks of compliance to contract technical requirements. Likewise, the Eighteenth Judicial District, Wichita (KS) diversion program coordinators receive regular progress reports on services delivered to program participants, and regularly visit local service providers to assess the quality of their service delivery.



CONCLUSION

Pretrial diversion today features an array of programs, more diverse than their predecessors in administrative location and practice, yet still united by the goal of offering a viable alternative to people whose criminal behavior can be addressed more effectively outside of traditional case processing. There are more pretrial diversion programs today than ever before in more varied administrative locations, from the traditional prosecutor's office to pretrial services agencies, probation departments, and private agencies. Pretrial diversion programs range in organization from single nonprofit agencies to state-supported networks.

The pretrial diversion concept has found increased legitimacy nationwide. Nearly all states have pretrial diversion statutes, most either enacted or updated since 2000. These statutes are as diverse as pretrial diversion programs themselves, from simple enabling legislation to full-blown prescriptive statewide dictates. Statutes have given the legislature more control of pretrial diversion practices, a development upheld by the courts. Three major criminal justice associations have established or are developing standards for pretrial diversion, further legitimizing the concept within the criminal justice field. Finally, a significant volume of case law on pretrial diversion reflects the field's continued relevance and growth. Courts are now willing to review practices that once were viewed as strictly the domain of prosecutors, especially concerns regarding participant due process.

Limits in budgets and staffing aside, pretrial diversion programs strive to offer supervision, programs, and services that respond appropriately to criminal behavior, address issues associated to continued criminality, and help restore victims of crime. Urinalysis, restitution, community service, and counseling are common supervision conditions. Further, over half of programs impose sanctions—particularly increases in supervision requirements—to address participant noncompliance. Many programs are partners in problem-solving initiatives such as drug courts and mental health diversion, and there are significant similarities in goals and structure between pretrial diversion and these initiatives.

Though pretrial diversion programs and problem-solving initiatives often differ in their histories, sponsoring agencies, funding sources, and available resources, they share many practices and goals. Whether relying on national standards, promising practices, or evidence-based practices, both attempt to provide the least restrictive alternative to traditional case processing and case disposition. Both recommend assessing individual defendant risks and needs and providing individualized responses to a defendant's specific issues. Both target the defendant's underlying issues or behaviors and call for measured responses to noncompliance. Both seek to enhance public safety and reduce recidivism through effective and comprehensive responses.



Challenges and Recommendations

The research associated with this monograph is just the beginning. The content of this document has highlighted pretrial diversion programming and its place and worth within the criminal justice system it serves. With resources at a premium, communities have to be intelligent about how they address criminal justice needs. Pretrial diversion programming offers an effective option within an array of thoughtful responses that local criminal justice systems should offer as a way to efficiently use limited resources and address the needs and risks that are posed by those entering the system. Within the context of a community problem-solving approach, pretrial diversion provides a short term focused intervention which preserves court and jail time while effectively intervening with a criminal justice population.

Continued research and evaluation: The biggest challenge to pretrial diversion programs and criminal justice planners is the lack of strong research in the field. It is the recommendation of the authors that the field focus on obtaining funding for individual program evaluations as well to work toward funding a national, multisite study to look at the pretrial diversion model and its effectiveness. One accomplishment of such a broad-based study would be to examine the nature of the relationship and potential for synergy with the problem-solving court model. The benefits of such a study would be enumerable and provide an evidence-based foundation for communities to make decisions about utilizing a more comprehensive model to respond to the people who are entering their criminal justice system.

NAPSA's survey of pretrial diversion programs offers valuable information about practices in the field; however its findings are limited by the relatively small number of programs responding. Given the number of pretrial diversion programs identified by the research for this monograph and the dynamic nature of the field, a more comprehensive survey should be launched to identify existing diversion programs. This should be done with adequate resources, reaching out to prosecutor's offices, probation departments and courts, with emphasis on program practices and interventions that are considered successful.

Collaboration with problem-solving initiatives: Where they co-exist, pretrial diversion programs and problem-solving initiatives should cooperate to provide the most effective and fair alternative responses to appropriate defendants. The responsible agencies should work collaboratively with criminal justice decision makers to establish eligibility criteria that target their respective services and resources to achieve positive outcomes for the system and the defendant.

Partnerships with pretrial release programs: There are an estimated 500 pretrial release programs operating in at least 37 states, the District of Columbia, and the Commonwealth of Puerto Rico.⁵⁸ Nearly all of these programs gather and verify information about arrestees—including criminal history, current status in

⁵⁸ Clark, J. and Henry, D.A. (2003). *Pretrial Services Programming at the Start of the 21st Century: A Survey of Pretrial Services Programs*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance, NCJ 199773.

the criminal justice system, address, employment, and drug and alcohol use history—that judicial officers use in making release/detention decisions.⁵⁹ According to the NAPSA survey, pretrial release agencies also are the most common administrative location for pretrial diversion programs. Given the services these programs provide and their relationship to pretrial diversion programs, criminal justice systems should consider utilizing pretrial release programs to identify, screen, and refer defendants at arrest or initial appearance to appropriate pretrial diversion programs and problem-solving initiatives.

Systems also should consider if a unified pretrial services agency model that combines release and diversion services under one roof can offer a jurisdiction sufficient programming and budgetary efficiencies.

Nearly half a century since they appeared in the nation’s criminal justice systems, pretrial diversion programs continue to be successful alternatives for eligible defendants. As practitioners study and apply innovative methods of “doing business” with persons in the criminal justice system, pretrial diversion programming continues to offer tested and practical strategies for appropriate defendants. Introducing pretrial diversion programming into other innovative strategies will help efforts nationally and locally in decreasing crime and increasing the public’s trust in the justice system.

⁵⁹ Ibid at p. 1.





APPENDIX A: SELECTED PRETRIAL DIVERSION PROGRAMS

To help identify promising practices within the field, the NAPSA Diversion Committee’s Best Practices Working Group (Working Group) and the monograph contractor, Willow Spring Consultants, Inc. (WSC), sought to identify and select pretrial diversion programs that met criteria believed to encourage development and use of best practices. These included:

1. *Program longevity*, on the premise that long-lived, successful programs are more likely to develop and implement promising practices.
2. *Independent program evaluations* that would have identified successful program functions and those needing revision or not contributing to program goals and objectives.
3. *Charge scope*—the number and type of offenses the program managed—assuming that programs with more varied defendant and case populations are more likely to consider and evaluate more varied approaches to supervision and service provision.

To help ensure the greatest diversity in program consideration, the contractor and Working Group considered programs from a wide range of administrative locations—prosecutor’s offices, pretrial probation, private non-profit organizations, probation departments, and statewide associations—and regions.

The Working Group convened in August 2008 to review a list of potential “model” programs prepared by the monograph contractor. Several candidate programs had strong reputations as model agencies. The Citizens’ Probation Authority, the nation’s first formal diversion program, served as a regional model for many other mid-western deferred prosecution programs. The East Baton Rouge, LA, Minneapolis, MN, Newark, NJ, and Columbia, SC programs served as pilots in their respective states for later programs. The New Jersey and South Carolina programs were also instrumental in creating statewide pretrial diversion programming. The Pretrial Services Corporation of the Monroe County (NY) Bar Association’s pretrial diversion program was the subject of the first modern diversion program evaluation in 1978, while Operation de Novo commissioned and participated in one of the most recent evaluations in 2003. Maricopa County (AZ) TASC was the first such program in the state and a recognized leader in providing treatment services for defendants and offenders. The Miami-Dade County Drug Court Program was the first in the nation, the subject of a very positive program evaluation, and a continuing model for over 2,000 other Drug Court programs. The New York City Drug Treatment Alternatives to Prison (DTAP) Program likewise served as a model for numerous other prosecutor-based drug diversion programs in New York State.





The group then pared this list down to a group of final model programs:

Maricopa County TASC Drug Diversion Program
Corporate HQ
2234 N 7th St.
Phoenix, AZ 85006
(602) 254-7328
www.tasc-arizona.org

San Francisco Pretrial Diversion Project, Inc.
567 Seventh St.
San Francisco, CA 94103
(415) 626-4995
Fax: (415) 626-3871
www.sfpreatrial.com

Accelerated Pretrial Rehabilitation Program
936 Silas Deane Highway
Wethersfield, CT 06019
(860) 721-2130
Fax: (860) 258-8756
www.jud.ct.gov

Miami Dade County Drug Court Program
Richard E. Gerstein Justice Building
1351 NW 12 St.
Miami, FL 33125
(305) 548-5135
Fax: (305) 548-5105
www.miamidrugcourt.com

Adult Diversion Program
Office of the District Attorney, 535 N. Main
Wichita, Kansas 67203
(316) 660-3663 or 1-800-432-6878
Fax: (316) 383-4669
www.sedgwickcounty.org/da

Kenton County Pretrial Services Diversion Program
Kenton County Justice Center
230 Madison Avenue, Room 229
Covington, KY 41011
(859) 292-6517
Fax (859) 292-6631
www.cts.ky.gov/aoc/pretrial

Citizen's Probation Authority
Genesee County Pretrial Services
630 South Saginaw St.
Flint, MI 48502
(810) 256-3480
Fax: (810) 257-0530
www.co.genesee.mi.us/pretrial

East Baton Rouge Parrish Attorney's
Pretrial Diversion Program
City of East Baton Rouge
Parish of East Baton Rouge
P.O. Box 1471
East Baton Rouge, LA 70821
(225) 389-3000
brinfo@brgov.com

Operation de Novo, Inc.
800 Washington Avenue North, Suite 610
Minneapolis, Minnesota 55401
(612) 348-4005
Fax: (612) 348-6188
www.operationdenovo.org

Essex County PTI Program
50 West Market St., Room 912
Newark, NJ 07102
(973) 693-5701
www.judiciary.state.nj.us/essex





Pre-Trial Services Corporation of the Monroe
County (NY) Bar Association
80 West Main Street Suite 200
Rochester, New York 14614
(585) 454-7350
Fax:(585) 454-4516
www.monroepretrialservices.org

Summit County Prosecutor's Diversion Program
Oriana House, P.O. Box 1501
Akron, Ohio 44309
(330) 535-8116, ext. 2759
Fax:(330) 761-3327
www.orianahouse.org

Multomah County District Attorney's Office
Community Court
1120 SW 3rd Ave.
Portland, OR 97204
(503) 988-3235
www.co.multomah.or.us/da/cc/index

Allegheny County Pretrial Services (ARD)
564 Forbes Ave. 4th floor
Pittsburgh, PA 15219
(412) 350-4732
www.alleghenycourts.us

Circuit Solicitor's Pretrial Intervention
1701 Main Street, Room 406-B PO Box 192
Columbia, South Carolina 29202
(803) 576-1850
Fax: (803) 576-1866



BIBLIOGRAPHY

Literature

Administrative Office of Pennsylvania Courts. (2008). *2007 Caseload Statistics of the Unified Judicial System of Pennsylvania*. Philadelphia, PA: Supreme Court of Pennsylvania.

Allison, M. & Kaye, J. (1997). *Strategic planning for nonprofit organizations: A practical guide and workbook*. New York, NY: John Wiley and Sons, Inc.

American Bar Association. (1993). *ABA Standards for Criminal Justice: Prosecution and Defense Function* (3rd Edition). Standard 3-3.8. p. 69. Washington, D.C.: American Bar Association.

Anglin, M. D., Longshore, D., and Turner, S. (1999). "Treatment Alternatives to Street Crime (TASC): An Evaluation of Five Programs." In *Criminal Justice & Behavior*, Vol. 26, Issue 2, at pp. 168-195.

Bellassai, J.P. (1978). "Pretrial Diversion: The First Decade in Retrospect," *Pretrial Services Annual Journal* pp. 13-16. Washington, D.C.: Pretrial Services Resource Center.

Bellassai, J.P. *A Short History of the Pretrial Diversion of Adult Defendants from Traditional Criminal Justice Processing*. www.napsa.org/publications/diversionhistory.pdf.

Bonta, J., and Hanson, R. (1995). *Violent recidivism of men released from prison*. Paper presented at the 103rd Annual Convention of the American Psychological Association, August 11, New York, NY.

Bonta, J., Wallace-Capretta, S., and Rooney, J. (2000). "Quasi-Experimental Evaluation of an Intensive Rehabilitation Supervision Program." *Criminal Justice and Behavior*, Volume:27, Issue: 3, pp. 312-329.

Brizer, D. (1989). "Introduction: Overview of current approaches to the prediction of violence." In D. Brizer & M. Crowner (Eds.), *Current approaches to the prediction of violence*. Washington, D.C.: American Psychiatric Press, Inc.

Bryson, J.M. (2004). *Strategic planning for public and nonprofit organizations: A guide to strengthening and sustaining organizational achievement*. New York, NY: Jossey-Bass Inc. Publishers, Inc.

Burke, C. and Pennell, S. (2001). *What Works: San Diego County's Breaking Cycles Program*. San Diego, CA: San Diego Association of Governments (SANDAG), Criminal Justice Research Division.

Burkhart, P. L. and Reuss, S. (1993). *Successful Strategic Planning: A Guide for Nonprofit Agencies and Organizations*. Newbury Park: Sage Publications.



Clark, J. (2007). *The Role of Traditional Pretrial Diversion in the Age of Specialty Treatment Courts: Expanding the Range of Problem-Solving Options at the Pretrial Stage*. Washington, D.C.: Pretrial Justice Institute.

Pretrial Justice Institute. (2008). *Pretrial Diversion and the Law: A Sampling of Four Decades of Appellate Court Rulings*. Washington, D.C.: Pretrial Justice Institute.

Clark, J. and Henry, D.A. (2003). *Pretrial Services Programming at the Start of the 21st Century: A Survey of Pretrial Services Programs*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance, NCJ 199773.

Cormier, R. B. (1997). "Yes, SIR! A stable risk prediction tool." *Forum on Corrections Research*, 9(1):, 3-7.

Crime and Justice Institute. (2004). *Implementing Evidence Based Practice in Community Corrections: The Principles of Effective Intervention*. Washington, D.C.: National Institute of Corrections.

Gottfredson, S. (1987). "Prediction: An overview of selected methodological issues." In D. Gottfredson & M. Tonry (Eds.), *Prediction and Classification* (pp. 21-51). Chicago: University of Chicago Press.

Henry, D. A. and Kennedy, S. (1997). *Evaluating the Merrimack County Adult Diversion Program: Process and Outcome Evaluation*. Washington, D.C.: Pretrial Services Resource Center.

Harrell, A., Hirst, A., Mitchell, O., Marlowe, D., Merrill, J. (2001). *Evaluation of the Breaking the Cycle Demonstration in Birmingham, Alabama: Final Report*. Washington, D.C.: The Urban Institute.

Harrell, A. and Roman, J. (2001). "Reducing Drug Use and Crime Among Offenders: The Impact of Graduated Sanctions." *Journal of Drug Issues*, Volume: 31 Issue:1 pp. 207-232.

Howe, E. (1994). "Judged person dangerousness as weighted averaging." *Journal of Applied Social Psychology*, 24(14), 1270-1290.

Kentucky Department of Public Advocacy. (2009). *The Advocate*, Volume 31, No. 1.

Kirby, M., Pryor D.E. (1982). *Practices of Pretrial Diversion Programs: Review and Analysis*, Washington, DC: Pretrial Services Resource Center, NCJ 121909.

Lattimore, P.K., Broner, N., Sherman, R., Frisman, L., and Shafer, M.S. (2003). "Comparison of Prebooking and Postbooking Diversion Programs for Mentally Ill Substance-Using Individuals with Justice Involvement," *Journal of Contemporary Criminal Justice* Volume:19 Issue:1.



Leroy, B. (1991). *The Community of Twelve and the Drug Demand. Comparative Study of Legislations and Judicial Practice*. Luxembourg: Commission of the European Community.

Litwack, T., Kirschner, S., and Wack, R. 1993). "The assessment of dangerousness and predictions of violence: Recent research and future prospects," *Psychiatric Quarterly*, 64(3), 245-271.

Madras, B.K., Compton, W.M., Avula, D., Stegbauer, T., Stein, J. B., and Clark, H.W. (2009). "Screening, brief interventions, referral to treatment (SBIRT) for illicit drug and alcohol use at multiple healthcare sites: Comparison at intake and 6 months later," *Drug and Alcohol Dependence*, Volume 99, Issues 1-3. pp. 280-295.

Marlowe, D.B. and Kirby, K.C. (1999). "Effective Use of Sanctions in Drug Courts: Lessons From Behavioral Research," *National Drug Court Institute Review*, Volume:2 Issue:1. pp. 1-31.

Mitchell, O. and Harrell, A. (2006). "Evaluation of the Breaking the Cycle Demonstration Project: Jacksonville, FL and Tacoma, WA," *Journal of Drug Issues*, Volume:36 Issue:1. pp. 97-118.

Mullen, J. (2007). "Pretrial Diversion – Its Impact on Recidivism." *Crime and Punishment in America 3*: 1726-27. <http://law.jrank.org/pages/1726/Pretrial-Diversion-Impact-on-recidivism.html>.

Mullen, J. (2007). "Pretrial Diversion – Results of Drug Treatment, Employment and Social Services." *Crime and Punishment in America 3*: 1727-28, <http://law.jrank.org/pages/1727/Pretrial-Diversion-Results-drug-treatment-employment-social-services.html>.

Munertz M.D., Mark R., and Griffin, P.A. (2006). "Use of the Sequential Intercept Model as an Approach to Decriminalization of People with Serious Mental Illness." *Psychiatric Services*, Volume:57 Issue: 4. p. 544.

National Advisory Commission on Criminal Justice Standards and Goals. (1973). *Report on Corrections. Standard 3.1*, pp. 73-97. Washington, D.C.: U.S. Government Printing Office.

National Association of Drug Court Professionals, Standards Committee. (1997 and 2004). *Defining Drug Courts: The Key Components*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance.

National Association of Pretrial Services Agencies. (2008). *Performance Standards and Goals for Pretrial Diversion/Intervention*.

Bureau of Justice Assistance. Forthcoming. *Pretrial Diversion in the 21st Century: A National Survey of Pretrial Diversion Programs and Practices*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance.





National District Attorney's Association. (1977). *National Prosecution Standards*. 44.1-44.8. Diversion (Arlington, VA: National District Attorneys Association).

National District Attorney's Association (1991). *National Prosecution Standards*, 44.5 (e). Alexandria, VA: National District Attorney's Association.

New Jersey Administrative Office of the Courts. (2008). "Fallout Rates: The Number and Percentage of Criminal Defendants Terminated From Referral of the Complaint to the Prosecutor Through Adjudication," *AOC Monthly Report*, July 2007- June 2008. Trenton, NJ: New Jersey Administrative Office of the Courts.

Payne, J. (2007). "Discrete-Time Survival Study of Drug Use and Property Offending: Implications for Early Intervention and Treatment." *Australian Institute of Criminology Technical and Background Paper*, No. 24.

Perlstein, J.J. and Henry, D.A.. (1986). *Implications of Effective Case Processing for Crowded Jails - A Manual for Prosecutors*. Washington, D.C.: U.S. Department of Justice National Institute of Justice. NCJ 099464.

Pointer, D. D., and Orlikoff, J. E. (2002). *The high-performance board Principles of nonprofit organization governance*. San Francisco, CA:., Jossey-Bass.

Porter, L., Arif, A.E. & Curran, W.J. (1986), *The Law and the Treatment of Drug- and Alcohol-dependent Persons: A Comparative Study of Existing Legislation*. Geneva: World Health Organization.

The President's Commission On Law Enforcement and Administration of Justice. (1967). *The Challenge of Crime in a Free Society*. Washington, D.C.: U.S. General Printing Office.

Rempel, M. and Depies Destefano, C.D. (2001). "Predictors of Engagement in Court-Mandated Treatment: Findings at the Brooklyn Treatment Court, 1996-2000." *Drug Courts In Operation: Current Research*. pp. 91-93.

San Diego Association of Governments (SANDAG) Criminal Justice Research Division. (1995). *Supervising Drug-Involved Offenders in the Community: An Integrated Approach*. San Diego, CA: San Diego Association of Governments.

Schillo, B., Erickson, B., and Schauben, L. (2003). *Review of Operation DeNovo's Adult Diversion Program: Clients Who Entered the Program in 2001*. Minneapolis, MN: Council on Crime and Justice.

Shields, A.C. (2006). "How to Take Control of Your Practice by Creating Vision and Mission Statements," *GP/Solo Law Trends and News, Business Law* 2(2). (American Bar Association, *GP/Solo Law Trends and News, Business Law*, Volume:2 Issue:2).



Skeem, J.L. and Manchak, S. (2008). "Back to the Future: From Klockars' Model of Effective Supervision to Evidence-Based Practice in Probation." *Journal of Offender Rehabilitation*, Volume:47 Issue:3, pp. 220-247.

Steyn, F. (2005). *Review of South African Innovations in Diversion and Reintegration of At-risk Youth*. Open Society Foundation for South Africa.

Van Nostrand, M. (2007). *Legal and Evidence Based Practices: Application of Legal Principles, Laws and Research*. Washington, D.C.: National Institute of Corrections.

Young, W. and Cameron, N. (1991). *Adult Pre-trial Diversion in New Zealand*. Wellington: Young & Cameron Policy & Research Consultants.

Wolfe, R. (2007). *Expanding the Use of Problem Solving*. Washington, D.C.: Center for Court Innovation.

Case Law

Clayton v. Lacy, 589 N.W. 2d 529 (Nebraska, 1999).

Cleveland v. State, 417 So. 2d 653 (Florida, 1982).

Griswold v. Connecticut, 381 U.S. 479 (1965).

Snyder v. Massachusetts, 291 U.S. 97, 105 (1934).

State v. Leonardis, 363 A.s.d 321 (1976).

State v. Hemmersly, 650 S.W.2d 352 (Tennessee, 1983).

