

# Pretrial Diversion

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- Alternative to traditional court processing
- Occur at different phases of justice system involvement
  - Law enforcement
  - Pretrial or prosecution level
  - Problem-solving or specialty courts

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# Prosecutor-Led Diversion: Rationale

- Reduce docket pressure
- Lower costs
- Focus resources on cases that demand more attention
- Produce better outcomes for individuals and communities and reduce future criminal behavior
  - Avoid collateral consequences of criminal charges
  - Opportunity to have charges dismissed (or expunged)

# Prosecutor-Led Diversion

- Grounded on prosecutor discretion
- Can be informal or formal
- Strict eligibility criteria (charge type, offense category, criminal history)
- Focus on rehabilitation and engagement in community-based services that address root causes of criminal behavior

# Deferred Prosecution Programs

- Pre-charge

- Program starts before formal charges are filed, successful completion → charges withheld

- Pre-plea

- Charges are filed, program starts before entering a guilty plea, successful completion → charges dismissed

- Post-plea

- Charges are filed, program starts **after** entering a guilty plea, successful completion → guilty plea withdrawn and charges dismissed
- Less common as they target higher-risk defendants with more serious charges or a longer criminal history – failure moves the case to sentencing

# Program Requirements

- Timelines and requirements vary, but often people are asked to
  - Pay restitution, fines, and often diversion program fees
  - Perform community service
  - Engage in mental health/SUD treatment or other human services
  - Secure employment
  - Remain crime free

# General Eligibility Criteria

- Typically (but not always) target low-risk people with non-violent misdemeanor charges and little to no criminal history
  - As a result, women can be disproportionately represented
  - In a 2018 NIJ evaluation of “high volume” programs, 20-42% of participants were female
- Majority of programs are gender-neutral, though some gender-responsive programs exist
- Some special circumstances may dictate priority eligibility or access to diversion programs



# General Programs

- Often pre-charge or pre-plea for low-level charges
- Less common are post-plea programs for more serious charges
- **Example:** [Diversion & Deferred Prosecution Program \(Milwaukee, WI\)](#)
  - Pre-charge program for low-level, low-risk people; post-charge program for medium-to-high risk people with serious felony charges
  - Individualized with case management, may include: restitution, community service, mediation, education, MH/SUD treatment, and/or drug testing
  - Signed Deferred Prosecution Agreement filed with the court
  - Program length varies from a few months to 2+ years

# Substance Use Disorder/Drug Crimes

- Mostly pre-plea
- Typically target first-time, non-violent drug/DUI charges
  
- **Examples**
- **Drug School Diversion Program (Cook County, IL)**
  - Pre-plea program for low-level drug-related offenses (males and females eligible, no violent charges)
  - Referral to services, attend drug education sessions (10 hours)
- **Drug Treatment Alternative to Prison (Brooklyn, NY)**
  - Post-plea residential SUD treatment for people charged with felony (+ one or more previous felonies) where addiction contributed to crime

# Mental Health/Co-Occurring Disorders

- Often post-plea
- Target people with serious mental disorders (or co-occurring MH and SUD) rather than focus on specific charges
- **Example:** [Miami Criminal MH Project: Post-Booking Jail Diversion](#)
  - Post-plea program for people with serious mental illness or co-occurring disorders (males and females)
  - Violent crimes are eligible (with caveats)

# Prostitution/Sex Work

- Typically post-plea
- Target people with first-time prostitution charges
- **Example:** Prostitution Diversion Program (Los Angeles, CA)
  - Post-plea program for people with prostitution charges (no history of violent charges, no prostitution charges in past 10 years)
  - Requires "educational awareness and rehabilitation services," mandatory HIV/AIDS education and testing, failure includes rearrest for prostitution

# Survivors of Domestic Violence

- Goal is to provide supportive services to survivors of domestic violence who are also criminalized
- **Example:** Survivors FIRST in King County (Seattle, WA)
  - Began in 2019, partnership with YWCA
  - Referrals can happen pre-charge or pre- or post-plea, with charges potentially being dismissed/declined
  - Recently replicated in Portland, OR and Nashville, TN through the Association of Prosecuting Attorneys; currently being evaluated

# Pregnancy/Postpartum

- Often jail diversion versus deferred prosecution programs
  - Some jurisdictions divert pregnant women from jail into community-based programs with supportive services and housing
  - Prosecutors (and other stakeholders) are involved, but formal programs are run by a community agency
  - May be permanent or temporary diversion
  - May be legislatively mandated as an alternative sentence

# Pregnancy/Postpartum: Examples

- **Los Angeles:** Maternal Health Diversion Program provides prenatal care and specialized services; women live with their children in supportive housing
- **Illinois:** Electronic home monitoring for pregnant women as a condition of pretrial jail release
- **Tennessee:** Grants a furlough of up to six months to pregnant women to allow for birthing/bonding
- **Maryland:** Governor (through clemency) can grant parole, reduced sentence, or an alternative residential setting during pregnancy – after birth --> return to facility
- **California, Minnesota, Missouri, New Jersey, Texas, Wisconsin:** Have laws that create/authorize pregnant and/or postpartum people (with very young infants) to live with their babies in the community for some amount of time

# Primary Caretakers

- 12 states have laws that either suggest or require judges to consider primary caretaking status during sentencing, create specialty diversion programs, or give priority in existing programs to primary caretakers
- Goal is to keep kids out of foster care while supporting rehabilitation



# Do diversion programs work?

- Program completion is the most common outcome; 50-80% of people nationally are estimated to successfully complete programs
- A [2018 NIJ evaluation](#) of “high-volume” deferred prosecution programs found significant decreases in convictions, jail sentences, 2-year re-arrests, and longer time to re-arrest
  - Outcomes not disaggregated by sex
- An evaluation of [behavioral health jail diversion](#) in Connecticut found that diverted women spent fewer days in jail and used more outpatient treatment services than non-diverted women

# Do diversion programs work?

- Most deferred prosecution and jail diversion programs show positive outcomes: program completion, recidivism, service utilization
- **Issues and gaps**
  - Few programs target women or use a trauma-informed lens
  - Few evaluations, outcomes not disaggregated by sex
  - Evaluations often focus on program completers with no comparison group or by comparing to program drop-outs
  - Jail diversion evaluations often use days in jail as an outcome and compare to people referred but not diverted to the program

# Additional Resources

- Belenko, S., Hiller, M., & Hamilton, L. (2013). [Treating substance use disorders in the criminal justice system](#). *Current Psychiatry Reports*.
- Jackson, R. & Pressley, N. (2024). [Caregiver mitigation and diversion programs: A family-centered alternative to incarceration](#). Right on Crime.
- Laine, R., Saunders, J., Benning, S., & Schlafer, R. (2023). [Alternatives to incarceration for pregnant and postpartum people in the U.S.](#) University of Minnesota.
- Lowry, M., & Kerodal, A. (2019). [Prosecutor-led diversion: A national survey](#). Center for Court Innovation.