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# A National Survey of Criminal Justice Diversion Programs and Initiatives



# A National Survey of Criminal Justice Diversion Programs and Initiatives

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*Appendices available for download at [www.centerforhealthandjustice.org](http://www.centerforhealthandjustice.org)*

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# Executive Summary

Across the United States, criminal justice systems are managing record numbers of people with rates of substance use and mental health disorders that are exponentially higher than those of the general public. In recent years, a confluence of factors has created fertile ground for broad-based improvements to criminal justice policy and practice, including overburdened courts, crowded jails and prisons, strained government budgets, advances in the science of drug use intervention and recovery, shifting public sentiment about drug policy, awareness of the negative and residual impacts of justice involvement on families and communities, and a preponderance of research on the effectiveness and cost efficiency of alternatives to incarceration.

Now more than ever, and often with strong public support, legislators, prosecutors, judges, court administrators, corrections and probation officials, and the jurisdictions they serve are responding with community-based diversion alternatives, often incorporating substance use and mental health service or program components. Policy responses such as “justice reinvestment” have offered approaches that eschew tough-on-crime policies in favor of the deliberate and data-driven application of resources to solutions that will generate the greatest return to communities and taxpayers in terms of cost savings, public safety, long-term health and personal stability for justice-involved populations, and overall community improvement.

**It is among these efforts and in this environment that this national survey of diversion programs has been developed.** This project set out to explore the landscape of diversion from criminal justice involvement, aiming to collect and present information about programs across the country that offer diversion as an alternative to traditional justice case processing. The effort was undertaken with the knowledge that a robust assortment of alternative options exists but may be absent from or underrepresented in national conversations, and therefore not available or obvious for consideration by other jurisdictions.

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*In many ways, modern justice policy is beginning to adopt public health strategies, focusing on broad-based, systemic intervention, and the application of the minimum but appropriate amount of supervision, sanctions, accountability, services, and resources to achieve the intended result.*

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The collective scope and variety of existing diversion programs across the country reflect a policy and political context that is increasingly receptive to the benefits of safely diverting individuals – who in many cases are drug-involved or have mental health problems or both – out of costly jail or prison incarceration, and away from conviction and its lifelong collateral consequences, into programs that more effectively and efficiently address the behavioral health conditions underlying their criminal behaviors.

In many ways, modern justice policy is beginning to adopt public health strategies, focusing on broad-based, systemic intervention, and the application of the minimum but appropriate amount of supervision, sanctions, accountability, services, and resources to achieve the intended result. The advent of federal health care reform under the Affordable Care Act, which includes requirements and resources for the provision of addiction treatment and mental health services at parity with medical services, offers the prospect of applying a public health approach at scale to the longstanding challenges that occur at the intersection of crime, substance use disorders, and mental illness.

To develop this report, project staff surveyed diversion programs and interventions with the intention of spotlighting program design, participating stakeholders, affected communities, implementation challenges and successes, and where available, cost savings and overall effectiveness, aiming also to express the scale

of their existence across the country. Rather than providing an exhaustive tally of each of the thousands of programs across the country, the report presents summary descriptions of various diversion programs at several specific phases of involvement in the justice system, and offers observations and themes that emerged from the survey to lay a foundation upon which to advance national and local diversion conversations.

Central to the development of the project is the understanding that a criminal conviction – misdemeanor or felony – triggers a cascade of collateral consequences that often severely hamper an individual’s ability to become a productive member of the community. In this context, the project was designed to survey only programs that afford individuals an opportunity to address their behavior without resulting in a criminal conviction. These diversion programs may occur as early as street-level law enforcement intervention, or as late as court involvement, but the distinguishing characteristic for the purposes of this survey is that the program not result in a conviction on an individual’s record.

**A number of key observations emerged from the survey analysis.** They provide opportunity and direction that can guide policymakers, system stakeholders, community service providers, advocates, and others in efforts to expand the use of programs and practices that are effective and that promote fiscal, public safety, social, and health benefits for their participants, communities, justice and health systems, and taxpayers.

## **OBSERVATIONS**

- 1. While programs vary in their approach to achieve diversion from traditional criminal justice case processing, a common critical component among many is a focus on individuals with substance use and mental health issues.**
- 2. Many diversion programs are limited to individuals with first-time or low-level offenses.**
- 3. With many diversion programs in existence across the country, there are no apparent overarching standards for collecting or publishing data for the purposes of evaluating different types of programs against common sets of performance measures such as cost savings or reduced recidivism.**
- 4. Standard definitions and language with regard to programs and interventions that engage in diversionary practices have not been adopted.**
- 5. As the numbers of people entering courts and correctional institutions have swelled and public resources have tightened, many jurisdictions are exploring diversion alternatives out of necessity.**

**These observations highlight the following themes and ideas that may serve as a framework for future diversion discussions.** Looking ahead, it is clear that the notion of diversion, and how it is practiced at the local and state level, will continue to evolve as new information, expertise, and collaborations emerge.

- 1. *Substance use and mental health care involvement.*** The most effective response to individuals with substance use and mental health issues is often an appropriate balance of supervision, accountability, and community treatment and support. What is deemed appropriate should be driven by the ever-

expanding base of research and data regarding which intervention model best serves a given population at a given point of justice involvement. A risk-needs-responsivity (RNR) approach offers particular promise in this context. Considered a best practice for criminal justice populations, this approach assesses both the risk of recidivism as well as needs related to substance use, mental health, and other social and environmental conditions, and determines the appropriate type and dose of treatments and other services necessary to maximize justice and health outcomes. As the body of knowledge around what works continues to grow, the awareness and implementation of research-based, proven models and practices will become paramount.

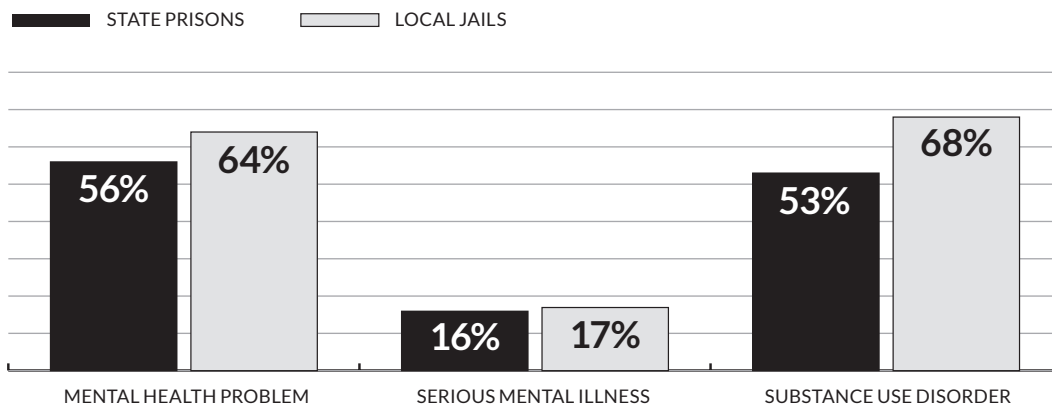
2. *Data-driven resource allocation.* Justice, health, and community resources should be allocated to those programs that demonstrate the greatest capacity to reduce recidivism, protect public order and safety, and promote public health, while also mitigating the need for costly justice supervision. These determinations will be most successful if programs take formal steps to develop standardized outcome measures (cost-, public safety-, and public health-based), and measure, analyze, monitor, and share results.
3. *Continued expansion of diversion beyond individuals with first-time and low-level offenses.* Jurisdictions can develop or adopt strategies and interventions that focus on those individuals most likely to recidivate, and that consider factors other than just current charge and criminal history in determining an intervention plan (for example, through the use of individualized risk and needs assessments). The next generation of diversion programs should be able to determine and provide the appropriate level of services and justice supervision for each individual.
4. *Development of a shared language.* The need for clarity and specificity around the description of programs and models will be of increasing importance in the growing exchange of ideas, innovations, and best practices.

# Introduction

The evolution of justice policy in the United States has been far from linear. The last several decades have seen dramatic shifts in the management of criminal justice populations across the country, especially with regard to drug policy. Through the early years of the “War on Drugs,” declared in the early 1970s by President Nixon, the fortification of laws and sanctions against the use of illegal drugs, combined with the criminal behavior that sometimes results from the drug-seeking component of addiction, and a host of other economic and social conditions, helped hold the roots of such criminality firmly within a moral and social realm in the minds of both policymakers and the public. Illicit drug use often has been perceived as a moral failing, punishable by incarceration. While this perception remains widespread in some areas and systems, significant advances in the science of treating underlying substance use disorders and mental illness has led to a burgeoning acceptance that addiction and mental illness are clinical issues with clinical solutions.

This has critical implications for the criminal justice system, which manages populations whose rates of substance use and mental health disorders are exponentially higher than those of the general population. In state prisons, more than half of the people incarcerated (56 percent)<sup>1</sup> have a mental health problem and one in six (16 percent)<sup>2</sup> have a serious mental illness (SMI). In local jails, almost two thirds (64 percent)<sup>3</sup> and 17 percent<sup>4</sup> meet these criteria, respectively. More than half of the people in state prisons (53 percent)<sup>5</sup> and two thirds in local jails (68 percent)<sup>6</sup> have substance use disorders. These conditions often co-occur; among people with mental health problems in state prisons and local jails, 74 percent and 76 percent, respectively, also have substance use disorders.<sup>7</sup>

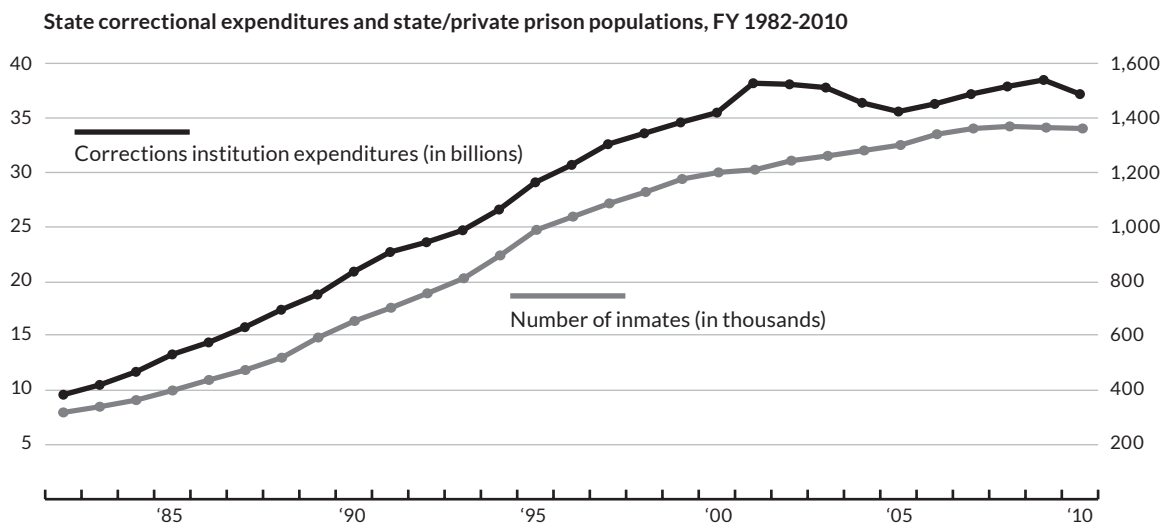
**Prevalence of substance use and mental health disorders in state prisons and local jails**



*Sources:* See preceding paragraph.

Even as our nation’s drug and justice policies have begun moving from being largely reactive toward being grounded in a growing body of evidence regarding which approaches are most effective, the cumulative effects of more than four decades of fear of crime and violence, recognition of substance abuse as a national problem, and tough-on-crime policies are omnipresent, with a multifold increase of both our national prison population and the public funds required to house and supervise people behind bars. By 2011, over 2.2 million people, or 1 in 107 adults, were incarcerated in prisons or jails across the U.S. Another 4.8 million, or 1 in 50 adults, were under supervision on probation or parole that year.<sup>8</sup> All told, nearly seven million Americans are under correctional or other justice supervision. The amount spent by states on corrections and community supervision has almost quadrupled over the past two decades.<sup>9</sup> Across the country, the portion of individuals returning to prison within the three-year period following their release has remained consistently above 40–50 percent for decades,<sup>10</sup> helping to hold the supervised population at record levels despite a steady decrease in crime overall.

In recent years, overburdened courts, crowded jails and prisons, strained government budgets, advances in the science of drug use intervention and recovery, shifting public sentiment about drug policies, awareness of the negative and residual impacts of justice involvement on families and communities, and a preponderance of research on the effectiveness and cost efficiency of alternatives to incarceration all have converged in a call for broad-based improvements to both policy and practice. Indeed, the economic realities of managing and supervising this enormous population have prompted even the most ardent supporters of tough-on-crime policies to consider more cost-efficient alternatives in effectively and safely addressing the intersection of crime and behavioral health problems.



**Note:** Expenditures inflation-adjusted to 2010 dollars.  
**Source:** Data from Bureau of Justice Statistics *State Corrections Expenditures, FY1982-2010*.

These circumstances, along with public support for alternatives to incarceration, serve as fertile ground for program and policy innovation. More than ever, legislators, prosecutors, judges, court administrators, corrections and probation officials, and the jurisdictions they serve are implementing less restrictive, community-based diversion alternatives. The result is a steady increase in the use of drug and law enforcement crisis intervention teams, problem-solving courts, probation alternatives, day reporting centers, and reentry programs, among an array of criminal justice strategies employed by states and local jurisdictions. Many of these programs emerge from within the justice systems themselves, to stem the tide of progressively deeper justice involvement and stop the so-called revolving door of justice. These efforts are complemented by the work of individual communities, which have taken initiative to develop innovative strategies, form inter-agency coalitions, and adopt evidence-based models designed to reduce violence and drug crime, often and increasingly incorporating behavioral and medical health and social service components into programs and approaches.

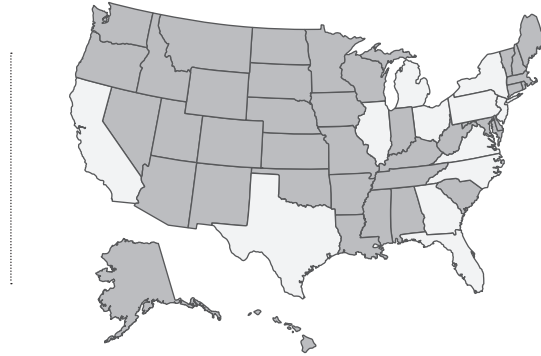
Additionally, policy response strategies such as “justice reinvestment” have offered approaches that eschew tough-on-crime policies in favor of the deliberate and data-driven application of resources to solutions that will generate the greatest return to communities and taxpayers in terms of cost savings, public safety, long-term health and personal stability for justice-involved populations, and overall community improvement.

In many ways, modern justice policy is beginning to adopt public health strategies, focusing on broad-based, systemic intervention, and the application of the minimum but appropriate amount of supervision, sanctions,



accountability, services, and resources to achieve the intended result. This public health approach has an inherently clinical, behavioral component and includes the recognition that rehabilitation is rarely without relapse. At the same time, jurisdictions continue to adopt community-oriented practices, such as restorative justice or community service, which focus on restoration of the relationship between the individuals charged with committing an offense and their communities.

**The number of people under correctional or justice supervision in the U.S. exceeds the entire general population in each of 38 different states.**



**Sources:** Adapted from Pew Center on the States *One in 31: The Long Reach of American Corrections* (2009). Data from Bureau of Justice Statistics *Correctional Populations in the United States, 2011* and the U.S. Census Bureau (2012).

The advent of federal health care reform under the Affordable Care Act, which includes requirements and resources for the provision of addiction treatment and mental health services at parity with medical services, furthers the evolution of justice policy, offering real promise toward building the community capacity necessary for successful diversion interventions. It offers the prospect of applying a public health approach at scale to the longstanding challenges that occur at the intersection of crime, substance use disorders, and mental illness. The growing number of jurisdictions, both large and small, that are electing fines instead of criminal charges for low-level marijuana possession offenses is an indication that stakeholders and policymakers are pursuing programs and justice alternatives that promote an efficient and appropriate use of limited public resources.

Whether out of a critical mass of community and stakeholder support, a desire to get maximum return from scarce resources, a recognized need to provide community services to break the cycle of drug use and recidivism, or a court decree to restore constitutional protections that have buckled under the weight of sheer volume, states and local jurisdictions have been pursuing justice practices that fall under the broad heading of “diversion.” In its most general usage, diversion means that an individual is placed on a justice track that is less restrictive and affords more opportunities for rehabilitation and restoration. In its most pure form, diversion may result in the avoidance or dropping of a charge and dismissal of a case completely. At either end of the diversion spectrum, the overriding goals are the same – to maximize the opportunity for success and minimize the likelihood of recidivism.

The diversity of existing diversion programs reflects the complex economic and behavioral issues underlying criminality, as well as the particular system, community needs and nuances, and jurisdictional politics in the areas from which they emerge. They range from statewide statutes affecting thousands to problem-solving courts serving dozens. As national models emerge, they are adapted as often as they are adopted. While the resulting landscape is rich with differences, it also reflects a strong common bond of commitment to public safety and the health of communities.

The collective scope and variety of existing diversion programs reflect a policy and political context that is increasingly receptive to the benefits of safely diverting individuals – who in many cases are drug-involved or have mental health problems or both – out of costly jail or prison incarceration, and away from conviction

and its lifelong collateral consequences, into programs that more effectively and efficiently address the behavioral health conditions underlying their criminal behaviors.

As the continuum of alternatives has increased, so too has the importance of understanding what works, and of applying promising and evidence-based practices. Rather than begin from scratch each time a program is developed, policymakers, stakeholders, and practitioners look to other jurisdictions for programs and ideas that can be adapted to respond to the nuances and needs of their own justice and community environment. Over the last several years, a number of government agencies, policy and research organizations, and associations have begun to identify and catalog these programs for various purposes based on various criteria.

It is among these efforts and in this environment that this report has been developed.

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### Published Numbers of CIT, Pretrial Diversion, and Diversionary Adult Drug Court Programs

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Crisis Intervention Team (CIT) Programs	2,719
Pretrial Diversion Programs	298
Pre-plea or Diversionary Adult Drug Court Programs	157

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**Sources:** University of Memphis CIT Center *National Directory* (n.d.), National Association of Pretrial Services Agencies *Promising Practices in Pretrial Diversion* (2010), and National Association of Drug Court Professionals *Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Court Programs in the United States* (2011).

**Notes:** This table excludes diversionary practices outside of formal programs, as well as an unknown number of uncounted or undocumented programs meeting this report's definition of diversion. The number of pre-plea or diversionary adult drug court programs herein represents only a portion of those facilitating diversion. Hence, in the context of estimating the overall use of diversion across the country, the figures in this table should be considered very conservative.

## Organization of the Report

Following this introduction, the report presents an overview of the project, and details the survey methodology and limitations of the report. The next section presents a theoretical framework for understanding types of diversion at three specific phases of involvement in the justice system: law enforcement, prosecution or pretrial, and courts. For each identified phase, the section presents brief historical context, information related to program outcomes, and summary descriptions of example programs. The conclusion presents observations from the project and lays a foundation upon which to advance a national dialogue on diversion programs and policies.

The report has two appendices, both available at [www.centerforhealthandjustice.org](http://www.centerforhealthandjustice.org). Appendix A presents summaries of more than 100 diversion programs identified through the project. Appendix B contains the online survey questionnaire used to collect detailed information from 30 programs.

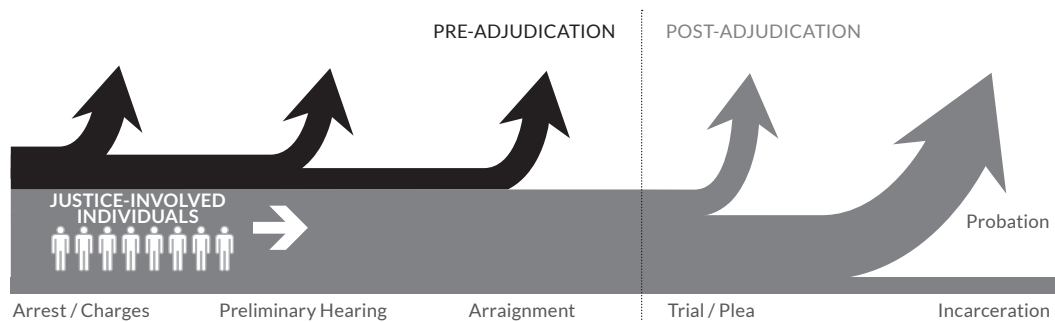
# Project Overview

This initiative set out to explore the national landscape of diversion from criminal justice involvement, aiming to collect and present information about programs across the country that offer diversion as an alternative to traditional justice case processing. It was undertaken with the knowledge that a robust assortment of such options exist but may be absent from or underrepresented in national conversations, and therefore not available or obvious for consideration by other jurisdictions.

To that end, project staff conducted a national survey of diversion programs and initiatives. This report provides historical and environmental context, a theoretical framework for understanding types of diversion at several phases of the justice system, summary descriptions of various diversion programs rather than an exhaustive tally of each of the thousands of programs across the country, and observations and themes that emerged from the survey. It spotlights program design, participating stakeholders, affected communities, implementation challenges and successes, and where available, cost savings and overall effectiveness. It also seeks to express the scale of the existence of these programs across the country.

The report intends to provide state and local policymakers, justice practitioners, community service providers, advocates, and other stakeholders with an understanding of what many jurisdictions are doing in terms of diversion-based alternatives, what constitutes effective and efficient programming, and what policies, practices, and innovations may be applicable in their own contexts to promote positive public safety and health outcomes and generate cost savings. In an effort to advance national and local conversations about diversion, the project aims to curry interest in implementing effective diversion initiatives that protect public safety, spend resources wisely, and promote health and restored citizenship.

Central to the survey and this report is the understanding that a criminal conviction – misdemeanor or felony – triggers a cascade of collateral consequences that often severely hamper an individual’s ability to become a productive member of the community. While policies and practices minimizing the use of incarceration certainly may be sound options, the conviction itself precludes or restricts an individual’s pursuit of education, housing, and employment, and creates a platform for enhanced sanctions and consequences upon further justice system involvement.



Terminology is critical to this discussion, as clarity and specificity around description of programs and models are necessary in understanding and transferring them. Although the term “diversion” has historically been used broadly, inclusive of programs that divert from incarceration in jail (pre- and post-adjudication) or prison but still result in a criminal conviction, the programs described herein meet a narrower definition of the term. For this project, the term “diversion” refers to programs that afford an opportunity to address an individual’s behavior without resulting in a conviction on an individual’s record.

With this understanding, project staff focused the survey on current diversion programs and initiatives occurring as early as street-level law enforcement intervention or as late as court involvement. Records of arrest, booking, and jail involvement may remain on an individual's record absent expungement or other record-clearing provisions. These matters, while of vital importance, are beyond the purview of this project.

## Methodology and Limitations of the Report

In an effort to collect a broad spectrum of information, project staff undertook a three-pronged effort to gather details on programs and initiatives.

*Online Survey.* An online survey was developed that sought a range of information on program scope, development, design, and evolution (see the survey questions in Appendix B). Project staff conducted outreach to national associations and organizations working in the early-phase criminal justice arenas, seeking promotion of the survey to the constituencies of those organizations. Thirty-three programs completed the online survey via self-report. A small number of survey responses were deemed inappropriate for inclusion in the report because they did not meet the definition of diversion adopted for this project.

Information collected through the survey (marked with the symbol “§” in Appendix A) is presented herein as it was originally provided or written. However, the information may have been reorganized or re-presented to allow for a more consistent format for the report.

*Telephone Interviews.* As part of the outreach previously described, project staff sought recommendations for programs that were experiencing success and promoting innovation. Those recommendations resulted in targeted outreach to specific individuals and programs for telephone interviews to collect more detailed, nuanced information about the program design, successes, and challenges.

*Secondary Research.* Many diversion programs are described in sufficient detail online or in publications that they were determined suitable for inclusion in the report. Project staff performed Internet keyword searches to seek published information about such programs, using search terms including “crisis intervention team,” “pre-trial intervention,” “pre-trial diversion,” and “deferred prosecution.” Additionally, staff performed Internet searches to follow up on leads that presented themselves throughout the course of the project with regard to particular programs. For programs included as a result of these methods (marked with the symbol “‡” in Appendix A), efforts were made to include as much relevant information as was provided, and web links to online information are included. Wide variation in program authorization, scope, design, implementation, description, and language has resulted in some degree of unavoidable inconsistency within the formatting of program descriptions in Appendix A.

Project staff did not validate information collected from survey respondents, phone interviews, or through secondary research. Staff attempted to maintain fidelity to the language and descriptions used by programs in describing themselves. Because standard definitions and language have not been adopted among programs, as indicated by one of this report's observations (see page 29), it is possible that the implied understanding or definition of a particular term in one program is inconsistent with the same term in another program.

Where contact information was provided, it has been included. Please note that some of the online survey responses were submitted by someone other than the primary contact for the program; such instances are indicated.

Because the survey methodology incorporates non-probability sampling, and because Internet research inherently excludes programs and initiatives that are not described online, the results of this survey are not intended to represent the characteristics, scale, or scope of all diversionary programs, initiatives, and mechanisms in operation across the U.S. The often local and decentralized nature of jurisdictional operations, the lack of shared understanding about what constitutes diversion, and the wide variance in perceived acceptability of diversionary programming make it impractical to catalog every program in every jurisdiction that incorporates one or more diversionary elements into practice, or to employ random sampling.

Within the framework of the stated methodology, every attempt has been made to provide accurate information about programs and initiatives in Appendix A. However, project staff recognize that inaccurate source information may have been reported or published, and that programs, contact information, and other relevant details may change over time. To submit a correction or inquire about the inclusion of a program or initiative in a subsequent iteration of Appendix A, please contact the Center for Health and Justice at TASC (CHJ).

# Diversion at Three Justice System Phases

During the course of identifying and collecting information about diversion, project staff considered different ways of categorization or organization, for purposes of both understanding diversion programs and with regard to presenting information about them. The variance in authorization, design, oversight, implementation, and structure defies any particular clear means of doing so. However, three main points of diversion prior to conviction emerged:

- 1) Diversion at the law enforcement phase
- 2) Diversion at the pretrial or prosecution phase
- 3) Diversion at the problem-solving/specialty court phase

These three “phases” share some common goals and characteristics in the context of diversion, but each also carries unique objectives and principles based on the population with which it comes into contact, its oversight, and its justice mandate. Each of these phases is discussed in more detail in this section.

## Typical oversight, diversion goals, and practices at three justice system “phases” of diversion

	Law Enforcement	Pretrial / Prosecution	Problem-solving / Specialty Court
<i>Oversight</i>	<ul style="list-style-type: none"> <li>• Municipal police department</li> <li>• County sheriff</li> </ul>	<ul style="list-style-type: none"> <li>• State's / District / Prosecuting Attorney</li> <li>• Pretrial services oversight by court or probation (county or state)</li> </ul>	<ul style="list-style-type: none"> <li>• Court</li> </ul>
<i>Diversion Goals</i>	<ul style="list-style-type: none"> <li>• Street-level safety</li> <li>• Reduce pressure on booking, holding in jail</li> <li>• Identify treatment needs of individuals that motivate crimes</li> </ul>	<ul style="list-style-type: none"> <li>• Reduce docket pressure</li> <li>• Reduce court and jail expenses</li> <li>• Maximize prosecution resources for more serious cases</li> <li>• Address the needs of individuals that motivate crimes</li> </ul>	<ul style="list-style-type: none"> <li>• Reduce recidivism</li> <li>• Supervision with rehabilitation best practices</li> </ul>
<i>Diversion Practices</i>	<ul style="list-style-type: none"> <li>• Street-level crisis intervention</li> <li>• Co-location with or immediate diversion to behavioral health services</li> </ul>	<ul style="list-style-type: none"> <li>• Deferred prosecution</li> <li>• Referral to community services</li> <li>• Individualized conditions for success / failure</li> <li>• Justice supervision (for more serious crimes)</li> </ul>	<ul style="list-style-type: none"> <li>• Deferred adjudication / sentencing</li> <li>• Multidisciplinary staffing</li> <li>• Referral to community services</li> <li>• Justice accountability</li> <li>• Clear rewards / sanctions</li> </ul>

# Diversion at the Law Enforcement Phase

## **MODELS AND COMPONENTS**

Diversion at the law enforcement phase often occurs through various models of partnership between law enforcement and the mental health community, wherein police work together in some manner with mental health professionals to manage incidents involving individuals who have mental illness.<sup>11</sup> Such programs are often based on robust collaborative efforts between local law enforcement, mental health and substance use providers and advocates, individuals with mental health and/or substance use issues, and their families.<sup>12</sup>

A model of street-level law enforcement diversion that has rapidly proliferated is the crisis intervention team (CIT), which involves a self-selected, specially trained cadre of officers available to respond to situations in which mental illness may be a contributing factor. Similar to CIT, the “co-responder” model involves trained officers and mental health professionals responding to crisis situations together.<sup>13</sup> While CIT and co-responder approaches tend to be local in focus, a recent trend has seen states attempting to develop and coordinate statewide efforts under the auspices of a state agency or non-profit entity.<sup>14</sup> Yet another emerging model is not crisis-based, but instead relies on law enforcement to conduct eligibility assessments and make direct referrals to community substance use treatment or other services.<sup>15</sup>

For more detailed discussions of core or essential elements in specialized police programs designed to respond to people with mental illness, including CIT, see Reuland,<sup>16</sup> Dupont and colleagues,<sup>17</sup> Schwarzfeld and colleagues,<sup>18</sup> and McGuire and Bond.<sup>19</sup>

## **HISTORICAL CONTEXT**

In an attempt to slow the revolving door that repeatedly leads people with mental illness through the criminal justice system, and spurred by the shooting of an individual with serious mental illness by a police officer, the Memphis Police Department and university researchers collaborated with mental health providers and advocates in 1988 to create the CIT model.<sup>20</sup> Commonly referred to as the “Memphis Model,” the University of Memphis CIT Center reports that it is now used in over 2,700 communities in more than 40 states across the country,<sup>21</sup> and in some places has also been implemented statewide.<sup>22</sup>

The co-responder model was developed in Los Angeles and San Diego, in response to the recognition that officers often came into contact with individuals with mental illness who were not engaged in treatment and services. Law enforcement agencies partnered with the mental health community, forming teams in which officers and treatment professionals co-respond to incidents and connect individuals with community-based services.<sup>23</sup>

## **COMMON IMPETUSES**

Typically, intervention that occurs as a result of street-level law enforcement contact seeks to safely manage incidents involving individuals with symptoms of behavioral health conditions, to avoid arrest and formal involvement in the criminal justice system when appropriate, and to ensure service provision that addresses behavioral health needs.<sup>24</sup>

## **EVIDENCE**

CIT programs have demonstrated effectiveness in reducing the number of officer injuries.<sup>25</sup> Findings from Steadman and colleagues<sup>26</sup> strongly suggest that specialized police responses to mental health emergencies reduce the inappropriate reliance on jails to house individuals with mental illness, finding relatively low arrest rates (ranging from 2 to 13 percent) across three studied program sites. In a multi-site analysis, the TAPA Center for Jail Diversion<sup>27</sup> found that pre-booking jail diversion programming, including diversion by law enforcement before formal charges are brought, did not result in increased re-arrest rates

among participants. This was the case in spite of participants spending two additional months, on average, in the community compared to those who were not diverted. For a comprehensive review of research on CIT programs, including officer-level outcomes and disposition of calls resulting in a CIT response, see Compton and colleagues.<sup>28</sup> The University of Memphis CIT Center has compiled a list of publications related to CIT.<sup>29</sup>

### SAMPLE PROGRAMS

The programs described herein are two of several described in more detail in Appendix A. The programs have been selected for the depth of available information and to express the variability in design.

## Law Enforcement Assisted Diversion (LEAD)<sup>§</sup>

.....  
**State:** Washington **Jurisdiction:** King County/City of Seattle **Type:** Large Urban

**Oversight by:** Policy Coordinating Group (Diverse Stakeholders Unified by a Memo of Understanding)

**Program Start:** 10/01/2011 **End:** N/A

**Annual Budget:** \$900,000 in Private Foundation Funding, Plus Substantial In-kind Local-level Resources

**Target Population:** Individuals Presenting with Substance Use Disorders

**Individuals diverted per year:** 100 (pilot stage)

**Contact:** See Appendix A  
.....

### DEVELOPMENT CIRCUMSTANCES

The primary catalysts for the program were jail overcrowding, receipt of a grant, and the mutual dissatisfaction among stakeholders with arrest and prosecution as a way to address low-level street drug use and sales. The jurisdiction includes other diversion programs, including crisis intervention teams, deferred prosecution, and specialty courts.

### PROGRAM DEVELOPMENT

The primary goal of the program is to offer a viable alternative to arrest/prosecution for low-level drug offenses. The planning process lasted six months and included key partnerships with law enforcement, public defenders, prosecutors, treatment providers, neighborhood leaders, and elected officials including the mayor, county executive, and members of both city and county councils. Management for the program is provided through a policy coordinating group comprised of key stakeholders united under a memorandum of understanding (MOU). Communication between partners occurs quarterly at some levels, every other week at others, and nearly daily at yet others.

According to program partners, critical components of the program's evolution included focused efforts to engage every group of stakeholders – including law enforcement, defending and prosecuting attorneys, treatment and other service providers, community members, and advocacy groups – to learn and address their beliefs and concerns with regard to proposed program elements. Additionally, instead of permitting law enforcement officers to self-select into the program to encourage their buy-in, the program team selected groups of officers they thought would be less likely to believe in and support the program's design. The project team then held focus groups with them, listening to and incorporating their feedback into the design, as well as providing education and training to help promote attitudes that would be conducive to the fundamental program design. The project team reports very high levels of critical program support from law enforcement partners as a result of this strategy.



PROGRAM DESIGN

The program includes intercept points at the pre-booking and Department of Corrections supervision phases of justice involvement. Participants are selected through social contact with law enforcement officers or through arrest for eligible offenses. Screening and assessment are conducted by officers who check to see whether arrestees meet eligibility criteria, including checking for prior offenses that would exclude them. There are no universal supervision requirements, and there is no ultimate decision maker. Each agency retains its options to refer or not refer, to prosecute or not, to accept an individual for services or not. In practice, program participants are very rarely if ever subject to criminal justice system processing as usual.

Once enrolled, participants are managed through case management. Community services accessed include mental health, substance abuse, employment/labor, housing, Medicaid, other public benefits, and community health centers. Following supervision, there is linkage to community services.

Project partners stress that key components of the program include that it was designed to function within the current legal paradigm and required no statutory changes, that it is fundamentally a public safety program that uses healthcare and human services to deliver public safety outcomes by freeing up resources that are currently tied up in justice system budgets, and that it was deliberately designed to meet the needs of all of the stakeholders involved.

PROGRAM EVOLUTION

The program has evolved over time, and is constantly being modified. Partners report that the program is achieving its goals. Since it began recently (2011), program outcomes have not yet been documented; data is currently being collected, and documentation is anticipated in subsequent years of the project. Demographic data is tracked but has not yet been documented. The program will be subject to a formal evaluation, and will be assessed for cost effectiveness. Program partners report that it is currently unknown whether or not the program has impacted the incidence of drug arrests.

According to project partners, the critical components of the program include the assessment process, decision making process, client management model, communication between partners, and length of participation. Looking back on the history of the program, they report that they would not do anything differently than they have.

Madison Police Department Crisis Response<sup>‡</sup>

**State:** Wisconsin **Jurisdiction:** City of Madison

**Oversight by:** Madison Police Department

**Target Population:** Individuals in Need of Mental Health Crisis Intervention

**Contact:** See Appendix A

Starting in the mid-1980s, the Madison Police Department (MPD) has cultivated relationships with a wide array of partners to assist in mental health response scenarios. These partners include the Mental Health Center of Dane County Human Services, NAMI, the United Way, Mendota Mental Health Institute of Wisconsin, the County Sheriff’s Office, the County District Attorney’s Office, the state Probation and Parole Division, the state Department of Corrections, and several local hospitals.

Every MPD officer receives approximately 60 hours of crisis management and mental health response training, including de-escalation and stabilization techniques. This training begins at the academy level and is supported through ongoing in-service trainings, which may be adapted to the specific needs of a community.

MPD also operates a Mental Health Liaison Program, which supports officers responding on the scene. The mental health liaison officers assist in identifying ongoing concerns, coordinating follow-up efforts, engaging residents with mental illnesses, and serving as a point of contact regarding mental health issues for the community.

**Source:**  
[http://csgjusticecenter.org/wp-content/uploads/2013/03/Madison\\_PD\\_One\\_Pager.pdf](http://csgjusticecenter.org/wp-content/uploads/2013/03/Madison_PD_One_Pager.pdf)

### **LIST OF PROGRAMS**

The following is a list of all law enforcement diversion programs described in this report. (See Appendix A for detailed descriptions of these programs.) *Note:* The University of Memphis CIT Center has compiled a directory of several thousand CIT programs in operation across the country: [www.cit.memphis.edu/CITMap](http://www.cit.memphis.edu/CITMap).

<i>State</i>	<i>Program / Statute</i>
Arizona	Project ROSE
California	Los Angeles Police Department Crisis Response Psychiatric Emergency Response Team (PERT)
Florida	Pinellas County CIT Program University of Florida Police CIT
Illinois	Chicago CIT
Maine	Portland Police Department Crisis Response
Ohio	Westerville CIT
Texas	Houston Police Department CIT
Utah	Salt Lake City Police Department, Utah Statewide CIT
Virginia	Colonial Crisis Intervention Team
Washington	Law Enforcement Assisted Diversion (LEAD)
Wisconsin	Madison Police Department Crisis Response

### **ADDITIONAL RESOURCES**

- CIT International • [www.citinternational.org](http://www.citinternational.org)
- Council of State Governments Justice Center • [www.csgjusticecenter.org/law-enforcement](http://www.csgjusticecenter.org/law-enforcement)
- International Association of Chiefs of Police • [www.iacp.org](http://www.iacp.org)
- National Alliance on Mental Illness • [www.nami.org](http://www.nami.org)
- University of Memphis CIT Center • [www.cit.memphis.edu](http://www.cit.memphis.edu)

## Diversion at the Pretrial / Prosecutorial Phase

### **MODELS AND COMPONENTS**

Like “diversion,” the word “pretrial” comes with myriad definitions and descriptions. For the purpose of this report, pretrial is defined as any level or stage of justice supervision between law enforcement and engagement with a trial or post-plea problem-solving court. As a result, it may involve multiple stages of involvement, including jail, bond or pretrial release, arraignment, deferred prosecution, community-based education, supervision by a states/district attorney, court, pretrial services department, and potentially even a probation department operating in a pretrial capacity. The National Association of Pretrial Services Agencies (NAPSA) observed that pretrial diversion programs begun before 1990 tend to be prosecutor-based, and those begun after tend to be part of pretrial services agencies.<sup>30</sup>

In keeping with the focused definition of diversion used herein, programs that are often thought of as diversion but may still result in a conviction are not included in this report. For example, a pretrial release program that redirects individuals out of jail or community corrections, but in which cases are still being processed and decided through traditional court processing with potential to result in conviction, is not considered diversion for the purpose of this survey.

Though there remains variety in their priority or presence among individual programs, several components serve as the hallmarks of pretrial diversion programs: 1) the deferment of traditional justice processing pending completion of the program; 2) specific guidelines for eligibility, either in law or practice; 3) interagency decision-making about participation (e.g., the agreement of the prosecuting attorney and the judge) with one entity serving as final arbiter; 4) managed supervision and reporting, typically by a pretrial service agency or local non-for-profit entity; and 5) articulated criteria for determining success or failure and implications of both.

In 1976, the Law Enforcement Assistance Administration issued a grant to NAPSA to develop national standards for programs that administer pretrial diversion programs.<sup>31</sup> Those standards were finalized in 1978, and revised in 1995 and 2008.<sup>32</sup> In 2010, NAPSA described promising and emerging practices in pretrial diversion, listing model programs in operation across the country.<sup>33</sup>

### **HISTORICAL CONTEXT**

In a comprehensive history of pretrial diversion’s early years, Bellasai notes that the perception of pretrial diversion programs has ranged significantly, from being viewed early on with much praise, to being criticized in the 1980s as a failing strategy, to receiving renewed attention in the 1990s as a legitimate, cost-effective alternative.<sup>34</sup> NAPSA recently offered a survey of pretrial programs to “re-introduce” such programming to the broader community corrections field.<sup>35</sup>

The earliest iterations of pretrial diversion originated in the 1940s, conceptualized as an alternative to prosecution for some youth. In 1947, the Judicial Conference of the United States encouraged courts to place some juveniles under the supervision of probation officers instead of moving forward with prosecution. The 1960s saw an evolution from the use of pretrial release programs as a means of ensuring court appearance to ways of addressing reasons for arrest.<sup>36</sup>

At least one successful adult pretrial diversion program had been established by the mid 1960s, by the Citizen’s Probation Authority in Flint, Michigan. Additionally, several states – Connecticut, Illinois, and New York – had passed legislation authorizing treatment instead of prosecution for some individuals.<sup>37</sup>

In 1965, President Johnson addressed Congress about the growing concern of crime, the first president to raise it in this venue as a national issue. In his address, he called for the creation of the President’s

Commission on Law Enforcement and Administration of Justice, which was charged with the ambitious task of constructing a national strategy to eliminate crime. The commission collected and analyzed data, created the first demographic composite of state correctional populations, and produced the first schematic diagram of the criminal justice process. Two years later, the commission presented its findings in a report entitled *The Challenge of Crime in a Free Society*.<sup>38</sup>

Following the release of this seminal report, in 1968 the U.S. Department of Labor funded pilot pretrial diversion sites in New York and Washington, DC, which were assessed as successful and replicated. The President's Commission on Prisoner Rehabilitation recommended that Congress enact legislation and appropriate funds for diversion programs with a goal of diverting the maximum number possible from the full criminal justice process. Provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (also known as the Controlled Substances Act) included a diversion section, which was intended as an example for states to follow in dealing with drug possession offenses. By the 1970s, pretrial diversion programs had begun proliferating.<sup>39</sup> Pretrial diversion was formally implemented in the federal judicial system with passage of the Pretrial Services Act of 1982.<sup>40</sup>

A national survey conducted in 1979 noted that there were 127 known pretrial diversion programs.<sup>41</sup> By 2010, the number of known programs had increased to 298, operating in 45 states, Washington DC, and the U.S. Virgin Islands. NAPSA counts, at minimum, 80 diversion laws in place in 45 states.<sup>42</sup> Meanwhile, the number of federal pretrial diversion cases has decreased, from 2,716 cases in 1999 to 1,426 in 2008.<sup>43</sup>

## **COMMON IMPETUSES**

Pretrial diversion programs are often initiated as an attempt to reduce the burden on the justice system and reduce recidivism by referring individuals with low-level or first-time charges and behavioral health issues into community education or services. Potential benefits resulting from pretrial diversion include reduction in recidivism as a result of addressing reasons for arrest, conservation of court time and resources for more serious crimes, prevention of future criminal activity, and restitution paid to individual victims and communities.<sup>44</sup>

## **EVIDENCE**

In a 2010 research summary on pretrial diversion programs, Camilletti noted that little work has examined their effectiveness as a whole. However, ample literature demonstrates cost- and time-effectiveness benefits (e.g., controlling growing court dockets) for criminal justice systems and jurisdictions that implement such programs. There also exists consistent evidence that pretrial diversion programs result in positive outcomes for participants, including less time spent incarcerated, avoidance of criminal convictions that make finding gainful employment difficult, and improved substance use and mental health outcomes.<sup>45</sup> The Pretrial Justice Institute has compiled a comprehensive bibliography of the literature on pretrial services.<sup>46</sup>

Some pretrial diversion programs have measured reductions in recidivism. For example, Operation De Novo, a program in Hennepin County, Minnesota, reported significantly reduced recidivism – defined as being convicted of or having a case pending for any new crime while in the program or within six months after completion – among successfully completing participants compared to those who did not complete successfully (6 percent vs. 40 percent).<sup>47</sup> Ulrich,<sup>48</sup> NAPSA,<sup>49</sup> and Camilletti<sup>50</sup> indicate, however, that few programs collect data related to recidivism, an issue confounded in part, according to Ulrich, by the fact that successful program completion often means there is no conviction record. In NAPSA's recent survey of pretrial diversion programs, respondents reported an average program completion rate of 85 percent, though only 37 percent of respondent programs reported collecting recidivism data, and the length of time that respondents tracked new convictions following program completion varied from one to five years.<sup>51</sup>

## SAMPLE PROGRAMS

The programs described herein are two of several dozen described in more detail in Appendix A. The programs have been selected for the depth of available information and to express the variability in design.

### Drug Treatment Alternative-to-Prison (DTAP)<sup>‡</sup>

.....  
**State:** New York    **Jurisdiction:** Kings County    **Type:** Urban

**Oversight by:** Kings County District Attorney

**Program Start:** 1990    **End:** N/A

**Annual Budget:** Unknown

**Target Population:** Nonviolent, Drug-addicted Chronic Felons

**Individuals Diverted:** 2,971 accepted into the program from 1990-2011, 1,349 successfully completed the program

.....  
Kings County Drug Treatment Alternative-to-Prison (DTAP) program was established in 1990 to divert substance-abusing, nonviolent, repeat felony offenders into treatment. Defendants in DTAP's target population face mandatory prison sentences under New York State law if convicted of their charged crimes.

DTAP provides substance abuse treatment under a deferred sentencing model. Participants must plead guilty to a felony prior to their admission into the program, however defendants who successfully complete DTAP are allowed to withdraw their guilty pleas, and the charges against them are dismissed. The plea agreement includes a specific prison term that will be imposed in the event of treatment failure.

Upon meeting the initial screen for eligibility, a multidisciplinary team lends its expertise to determine the appropriate course of action. This team includes the judge, the district attorney, the defense attorney, probation and parole, TASC, and the warrant enforcement team. To determine program eligibility, the assistant district attorney reviews the defendant's criminal history and the facts of the case. The most common charges are possession and sale of narcotics, and theft. Rejections following screening by the assistant district attorney most often include cases that involve defendants who are major drug traffickers and those who have significant histories of violence.

Defendants who meet the screener's eligibility criteria then receive a clinical assessment by Treatment Alternatives for a Safer Community (TASC), a not-for-profit criminal justice case management organization. Next, defendants are reviewed by DTAP's enforcement team. Final acceptance decisions are then made by the Alternative Programs Bureau of the District Attorney's Office.

Participation in DTAP is voluntary. If the defendant agrees to participate, then the Alternative Programs Bureau assistant district attorney, through regular contact with the TASC case manager, carefully monitors the defendant's progression through treatment. DTAP relies on the Therapeutic Community (TC) model of treatment, a highly structured and supervised community-based residential environment with an emphasis on self-help through the use of a peer community where individuals go through successive stages of rehabilitation.

The assistant district attorney consults with the court regarding appropriate sanctions and rewards. Finally, once a defendant appears to have successfully finished all phases of the drug treatment plan and to have fulfilled other criteria for graduation, TASC, in consultation with the treatment provider, will make a recommendation to the District Attorney's Office

that the defendant be considered as having completed DTAP. The decision of whether the defendant has completed DTAP is then made by the office's Alternative Programs Bureau. Recognizing that relapse is not uncommon in the recovery process, DTAP also has a selective readmission policy. Defendants who relapse or experience treatment setbacks are readmitted to DTAP if they express a genuine desire to continue treatment and pose no threat to the provider or the community.

DTAP partners have consistently collected and analyzed data on program involvement and impact – including recidivism rates, employment rates, and estimated cost savings – since the program's inception. Based on the 1,349 graduates as of October 2011, DTAP partners estimate savings of over \$92 million.

In 1998, the program saw a significant shift in design, moving from a deferred prosecution model to a deferred sentencing model. DTAP partners believed that the guilty plea and the guaranteed prospect of prison upon failure would serve as effective motivation, even if the plea could be later withdrawn and charges dropped. Program partners believe that the deferred sentencing model has proven very effective in maintaining high treatment retention rates.

**Source:** [www.brooklynda.org/dtap/reports/dtap-twenty-first-annual-report%20.pdf](http://www.brooklynda.org/dtap/reports/dtap-twenty-first-annual-report%20.pdf)

## Milwaukee County Treatment Alternatives and Diversion (TAD)‡

**State:** Wisconsin **Jurisdiction:** Seven Sites

**Oversight by:** Various

**Target Population:** Individuals Who Abuse Alcohol or Other Drugs

In 2005, Wisconsin Act 25 § 90m. 16.964 authorized “grants to counties to enable them to establish and operate programs, including suspended and deferred prosecution programs and programs based on principles of restorative justice, that provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol or other drugs.” In response, through collaboration between Wisconsin's Office of Justice Assistance (OJA), Department of Corrections (DOC), and Department of Health Services (DHS), the state established in 2006 the Treatment Alternatives and Diversion (TAD) grant program to provide alternatives to prosecution and incarceration for non-violent individuals with criminal offense charges or convictions who abuse alcohol or other drugs. TAD currently funds programs in seven sites, which, though their design varies in terms of model/approach, length, treatment intensity, and target population, all provide case management, substance abuse treatment, drug testing, and monitoring.

Four TAD projects utilize traditional adult drug treatment court models (Burnett County, Washburn County, Wood County, and Rock County). Three TAD projects provide some type of diversion (Milwaukee County, Washington County, and Dane County). The Dane County TAD project operates largely as a pre-trial treatment-alternative-to-jail day-reporting program. The Washington County TAD project focuses on individuals with subsequent OWI (operating while intoxicated) charges and those on probation or parole facing revocation. The Milwaukee County TAD project uses a pre-charging diversion and deferred prosecution model.

The TAD program, including all sites, has been evaluated. Information including participant demographics, program outcomes (related to substance abuse/mental health and justice involvement), and costs/benefits are documented in evaluation reports. For example, TAD

projects successfully divert non-violent offenders with alcohol or other drug problems from jail and prison incarceration. A total of 135,118 incarceration days were averted by TAD projects during the first four years of the program (86,530 jail days and 45,588 prison days). Also, participants who complete TAD are nine times less likely to be admitted to state prison after program participation than those who do not (3 vs. 28 percent).

*Milwaukee County TAD* – The program serves non-violent offenders with substance abuse and/or co-occurring mental health problems through either pre-charging diversion or deferred prosecution. Through pre-charging diversion, individuals who successfully participate in case management and treatment services avoid having charges filed for their arresting offense. Through deferred prosecution, individuals enter a plea, judgment is deferred, and cases are held open for a period of time under the condition that program requirements are completed. Successful completion results in a dismissal or reduction of charges. Pre-trial, screening, case management, and substance abuse services are supplied by contracted providers.

**Contact:** See Appendix A

## LIST OF PROGRAMS

The following is a list of all pretrial diversion programs described in this report. (See Appendix A for detailed descriptions of programs.) *Note:* NAPSA lists 69 of the known pretrial diversion programs in their 2009 survey report: [www.napsa.org/publications/NAPSAPretrialPracticeSurvey.pdf](http://www.napsa.org/publications/NAPSAPretrialPracticeSurvey.pdf).

<b>State</b>	<b>Program / Statute</b>
United States	Pretrial Diversion Program
Alabama	Discretionary Pretrial Diversion Programs
Arizona	Maricopa County Pretrial Services Tucson City Court Diversion Programs
California	Forensic Multi-Disciplinary Team San Francisco Pretrial Diversion Project Support and Treatment After Release (STAR)
Colorado	Jefferson & Gilpin Counties Diversion Programs
Connecticut	Connecticut Diversionary Programs
Florida	Alachua County Pretrial Services Eleventh Judicial Criminal Mental Health Project Fourth Circuit Diversion Programs Pre-Trial Intervention Statute
Georgia	Pretrial Intervention & Diversion Programs
Illinois	Cook County Drug School Deferred Prosecution Program Cook County Felony Deferred Prosecution Program Jefferson County Datalink Macon County Pretrial Phase Program McLean County Pretrial Services Offender Initiative Program Statute St. Clair County Jail Datalink
Indiana	Pretrial Deferred Prosecution Statute

Kansas	Diversion Program Statute
Kentucky	Kentucky Pretrial Services
Louisiana	Pretrial Intervention Guidelines
Maryland	Montgomery County Diversion Programs
Massachusetts	Pretrial Diversion and Probation Statutes
Michigan	Citizen's Probation Authority Kent County Diversion Program Wayne County Pretrial Diversion Programs
Minnesota	Operation de Novo Adult Diversion Pretrial Diversion Programs Project Remand Winona County Adult Diversion Programs
Mississippi	Pre-trial Intervention Program
Nebraska	Pretrial Diversion Program Statute
New Jersey	Pretrial Intervention (PTI) Program
New Mexico	Bernalillo Pretrial Services Division
New York	Kings County Drug Treatment Alternative to Prison (DTAP) Monroe County Pre-Trial Services
North Carolina	Buncombe County Pretrial Services Deferred Prosecution Statutes Drug Education Schools
Ohio	Mahoning County TASC Oriana House Pretrial Diversion Programs Pre-trial Diversion Program Statute Recovery Project
Oklahoma	Oklahoma County Veterans Program (OCVP)
Pennsylvania	Accelerated Rehabilitation Disposition (ARD) Program Allegheny County Justice Related Services
Rhode Island	Adult Diversion Program Intensive Diversion Program Mental Health Diversionary Program
South Carolina	Pre-Trial Intervention (PTI) and Alcohol Education (AEP) Program Statutes
Texas	Bexar County Jail Diversion Bowie County Pre-Trial Diversion Deferred Adjudication Community Supervision and Pre-Trial Diversion Travis County Felony Pretrial Diversion Program
Wisconsin	Dane County Deferred Prosecution Unit (DPU) Rock County Deferred Prosecution Program St. Croix County Pre-trial Diversion Program Milwaukee County Treatment Alternatives and Diversion (TAD)



## **ADDITIONAL RESOURCES**

Association of Prosecuting Attorneys • [www.apainc.org](http://www.apainc.org)

National Association of Pretrial Services Agencies • [www.napsa.org](http://www.napsa.org)

National District Attorneys Association • [www.ndaa.org](http://www.ndaa.org)

Pretrial Justice Institute • [www.pretrial.org](http://www.pretrial.org)

## Diversion at the Court Phase

### **MODELS AND COMPONENTS**

While significant variety exists among drug courts and other problem-solving courts in terms of intended population, aspects of implementation, and other features, overarching model elements often include the use of the criminal justice system's authority to provide behavioral health care and other services in lieu of incarceration<sup>52</sup> or traditional case processing.<sup>53</sup> Typically consisting of a special court docket and team approach (including a judge, defense and prosecuting attorneys, probation/parole officer, case manager and/or representatives from addiction or mental health treatment), variations include courts seeking to address addiction, mental illness, and trauma. There may be focus on special populations, such as veterans or families, or on specific charges such as prostitution, domestic violence, or driving under the influence (DUI). Some operate within a community context, fostering relationships within the justice system and with residents, businesses, the faith community, and schools to address local problems.<sup>54</sup> Clients are offered incentives – rewards, sanctions, or both – to remain compliant and are monitored throughout participation.<sup>55</sup>

Drug and other problem-solving courts generally have many of the same key components as pretrial or prosecutorial diversion programs, including: 1) specific guidelines for eligibility; 2) inter-disciplinary teams and case staffings; 3) tightly managed supervision, reporting, and significant judicial involvement; and 4) specific criteria for determining success or failure and implications of both.

In 1997, the National Association of Drug Court Professionals (NADCP) identified ten key components of drug courts,<sup>56</sup> and recently published the first of two volumes of best practice standards for them.<sup>57</sup> Carey and colleagues identified ten key components of drug courts.<sup>58</sup> Thompson, Osher, and Tomasini-Joshi<sup>59</sup> articulated ten essential elements of mental health court design and implementation. Wolf<sup>60</sup> identified six broad principles for problem-solving justice meant to encompass the variety in characteristics among problem-solving initiatives while remaining meaningful.

In a 2011 survey of the drug court field, NADCP reported that a majority of drug courts (58 percent) operate according to a post-plea model, in which participation requires an admission of guilt and often a conviction. Previously, many followed the pre-plea model, in which no plea is entered and there is an agreement that charges will be dropped upon successful program completion. As research emerged suggesting that drug courts should focus on higher-risk populations, more programs began utilizing a post-plea model.<sup>61</sup> Findings from Redlich and colleagues<sup>62</sup> suggest that, like drug courts, mental health courts have moved toward favoring a post-plea approach. Because of this, a significant portion of existing problem-solving courts do not meet the narrower definition of diversion adopted in this report.

### **HISTORICAL CONTEXT**

Programs linking courts with community-based treatment began to emerge in the late 1960s<sup>63</sup> and early 1970s under the Nixon administration.<sup>64</sup> Built on these concepts, the first officially named drug court was established in Miami-Dade County, Florida, in 1989. During the 1980s, changes in drug enforcement resulted in a sharp increase in drug-related arrests in Miami and across the country. Miami's role as a port for international drug trafficking drew increased attention and further exacerbated arrest rates. The local courts and jails became overwhelmed with individuals who had drug problems, the city's drug treatment facilities were overcrowded and had long waitlists, and many individuals cycled through courts and jails repeatedly without getting treatment. To address the situation, the chief judge developed a task force charged with finding a solution to the backlog issue, to reduce recidivism, and to increase access to drug treatment.<sup>65</sup>

While specialized courtrooms dedicated to drug cases were not new, a court with an explicitly rehabilitative orientation rather than a retributive and deterrent one was novel. A "drug court movement" grew out of the Miami experience, buttressed by other programs that had been bringing together drug treatment and

criminal justice case processing, including Treatment Alternatives to Street Crime (TASC) programs. In 1994, the Violent Crime Control and Enforcement Act authorized federal funding for the development of drug courts across the country. Subsequent and increased federal funding grew the presence of drug courts further, and required that they have an evaluation component. In 2001, there were 700 known drug treatment courts in the country and over 400 more in development.<sup>66</sup> By 2012, there were over 2,700 known drug courts, operating in every U.S. state and territory.<sup>67</sup>

Similar models have adapted the drug court model to meet the needs of specific populations or circumstances. NADCP counts over 1,100 other problem-solving courts across the nation as of 2012.<sup>68</sup> Mental health courts began appearing in 1997. By 2003 there were 80 known mental health courts across the country,<sup>69</sup> and by 2009, there were more than 250.<sup>70</sup> The first veterans court appeared in 2008, in Buffalo, New York,<sup>71</sup> and by 2011, there were 74 in operation.<sup>72</sup>

## **COMMON IMPETUSES**

With the recognition that enough cases on regular dockets involve similar enough needs and characteristics to warrant a specialty docket with more attention and resources devoted to individual cases, problem-solving courts typically emerge from the desire to reduce recidivism by providing treatment and services that address addiction, mental illness, and other needs likely underlying criminal behaviors. Reducing justice system costs is also a motivating factor.<sup>73</sup>

## **EVIDENCE**

Program evaluation and analysis is relatively abundant for drug courts compared to other types of diversion, likely in part because of requirements attached to federal funding for programs. Importantly, even though only pre-plea and a small portion of post-plea programs meet this report's definition of diversion, general findings for problem-solving courts have been included, along with those that present differential findings related to effectiveness among pre-plea, post-plea, or hybrid/combination models, to inform the discussion.

In a recent meta-analytic review of drug court evaluations measuring impact on recidivism, Mitchell and colleagues<sup>74</sup> note that the initial expansion of drug courts occurred without a solid body of empirical evidence of the model's effectiveness on this measure. Findings from several previous reviews suggested that participation in drug court programs resulted in recidivism reductions, but authors cautioned that existing evaluations tended to lack methodological rigor and leave questions unanswered about the long-term impact of participation.<sup>75</sup> Incorporating new evaluations into their review, Mitchell and colleagues found that participation in adult drug court programs has an effect of reducing recidivism, on average, akin to a drop from 50 percent to 37-38 percent.

A five-year longitudinal process, impact, and cost-benefit evaluation compared data from 23 adult drug courts with data from six geographically similar comparison sites,<sup>76</sup> finding that drug court participants were less likely to experience drug use relapse and reported less criminal activity within the 18-month period following participation. Authors noted that successful outcomes varied widely across studied courts, and indicated that the variance is likely attributable to multiple factors, including differences in participant populations (e.g., lower-risk vs. higher-risk in terms of offense history, level of drug dependence, and motivation to change) and variation in implemented policies and practices. Among their findings were that courts adopting either pre- or post-plea models appear to be more effective at preventing crime and substance use than courts that adopt a hybrid or combination model (i.e., accepting participants at various points of entry). For additional discussions of the evidence on drug courts, see King and Pasquarella,<sup>77</sup> U.S. GAO,<sup>78</sup> and Carey and colleagues.<sup>79</sup>

The body of research on mental health courts is relatively limited. However, some programs have demonstrated recidivism reductions among participants relative to individuals with mental illness processed traditionally through the justice system. Studies have shown that these programs improve the connection of participants

with mental health treatment services, and also that they can save money through prevented recidivism and criminal justice system costs (i.e., avoided court and jail costs) and avoidance of costly inpatient care.<sup>80</sup>

### SAMPLE PROGRAMS

The programs described herein are two among a limited number described in more detail in Appendix A. The programs have been selected for the depth of available information and to express the variability in design.

## Vermont Court Diversion<sup>‡</sup>

.....

**State:** Vermont    **Jurisdiction:** Various Jurisdictions

**Oversight by:** State's Attorneys and Local NFPs

**Target Population:** Misdemeanor Offenders

.....

Beginning as a single community program in the late 1970s, court diversion was a community justice program that aimed to divert minor offenders out of the court system. The program's success led the State legislature to expand it to youth across the State, and in 1982 to adults as well (3 VSA §163 & §164).

Following a balanced and restorative justice (BARJ) model, Vermont court diversion programs engage community members in responding to the needs of crime victims, the community, and those who violated the law, holding the latter accountable in a manner that promotes responsible behavior. State's Attorneys refer individuals to local programs. The majority of participants ("clients") are charged with misdemeanors, typically related to disorderly conduct, simple assault, larceny, retail theft, unlawful mischief, alcohol and marijuana violations, and bad checks. Participants enter the program voluntarily after being charged with a criminal offense and prior to adjudication.

Community members make up review boards, which meet with clients to develop contracts that address the particular offense and the underlying reasons for their actions. Victims have the opportunity to voice their opinion, and contracts may require clients to pay restitution, participate in counseling or substance abuse treatment, or write letters of apology. Participants accept responsibility for violating the law and work to repair the harm they caused. Those who complete the program successfully have their cases dismissed by the State's Attorney. Two years later, the court orders the sealing of all records related to the case. If an offender does not complete the terms of the contract, the case is returned to court for prosecution.

Each county in Vermont has a diversion program run by a local, private non-profit organization. Programs are funded by a state grant administered by the Attorney General's office, client fees, town appropriations, grants, private donations, and United Way allocations. Programs are joined together through membership in the Vermont Association of Court Diversion Programs.

**Sources / Examples:**

Vermont Association of Court Diversion Programs (VACDP) – [vtcourtdiversion.org](http://vtcourtdiversion.org)

VACDP List of Programs – [www.atg.state.vt.us/assets/files/VACDP%20Programs.pdf](http://www.atg.state.vt.us/assets/files/VACDP%20Programs.pdf)

Virginia Office of the Attorney General – [www.atg.state.vt.us/issues/court-diversion.php](http://www.atg.state.vt.us/issues/court-diversion.php)

## Multnomah County Community Court<sup>‡</sup>

.....

**State:** Oregon    **Jurisdiction:** Multnomah County

**Oversight by:** Multnomah County District Attorney

**Target Population:** Defendants Charged with “Quality of Life” Misdemeanor Offenses

.....

With goals of reducing the number of cases on other court dockets and costs associated with jail incarceration, the Community Court focuses on misdemeanors described as “quality of life” crimes, including theft, prostitution, public drinking, and trespass. Participants plead guilty and receive a sentence that may include community service and required social services. Services can include health care, food assistance, access to shelter and clothing, and drug and alcohol assessments. Most first-time cases in the program are dismissed following successful completion of mandated community service and/or social services.

**Source:**

<http://mcda.us/index.php/community-initiatives-special-programs/community-court/>

### LIST OF PROGRAMS

The following is a list of all law enforcement diversion programs described in this report. (See Appendix A for detailed descriptions of programs.) *Note:* NADCP has created a map of several thousand drug and problem-solving courts across the country: [www.nadcp.org/learn/find-drug-court](http://www.nadcp.org/learn/find-drug-court). The GAINS Center has developed a comprehensive database to identify existing mental health courts in the U.S.: [gainscenter.samhsa.gov/grant\\_programs/adultmhc.asp](http://gainscenter.samhsa.gov/grant_programs/adultmhc.asp).

<b>State</b>	<b>Program / Statute</b>
Alabama	DeKalb County Diversion Treatment Court
Colorado	18th Judicial Mental Health Court
Delaware	Superior Court Specialty Court Programs
District of Columbia	Drug Court, Community Court, and Mental Health Community Court
Florida	Okaloosa County Mental Health Court and Drug Court Seminole County Drug Court and Tier One (PTI) Felony Drug Court
Illinois	Macon County Specialty Courts Peoria Mental Health Court / Emergency Response Services
New York	Bronx TASC Mental Health Court Program
Ohio	Akron Mental Health Court
Oregon	Multnomah County Community Court
Texas	Travis County Drug Court Program
Vermont	Vermont Court Diversion
Wisconsin	Rock County Drug Court and Veterans Court Programs

## **ADDITIONAL RESOURCES**

Center for Court Innovation • [www.courtinnovation.org](http://www.courtinnovation.org)

Council of State Governments Justice Center • [www.csgjusticecenter.org/courts](http://www.csgjusticecenter.org/courts)

National Association of Drug Court Professionals • [www.nadcp.org](http://www.nadcp.org)

National Judicial College • [www.judges.org](http://www.judges.org)

National Center for State Courts • [www.ncsc.org](http://www.ncsc.org)

# Observations and Conclusion

A number of key observations emerged from the survey analysis, providing opportunity and direction that can guide policymakers, system stakeholders, community service providers, advocates, and others in efforts to expand the use of programs and practices that are effective and promote fiscal, public safety, social, and health benefits for their participants, communities, justice and health systems, and taxpayers.

**1. *While programs vary in their approach to achieve diversion from traditional criminal justice case processing, a common critical component among many is a focus on individuals with substance use and mental health issues.***

The programs described in this survey are as varied as the jurisdictions in which they operate. Some were started as long ago as the 1970s, some as recently as 2013. Some are managed by the state, some by county criminal justice entities, and some by independent non-profits. Some include involvement by state agencies, some do not. Annual budgets range from zero (all volunteer) to millions of dollars, and the numbers of participants range from dozens to more than 10,000. Some are isolated in one phase of justice involvement, such as law enforcement or problem-solving courts, while others are available to be accessed at multiple points, from arrest through booking into jail and appearance before a judge. Likewise, the types of programs accessed, from drug education to substance use treatment to mental health services to homeless services and job training, vary from program to program. Some utilize independent case management while others rely on probation or other supervision to ensure compliance and access to services.

While the notion of a “model program” for diversion defies description based on these variances, some commonalities emerged in programs’ survey responses to questions of critical components, including identification and assessment of participants, the decision-making process, communication between partners, and participation in services. Almost all of the programs, regardless of the phase of justice involvement, focus on individuals with behavioral health issues – primarily substance use, mental illness, and co-occurring disorders. The implications are two-fold. First, this indicates a growing acceptance of the idea that effective responses to individuals with substance use and mental health issues involved in the justice system combine community-based treatment, accountability, and supervision. Second, it means that treatment resources can be dedicated to this population to benefit both public health and safety.

**2. *Many diversion programs are limited to individuals with first-time or low-level offenses.***

Many of the programs have explicit eligibility criteria that limit participation to individuals with first-time offenses (felony or misdemeanor) or misdemeanors only. Individuals with criminal histories – including those with more complex behavioral health needs and those more likely to reoffend – may be afforded diversion opportunities in some programs, but they are excluded from others. Programs and initiatives that adopt such limitations may be working under the presumption that this population presents low risk to public safety and is “deserving” of a second chance. This perception of safety risk, however, may assume an oversimplified approach to assessment, one that discounts or ignores the influence of behavioral health conditions often underlying criminal behavior.

**3. *With many types of diversion programs in existence across the country, there are no apparent overarching standards for collecting or publishing data for the purposes of evaluating different types of programs against common sets of performance measures such as cost savings or reduced recidivism.***

While some programs may be collecting these data and some may be publishing outcomes, there currently is not an aggregated means of sharing data across different types of diversion programs to inform or advise the development of new programs or strengthening of existing strategies.

Relatively little true evaluation exists in national or local literature about the effectiveness of these types of programs overall, either in terms of cost savings or in reduced recidivism. This may be due, in part, to a lack of standard design or model, and also to scarce resources. Unlike problem-solving courts, which emerged with guidelines to be adapted by individual jurisdictions, pre-sentence diversion programs tend to be built around local needs, capacity, and partnerships.

Overwhelmingly, program representatives responding to the online survey reported that they were achieving the goals they set out to achieve. Among survey responses, most reported collecting outcome and demographic data, and approximately half report actually publishing that data. Most have not been subject to a formal evaluation, and most have not been evaluated for cost effectiveness. Of all the programs presented in Appendix A, very few actively and publicly presented findings on cost savings and recidivism in detail on their website.

While many programs report that they achieve their goals of reducing burden on courts, jails, and prisons, the potential for unintended consequences increases the need for monitoring and evaluation. For example, a program with goals of 1) reducing the numbers of individuals with convictions and 2) increasing the numbers of individuals connected with community-based behavioral health or other supportive services may achieve the second but still fail to achieve the first. This could happen by including participants who would not otherwise have been convicted without involvement in the program. Further, if participating individuals were required to plead guilty to participate, the result could be increased numbers of individuals with criminal records. Vigilance in monitoring results and making adjustments necessary to meet intended goals is warranted.

**4. *Standard definitions and language with regard to programs and interventions that engage in diversionary practices have not been adopted.***

The language and vocabulary used in discussions of alternatives to arrest, detainment, conviction, sentencing, or post-sentence incarceration lacks common definitions and terminologies. As the scope of and attitudes toward alternatives has changed in recent years, the language used to describe those alternatives has become muddled. Current language is predominantly process-oriented, based on a phase of justice involvement (e.g., deferred prosecution, pretrial intervention). However, there is no clear definition of terms like “diversion” – diversion from what, and to what, and with what goal? Diversion from one justice process to another (e.g., traditional felony court to problem-solving court) or from pretrial detainment to community supervision pending trial is quite different from diversion out of the justice process entirely with a goal of charge dismissal. As noted, terminology is critical to this discussion of diversion, as clarity and specificity around description of programs and models are necessary in understanding and transferring them. A full exploration of the impact of language, while outside the purview of this project, is needed.

**5. *As the numbers of people entering courts and correctional institutions have swelled and public resources have tightened, many jurisdictions are exploring diversion alternatives out of necessity.***

When exploring the reasons for the initial development of each program, a common catalyst articulated by approximately half of the survey responses was reduction in jail overcrowding. As a result, it is not surprising that administrative priority also ranked among the top catalysts. While a fairly small number of programs explicitly stated reducing costs as a goal for their program, the prevalence of both “expediting case disposition” and “increasing diversion options” as motivators indicates a broader desire to pursue efficient alternatives, individual rehabilitation, and system reform.



## Conclusion: The Evolving Landscape of Diversion

The relatively recent and rapid expansion of intervention approaches such as drug and law enforcement crisis intervention and various problem-solving courts suggests a growing institutional acceptance among policymakers and practitioners that, in certain circumstances, less restrictive justice strategies may offer increased effectiveness in reducing recidivism and addressing substance use disorders and mental illness, as well as greater efficiency in the use of public resources. One needs look no further than the co-responder crisis intervention model to see two fields that once had vastly divergent policy and practice approaches are now finding ways to actively collaborate to best serve their communities.

Looking ahead, it is clear that the notion of diversion, and how it is practiced at the local and state level, will continue to evolve as new information, expertise, and collaborations emerge. The results of this survey highlight several broad themes and ideas that may serve as a framework for the future of diversion:

1. **Substance use and mental health care involvement.** The most effective response to individuals with substance use and mental health issues is often an appropriate balance of supervision, accountability, and community treatment and support. What is deemed appropriate should be driven by the ever-expanding base of research and data regarding which intervention model best serves a given population at a given point of justice involvement. A risk-needs-responsivity (RNR) approach offers particular promise in this context. Considered a best practice for criminal justice populations, this approach assesses both the risk of recidivism as well as needs related to substance use, mental health, and other social and environmental conditions, and determines the appropriate type and dose of treatments and other services necessary to maximize justice and health outcomes. As the body of knowledge around what works continues to grow, the awareness and implementation of research-based, proven models and practices will become paramount.
2. **Data-driven resource allocation.** Justice, health, and community resources should be allocated to those programs that demonstrate the greatest capacity to reduce recidivism, protect public order and safety, and promote public health, while also mitigating the need for costly justice supervision. These determinations will be most successful if programs take formal steps to develop standardized outcome measures (cost-, public safety-, and public health-based), and measure, analyze, monitor, and share results.
3. **Continued expansion of diversion beyond individuals with first-time and low-level offenses.** Jurisdictions can develop or adopt strategies and interventions that focus on those individuals most likely to recidivate, and that consider factors other than just current charge and criminal history in determining an intervention plan (for example, through the use of individualized risk and needs assessments). The next generation of diversion programs should be able to determine and provide the appropriate level of services and justice supervision for each individual.
4. **Development of a shared language.** The need for clarity and specificity around the description of programs and models will be of increasing importance in the growing exchange of ideas, innovations, and best practices.

# Additional Resources

Association of Prosecuting Attorneys • [www.apainc.org](http://www.apainc.org)  
Center for Court Innovation • [www.courtinnovation.org](http://www.courtinnovation.org)  
CIT International • [www.citinternational.org](http://www.citinternational.org)  
Council of State Governments Justice Center • [www.csgjusticecenter.org](http://www.csgjusticecenter.org)  
International Association of Chiefs of Police • [www.iacp.org](http://www.iacp.org)  
Justice Management Institute • [www.jmijustice.org](http://www.jmijustice.org)  
National Alliance on Mental Illness • [www.nami.org](http://www.nami.org)  
National Association of Counties • [www.naco.org](http://www.naco.org)  
National Association of Drug Court Professionals • [www.nadcp.org](http://www.nadcp.org)  
National Association of Pretrial Services Agencies • [www.napsa.org](http://www.napsa.org)  
National Center for State Courts • [www.ncsc.org](http://www.ncsc.org)  
National District Attorneys Association • [www.ndaa.org](http://www.ndaa.org)  
National Drug Court Institute • [www.ndci.org](http://www.ndci.org)  
National Judicial College • [www.judges.org](http://www.judges.org)  
National Network for Safe Communities • [www.nnscommunities.org](http://www.nnscommunities.org)  
Pew Center on the States • [www.pewstates.org](http://www.pewstates.org)  
SAMHSA's GAINS Center for Behavioral Health and Justice Transformation • [gainscenter.samhsa.gov](http://gainscenter.samhsa.gov)  
Pretrial Justice Institute • [www.pretrial.org](http://www.pretrial.org)  
University of Memphis CIT Center • [www.cit.memphis.edu](http://www.cit.memphis.edu)  
Vera Institute of Justice • [www.vera.org](http://www.vera.org)

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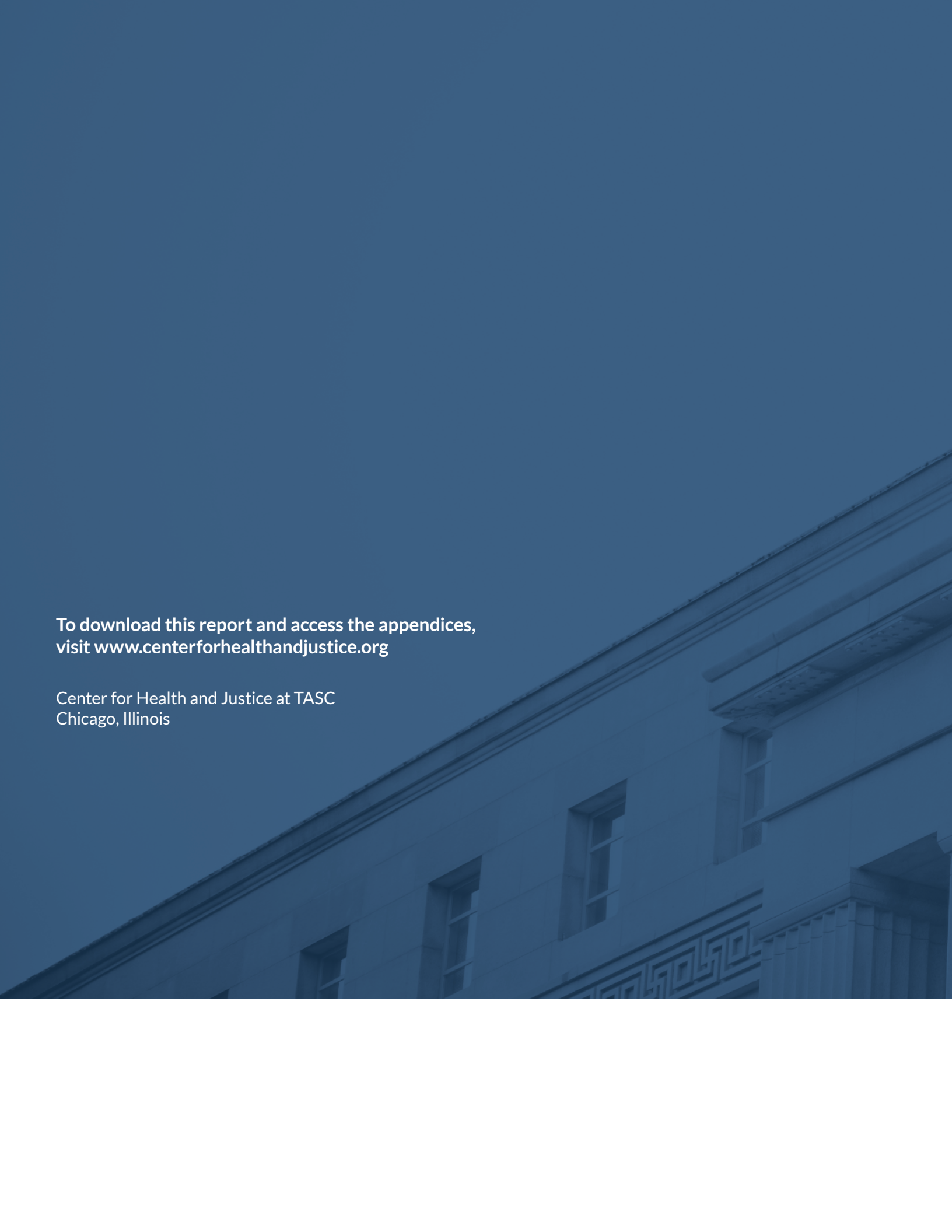
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