



# FAIR AND JUST PROSECUTION

Promoting justice through leadership and innovation

## ISSUES AT A GLANCE

## Promising Practices in Prosecutor-Led Diversion

*Fair and Just Prosecution (FJP) brings together recently elected district attorneys<sup>1</sup> as part of a network of like-minded leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutive leaders to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. In furtherance of those efforts, FJP's "Issues at a Glance" provide district attorneys with information and insights about a variety of critical and timely topics. These papers give an overview of the issue, key background information, ideas on where and how this issue arises, and specific recommendations to consider. They are intended to be succinct and to provide district attorneys with enough information to evaluate whether they want to pursue further action within their office. For each topic, Fair and Just Prosecution has additional supporting materials, including model policies and guidelines, key academic papers, and other research. If your office wants to learn more about this topic, we encourage you to contact us.*

### OVERVIEW

#### Momentum around Alternatives to Incarceration

Across the country, prosecutive leaders are embracing alternatives to incarceration for a range of offenses. A growing body of evidence confirms that diversion from the criminal justice system can reduce recidivism and relieve the strain on resource-strapped courts, corrections systems, and prosecutor's offices.<sup>2</sup> A range of diversion models exist in response to specific offenses and offering a variety of alternatives to imprisonment — including treatment, restorative justice, and probation.

This FJP summary lists a sampling of programs and models for prosecutor-led diversion. An overview of each program or model is provided, along with resources that can provide more detailed information. While this summary focuses primarily on prosecutor-involved programs, these models can and should be complemented by programs that divert individuals at both the initial law enforcement contact and post-sentencing stages as well.

<sup>1</sup> The term "district attorney" or "DA" is used generally to refer to any chief local prosecutor, including State's Attorneys, prosecuting attorneys, etc.

<sup>2</sup> Center for Health and Justice, TASC. *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*. Available at: [http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report\\_web.pdf](http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf).

***"Together we are working hard to create a balance between prosecution, prevention/intervention, and awareness, with innovative programs and initiatives inside and beyond the courthouse walls."***

— DEKALB COUNTY (DECATUR, GA) DISTRICT ATTORNEY SHERRY BOSTON

## Considerations in Crafting Diversion Models

Diversionary programs should be tailored to the needs, resources, and unique circumstances of each jurisdiction. However, several guiding principles are worth bearing in mind:

1. Whenever possible, promote models that **avoid and/or limit contacts with the criminal justice system**. Criminal justice contacts — however brief — can have negative psychosocial and employment effects, and often fail to address the underlying cause of criminal behavior.<sup>3</sup>
2. **Rely on clinical staff** — not prosecutors or other legal personnel — to design and run evidence-based and individually-tailored treatment programs.
3. **Rigorously track outcomes** and recidivism rates in partnership with outside evaluators.
4. **Avoid, whenever possible, imposing costs** of program participation on the individuals. Such charges, if absolutely necessary, should be based on an individual's ability to pay and there should be clearly defined indigency exceptions.
5. **Limit exclusionary criteria** to the greatest extent possible. Individuals with moderate to high needs tend to pose the greatest burdens on correctional systems, and if diverted with appropriate programming, can offer the greatest reductions in recidivism and costs.
6. Carefully consider which program conditions — such as full sobriety — are truly necessary. **Program requirements should seek to address the underlying causes of the misbehavior** and promote safer and healthier communities. Similarly, prosecutors should not presume that punitive responses to noncompliance with program conditions are always appropriate or necessary.
7. While elected prosecutors can and should be leaders in promoting these programs, they should **not necessarily presume that a justice system response is the most effective tool** to address problematic substance use, mental illness, homelessness, poverty or similar issues. Instead, elected prosecutors can be powerful conveners of other system leaders and community groups to create partnerships and responses that will best serve the community and the individual.

A sampling of diversion programs is offered below, listed by the particular population or offense the program seeks to address. This is not intended to reflect the full universe or even all types of diversion programs around the nation, nor are detailed eligibility requirements described. Rather, this brief provides examples of different programs that can offer elected DAs a starting point as they begin to think about increasing and improving their diversion options. Specific questions to consider as DAs develop their thinking and planning around diversion models might include:

- What legal authority or mechanism will the prosecutor's office use to divert individuals?
- Which eligibility criteria for diversion will be used, and how will screening and admission into the program occur?
- After an individual is diverted, what types of services and programming will be offered? Who will provide the services?

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<sup>3</sup> Travis, J., Western, B., and Redburn, S.. *The Growth of Incarceration in the United States*. Washington: National Academies Press (2014) Pages 152, 235-6. <https://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

- How is compliance monitored, and what sanctions or responses, if any, will be levied for non-compliance?
- What will be the outcome of successful completion for the individual's case and their criminal record?

For each program and model listed below, there is a brief summary of key information, including program details, eligibility requirements, results and outcomes (if known), funding sources, the prosecutor's role in the program, and where more information can be obtained.<sup>4</sup>

## DIFFERENT DIVERSION MODELS AND PROGRAMS

### Chemical Dependency Programs

#### Law Enforcement Assisted Diversion (LEAD)

*Seattle, WA; Santa Fe, NM; Albany, NY; Baltimore, MD; Fayetteville & Wilmington, NC; Portland, OR; Charleston & Huntington, WV; Bangor, ME; additional sites forthcoming*

*Eligibility:* LEAD is a pre-booking diversion program that engages individuals who would otherwise be detained on low-level drug possession or sales charges, prostitution, or other charges related to behavioral health issues or extreme poverty. Divertible offenses and exclusionary criteria vary by jurisdiction. LEAD is specifically designed to serve individuals who are chronically exposed to justice system involvement. Entry is either by diversion at the point of arrest, or upstream as an entirely voluntary "social contact" referral, but in all cases, prior to booking and prosecution. However, once in LEAD, individuals who have future law enforcement contacts may be re-diverted or subject to enforcement action, at the discretion of officers/sergeants and prosecutors involved, but are not dismissed from the program. In exercising discretion in these subsequent contacts, LEAD operational partners are asked to choose among their available options to take the step most likely to support behavior change — which is often not booking or prosecution.

*Program Details:* Police officers exercise discretionary authority at the point of contact to divert individuals to a trauma-informed intensive case management program in lieu of booking and prosecution. Individuals receive a wide range of support services, often including transitional and permanent housing and/or drug treatment.

*Prosecutor's Role:* Prosecutors coordinate closely with justice system colleagues and case managers, using their discretion to ensure filing, release and disposition decisions in cases other than the diverted case maximize opportunities for behavior change and support defendants' progress.<sup>5</sup> Prosecutors also ensure that individuals diverted after arrest have charges filed (if those charges otherwise meet filing standards) if they do not complete an in-depth intake session and sign a release of information within 30 days of the referral. In King County, there is greater than a 90% intake completion rate, with outreach workers and police officers helping to connect the individual referred to the intake staff. Prosecutors' offices are typically represented in a steering committee that coordinates and guides implementation.

<sup>4</sup> Contact information and program details throughout this summary are listed as of August 2017 and may change over time. If contact or other information is no longer accurate, please contact FJP at [info@fairandjustprosecution.org](mailto:info@fairandjustprosecution.org).

<sup>5</sup> LEAD National Support Bureau, *Core Principles for Prosecutor Role*, available at: [https://docs.wixstatic.com/ugd/6f124f\\_aed79135cd61443e842102df318a520e.pdf](https://docs.wixstatic.com/ugd/6f124f_aed79135cd61443e842102df318a520e.pdf).

*Outcome of Successful/Unsuccessful Completion:* A completed referral process results in charges not being filed in the diverted case. LEAD does not use a concept of “completion” per se, however, and as a harm reduction-based intervention, does not consider that participants “fail” if they continue to struggle, even for a significant period of time. LEAD participants usually have experienced complex trauma and major immediate behavior shifts are not necessarily expected, though such shifts over time are reliably seen. While participants could still be subsequently charged for committing a later offense while in LEAD, the program adopts a harm reduction approach that recognizes substance use disorder as a chronic condition that may include relapse. Rather than enforcing a “zero tolerance policy” toward drug use, LEAD meets participants where they are and encourages behavior that causes less harm to themselves and their community.

*Results:* Through an independent quasi-experimental evaluation, LEAD was found to reduce the likelihood of re-arrest by 58% compared to a control group. Additionally, the LEAD treatment group had 39% lower likelihood of being charged with a felony than the control group.<sup>6</sup> The intervention was also highly cost effective, saving over \$8,000 in justice system utilization costs per year per participant compared to a control population. Based on these results and a high level of community satisfaction, the City of Seattle and King County are in a planning process to expand LEAD to scale throughout the City, in unincorporated King County, and in other King County cities.

*Funding:* While well-designed diversion programs have been shown to be cost-effective, many jurisdictions seek government or foundation grant support for pilot costs. Seattle’s program initially cost \$899/participant/month and later fell to \$532/participant/month during the pilot studied in the cost/utilization evaluation, and still further to \$435 later in program expansion. Added cost savings necessarily result from diverted cases that avoid justice system entry and engagement. Costs will also be reduced in Medicaid expansion states where some services can be reimbursed by Medicaid. Costs per participant per month have been shown to fall in Seattle as the program expands and realizes economies of scale.

*Website:* <https://www.leadbureau.org/>

*Additional Resources:* Desiderio, Adam et al. “Why a Seattle Police Program Wants to Keep Low-Level Drug Offenders Out of Jail.” Nightline. October 7, 2015. (Accessible at: <http://abcnews.go.com/Health/seattle-police-program-low-level-drug-offenders-jail/story?id=34317585>.)

*Contact:* Kris Nyrop, LEAD National Support Bureau Director. Email: [kris.nyrop@defender.org](mailto:kris.nyrop@defender.org), phone: (206) 392-0050 x795.

## **Drug School Diversion Program**

### *Cook County, IL*

*Eligibility:* Individuals with low-level drug-related offenses are eligible for diversion post-filing at preliminary hearings, and can be diverted once every three years. Both felony and misdemeanor charges are eligible, but individuals may not have a prior felony or violent misdemeanor conviction.

*Program Details:* In lieu of prosecution, individuals attend four drug education sessions, each 2.5 hours.

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<sup>6</sup> See LEAD National Support Bureau resources for a full list of evaluations and role-specific resources: <https://www.leadbureau.org/resources>.

*Prosecutor's Role:* The State's Attorney's office funds the program, and prosecutors agree to nolle<sup>7</sup> charges upon completion of the program.

*Outcome of Successful/Unsuccessful Completion:* Completing the education program results in the participant's case being "nolled" and the participant is then eligible to apply for expungement. Non-compliance results in failure of the drug school program. Participants' cases are rescreened for eligibility in a problem-solving court or traditionally prosecuted.

*Results:* An estimated 30,000 cases have been dismissed since 2001, and as many as 40,000 since the program's inception in the 1970s. Among those diverted, 90% completed the program and 89% were not subsequently arrested on a drug-related charge one year after completion.<sup>8</sup>

*Funding:* Funding is provided by the State's Attorney's Office in the corresponding county and is estimated to be \$705,000 for a program serving roughly 2,000 individuals annually.

*Website:* <http://www2.tasc-il.org/program/state%E2%80%99s-attorney%E2%80%99s-drug-school-diversion-program>

*Additional Resources:* Kadioglu, Tara. "Cook County minor drug offenders to get treatment, not jail." *The Chicago Tribune*. April 20, 2015. (Accessible at: <http://www.chicagotribune.com/ct-sta-alvarez-drug-policy-st-0421-20150420-story.html>).

*Contact:* Emily Cole, Supervisor, Alternative Prosecution and Sentencing Unit, Cook County State's Attorney Office, email: [Emily.Cole@cookcountyil.gov](mailto:Emily.Cole@cookcountyil.gov).

### **First Time DUI Diversion Program**

#### **Wyandotte County, KS**

*Eligibility:* Individuals are eligible for the diversion program if the offense is their first citation for driving under the influence of alcohol, there was no accident or victims, they do not have a commercial driver's license, and they do not have any criminal history, among other requirements. In order to be considered for diversion, defendants must apply to the District Attorney's office and may be subject to a conference with the Diversion Program Manager before a scheduled docket appearance. The DA's office will also review the applicant's risk to the community, ability to pay restitution, if any, and unique needs. If approved, criminal proceedings are suspended.

*Program Details:* Defendants must stipulate to the charges, before a judge, as a condition of the diversion. Individuals receive a drug and alcohol evaluation and must follow the recommendations of the evaluation. Defendant must attend a drug and alcohol program, as well as remain employed or in school. Individuals are also subject to random testing. Defendants can pay off some fines and costs through community service. Approximately 60 DUI diversion applications are received annually.

*Prosecutor's Role:* All police reports as well as the individual's application are reviewed by the District Attorney. The final authority for acceptance or denial into the program rests with the District Attorney.

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<sup>7</sup> *Nolle prosequi*, or "nolle," or "nolle pros," is a phrase used in some jurisdictions to describe the decision by the prosecutor to refrain from continuing prosecution against the defendant, similar to a dismissal.

<sup>8</sup> Cook County State's Attorney's Office, *Presentation by the Alternative Prosecution and Sentencing Unit* (June 30, 2015), available at: [http://justiceforvets.org/sites/default/files/2015\\_conference\\_web\\_page/Handouts/C17/C-17.pdf](http://justiceforvets.org/sites/default/files/2015_conference_web_page/Handouts/C17/C-17.pdf).

*Outcome of Successful/Unsuccessful Completion:* Criminal charges are dismissed upon successful completion of the program. If the individual fails to comply with all the requirements of diversion the criminal proceedings resume based on the stipulation of facts.

*Results:* No data on results are currently available.

*Funding:* Some diversion costs are funded through court and diversion fees and fines.

*Website:* <http://www.wycokck.org/MycoKCK/media/District-Attorney/Documents/DUI-Diversion-Policy.pdf>

*Contact:* Mayra Flores, Diversion Services Unit, Wyandotte County District Attorney's Office, email: [mflores@wycokck.org](mailto:mflores@wycokck.org), phone: (913) 573-2851.

## **Mental Health Programs**

### **Criminal Mental Health Project: Post-Booking Jail Diversion Programs**

*Miami-Dade County, Florida*

*Eligibility:* Individuals with serious mental disorders or co-occurring mental and substance use disorders are eligible for diversion. Post-booking diversion is available for both misdemeanants and felony defendants. (There is also a program for pre-booking diversion by police officers who have been trained in the Crisis Intervention Team model.)

*Program Details:* All defendants booked into jail are screened for signs and symptoms of mental disorders, and, depending on the alleged crime, both felonies and misdemeanors may be diverted. Individuals charged with misdemeanors who meet program admission criteria are transferred from the jail to a community-based crisis stabilization unit within 24 to 48 hours of booking. Participants in the felony jail diversion program are referred through a number of sources (including the State Attorney's Office). At the time a person is accepted into the felony jail diversion program, the State Attorney's Office informs the court of the plea the defendant will be offered contingent upon successful program completion. In order to determine the appropriate level of treatment, support services and community supervision, each program participant is screened and assessed in regards to Mental Health, Substance Use and Criminogenic Risks and Needs using evidence-based screening tools. A two-page summary is compiled to develop an individualized transition plan aimed at reducing criminal justice recidivism, and improving psychiatric outcomes, community integration and recovery. The program staff develops a transition plan designed to address criminogenic risks and needs and to determine the appropriate level of treatment/service delivery. Linkages to housing, treatment and services are identified and coordinated as necessary.

*Prosecutor's Role:* The Office of the State Attorney, Mental Health unit reviews all cases referred to the program and determines program eligibility. They are also involved in determining the plea and disposition in each case.

*Outcome of Successful/Unsuccessful Completion:* In both programs, legal charges may be dismissed or modified based on treatment engagement upon successful completion of the program.

***"The jail is not the place to deal with mental health,... This is not what it was built for."***

**COOK COUNTY (CHICAGO, IL) STATE'S ATTORNEY KIM FOXX**

*Results:* The misdemeanor diversion program receives approximately 300 referrals annually. According to results provided by CMHP, recidivism rates among program participants have decreased from roughly 75 percent to 20 percent annually. Individuals participating in the felony jail diversion program demonstrate reductions in jail bookings and jail days of more than 75 percent, with those who successfully complete the program demonstrating a recidivism rate of just 6 percent. Since 2008, the felony jail program alone is estimated to have saved the county over 25,000 jail days, more than 68 years.

*Funding:* The program initially was cost-neutral, as it diverted individuals to existing services. By 2016, the diversion program allowed for an estimated annual cost avoidance of \$6 million.<sup>9</sup> Cost-savings from diversion and the closure of a jail allowed for subsequent expanded training and treatment options.

*Website:* <http://www.jud11.flcourts.org/Criminal-Mental-Health-Project>

*Additional Resources:*

Frequently Asked Questions for County Jail Diversion Program. (Accessible at: <http://www.jud11.flcourts.org/FAQs-for-County-Court-Jail-Diversion-Program>.)

Iglehart, John K. "Decriminalizing Mental Illness — The Miami Model." *New England Journal of Medicines*. (Accessible at: <http://www.nejm.org/doi/full/10.1056/NEJMp1602959>).

*Contact:* Cindy Schwartz, Director, Jail Diversion Program, email: [cischwartz@jud11.flcourts.org](mailto:cischwartz@jud11.flcourts.org), telephone: (305) 548-5319.

## Programs For General First Time & Low-Level Offenses

### Neighborhood Courts

*San Francisco, CA*

*Eligibility:* Nonviolent misdemeanor cases and select felony offenses are eligible for pre-charging diversion to the Neighborhood Court, with the approval of both the San Francisco District Attorney's Office (SFDA) and the individual.

*Program Details:* After a prosecutor deems the case eligible and the individual agrees to participate in the program, the case is referred to a local Neighborhood Court. The program uses restorative justice practices to hear cases in locations throughout the community. Volunteer "adjudicators" drawn from the community adopt a problem-solving approach grounded in restorative justice principles, resolving matters without the presence of a judge, prosecutor, or defense counsel. Participants discuss the incident with the panelists, taking accountability for their actions and helping to identify the harm they caused. Victims have the option, but are not compelled, to speak to the adjudicators. After reviewing the police report and hearing from the participant, adjudicators determine one or more "directives" for the individual to complete to repair the harm caused. Directives can include community service, restitution, a letter of apology, or treatment, among other options.

*Prosecutor's Role:* SFDA's charging unit determines which cases to divert to Neighborhood Court, but no prosecutors are involved during the proceedings. In some cases, prosecutors may also offer Neighborhood Court participation to a defendant at arraignment. Neighborhood Courts were

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<sup>9</sup> *GOB Project 193 — Mental Health Diversion Facility: Service Capacity and Fiscal Impact Estimates* (June 9, 2016), available at: [https://www.neomed.edu/wp-content/uploads/CJCCOE\\_11\\_MH-Capacity.pdf](https://www.neomed.edu/wp-content/uploads/CJCCOE_11_MH-Capacity.pdf).

launched by District Attorney George Gascón, and the office's Neighborhood Courts Director oversees all aspects of the program, including volunteer recruitment and support, oversight of nonprofit partners, and ongoing program assessment and development.

*Outcome of Successful/Unsuccessful Completion:* Successful completion of the Neighborhood Court directive results in the case being discharged, and participants are eligible to have the underlying arrest record sealed. If an individual fails to complete the program, the case is referred back to SFDA for prosecution.

*Results:* In 2016, 422 cases were handled by Neighborhood Courts — 94% misdemeanors and 6% felony offenses. These cases had a 97% appearance rate and 90% successful completion rate.

*Funding:* Neighborhood Courts are funded through both local and state sources.

*Website:* <http://sfdistrictattorney.org/neighborhood-courts>

*Additional Resources:*

Neighborhood Courts Participant FAQ sheet, (accessible at: <http://sfdistrictattorney.org/modules/showdocument.aspx?documentid=363>).

SFDA Neighborhood Courts Replication Toolkit (accessible at: <http://www.apainc.org/wp-content/uploads/Neighborhood-Court-Replication-Toolkit.pdf>).

*Contact:* Jackson Gee, Neighborhood Courts Director, San Francisco District Attorney's Office, email: [jackson.gee@sfgov.org](mailto:jackson.gee@sfgov.org), phone: (415) 553-1817.

## **Neighborhood Justice Program**

*Los Angeles, CA<sup>10</sup>*

*Eligibility:* Individuals without criminal records charged with certain low-level, non-violent offenses such as petty theft, vandalism, and disturbing the peace as well as minors in possession of a false ID or alcoholic beverage, are eligible to be diverted pre-filing. The following offenses are not eligible for participation in NJP:

- Any offense involving family violence
- Any offense involving sexual abuse
- Any crime of violence involving an injury or use of a weapon
- Any vehicular/driving offense
- Any drug offense
- Any gang-related offense
- Forgery-related offenses
- Crimes against police officers

*Program Details:* Individuals willing to accept responsibility for their actions appear (on a voluntary and confidential basis) before a panel of three community stakeholders and a mediator trained in restorative justice. The participants discuss the nature of the offense and root causes, the impact of the offense on the community, and the appropriate rehabilitative/educational response which may include, but is not limited to, writing a reflection essay or letter of apology to the victim,

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<sup>10</sup> The Neighborhood Justice Program in Los Angeles is partially based on the San Francisco Neighborhood Courts program described above.

performing community service, receiving job training, attending Alcoholics Anonymous meetings or other types of counseling.

*Prosecutor's Role:* The Los Angeles City Attorney's Office exercises its prosecutorial discretion to refer eligible misdemeanors before any charges are filed. Every potentially-eligible report is reviewed by an Assistant City Attorney, who serves as the Neighborhood Justice Program supervisor, to confirm eligibility before pre-filing diversion is offered.

*Outcome of Successful/Unsuccessful Completion:* Successful completion results in no charges being filed, and failure to complete the program obligations results in the case being referred back to the City Attorney for prosecution.

*Results:* According to the City Attorney's Office, NJP two-year outcomes include 2,376 total program referrals (1,066 in 2015; 1,310 in 2016), 1,277 total initiated diversions (540 in 2015; 737 in 2016) and 1,188 successfully-completed diversions (482 in 2015 (90% completion rate); 706 in 2016 (96% completion rate)). Successful participant recidivism rates are 4.33% citywide (based on any re-arrest within a 24-month period following successful participation in NJP). Within a pilot area where NJP utilized a Risk/Needs Assessment tool developed by the Center for Court Innovation to tailor engagement plans according to each participant's unique circumstances, the recidivism rate was 2.27% according to the office.

*Funding:* The City Attorney's office secured two-year demonstration grants from LA County, The California Endowment and the U.S. Department of Justice's Bureau of Justice Assistance. Including case managers and excluding the supervising attorney, the program cost \$1,000 per participant — roughly 2.5 to 5 times cheaper than traditional prosecution.<sup>11</sup>

*Website:* <http://www.lacityattorney.org/njp>

*Additional Resources:*

LA City Attorney. "Neighborhood Justice Program: What Have We Learned?" January 25, 2016. (Accessible at <http://www.courtinnovation.org/sites/default/files/documents/NJPFIRSTYEARANALYSIS.pdf>.)

Feuer, Mike. "Justice Takes to the Streets of LA." *The Los Angeles Times*. September 11, 2014. (Accessible at <http://www.latimes.com/opinion/op-ed/la-oe-feuer-neighborhood-justice-20140912-story.html>.)

*Contact:* Jose Egurbide, Assistant City Attorney, email: [jose.egurbide@lacity.org](mailto:jose.egurbide@lacity.org), phone: 213-978-4096.

## **Milwaukee County Diversion and Deferred Prosecution Program**

### *Milwaukee County, WI*

*Eligibility:* After arrest, individuals are screened and assessed based on their risk of re-offense, with low-risk individuals considered for the pre-charge Diversion Program and medium-to-high-risk (and needs) individuals to the post-charge Deferred Prosecution Program. Both programs exclude DUIs, sexual assault, some burglaries, firearms charges, and higher-level drug offenses, among others.

*Program Details:* Because it is designed for low-risk populations, the Diversion Program is focused primarily on accountability — rather than problem-solving or risk reduction — and includes certain requirements. These may include restitution, community service, restorative justice/mediation,

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<sup>11</sup> Cost estimates provided directly to FJP by the LA City Attorney's Office.

and/or education. Deferred Prosecution Agreements (DPA), meanwhile, directly address risk reduction and can also include accountability strategies. Requirements can include chemical dependency and/or mental health treatment, random urine screens to ensure sobriety, cognitive behavioral therapy, restitution, and community service. Periodic DPA case meetings between the defendant, defense attorney (counsel is mandatory), assistant district attorney and case manager are also held to discuss compliance.

*Prosecutor's Role:* Prosecutors are involved in the charging decisions, referral to the Diversion/DPA programs, development of non-custodial sanctions, and periodic case meetings.

*Outcome of Successful/Unsuccessful Completion:* Successful completion of the Diversion Program results in no criminal complaint being filed. Re-arrest may result in a new deferred prosecution offer that combines the prior and new offense, depending on severity. Violations while on DPA may result in termination, referral to the Drug Court or Day Reporting Center for further intervention. Successful DPA completion will not result in elimination of the arrest record, but the individual's case will be dismissed or result in a reduction in charge (often felony to misdemeanor) depending on the terms agreed to by the parties.

*Results:* The Deferred Prosecution program served 420 participants in 2016, and ultimately reinstated prosecution in 28% of cases, saving 20,460 jail days and 2,610 prison days.<sup>12</sup> The new arrest rate was 5.45% (percentage of participants that were rearrested during the pendency of their agreement).

*Funding:* Program monitoring funded through a combination of grants from the State of Wisconsin and Milwaukee County.

*Website:* <http://milwaukee.gov/ImageLibrary/Groups/2014.10.31MilwaukeeCountyEarly.pdf>

*Contact:* Milwaukee County District Attorney's Office, email: [da.milwaukee@da.wi.gov](mailto:da.milwaukee@da.wi.gov), phone: (414) 278-4646.

## **Montgomery County Pre-Trial Diversion**

### *Montgomery County, AL*

*Eligibility:* Defendants are eligible for the diversion program if they have committed a nonviolent offense and do not have a previous conviction; have resolved all outstanding fines and citations; and have admitted guilt for the underlying offense, among other requirements. Defendants plead guilty to the offense, but the case is "withdrawn and filed" pending application to and completion of the Pre-Trial Program. Defendants must go through an application process and be accepted into the program.

*Program Details:* Individuals who are accepted are required to pay a program fee, bond fee, and restitution if owed, pursue education, perform community service (150 hours for a felony and 60 hours for a misdemeanor), community service, and group and individual counseling. Defendants

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<sup>12</sup> According to information provided to FJP by the Milwaukee County District Attorney's Office.

***"[S]ending non-violent offenders to jail for a long period of time is not productive for society and counter-productive for the individual.***

**— 16TH CIRCUIT COURT (COLUMBUS, MS) DISTRICT ATTORNEY SCOTT COLOM**

must obtain employment while on the program if they are able to do so, and refrain from engaging in any further criminal activity. In 2016, the program received 232 applications, accepted 139 applicants onto the program, and maintained an average monthly case load of 234 defendants.

*Prosecutor's Role:* The Montgomery County DA's Office oversees the program and prosecutors review applications for inclusion.

*Outcome of Successful/Unsuccessful Completion:* Following successful completion, the ADA will file a motion to nolle the case, and there will not be a conviction on the defendant's record. One year after the charge is nolle prossed the defendant may file for expungement with the Montgomery County Circuit Clerk's Office. Failure to complete the program results in sentencing as if the case had proceeded under the standard trial track.

*Results:* Data on the outcomes of this program is not currently available.

*Funding:* Funding is through the Montgomery County Commission.

*Website:* <http://www.montgomeryda.com/departments/ptd>

*Contact:* Duane Johnson, Program Director, email: [duanejohnson@mc-ala.org](mailto:duanejohnson@mc-ala.org), phone: (334) 832-2503

## Juvenile and Young Adult Diversion Programs

### Alternatives to the Court Experience (ACE)

#### *Washington, D.C.*

*Eligibility:* The ACE Diversion Program serves young people up to 17 years old who have been referred from the District of Columbia's juvenile justice entities for status (primarily truancy) and low-level delinquency offenses. Youth can be diverted via three different entry points: pre-arrest by the Metropolitan Police Department (MPD), post-arrest by the Office of the Attorney General (OAG) or pre-petition for status offenses by Court Social Services (CSS) in collaboration with the OAG. The OAG may consider an individual's history, but has ultimate discretion to divert the juveniles it deems appropriate.

*Program Details:* ACE and the diverted youth's family collaboratively develop a 6-month diversion plan that addresses the youth's unique needs, provides opportunities for them to take responsibility for their actions, etc. The ACE Social Worker/Case Manager makes referrals to selected service providers and works closely with the youth, family, and providers for the diversion period. At the end of diversion, ACE reports back to the referring agency regarding the youth's participation and their progress in the program. The program generally lasts six months, and serves roughly 600 youth per year.

*Prosecutor's Role:* The OAG, which prosecutes some criminal cases in the District of Columbia, can divert cases. OAG and ACE communicate regularly regarding case progress and re-offenses, and in the event of failure to complete the diversion program, OAG may prosecute. OAG also provides the program with a bi-annual recidivism report that determines the recidivism rates for youth who have completed the program.

*Outcome of Successful/Unsuccessful Completion:* Pursuant to current legislation, juvenile criminal records are sealed and can only be accessed by law officials. Upon completion of diversion, the charges from the diverted offense are dropped. The arrest record is not automatically expunged; youth can navigate the appropriate legal channels to apply for expungement after program

completion. Failure to complete the program due to non-participation or further legal involvement (prosecuted re-offense) results in termination from the program and the case being sent back to the referring agency for potential prosecution of the original diverted offense.

*Results:* According to the OAG, in 2016 and the first half of 2017, 88% of diverted youth completed the program. 51% saw improved school attendance, 81% had no further legal involvement, and 91% had improved Child and Adolescent Functional Assessment Scale (CAFAS) scores.

*Funding:* The program cost \$2.5M to run in 2017 with a staff of 19 FTEs. It was funded through local and federal sources.

*Website:* <https://oag.dc.gov/page/how-juvenile-diversion-benefits-district>

*Additional Resources:* Trull, Armando. "How A D.C. Diversion Program Helps Get Young Lives Off The Ropes." WAMU. June 30, 2016. [http://wamu.org/story/16/06/30/dc\\_diversion\\_program\\_helps\\_get\\_young\\_lives\\_off\\_the\\_ropes/](http://wamu.org/story/16/06/30/dc_diversion_program_helps_get_young_lives_off_the_ropes/).

*Contact:* Rashanna Roach, Program Analyst, Department of Human Services, ACE Diversion Program, email: [Rashanna.Roach2@dc.gov](mailto:Rashanna.Roach2@dc.gov); Seema Gajwani, Special Counsel for Juvenile Justice Reform, Office of the Attorney General, email: [seema.gajwani@dc.gov](mailto:seema.gajwani@dc.gov).

## **Project Re-Direct**

### *Brooklyn, NY*

*Eligibility:* This program is designed specifically for young men ages 14 to 22 who are facing their first felony charge and are gang-involved. The program excludes defendants charged with a sex offense, arson, homicide, or firing a weapon, though individuals may be diverted if arrested in possession of a gun. Defendants are required to plead guilty before entering the program. Once they plead, sentencing is deferred. Either the ADA or the judge refers potentially eligible individuals to the program for additional screening by program staff.

*Program Details:* The 18-24-month program includes wearing an ankle bracelet, regular communication with staff, counseling, random drug testing, and education and/or employment.

*Prosecutor's Role:* Prosecutors refer individuals to the program and may dismiss charges upon successful completion of the program.

*Outcome of Successful/Unsuccessful Completion:* Successful completion may result in the dismissal of charges, and failure can result in a prison sentence.

*Results:* New York City states the program saves \$800,000 per year in avoided costs.<sup>13</sup>

*Funding:* The program costs approximately \$40,000 per participant.

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<sup>13</sup> Findings according to NYC Service. See: <https://www.nycservice.org/organizations/1848>.

***"When you talk about holding people accountable... I don't think our primary responsibility should be incarceration. That should be the last option. The first option is making sure people are truly accountable and admit what they've done wrong and to try to make amends with the victims in the ways that they can,"***

**— BROOKLYN (NY) ACTING DISTRICT ATTORNEY ERIC GONZALEZ**

Website: <http://www.brooklynda.org/youth-diversion-programs/>

Contact: Edward Pichardo, Chief of Youth Diversion Programs, Kings County District Attorney, email: [pichardoe@brooklynda.org](mailto:pichardoe@brooklynda.org), telephone: 718-250-2331.

## **The 180 Program** *King County, WA*

*Program Description and Prosecutor's Role:* The 180 Program is a pre-filing community based diversion program for juveniles arrested for misdemeanor and low level felony offenses. The King County Prosecuting Attorney's Office (KCPAO) launched the 180 Program in 2011 after King County Prosecuting Attorney Dan Satterberg asked community leaders for help to reach youth in a new way. Prosecuting Attorney Satterberg recognized that the community would be more effective than the criminal justice system in getting at the heart of why some juveniles make poor choices. He also recognized that in order to encourage youth to make positive changes in their lives the message had to come from "credible messengers" and not system actors. Credible messengers are community leaders who often have prior criminal justice involvement and are skilled at mentoring youth.

The 180 Program consists of a half-day workshop where credible messengers share their life stories about the consequences of their decisions to participate in criminal behavior. The youth then participate in small groups facilitated by 180 staff. In the small group, the youth are provided a safe space to identify the root causes of their criminal behavior and to develop an action plan for change. Youth who successfully complete the workshop never have their cases filed into the criminal justice system.

Today, the 180 Program diverts approximately 300 youth each year from the criminal justice system which generates considerable financial savings in public defense, detention, and court costs. Evaluations of the program have concluded that it is successful in reducing recidivism and racial disproportionality in the criminal justice system.

*Program Eligibility:* A youth is referred to the 180 Program after their case has been reviewed to determine if the case is legally sufficient, but before formal charges are filed. Eligible offenses for the 180 Program include civil infractions, misdemeanors, gross misdemeanors, or Class C felony property or drug offenses.

*Program Funding:* Originally, the 180 Program was housed within the KCPAO, but in 2015 the program became its own nonprofit and is now governed by a board, managed by an executive director, and administered by staff who run the workshops. The program is funded by private donations and by the county from the cost savings generated by the reduction in public defense, detention, and court costs.

*Program Evaluation:* The 180 Program was evaluated in 2012 and again in 2014 by outside entities. The 2012 evaluation of the 180 Program, conducted by the University of Washington, found that the program is effective at reaching youth, inspiring them to change, and helping them identify the assets and liabilities in their lives that can help or hinder their desire to change. That evaluation also revealed that the effects of the 180 Program stayed with youth over time and that the program was effective in changing attitudes and behavior. The 2014 evaluation, by the King County Office of Strategy and Budget, found that the 180 Program is more effective than traditional diversion in reducing juvenile recidivism and more effective than traditional diversion in having a positive impact on disproportionate minority contact.

Contact: Stephan Thomas, Director of Community Justice Initiatives, phone: (206) 477-1914, email: [stephan.thomas@kingcounty.gov](mailto:stephan.thomas@kingcounty.gov).

### **Make it Right**

*San Francisco, CA*

*Eligibility:* Juveniles ages 13-17 (exceptions are made for under 13 when appropriate) facing prosecution for select first-time felony and some repeat misdemeanor offenses are eligible for pre-charging diversion (first-time misdemeanor offenses are directed to other diversion programs). Juveniles must not be on probation and not be gang-affiliated, and the offense must not have involved a weapon or injuries to the victim. Additionally, the minor and the victim must agree to participate.

*Program Details:* The program uses the tools of restorative justice to hold juveniles accountable in a manner that connects an individual's actions to the harm caused and offers an opportunity to make amends. Minors and their victim(s) participate in a facilitated conference to discuss the offense committed and develop a plan for the minor to repair the harm caused to his/her victim, community, family, and self. A community-based case manager then supports the minor during the six-month period as they complete the plan.

*Prosecutor's Role:* The San Francisco District Attorney initiated the program. At this time, the Managing Attorney of the Juvenile Division identifies all eligible cases and, as part of an ongoing randomized control trial, 70% are diverted into the Make it Right program pre-charge. The balance are charged and serve as a control group. The DA's office does not have a presence in the restorative conference and does not use any information learned in the conference in any subsequent court proceedings. The conference facilitation and community-based case management are provided by two non-profit organizations through a grant from the SFDA.

*Outcome of Successful/Unsuccessful Completion:* Successful completion results in no charges being filed. The program does not alter or expunge records; juvenile justice records remain sealed as they otherwise would.

*Results:* While results of an ongoing randomized control trial evaluation are not yet available, two of the 14 juveniles to successfully complete the program have recidivated, compared to 55% in a control group.

*Funding:* Excluding District Attorney's Office staff time, the program costs approximately \$5,700 per person. The program is financed through foundation and local funds.

*Website:* <http://sfdistrictattorney.org/youth-programs>

Contact: Katherine Miller, Chief of Alternative Programs and Initiatives, San Francisco District Attorney's Office, email: [katherine.miller@sfgov.org](mailto:katherine.miller@sfgov.org), phone: (415) 553-1110.

***"We know that the data shows that issuing youth an opportunity to take accountability for their actions while staying out of the criminal justice system leads to lower recidivism rates,"***

**— 4TH JUDICIAL CIRCUIT (JACKSONVILLE, FL) STATE ATTORNEY MELISSA NELSON**

## **Common Justice**

*Brooklyn, NY; The Bronx, NY*

*Eligibility:* Common Justice is an alternative to incarceration and victim service program for serious crimes based on restorative justice practices. The program provides an important opportunity for healing to those harmed by a range of crimes, including assault and robbery, and an opportunity for those who have caused harm to make things as right as possible in place of a lengthy prison term. Common Justice involves victims of any age harmed by younger adults (ages 16 to 26) facing violent felony charges in Supreme Court in Brooklyn and the Bronx. To enter the program, a defendant's case is rigorously screened and must be approved by the victim of the crime, the District Attorney's Office, and Common Justice. The program does not work with sexual, domestic, intimate partner, or family violence cases.

*Program Details:* Common Justice engages qualifying defendants and those they have harmed. If the harmed parties (victims) agree, these cases are diverted into a dialogue process that gives participants the power and opportunity to collectively identify and address impacts, needs, and obligations, in order to heal and put things as right as possible. In the dialogue process, all parties agree on sanctions other than incarceration to hold the responsible party (defendant) accountable in ways meaningful to the person harmed. Staff closely monitors responsible parties' compliance with the resultant agreements and connects the harmed parties with appropriate services. These agreements replace the lengthy prison sentences that responsible parties would otherwise have received. Common Justice works with a broad range of victims of all demographics, but crucial among them are young men of color — notably, a full 70% of the program's harmed parties are men of color.

*Prosecutor's Role:* Common Justice works in close partnership with the Brooklyn District Attorney's office, the Brooklyn Supreme Court, the Bronx District Attorney's office, and the Bronx Supreme Court. The project is the first of its kind in the country to secure system partners' support in the adult court system to divert serious and violent felony cases into a participatory accountability process that replaces prison and supports the healing of victims.

*Outcome of successful/unsuccessful completion:* Non-compliant responsible parties may be subject to a variety of graduated sanctions, including temporary remands to jail, and may ultimately be terminated from the program for any violation of the contract. Responsible parties who fulfill all of the requirements "graduate" from Common Justice. At that point, the felony charges against them are then dismissed and they are sentenced to a conditional discharge on a misdemeanor.

*Results:* Common Justice has shown very promising early results and its impact is currently being evaluated.

### *Additional Resources:*

Sered, Danielle. *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*. Vera Institute of Justice. February 2017. (Accessible at: <https://www.vera.org/publications/accounting-for-violence>.)

Johnson, Carrie. "Black Men Who Are Crime Victims Have Few Places To Turn". *National Public Radio*. August 17, 2015. (Accessible at <http://www.npr.org/2015/08/17/432542041/advocates-work-to-help-black-men-who-are-victims-of-violent-crime>.)

Abdul Jabbar, Kareem. "Black Americans Are Overlooked Victims of Gun Violence". *Time*. December 17, 2015. (Accessible at: <http://time.com/4153876/kareem-abdul-jabbar-black-americans-gun-violence/>).

*Funding:* Common Justice receives its funding from government contracts, foundation grants, and a number of individual contributions.

*Website:* <https://www.vera.org/centers/common-justice>

*Contact:* Hyunhee Shin, Operations and Development Manager, telephone: (718) 747-8776, email: [hshin@commonjustice.org](mailto:hshin@commonjustice.org).

## **Offenses Related to Prostitution**

### **First Offender Prostitution Program (FOPP)**

*San Francisco, CA*

*Eligibility:* “Johns” who solicit sex workers and who have no criminal record — unless waived in by the San Francisco District Attorney — are eligible. Individuals are diverted post-arrest, pre-charge, through the SFDA’s Neighborhood Courts program.

*Program Details:* Participants attend an eight-hour Saturday School focused on building knowledge regarding the consequences, both personal and societal, of buying sexual services. The class combines lecture and circle formats to promote both learning and self-reflection. Topics range from the law to health, community impacts, human trafficking, and sex addiction.

*Prosecutor’s Role:* Neighborhood Courts refer eligible cases to the First Offender Prostitution Program (FOPP), and the DA’s Office oversees the program, which is operated by a non-profit organization through a grant from the SFDA.

*Outcome of Successful/Unsuccessful Completion:* Successful completion of the program results in cases being discharged and the individual becoming eligible to have the underlying arrest sealed. In the event of a subsequent arrest, both the original and the new charge could be prosecuted.

*Results:* Independent evaluators found the program to be cost-effective and reduced recidivism among men arrested for solicitation.<sup>14</sup>

*Additional Resources:* Harvard Kennedy School. First Offender Prostitution Program: Innovations in American Government Winner. (Accessible at <https://www.innovations.harvard.edu/first-offender-prostitution-program>).

*Funding:* The non-profit program operator is funded through the DA’s office. Excluding the DA’s office staff time, the program costs \$50,000 annually.

*Website:* <http://sfdistrictattorney.org/diversion-reentry-programs>

*Contact:* Katherine Miller, Chief of Alternative Programs and Initiatives, San Francisco District Attorney’s Office, email: [katherine.miller@sfgov.org](mailto:katherine.miller@sfgov.org), phone: (415) 553-1110.

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<sup>14</sup> Shively, Michael et al. “Final Report on the Evaluation of the First Offender Prostitution Program.” Abt Associates Inc. March 7, 2008. <https://www.ncjrs.gov/pdffiles1/nij/grants/221894.pdf>.

## **Prostitution Diversion Program (PDP)**

*Los Angeles, CA*

*Eligibility:* With some exceptions and among other requirements, individuals with prostitution (providing and soliciting) charges who have no prostitution-related arrests within the last 10 years, and no prior arrests or convictions for violence or felonies, are eligible for diversion. The program is offered post-filing for guilty pleas.

*Program Details:* The Prostitution Diversion Program is a post filing, post plea sentencing diversion program that was created in 2007 for Johns and sex workers detained for the first time. For both populations, they were afforded an opportunity to participate in educational awareness and rehabilitation services in lieu of traditional prosecution provided they complete the required classes and mandatory HIV/AIDS education and testing, and do not get involved in the same or similar offense for the course of one year.

There are two components of the PDP. The John School component is an 8-hour class in which the participants are given information as to the legal consequences, health consequences, and the community and victim impact of prostitution activity. Sex workers are offered an 8-session program covering many of the same topics, including an overall assessment and wrap-around services. The sex workers component was expanded in 2014 to allow individuals charged with repeat offenses to participate in a longer, 18-session program if the social service provider qualifies them.

*Prosecutor's Role:* Prosecutors review the cases for eligibility and offer a plea bargain agreement which details the terms of the program, which includes 12-month summary probation, PDP class completion, mandatory HIV/AIDS test and education, staying away from the location of arrest, and obeying all laws and orders of the court. The defendant enters a "No Contest" plea and waives time for sentencing to complete the required obligations. Prosecutors also monitor progress in the selected program by communicating with the social service and John School providers on a regular basis. Prosecutors also provide ongoing training for line deputies, the defense bar and the judiciary (as requested) and as necessary due to attrition and turnover.

*Outcome for successful/unsuccessful completion of the program:* After one year, if participants successfully complete the terms of the time waiver for sentencing, they are allowed to withdraw their plea and the case is dismissed. If they are unsuccessful or are re-arrested, the PDP is terminated and they are sentenced on the original case and could be sentenced on the new case as well depending on the circumstances.

*Results:* The City Attorney's office recently released recidivism statistics on PDP with the following parameters: (1) program completion dates ranges from June of 2014 through January of 2016; (2) participants that have not completed the diversion program were excluded; and (3) the data is limited to include only prostitution-related arrests and/or convictions that occurred after participants completed PDP. Prostitution-related arrests and convictions are defined as those that fall under sections 647 and 653 of the California Penal Code.

- Forty-three participants completed the program (note: one participant, completed the program on two separate occasions).
- Of the 43 participants, 10 were arrested and/or convicted of a prostitution-related offense after the completion of the diversion program.
- These findings indicate a recidivism rate of approximately 23%.

*Funding:* The John School program is privately funded and the social service providers (for women) receive grant funds for administering the programs.

*Website:* <http://www.lacityattorney.org/community-justice>

*Contact:* Deputy City Attorney Sonja Dawson, telephone: (213) 978-4090, email: [Sonja.Dawson@lacity.org](mailto:Sonja.Dawson@lacity.org).

## ADDITIONAL RESOURCES

- Brookes, Laura. "No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives". Center for Health and Justice. (Accessible at: <http://www2.centerforhealthandjustice.org/content/pub/no-entry-national-survey-criminal-justice-diversion-programs-and-initiatives>.)
- Kennedy, Spurgeon et al. "Promising Practices in Pretrial Diversion." National Association of Pretrial Services Agencies (NAPSA). (Accessible at: <https://netforumpro.com/public/temp/ClientImages/NAPSA/20b9d126-60bd-421a-bcbf-1d12da015947.pdf>.)
- The National Association of Pretrial Services Agencies (NAPSA). "Pretrial Diversion in the 21st Century". 2009. (Accessible at: <https://netforumpro.com/public/temp/ClientImages/NAPSA/18262ec2-a77b-410c-ad9b-c6e8f74ddd5b.pdf>.)

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