



Justice Center

THE COUNCIL OF STATE GOVERNMENTS

Advancing Prosecutor-Led Behavioral Health Diversion

September 25, 2020

Presentation Outline

- I. Welcome and Introductions
- II. What Do We Know About Prosecutor-Led Diversion?
- III. Discussion with Milwaukee County District Attorney's Office & Second Judicial District of Arkansas
- IV. Questions & Answers

The Council of State Governments Justice Center

We are a national nonprofit, nonpartisan organization that combines the power of a membership association, serving state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities.

Justice and Mental Health Collaboration Program

The Justice and Mental Health Collaboration Program (JMHCP) supports cross-system collaboration to improve public safety responses and outcomes for individuals with mental illnesses (MI) or co-occurring mental illness and substance abuse (CMISA) who come into contact with the justice system.

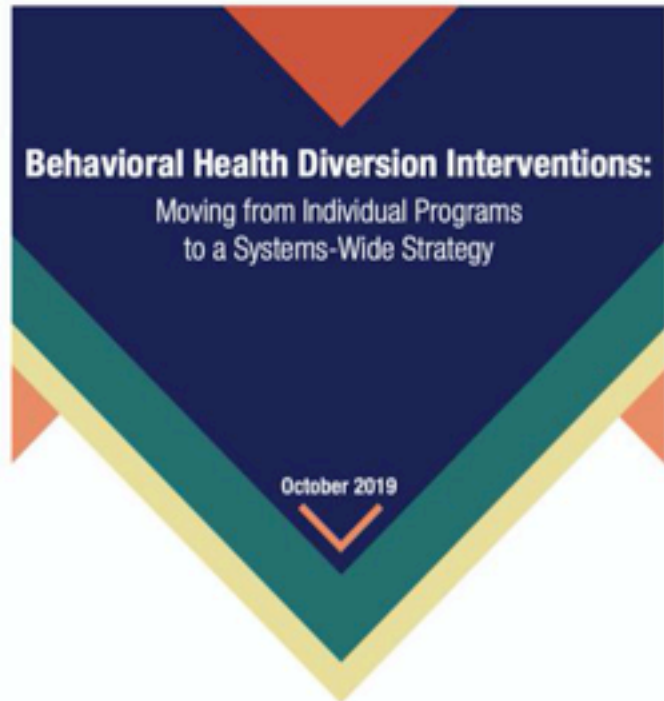
The U.S. Department of Justice Bureau of Justice Assistance

Mission: BJA provides leadership and assistance to local criminal justice programs that improve and reinforce the nation's criminal justice system. BJA's goals are to reduce and prevent crime, violence, and drug abuse and to improve the way in which the criminal justice system functions. In order to achieve such goals, BJA programs illustrate the coordination and cooperation of local, state, and federal governments. BJA works closely with programs that bolster law enforcement operations, expand drug courts, and provide benefits to safety officers.



Visit the [BJA website](#) to learn more.

Diversion Interventions Overview & FAQs



FREQUENTLY ASKED QUESTIONS: A Look into Jail-Based Behavioral Health Diversion Interventions

SEP 2020

Justice Center
Center for Crime Prevention

Recognizing that people with behavioral health needs are overrepresented in the criminal justice system, many communities have developed diversion interventions to maximize their resources and provide to community-based treatment and supports. While efforts around providing people with behavioral health needs with diversion interventions are critical to supporting people to live in the community, the most recent in diversion efforts are **newer, more targeted, and more evidence-based**, such as **judges, prosecutors, defense attorneys, and court administrators**. For information on other diversion opportunities, see [Behavioral Health Diversion Interventions: Moving from Individual Programs to a Systems-Wide Strategy](#), and other diversion resources.

Why set up jail-based behavioral health diversion interventions?

Jail-based diversion provides an important opportunity to increase average length of stay (ALOS) for people with behavioral health needs without increasing public safety risk. By shortening ALOS, these interventions can help reduce jail costs. They also can enhance or restore the significant savings that come in cost savings due to people with behavioral health needs, including exposure to risk of violence and likelihood of community-based care and supports to keep them out of jail. Jail-based diversion can also help to reduce the impact of criminal justice system with respect to its treatment of individuals, such as factors in finding employment, housing, or connections to community-based treatment and recovery support services. Additionally, these interventions can increase connections to supports, such as housing, that directly position people to engage that health and reduce the risk of returning to jail.

People with behavioral health needs often stay longer in pretrial detention than people without who are facing similar charges, making diversion at this stage a critical opportunity.

Who can implement these?

Jail administrators and staff are critical to the implementation of jail-based behavioral health diversion interventions, whether being provided in other settings or their own facilities. But they cannot do it alone. Some common collaborators can include:

- County sheriff's or correctional health diversion programming
- Detention jail diversion staff or teams that are jail-based but not community-based case management or behavioral health treatment providers, who can screen and assess for diversion and connect people to community-based services
- Medical and/or behavioral health staff from community-based health care providers, including community-based providers, who can help identify people with behavioral health needs and also aggregate their information with jail staff, case management agencies, and community-based behavioral health treatment providers
- Outreach programs that coordinate care in jail facilities or community, whether from the jail, a community-based organization, or county behavioral health agencies, who can help identify people who might be eligible for behavioral health services, assist with stability, and make referrals to community-based care and supports
- Probation, parole, or court staff who can provide case management and oversight

1. For information on how to implement these interventions, see [Behavioral Health Diversion Interventions: Moving from Individual Programs to a Systems-Wide Strategy](#).
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It's been working with a broad set of stakeholders across Massachusetts to develop approaches that focus on connecting people to treatment. This means providing excellent treatment within our jail and working with our partners to identify diversion opportunities. By using data to identify those who can benefit most from diversion and on-going behavioral health services in the jail, we can get people the help they need, improve public safety, and make our communities safer and stronger."

— Sheriff Peter Koutoukas, Massachusetts Department of Corrections

FREQUENTLY ASKED QUESTIONS: A Look into Court-Based Behavioral Health Diversion Interventions

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Why set up court-based behavioral health diversion interventions?

Court-based behavioral health diversion interventions focus on connecting people with mental health needs to community-based care, usually after assessment with mental health professionals, who can help identify people who might be eligible for behavioral health services. These interventions, which may be provided at a person's initial court appearance or at subsequent court appearances, can be done through programs operating in court or prosecutor's office or as a pre-arrest component of an intervention (e.g., "Drug Courts," "Mental Health Courts," "Quick Courts"). While the diversity of diversion programs across the U.S. makes evidence statements about outcomes difficult, research has shown that court-based diversion can shorten average length of jail stay and increase connections to treatment and supports without additional risk to public safety. Some programs have also been shown to reduce future criminal justice involvement. There are also studies showing how diversion programs can potentially save the criminal justice and behavioral health systems money.

Who can implement these?

Leadership of court-based diversion usually comes from judges and prosecutors, who drive the development of diversion policies and bring parties together. But they cannot do it alone. Other critical stakeholders in the court system include:

- Prosecution staff to identify potential candidates for diversion by adding behavioral health screening and assessment to pretrial intake processes. They may also play an important role in providing consistent monitoring and feedback to the court about people who are currently in pretrial supervision, which can help inform judges' and prosecutors' public safety concerns.
- Defense support, including public defenders, who can partner with social workers or clinicians to screen and assess potential eligible defendants, advocate their eligibility, advocate for a court-based diversion intervention, and assist social workers in developing a case plan that follows service linkage recommendations.
- Behavioral health providers, who can make recommendations for services and facilitate connections to community-based organizations that link people to housing, substance use disorder treatment, and access to employment services, among others.
- Prosecution to determine who might be eligible for behavioral health diversion programs and connect people to the most appropriate services. These decisions can be made by defense prosecutors or as a judge made by the diversion prosecutor. Prosecutors, the defense attorney, may also partner with social workers or their diversion efforts.
- Judges to address their potential role as system leaders. In recognition of a defendant's displaying signs of potential behavioral health needs, and should be assessed and diverted from criminal justice proceedings, judges may also order a diversion, receive reports on progress, and monitor the duration of charges or suspension of a criminal case based on the participant's completion of the program.
- Court administrators to operationalize diversion programs by developing policies and procedures, managing caseloads, facilitating accountability for participants and program partners, and potentially ensuring ongoing training and program sustainability.

"The overrepresentation of people with behavioral health disorders in the criminal justice system is a problem that cannot be ignored and should not be tolerated. As a judge, I have been uniquely positioned to bring criminal justice and clinical professionals together with community partners to develop and implement behavioral health diversion programs that offer hope and recovery to people whose lives have been dominated by addiction and mental illness. At the same time, these efforts promote public safety by effectively reducing the likelihood that they will reoffend. The public safety and quality of life benefits of these programs in the court system, state, local, and the community can't be overstated."

— Judge Janet Rodriguez, 15th Circuit Court House

Speakers

- *Jeffrey Altenburg, Deputy District Attorney, Milwaukee County DA*
- *Scott Ellington, Second Judicial District Prosecuting Attorney, Mississippi Country, Arkansas*
- *Hallie Fader-Towe, Program Director, Behavioral Health, CSG Justice Center*
- *Robert Hood, Project Director, Association of Prosecuting Attorneys*
- *Kent Lovern, Chief Deputy District Attorney, Milwaukee County DA*

Association of Prosecuting Attorneys

The Association of Prosecuting Attorneys (APA) is a national association dedicated to supporting and enhancing the effectiveness of prosecutors in their efforts to ensure justice and create safer communities.

Presentation Outline

I. Welcome and Introductions

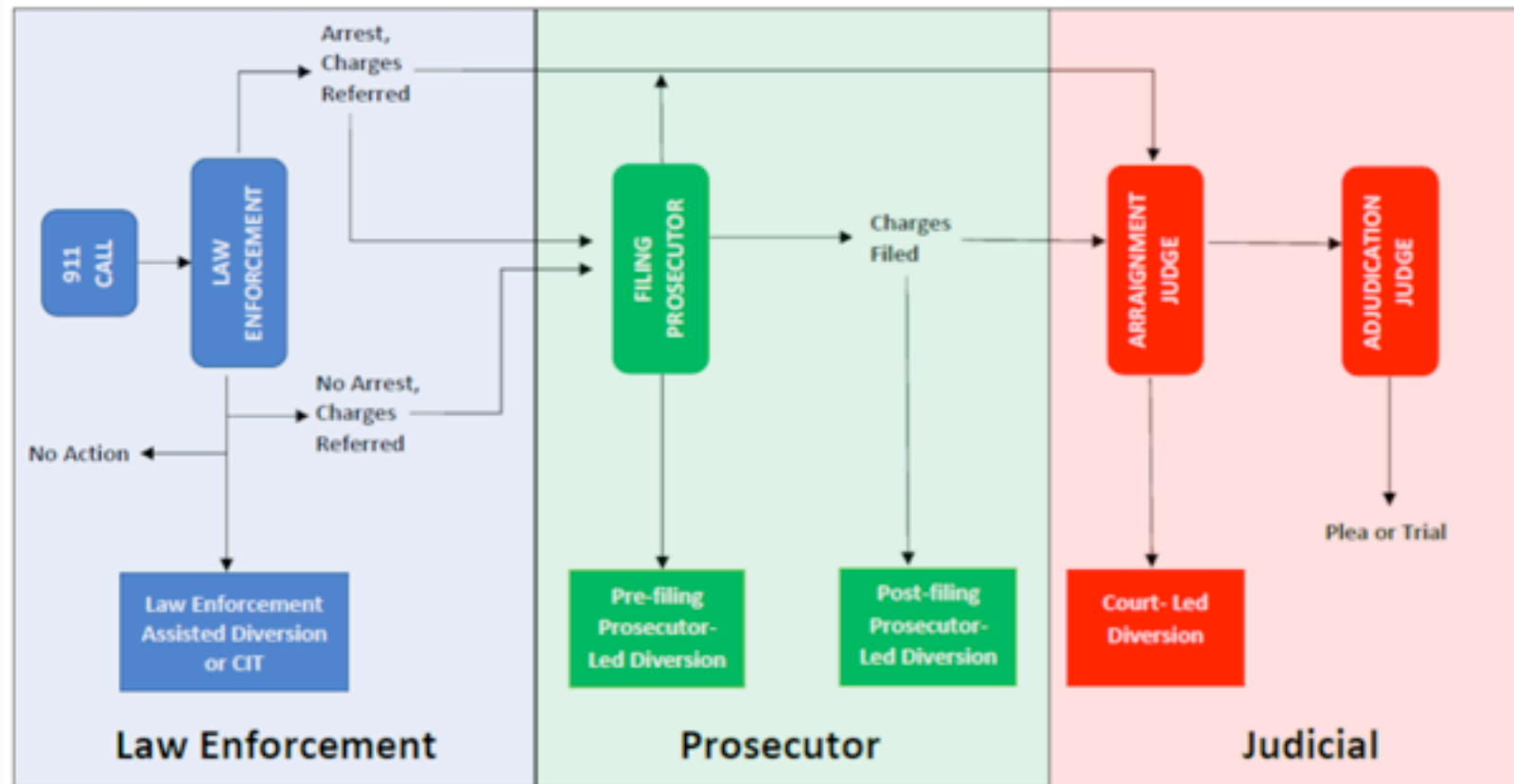
II. What Do We Know About Prosecutor-Led Diversion?

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What is Prosecutor-Led Diversion?

Sequential Intercept Model for Various Diversion Models



Source: Association of Prosecuting Attorneys, Prosecutor-led Diversion Sequential Intercept Model, 2020

Why is Prosecutor-led Behavioral Health Diversion Important?

- Treatment can help reduce recidivism and improve public safety
- Diversion efforts can address health and justice inequities
- Prosecutors can play an important role in helping people improve their lives and send them on the path toward treatment and recovery
- Diversion efforts can save money

Sources: See Resources slide at end of presentation.

Prosecutor-Led Diversion Toolkit



<https://www.diversiontoolkit.org>



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Milwaukee County, Wisconsin



Image by [David Mark](#) from [Pixabay](#)

- Largest of Wisconsin's counties
- Population Size: 952,085
- Milwaukee Jail and House of Corrections population: 3,500
- Jail Bookings in 2019: 31,389

Early Intervention Programs

- The Milwaukee County Diversion Program
- The Milwaukee County Deferred Prosecution Program
- Drug Treatment Court
- Day Reporting Center
- Veteran's Treatment Court

Second Judicial District of Arkansas

The Second Judicial District is comprised of Clay, Craighead, Crittenden, Greene, Mississippi and Poinsett Counties in the delta region of Northeast Arkansas.

FY17 JMHCP Grantee Mississippi County Mental Health Court

- Mississippi County has a population of around 43,000
- Average Jail Count in 2018 was 130



Photo by [Joshua J. Cotten](#) on [Unsplash](#)



Discussion Questions

- Why should prosecutors be involved in this work?
- What information do you use to inform your decisions?
- Who are your key partners? How do you work together?
- How do you mitigate and manage risk in your programs?

Takeaways

- Most people with behavioral health conditions are not coming to jail for violent offenses
- Diversion programs can actually increase the overall safety of a community while saving jail costs
- Perform comprehensive assessments quickly so prosecutors can make safe, informed decisions, promptly

Takeaways

- For individuals with a higher risk of recidivism put more intensive supervision resources in place
- Diversion programs require close inter-entity cooperation between prosecutors, judges, public defenders and behavioral health providers
- "Perfection is the enemy of progress"

Questions & Answers

Resources: Slide 11

- I. Treatment can help reduce recidivism and improve public safety.** Virginia Hiday, Bradley Ray, and Heathcote Wales, "Longer-Term Impacts of Mental Health Courts: Recidivism Two Years After Exit," *Psychiatric Services* no. 67 (2016): 378-383; Karli J. Keator, "The Impact of Treatment on the Public Safety Outcomes of Mental Health Court Participants," *American Behavioral Scientist* no. 57 (2013): 231-243; and Henry J. Steadman et al., "Effect of Mental Health Courts on Arrests and Jail Days," *Archives of General Psychiatry* no. 68 (2011): 167-172; Kenneth J Gill, Ann A. Murphy, "Jail Diversion for Persons with Serious Mental Illness Coordinated by a Prosecutor's Office," *BioMed Research International* 2017 (2017).
- II. Diversion efforts can address health and justice inequities.** Melissa Thompson, "Race, Gender, and the Social Construction of Mental Illness in the Criminal Justice System, Sociological Perspectives," *Sociological Perspectives* 53, no. 1 (2010): 99-126; Melissa Thompson, *Mad or Bad? Race, Class, Gender and Mental Disorder in the Criminal Justice System* (El Paso, TX: LFB Scholarly Publishing, LLC, 2010); Traci Schlesinger, "Racial Disparities in Pretrial Diversion: An Analysis of Outcomes Among Men Charged With Felonies and Processed in State Courts," *Race and Justice* 3, no. 3 (2013): 210-238.
- III. Prosecutors can play an important role in helping people improve their lives and send them on the path toward treatment and recovery.** Meredith Drew, Elizabeth Panuccio, and Kelly Shelton. "Warren County Prosecutor-Led Mental Health Diversion Program," *The Prosecutor, Journal of the National District Attorneys Association* (2020): 18-23; Kenneth J Gill, Ann A. Murphy, "Jail Diversion for Persons with Serious Mental Illness Coordinated by a Prosecutor's Office," *BioMed Research International* 2017 (2017).
- IV. Diversion efforts can save money.** Doug McVay, Vincent Schiraldi, and Jason Ziedenberg, *Treatment or Incarceration? National and State Findings on the Efficacy and Cost Savings of Drug Treatment Versus Imprisonment* (Washington, DC: Justice Policy Institute, 2004); Sheryl Kubiak et al., "Cost Analysis of Long-term Outcomes of an Urban Mental Health Court," *Evaluation and Program Planning* no. 52 (2015): 96-106.

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