

# Pretrial Diversion Programs

## *Research Summary*

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# Research Summary: Pretrial Diversion Programs

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## Abstract

Pretrial diversion programs are voluntary alternatives to traditional criminal justice processing. Research demonstrates that these programs can have positive outcomes for offenders with alcohol, substance abuse, mental health, or co-occurring disorders (NAPSA, 2010). Although researchers have assessed individual components of these programs, there has been little work to examine the effectiveness of pretrial diversion programs as a whole (NAPSA, 2010).

## Definition and Goals

“Pretrial diversion/intervention is a voluntary option which provides alternative criminal case processing for a defendant charged with a crime that ideally, upon successful completion of an individualized program plan, results in a dismissal of the charge(s).” (NAPSA, 2008, p. 6)

These alternative programs use established criteria to determine which defendants are eligible to participate in the program. For example, the New York City diversion program includes only first-time offenders with nonviolent misdemeanor offenses and inadequate employment. Diversion programs also are characterized by standardized supervision (e.g., drug testing) and service delivery, including counseling and drug treatment (NAPSA, 2010). The third shared characteristic of pretrial diversion programs is that completion of the program results in the dismissal of criminal charges (NAPSA, 2010).

The goal of these programs is to reduce crime by discovering the underlying factors that lead to an individual’s criminal behavior (NAPSA, 2010). Because these types of programs typically target nonviolent offenders, they aim to eliminate underlying factors such as mental illness or substance abuse that may drive an individual’s criminal behavior. Thus, many of these programs target offenders who are better served through community restitution programs rather than criminal sanctions

(NAPSA, 2010). By targeting the underlying root causes of criminal activity, pretrial diversion programs ultimately aim to reduce offenders’ recidivism (Ulrich, 2002).

Eligibility requirements for pretrial diversion programs can differ depending on the jurisdiction in which they are run, but most have at least one requirement centered on the following: (a) prior criminal history, (b) current charge, (c) substance abuse history, (d) mental health history, (e) victim approval, (f) restitution repayment, and (g) arresting officer approval (NAPSA, 2009).

A study of nationwide pretrial diversion programs found that most offenders in them had been charged with nonviolent felony offenses (Ulrich, 2002). The most common types of these offenses were fraud, larceny/theft (Ulrich, 2002), and drug-related offenses (Zlatic, Wilkerson, and McAllister, 2010).

The most recent major review of pretrial diversion programs was completed in 1982 for the Pretrial Services Resource Center (see Kirby and Pryor, 1982). More recent studies have examined the effectiveness of some components of diversion programs, others have examined different types of diversion programs, but none have examined the effectiveness of diversion programs as a whole (NAPSA, 2010; Lattimore et al., 2003; Cowell, Broner, and Dupont, 2004; Mire, Forsyth, and Hanser, 2007). Additionally, the more recent review of pretrial diversion programs by NAPSA (2009) was offered to “re-introduce’ pretrial diversion to the broader [criminal justice] field” (NAPSA, 2009, p. 5).

## Components of Diversion Programs

Pretrial diversion programs have several components. Most use risk assessments to determine whether offenders are eligible for the program, while others use standardized eligibility criteria such that an offender and his or her charge must fit certain requirements (NAPSA, 2010). Many also use assessments to

determine the needs of offenders and appropriate treatment/service plans.

Most pretrial diversion programs also include some type of supervision that accompanies treatment services (NAPSA, 2010).

Additionally, most require some sort of victim restitution, community service, and counseling. Depending on an offender's needs, programs also may include drug treatment or counseling, urinalysis, and programming for several types of traffic offenses.

### Types of Diversion Programs

There are several types of pretrial diversion programs. These include statewide diversion programs, prebooking programs, postbooking programs, and post-plea programs (NAPSA, 2010; Lattimore et al., 2003; Cowell, Broner, and Dupont, 2004; Mire, Forsyth, and Hanser, 2007). These programs are very similar, but each has different requirements.

1. *Statewide Pretrial Diversion Programs*—These programs are managed and funded by the state's Administrative Office of the Courts, the state probation department, community corrections agencies, or nonprofit organizations (NAPSA, 2010). Many have community service or victim restitution components. Interestingly, most statewide pretrial diversion programs are not available in all of a state's jurisdictions (NAPSA, 2010). In Kentucky, for example, these programs are available in only 43 of the 120 counties (Kentucky Department of Public Advocacy, 2009).
2. *Prebooking Diversion Programs*—These programs intervene in the criminal justice process before an offender is charged with a crime (Lattimore et al., 2003). Thus, they keep offenders out of jail altogether (Cowell, Broner, and Dupont, 2004). They usually are aimed at offenders with a serious mental illness or those with co-occurring disorders (Lattimore et al., 2003). In jurisdictions with prebooking programs, criminal justice personnel are taught to recognize the symptoms of serious mental illnesses. Personnel are then able to
3. *Postbooking Diversion Programs*—These are the most prevalent type of pretrial diversion program (Cowell, Broner, and Dupont, 2004). Like prebooking diversion programs, postbooking programs also are aimed at diverting offenders with mental illness or co-occurring disorders from the criminal justice system (Lattimore et al., 2003). These programs involve assessment and screening of offenders after they have been charged with an offense and typically require negotiations between diversion staff and criminal justice personnel. Postbooking programs develop treatment plans for offenders and allow offenders' charges to be waived after completion of the diversion program. Diversion staff typically work in courts and serve as case managers or monitors, and they help bridge the gap from the courts to community service providers (Lattimore et al., 2003).
4. *Post-Plea Diversion Programs*—Offenders taking part in post-plea diversion programs must plead guilty to the pending charges and participate in community-based supervision, treatment, or service programs (NAPSA, 2010). Once all aspects of the

identify whether these symptoms are present in the offenders they encounter in the field. When an offender is identified with symptoms of a serious mental illness, criminal justice personnel are able to divert that individual to a treatment center rather than booking him or her, which terminates that individual's involvement with the criminal justice system (Mire, Forsyth, and Hanser, 2007).

Prebooking diversion programs may be the most beneficial type of pretrial diversion programs, but there are some barriers to their implementation. First, a jurisdiction's criminal justice personnel need to be highly trained. And jurisdictions that implement these programs have a greater liability. If frontline officers misdiagnose an offender and this leads to an injury, the officers' department may be open to a lawsuit (Mire, Forsyth, and Hanser, 2007).

program are completed, the defendant's charges and plea are thrown out or dismissed.

That there are several types of pretrial diversion programs demonstrates that different offenders may benefit from different programs or different components of programs. Each of the programs discussed above aims to divert offenders suffering from mental illness, alcohol and drug abuse, or co-occurring disorders from the traditional criminal justice system to treatment centers. Additionally, these programs aim to eliminate the factors that lead to an offender's criminal behavior.

Offenders who participate in pretrial diversion programs demonstrate positive outcomes when compared with eligible offenders who go through the traditional criminal justice system. Specifically, one study, by Broner, Mayrl, and Landsberg (2005), has demonstrated that offenders in pretrial diversion programs are more likely to be in the community than in jail or treatment centers 12 months after their initial crime. These researchers also found that offenders in these programs spent less time in prison than did eligible offenders who did not participate in a pretrial diversion program. Compared with traditional criminal justice procedures, diversion programs also lead to positive mental health, substance abuse, and treatment outcomes for offenders (Broner, Mayrl, and Landsberg, 2005).

Other research has found that the most positive outcomes occur when the offender is well matched with a mental health provider who has a good understanding of the offender's needs. The benefits also are maximized when an offender's caseworker has a small caseload and is able to be actively involved in the client's progress (Mire, Forsyth, and Hanser, 2007).

### **Other Benefits of Pretrial Diversion Programs**

In addition to the above-mentioned benefits, there are benefits to the criminal justice system as a whole and to the jurisdictions that implement pretrial diversion programs. These programs are both cost- and time-effective for

the criminal justice system (Cowell, Broner, and Dupont, 2004; Tanner, Wyatt, and Yearwood, 2008). They have been shown to reduce criminal justice costs in most jurisdictions (Cowell, Broner, and Dupont, 2004).

Pretrial diversion programs have been shown to be time-effective because they keep court dockets from becoming too large by diverting offenders away from traditional criminal justice processing, thus improving processing. They also reduce overcrowding in prisons (Tanner, Wyatt, and Yearwood, 2008).

Without pretrial diversion programs, prison and jail populations would almost certainly be larger. Finally, these programs benefit society as a whole. By being diverted away from traditional criminal justice processing, offenders avoid criminal convictions and sentences and are better able to obtain gainful employment (Zlatic, Wilkerson, and McAllister, 2010). This allows individuals participating in pretrial diversion programs to become productive members of society.

### **Unanswered Questions About Pretrial Diversion Programs**

There still are unanswered questions about pretrial diversion programs and their overall effect on offenders and the criminal justice system. Despite the fact that they aim to reduce offenders' criminal behavior, relatively few of these programs collect data on offenders' rates of recidivism (NAPSA, 2009; Ulrich, 2002). This is an opportunity for future research.

Researchers also have suggested that future studies examine the impact of using diversion programs with offenders diagnosed with a mental health or co-occurring disorder. There is evidence that an offender's openness to treatment can affect his or her experience in a pretrial diversion program as well as success after the program ends (Mire, Forsyth, and Hanser, 2007). More specifically, researchers should work to validate an assessment of offenders' openness to treatment, develop a valid way to match offenders and treatment

providers, and develop a valid assessment of the quality of services provided in pretrial diversion programs. Developing valid assessments and examining the point of diagnosis will allow researchers to determine the effects of these decisions and services on participant outcomes and the effect of pretrial diversion programs on the criminal justice system.

## Summary

Pretrial diversion programs divert offenders away from traditional court trials and sentencing procedures. Diversion programs operate on the principle that diverting offenders away from court trials and sentencing allows staff to uncover and address the root causes of a defendant's criminal behavior, which makes it less likely that he or she will reoffend in the future (NAPSA, 2010).

There are many ways to implement pretrial diversion programs (e.g., Lattimore et al., 2003; Cowell, Broner, and Dupont, 2004), but there is consistent evidence (e.g., Broner, Mayrl, and Landsberg, 2005; Mire, Forsyth, and Hanser, 2007) that diversion programs result in positive outcomes for program participants.

Despite these positive findings there still are gaps in the literature on the effects of pretrial diversion programs. These programs aim to reduce offenders' criminal behavior, but research has yet to empirically examine the success of this goal (Ulrich, 2002). To address this information gap, future research would need to randomly assign defendants to participate in the program and then compare their recidivism rates with those of offenders randomly selected to remain in the traditional criminal justice system. Similarly, research should examine the effect of pretrial diversion programs as a whole on offender outcomes, as opposed to the effect of individual components of these programs. Researchers may discover that pretrial diversion programs as a whole are more effective than any one component by itself.

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