



District of Columbia

Statistical Analysis Center

Fall 2017

# BRIEF: DIVERSION AND DEFLECTION IN THE DISTRICT OF COLUMBIA

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## OVERVIEW

Diversion and deflection programs seek to re-direct, or channel people away from adult or juvenile justice systems. The concept of diversion is based on the theory that processing certain individuals through the justice system may do more harm than good, or may be an inappropriate response for someone with unmet behavioral health needs.<sup>1</sup>

## HISTORY

Some U.S. localities began experimenting with diversion as early as the 1940s, but it was not until the 1960s when diversion programs began to find political support. During the 1960s, several states, including Michigan, Connecticut, Illinois, and New York, passed laws authorizing treatment instead of prison for select adult offenders.<sup>2</sup> By the 1970s, the federal government had taken notice and included language promoting the adoption of diversion programs into its Comprehensive Drug Abuse Prevention and Control Act of 1970. The number of diversion programs continued to grow throughout the 1970s; however, it was not until after the creation of the first Drug Court program in 1989 in Miami-Dade County, when the number of programs increased dramatically. Within 10 years, there were 492 Drug Courts nationwide, and by 2017, 3,100 Drug Courts were operating in every U.S. state and territory.<sup>3 4</sup> Although drug courts are just one type of diversion program, they are the most widely replicated type of adult and juvenile diversion.

While the exact number of diversion and deflection programs in the United States is unknown, their proliferation been accelerated by research showing that they can substantially impact recidivism and help individuals avoid the collateral consequences of having a criminal record. Today, there is a wide variety of diversion programs working to address an

<sup>1</sup> The Center on Juvenile and Criminal Justice. (1999, September). Detention Diversion Advocacy: An Evaluation (Rep.). Retrieved May 15, 2017, from Juvenile Justice Bulletin website: [www.ncjrs.gov/html/ojdp/9909-3/div.html](http://www.ncjrs.gov/html/ojdp/9909-3/div.html)

<sup>2</sup> The Center for Health and Justice at TASC. (2013). No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives. Chicago: Author. Retrieved April 20, 2017, from [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)

<sup>3</sup> U.S. Department of Justice, & Office of Justice Programs. (2017). Drug Courts (Publication). doi:<https://www.ncjrs.gov/pdffiles1/nij/238527.pdf>

<sup>4</sup> National Association of Drug Court Professionals . (n.d.). HISTORY: JUSTICE PROFESSIONALS PURSUE A VISION [Web log post]. Retrieved from <http://www.nadcp.org/learn/what-are-drug-courts/drug-court-history>

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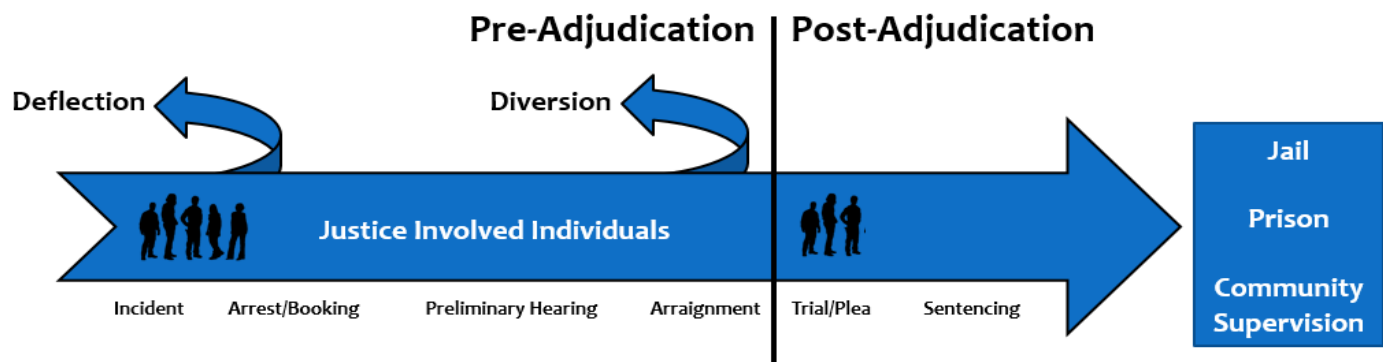
assortment of problematic behaviors within adult and juvenile populations (substance abuse, property crime, nuisance crimes, prostitution, etc.).<sup>5</sup> Most programs focus on individuals with low-to-moderate criminogenic risk or those whose likelihood of future system involvement can be substantially reduced through behavioral health or social service interventions.<sup>6</sup>

## DEFLECTION

Traditionally referred to as pre-booking/pre-arrest diversion or law enforcement assisted diversion, deflection is an all-encompassing term for programs that deflect individuals away from the justice system entirely.<sup>7</sup> Deflection programs offer law enforcement an opportunity to direct an individual toward behavioral health and social service interventions without ever arresting the individual or processing the individual into the criminal justice system. Designed most often to work with those individuals whose problematic behaviors stem from trauma, substance abuse and mental illness, deflection provides a public health alternative to justice system involvement. This model requires buy-in and coordination between law enforcement, the community and the non-profit service providers who assist individuals with addressing their unmet behavioral health needs. Unlike programs like Crisis Intervention Training, which focuses on de-escalation and working with individuals in crisis, deflection programs focus on providing referrals and access to services before a crisis occurs.<sup>8</sup>

## DIVERSION

Diversion programs are intervention strategies that seek to offer individuals who have entered the criminal justice system, such as through arrest, an opportunity to avoid prosecution or sentencing by taking part in treatment, education, community service or other pro-social activities. Also known as deferred-prosecution or deferred-sentencing, these initiatives leverage both the offer of assistance and the threat of formal prosecution to incentivize participation. Diversion programs may vary from low-intensity programs to more-intensive treatment or therapeutic programming. Successful completion of diversion programming will generally result in no further judicial processing, allowing the individual to avoid the secondary consequences of having a criminal conviction. In addition to affording individuals an opportunity to address the behaviors that brought them to the attention of the justice system, diversion reduces the costs associated with formal court proceedings, reduces the burden on correctional institutions, lowers community corrections caseloads and frees up limited justice system resources and services for high-risk offenders.<sup>9</sup>



<sup>5</sup> Bynum, J.E., and Thompson, W.E. 1996. *Juvenile Delinquency: A Sociological Approach*. 3d ed. Needham Heights, MA: Allyn and Bacon.

<sup>6</sup> National Institute of Justice. (n.d.). *Juvenile Diversion Programs*. Retrieved May 2, 2017, from <https://www.crimesolutions.gov/PracticeDetails.aspx?ID=37>

<sup>7</sup> Peterson, R. (2017). Pre-arrest and Pre-booking Diversion and Mental Health In Policing. *Policy Perspective*, 5-13. Retrieved April 27, 2017, from <http://rightoncrime.com/2017/04/pre-arrest-and-pre-booking-diversion-and-mental-health-in-policing/?platform=hootsuite>

<sup>8</sup> <http://www.policechiefmagazine.org/deflection-a-powerful-crime-fighting-tool-that-improves-community-relations/>

<sup>9</sup> WILSON, H., & HOGE, R. (2013). The Effect of Youth Diversion Programs On Recidivism. *Criminal Justice and Behavior*, 40(5), may 2013, 497-517. Retrieved April 20, 2017, from [http://users.soc.umn.edu/~uggen/Wilson\\_CJB\\_13.pdf](http://users.soc.umn.edu/~uggen/Wilson_CJB_13.pdf)

## TYOLOGY: DIVERSION AND DEFLECTION

Over the past few decades, much of the innovation in deflection and diversion has focused on individuals whose interactions with the justice system are driven by unmet behavioral health needs. These diversion and deflection programs have often taken the following forms:

### ➤ Pre-Arrest Deflection<sup>10</sup>

- Intervention Based Pre-Arrest Deflection: An individual with an unmet behavioral health need is identified by law enforcement as committing an arrestable or citable offense. Instead of formal arrest/citation and processing, the individual is transported to treatment for clinical assessment. If the individual refuses treatment, then the officer makes the arrest or citation and regular justice system processing occurs.
- Prevention Based Pre-Arrest Deflection – An individual with an unmet behavioral health need, whose behavior puts them at risk for justice system involvement, is identified by or self identifies to law enforcement and a direct handoff to treatment or clinical assessment is provided.

### ➤ Diversion<sup>11</sup>

- Deferred-Prosecution – Defendants in a deferred prosecution agreement are required to participate in treatment/programming but are not required to plead guilty to the charges against them. If they successfully complete the treatment/programming, the prosecutor will drop the case against them. Failure to complete the program, however, results in prosecution.
- Deferred-Sentencing – Defendants in a deferred sentencing agreement are required to both participate in treatment/programming and must plead guilty to their charges. Sentencing for that individual is deferred or suspended while they participate in treatment. Successful participation results in a waived sentence or expungement of the offense, unsuccessful participation will result in sentencing on the guilty plea.

The outcomes sought by diverting or deflecting individuals are generally three-fold:

- 1) reduce crime by connecting individuals with services that decrease the likelihood of future offending;
- 2) provide individuals with an opportunity (with assistance) to change the behaviors that brought them to the attention of the justice system; and
- 3) conserve limited justice system resources by reducing re-arrest, recidivism and future justice system expenditures.

Regardless of the age of the population served, these types of programs provide individuals with an opportunity to avoid the collateral consequences associated with a criminal record and justice systems with an alternative to post-adjudication processing.<sup>12</sup>

<sup>10</sup> Charlier, J. (n.d.). *Pre-Arrest Diversion: A Public Health Solution to Better Public Safety*. Lecture. Retrieved September 1, 2017, from [https://comm.ncsl.org/productfiles/92221780/Handout\\_Pre-Arrest-Diversion.pdf](https://comm.ncsl.org/productfiles/92221780/Handout_Pre-Arrest-Diversion.pdf)

<sup>11</sup> King, R., & Pasquarella, J. (2009, April). Drug Courts A Review of the Evidence (Rep.). Retrieved <http://www.sentencingproject.org/wp-content/uploads/2016/01/Drug-Courts-A-Review-of-the-Evidence.pdf>

<sup>12</sup> The Center for Health and Justice at TASC. (2013). No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives. Chicago: Author. Retrieved April 20, 2017, from [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)

## **EFFORTS UNDERWAY IN THE DISTRICT OF COLUMBIA**

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An early adopter of diversion programs like Drug Court and Community Court, the District of Columbia has a long history of interagency collaboration to provide individuals with opportunities to address unmet needs and avoid future system involvement. This history continues today, with more than 2,760 D.C. Superior Court cases dismissed in 2016 due to successful diversion.<sup>13</sup> Descriptions of the deflection and diversion programs currently available in the District of Columbia are provided below.

### **SUPERIOR COURT DRUG INTERVENTION PROGRAM (SCDIP)**

The Superior Court Drug Intervention Program, better known as Drug Court, was established in 1993 as a partnership between D.C. Superior Court (DSCS), the Pretrial Services Agency (PSA), the U.S. Attorney's Office for the District of Columbia (USAO), the Office of the Attorney General (OAG) and Public Defender Service (PDS). One of the original drug court programs in the country, SCDIP is a deferred-prosecution diversion program working with misdemeanor and non-violent felony defendants who have been assessed by PSA as being in need of substance-related treatment. The court-supervised, evidence-based treatment program takes an average of 7 months to complete, and admits only pretrial participants.<sup>14</sup> In fiscal year 2016, 57 defendants successfully graduated from Drug Court. Of the 57 graduates, 47 were able to have their misdemeanor cases nolleed due to participation.<sup>15</sup>

### **MENTAL HEALTH COMMUNITY COURT (MHCC)**

Founded in 2007, and later expanded in 2011, the Mental Health Community Court seeks to integrate community behavioral health resources to meet the unique needs of persons with mental illness in the court system. A collaboration between DCSC, PSA, USAO, PDS and the D.C. Department of Behavioral Health (DBH), this diversion opportunity was designed for defendants who have been charged with certain non-violent misdemeanor or felony offenses. PSA screens the person for clinical eligibility, which is defined as having a severe mental health diagnosis such as schizophrenia or bi-polar disorder, and requires that the defendant be approved for supervision under PSA's Specialized Supervision Unit. If compliance with treatment services is maintained, as well as the other conditions set by the court, participants will be allowed to enter into a diversion agreement for a period of at least 4 months. Upon successful completion of the agreement, the participant will graduate from MHCC and the prosecution seeks the dismissal or reduction of his or her criminal charges.<sup>16</sup> In 2016, 264 defendants successfully completed the Mental Health Community Court.<sup>17</sup>

### **REDIRECT DIVERSION**

Founded in April of 2016, the Redirect Diversion program offers those with non-violent misdemeanor charges an opportunity to avoid judicial processing by engaging in pro-social education or employment programming. A partnership between DCSC, the Department of Employment Services (DOES) and the Office of the State Superintendent of Education (OSSE), Redirect is a deferred sentencing diversion program that links youth without a high school diploma with OSSE's ReEngagement Center and unemployed adults with DOES's Career Connections and Project Empowerment programs. Participation is voluntary and requires at least 6 months of active engagement with programming before an individual becomes eligible to have his or her case dismissed. If the defendant has not complied, such as if the defendant failed urine tests or is not engaging fully after 8 weeks, he or she will proceed directly to sentencing and will

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<sup>13</sup> District of Columbia Courts. (n.d.). District of Columbia Courts 2016 Annual Report - Statistical Summary (Rep.). Retrieved April 31, 2017, from <http://www.dccourts.gov/internet/documents/Statistical-Summary-CY2016-Final.pdf>

<sup>14</sup> Herrera, T., Carey, S., & Finigan, M. (2011). Washington, D.C. Superior Court Drug Intervention Program Assessment Report (Rep.). Portland, OR: NPC Research.

<sup>15</sup> Congressional Budget Justification and Performance Budget Request Fiscal Year 2018 (Rep.). (2017, May). Retrieved: June 26, 2017, from PSA website: <https://www.csosa.gov/about/financial/budget/2018/FY18-PSA-CBJ-Performance-Budget-05232017.pdf>

<sup>16</sup> Mental Health Community Court. (n.d.). Retrieved May 03, 2017, from <https://www.psa.gov/?q=node%2F429>

<sup>17</sup> Congressional Budget Justification and Performance Budget Request Fiscal Year 2018 (Rep.). (2017, May). Retrieved: June 26, 2017, from PSA website: <https://www.csosa.gov/about/financial/budget/2018/FY18-PSA-CBJ-Performance-Budget-05232017.pdf>

not be eligible for any other diversion opportunities on that charge. In the programs first year they received 102 referrals, with 66 individuals successfully completing the terms of their diversion.<sup>18</sup>

### **DISTRICT-WIDE U.S. MISDEMEANOR AND TRAFFIC COMMUNITY COURT**

Founded in 2002 as the East of the River Community Court (ERCC) and expanded city-wide in 2012, the Community Court provides eligible low risk defendants charged with U.S. misdemeanors (other than domestic violence) and certain traffic offenses with access to deferred prosecution or deferred sentencing diversion opportunities. Depending on the charge and an individual's criminal history, an individual may be given the opportunity to have his/her case dismissed by completing community service, participating in mediation, attending and graduating from Drug Court or Mental Health Community Court, or participating in and completing a career training, employment or education program.<sup>19</sup> In 2016, 2,592 defendants graduated.<sup>20</sup> Since 2015, participants in the Community Court Service Program have performed more than 53,117 hours of community service across the District.<sup>21</sup>

### **JUVENILE BEHAVIOR DIVERSION PROGRAM (JBDP)**

Founded initially in 2010, the Juvenile Behavior Diversion Program is an intensive non-sanction based mental health court designed to link juveniles and status offenders to, and engage them in, appropriate mental health services and supports in the community. JBDP seeks to reduce the behavioral symptoms that resulted in contact with the court and to improve the youth's functioning in the home, school, and community. A collaboration between representatives from the Family Court, DBH, OAG, PDS, Court Social Services (CSS), and the D.C. Courts' Research and Development Division (R&D), the JBDP has three tracks, two of which offer participants an opportunity to have their case dismissed after successful completion of the program. Since its creation, the program has seen over 300 successful graduates, with 45 youth successfully completing the JBDP in 2016.<sup>22</sup>

### **OFFICE OF THE ATTORNEY GENERAL'S RESTORATIVE JUSTICE DIVERSION PROGRAM**

Launched in 2016, OAG's Restorative Justice Diversion Program provides juvenile defendants with an opportunity to have their cases dismissed by taking responsibility for their actions and entering into a resolution agreement with the victim of the crime. Offered as both a deferred prosecution and deferred disposition agreement, this diversion opportunity can only be entered into if the victim, offender and the offender's parents agree to participate. Offered only for certain offense, the program brings together the victim, offender and an OAG restorative justice facilitator to discuss the crime, how the parties were impacted and what the defendant needs to do (e.g., restitution, community services, counseling) to resolve the matter to the satisfaction of the victim. Once all parties have agreed to a resolution agreement, OAG will monitor compliance with the agreement while Court Social Services continues to supervise the respondent in the community. If the youth successfully completes the agreement, OAG will dismiss the case. If the respondent does not complete the terms of the agreement within 6 months, the case will be returned to the prosecutor for traditional prosecution. Cases involving guns, intimate partner domestic violence and sexually based offenses are ineligible for this diversion opportunity. In the year since its implementation, the Restorative Justice Diversion Program has fielded approximately 60 case referrals.<sup>23</sup>

### **ALTERNATIVES TO COURT EXPERIENCE (ACE) – DEFLECTION AND DIVERSION**

The Alternatives to Court Experience (ACE) program was founded in 2014 and offers both a deflection and diversion program. The *deflection* program is an interagency initiative spearheaded by the Department of Human Services (DHS)

<sup>18</sup> Source: DC Superior Court (October 23rd, 2017)

<sup>19</sup> Leading in Specialty Court Programs. (n.d.). Retrieved May 02, 2017, from [https://psa.gov/?q=leading\\_programs](https://psa.gov/?q=leading_programs)

<sup>20</sup> Source: District of Columbia Superior Court (June 22, 2017)

<sup>21</sup> District of Columbia Courts. (n.d.). District of Columbia Courts 2015 Annual Report (Rep.). Retrieved April 15, 2017, from <http://www.dccourts.gov/internet/documents/2015-Annual-Report-Narative.pdf>

<sup>22</sup> District of Columbia Courts. (n.d.). District of Columbia Courts 2016 Annual Report - Statistical Summary (Rep.). Retrieved April 31, 2017, from <http://www.dccourts.gov/internet/documents/Statistical-Summary-CY2016-Final.pdf>

<sup>23</sup> Source: Office of the Attorney General (December 5, 2017)

and the Department of Behavioral Health (DBH) in collaboration with the Metropolitan Police Department (MPD) and community-based service providers. This partnership provides law enforcement with an opportunity to deflect youth away from the juvenile justice system and toward services in the community. Youth who are picked up or seized by MPD for misdemeanor and delinquency related offenses may be given the option to take part in the ACE program in order to avoid a formal arrest and possible prosecution. Once a youth has been referred by MPD, and a parent or guardian agree to participate, the youth will be evaluated by ACE Social Workers/Case Managers and connected with appropriate rehabilitative and pro-social wrap-around services in the community.<sup>24</sup> In 2016, MPD referred 202 cases to the ACE program for deflection.<sup>25</sup>

The ACE *diversion* program is an inter-agency initiative spearheaded by DHS and DBH in collaboration with the Office of the Attorney General (OAG), Court Social Services (CSS/OAG), and community-based service providers. Youth are referred to ACE pre-petition or post-arrest for status (largely truancy) offenses, misdemeanor offenses and low-level delinquency offenses. Irrespective of the reason for referral (e.g. simple assault, Metro fare evasion, or any other low-level delinquency offense), diverted youth and their families are assessed using the Child and Adolescent Functional Assessment Scale (CAFAS). ACE Social Workers/Case Managers use these evaluative tools to provide an individually tailored program of wrap-around services that will help each child achieve success and avoid re-offending.<sup>26</sup> These services include, among other things, family and individual therapy, mentoring, tutoring, mental-health treatment, education, recreation and school supports. (These same services are available to youth who are referred to ACE through deflection.) According to DHS, more than 80% of youth diverted to ACE have not been rearrested since completing the program, 85% of youth had improved CAFAS scores after completing the program, and 62% of youth showed improved school attendance after completing the program.<sup>27</sup>

The ultimate goal of the program is to help youth and their families address the underlying issues causing the negative behaviors, while minimizing the likelihood of reoffending and giving youth the opportunity to avoid acquiring a juvenile record.

## CONCLUSION

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With more than 2,760 D.C. Superior Court cases dismissed due to successful diversion in 2016, the District is committed to providing its citizens with pathways away from the criminal justice system and toward rehabilitative opportunities. This commitment, from all three branches of government, is exemplified by the recent expansion of the Alternatives to Court Experience programs, an upcoming evaluation of the Superior Court Drug Intervention Program and the procurement of funding for the Metropolitan Police Department to pilot a new law enforcement assisted diversion program. By expanding what works, evaluating what we are doing and innovating to address emerging issues, the District of Columbia is making important strides with appropriate and impactful deflection and diversion strategies.

## THE DC SAC

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The Statistical Analysis Center for the District of Columbia (DC SAC), the research arm of the CJCC, was established in 2001 by a Mayoral Executive Order to provide a division dedicated to the collection, analysis, and dissemination of criminal justice system information. The work of the DC SAC is guided by the Interagency Research Advisory Committee (IRAC), which consists of researchers and program representatives from justice system agencies. The IRAC serves as the advisory body for the DC SAC and supports its efforts to collect, analyze, and disseminate

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<sup>24</sup> DC Children and Youth Investment Trust Corporation. (2014, October). District of Columbia Alternatives to the Court Experience Diversion Program FY15 Request for Proposals. Retrieved May 3, 2017, from <http://cyitc.org/wp-content/uploads/2014/10/2014-10-16-Diversion-FINAL-updated-10-23-2014.pdf>

<sup>25</sup> Source: Metropolitan Police Department (August 7, 2017)

<sup>26</sup> DC Department of Human Services. (2016, June). Alternatives to the Court Experience Program Creates Second Chances for Youth Offenders. Retrieved May 2, 2017, from <https://medium.com/@DCHumanServ/alternatives-to-the-court-experience-program-creates-second-chances-for-youth-offenders-9f903f77c2ca>

<sup>27</sup> DEPARTMENT OF HUMAN SERVICES: Fiscal Year 2017 - 2018 Budget Oversight Hearing, 3 (2017) (testimony of Laura Green Zeilinger). [https://dhs.dc.gov/sites/default/files/dc/sites/dhs/page\\_content/attachments/TESTIMONY-DHS%20FY18%20Budget%20Oversight.pdf](https://dhs.dc.gov/sites/default/files/dc/sites/dhs/page_content/attachments/TESTIMONY-DHS%20FY18%20Budget%20Oversight.pdf)

relevant research and analysis that can impact the District's adult and juvenile justice systems. The DC SAC strives to provide decision-makers and the public at large with easily accessible and fact-based information about crime and the administration of justice across the District of Columbia.

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