

REPORT

The Legislative Primer Series
for Front-End Justice

Deflection and Diversion



PENNINGTON COUNTY SHERIFF'S OFFICE



The Legislative Primer Series for
Front-End Justice:
Deflection and Diversion

BY AMBER WIDGERY

Introduction

State prisons admitted more than 319,000 people in 2020. Local jails had more than 27 times as many people that same year with about 8.7 million admissions. A significant number of those who cycle through jails are individuals with serious mental illness, the vast majority of whom also have drug- or alcohol- related needs that can complicate treatment.

State efforts in the past decade have focused on strategies that protect public safety, promote accountability and create greater access to treatment and programs that can reduce recidivism and connect individuals to a network of support and resources. Recent efforts have built upon earlier experience with pretrial diversion and treatment courts.

Pretrial diversion programs and treatment courts are not a new or emerging trend. Diversion programs expanded across the country in the 1960s and problem-solving courts, specifically drug courts, have been operating since the 1970s.

What has changed over time is the creation of state legislative frameworks for these programs, expansion of eligibility and shifting focus to interventions earlier in the legal process so participants can access treatment sooner and potentially avoid deeper involvement with the criminal justice system. The increased use of pre-arrest deflection programs demonstrates this shift over time, with most of these programs emerging in the last 10 years.

This report examines the statutory frameworks impacting deflection and diversion programs and highlights notable program examples from across the country.

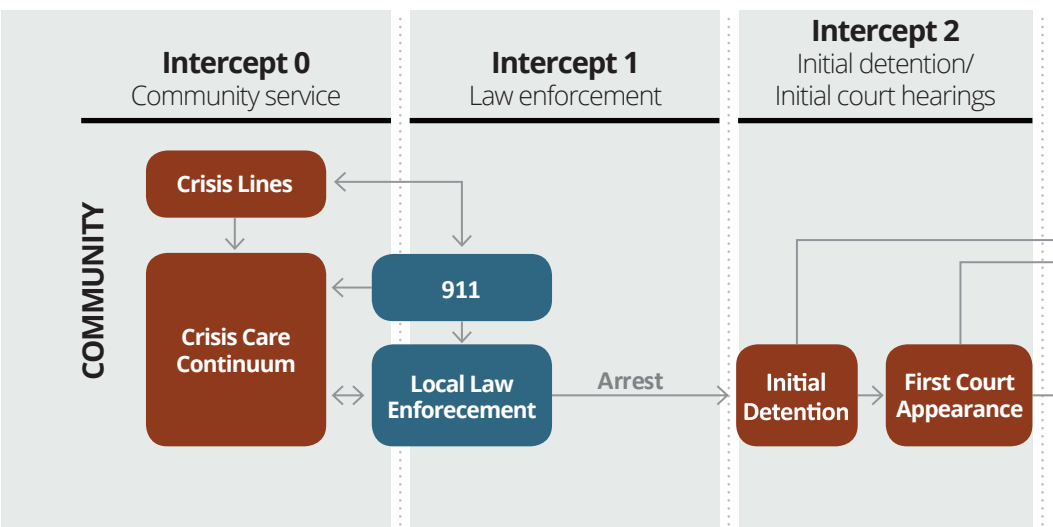
What is Deflection?

Deflection programs occur before arrest or prior to initiation of a law enforcement or other justice system contact. These programs generally provide a path to treatment for individuals with mental health or substance related needs with the goal of averting the need for an emergent response from law enforcement or health services. Programs typically involve law enforcement, peer support specialists, recovery coaches, clinical staff, case managers or social workers.

What is Diversion?

Pretrial diversion programs are post-arrest interventions that occur at some point prior to final entry of judgment. Programs can take place before charges are filed, before first appearance or before adjudication. Successful completion of these programs results in dismissal of charges and in some instances clearing of associated records of the case or arrest. Programs authorized by legislation are typically administered by prosecutors or court officials.

The Sequential Intercept Model



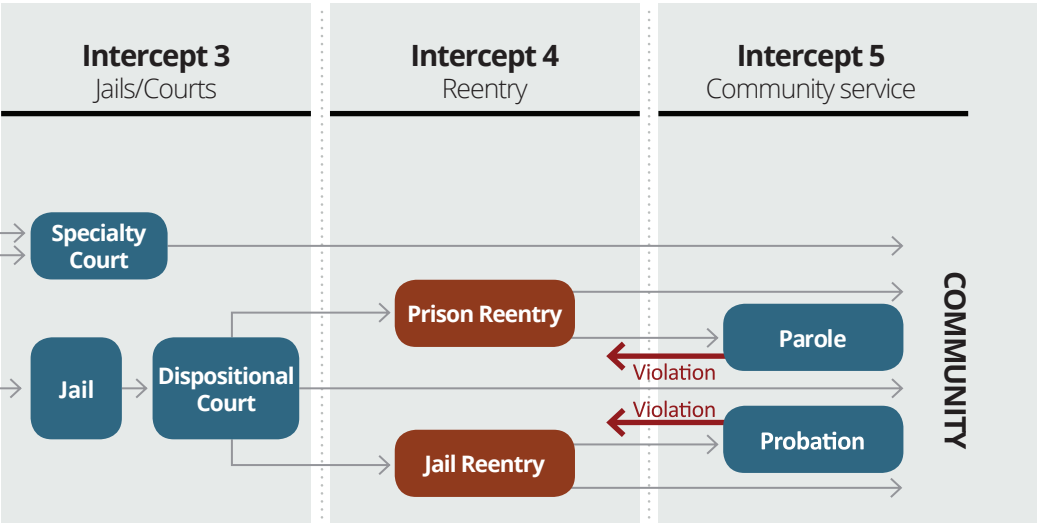
Creating a Continuum of Care: Using the Sequential Intercept Model

The Sequential Intercept Model is a framework communities can use to evaluate the coordination of health and justice systems to create a robust continuum of care. The model can help policymakers determine available resources, identify gaps in services, and develop policy and service changes. NCSL has more information on the Sequential Intercept Model in our [Legislative Primer for Front-End Justice](#).

Deflection programs generally take place at intercepts 0 and 1, while diversion programs come into play at intercepts 2 and 3. Together these programs can be a part of a larger strategy to appropriately address the needs of individuals who could benefit from treatment and intervention.

Deflection

According to a [recent survey from the Center for Health and Justice](#) most diversion programs in local communities are new since 2016, with the majority of programs being led by law enforcement agencies. Of the jurisdictions that responded to the survey more than half involved a direct connection to treatment for individuals. The majority also facilitated greater engagement in treatment by providing for transportation to a client’s first appointment.



Policy Research Associates Inc.

Experts in the field have [identified eight benefits](#) of deflection programs including:

- Breaking the costly cycle of justice-system involvement for eligible individuals.
- Increasing cross-system collaboration to create new pathways to community-based services.
- Enhancing relations between community members and law enforcement.
- Decreasing crime, incarceration and recidivism rates.
- Lessening the burden on justice systems.
- Improving public health and safety.
- Ensuring equal access to deflection programs regardless of race, income or geography.
- Saving taxpayer dollars.

Communities across the country have a variety of names and acronyms for these programs. Options such as Eugene’s [CAHOOTS](#) (Crisis Assistance Helping Out On the Streets), Denver’s [STAR](#) (Support Team Assisted Response) and King County’s [LEAD](#) (Law Enforcement Assisted Diversion) are specific programs that have gained national recognition and have been replicated across the country. Other commonly used terms include CIT (crisis intervention teams), co-response, pre-arrest diversion or pre-booking diversion.

To better track and understand these programs, experts from across the field have identified five different models or pathways. These include self-referral, active outreach, post-overdose, prevention and intervention.

SELF-REFERRAL

The self-referral model includes programs designed to encourage an individual to voluntarily reach out to law enforcement or other first responders to seek assistance. Generally, these programs provide immunity from specified charges including drug possession or paraphernalia charges if individuals turn over any illicit substances and related materials upon contacting a program representative.

An example of a [legislatively authorized](#) self-referral program is Kentucky's Angel Initiative. Individuals struggling with substance use can go to any [Kentucky State Police](#) post and request a connection to treatment. State law prohibits arrest of any individual requesting assistance and provides immunity from certain criminal charges if they turn in illicit substances and paraphernalia.

Crisis triage or stabilization centers can also be a mechanism for self-referral. A [2021 New York bill](#) addressed the creation of crisis stabilization centers as emergency service providers for individuals with a psychiatric or substance use disorders and authorized self-referral and walk-ins in addition to allowing for referrals from family members, schools, hospitals, community-based providers, mobile mental health crisis teams, crisis call centers, primary care doctors, law enforcement and private practitioners.



Utah has worked to expand self-referral options in the state, enacting unanimously approved [legislation](#) that supports the existing statewide mental health crisis line and creates a statewide warm line, which can be staffed by peer counselors. The crisis line is required to be staffed by mental health therapists or crisis workers and be accessible 24 hours a day, 365 days a year. The legislation that created the statewide warmline provided more than \$16.7 million in funding for the new warmline and related initiatives in the first year.

ACTIVE OUTREACH

Active outreach programs are built by allowing law enforcement, other first responders and colleagues including clinicians or peer support specialists, to identify or seek out individuals in their community that need services. Services can range from housing assistance and case management to connections to substance use or mental health treatment resources.

For example, The Tucson Police Department operates three specialized units that conduct targeted outreach in addition to taking referrals from 911 and peers in traditional patrol roles.

- The Substance Use Resource Team includes peer support specialists who do initial outreach and officers who transport individuals to a local community provider if they choose to participate.
- The [Mental Health Support Team](#) includes law enforcement officers paired with masters-level licensed mental health clinicians who work to reduce the number of people with mental illness and substance use disorders who are incarcerated, instead acting as a point of entry into treatment.
- Officers from the Homeless Outreach Team partner with a housing navigator in the community to connect individuals with a housing voucher program. Officers from this team [described](#) “approaching their work with the understanding that homelessness is often a symptom of [substance use disorder] and [severe mental health diagnosis] and not a crime.”

Other jurisdictions from [Houston](#) to [San Francisco](#) to [Wichita](#) have also implemented homeless outreach teams.

POST-OVERDOSE

Post-overdose programs operate similarly to active outreach programs with health professionals and law enforcement working together to provide resources and treatment information to individuals after first responders have been called to the scene of an overdose.

In 2014 the Sheriff of Lucas County Ohio launched the [Drug Abuse Response Team](#) (DART). Officers who work on the team follow up with overdose victims and their families within 72 hours of initial engagement to establish relationships and engage individuals in treatment. Officers wear plainclothes and utilize donated unmarked cars. Connections to treatment include detoxification, in-patient and out-patient programs, mental health

counseling, medication-assisted treatment, recovery housing and support groups. Clients can receive support through DART for up to two years with officers providing additional support such as driving victims to court and other appointments.

In 2017, the Ohio Legislature [appropriated](#) funds for the 2018-2019 fiscal year requiring the attorney general to establish a Drug Abuse Response Team Grant Program for the purpose of expanding programs similar to DART.

Outreach often includes more than law enforcement or co-response teams. For example, the Mental Health Association of Nebraska operates the [Respond, Empower, Advocate and Listen](#) program. Service providers can link individuals to a trained peer specialist who contacts the person referred and works mutually with the individual to support them as they move toward recovery. Between 2011 and April 2018, [67% of people referred](#) to the program accepted services.

PREVENTION

Prevention programs are generally law enforcement-based interventions or law enforcement and healthcare co-responder partnerships. Individual officers or teams work to connect people to treatment when they encounter people in situations where no charges would be filed.

The [Law Enforcement Assisted Diversion](#) (LEAD) program originated in King County Wash., in 2011 and has been studied and replicated many times since.

One [evaluation](#) of LEAD found that participants were significantly more likely to obtain housing, employment and legitimate income in any given month subsequent to their LEAD referral compared to the month prior to their referral. For example, participants were twice as likely to be sheltered versus unsheltered and 89% more likely to obtain permanent housing during follow-up. Each contact with a case manager translated to a higher likelihood of obtaining shelter or being housed.

Several states have legislatively addressed LEAD programs. In 2016, California [appropriated \\$15 million](#) to establish a grant program to fund three Law Enforcement Assisted Diversion pilot programs. Of the total appropriation, \$550,000 was authorized to be used for technical assistance and a [required evaluation](#) of results that was submitted to the legislature in 2020.

Colorado has also addressed funding for LEAD, [appropriating](#) \$2.3 million annually for three years to support four pilot programs. Initial [evaluation](#) of the pilot in Longmont, Colo., showed a 50% reduction in re-arrest of participants.

INTERVENTION

Intervention programs are similar to prevention programs in that they are led by law enforcement or co-responder teams. However, the intervention takes place in a situation where criminal charges could likely be filed, but the officer feels that an alternative response, including a possible citation, would be appropriate.

The Rapid City (S.D.) Police Department launched a [Quality of Life Unit](#) in 2018 to respond to the needs of individuals the department had regular interactions with. Upwards of 90% of the identified population were Native American, and many struggled with chronic homelessness and substance use disorder.

The unit receives extensive trauma-informed policing training and works one-on-one with high-needs community members to connect them to social services and provide support. When a call for service comes in, individuals who frequently interact with law enforcement and behavioral health services are identified by a computer system allowing the specially trained unit to respond and offer referrals to detoxification or counseling services in lieu of making an arrest.

Plainclothes officers act as care coordinators, taking individuals to and from appointments, waiting during appointments and helping them determine next steps, all while building rapport with these individuals and creating a network of support.

In addition to training on trauma-informed practices the department has also established training on cultural competency to help officers understand more about tribal practices and values, including the relationship between Native Americans and law enforcement.

States have also acted to expand the availability of alternative responders and law enforcement collaborations on co-response. Utah for example, enacted [legislation](#) in 2020 that increased the number of mobile crisis outreach teams (MCOT), mobile teams of medical and mental health professionals that in coordination with law enforcement and emergency medical service personnel provide mental health crisis services. The legislation specifically targeted rural areas by appropriating \$2.4 million to support grants for rural jurisdictions establishing new teams. Funding was also appropriated for purchase, maintenance and replacement of vehicles and for establishing crisis receiving centers.

Diversion

Pretrial diversion programs and treatment courts are fixtures in many states. However, statutes addressing these programs have been established and modified in recent years with many states moving to expand access and eligibility for defendants. Thirty-one states have made significant amendments to, or created new, pretrial diversion programs since 2017.

These alternatives are intended to reroute defendants away from traditional criminal justice processing after arrest but prior to adjudication. Pretrial diversion programs are designed to address criminogenic needs that contribute to criminal behavior, with successful completion resulting in a dismissal of charges.

Legislation addressing pretrial diversion often sets requirements for eligibility or dictates who is specifically excluded from participation. Many states have recently amended their eligibility guidelines, intending to increase pretrial diversion oppor-

tunities, and thereby increasing treatment opportunities and alternatives to jail for defendants. Statutes also address who should administer the program, most often placing responsibility on courts or prosecutors, as well as what the fee structure should look like, length of the diversion and standards for what the content of the program should entail.

POPULATION SPECIFIC DIVERSION

Diversion programs are not one-size-fits-all and population-specific diversion programs are often created to address the needs of a specific defendant population. Forty-four states and the District of Columbia have outlined population-specific diversion programs in statute. The most popular legislation in this area includes diversion for people with substance use disorders, mental health needs, a history of serving in, or active service in the military, and charges related to domestic relations.



Many states have recently amended their eligibility guidelines, intending to increase pretrial diversion opportunities, and thereby increasing treatment opportunities and alternatives to jail for defendants.

Arrest Records and Convictions Can Lead To Additional Consequences

Deflection and diversion, and overall reducing involvement with the criminal justice system, can also reduce collateral consequences associated with being involved in the system. Having a criminal record means people can face “collateral consequences”—legal and regulatory sanctions and restrictions that can limit or prohibit access to employment, occupational licensing, housing, voting, education and other opportunities.

Some states have included provisions in their deflection and diversion statutes that will expunge criminal records if the programs or court participation is finished successfully. For example, Florida allows charges to be expunged for any person who successfully completes a treatment-based drug court program or a misdemeanor veterans’ treatment intervention program. (Florida § 948.16)

SUBSTANCE ABUSE

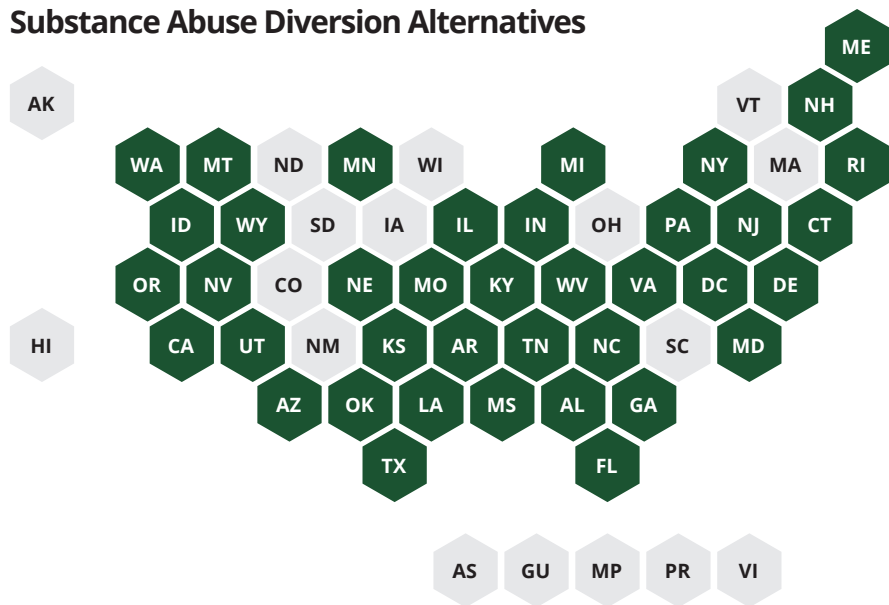
Thirty-eight states and the District of Columbia have legislatively authorized diversion alternatives that address individuals with substance-related needs. These programs or treatment courts are available to people charged with drug or alcohol-related offenses, as well as defendants identified as having substance abuse or addiction needs, depending on the program.

By and large, drug courts are the most popular substance abuse programming, although many states like Florida, specifically state that drug court programs must provide access to “alcohol, drug, and other related treatment and rehabilitation services.” (Florida § 397.334)

Some states have taken it a step further moving to combine substance abuse and mental health programs, noting as Illinois does that, “substance use disorders and mental illness co-occur in a substantial percentage of criminal defendants.” (730 ILCS 166/5)

These programs or treatment courts are available to people charged with drug or alcohol-related offenses, as well as defendants identified as having substance abuse or addiction needs.

Substance Abuse Diversion Alternatives



Source: NCSL, 2022

Mental health related pretrial diversion programs and treatment courts have been enacted in 27 states. Legislators are responding to the attention placed on mental health, largely expanding eligibility for pretrial diversion programs centered on mental health. For example, Illinois expanded statutory eligibility for defendants to participate in mental health pretrial diversion three times in the past five years. (730 ILCS 168/1 et seq.)

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In a similar effort, Mississippi created the [State Intervention Courts Advisory Committee](#) to establish “a viable and fiscally responsible plan to expand the number of adult and juvenile intervention court programs operating in Mississippi [including] plans to increase participation in existing and future programs while maintaining their voluntary nature.”

Mississippi also expanded the accessibility of diversion opportunities by authorizing courts to waive mental health court fees when a defendant was found to be indigent. (Miss. § 9-27-1 et seq.)

Mental Health Diversion Alternatives

Source: NCSL, 2022

VETERANS/ACTIVE MILITARY

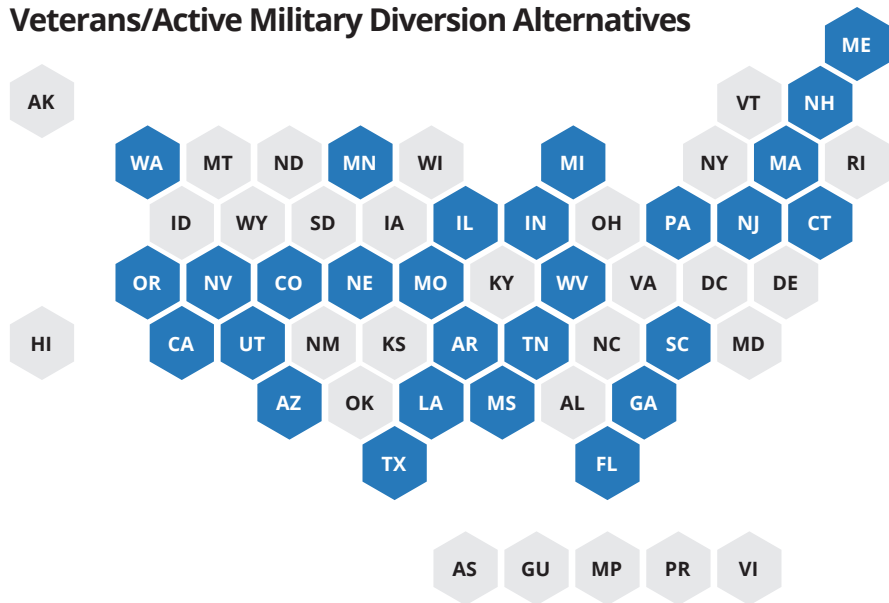
Many of the veterans or active military who become involved with the criminal justice system have substance abuse and/or mental health needs stemming from combat experiences. Twenty-eight states allow participation in diversion programs or treatment courts specific to the needs of veterans or active military personnel.

How legislators address this unique population in their state differs. For example, in Louisiana legislators enacted a pretrial diversion program specific to veterans suffering from Post-Traumatic Stress Disorder. (Louisiana § 15:244)

How legislators address this unique population in their state differs. For example, in Louisiana legislators enacted a pretrial diversion program specific to veterans suffering from Post-Traumatic Stress Disorder.

Massachusetts opted to direct district attorneys to establish a pretrial diversion program for veterans. (Mass. Ch. 12 § 34) The Minnesota legislature enacted a statute aimed at offering multiple pretrial diversion options for veterans ranging from deferred prosecution to probation in lieu of judgement and local veterans’ treatment court and diversion programs. (Minn. § 609.1056)

Veterans/Active Military Diversion Alternatives



Source: NCSL, 2022

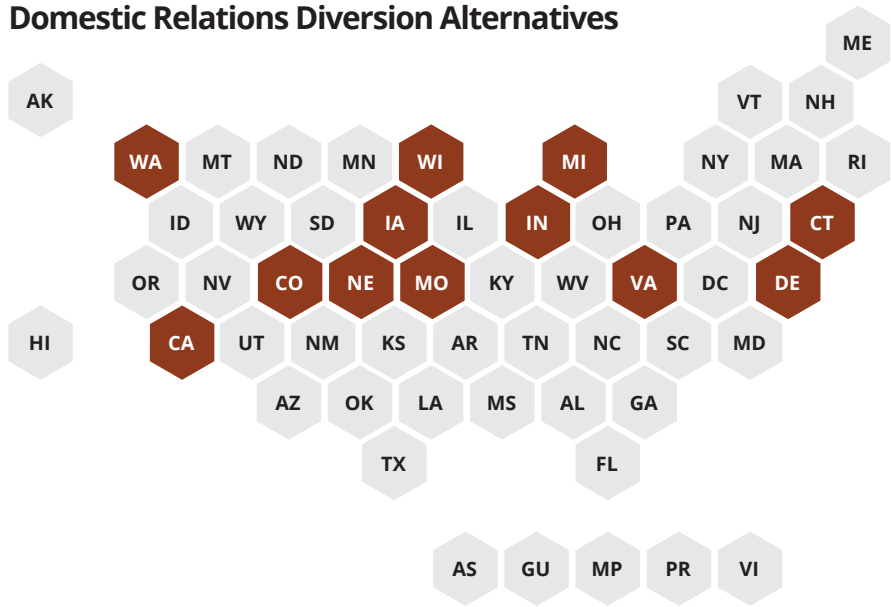
DOMESTIC RELATIONS

Twelve states permit some people charged with domestic relations offenses, including domestic violence and child abuse or neglect, to be diverted. These domestic relations pretrial diversion programs are largely different from those in other categories because they often require specified charges to be alleged.

Colorado, for example, allows prosecutors to divert people charged in child abuse or neglect cases to treatment or assistance with certain conditions. (Colo. § 19-3-310) In Virginia, under certain circumstances, a person charged with simple assault against a domestic relation may be diverted by the court. (Virginia § 18.2-57.3)

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Domestic Relations Diversion Alternatives

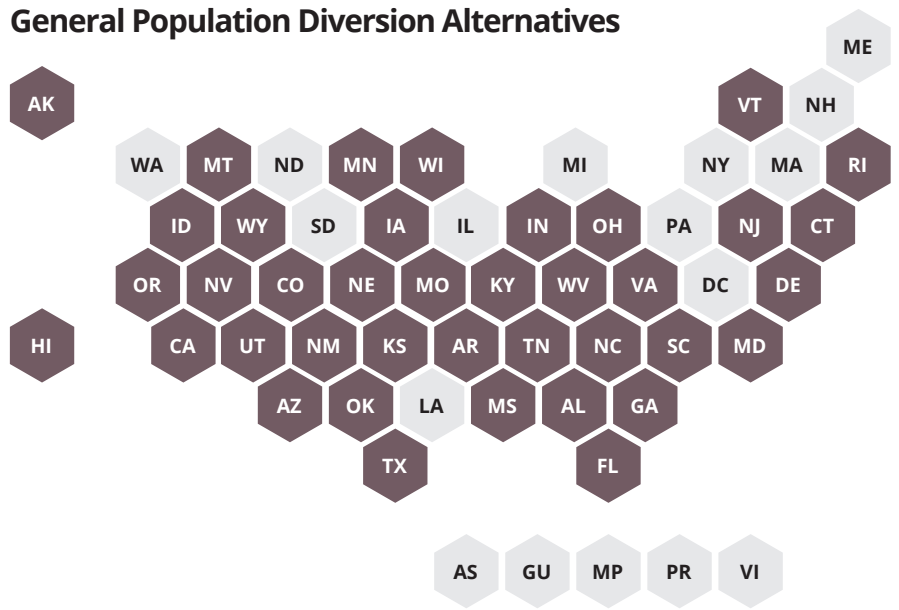


Source: NCSL, 2022

GENERAL POPULATION DIVERSION

In lieu of, or in addition to, population-specific diversion, 39 states provide for one or more general diversion programs in statute. These programs are intended to address the needs of people more generally.

General Population Diversion Alternatives



Source: NCSL, 2022

Laws addressing general population diversion normally designate who has authorization to create a diversion program or designates administrative authority over a program to a specific individual or office such as prosecuting attorneys, local courts or other local government agencies.

State statute often dictates which defendants are eligible for participation in a diversion program and frequently excludes specific defendants charged with a particular crime, defendants with specified criminal histories or cases where certain circumstances, like death or bodily injury, were a factor.

Vermont’s statute lists defendants charged with a first- or second-degree misdemeanor or a first nonviolent felony as eligible, while Minnesota specifically excludes from participation in their diversion program defendants who have previously participated in a diversion program.



For example, Vermont's statute lists defendants charged with a first- or second-degree misdemeanor or a first nonviolent felony as eligible, while Minnesota specifically excludes from participation in their diversion program defendants who have previously participated in a diversion program. (Virginia 3 V.S.A. § 164; Minnesota § 401.065)

Much of the legislation in this area also provides statutory guidance to program administrators, establishing factors to consider regarding who qualifies for entry into the program. These guidelines are generally intended to help make admission to diversion programs more consistent.

PROSECUTOR LED DIVERSION

At least 19 states have authorized prosecutor-led general diversion programs. Some states, like Arizona, authorize prosecutors to administer the program as well as decide, without dictating in statute which crimes are eligible or excepted, who could benefit from diversion. (Arizona § 11-361 et seq.)

Additionally, there are at least four states that authorize prosecutors to lead programs with court oversight or approval of some kind. North Carolina, for example, allows for prosecutor-led diversion, but requires court approval to divert a defendant. The law specifies eligible charges and requires that a court must find specific facts on the record including the completion of victim notification and opportunity to be heard, the existence of a written agreement of deferred prosecution, that the defendant has not

been previously convicted of a felony or a misdemeanor involving moral turpitude, that the defendant has not previously been on probation and that the defendant is unlikely to commit another offense other than a class three misdemeanor. (North Carolina § 15A-1341)

COURT LED DIVERSION

General population diversion programs led by courts exist in at least 17 states. State statutes vary on which courts are authorized to administer diversion programs. In most cases, diversion programs are administered at the trial court level. Sometimes chief judges, court administration or court services are referenced in statute as well.

Additionally, at least four states authorize courts to administer programs with input or approval from prosecuting attorneys. For example, Wyoming allows for a court-led diversion program but requires consent from the defendant and the prosecution. (Wyoming § 7-13-301).

Conclusion

Several factors, including the ongoing overrepresentation of individuals with mental illness in jails and the ongoing opioid crisis will drive states to continue working to find ways to maximize finite resources in a way that addresses the needs of individuals to reduce justice system involvement and prioritizes public safety.

The National Conference of State Legislatures is the bipartisan organization dedicated to serving the lawmakers and staffs of the nation's 50 states, its commonwealths and territories.

NCSL provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues, and is an effective and respected advocate for the interests of the states in the American federal system. Its objectives are:

- Improve the quality and effectiveness of state legislatures.
- Promote policy innovation and communication among state legislatures.
- Ensure state legislatures a strong, cohesive voice in the federal system.

The conference operates from offices in Denver, Colorado and Washington, D.C.

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