
PRETRIAL DIVERSION ABSTRACT

NAPSA Diversion Committee

While the concept of Pretrial Diversion has remained constant since its inception, its programs and practice are highly diverse. The sheer variety of services, sites, legal mandates, and approaches defy an easy definition. This abstract is an attempt to give a brief history of diversion and to provide an overview of the basic tenets on which most Diversion programs are built.

Currently, the Pretrial Diversion concept is enjoying a resurgence of interest around the country as communities struggle with a burgeoning criminal justice system and the constant cycling of defendants through that system. It was not so different when Diversion programs began: the growth of Pretrial Release Programs during the 1960's had spurred interest in doing more than assuring appearance in court. Release programs quickly identified that many defendants simply cycled through the system time and again. Pretrial Diversion began as a concept of interrupting this cycling by intervening in a meaningful way that addressed the reasons for arrest, thus reducing the likelihood of future arrests. One critical importance to the implementation of this concept involved suspending the traditional criminal justice case processing of a defendant's case. To this day, that suspension of forward prosecution of a case remains a hallmark of the diversionary process. Balancing the needs of the criminal justice system with that of the defendant was an important goal for the early programs. It remains one that today's programs share.

Most early Diversion programs focused on socio-economic reasons as the basis for arrest, thus developing employment based intervention strategies. Of particular note were the Manhattan Court Employment Project in New York City and the Crossroads Program out of Washington, D.C. Both programs utilized the employment program, Manpower Services, as their primary intervention strategy. It was discovered that, while this intervention was helpful, more than employment services were needed by defendants to accomplish the goal of reducing recidivism.

The knowledge gained through these programs, along with a number of other programs, provided the basis for development of the field of Pretrial Diversion. Continuing to expand on this pioneer knowledge base, later programs such as those in South Carolina, Florida, and Minnesota, incorporated intervention strategies including drug, alcohol and mental health treatment. Diversion Programs have evolved throughout the United States in a variety of forms and use a broad set of approaches to intervene with defendants.

In the 1970's, the National Association of Pretrial Services Agencies Board of Directors named a subcommittee charged with the task of developing a set of Standards for the field of Diversion. In 1978, the **Performance Standards and Goals for Pretrial Release and Diversion: Diversion** were adopted by the Board and the membership of the Association. Those Standards, although updated in 1995, have stood the test of time as providing the definition and the basic tenets of the field. The Standards, both in the 1970's and the 1990's, describe Pretrial Diversion as "a

strategy designed to offer non-punitive case processing to selected individuals charged with a crime.” More specifically, the Standards continue to affirm the following practices as defining a Pretrial Diversion program:

- ❖ it offers persons charged with criminal offenses alternatives to traditional criminal justice or juvenile justice proceedings; and
- ❖ it permits participation by the accused only on a voluntary basis; and
- ❖ the accused has access to defense counsel prior to a decision to participate; and
- ❖ it occurs no sooner than the filing of formal charges and no later than a final adjudication of guilt; and
- ❖ it develops service plans in conjunction with the defendant which addresses the needs of that defendant and are structured to assist that person in avoiding behavior likely to lead to future arrests; and
- ❖ it results in dismissal of charges or its equivalent, if the divertee successfully completes the Diversion process.

Diversion programs incorporate these basic practices with the overall goal of reducing recidivism through rehabilitation. Most programs utilize an assessment process to determine what a defendant’s needs might be, develop an intervention plan for that defendant, and contract with the defendant to delineate the requirements of the program and the criminal justice outcomes of success (dismissal of charges) or failure (continued prosecution). As a practice, Diversion programs must work closely with all the major components of the criminal justice system to be most effective. Of particular importance to the Diversion process is the role of prosecution. In most instances, the forward prosecution of a defendant’s case based on his or her performance in Diversion must take place before the process begins. In some states, the Diversionary process is established through law, thus providing for a systematic application of these tenets. In other circumstances, individual agreements with local prosecutors form the basis for the process.

Diversion programs offer a variety of services both in-house and through community based referrals. Such services can include drug and alcohol treatment, mental health services, employment, educational and specific programs designed to address common issues such as domestic violence. The diversity of the types of interventions is often a response to the criminal

justice population unique to each community. The strength of an effective Diversion program is linked to its ability to match clients to the most appropriate intervention based on identified need, not just as a response to a specific crime. As the development of personal responsibility is often seen as the key to reducing future arrests, many programs also incorporate the practices of restitution, drug testing, and/or volunteer community service as part of the Diversionary process.

Pretrial Diversion is a strong, viable alternative that provides an important service for defendants and the communities in which they live. For defendants, Diversion provides an opportunity to make significant changes in their lives and prevent further penetration into the criminal justice system. For communities, the programs assist the courts, prosecutors, and victims in addressing serious problems caused by growing criminal and juvenile justice populations through reducing reliance on traditional case processing and working to stem the “revolving door” syndrome.

1) The Board of Directors of the National Association of Pretrial Services Agencies, Performance Standards and Goals for Pretrial Release and Diversion - Diversion, (1995 Revision), p. 21

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