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# Prosecutor-Led Diversion

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## A National Survey

By Michela Lowry and Ashmini Kerodal

 Center  
for  
Court  
Innovation

Prosecutor-Led Diversion: A National Survey

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The opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect the positions or policies of the U.S. Department of Justice. For correspondence, please contact Michela Lowry (lowrym@courtinnovation.org).

# Table of Contents

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|                                       |           |
|---------------------------------------|-----------|
| <b>Acknowledgements</b>               | <b>ii</b> |
| <b>Executive Summary</b>              | <b>iv</b> |
| <b>Chapter 1.</b>                     |           |
| <b>Introduction &amp; Methodology</b> | <b>6</b>  |
| About the Current Study               | 7         |
| Methodology                           | 8         |
| <b>Chapter 2.</b>                     |           |
| <b>Program Structure &amp; Goals</b>  | <b>12</b> |
| Program Structure                     | 13        |
| Target Population                     | 13        |
| Program Goals                         | 15        |
| <b>Chapter 3.</b>                     |           |
| <b>Program Participation</b>          | <b>16</b> |
| Screening & Assessment                | 16        |
| Program Length                        | 17        |
| Program Requirements                  | 17        |
| Supervision                           | 20        |
| Program Completion                    | 21        |
| <b>Chapter 4.</b>                     |           |
| <b>Study Conclusions</b>              | <b>23</b> |
| <b>References</b>                     | <b>24</b> |
| Appendix A. Survey Instrument         | 26        |

# Executive Summary

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Diversion programs offer the prospect of “off-ramping” suitable cases early in the court process, potentially alleviating the strain on overburdened criminal justice agencies and resulting in increased case processing efficiency, reduced court backlogs, and better decision-making by court players. The purpose of the current study was to learn more about the range of prosecutor-led diversion programs nationwide and to provide a detailed portrait of their goals, target populations, and policies.

Funded through the Bureau of Justice Assistance’s Prosecutor-Led Diversion Initiative and in collaboration with the Association of Prosecuting Attorneys and NORC at the University of Chicago, the Center for Court Innovation developed and administered a survey to a national sample of 800 prosecutors’ offices. The results contribute to a broader understanding of how prosecutors’ offices across the country are implementing diversion programs.

## Key Findings

**Program Structure and Eligibility** Fifty-five percent of the 220 responding prosecutors’ offices reported that their agency offered some type of diversion program. Of the 121 sites reporting diversion programming, a majority limited participation to adults (74%), were post-filing only models (53%), and had some type of charge type restrictions (52%).

**Program Goals** Overall, the four most important diversion goals according to respondents were: hold participants accountable for their criminal behavior; reduce participant recidivism; rehabilitate participants by treating underlying problems; and use resources more efficiently.

### Program Participation

- **Screening and Assessment** Sixty-nine percent of programs used some sort of assessment to screen participants; assessments were primarily used to determine program eligibility, but also informed service provision and supervision intensity.
- **Program Length** Half of programs (52%) lasted ten months or more.

- **Program Requirements** Across both urban and rural counties, the most commonly available mandates and services were community service (77%), substance abuse education (69%), substance abuse treatment (59%), and individual therapy (42%). More than half of both diversion programs required restitution and/or fines and fees in all cases.
- **Participant Understanding** The majority of programs reported taking measures to ensure participant understanding of program requirements—for instance, by distributing written program materials to participants (69% of programs) and making the legal ramifications of program completion (88%) and failure (92%) clear from the outset.
- **Supervision** Fewer than half (44%) of programs universally required participants to meet with case managers or probation officers; supervision through regular court appearances and/or drug testing were less common.
- **Result of Program Completion** Successful program completion most commonly resulted in dismissal of charges or no charges filed.
- **Result of Program Failure** Unsuccessful program termination most commonly resulted in a conviction and probation sentence.

## Chapter 1

# Introduction & Methodology

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As jurisdictions around the country struggle with the realities of our modern justice system—staggering caseloads of more than 100 million criminal cases per year nationwide (LaFountain et al. 2010; National Association of Pretrial Services Agencies 2010); tightening state and local budgets for the courts, prosecutors, and corrections (e.g., Byrne 2012); and growing support for evidence-based policies towards crime and delinquency (e.g., Andrews and Bonta 2010; Lutze et al. 2012)—diversion programs have emerged as a prudent and appealing option.

Some prosecutors are creating innovative responses to crime, particularly in the development and oversight of pretrial diversion programs. Prosecutor-led pretrial diversion programs take many forms (Rempel et al. 2018). They encompass pre-filing (before the prosecutor’s office formally files charges) and post-filing/pre-adjudication models (after the prosecutor’s office has formally filed charges, but before the case is adjudicated); accept felonies, misdemeanors, or both; target specific crimes (e.g., drug, property, or prostitution) or an array of charges; and range in approach, from ordering defendants to lengthy periods of drug or mental health treatment to offering short educational classes or job training.

Regardless of the variety, prosecutor-led diversion programs offer a potential remedy for many of the justice system’s principal challenges—for example, overcrowding and cost efficiency issues—by encouraging resource savings, reducing collateral consequences for justice-involved individuals, and shrinking jail populations, to name a few. Though not a new idea, interest in such approaches has recently grown, in part generated by the mass incarceration crisis, new funding streams, emphasis on community prosecution, and promising research results.

In particular, results of a 2017 National Institute of Justice study conducted collaboratively by the Center for Court Innovation, RAND Corporation, Association of Prosecuting Attorneys, and Police Foundation, are promising. The researchers studied 16 prosecutor-led diversion programs in 11 jurisdictions across the country; impact evaluations were completed for five programs in three different sites. Results indicate that in all five impact programs, diversion participants were less likely to be convicted and incarcerated. In four of the five

programs, participation in a pretrial diversion program led to reduced recidivism. Appealingly, in four programs in which a cost evaluation was conducted, cases that were routed to diversion used fewer resources than similar comparison cases (Rempel et al. 2018).

Why are these programs so attractive? Beyond the potential for reduced recidivism and cost-savings, diversion programs offer the prospect of “off-ramping” suitable cases early in the court process, potentially alleviating the strain on overburdened criminal justice agencies and resulting in increased case processing efficiency, reduced court backlogs, and better decision-making by court players. Theoretically, effective diversion programs thus enable prosecutors and other system players to invest greater resources in the most serious criminal cases, including those headed for trial. Moreover, pretrial diversion programs that include treatment for behavioral health conditions offer a potential tool for prosecutors seeking to address defendant needs and reduce recidivism. The purpose of the current study was to learn more about the range of prosecutor-led diversion programs nationwide and to provide a detailed portrait of their goals, target populations, and policies.

## About the Current Study

In 2015, the Association for Prosecuting Attorneys (APA), collaborating with the Center for Court Innovation (hereafter, the Center), was awarded a three-year grant from the U.S. Department of Justice’s Bureau of Justice Assistance (BJA). The goal of the Prosecutor-Led Diversion Initiative was to give prosecutors’ offices across the country the necessary tools to make smarter diversion decisions, while simultaneously restoring public faith in justice and maintaining public safety. In addition to assisting prosecutors around the country with planning, implementing, sustaining, enhancing, and evaluating drug treatment diversion programs, the initiative involved a national survey of prosecutors’ offices to be conducted in collaboration with NORC at the University of Chicago.

The Department of Justice’s Bureau of Justice Statistics implements a national prosecutor survey every few years; however, prior versions lacked questions specifically about diversion programming. The current prosecutorial census asks a short series of diversion-related questions, including questions about whether diversion programs are used in each jurisdiction; for which types of defendants and crimes diversion programming is available; whether prosecutorial staff is assigned to the diverted cases; and the number of cases diverted



from traditional prosecution. However, detailed information regarding the scope of diversion programs is not covered by the survey.<sup>1</sup>

The current study is an attempt to fill this gap by asking prosecutors additional questions about four domains related to diversion:

- **Prevalence and Type of Program** Does the prosecutor run any pretrial diversion program? What are the basic program parameters?
- **Program Goals and Philosophy** What are the goals and objectives of the diversion program?
- **Target Population** Who is eligible for diversion programs? How are cases screened, assessed, and routed to the program?
- **Policies and Practices** What staffing, services, case management, or other policies apply to the program?

The remainder of this chapter describes the methodology used in the current study. Survey results are presented in Chapter 2 (Program Structure & Goals) and Chapter 3 (Program Participation).

## Methodology

This study was designed to provide a comprehensive portrait of prosecutor-led pretrial diversion programs nationwide, exploring program goals, policies, and practices. For the purposes of this study, prosecutor-led diversion programs were defined as a discretionary decision made by prosecutors to route individuals (juveniles or adult) away from the traditional court process. This section describes the survey instrument, sampling plan, fielding strategy, and data analysis.

### Survey Instrument

APA, the Center, and NORC collaboratively developed the survey. Several key domains were identified, including: prevalence and type of program (e.g., length of operation, stage of

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<sup>1</sup> Information available at <https://www.bjs.gov/index.cfm?ty=dcdetail&iid=265>.

program entry, eligible charge type); program goals and philosophies; target population (screening and eligibility, assessment); and program policies and practices (e.g., treatment/services, program completion, supervision).

The survey also included items expressly designed to document the use of key evidence-based strategies or promising practices. These include use of risk-need screening or assessment tools to determine eligibility, length, and content of mandated services; use of cognitive-behavioral and trauma-informed treatment approaches; deterrence strategies including positive incentives for program completion (e.g., case dismissed) and negative incentives for non-completion (e.g., probation sentence); and distribution to defendants of written materials describing the program and their responsibilities. A full copy of the survey instrument can be found in Appendix A.

## **Sampling Plan**

The sampling frame was the pay-for-use list of 3,871 prosecutor offices maintained by the National Public Safety Information Bureau. Using publicly available census data, NORC defined two strata based on county population size, oversampling prosecutors' offices in large jurisdictions where diversion programs are more likely to exist. The first stratum included the one-third of the jurisdictions (n=1,280) with a population greater than 61,000; the second stratum included the remaining two-thirds of counties with a population of less than 61,000 (n=2,591).

NORC further developed an urban or rural flag for each jurisdiction based on the 2015 five-year American Community Survey county population counts. An *urban county* was defined as one located within a Metropolitan Statistical Area (MSA), a standard designation defined by the federal government,<sup>2</sup> whereas a *rural county* was defined as outside any MSAs. Over 84% of the jurisdictions in the first stratum were in urban counties, while 82% of the jurisdictions in the second stratum were flagged as rural counties.

A systematic equal probability sample of 400 counties was selected from each stratum, resulting in a total target sample of 800. Within each stratum, the frame was first sorted by geography and then by population size and a random starting point was identified, after

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<sup>2</sup> A Metropolitan Statistical Area (MSA) must have at least one urbanized area of 50,000 or more inhabitants.

which every  $n^{\text{th}}$  case was selected until the target sample of 400 counties was reached. Implicit stratification ensured an even sample spread by geography and population size within each stratum.

The 800 target prosecutors' offices represented oversampling to account for nonresponse. Ultimately, NORC hoped to receive 400 completed surveys, with 200 from offices that had existing diversion programs. With this sample size, a typical proportion estimate had a margin of error no greater than 5 percentage points at the 95 percent confidence level.

## **Fielding Strategy**

The survey was offered online in English only and took an estimated 15 minutes to complete. Each office in the sample was given a unique URL to access the survey. Sampled offices were notified of the survey the week of August 7th, 2017, and invited to complete it the following week. Outreach was primarily via post; supplemental email and telephone outreach was feasible for a portion of the population (see details below). Each mailing included the individualized URL and contact information for a study representative.

**Mailings** A full schedule of the mailings is as follows:

- **Pre-notification mailing (Week 1)** A pre-notification letter was mailed to each sampled office announcing the start of data collection.
- **Web invitation letter (Week 2)** Approximately one week after the pre-notification letter, sampled officers were sent a web invitation letter. This invitation informed the office of the importance of the study, requested its timely submission of the survey, and provided instructions to respond via the web.
- **Thank-you/reminder postcard (Week 3)** A thank-you/reminder postcard was then mailed to offices seven days after the web invitation. This postcard thanked those respondents who had completed the survey and encouraged non-responders to complete it.
- **Reminder letter (Week 4)** A week after the thank-you/reminder postcard, a reminder letter was sent to each non-responder.

- **“Last chance” postcard (Week 7)** Three weeks after the reminder letter, a “last chance” postcard was sent alerting potential respondents that data collection would end soon and asking for their timely submission of the survey.

**Prompting** Before data collection launched, web searches yielded email addresses and phone numbers for 250 of the 800 sampled offices. This allowed NORC to send emails containing the office’s unique survey URL, in conjunction with the standard mailings, for almost one-third of the sample. These email addresses and phone numbers were also used for follow-up prompts.

## **Final Sample and Analysis**

The final dataset contained 220 responses—a 28% response rate, substantially lower than the target sample of 400. The data were weighted with a simple ratio adjustment within each stratum and MSA. Of the 220 offices responding to the survey, 55% had diversion programming in place. The findings presented in chapters 2 and 3 are limited to the 121 prosecutors’ offices that had a diversion program, with the analysis weighted to produce estimates for the population of 2,854 cases from which our sample was randomly selected.<sup>3</sup> Descriptive statistics provide a comprehensive portrait of prosecutor-led pretrial diversion program goals, policies, and operations, and also explore the relationship between jurisdiction size and key policy characteristics. Bivariate analyses (t-tests and chi-square tests) were used to test for any differences between urban and rural counties.

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<sup>3</sup> Even with a low response rate, it is possible that a sample can be representative. Many prior studies have shown the correlation between response rate and estimation bias is low (*e.g.*, Curtin, Presser, & Singer 2000; Fricker and Tourangeau 2010; Groves 2006; Keeter et al. 2000; Merkle & Edelman 2002). For further information on this weighting strategy, please contact our collaborators at NORC at [Yang-Michael@norc.org](mailto:Yang-Michael@norc.org).

## Chapter 2

# Program Structure & Goals

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This chapter provides an overview of the types and structure of prosecutor-led diversion programs identified by survey respondents, as well as the primary goals of those programs. Survey respondents were asked to describe the development and oversight of diversion programs, their eligibility requirements, the target population, and general program structure. Respondents were further asked to assess the importance of specific goals as they relate to their diversion programs by rating each goal on a four-point scale from “not a goal” to “extremely important goal.”

Based on the final survey sample, 55% of respondents reported that their agency offered some type of prosecutor-led diversion program. Contrary to expectations, urban counties were no more likely than rural ones to report having a diversion program. All tables and figures throughout this report—*with the exception of Table 2.1*—are based on the subsample of respondents who reported that their office was involved with a prosecutor-led diversion program (N=121).

**Table 2.1. Prevalence of Prosecutor-Led Diversion Programs**

|  | Rural<br>Counties | Urban<br>Counties | All Sites |
|--|-------------------|-------------------|-----------|
| Actual N                                     | 125               | 95                | 220       |
| Weighted N <sup>1</sup>                      | 1,280             | 2,591             | 3,871     |
| Site Has No Prosecutor-Led Diversion Program | 44%               | 46%               | 45%       |
| Site Has a Prosecutor-Led Diversion Program  | 56%               | 54%               | 55%       |

\*p<.05, \*\*p<.01, \*\*\*p<.001

<sup>1</sup> Actual responses were weighted to produce estimates for the population from which the sample was randomly selected.

# Program Structure

## Timing of Program Entry

Cases can be diverted by prosecutors at two points in the process: before the case is filed with the court (*pre-filing*) or after the court process begins but before a disposition (*post-filing*). As shown in Table 2.2, just over half (53%) of programs were post-filing models; 15% were pre-filing models; and a third of programs (32%) include a mix of pre- and post-filing cases, depending on the specific details of the case. Urban jurisdictions were primarily post-filing models, whereas rural jurisdictions utilized slightly more pre-filing models or made case-by-case discretionary decisions.

**Table 2.2. Timing of Program Entry**

|                                     | Rural Counties | Urban Counties | All Sites |
|-------------------------------------|----------------|----------------|-----------|
| Actual N                            | 70             | 51             | 121       |
| Weighted N <sup>1</sup>             | 717            | 1,391          | 2,108     |
| Pre-Filing                          | 18%***         | 12%            | 15%       |
| Post-Filing                         | 44%            | 66%            | 53%       |
| Pre- and Post-Filing (case-by-case) | 38%            | 22%            | 32%       |

\*p<.05, \*\*p<.01, \*\*\*p<.001

<sup>1</sup> Actual responses were weighted to produce estimates for the population from which the sample was randomly selected.

# Target Population

## Population Served

Nearly all programs (94%) served adults: either solely (74%) or alongside juvenile participants (20%). A small minority of programs (7%) served only juveniles. While the majority of programs across both urban (85%) and rural (67%) counties served adults only, rural counties were more likely to report targeting diverse age groups in a single program (27% v. 8%, p<.001).

**Table 2.3. Population Served**

|                         | Rural<br>Counties | Urban<br>Counties | All Sites |
|-------------------------|-------------------|-------------------|-----------|
| Actual N                | 70                | 51                | 121       |
| Weighted N <sup>1</sup> | 717               | 1,391             | 2,108     |
| Adult Only              | 67%***            | 85%               | 74%       |
| Juvenile Only           | 6%                | 8%                | 7%        |
| Adult and Juvenile      | 27%               | 8%                | 20%       |

\*p<.05, \*\*p<.01, \*\*\*p<.001

<sup>1</sup> Actual responses were weighted to produce estimates for the population from which the sample was randomly selected.

## **Eligibility by Charge and Criminal History**

Half of programs (52%) had charge type restrictions—that is, only defendants charged with specific charges (or charge *types*) were considered for the program. Very few programs considered violent felonies for diversion (4%); more than half accepted non-violent felonies (56%) and misdemeanors (60%); 40% diverted lesser violations and infractions. Urban counties were more likely than rural sites to divert misdemeanor charges (69% v. 54%), while rural jurisdictions were more likely to consider very low-level offenses for diversion (43% v. 36%).

**Table 2.4. Eligibility by Charge and Criminal History**

|  | Rural<br>Counties | Urban<br>Counties | All Sites |
|--|-------------------|-------------------|-----------|
| Actual N                                       | 70                | 51                | 121       |
| Weighted N <sup>1</sup>                        | 717               | 1,391             | 2,108     |
| Participation Limited to Specific Charge Types | 53%***            | 49%               | 52%       |
| <b>Eligible Charge Severities<sup>2</sup></b>  |                   |                   |           |
| Violent Felony                                 | 4%*               | 6%                | 4%        |
| Nonviolent Felony                              | 55%               | 57%               | 56%       |
| Misdemeanor                                    | 54%**             | 69%               | 60%       |
| Lesser Violations                              | 43%***            | 36%               | 40%       |
| Other <sup>3</sup>                             | 5%**              | 10%               | 7%        |
| <b>Eligible Criminal Histories<sup>2</sup></b> |                   |                   |           |
| Any Prior Arrest                               | 83%***            | 90%               | 85%       |
| Any Prior Misdemeanor Conviction               | 68%***            | 82%               | 73%       |
| Prior Felony Conviction                        | 34%               | 35%               | 34%       |

\*p<.05, \*\*p<.01, \*\*\*p<.001

<sup>1</sup> Actual responses were weighted to produce estimates for the population from which the sample was randomly selected.

<sup>2</sup> Respondents could select multiple responses, so percentages sum to > 100%.

<sup>3</sup> Mostly DUIs.

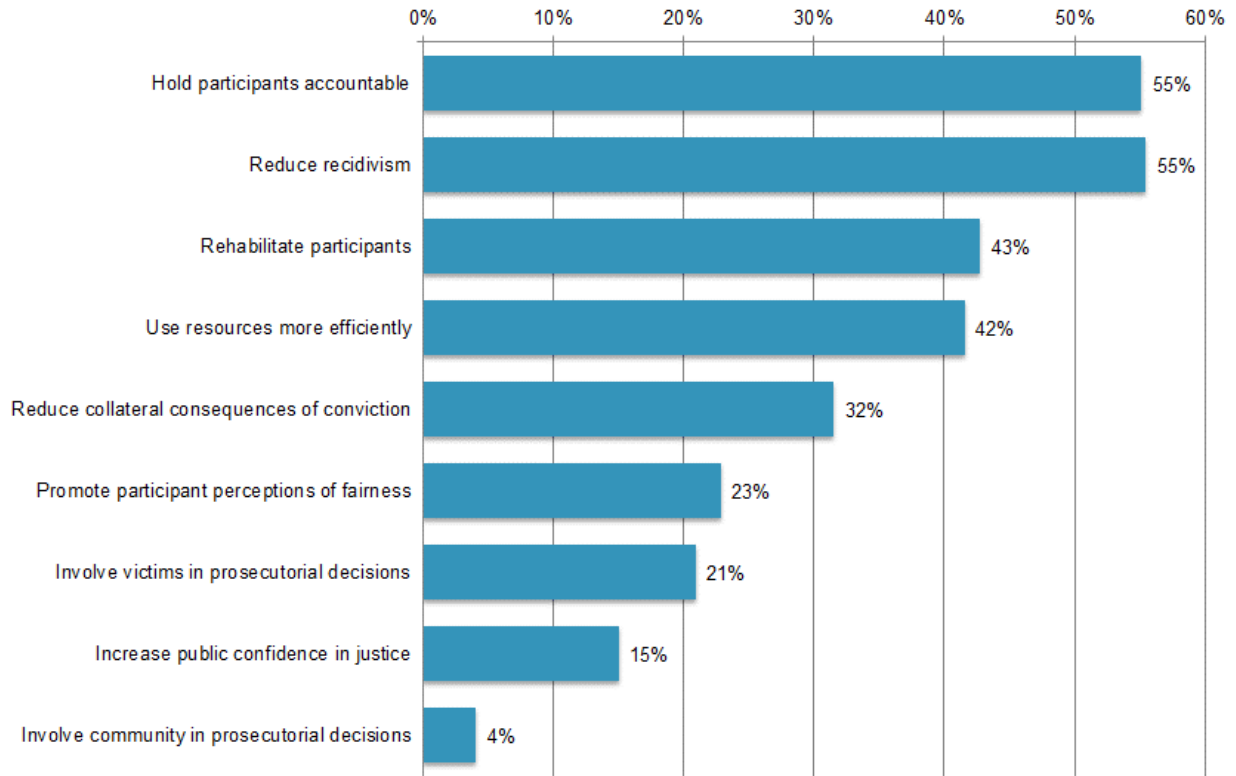
Most programs divert offenders with

prior arrests (85%) and prior misdemeanor convictions (73%); only a third of programs divert offenders with prior *felony* convictions (34%). Overall, urban programs were more likely than rural ones to accept individuals with priors.

## Program Goals

**Figure 2.5. Programs Rating Goals as Extremely Important**





Respondents were asked to rate a series of possible program goals on a four-point scale ranging from “not a program goal” to “extremely important.” Overall, the four most important goals across both urban and rural jurisdictions were: (1) hold participants accountable for their criminal behavior (55% rated extremely important); (2) reduce participant recidivism (55%); (3) rehabilitate participants by treating their underlying problems (43%); and (4) use resources more efficiently (42%). Only 4% of responding programs felt that involving the community in prosecutorial decisions was a major impetus for the diversion program.

## Chapter 3

# Program Participation

This chapter describes, for the programs in our survey sample, what happens once a case is flagged as potentially eligible for the diversion program.

## Screening & Assessment

As shown in Table 3.1, 69% of responding programs used an assessment to screen participants; urban sites were more likely to report using an assessment. Beyond helping prosecutors to determine program eligibility (in 42% of programs), assessments were used to determine the content (27%) and length (22%) of mandated services. In fewer sites, assessment results helped to inform the intensity of initial programming—that is, how frequently participants attended mandated services (15%) and/or met with case managers (14%). Generally, urban sites were significantly more likely than rural ones to inform programming with assessment results. Nearly all (99%) programs allowed participants to refuse to participate in diversion programming.

**Table 3.1. Screening and Assessment**

|  | Rural Counties | Urban Counties | All Sites  |
|--|----------------|----------------|------------|
| Actual N                                     | 70             | 51             | 121        |
| Weighted N <sup>1</sup>                      | 717            | 1,391          | 2,108      |
| <b>Any Assessment Conducted</b>              | <b>59%***</b>  | <b>85%</b>     | <b>69%</b> |
| <b>Program Assessment Used to Determine:</b> |                |                |            |
| Program Eligibility                          | 38%***         | 48%            | 42%        |
| Content of Mandated Services                 | 17%***         | 42%            | 27%        |
| Length of Mandated Services                  | 17%***         | 30%            | 22%        |
| Initial Frequency of Mandated Services       | 12%***         | 20%            | 15%        |
| Initial Frequency of Case Management         | 12%***         | 17%            | 14%        |

\*p<.05, \*\*p<.01, \*\*\*p<.001

<sup>1</sup> Actual responses were weighted to produce estimates for the population from which the sample was randomly selected.

## Program Length

Rural programs reported shorter program stays. Just over a third (34%) of respondents reported that participants typically spend between 10 to 12 months in the program; half of programs last ten months or more (52%). Rural programs were more likely to report very short stays of three months or less (21% v. 11%) *and* long program stays of more than a year (21% v. 11%).

**Table 3.2. Program Length**

|                         | Rural<br>Counties | Urban<br>Counties | All Sites |
|-------------------------|-------------------|-------------------|-----------|
| Actual N                | 70                | 51                | 121       |
| Weighted N <sup>1</sup> | 717               | 1,391             | 2,108     |
| 0-3 Months              | 21%***            | 11%               | 17%       |
| 4-6 Months              | 11%               | 28%               | 18%       |
| 7-9 Months              | 10%               | 9%                | 10%       |
| 10-12 Months            | 34%               | 36%               | 35%       |
| Over a Year             | 21%               | 11%               | 17%       |

\*p<.05, \*\*p<.01, \*\*\*p<.001

<sup>1</sup> Actual responses were weighted to produce estimates for the population from which the sample was randomly selected.

## Program Requirements

### Service Provision

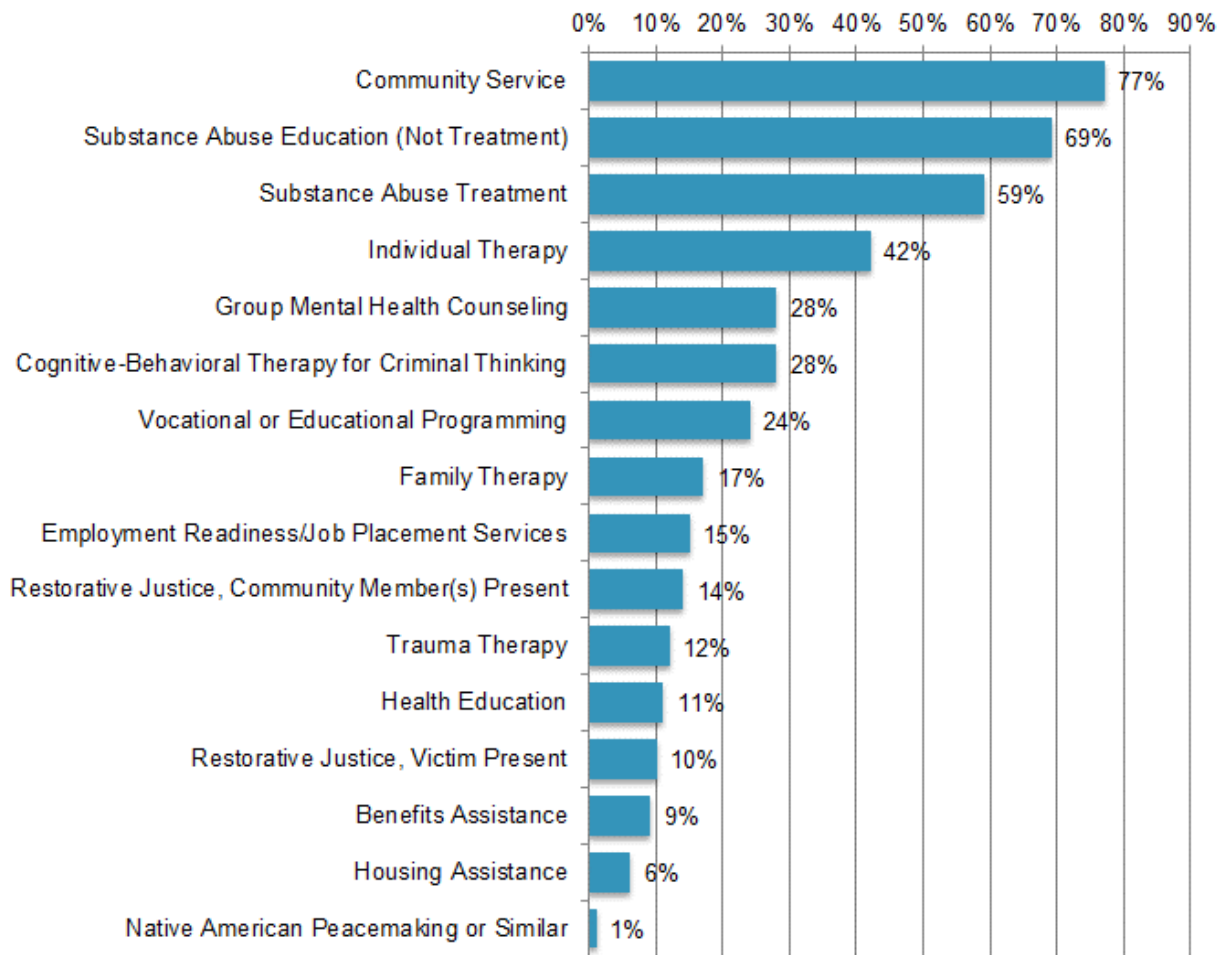
Respondents were asked to identify the types of services offered to participants. These services were not necessarily mandated for participants; positive responses indicate that a specific type of service was available and offered to participant. (In some instances, services may have been mandated, but the survey did not specifically ask about mandated services.)

Across both urban and rural counties, the most commonly available services were community service (77%), substance abuse education (69%), substance abuse treatment (59%), and individual therapy (42%).

Overall, urban programs were more likely than rural programs to offer each of the listed types of services to diversion participants, with the exception of family therapy (more frequently offered in rural sites), restorative justice programs involving the victim (no difference), and health education (no difference). Given the relatively greater availability of

service programs in urban jurisdictions, it is not surprising that urban programs were more likely to offer services.

**Figure 3.3. Percent of Programs Offering Select Services<sup>1</sup>**



<sup>1</sup> Does not sum to 100%; respondents selected multiple options.

## Other Program Requirements

Beyond service referrals, responding programs were asked about program requirements including restitution to victims and fines, fees, or surcharge payments. More than half of both diversion programs required restitution and/or fines and fees in all cases; this was true across urban and rural programs. Mandatory victim restitution was slightly more common in urban jurisdictions, whereas compulsory fines and fees were more common among rural programs.

**Table 3.4. Other Program Requirements**

|  | Rural Counties | Urban Counties | All Sites |
|--|----------------|----------------|-----------|
| Actual N                               | 70             | 51             | 121       |
| Weighted N <sup>1</sup>                | 717            | 1,391          | 2,108     |
| <b>Restitution to Victim</b>           |                |                |           |
| Always                                 | 65%***         | 70%            | 67%       |
| Sometimes (case-by-case)               | 28%            | 21%            | 25%       |
| <b>Fine, Fee, or Surcharge Payment</b> |                |                |           |
| Always                                 | 69%***         | 52%            | 63%       |
| Sometimes (case-by-case)               | 15%            | 29%            | 20%       |

\*p<.05, \*\*p<.01, \*\*\*p<.001

<sup>1</sup> Actual responses were weighted to produce estimates for the population from which the sample was randomly selected.

## Promoting Participant Understanding

The literature on procedural justice suggests that *respect*, *neutrality*, *voice*, and *understanding* are central to promoting perceptions of a fair process for justice system users and increasing compliance. Particularly relevant for prosecutor diversion programs is understanding—of criminal court processes, rights, requirements for compliance, and outcomes. Programs can promote user understanding through strategies such as creating and sharing documents outlining program rules and expectations and specifying likely outcomes of both program completion and termination.

**Table 3.5. Promoting Participant Understanding**

|   | Rural Counties | Urban Counties | All Sites |
|---|----------------|----------------|-----------|
| Actual N  | 70             | 51             | 121       |
| Weighted N <sup>1</sup>                             | 717            | 1,391          | 2,108     |
| <b>Written Information Provided to Participants</b> |                |                |           |
| Handbook about Program                              | 24%            | 11%            | 19%       |
| Other Written Information about Program             | 48%            | 52%            | 50%       |
| <b>Participants are Told Likely Case Outcome</b>    |                |                |           |
| Upon Successful Completion of Mandate               | 91%***         | 84%            | 88%       |
| Upon Program Termination                            | 91%            | 94%            | 92%       |

\*p<.05, \*\*p<.01, \*\*\*p<.001

<sup>1</sup> Actual responses were weighted to produce estimates for the population from which the sample was randomly selected.

Over two-thirds (69%) of programs indicated that participants are given written materials describing the program—either in the form of a program handbook (19%) or other written information about the program (50%). Rural sites were more likely than urban ones to report distributing a formal program manual or handbook to participants.

The majority of programs reported that participants are told up front what will happen to their case if they complete the program successfully (88%) and if they are terminated from the program (92%). Rural programs were more likely than urban ones to report informing participants of the legal ramifications of successful program completion up front; urban and rural programs are equally likely to report that participants are told the likely consequence of program failure.

## Supervision

**Table 3.6. Supervision Models**

|   | Rural Counties | Urban Counties | All Sites |
|---|----------------|----------------|-----------|
| Actual N  | 70             | 51             | 121       |
| Weighted N <sup>1</sup>                             | 717            | 1,391          | 2,108     |
| <b>Regular Court Appearances</b>                    |                |                |           |
| Universal Requirement                               | 5%***          | 8%             | 6%        |
| Case-by-Case  | 8%             | 16%            | 11%       |
| <b>Any Drug Testing</b>                             |                |                |           |
| Universal Requirement                               | 25%***         | 32%            | 28%       |
| Case-by-Case  | 43%            | 51%            | 47%       |
| <b>Meetings with Case Manager/Probation Officer</b> |                |                |           |
| Universal Requirement                               | 43%***         | 46%            | 44%       |
| Case-by-Case  | 28%            | 37%            | 31%       |

\*p<.05, \*\*p<.01, \*\*\*p<.001

<sup>1</sup> Actual responses were weighted to produce estimates for the population from which the sample was randomly selected.

Respondents were asked how defendants are supervised during participation in the diversion program, and whether supervision strategies were applied universally or on a case-by-case basis. Programs were most likely to report supervision by case managers or probation officers: 44% of programs indicated such supervision is always mandated for participants; an additional 31% reported that case management and/or probation are required for *some*

participants. Not surprisingly, given the limited role of the *court* in pre-adjudication prosecutor-led diversion programs, regular court-based monitoring was uncommon. Urban programs were more likely than rural sites to utilize each of the three supervision strategies.

## Program Completion

Finally, responding programs were asked to indicate the possible outcomes for diversion program participants, depending upon whether the program was completed successfully or unsuccessfully.

Responding programs were asked to indicate which outcomes were *ever* granted to successful program completers; programs were invited to select more than one response. Sixty-nine percent of programs grant some participants a dismissal of charges upon successful completion—such dismissal is slightly more common among urban programs. Rural sites are more likely (52%) than urban ones (26%) to forego filing the case with the court upon successful program completion. A small percentage of programs (only 6%) reported closing the case with *no* dismissal of the charges for successful participants.

**Table 3.7. Case Outcome for Program Participants by Completion Status**

|   | Rural Counties | Urban Counties | All Sites |
|---|----------------|----------------|-----------|
| Actual N  | 70             | 51             | 121       |
| Weighted N <sup>1</sup>   | 717            | 1,391          | 2,108     |
| <b>Final Outcome at Successful Program Completion<sup>2</sup></b> |                |                |           |
| Dismissed by the Court  | 67%*           | 73%            | 69%       |
| Never Filed for Prosecution                                       | 52%***         | 26%            | 42%       |
| Court Case Closed (Charges not Dismissed)                         | 4%***          | 9%             | 6%        |
| <b>Final Outcome at Program Termination</b>                       |                |                |           |
| Convicted and Sentenced: Probation                                | 33%            | 59%            | 43%       |
| Convicted and Sentenced: Jail                                     | 20%            | 15%            | 18%       |
| Convicted and Sentenced: State Prison                             | 5%             | 3%             | 4%        |
| Convicted with Lesser Sentence <sup>3</sup>                       | 13%            | 2%             | 8%        |
| Case Dismissed  | 0%***          | 3%             | 1%        |
| Other <sup>4</sup>  | 24%            | 18%            | 22%       |

\*p<.05, \*\*p<.01, \*\*\*p<.001

<sup>1</sup> Actual responses were weighted to produce estimates for the population from which the sample was randomly selected.

<sup>2</sup> Respondents were asked to select all outcomes that are granted in at least *some* cases; percentages add up to more than 100%.

<sup>3</sup> i.e., sentence not involving corrections.

<sup>4</sup> Includes returned to court, fine, and diversion sentences.

Outcomes for unsuccessful participants (i.e., those who are terminated from or fail the program) include only the most frequently imposed legal consequence at each site. The most common results of program failure are as follows: conviction with a probation sentence (43%); “other” resolution (e.g., return to court, fine; 22%); and conviction with a jail sentence (18%).



## Chapter 4

# Study Conclusions

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Despite assumed differences in prosecutor culture and resource accessibility that theoretically may impact the way that diversion programs are run, the prevalence and structure of diversion programs across urban and rural jurisdictions was actually quite similar. Programs expressed many similarities in operational aspects, including program structure and eligibility, use of screening and assessment to determine intensity and type of services, program length and requirements, and results of program completion or failure. For example, a majority of programs limited participations to adults only (74%), were post-filing only models (53%), and/or had some type of charge type restrictions (52%).

Similarly, prosecutors in both rural and urban jurisdictions expressed similar goals for their diversion programs. Overall, the four most important self-reported diversion goals for respondents were to hold participants accountable for their criminal behavior; reduce participant recidivism; rehabilitate participants by treating their underlying problems; and use resources more efficiently.

The current study was impacted by a lower-than-anticipated response rate, so we should exercise caution in drawing any conclusions base on the limited sample in this study. Additionally, because the survey was purposefully brief (in order to increase potential response rates), it was not designed to capture more detailed and nuanced data about diversion programs across prosecutors' offices more broadly.

To that end, future research may dig deeper into specific programmatic elements of diversion programming, including questions like staffing (e.g., are there social workers or case managers as part of the staffing structure?) and budget (e.g., how much do these programs typically cost prosecutors' offices to operate?). Other research questions to be explored in the future might focus on whether there are any significant differences in recidivism rates among participants of prosecutor-led diversion programs when compared with those developed and run by other agencies, particularly as prosecutor offices nationally begin to more frequently consider whether implementing a diversion program will achieve the desired goals.

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# Appendix A: Survey Instrument

The purpose of this questionnaire is to learn about prosecutor-led diversion programs nationwide and to provide a portrait of their goals, target populations, and policies. We will not identify which person or agency gave which responses without explicit permission from authorized personnel. We will also keep strictly confidential any personally identifying information such as your name and contact information.

## CENTER FOR COURT INNOVATION Assessment of the Field: Prosecutor-Led Diversion Programs

Name of Prosecutor's Office: \_\_\_\_\_

Your Name: \_\_\_\_\_

Position: \_\_\_\_\_

City: \_\_\_\_\_

County: \_\_\_\_\_

State: \_\_\_\_\_

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### SECTION A. BACKGROUND INFORMATION

1. How many attorneys are employed in your office? If none, enter '0.' \_\_\_\_\_ (#)
2. How many **adult criminal cases** did your office prosecute in 2016? Please provide an estimate if you do not know the exact figure. If none, enter '0.'
- Felony \_\_\_\_\_ (#)
- Misdemeanor \_\_\_\_\_ (#)
- Lesser Offense \_\_\_\_\_ (#)
3. How many **juvenile delinquency cases** did your office prosecute in 2016? Please provide an estimate if you do not know the exact figure. If none, enter '0.'
- Juvenile \_\_\_\_\_ (#)

**Please read:** For the purpose of this survey, *diversion involves a discretionary decision to route an individual (juvenile or adult) away from the traditional justice process*. Specifically, an individual who is diverted is not subject to further prosecution or court involvement, except in some cases where prosecution proceeds in response to noncompliance with diversion requirements.

We are interested in prosecutor-led diversion, where:

- Prosecutors run a diversion program, *or*
- Prosecutors agree to engage in diversion through programs or policies developed by others (e.g., police, court, or community-based organizations) and have discretion in the decision to divert.

We are not interested in:

- Diversion programs run by the police where the prosecutor’s office is not involved.
- “Problem-solving courts” (e.g., drug, mental health, or veterans courts), except where explicitly specified.

## SECTION B. USE OF DIVERSION

4. Based on the preceding definition, does your agency ever engage in formal prosecutor-led diversion? As previously explained, please do not consider problem-solving courts in your response.

- Yes
- No
- Don’t Know

5. Does your agency “run” the diversion option or program? That is, did your agency develop the program and/or does your agency currently oversee its policies and procedures? *Check all that apply.*

- Yes, my agency developed the program
- Yes, my agency currently oversees program policies and procedures
- No
- Don’t Know

**{IF NO or Don’t Know TO QUESTIONS #4 and #5, AUTO END}**

## SECTION C. TYPE OF DIVERSION PROGRAM

6. How many prosecutor-run diversion programs do you have? \_\_\_\_\_#

If you have indicated that your office runs more than one diversion program, **please choose the program that enrolls the most defendants** and answer the following questions for that program only.

**NOTE FOR TEAM: For clarity purposes, if the office runs more than one diversion program, we are only asking the respondent to answer the following questions for one of the diversion programs. However, if they indicate that they run more than one program, we will provide a link to a shorter set of questions that include only key questions that the respondent may choose to answer about any additional program. We will work with NORC on how best to program this.**

7. What is the name of the diversion program? \_\_\_\_\_
8. In what year did the program open? \_\_\_\_\_
9. Is the program for adult criminal or juvenile delinquency cases?
- Adult
  - Juvenile
  - Both
  - Don't Know
10. When do participants enter the pretrial diversion program?
- Pre-filing only (i.e., before a court case exists) *SKIP PATTERN HERE – SKIP TO QUESTION #13*
  - Post-filing only (i.e., after the prosecutor files charges with the court or after at least one court appearance) *SKIP PATTERN HERE – SKIP TO QUESTION #12*
  - Varies case to case *SKIP PATTERN HERE – SKIP TO QUESTION #12*
  - Don't Know
11. When participants enter the court post-filing, does diversion take place prior to a guilty plea (pre-plea), or is a guilty plea required to enroll (post-plea) in those post-filing cases?
- Pre-Plea
  - Post-Plea
  - Varies case to case
  - Don't Know
12. Which types of arrest charges are potentially eligible for your diversion program? Check all that apply.
- Violent felony
  - Nonviolent felony
  - Misdemeanor
  - Lesser violations (e.g., violations, infractions, citations, summonses)
  - Other: Please specify: \_\_\_\_\_
  - Don't Know

13. Is the program only available to defendants facing certain types of charges (e.g., drug, marijuana, property, prostitution, etc.)?

- Yes: {text box asking “What charges are eligible?”}
- No
- Don’t Know

14. Please check if defendants can participate despite the following criminal histories.

- Prior arrest
- Prior misdemeanor conviction
- Prior felony conviction
- Don’t Know

## **SECTION D. SCREENING AND ELIGIBILITY DETERMINATION**

15. Can the defendant and/or the defendant’s attorney refuse to participate?

- Yes
- No

16. Do you screen everyone for diversion who is at least potentially eligible based on formal legal criteria such as the nature of the charges and prior criminal history?

- Yes
- No
- Don’t Know

## **SECTION E. ASSESSMENT**

17. Do you perform a formal assessment for risk or needs with program participants (regardless of its length or content)?

- Yes *SKIP PATTERN HERE – SKIP TO QUESTION #19*
- No *SKIP PATTERN -SKIP PATTERN HERE – SKIP TO QUESTION #20*
- Don’t Know *SKIP PATTERN - SKIP PATTERN HERE – SKIP TO QUESTION #20*

18. If “Yes”, which tool(s) do you use? Please check all that apply in at least some instances.

- AUDIT (Alcohol Use Disorders Identification Test)
- CAGE
- CCAT (Criminal Court Assessment Tool)
- COMPAS (Correctional Offender Management Profiling for Alternative Sanctions)
- GAIN (Global Appraisal of Individual Needs)
- LSI-R (Level of Service Inventory – Revised)
- LS-CMI (Level of Service/Case Management Inventory)
- ORAS (Ohio Risk Assessment System)
- PSA-Court (Public Safety Assessment-Court)
- RANT (Risk and Needs Triage)
- RCC (Risk and Resiliency Checkup)
- SAVRY (Structured Assessment of Violence Risk in Youth)
- SBIRT (Screen, Brief Intervention, and Referral to Treatment)
- STRONG (Static Risk and Offender Needs Guide)
- TCU-DS (Texas Christian University Drug Screen)
- Other TCU Scales (e.g., TCU criminal thinking or motivation for treatment scales)

- YASI (Youth Assessment and Screening Instrument)
- YLS/CMI (Youth Level of Service/Case Management Inventory)
- Other: please write the precise name of the screening or assessment tool: \_\_\_\_\_

19. Is an assessment or risk screening tool administered to inform program eligibility?

- Yes
- No
- Don't Know

20. Is an assessment or risk screening tool administered for the length and content of mandated services?

- Yes
- No
- Don't Know

21. How do you routinely use the results of your assessment? Check all that apply.

- Inform program eligibility
- Determine length of mandated services
- Determine content of mandated services
- Determine frequency of mandated services at program outset
- Determine frequency of case management at program outset
- Other: Please specify: \_\_\_\_\_
- Don't Know

## SECTION F. PARTICIPATION

22. Do participants receive a handbook or other written information about the program? Check all that apply.

- Yes, official program handbook
- Yes, other written program information {Text box: Explain \_\_\_\_\_}
- No
- Don't Know

23. Do participants receive written information about what will happen to their criminal case if they successfully complete the program?

- Yes
- No
- Don't Know

24. Do participants receive written information about what will happen to their criminal case if they are terminated from the program for noncompliance?

- Yes
- No
- Don't Know

## SECTION G. PROGRAM STRUCTURE

25. What is the average duration of time spent in the diversion program (i.e., length of time from point of enrollment to completion)?



- 0-3 months
- 4-6 months
- 7-9 months
- 10-12 months
- Over a year
- Don't Know

26. What is the typical or average length of required classes or programs?

- Not applicable (no required classes or programs)
- Single day/class/session
- 2-4 days/classes/sessions
- 5-7 days/classes/sessions
- Regular program involving more than 7 days/classes/sessions
- Don't Know

27. Are the following services offered to individuals as part of the diversion program? (Check all that apply)

| Service Offered |  |
|-----------------|--|
|                 | Community service                                    |
|                 | Substance abuse education (not treatment)            |
|                 | Substance abuse treatment                            |
|                 | Trauma therapy                                       |
|                 | Individual therapy or counseling                     |
|                 | Group-based mental health counseling                 |
|                 | Family therapy                                       |
|                 | Cognitive-behavioral therapy for criminal thinking   |
|                 | Vocational or educational programming                |
|                 | Employment readiness or job placement services       |
|                 | Health education                                     |
|                 | Restorative justice with victim present              |
|                 | Restorative justice with community member(s) present |
|                 | Native American peacemaking or variant thereof       |
|                 | Housing assistance                                   |
|                 | Benefits assistance                                  |
|                 | Other social service program (Please explain)        |

## SECTION H. COMPLETION OF PROGRAM

28. In order to complete all program requirements, must participants pay victim restitution?

- Yes

- No
- Sometimes
- Don't Know

29. In order to complete all program requirements, must participants pay a fine, fee, or surcharge?

- Yes
- No
- Sometimes
- Don't Know

30. For program participants who **successfully complete all requirements**, what happens to the case? Please check all that apply in at least some cases.

- Case never filed with the court
- Case dismissed by the court
- Case reaches the court and is closed but without dismissal of the charges
- Other: Please specify: \_\_\_\_\_
- Don't Know

31. As a practical matter, the most likely legal outcome for program participants who **fail to complete** the program is:

- Case dismissed
- Convicted and sentenced to state prison
- Convicted and sentenced to jail
- Convicted and sentenced to probation
- Convicted with lesser sentence (not involving corrections)
- Other: Please specify: \_\_\_\_\_
- Don't Know

## SECTION I. SUPERVISION

32. Must participants appear in court regularly during their program participation?

- Yes
- No
- Case by case
- Don't Know

33. Are participants drug-tested during their program participation?

- Yes
- No
- Case by case
- Don't Know

34. Must participants meet with a case manager or probation officer during program participation?

- Yes
- No
- Case by case
- Don't Know

## SECTION J. PROGRAM GOALS

35. Here is a list of diversion program goals that may or may not be important to you. Please candidly rank the importance of each one.

| Goals and Objectives   | Not a Program Goal | Somewhat Important | Very Important | Extremely Important |
|--|--------------------|--------------------|----------------|---------------------|
| Hold participants accountable for their criminal behavior                              |                    |                    |                |                     |
| Rehabilitate participants by treating their underlying problems                        |                    |                    |                |                     |
| Reduce participant recidivism  |                    |                    |                |                     |
| Use prosecutorial or court resources more efficiently                                  |                    |                    |                |                     |
| Reduce the collateral consequences of conviction for participants                      |                    |                    |                |                     |
| Provide participants with a case outcome that they will perceive as fair and just      |                    |                    |                |                     |
| Involve victims in prosecutorial decisions and outcomes                                |                    |                    |                |                     |
| Involve community members in prosecutorial decisions and outcomes                      |                    |                    |                |                     |
| Increase public confidence in justice by responding to community support for diversion |                    |                    |                |                     |
| Other key goal: _____  |                    |                    |                |                     |
| Other key goal: _____  |                    |                    |                |                     |

**SECTION K. IMPLEMENTATION**

36. Please indicate approximately how many individuals enrolled in this diversion program in 2016? Please provide your best estimate. If none, enter '0.' \_\_\_\_\_ (#)

37. What are the key strengths of the diversion program?

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38. What are the primary challenges faced by the diversion program?

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**Thank you for completing this assessment of the field! We appreciate the time you have spent.**

## **SHORT SET OF ADDITIONAL QUESTIONS FOR PROGRAMS**

1. Is the program for adult criminal or juvenile delinquency cases?
  - Adult
  - Juvenile
  - Both
  - Don't Know
  
2. When do participants enter the pretrial diversion program?
  - Pre-filing only (i.e., before a court case exists)
  - Post-filing only (i.e., after the prosecutor files charges with the court or after at least one court appearance)
  - Varies case to case
  - Don't Know
  
3. Which types of arrest charges are potentially eligible for your diversion program? Check all that apply.
  - Violent felony
  - Nonviolent felony
  - Misdemeanor
  - Lesser violations (e.g., violations, infractions, citations, summonses)
  - Other: Please specify: \_\_\_\_\_
  - Don't Know
  
4. Is the program only available to defendants facing certain types of charges (e.g., drug, marijuana, property, prostitution, etc.)?
  - Yes: {text box asking "What charges are eligible?"}
  - No
  - Don't Know
  
5. Is a formal needs assessment or screening tool administered to gain information about the defendant's background characteristics and treatment or service needs?
  - Yes
  - No
  - Don't Know
  
6. Is a formal risk assessment or risk screening tool administered to gain information about the defendant's risk of re-offense?
  - Yes
  - No

Don't Know

7. What is the average duration of time spent in the diversion program (i.e., length of time from point of enrollment to completion)?

- 0-3 months
- 4-6 months
- 7-9 months
- 10-12 months
- Over a year
- Don't Know

8. For program participants who **successfully complete all requirements**, what happens to the case? Please check all that apply in at least some cases.

- Case never filed with the court
- Case dismissed by the court
- Case reaches the court and is closed but without dismissal of the charges
- Other: Please specify: \_\_\_\_\_
- Don't Know

9. Please indicate approximately how many individuals enrolled in this diversion program in 2016? Please provide your best estimate. If none, enter '0.' \_\_\_\_\_ (#)