



# A Survey of Prosecutorial Diversion in Illinois

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*Appendices available at [www.centerforhealthandjustice.org](http://www.centerforhealthandjustice.org).*

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March 2017

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# Executive Summary

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As criminal justice reform efforts take hold across the country, diversion programs and initiatives operating at the front end of the justice system represent one of the most promising reform strategies. In these interventions, criminal justice system practitioners work in partnership with stakeholders to deflect and redirect eligible individuals out of the system and into community-based services. They stand in contrast to decades of public policies and practices that have resulted in record incarceration rates, unsustainable costs, and long-lasting collateral consequences harming generations of families and communities.

In some programs and initiatives, diversion from the system can occur without even the logging of an arrest. In others, prosecution or sentencing is deferred while participants engage in supervised programming, and charges are dropped when it is completed successfully. By intervening early, caseloads and jail days can be reduced, criminal records can be prevented, and access to services that put men and women on the path to health and stability can be accelerated. Diversion can prevent the costs and harmful collateral consequences—to the justice system, the community, and the individual—of repeated arrests, convictions, and incarcerations.

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A variety of diversion models and approaches have been implemented, and some have been researched and evaluated with regard to effectiveness and impact. Local jurisdictions seeking to apply effective interventions that meet their needs to improve outcomes and spend resources wisely are increasingly incorporating risk-need-responsivity principles designed to identify the needs of individuals that, if effectively addressed, would reduce re-offending. As jurisdictions take steps to address recidivism and the nexus between drug use, mental illness, and criminal behavior, and as the body of knowledge on these programs continues to expand, practitioners are becoming more versed in a variety of critical issues that have surfaced in national conversations and must be considered locally.

Building on its 2013 report, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*, and in recognition of the many diversion programs that have emerged under the strong and innovative leadership of local prosecutors, TASC's Center for Health and Justice (CHJ) set out to explore more deeply the landscape of prosecutorial diversion in Illinois, and specifically that which affords adults an opportunity to be accountable for their behavior without the imposition of a criminal conviction on public record.

To that end, between May and December 2015, project staff conducted a survey among prosecutors of diversion programs, practices, and initiatives operating in counties across the state, with an aim of informing program development, implementation of best and innovative practices, collaboration and knowledge exchange, and policy change designed to generate cost savings and achieve public health and safety goals. The project focused on prosecutors because of their unique position to convene partnerships and build collaborative solutions to local criminal justice problems, and because of their flexibility to influence and implement policies and strategies appropriate for the populations and crime patterns of their jurisdictions.

A number of **observations** emerged from the survey analysis:

1. **Programs define their goals not only through treatment and justice lenses, but also through individual and system lenses.**

2. Most programs limit eligibility based on justice criteria—namely, offense or criminal history—and many are limited to first-time offenses.
3. Jurisdictions take advantage of available statutory options, and collaborate across agencies to develop programs.
4. Jurisdictions explore diversion alternatives throughout the justice system continuum, and the prosecutorial stage offers many opportunities for intercept.
5. Most programs access clinical services, and many access other supportive services. However, many were not able to report the use of evidence-based practices.
6. Programs use a variety of funding mechanisms, and many rely on local budgets and participant fees.
7. While many programs report outcomes, in most cases those outcomes do not rise to a statistical measure that can be analyzed or compared on level footing with other programs.

Eight **recommendations** emerged from this analysis that are intended to guide criminal justice system practitioners and other stakeholders in the development, implementation, expansion, replication, and improvement of diversion programs. The recommendations are also intended to inform and motivate policymaker discussions and decisions, as diversion programs continue to proliferate and drive the next wave of criminal justice reform.

1. **Incorporate research findings and evidence-based practices into diversion programs.**
2. **Apply resources to individuals and programs with potential to achieve the greatest impact.**
3. **Incorporate community-based behavioral health and social services into diversion programs, as appropriate, especially substance use and mental health services.**
4. **Leverage all available resources for community-based behavioral health and social services, and strongly advocate to protect and expand them.**
5. **Adopt standardized program goals, outcome and performance measures, and terminology.**
6. **Adopt standardized data collection and analysis models and mechanisms.**
7. **Develop a web-based, searchable directory of diversion programs in Illinois.**
8. **Develop opportunities for cross-system education, training, and technical assistance available to jurisdictions for the purpose of establishing, expanding, and improving prosecutorial diversion programs.**

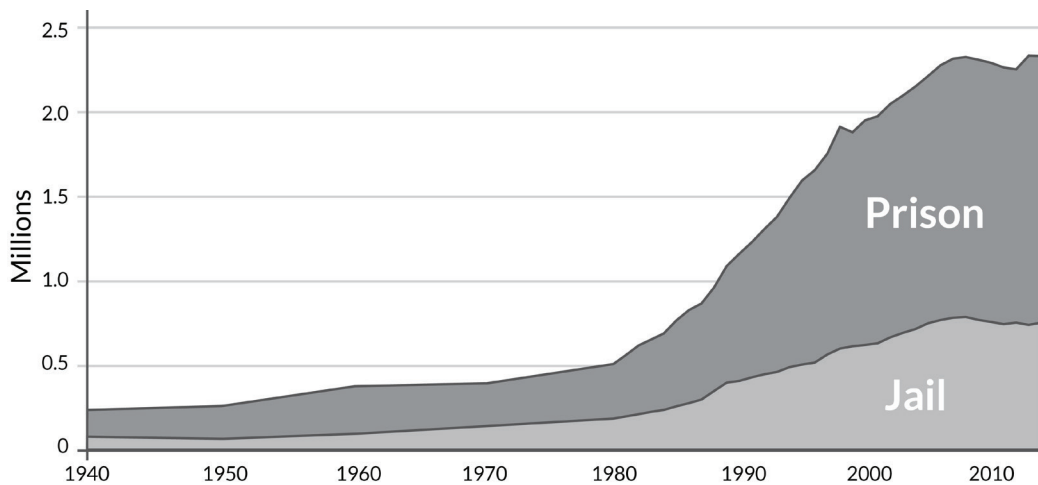
The amplification of diversion as a viable and useful justice practice suggests new promise to transform encumbered systems and bring a culture of restoration to lives, families, and communities that have been eroded by justice system involvement. As a growing field, there are many opportunities for improvement in diversion practices—in how programs are designed, implemented, and evaluated; in how data are collected and shared; and in ensuring that community services are available and accessible for those who need them, and as soon as they need them. These recommendations offer a pathway toward realizing that new promise.

# Introduction

Criminal justice reform efforts are underway across the country, as more than four decades of policies and practices that have resulted in record incarceration rates and unsustainable costs are being reexamined and reversed. Local, state, and national efforts to reevaluate and update sentencing policies and focus on reforming reentry programs, processes, and practices have led to meaningful improvements.

With its potential to stem the vast numbers of people flowing into courts and correctional systems, one of the most promising reform strategies taking hold is criminal justice diversion, whereby law enforcement agencies, pretrial units, prosecutors, and judges, often in partnership with broad groups of stakeholders, deflect and redirect eligible individuals out of the justice system prior to prosecution or conviction. In some cases, such diversion from the system can occur without the logging of an arrest.

## Total Incarceration in the U.S., 1940-2014



Source: CHJ analysis of Bureau of Justice Statistics data, 1940-2014.<sup>1</sup>

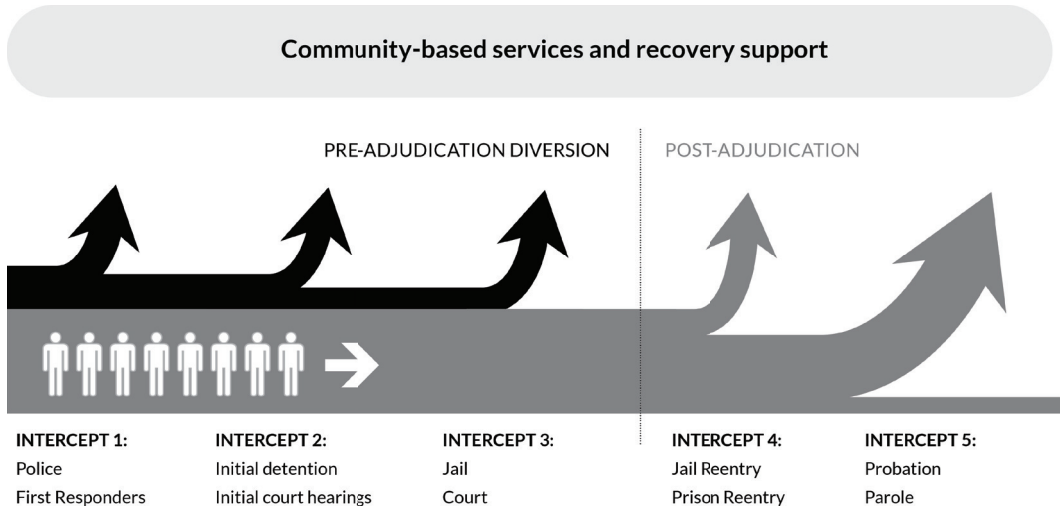
Diversion, especially that which takes place toward the very front end of the justice system continuum, can prevent the unnecessary accumulated costs and harmful consequences—to the justice system, the community, and the individual—of repeated arrests, convictions, and incarcerations. By facilitating early intervention, diversion policies and practices can reduce caseloads, reduce jail time, prevent criminal records, and encourage quicker access to services that put men and women on the path to health, stability, and community participation.

These programs provide police, prosecutors, and judges with options other than arrest, conviction, sentencing, or imprisonment, and may be especially appealing and valuable when it comes to dealing with those who make up the majority of people cycling in and out of the system—those with mental health and substance use disorders. Years of responding to these health issues with punishment and incarceration have proven that these approaches alone not only do not solve the problem, but in fact, are likely to exacerbate it. Incarceration is costly and can further induce the criminal behaviors it is intended to stop. By contrast, diversion can steer individuals toward a positive path, provide access to health services in the community, and prevent the long-term collateral consequences of a criminal record, all while still holding people accountable for criminal behavior.

Collateral consequences have been defined as “sanctions and disqualifications that can place an unanticipated burden on individuals trying to reenter society and lead lives as productive citizens...they attach not only to felonies and incarceration, but also to misdemeanors and individuals who have never been incarcerated...Most states have close to 1,000 [collateral consequences], and many have more.”<sup>2</sup>

**National trends.** Over the past several decades, approaches that provide alternatives to prison have proliferated, such as problem-solving courts and, more recently, justice reinvestment initiatives, often facilitating access to substance use and mental health treatment and other rehabilitative services.<sup>3,4</sup> Prosecutorial diversion programs and options have long been implemented and utilized as well, offering, for example, deferred prosecution with treatment as a condition of supervision, followed by dismissal of charges for those completing the terms of the agreement successfully. Efforts by law enforcement to deflect and divert certain individuals have emerged, previously in response to a growing understanding of how to safely manage mental health crises, and now, also to the ongoing opioid crisis, in recognition of the fact that repeatedly arresting people without addressing the underlying causes of their offending behaviors does not necessarily benefit them or society.

### Deflection and Diversion from the Criminal Justice System at Various Points



*Note: This figure incorporates intercept points from the Sequential Intercept Model. For more information, see reference 10.*

These deflection, diversion, and alternative approaches appear to increasingly reflect the understanding that there is a need for interventions that are mindful of the fact that each individual has a unique set of risks and needs warranting differentiated services and supervision levels. From programs in which police officers escort individuals to a hospital, where they are guided immediately into addiction treatment,<sup>5</sup> to those in which people with low-level drug or prostitution offenses are placed into community-based services instead of jail or prison,<sup>6</sup> jurisdictions across the country are implementing programs to divert people who present a low risk to public safety out of the justice system and back into the community. These newer models may focus on intervening with small populations of “familiar faces,”<sup>7</sup> individuals with substance use or mental health conditions (or both) who have extremely high rates of criminal justice system utilization, and increasing numbers of these models are seeking to introduce data-driven strategies into their approaches.

TASC’s Center for Health and Justice (CHJ) offered an overview of the national diversion landscape in its December 2013 report entitled *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*. The report explored similarities and differences among more than 100 criminal justice diversion programs across the country, ranging from law enforcement-based crisis intervention teams, to pretrial/prosecution-based programs, to judicial interventions such as problem-solving courts. The project focused



specifically on those diversion programs which, if successfully completed, would not result in a criminal conviction on public record. The rationale for this focus was that such approaches recognize that a conviction on one's record means a significant detriment to future efforts toward restored citizenship and health, such as finding housing and employment, and often places individuals at risk of enhanced penalties for future crimes.

**Diversion in Illinois.** Illinois is home to a robust assortment of criminal justice diversion programs, initiatives, and options, and provides fertile ground for continued expansion and development of new efforts. Many of these options have been codified by state statute. Urban, rural, and suburban jurisdictions are developing, implementing, and expanding a variety of programs designed to screen and divert eligible individuals out of the justice system at points throughout it.

Recent years have seen numerous and ongoing efforts by state policymakers to reform the justice system. In 2014, a bicameral, bipartisan legislative criminal justice reform committee was authorized by joint resolution to examine the current system, study the impact of current sentencing structure, and consider strategies for reform.<sup>8</sup> In 2015, a state commission mandated by executive order was tasked with a goal of mapping out strategies to decrease the state prison population by 25 percent within 10 years.<sup>9</sup> Both of these efforts and others have included discussion of the key role played by diversion and alternatives to incarceration programs to stem the flow of individuals into the criminal justice system at its front end.

Building on the 2013 national survey, and in recognition of the many programs, practices, and initiatives that have emerged under the strong and innovative leadership of local prosecutors—referred to in Illinois as state's attorneys—CHJ set out to explore more deeply the landscape of prosecutorial diversion in Illinois, and specifically that which affords adults an opportunity to be held accountable for their behavior without the imposition of a criminal conviction on public record.

In presenting such a snapshot, this project aims to help connect practitioners who wish to expand or improve local programs, promote best practices and evidence-based policies, and advance local and national conversations about diversion as a core component of reform. To that end, the report offers eight recommendations emerging from survey observations that are intended to guide the development, implementation, and improvement of diversion programs and initiatives.

**Organization of the report.** Section 1 presents a conceptual framework used by the project for understanding, analyzing, and discussing criminal justice diversion. Then, models of diversion programs implemented and utilized by prosecutors are described, and the use of evidence-based and promising programs and practices is discussed. Finally, a variety of critical issues relevant to diversion are noted. Section 2 provides an overview of the current survey project, its methodology, and its limitations. Then it presents observations and recommendations that lay a foundation on which to advance effective diversion programs, practices, and policies.

The report has three appendices, available at [www.centerforhealthandjustice.org](http://www.centerforhealthandjustice.org). Appendix A presents summaries of each survey response received during the project. Appendix B contains the survey questionnaire used to collect detailed information from survey respondents. Appendix C briefly describes the current slate of statutory diversion and alternative-to-incarceration options codified in Illinois.

# Criminal Justice Diversion

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## CONCEPTUAL FRAMEWORK

States and counties across the country, along with the federal government, continue seeking ways to address crowded dockets, high recidivism rates, and steeply rising costs associated with case processing, incarceration, and emergency room visits by putting criminal justice diversion programs and practices into place. These interventions often reflect an understanding that many cases and circumstances warrant handling in a manner different from traditional processing, and are in alignment with growing public support for criminal justice reforms and innovative responses to the nationwide opioid crisis.

Broadly speaking, diversion programs and practices direct individuals away from the traditional progression into and through the justice system and onto a track that is less likely to result in permanent conviction records and collateral consequences, and may offer more opportunities for rehabilitation.

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*Diversion responses evolve in local ecosystems, each with its own unique combination of government structures, policymaking processes, political pressures, public safety concerns, behavioral health-related challenges, and resources. As a result, while many diversion interventions share common elements, they are inexorably local in nature, and are as unique as they are similar.*

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Such responses evolve in local ecosystems, each with its own unique combination of government structures, policymaking processes, political pressures, public safety concerns, behavioral health-related challenges, and resources. As a result, while many diversion interventions share common elements, they are inexorably local in nature, and are as unique as they are similar. The variation across programs in approach, goals, oversight, available resources, and terminology make it challenging to conduct formal evaluations or propose global assertions of the effectiveness of any one model over another.

This report utilizes the conceptual framework presented in CHJ's 2013 national diversion survey to understand, analyze, and discuss diversion programs, organizing them into three general categories according to the point of diversion:

1. Diversion at the law enforcement phase (also called deflection)
2. Diversion at the prosecution/pretrial phase
3. Diversion at the court phase

Diversion interventions vary not only across these three phases, but also within each, in terms of models and components, context and impetuses for their evolution, goals, and available evidence in support of their effectiveness. These phases approximately align with intercepts 1, 2, and 3 of the Sequential Intercept Model, which was developed a decade ago as part of an effort to address the overrepresentation of people with mental illness in local criminal justice systems.<sup>10</sup>

As indicated in the following table, the current survey project is focused on diversion interventions at the prosecution/pretrial phase, and specifically on programs operated by or partnering with prosecutors.

**Typical oversight, diversion goals, and practices at three justice system “phases” of diversion**

	<b>Law Enforcement</b>	<b>Prosecution / Pretrial</b>	<b>Specialty / Problem-solving Court</b>
<i>Oversight</i>	<ul style="list-style-type: none"> <li>• Municipal police department</li> <li>• County sheriff</li> </ul>	<ul style="list-style-type: none"> <li>• State’s / District / Prosecuting Attorney</li> <li>• Pretrial services oversight by court or probation (county or state)</li> </ul>	<ul style="list-style-type: none"> <li>• Court</li> <li>• Input from multidisciplinary team</li> </ul>
<i>Diversion Goals</i>	<ul style="list-style-type: none"> <li>• Street-level safety</li> <li>• Reduce bookkeeping burden on police to process low-level offenses</li> <li>• Reduce pretrial detention, pressure on jail</li> <li>• Identify underlying treatment and service needs of individuals</li> </ul>	<ul style="list-style-type: none"> <li>• Reduce docket pressure</li> <li>• Reduce pretrial detention, pressure on jail</li> <li>• Reduce court and jail expenses</li> <li>• Maximize prosecution resources for more serious cases</li> <li>• Address underlying treatment and service needs of individuals</li> </ul>	<ul style="list-style-type: none"> <li>• Prevent incarceration</li> <li>• Reduce recidivism</li> <li>• Supervision with rehabilitation best practices</li> </ul>
<i>Diversion Practices</i>	<ul style="list-style-type: none"> <li>• Street-level crisis intervention, overdose prevention</li> <li>• Co-location with or immediate diversion to behavioral health services</li> <li>• Citations in lieu of arrest</li> <li>• Referral to caseworker or community health / behavioral health provider</li> </ul>	<ul style="list-style-type: none"> <li>• Deferred prosecution / adjudication / sentencing</li> <li>• Evaluation of treatment needs, risk of recidivism</li> <li>• Referral to community services</li> <li>• Individualized conditions for success / failure</li> <li>• Justice supervision (for more serious crimes)</li> </ul>	<ul style="list-style-type: none"> <li>• Deferred adjudication / sentencing</li> <li>• Multidisciplinary staffing</li> <li>• Referral to community services</li> <li>• Justice accountability</li> <li>• Clear rewards / sanctions</li> </ul>

**MODELS AND EFFECTIVENESS**

Prosecutorial diversion programs may evolve with goals that include one or more of the following: reducing the burden on the court system, reducing repeated cycling of individuals through the system, connecting people to health and social services, reserving prosecutorial resources for more serious cases, or saving costs. These programs typically involve discretion by a prosecutor to accept individuals into alternative programs or tracks.

Among the varied program models and approaches put in place by jurisdictions across the country, many involve deferred prosecution or plea-in/post-plea deferred adjudication or sentencing elements. Deferred prosecution programs usually do not require a guilty plea; instead, the prosecutor defers filing prosecution forms during program participation, and holds them in abeyance contingent on successful program completion, at which point charges are dropped. Plea-in/post-plea deferred adjudication or sentencing programs generally require a guilty plea and associated documentation to participate, and the prosecutor then dismisses charges or petitions the court to vacate the judgment upon successful program completion.

Ample literature on pretrial diversion programs demonstrates cost- and time-effectiveness benefits—such as controlling growing court dockets—for criminal justice systems and jurisdictions that implement such programs.<sup>11</sup> These programs have also been found to result in benefits for participants, including less time incarcerated, prevention of criminal convictions (and the host of collateral consequences they trigger), and

improved substance use, mental health, and treatment outcomes.<sup>12</sup> However, several reviews have noted that relatively few programs collect recidivism data—only 37 percent of the pretrial diversion programs surveyed in a study conducted by the National Association of Pretrial Services Agencies (NAPSA).<sup>13,14</sup> Further, uniform data collection standards and procedures have not been widely adopted by the field, making comparisons across programs difficult.<sup>15</sup>

In partnership with and in support of the National Institute of Corrections’ (NIC) Evidence-based Decision Making Framework (EBDM), NAPSA released a 2015 report offering suggested outcome and performance measures and critical operational data for pretrial diversion programs.<sup>16</sup> The report’s goal is to present “clearly defined and easily calculable measures that pretrial diversion programs can use to gauge progress in achieving their mission and strategic goals, improve business decisions, and illustrate pretrial diversion’s value in an evidence-based criminal justice system.” The suggested measures and data are applicable to any programs providing voluntary alternative options, and that intend to reduce the likelihood of re-arrests through programming tailored to individual participants’ recidivism risks and needs, and that intend to preserve criminal justice resources for more serious crimes.

### **NAPSA/NIC’s Suggested Outcome Measures, Performance Measures, and Critical Operational Data for Pretrial Diversion Programs**

<b>SUGGESTED OUTCOME MEASURES</b>	
Success Rate	The percentage of diversion participants who successfully complete the diversion program.
Safety Rate	The percentage of diversion participants who are not charged with a new offense while participating in diversion programs or services.
Post-program Success Rate	The percentage of participants who complete diversion successfully and are not charged with a new offense during a specific period after program completion.
<b>SUGGESTED PERFORMANCE MEASURES</b>	
Screening	The percentage of diversion-eligible persons assessed for diversion placement.
Placement	The percentage of persons appropriate for diversion placement who are placed into diversion and specific diversion programs or services.
Compliance	The percentage of participants successfully completing specific diversion requirements (community service hours, restitution, fees, etc.).
Response	The frequency of policy-approved responses to compliance and noncompliance with diversion conditions.
Provision	The percentage of assessed and appropriate participants who receive substance abuse, mental health, or other needed services.
Satisfaction	The qualitative measure of stakeholder opinions of the pretrial diversion program’s quality of supervision and services, interactions and worth within the criminal justice system.
<b>SUGGESTED CRITICAL OPERATIONAL DATA</b>	
Referrals	Number of referrals to the diversion program and referral sources.
Time to Placement	Time from the defendant’s arrest or diversion eligibility screen and actual diversion program placement.
Time to Diversion	Time from program entry to successful completion, voluntary withdrawal, or termination.
Time in Programming	Time from entry to successful completion, voluntary withdrawal, or termination for each diversion program component.
Exits	Recorded graduations or other successful completions, voluntary withdrawals, and program terminations.

Source: Kennedy & Klute, 2015<sup>17</sup>

**Evidence-based and promising practices in diversion.** While many diversion programs lack the resources and access to data that are necessary to conduct outcome evaluations, the existing and evolving evidence base underpinning criminal justice programming can inform their design, implementation, and expansion. There are resources that catalog evaluations of criminal justice and behavioral health programs and practices, many rating them according to their effectiveness in achieving positive outcomes.

For example, *CrimeSolutions.gov* and the *What Works in Reentry Clearinghouse* both provide an accounting of high-quality research studies on the effectiveness of criminal justice-related interventions. Both are supported by the U.S. Department of Justice.<sup>18</sup> NIC offers an annotated bibliography on evidence-based practices. While not primarily focused on programs and practices in criminal justice system settings, the Substance Abuse and Mental Health Services Administration’s (SAMHSA) *National Registry of Evidence-based Programs and Practices* (NREPP) offers an index of proven substance use and mental health interventions. The Illinois Center of Excellence for Behavioral Health and Justice and Adult Redeploy Illinois also provide information about evidence-based practices used in criminal justice settings.

**Selected Sources for Evidence-based Programs and Practices Relevant to Criminal Justice Diversion Programs and Initiatives**

<b>CrimeSolutions.gov</b> <i>U.S. Department of Justice’s National Institute of Corrections</i>	<a href="http://www.crimesolutions.gov">www.crimesolutions.gov</a>
<b>What Works in Reentry Clearinghouse</b> <i>Council of State Governments Justice Center and the Urban Institute (funded by U.S. Department of Justice’s Bureau of Justice Assistance)</i>	<a href="https://whatworks.csgjusticecenter.org">https://whatworks.csgjusticecenter.org</a>
<b>Annotated Bibliography of Evidence-based Practices</b> <i>U.S. Department of Justice’s National Institute of Corrections</i>	<a href="http://nicic.gov/library/026917">http://nicic.gov/library/026917</a>
<b>National Registry of Evidence-based Programs and Practices (NREPP)</b> <i>U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA)</i>	<a href="http://www.nrepp.samhsa.gov">www.nrepp.samhsa.gov</a>
<b>List of Selected Evidence-based Interventions and Resources</b> <i>Illinois Center of Excellence for Behavioral Health and Justice</i>	<a href="http://www.illinoiscenterofexcellence.org">www.illinoiscenterofexcellence.org</a>
<b>Evidence-based Practice Information and EBPs Currently in Use</b> <i>Adult Redeploy Illinois</i>	<a href="http://www.icjia.state.il.us/redeploy/ebps.cfm">www.icjia.state.il.us/redeploy/ebps.cfm</a>

**Moving to an individualized approach.** As noted in CHJ’s 2013 *No Entry* report,<sup>19</sup> and as observed in numerous responses to the current Illinois diversion survey, many diversion programs include offense-based participation criteria, permitting participation by only those individuals with low-level and/or first-time offenses, and excluding those who have already participated or who have pre-existing criminal records. Some jurisdictions are now in the process of updating practices to reflect the complexity of factors influencing the prediction validity of the likelihood of appearance in court or future recidivism.

Risk assessments have long been used to predict the likelihood of recidivism, evolving from unstructured judgments to assessments that incorporate static and dynamic risk and needs factors, to those that align interventions with the abilities and motivations of each individual and incorporate adjustments as behavior changes are observed.<sup>20</sup> These tools may have application at virtually all points in the criminal justice system, including pretrial detention, sentencing, probation, prison, and parole/post-release.<sup>21</sup>

One of the most transformative areas of study and practice implementation relevant to diversion is the application of risk-needs-responsivity (RNR) principles and the use of risk assessment tools in criminal justice decision-making at the front end of the system. RNR principles were developed as the basis of a

recidivism-reduction model for the rehabilitation of justice-involved populations. Ward, Melsner, and Yates<sup>22</sup> described the principles:

In brief, the *risk principle* suggests that offenders at higher risk for reoffending will benefit most from higher levels of intervention, including high intensity treatment, and that lower risk offenders should receive minimal, routine, or no intervention. The *need principle* proposes that only those factors associated with reductions in recidivism (i.e., criminogenic needs) should be targeted in intervention. The *responsivity principle* states that correctional programs should be matched to offender characteristics such as learning style, level of motivation, and the individual’s personal and interpersonal circumstances.

Developed in the 1990s, RNR principles have been used increasingly in the management of criminal justice populations. Programs that incorporate them intend to reduce the risk of recidivism through an individualized approach that: 1) assesses each person’s unique risk for recidivism and matches intensity to risk, 2) assesses and targets each individual’s need for particular treatments likely to reduce the risk that he or she will recidivate, and 3) applies the right programming for each person’s characteristics and circumstances to maximize impact and effect. The theory underlying this approach is that individuals vary in terms of their risks for recidivism and treatment needs, and that rehabilitative services matched to each individual’s RNR profile will maximize the effect of provided programming.<sup>23</sup>

Research has demonstrated that matching individuals to appropriate program intensity based on their specific risk levels can help reduce recidivism.<sup>24</sup> It has shown that focusing intensive programming on higher-risk individuals provides the greatest potential gains and maximizes the efficiency of limited resources,<sup>25</sup> and also that over-supervising individuals with low-risk profiles can increase recidivism.<sup>26</sup>

While often discussed together and combined into integrated tools, there is a distinction between assessment of risk and needs. Risk assessments are typically based on scoring criteria designed to determine the risk of criminal behaviors (e.g., failure to appear for justice appointments, comply with justice conditions, or re-offend). Needs assessments may consider a complex constellation of needs in the domains of behavioral and medical healthcare, access to housing, need for employment, and other circumstances that may complicate stability upon diversion into the community. The current generation of criminal justice risk assessment tools has evolved to incorporate dynamic factors directly related to criminal behavior that are amenable to treatment, integrating risk and needs principles. While assessments vary in length and focus, Andrews and Bonta identified the “central eight” risk/need factors as major predictors of criminal behaviors. Seven of these are dynamic factors, which hold promise for interventions intended to reduce criminal behaviors, and the remaining factor—criminal history—is static.<sup>27</sup>

### The Central Eight Major Risk/Need Factors

Antisocial personality pattern	Dynamic factors
Procriminal attitudes	
Social supports for crime	
Substance abuse	
Family/marital relationships	
School/work	
Prosocial recreational activities	
Criminal history	Static factor

Source: Bonta & Andrews, 2007<sup>28</sup>

The specific purpose of assessment tools varies, depending on which phase of the justice system utilizes them. Pretrial risk assessment tools stand apart from needs assessment and post-adjudication decision-making tools, for example, in that they are designed to assess short-term risk to public safety or of non-appearance in court, the only two things that can be legally considered by a court when making pretrial release decisions.<sup>29</sup> The use of uniform and validated risk/needs assessments to determine the most appropriate and least restrictive levels of supervision and the types of services needed is included among NAPSA's promising practices in pretrial diversion.<sup>30</sup>

The implementation of these tools is a significant consideration for many jurisdictions with regard to the time required to perform assessments and the ability to accurately predict participant behavior. A number of tools exist, some proprietary and others free and available to the public, usually requiring validation for a specific population, including factors such as age, point in the justice system, and geographic location. Examples of assessment tools include the Level of Service Inventory-Revised (LSI-R), the Self-Appraisal Questionnaire (SAQ), the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), the Ohio Risk Assessment System (ORAS), the Virginia Pretrial Risk Assessment Instrument (VPRAI), and the Level of Service/Case Management Inventory (LS/CMI). The Laura and John Arnold Foundation (LJAF) has developed the Public Safety Assessment (PSA), a pretrial risk assessment tool available to judges to help make decisions about whether to detain or release individuals before trial. The tool is also being used by prosecutors in their pretrial decision-making, including charge, plea bargain, and diversion, and its potential for application with law enforcement is being studied.<sup>31</sup>

Recent attention has been focused on whether these tools may have differential implications for racial and ethnic minorities, particularly for African Americans.<sup>32,33</sup> In 2014 conference remarks to criminal defense attorneys and other practitioners, then U.S. Attorney General Eric Holder cautioned against the potential unintended consequences of applying certain risk assessment data in sentencing decisions: "By basing sentencing decisions on static factors and immutable characteristics—like the defendant's education level, socioeconomic background, or neighborhood—they may exacerbate unwarranted and unjust disparities that are already far too common in our criminal justice system and in our society." He recommended further study of the use of these tools on front-end decision-making and the effects on both public safety and racial justice.<sup>34</sup> Some assert that proper validation and use of tools may limit or prevent their contribution to racial disparities, and may also help limit racial bias in decision-making.<sup>35</sup>

## CRITICAL ISSUES

National and statewide conversations around criminal justice reform and diversion continue to evolve, while at the same time programs and initiatives develop and operate in local contexts. Even the most well-researched and well-designed programs carry significant implications in local policy, funding, public safety, and public health arenas. As jurisdictions take steps to address recidivism and the nexus between drug use, mental illness, and criminal behavior, and as the body of knowledge on these programs continues to expand, practitioners are becoming more versed in a variety of critical issues that have surfaced in national conversations and must be considered locally.

**Unintended net widening and the preponderance of plea bargaining.** Several critical issues are associated with prosecutorial discretion. One example, related to discretion in determining diversion program participation, is the challenge to avoid net widening. Net widening occurs when individuals beyond those intended for a diversion program are served by it—that is, people with lower-risk/need profiles who otherwise would have been left alone. Though it may be motivated by helpful intentions to connect people to services and resources, net widening counteracts the diversionary purpose of the program, which is to reduce rather than increase the overall number of people involved in or supervised by the system.<sup>36</sup> Another example, related to discretion in determining charge, is that of plea bargaining, which now is used to resolve almost



all criminal cases—from 90 to 97 percent of them, according to estimates.<sup>37,38</sup> Some argue that moving from a trial-based system to one that almost solely relies on plea deals has led to harsher and more disparate sentences and the incentivization of defendants who are innocent to plead guilty.<sup>39</sup>

**Cash bail, participatory fees for diversion programs, and for-profit community corrections.** Other critical issues related to criminal justice diversion that are emerging in national conversations revolve around financing and penalty features sometimes embedded in diversion programs. For instance, many programs charge participation fees to offset operational costs. Depending on how they are implemented, fees may result in disparate access to programs—one diversion program in New Orleans tripled the number of participants when the cost was reduced from \$1,200 to \$200 per person—or in unmanageable debt further incentivizing criminal activity that generates income to pay them.<sup>40,41</sup> Another example is the widespread use of cash bail systems intended to ensure appearance in court, an approach that has been shown to result in significant numbers of people with lower-risk profiles detained simply because of an inability to pay,<sup>42</sup> which the U.S. Department of Justice has indicated is unconstitutional.<sup>43</sup> Research has demonstrated that detaining individuals for even just a few days is correlated with greater rates of recidivism,<sup>44</sup> and some suggest that using risk assessments may better predict likelihood of appearance.<sup>45</sup> Finally, some propose that efficiencies promised by private, for-profit organizations performing community corrections functions, such as pretrial services, fee collection, and supervision, may be offset by lack of oversight, excessive fees and penalties, and the deferment of discretion,<sup>46</sup> which combine to hamper rather than support successful community reintegration and citizenship.

**Disproportionate minority contact with the justice system.** Another critical issue important to discussions of diversion is disproportionate minority contact (DMC). The persistent overrepresentation of minority groups, in particular African Americans, at every stage of justice system involvement has been well-documented and is linked to a complex array of factors.<sup>47</sup> In 2010, the Illinois Disproportionate Justice Impact Study (DJIS) Commission found racial disparities in arrest, prosecution, and sentencing for the same offenses. For example, the Commission's study found that among defendants with a low-level drug possession charge, African Americans were sentenced to prison at a rate almost five times greater than whites. The Commission acknowledged the need for further study on the impact of access to diversion and alternative sentencing programs.<sup>48</sup>

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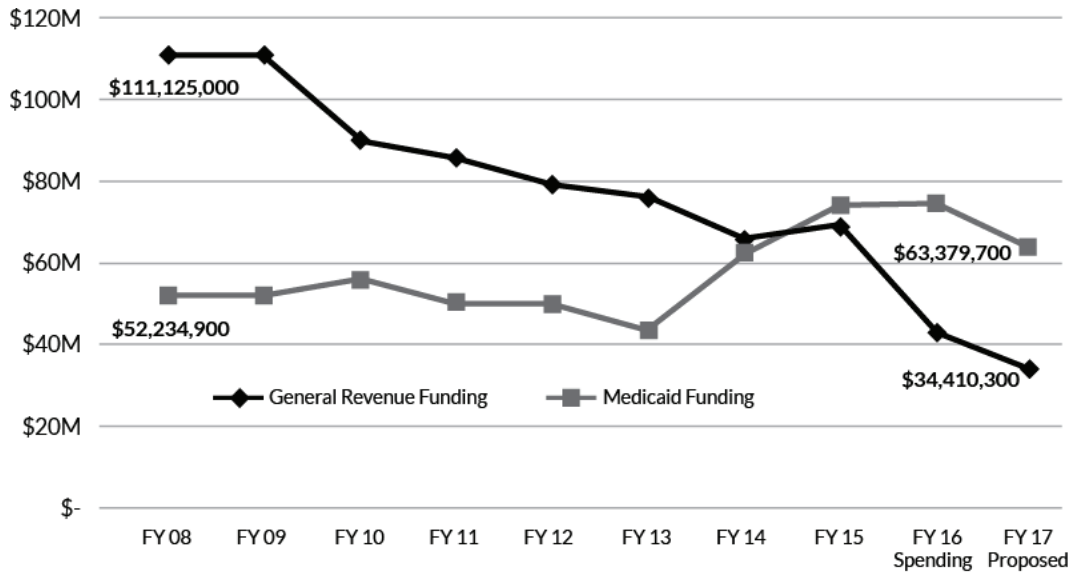
*The much greater prevalence rates of substance use and mental health conditions among people involved in the justice system compared to those in the general population necessitates assessments, linkage, and access to care as a component of diversion programs.*

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**Access to substance use and mental health treatment, medical care, and recovery support services, along with continuity of care during transitional periods.** Finally, an array of issues related to medical and behavioral health care access for justice populations are critically relevant to diversion. The much greater prevalence rates of substance use and mental health conditions among people involved in the justice system compared to those in the general population necessitate assessments, linkage, and access to care as a component of diversion programs. Ensuring access to care for individuals in these programs requires adequate community capacity, which may entail different strategies in rural areas than in urban or suburban areas. However, many jurisdictions lack adequate capacity. Illinois' overall treatment capacity, for example, has been severely diminished by funding cuts over the past decade. Between 2007 and 2012, the number of publicly funded treatment episodes available per 100,000 people in the state decreased by a greater percentage (52 percent) than in any other state.<sup>49</sup>



### Decreased Illinois State Funding for Substance Use Treatment, FY08-17



Source: Illinois Association for Behavioral Health, 2016<sup>50</sup>

There are various strategies that diversion programs and other stakeholders can employ to leverage resources for improved health and justice outcomes. Providing assistance and guidance in navigating the various payers, providers, and potential resources available to individuals involved in diversion programs can be a challenge, one addressed by Horton and colleagues (2015) in their resource guide for criminal justice and partner stakeholders interested in creating or expanding diversion initiatives.<sup>51</sup> Continuity of medical and behavioral health care as individuals move through different points of justice system involvement is essential to ensuring that any gains are not lost, and to prevent acute episodes—including drug overdose and even death<sup>52</sup>—and the high costs associated with emergency department care and recidivism. Services not typically accessible under private or public health insurance, such as certain types of substance use and mental health care, housing support, transportation assistance, and vocational training, are also critical components of successful diversion programs.

# A Survey of Prosecutorial Diversion in Illinois

## PROJECT OVERVIEW

Over recent decades, Illinois lawmakers have authorized a robust assortment of criminal justice diversion options designed to provide alternatives to traditional processes and to reduce the incidence of conviction and incarceration (see Appendix C for brief descriptions of statutory options). While these options are available to jurisdictions across the state, anecdotal evidence suggests they may be underutilized.<sup>53</sup>

The current project builds on CHJ's 2013 national survey, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*, setting out to explore more deeply the landscape of diversion in Illinois. To that end, between May and December 2015, project staff conducted a survey among prosecutors of diversion programs and practices operating in counties across the state, with the aim of informing program development, implementation of best and innovative practices, collaboration and knowledge exchange, and policy change designed to generate cost savings and achieve public health and safety goals.

**Defining diversion.** Over the past several decades, the term “diversion” has been used broadly and in a variety of ways, often inclusive of initiatives that divert people from jail—pre- or post-adjudication—or prison, but sometimes still result in a criminal conviction. Policies and practices that aim to divert individuals from arrest, jail, and prison are all critically important to any criminal justice reform efforts, and to the individuals, families, communities, and systems involved. However, to achieve specificity and consistency of meaning, and in recognition of the long-lasting hardships and costs created by the collateral consequences that accompany a criminal record, this project has adopted a definition of “diversion” that includes only those programs and practices that divert individuals from traditional case processing and justice system involvement in a way that affords the opportunity to avoid a criminal conviction on public record.

**Focus on prosecutors.** Along with the responsibilities they have to hold individuals accountable for criminal offenses and protect public safety, prosecutors are in a unique position to convene partnerships and build collaborative solutions to local criminal justice problems. They are often a driving force behind the development and implementation of innovative responses to overburdened court systems, overrepresentation at various points in the criminal justice system of people with behavioral health conditions, and high rates of recidivism. Their position gives them flexibility to influence and implement policies and strategies unique to the populations and crime patterns of their jurisdictions. This project was conducted with that understanding, and is focused on those initiatives that aim to narrow the front door of the justice system at the point of prosecutorial decision-making or through prosecutorial leadership and collaboration.

### Statutory Options for Diversion and Alternatives to Incarceration in Illinois

- **Drug School**  
55 ILCS 130
- **First Offender Probation**  
720 ILCS 550/10; 720 ILCS 570/401; 720 ILCS 646/70
- **Offender Initiative Program**  
730 ILCS 5/5-6-3.3
- **Second Chance Probation**  
730 ILCS 5/5-6-3.4
- **Probation with Designated Program Supervision**  
20 ILCS 301/40
- **Specialty/Problem-Solving Courts**  
730 ILCS 166; 730 ILCS 167; 730 ILCS 168
- **Adult Redeploy Illinois**  
730 ILCS 190/20
- **Accelerated Resolution Court**  
730 ILCS 169

*This project has adopted a definition of “diversion” that includes only those programs and practices that divert individuals from traditional case processing and justice system involvement in a way that affords the opportunity to avoid a criminal conviction on public record.*

**Methodology.** To gather detailed information about the range, variety, and scale of diversion programs and options operating in counties across Illinois, project staff developed a survey instrument consisting of 29 questions (see Appendix B). The survey collected quantitative and qualitative data about diversion program authorization, oversight, target population, goals, structure, services, outcomes, and evaluation. It also invited additional information and recommendations related to diversion policies, programs, or options in Illinois. Both paper- and web-based versions of the survey were offered. Pilot review of the instrument was conducted with prosecutors in two counties—Kane and Winnebago—to maximize understandability and usability.

The paper-based survey was distributed to prosecutors in the remaining 100 Illinois counties by U.S. mail in May 2015, and again to those who had not yet submitted a response in July 2015. It was accompanied by a letter co-signed by prosecutors in Kane and Winnebago counties to introduce and invite participation in the project. The letter included a URL to the web-based version of the survey.

Twenty-six survey responses describing 54 programs serving 37 counties were received; one additional program was deemed inappropriate for inclusion in the report because it did not qualify under the definition of diversion adopted by the project. Most responses indicated that the jurisdiction served by the program was the county. One respondent described a program operating in two counties (Greene and Scott). Several described programs serving some or all counties within judicial circuits (see below)



**Twenty-six survey responses received, describing 54 programs in 37 counties**

**RESPONDING JURISDICTION**

Calhoun	Lake	Peoria
Cook	Lee	Pope
DuPage	Livingston	Randolph
Ford	Macon	Sangamon
Greene/Scott	Macoupin	St. Clair
Hamilton/2nd Judicial Circuit*	Massac	Stark
Jackson	McHenry	Wabash
Johnson	Mercer	Winnebago/17th Judicial Circuit†
Kane	Morgan	

\* Eleven of 12 counties in the circuit: Crawford, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jefferson, Lawrence, Richland, Wabash, and White

† Both counties in the circuit: Winnebago and Boone

For each survey response received, project staff drafted a narrative summary presenting the information submitted. Every attempt was made to present information as provided, in a format consistent across submissions. Fidelity to the language and descriptions used by submitters was maintained, with one exception—use of the term “offender” was avoided to prevent the labeling of individuals who may not have been convicted. Full narrative program descriptions derived from survey responses are presented in Appendix A (organized by jurisdiction of submitter).

To address the potential for error during the migration of information from survey response to narrative summary, project staff sent a draft of each summary to the respective submitter in November/December 2015 and provided an opportunity for review and correction.

**Limitations.** Project staff did not validate information collected from survey respondents. Therefore, it is possible that reported information believed and intended to be accurate is not, in fact, fully accurate. Further, it is possible that any individual completing the survey did not report the totality of relevant information with regard to his or her jurisdiction’s portfolio of diversion programs, practices, and initiatives. Program nuances particular to any given jurisdiction or program may not have been captured by the survey questionnaire and therefore may not be fully reflected in the summary. Therefore, while the results represent a new compendium of detailed information, there is a reasonable likelihood that it is not comprehensive.

Because standard definitions and language have not been adopted among programs, it is also possible that the implied understanding or definition of a particular term in one program is inconsistent with the same term in another program. This limits the potential for definitive comparisons of similarities and differences between jurisdictions.

This report represents a point-in-time snapshot of diversion in Illinois, and does not incorporate programs that developed after the survey was disseminated and responses collected. Additionally, some respondents reported multiple diversion programs operating in their jurisdictions, but did not submit a survey response for all of them. The tabulations reflected in this report are based solely on those programs for which a survey response was completed. Finally, because the survey responses represent only a fraction of jurisdictions across the state, the results do not represent the characteristics, scale, or scope of all diversionary programs, practices, and initiatives in Illinois.

## SURVEY OBSERVATIONS

What follow here are observations resulting from the project’s analysis of 26 survey responses describing 54 diversion programs serving 37 counties in Illinois. These observations are not intended as a statistical analysis, but instead as a baseline for understanding how different jurisdictions throughout the state manage pre-sentence criminal justice populations and what types of diversion options are employed. They are intended to provide insight into how program leadership and staff view diversion, and to describe practical details to inform diversion efforts in other jurisdictions.

### **Observation 1: Programs define their goals not only through treatment and justice lenses, but also through individual and system lenses.**

Respondents were asked to articulate, in their own words, the goals of their program(s), and the target population(s) they intended to reach. The responses, particularly when paired with responses about program limitations and services accessed, represent the different perspectives brought to bear in developing justice programs. Nearly equal numbers of programs had stated goals of either: 1) linking to treatment of substance use or mental illness, 2) reducing recidivism, or 3) avoiding a conviction on the individual’s record. To a much lesser degree, programs reported goals of reducing admissions to the Illinois Department of Corrections or caseload reduction.

Similarly, when asked to describe their target population, some responded through the lens of clinical need (i.e., substance use or mental illness); some through the lens of offense type (i.e., drug, prostitution, non-violent); some through the lens of offense level (i.e., felony vs. misdemeanor); some through the lens of criminal history (i.e., first-time offenses only); and some through a combination of two or more.

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*The involvement of different stakeholders and systems suggests that programs should consider their impacts on public safety, public health, individual health and stability, and a multitude of other factors.*

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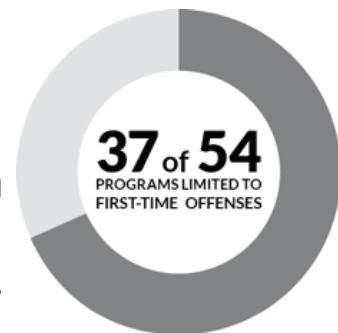
It should be noted that not stating a specific goal or target population did not rule out the possibility that a program was delivering certain services or focused on a particular group. For example, many programs indicated that eligibility was limited to particular individuals—such as those with low-level drug offenses—and almost all accessed substance use treatment, despite access to treatment not being a stated goal.

**Implications:** No one “lens” emerges as the correct or dominant one. Indeed, the involvement of different stakeholders and systems suggests that programs should consider their impacts on public safety, public health, individual health and stability, and a multitude of other factors. However, in an era of high expectations for positive outcomes, the ability to articulate, program for, and measure against realistic and definable goals is paramount. Evidence-based practices combined with local and national experience provide a statistical foundation on which realistic expectations and goals can be anchored. Diversion programs with loosely stated or difficult-to-measure goals such as “reduced recidivism” may struggle to demonstrate success that is meaningful to funders, stakeholders, or the general public.

**Observation 2: Most programs limit eligibility based on justice criteria—namely, offense or criminal history—and many are limited to first-time offenses.**

The surveyed programs were provided a list of criteria for exclusion from program eligibility, based on criminal history, offense type, or presenting need. Of those that responded: 37 programs were limited to individuals with first-time offenses; 32 were limited to those with non-violent offenses; 23 were limited to those with felony offenses; nine were limited to those demonstrating substance use or mental health needs; and seven were limited to those with misdemeanor offenses.

**Implications:** Limiting participation based on justice criteria appears to be heavily influenced by an intention to control risk. However, limiting participation in this manner (i.e., using offense history as a de facto substitute for a more formal risk assessment) may implicitly discount clinical need and the nexus between behavioral health issues and criminal behavior. This approach may likewise under-emphasize the reality of mental illness and addiction and incentivize targeting “low-hanging fruit,”—that is, individuals with low-risk profiles who appear “easy” to treat, but in fact may not benefit from treatment at all. This could also lead to net widening, whereby people who would otherwise appropriately and responsibly be deflected without services are instead involved in a program with intensive supervision and penalties for failure. Conversely, the same programs may disregard by design individuals who have more complex clinical profiles, and who are more likely to realize health and justice benefits from treatment.



### **Observation 3: Jurisdictions take advantage of available statutory options, and collaborate across agencies to develop programs.**

The responding programs reflected the wide variety of diversion options statutorily available in Illinois, as well as a strong commitment to collaboration. Thirty-five programs were established under statutory authority:

- Drug School Program—2 programs
- First Offender Probation—16 programs
- Pre-sentence Drug, Mental Health, and Veterans Courts—9 programs
- Second Chance Probation—6 programs
- Offender Initiative Program—2 programs

The remaining 19 programs emerged out of agency initiatives absent specific statutory authority, and the majority of those were deferred prosecution programs initiated by state’s attorneys’ offices.

Of the 53 programs that described their administrative oversight: 20 were overseen by a collaborative effort between two or more agencies; 19 were overseen by the state’s attorney’s office; nine by the local probation office; three by the local court; and one by local law enforcement. (One respondent indicated that the administrative oversight was unknown.)

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### *Statutory and non-statutory programs create a robust environment for cross-agency and cross-system collaboration.*

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**Implications:** Statutory and non-statutory programs create a robust environment for cross-agency and cross-system collaboration. Likewise, they offer a variety of models that allow stakeholders to identify and employ whichever one(s) make the most sense in their jurisdiction, given the variety of factors to consider, including the profile of their justice population, the capacity of justice and treatment agencies to collaborate, and more.

### **Observation 4: Jurisdictions explore diversion alternatives throughout the justice system continuum, and the prosecutorial stage offers many opportunities for intercept.**

The survey asked at which phase of justice involvement the diversion program acted as an intercept. As some programs follow individuals through multiple phases of justice involvement, single programs often reported multiple intercept points. Because the survey project was focused on state’s attorneys, responses skewed toward prosecution-oriented programs.

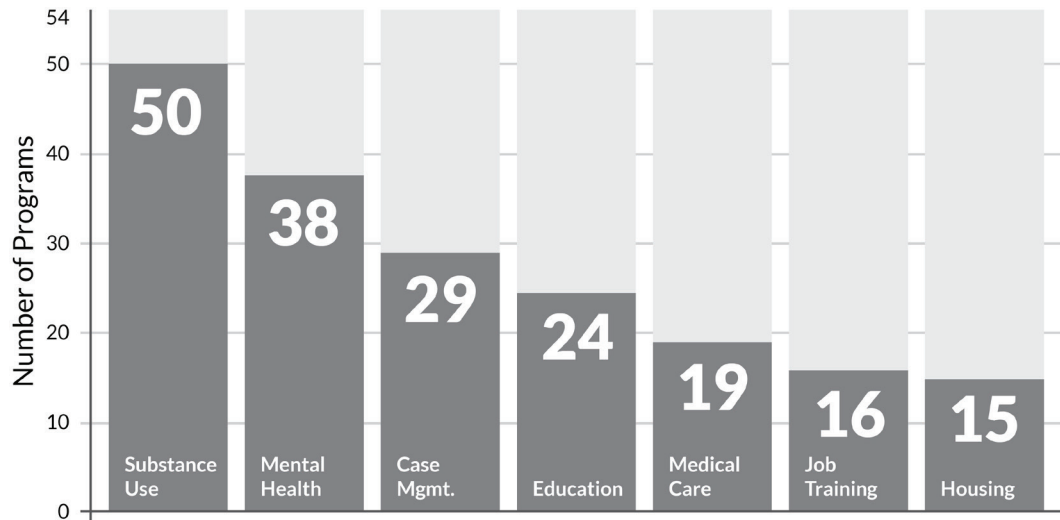
Among the responding programs: 19 of the programs categorized themselves as deferred prosecution; 18 occurred post-booking; eight took the form of pre-sentence specialty courts; seven were considered post-plea; five each occurred pretrial at the jail or law enforcement phases; four were considered conditional discharge; three occurred as part of plea negotiations; and two occurred pre-booking. Thirteen reported intercept points or processes other than those mentioned above. Many programs described themselves as occurring at multiple intercepts.

**Implications:** The wide variety of intercept points reported by survey respondents echoes what CHJ observed in its 2013 national survey report—that questions related to justice stage of diversion seem to defy responses describing distinct classification. How a program classifies itself appears to be influenced by local definitions and interpretations of justice terminology, and may be blurred by features of local processes.

**Observation 5: Most programs access clinical services, and many access other supportive services. However, many were not able to report the use of evidence-based practices.**

Programs were asked to report which types of community services could be accessed through the program and were provided a list from which to choose. Many reported accessing more than one service: Nearly all (50) accessed substance use treatment, 38 accessed mental health treatment, 29 accessed case management services, 24 accessed education services, 19 accessed medical care, 16 accessed job training, and 15 accessed housing.

**Number of Surveyed Programs Accessing Specified Services**



Programs were also asked about their use of evidence-based practices. The phrase “evidence-based practices” was not qualified as either clinical- or justice-based, leaving it to programs to interpret and describe. Twenty programs reported that they used evidence-based practices, while 32 either did not or were unsure.

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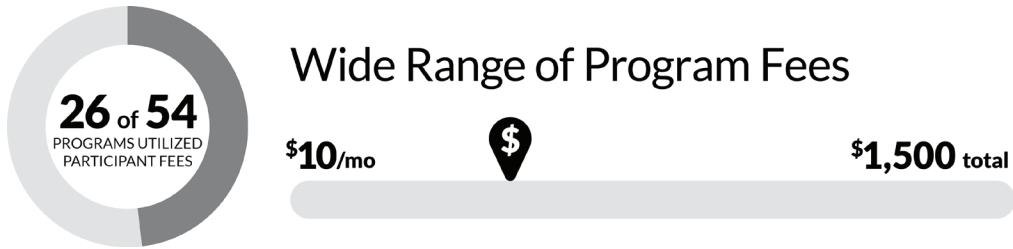
*Ultimately, diversion relies heavily on the justice authority’s trust that diverting an individual out of traditional justice processes will be more productive and more beneficial than not doing so.*

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**Implications:** The responses suggest an opportunity for cross-system education on evidence-based practices between treatment providers and justice practitioners, as well as the development of standards for using evidence-based practices. Ultimately, diversion relies heavily on the justice authority’s trust that diverting an individual out of traditional justice processes will be more productive and more beneficial than not doing so. Evidence-based practices provide a foundation on which to build that trust. Research grounds the practice in science, while informing stakeholders about the realities and complexities of the population in their charge.

**Observation 6: Programs use a variety of funding mechanisms, and many rely on local budgets and participant fees.**

Fifty of the 54 programs were able to report on their source of funding, and many had multiple sources. Of the 50 reporting, 28 stated they were funded through local budgets, either the municipality or the county. Five reported using state funding, and three received federal grants. Twenty-six programs received participant fees. In most of those instances, fees were specific to the program. One county, however, relied on a common court fee fund to underwrite the program. The fees ranged from as low as \$10 per month to as high as \$1,500 over the course of participation in a program, and several had sliding scales based on ability to pay.



**Implications:** Jurisdictions appear willing and have had some success exploring local (county or municipal) funding for diversion alternatives. Local funding may provide more sustainable resources and demand more accountability. Fees can be used to offset costs associated with establishing and operating diversion programs. However, depending on how they are implemented, their use may have the unintended consequence of reducing access to diversion options among low-income or indigent individuals. It can also lead to “justice debt,” which can extend involvement with the criminal justice system.

**Observation 7: While many programs report outcomes, in most cases those outcomes do not rise to a statistical measure that can be analyzed or compared on level footing with other programs.**

Most programs reported either some measure by which they gauged success or specific statistical outcomes demonstrating success. Some were broad and descriptive in nature, such as “reduced recidivism” or “successful completion.” Others were more explicit, providing specific statistical outcomes, such as a particular percentage completion rate or number of cases dismissed annually. However, only five out of 54 programs reported having undergone a formal outcome evaluation for either program success rate or cost savings, and three of those were from Cook County.

**Implications:** Because standards and rigorous methodology have not been applied for collecting and analyzing diversion program information, jurisdictions and the prosecutorial diversion field as a whole are challenged to collaborate toward program improvement and cross-jurisdictional learning. Without adoption and application of such standards, programs may remain unable to realistically assess their effectiveness or identify gaps and strengths.

## RECOMMENDATIONS

From this analysis of survey responses emerged a series of recommendations intended to guide criminal justice system practitioners and other stakeholders in the development, implementation, expansion, replication, and improvement of diversion programs. The recommendations are also intended to inform and motivate discussions and decisions made by policymakers and other decision-makers, as diversion programs continue to proliferate and drive the next wave of criminal justice reform.



## EVIDENCE-BASED, INDIVIDUALIZED DIVERSION

1. **Incorporate research findings and evidence-based practices into diversion programs.** Certain programs and approaches have been tested and found to result in desired health and justice outcomes, and others have been found to have no effect or undesired effects. Diversion initiatives should prioritize implementation of those evidence-based programs and approaches that have been found to result in positive outcomes, and cease programs and approaches that achieve no effect or counterproductive effects. Promising approaches should be explored when they can be justified.
2. **Apply resources to individuals and programs that achieve the greatest impact.** There is clear evidence that focusing resources on certain individuals with higher-risk profiles will reap greater impact than focusing on those with lower-risk profiles, and further, that over-supervising certain individuals with lower-risk profiles makes them more likely to recidivate. Given the scarcity of resources, and to maximize individual and program results, diversion programs should ensure their most efficient use, considering each participant's risks and needs, and prioritizing resource application in a manner cognizant of evidence-based and promising practices.

## COMMUNITY-BASED SERVICES

3. **Incorporate community-based behavioral health and social services into diversion programs, as appropriate, especially substance use and mental health services.** The need for community-based services to support diversion programs cannot be overstated. The high prevalence of substance use and mental health conditions among the justice-involved—including opioid use disorders—necessitates that programs include community treatment and services to address them. Policies and procedures for accessing benefits and conducting individual assessments and referrals must be in place, so that services can be appropriately matched and delivered.
4. **Leverage all available resources for community-based behavioral health and social services, and strongly advocate to protect and expand them.** Public funding for community-based treatment services across Illinois has been severely diminished over the past decade. In turn, this has reduced community capacity to treat individuals who can be managed in the community. Diversion programs should work collaboratively to ensure that the community-based service infrastructure is in place and that needed services are available and accessible, in urban, suburban, and rural areas. Jurisdictions should pursue all opportunities to access care that is afforded through Medicaid and other public and private sources.

## STANDARDIZED TERMINOLOGY, PROGRAM GOALS, AND EVALUATION

5. **Adopt standardized program goals, outcome and performance measures, and terminology.** A standardized framework for diversion program terms, goals, and outcomes—one which will still permit adaptation to local circumstances—would equip jurisdictions to identify problems, develop programs with clear goals, apply targeted interventions to address and achieve them, and communicate and consult with one another to provide assistance and further progress in the field. Resources such as *Measuring for Results: Outcome and Performance Measures for Pretrial Diversion Field*—published in 2015 by NAPSA and NIC—may provide useful frameworks to guide the development of such goals and outcome measures.

6. **Adopt standardized data collection and analysis models and mechanisms.** Data collection and analysis is imperative to understand whether diversion programs are effective in achieving goals, and to devise improvements. To support the development, improvement, and sustainability of diversion programs, data collection, analysis, and reporting must be prioritized and manageable. To further inter-program collaboration and knowledge transfer, it should be translatable across jurisdictions, and supported through training and technical assistance. The *Measuring for Results* document cited in recommendation number five may also provide useful frameworks for data collection and analysis.

## **COLLABORATION AND TRAINING**

7. **Develop a web-based, searchable directory of diversion programs in Illinois.** The directory should include program elements, goals, data collection and evaluation models and methods, outcomes, and any other information enabling cross-jurisdictional communication and consultation on problem-solving and effective approaches and practices.
8. **Develop opportunities for cross-system education, training, and technical assistance available to jurisdictions for the purpose of establishing, expanding, and improving prosecutorial diversion programs.** Providing support to practitioners who desire to develop or improve diversion programs will bring evidence-based and best practices to the process, promoting improved outcomes and efficient use of resources. Existing groups, associations, and forums—such as the Illinois Office of the State’s Attorneys Appellate Prosecutor, the Illinois Judges Association, the Illinois Association of Problem-Solving Courts (ILAPSC), and the Illinois Criminal Justice Information Authority (ICJIA)—should be engaged for purposes of education, training, and problem-solving.

## **CONCLUSION**

As jurisdictions across the country continue enacting criminal justice reforms designed to bring about less costly systems that create pathways to recovery rather than recidivism, diversion is being propelled to the forefront of national, state, and local program and policy conversations. This amplification of diversion as a viable and useful justice practice suggests new promise to transform encumbered systems and bring a culture of restoration to lives, families, and communities that have been eroded by justice involvement.

Many people who represent a low public safety risk can be diverted to programs in the community, stemming the tide of those coming into the system and thereby slowing the “revolving door” of justice system involvement. Diversion interventions can help prevent convictions that may permanently and severely hamper individuals’ chances of finding a job or getting an education, and reduce the number of people crowding county jails and state prisons.

As a growing field, there are many opportunities for improvement in diversion practices—in how programs are designed, implemented, and evaluated; in how data are collected and shared; and in ensuring that community services are available and accessible for those who need them, and as soon as they need them. The current survey project brings forth the robust array of diversion programs and practices underway in Illinois counties, and its recommendations offer a pathway toward realizing the new promise of diversion.

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