



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Pretrial Diversion

June 10, 2013

Forty-two states provide pretrial diversion alternatives to traditional criminal justice proceedings for persons charged with criminal offenses. Diversion programs address factors that contribute to criminal behavior of the accused, called criminogenic needs. Laws require that participation in diversion programs is voluntary and that the accused has access to counsel prior to making the decision to participate. Individuals are diverted prior to conviction and a guilty plea may or may not be required. Successful completion of the program results in a dismissal of charges.

In addition, state laws provide for pretrial diversion by creating programs based on offender needs, by authorizing state or local government entities to develop programs, or by permitting diversion based on charged offense.

It is the policy of the State of New Jersey that [pretrial diversion] should...

- (1) Provide applicants, on an equal basis, with opportunities to avoid ordinary prosecution by receiving early rehabilitative services or supervision, when such services or supervision can reasonably be expected to deter future criminal behavior by an applicant, and when there is apparent causal connection between the offense charged and the rehabilitative or supervisory need, without which cause both the alleged offense and the need to prosecute might not have occurred; or
- (2) Provide an alternative to prosecution for applicants who might be harmed by the imposition of criminal sanctions as presently administered, when such an alternative can be expected to serve as sufficient sanction to deter criminal conduct; or
- (3) Provide a mechanism for permitting the least burdensome form of prosecution possible for defendants charged with "victimless" offenses, other than defendants who were public officers or employees charged with offenses that involved or touched their office or employment; or
- (4) Provide assistance to criminal calendars in order to focus expenditure of criminal justice resources on matters involving serious criminality and severe correctional problems; or
- (5) Provide deterrence of future criminal or disorderly behavior by an applicant in a program of supervisory treatment. [§2C:43-12]

The most common type of diversion laws, in 38 states, are those that create programs to address specific needs. These include:

- Twenty-three states have programs that address substance abuse. These programs are available to people charged with drug or alcohol related offenses as well as defendants identified through risk and needs assessments as having substance abuse or addiction.
- Nineteen states allow diversion for people identified as having a mental illnesses related to their criminal behavior.
- Many of the veterans or active military who have become involved with the criminal justice system have substance abuse or mental health needs stemming from combat experiences. Eleven states allow participation in diversion programs specific to meet those needs.
- Worthless check diversion programs are authorized in 10 states. These programs allow first time violators to clear their record after paying all restitution and completion of a financial management skills class.

Ten states permit some domestic violence and child abuse offenses to be diverted. These laws generally require victims to agree to the diversion and involve classes dealing with parenting and anger management.

Problem-solving courts are a specific type of diversion program that provide intensive treatment, graduated sanctions and rewards, close monitoring by the court and other programming such as education or job training. Twenty-four states have authorized the use of drug, mental health, veterans and other types of these specialized courts for pretrial diversion. Six states have created drug courts as well as authorizing other types of drug diversion. In California it is mandatory that low-level drug offenders are diverted. This policy requires the defendant to plead guilty and participate in intensive community-based treatment under the supervision of probation officers. Another law allows courts to create a pre-guilty plea drug court where defendants remain under the supervision of the court. Local courts may choose which diversion program to utilize.

In lieu of, or in addition to, needs-specific programming, at least 14 states give broad authorization to local governments, prosecuting attorneys, or state courts to create and operate diversion programs. In Arizona, for example, diversion programs are administered by the county attorneys according to guidelines established by the prosecuting attorney's advisory council.

There also are 11 states that do not require a specific diversion program be created in order to operate pretrial diversion. Rather, these laws allow diversion based on the offense charged. In Tennessee a "qualified defendant" is one who has not previously participated in a diversion program, does not have prior convictions, is not charged with a felony, certain misdemeanor sex offenses, nor offenses committed by a government official while performing duties in an official capacity. Local prosecutors can, but are not required to, make participation in a rehabilitative programming part of the diversion agreement.

The chart below provides more information on state laws governing pretrial diversion.

Statutory Creation of Pretrial Diversion Programs

Legend

P-diversion program authorized;

C-problem solving court authorized;

PC-both problem-solving court and diversion program authorized.

			By Crimi					
State & Citation	Substance Abuse	Mental Health	Veterans / Active Military	Domestic Relations	Worthless Checks	Other	Diversion Discretion Assigned to	By Offense
Alabama								
§12-23A; Act	PC	Р		Р				
2013-361								
Alaska no								
statute								
located								
Arizona §13-							Prosecuting	
1810; §11-361					Р		attorneys' advisory	
							council	
Arkansas §16-								
98-201; §16-								
98-301 et	PC	Р					Judicial districts	
seq.; §5-4-901								
et. seq								
California	DC.	Р		Р	Р			81001 1
Penal Code	PC	۲		"	۲			§1001.1



State & Citation Abuse Health Ab				By Crimi					
Stote State Stat				/ Active			Other		By Offense
Colorado \$18- 1.3-101; \$13- 10-126; \$13-5- 1.44 Connecticut \$533-39C; \$543-56; \$54-56; \$465-38C Delaware 10 \$1024 Shufflind as \$15- 10-126; \$13-5- 10-126; \$									
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			By Crimi					
State & Citation	Substance Abuse	Mental Health	Veterans / Active Military	Domestic Relations	Worthless Checks	Other	Diversion Discretion Assigned to	By Offense
Louisiana		С						
§587.4								
Maine 4 §431;	С	С	С					
§433; §421								
Maryland no								
statute								
located								
Massachusetts			_					
276A §1 et.			Р					276A §2
seq.								
Michigan			_					
§600.1200 et			С					
seq.								
Minnesota								
§401.065;					Р			§401.065
§628.69								
Mississippi	_							
§99-15-105;	С						District Attorney	
§9-23-15								
Missouri								
§217.777;	С						Local jurisdictions	
§478.001 et.							,	
seq.								
Montana §46-								
16-130; §46-1-	С	С					Local prosecutors	
1104; §46-1-								
1204								
Nebraska §29-							Counties	
3601 et. seq.								
Nevada			Р					
§176A.280								
New	С							
Hampshire §490-G:2	C							
New Jersey								
§2C:43-12 et.							Supreme Court	
seq.							Supreme Court	
New Mexico								
no statute								
located								
New York CPL								
§216.05	Р	Р						
North Carolina								
§7A-793;	С							§7A-793
§15A-1341								3,,,,,,,,,
North Dakota								
no statute								
located								
Ohio							Prosecuting	
§2935.36;	Р	Р					attorneys &	
§2951.041	'	'					presiding judges	
Oklahoma 22						Property		
§991f-1.1,	С				Р	crimes	District attorneys	



		•	By Crimi	Diversion Discretion Assigned to	By Offense			
State & Citation	Substance Abuse	Mental Health	Veterans / Active Military					
§305.1; §471			_					
et. seq.								
Oregon								
§430.455 et.	Р		Р	Р	Р			
seq.; §135.881			r		r			
et. seq.								
Pennsylvania								
35 P.S. §780-	PC	С						
117; 42 P.S.	'`							
§916								
Rhode Island								
no statute								
located								
South Carolina	Р			Р	Р		Circuit solicitors	
§17-22								
South Dakota								
no statute								
located								
Tennessee								
§40-15-101 et.		С						§40-15-105
seq.; §16-15-								
5013 e								
Texas §616.001 et.								
seq.; 617.001		С	С					
et seq.								
Utah §77-2-5								
et. seq.								§77-2-9
Vermont 3								
§164							Attorney general	
Virginia §18.2-								
254.1		С						
Washington								
§10.05;								
§2.28.170 to	PC	PC		PC				
190;								
§26.12.250								
West Virginia								
§62-15;	С							
Wisconsin								
§971.41;				Р	Р			
§971.37								
Wyoming no								
statute								
located]						