

# THE EVIDENCE-BASED PRETRIAL DIVERSION MODEL

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# SESSION GOALS

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- ⦿ Describe pretrial diversion's evidence-based model of best and promising practices.
- ⦿ Discuss how pretrial diversion fits within NIC's *Evidence Based Decision Making Framework (EBDM)* .

# THEME

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*Evidence-based pretrial diversion programs are a vital part of an effective criminal justice system. Pretrial diversion programs that follow accepted best practices in management and programming offer a meaningful intervention to criminal behavior by low-risk, non violent defendants and help systems target court, prosecutorial and corrections resources to more serious cases and defendants.*



*Pretrial Diversion* is any voluntary option that provides alternative criminal case processing and ideally results in a dismissal of charges. Pretrial diversion programs have as an objective:

*Reducing the likelihood of future arrests through appropriate interventions based on thorough assessments and intervention plans tailored to an individual defendant's risks and needs*

and/or

*Conserving/redirecting criminal justice resources to more serious crimes by providing a meaningful response to non-violent defendant conduct*

# PRETRIAL DIVERSION

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Pretrial diversion programs feature:

- ⦿ *Uniform eligibility criteria*
- ⦿ *Structured delivery of services and supervision; and*
- ⦿ *Dismissal—or its equivalent—of pending criminal charges upon successful completion of the required term and conditions of diversion.*

(NAPSA Performance Standards and Goals for Pretrial Diversion/ Intervention (2008). This definition is supported by the upcoming ABA Standards, Federal and State statutes, and ongoing pretrial diversion program practices)

# THE BENEFITS

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- ⦿ Provide an early opportunity to interrupt cycle of crime and promote public safety through expedited dispositions or brief and effective interventions focused on behavioral change
- ⦿ Modify behaviors linked to further criminal activity
- ⦿ Conserve/redirect criminal justice resources to more serious crimes and higher-risk defendants
- ⦿ Enhance personal accountability and responsibility
- ⦿ Utilize intermediate sanctions to reduce reliance on jail as a sanction

# THE NEED

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- In 2010, state courts processed over 21 million criminal cases—80% of which were misdemeanors.
- Most felony filings involved nonviolent offenses such as drug charges (29%) and property crimes (28%).
- Jail beds usually are one of the top three budget expenses for most counties. The National Association of Counties estimates that American counties have experienced a 500% increase in corrections expenditures since 1982.
- 62% of the nearly 13 million jail admissions between June 2009 and June 2010 involved pretrial detainees and two-thirds of pretrial detainees were held on non-violent property, drug or public order crimes.



# THE EVIDENCE-BASED MODEL

# BEST AND PROMISING PRACTICES

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- ◎ Theory, law and practice
- ◎ Practitioner experience
- ◎ Empirical evaluation findings

Nine core elements

# CORE ELEMENTS:

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- ① #1: Broad, equitable and objective diversion eligibility criteria, applied consistently at multiple points of case processing
- ② #2: Uniform and validated risk and needs assessment to determine the most appropriate and least restrictive levels of supervision and services needed
- ③ #3: Intervention plans tailored to individual participant risks and needs and developed with the participant's input

# CORE ELEMENTS:

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- ④ #4: Graduated responses short of termination as responses to participant behavior
- ④ #5: Defendant access to defense counsel before the decision to participate in pretrial diversion
- ④ #6: Formalized cooperative agreements between the pretrial diversion program and key stakeholders to assure program continuity and consistency

# CORE ELEMENTS:

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- ⦿ #7: Specific due process protections incorporated into programming
- ⦿ #8: Maximum possible privacy protections for participants and program records
- ⦿ #9: Independent program evaluations

# ELIGIBILITY CRITERIA

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Broad, equitable and objective, applied early and consistently at multiple points of case processing. Criteria should include as many appropriate defendant populations and be consistent with the *sequential intercept model* of considering program placements whenever warranted by the defendant's most current situation or the current nature of adjudication.

# RISK AND NEEDS ASSESSMENT

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- ◎ Programs use assessments to identify a defendant's risk of future arrest and the level and type of supervision and services needed to reduce that risk. Risk and needs assessments determine *the most appropriate and least restrictive* levels of supervision and services needed
- ◎ Risk and needs assessment validation ensures that the instrument actually measures and weighs factors associated empirically with recidivism or diversion noncompliance

# INTERVENTION PLANS

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- ◎ Tailored to individual participant's risks and needs (gathered through assessment) and developed with the participant's input
  - Conditions relate to reducing the risk of future arrests and can include attending treatment for drug abuse, alcohol abuse, mental health problems, or other specific need
- ◎ Ensure against excessive conditions
  - “Over-programming,” especially of lower-risk defendants, often leads to more technical violations with no improvement of therapeutic outcomes



# GRADUATED RESPONSES

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- ◎ Swift, certain and relevant responses to supervision noncompliance to reduce the likelihood of future infractions
- ◎ Administrative responses short of program termination
  - Increasing community service hours
  - Modifying the diversion contract or level of supervision
  - Changing drug testing or treatment requirements

# DEFENDANT ACCESS TO COUNSEL

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- ⦿ Standards 2.2 and 4.1
- ⦿ Participation is voluntary and must be based on the defendant's understanding of possible rewards and sanctions
- ⦿ Access to counsel assures that the defendant can discuss his or her legal options and provides the information needed for an informed decision

# FORMALIZED COOPERATIVE AGREEMENTS

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- ⦿ Formal written agreements with criminal justice and service provider partner agencies that outline roles and responsibilities of all parties
- ⦿ With a written agreement in place, successive prosecutors, administrative judges, and even new diversion program directors, are less likely to change the prescribed procedures
- ⦿ Agreements also provide transparency about the “rules” governing diversion and consistency in treatment of participants

# SPECIFIC DUE PROCESS PROTECTIONS

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- ◎ Judicial review of prosecutorial decisions
  - To deny pretrial diversion placements and to terminate program participation
  - Appropriateness of diversion conditions
  - Use of program information following termination
- ◎ Substantive due process
  - whether prosecutors exercised discretion fairly when denying pretrial diversion and terminating agreements
  - whether conditions of supervision or treatment were actually proper

# SPECIFIC DUE PROCESS PROTECTIONS

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- ◎ At the least, promising practices afford defendants
  - the right to review prosecutorial decisions to deny pretrial diversion placement
  - written reasons for decisions to terminate pretrial diversion placements
  - a right to challenge a termination action

# PRIVACY PROTECTIONS

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Guarantee that no information gathered during diversion application or participation will be admissible as evidence in the diverted case or in any subsequent civil, criminal or administrative proceeding

# INDEPENDENT PROGRAM EVALUATION

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- ⦿ 87 percent of NAPSA diversion survey respondents maintained performance measurement data
- ⦿ One-third had participated in a study of program recidivism
- ⦿ 28 percent had commissioned an independent program evaluation

# PRETRIAL DIVERSION WITHIN AN EVIDENCED-BASED FRAMEWORK

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# THE EBDM FRAMEWORK

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The National Institute of Correction's *Evidence-Based Decision Making Framework* is a system wide effort (arrest through disposition/discharge) that encourages collaborative, evidence-based decision making and practices in local criminal justice systems. The initiative is grounded in two decades of research on the factors that contribute to criminal reoffending and the best methods to interrupt the cycle of reoffense.

## PURPOSE:

To equip criminal justice policymakers in local communities with the information, processes, and tools that will result in measurable reductions of pretrial misconduct and post-conviction reoffending.

# THE EBDM FRAMEWORK

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## GOAL:

Test a “Framework” for evidence-based decision making at the local level using evidence to inform decisions that lead to *risk* and *harm* reduction.

- Affirm existing practices that have been demonstrated to be effective
- Inspire and challenge practices that can be improved
- Create tools and processes that can be replicated elsewhere
- Address those thorny issues that are barriers to advancement

# THE EBDM FRAMEWORK

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## OUTCOMES:

- Fewer crimes
- Reduced erosion of property values
- Less money spent on the justice system
- Increased sense of safety
- Less financial loss by victims
- Greater confidence by citizens in the CJS

# THE EBDM FRAMEWORK

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## WHY EBDM:

- ⊙ There is a growing body of evidence that can (and does) inform justice system agencies' performance and increase effectiveness
  - Validated assessment tools predict pretrial misconduct and re-offenses by sentenced offenders more effectively than professional judgment alone
  - Recidivism rates can be reduced significantly by interventions (supervision and programming) matched to risk level
    - Limited interventions for **low risk**
    - Appropriate programming and level of supervision for **medium and high risk**

# THE EBDM FRAMEWORK

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## WHY EBDM:

- When *criminogenic needs* are targeted through intervention and treatment, the best results are achieved
- Misconduct can be diminished with *swift, certain, and proportionate responses*
- Incentives and *positive reinforcement* are effective techniques in promoting behavioral change
- Programming provided in a *community setting* tends to get better results
- *Sanctions* by themselves without programming do not contribute to recidivism reduction

# PRETRIAL DIVERSION WITHIN THE EBDM FRAMEWORK

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Two critical areas for future growth in EBDM are *charging* and *pretrial status* decisions. These are critical gaps since these decisions effect nearly every other resulting outcome.

The prevalence of non-violent charged defendants on America's court dockets and in its jail beds suggests that a greater number of defendants could be suitable for alternatives to adjudication.

Pretrial risk research shows that many defendants exhibit criminogenic issues such as drug use, mental health issues, and poor vocational skills that might be better addressed through alternative problem-solving programs.

*The objective for practitioners should be to expand the types of programs available and the system's knowledge of truly effective alternatives.*

# PRETRIAL DIVERSION WITHIN THE EBDM FRAMEWORK

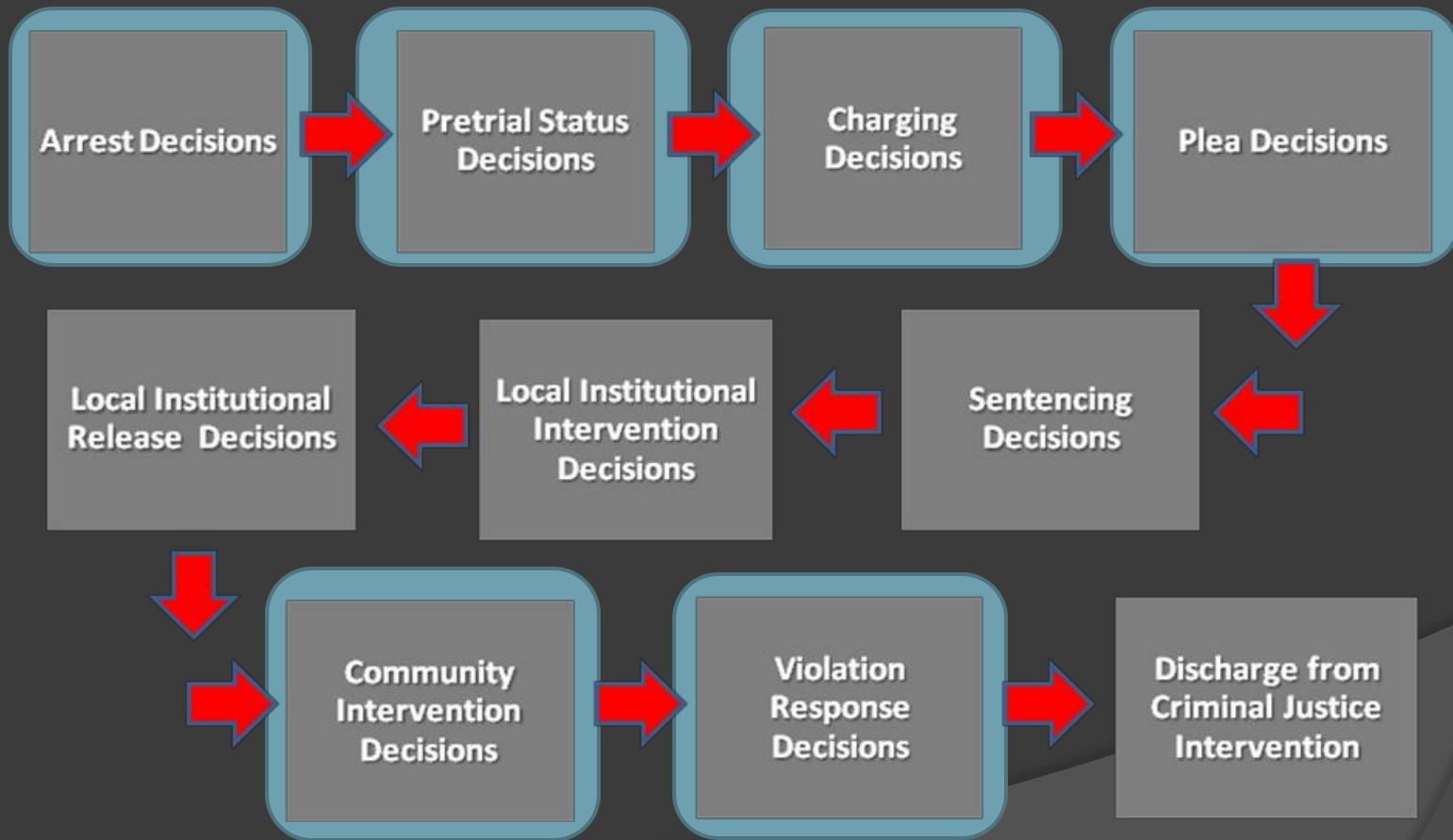
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Pretrial diversion dovetails charging and pretrial release decision making. Pretrial diversion programs can provide a better sanction to nonviolent criminal behavior than traditional adjudication, usually by addressing the underlying social and psychological issues behind criminality. Diversion programs offer defendants programming (with close supervision) to redress criminal behavior (for example, community service, restitution and mediation) or help reduce the risk of future criminality (counseling, substance abuse treatment, mental health services). Often, diversion criteria are broader than that of newer problem-solving efforts, thereby exposing more and more varied defendants to this alternative.

*Effective diversion programming as part of the overall EBDM Framework will help localities provide a meaningful intervention to criminal behavior far sooner in the process, target court, prosecutorial and corrections resources to more serious cases and defendants, manage growing case dockets, and ease the high cost of jail operations.*

# THE EBDM FRAMEWORK

## Key Decision Points





# RECAP

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- 1. Diversion provides a meaningful intervention to criminal behavior by low-risk, non violent defendants and helps justice systems target resources to more serious cases and higher-risk defendants.*
- 2. Diversion programming includes several best and promising practices, several of which mirror evidence-based practices found in other criminal justice interventions.*
- 3. Diversion programming based on these best and promising practices should be a common and vital component of all evidence-based justice systems.*

# FOR MORE INFORMATION

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*National Association of Pretrial Services Agencies*

<http://napsa.org>

<http://napsa.org/diversionmain.html>

*National Institute of Corrections:*

<http://nicic.gov>

<http://nicic.gov/EBDM>

*Pretrial Justice Institute*

<http://pretrial.org>