



# PROSECUTOR-LED DIVERSION

## Defense Attorney Fact Sheet

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### What is Prosecutor Led Diversion?

Prosecutor-Led Diversion programs are characterized as diversion programs where prosecutors are responsible for deciding:

- What the eligibility criteria are for a given program,
- If a diversion offer is made in a given case,
- What conditions must be met to complete the program, and
- If a program participant has successfully completed those conditions.

It is not unusual for multiple criminal justice system partners to have input on these important decisions as many such programs involve cross-agency partnerships. In a prosecutor-led diversion program, however, these responsibilities are primarily exercised by the prosecutor.

### Intro

A prosecutor-led diversion program can provide offenders with a critical opportunity to avoid a criminal conviction and help them turn their lives around. It can also help them avoid the collateral consequences of a conviction, such as increased difficulties in getting a job, finding housing, obtaining public benefits, or receiving student financial assistance. As such, diversion offers appropriate candidates with the hope of counseling, treatment, and engagement, rather than simply punishment and incarceration.

The creation of a new prosecutor-led diversion program allows prosecutors and defense counsel to collaborate in developing an alternative disposition option that better meets the needs of the affected stakeholders (victims, offenders, and the public) without having to sacrifice their professional and ethical responsibilities to the people that they represent. Defense counsel are an important resource for prosecutors to understand what an offender's needs are and how they can be met, why a client may be an appropriate diversion candidate, and what kind of diversion programming a client may be more inclined to accept. These insights can result in the design of a better program and one that more individuals are willing to opt into.

## Top ten things that Defense Attorneys should know:

1. Across the United States, the population of incarcerated individuals has increased while resources to run correctional facilities have stagnated or decreased. This confluence of circumstances makes the bench, police and prosecutors receptive to diversionary alternatives.
2. Diversion programs and procedures may be spelled out in statutes or be informal agreements. Defense attorneys best serve their clients by engaging prosecutors to find diversion programs best suited for people facing charges.
3. There are programs tailored to address specific criminal or disruptive behavior. Some jurisdictions, however, do not allow repeat offenders, or people facing violent crime or felonies to enter redirection programs.
4. Some programs require the use of risks and needs assessment tools while others do not. Before participating in a diversion program, some jurisdictions require a meeting with program counselors to determine if the program is a good fit for the defendant. In these meetings, the defendant may be asked lifestyle questions, and social connections may also be evaluated. Responses are scored against empirical standards to determine suitability of program to your client's needs.
5. Some programs require a guilty plea prior to enrollment, others do not. Defense attorneys should engage prosecutors and the court system to shape and inform diversionary programs, their procedures and other elements.
6. Cost of diversion programs may sometimes be higher than a fine. This cost may still rise after paying restitution and other programmatic costs.
7. Individuals may enter diversion before arrest, pre-trial or post-trial.
8. Consequences for dropping out of a program may be more punitive than original charges. Failure to complete program requirements may lead to enhanced charges, but some jurisdictions allow for a cap on punishment during diversion negotiations.
9. Diversion is sometimes not the end of the road. Successfully completing a diversion requirements may mean reduced charges or dismissal of charges.
10. While some programs have automatic expungement or sealing of records, others do not. Check if your jurisdiction requires defendants to file a request for their records to be sealed.

## Frequently Asked Questions

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### •What is Diversion?

Diversion is a decarceration strategy that focuses on keeping certain people facing charges out of jail and off a strained criminal justice system. Low level offenders, people facing mental health or addiction challenges are some of the major groups considered for diversion.

### •Why Diversion?

Diversion programs provide a second chance while addressing while correcting behavior. In the midst of an increasing jail and prison population and a limited supply of resources to run correctional facilities, police, judges, prosecutors, defense and other criminal justice partners have realized that locking people up is neither rehabilitative nor beneficial to the individual or society.

### •What kinds of programs should I consider for my client?

Different off-ramping options are available in different jurisdictions. Furthermore, while some programs are spelled out by statutes, others are informal. Whether pretrial or post-adjudication, consider the consequences for dropping out of the program, disposition once client concludes program, cost of participating in the program among others. Choosing a good fit for a client requires research into different programs available in your jurisdiction.

### •Are there limits on who can participate?

Jurisdictions may place limitations on who may participate in diversion programs. Some programs may not allow repeat offenders or people facing violent crime charges. Additionally, some diversion programs are specifically tailored towards addressing specific disruptive or criminal behavior like driving under the influence or truancy.

### •What should I consider when advising a client on a program?

Not all diversion programs are created equal. Some diversion alternatives require a guilty plea while others do not. Additionally, some programs may not offer dismissal of all charges as an acceptable disposition, but offer reduction, probation or other supervision. Competently informing a client requires research into different programs available in your jurisdiction.

