



NATIONAL CONFERENCE *of* STATE LEGISLATURES

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Pretrial Diversion

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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.

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

State & Citation	By Criminogenic Need						Diversion Discretion Assigned to	By Offense
	Substance Abuse	Mental Health	Veterans / Active Military	Domestic Relations	Worthless Checks	Other		
§1000 et. seq.; §1001 et. seq.								
Colorado §18-1.3-101; §13-10-126; §13-5-144			C			Prostitution		§18-1.3-101
Connecticut §53a-39c; §54-56e; §54-56i; §54-56l; 46b-38c	P	P	P		P			§54-56e
Delaware 10 §1024				P				
District of Columbia no statute located								
Florida §397.334; §948.08; §948.16; §944.16; §394.47891; §832.08	PC		PC		P	Prostitution		§948.08(6)
Georgia §42-8-80 et. seq.; §15-18-80 et. seq.; §15-1-16 et. Seq.		C					Prosecuting attorney for judicial circuit	§42-8-80
Hawaii no statute located								
Idaho §19-5601 et. seq.		C						
Illinois 730 §166/1 et. seq., §167/1 et. seq., §168/1 et. seq.; 720 §5/17-1b	C	C	C		P			
Indiana §11-12-3.7-7	C	C	C	C			Judicial Center	
Iowa §708.2B; §907.3				P				§907.3
Kansas §12-4414; §22-2907	P			P			City Attorney	
Kentucky §533.250; HMHC §1-24; ULCR §1-24	P	C*						

State & Citation	By Criminogenic Need						Diversion Discretion Assigned to	By Offense
	Substance Abuse	Mental Health	Veterans / Active Military	Domestic Relations	Worthless Checks	Other		
Louisiana §587.4		C						
Maine 4 §431; §433; §421	C	C	C					
Maryland no statute located								
Massachusetts 276A §1 et. seq.			P					276A §2
Michigan §600.1200 et seq.			C					
Minnesota §401.065; §628.69					P			§401.065
Mississippi §99-15-105; §9-23-15	C						District Attorney	
Missouri §217.777; §478.001 et. seq.	C						Local jurisdictions	
Montana §46-16-130; §46-1-1104; §46-1-1204	C	C					Local prosecutors	
Nebraska §29-3601 et. seq.							Counties	
Nevada §176A.280			P					
New Hampshire §490-G:2	C							
New Jersey §2C:43-12 et. seq.							Supreme Court	
New Mexico no statute located								
New York CPL §216.05	P	P						
North Carolina §7A-793; §15A-1341	C							§7A-793
North Dakota no statute located								
Ohio §2935.36; §2951.041	P	P					Prosecuting attorneys & presiding judges	
Oklahoma 22 §991f-1.1,	C				P	Property crimes	District attorneys	

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

*Programs are authorized only for specific local governments.