**United States Existing National Level Mechanisms for**

**Alternative Measures to Conviction or Punishment for People with Mental Health Disorders, Including Substance Use Disorders, in Contact with the Criminal Justice System**

**April 2021**

The United States has extensive experience with alternative measures to conviction or punishment for people with mental health disorders, including drug use disorders, in contact with the criminal justice system. While the Federal government is supportive of these efforts, the majority of these efforts are designed and implemented at the state and local levels. Since the 1970s, the Federal government has provided direct support for state and local alternatives to incarceration (ATI) programs, has initiated numerous pilot and research grant programs, and has further funded program evaluations and disseminated research results and best practices. The Federal government also has a critical role in setting criminal justice policy priorities for the departments and agencies that fund and support ATI programs. In fact, the Biden/Harris Administration, in its recently released Statement of Drug Policy Priorities, specifically highlights that “people should not be incarcerated for drug use, but should be offered treatment instead.”[[1]](#endnote-2)

ATI programs are cost-effective, evidenced-based interventions that enable individuals from arrest, to court, to prosecution, to community supervision, to reentry from incarceration access to community-based treatment for people with substance use disorders (SUDs), mental health disorders, or both. The goal of ATI programs is to prevent or minimize further progression within the criminal justice system for individuals with SUDs. ATI programs can be offered to individuals before an arrest, at an initial court hearing, within a correctional facility, at the point of re-entry, and through community correction services such as probation. These initiatives promote collaboration between health and justice ministries and accelerate political discussions on sentencing and justice reform. Ultimately, ATI programs effectively address some of the underlying causes of crime, thereby reducing the 1) likelihood of reoffending, 2) rate of incarceration, and 3) collateral consequences of justice system involvement.

The U.S. government, particularly through the Departments of Justice and Health and Human Services, has sought to increase access to a range of ATI programs, to expand innovative pilot programs, and to identify and disseminate best practices. The National Institute on Drug Abuse (NIDA) and the National Institute of Justice (NIJ) have developed a rich portfolio of research and evaluation related to ATI programs, including pre-arrest diversion and deflection initiatives, treatment courts and other therapeutic courts, work release and day reporting centers, and reentry programs following release from jail or prison.[[2]](#endnote-3) To complement these research activities, the Bureau of Justice Assistance (BJA) has supported the implementation of diverse and innovative ATI programs throughout the United States. The U.S. Department of State, through its international assistance programs led by the Bureau of International Narcotics and Law Enforcement Affairs, has promoted best practices through exchanges and through the provision of technical assistance to create ATI programs focused on treatment for those with SUDs. The Federal government, through its support for research and pilot programs, has developed a portfolio of screening, diagnostic, and treatment tools to ensure that an individual receives the appropriate treatments or services in criminal justice settings.

Effective ATI programs for people with SUDs requires accessible evidence-based treatment.[[3]](#endnote-4) For persons who are incarcerated, the United States supports SUD treatment with connected reentry treatment capacity, including access to medication assisted treatment and ongoing care and support in the community. All persons who are diagnosed with a SUD should receive treatment to break the cycle of addiction, arrest, conviction, and incarceration – a cycle which destroys families and communities, threatens public safety, and imposes significant public fiscal burdens. A diagnostic assessment capability is a critical component of any evidence-based ATI program for those affected by a SUD. Each person requires individual assessment in order to ensure that appropriate treatment or services are provided. NIDA maintains a list of recommended and widely accepted diagnostic tools.[[4]](#endnote-5)

Some models for ATI programs require specific legislative authority, although others can operate under the existing discretion of judges, prosecutors, a law enforcement or other criminal justice system personnel. In instances where additional legislative authority is necessary, an example of model legislation that establishes the authority for ATI programs can be found in the National Alliance for Model State Drug Laws’ Model Criminal Justice Treatment Act.[[5]](#endnote-6) This model legislative language calls for opportunities for intervention at each stage of the criminal justice process.

**1. Measures at pre-arrest stage (e.g., deflection, pre-arrest diversion, co-responder deflection, administrative sanctions, citations in lieu of arrest, citations with treatment)**

During the past decade in the United States, there has been a growing interest in “front-end diversion,” “deflection,” “pre-arrest diversion,” or “first responder diversion.” There are approximately 850 programs in the United States.[[6]](#endnote-7) These programs enable police, paramedics, crisis intervention teams, peer recovery coaches, or other first responders to keep at-risk individuals out of the criminal justice system by linking them with SUD treatment, mental health services, and other support services instead of arrest. Deflection also applies to encounters with people who are not facing arrest but based on their substance use or mental health issues would benefit from a “warm handoff” connection to treatment, housing, and support services in lieu of taking no action.

Measures taken at the pre-arrest stage allow for early intervention to reduce the number of people who enter the criminal justice system in the first place. Police and other first responders target deflection programs at individuals whose behavioral health issues place them at chronic risk for exposure to arrest but can otherwise be safely treated with community-based treatment, housing, recovery support, or other social services.

Deflection at the pre-arrest stage is unique because it relies on accessing established community services and resources directly, as opposed to later stages of ATI programs that require these services to be available within the criminal justice system. This is a critical distinction because current evidence indicates that even three days in jail for people who are a low to moderate criminogenic risk increases their recidivism risk by forty percent.[[7]](#endnote-8) The arrest and incarceration of those who can be better helped through evidence-based substance use disorder and mental health care actually increases crime.

In the United States, the five Pathways to Deflection and Pre-Arrest Diversion have been adopted by the U.S. Department of Justice to describe the various approaches that first responders can use to connect individuals to treatment, housing, and other social services. These all occur at the pre-arrest stage and are as follows:[[8]](#endnote-9)

* **Self-Referral:** An individual voluntarily initiates contact with a first responder (a law enforcement, fire services, or EMS professional) for a treatment referral (without fear of arrest) and receives a warm handoff to treatment.
* **Active Outreach:** A law enforcement officer or other first responder identifies or seeks out individuals in need of SUD treatment; a warm handoff is made to a treatment provider, who engages them in treatment.
* **Naloxone Plus:** A law enforcement officer or other first responder engages an individual in treatment as part of an overdose response.
* **Officer Prevention Referral:** A law enforcement officer or other first responder initiates treatment engagement, but no criminal charges are filed.
* **Officer Intervention Referral:** A law enforcement officer or other first responder initiates treatment engagement; charges are filed and held in abeyance or a citation is issued.

Communities may develop deflection or diversion programs tailored to their unique needs and resources that involve hybrid or innovative models that are combinations of the five pathways identified above.

Furthermore, eight U.S. communities were selected to serve as mentor sites for law enforcement/first responder diversion and referral program mentoring initiatives. These sites represent a wide variety of diversion pathways.[[9]](#endnote-10)

* Huntington, West Virginia
* Philadelphia, Pennsylvania
* Lake County, Illinois
* Plymouth Country, Massachusetts
* Colerain Township, Ohio
* Blue Earth Country, Minnesota
* Seattle, Washington
* Pima County, Arizona

Some communities may develop law enforcement deflection/first responder diversion programs tailored to their unique needs and resources that involve hybrid or innovative models that are combinations of the five pathways.

Another ATI focused on the pre-arrest stage is the **Crisis Intervention Teams (CIT) International** model. This model creates connections between law enforcement, mental health providers, hospital emergency services and individuals with mental illness, which may include co-occurring substance use disorders, and their families. Through collaborative partnerships and intensive training, CIT improves communication, identifies mental health resources for those in crisis and contributes to community safety. Diversion programs such as CIT reduce arrests of people with mental illness and increase the likelihood that individuals will receive mental health services.[[10]](#endnote-11) [[11]](#endnote-12) CIT programs seek to avoid arrest and prosecution and to divert individuals directly to behavioral health services. A great deal of information about this intervention is available at the CIT International web site.[[12]](#endnote-13)

As with other parts of ATI where national organizations emerge to represent various sectors of the justice and health intersect, **The Police, Treatment, and Community Collaborative (PTACC)**, formed in the United States as the national voice of the field of deflection and pre-arrest diversion, is comprised of 45 national and international organizations. PTACC works to grow and develop the entire field of deflection and diversion, across all five pathways and all approaches to maximize opportunities for communities to implement ATIs.

Finally, there are also early intervention models that do not include law enforcement. The **CAHOOTS (Crisis Assistance Helping Out On The Streets) model** is a leading example first developed in Eugene, Oregon in 1989. [[13]](#endnote-14) In this model, emergency response calls are triaged to determine when police are absolutely necessary versus when it is more appropriate to send healthcare professionals without police. Similar to the CIT model, CAHOOTS was designed to increase the safety of everyone involved in a crisis situation and research the full range of social service interventions that can occur prior to formal engagement of law enforcement.

**2. Measures at pretrial stage (e.g., caution, conditional bail, conditional dismissal with**

**referral to education or treatment)**

**Treatment Alternatives for Safe Communities (TASC):** TASC, based in Chicago, promotes multiple avenues to connect court systems to community-based treatment and related services. Central to the model is clinical case management to conduct assessment of individuals’ needs and to ensure smooth transition of the client through each phase of the entire journey through the justice system and re-entry into the community. Information on key elements of this program can be found on TASC’s website,[[14]](#endnote-15) and details on how to implement other health/justice collaborations is available at its Center for Health and Justice.[[15]](#endnote-16) The TASC site also includes information on deferred prosecution, jail discharge management, and problem solving courts.

**Pretrial Supervision Programs**

**Pretrial Diversion:** A wide variety of pretrial diversion programs allow justice-involved individuals to avoid a criminal conviction and to have their cases dismissed in return for performing community service, engaging in treatment, or accessing other support services. [Project Reset](https://www.courtinnovation.org/programs/project-reset) is a diversion program for minor crimes, offering participants the opportunity to resolve their cases without ever stepping foot in a courtroom[[16]](#endnote-17). It uses innovative, community-based programming, such as restorative justice circles and arts programs, as well as traditional counseling and treatment to help participants address underlying issues and avoid future criminal justice system contact. Other pretrial diversion programs, such as [opioid intervention courts](https://www.courtinnovation.org/sites/default/files/media/documents/2019-07/handout_happeningnow_pageview_07112019.pdf), focus specifically on helping individuals with SUDs by rapidly linking them with treatment—including medication-assisted treatment—to prevent overdose and save lives.[[17]](#endnote-18)

**Supervised Release:** Pretrial supervision includes making release recommendations to judges that are based on factors beyond a defendant’s ability to afford to post bail. Instead, these programs assess risk of failure to appear for court hearings, risk of future criminal activity, and the existence of SUDs or mental health disorders that may increase those risks. Under these programs, the majority of defendants are assessed as low risk, given referrals for services, released without supervision conditions, and followed up with frequent reminders to return to court. Those at high risk are held, assigned a monetary bail, or released with conditions to report to a supervision officer or case manager to address a SUD a mental health disorder, or other identified needs. Some pretrial supervision programs also incorporate drug treatment courts. Supervised release programs, such as those operated by the Center for Court Innovation in [New York City](https://www.courtinnovation.org/programs/supervised-release), provide pretrial supervision and social services to people charged facing criminal charges, enabling thousands of individuals to be safely released into the community rather than await trial in jail.[[18]](#endnote-19)

**Centralized Screening and Referral:** The Center for Court Innovation has pioneered several centralized screening and referral models in New York and New Jersey, including [Newark Community Solutions](https://www.courtinnovation.org/programs/newark-community-solutions)[[19]](#endnote-20), [Bronx Community Solutions](https://www.courtinnovation.org/programs/bronx-community-solutions)[[20]](#endnote-21), [Brooklyn Justice Initiatives](https://www.courtinnovation.org/programs/brooklyn-justice-initiatives)[[21]](#endnote-22), and [Manhattan Justice Opportunities](https://www.courtinnovation.org/programs/manhattan-justice-opportunities)[[22]](#endnote-23). These programs operate within or adjacent to large courthouses, screening court-involved individuals to identify their needs, creating individualized case plans, referring participants to community-based services, and often providing on-site services as well. These programs give courts options other than jail and fines and help tens of thousands of individuals get the help they need in the community.

**Restorative Justice:** Many programs in the United States utilize restorative justice, a non-adversarial approach to resolve conflict. Restorative justice brings together the offender and those impacted by the crime (e.g., victim, family members, community representatives) for facilitated discussions that seek to repair the harms caused as an alternative to traditional criminal court proceedings. Rather than focused on assigning legal responsibility and meting out punishment, restorative justice aims to heal damaged relationships and promote long-term peace and stability among individuals and communities. Restorative justice can take many forms, such as peacemaking, victim-offender mediation, family group conferencing, and more. Courts refer criminal cases to restorative justice programs for resolution. Regardless of the setting, restorative justice seeks to secure safety through stronger, healthier relationships and communities.

**3. Measures at trial/sentencing stage (e.g., postponement of sentence, deferring the execution of the sentence, diversion through specialized courts, probation/judicial supervision)**

**Drug Treatment Courts:** There are over 4,000 drug treatment courts in the United States that serve approximately 150,000 people each year.[[23]](#endnote-24) Drug treatment courts (also known as “treatment courts” or “drug courts”) provide court-supervised treatment for individuals at high risk for failure under regular probation. Studies show treatment courts achieve up to 58% reductions in recidivism.[[24]](#endnote-25) In addition to adult drug treatment courts, examples of treatment courts are:

* + **Driving Under the Influence (DUI) courts** that serve high-risk individuals charged with repeated instances of DUI of drugs or alcohol, also referred to as driving while intoxicated or driving while impaired (DWI). Some DUI courts also serve first-time DUI offenders with a high blood alcohol content at arrest or other risk factors for recidivist impaired driving.
  + **Juvenile drug treatment courts** (JDTCs) that serve moderate- to high-risk teens charged with delinquency offenses caused or influenced by a SUD or co-occurring mental health disorder.
  + **Family drug treatment courts** (FDTCs) that serve high-risk parents or guardians in dependency proceedings facing allegations of child abuse or neglect caused or influenced by a moderate-to-severe SUD.
  + **Reentry drug courts** that serve high-risk parolees or other persons released conditionally from jail or prison who have a moderate-to-severe SUD.
  + **Tribal healing to wellness courts** that apply traditional Native American healing and communal practices to serve high-risk persons charged with drug- or alcohol-related violations of tribal laws.
  + **Mental health courts** that serve high-risk persons charged with crimes caused or influenced by a serious and persistent mental health disorder.
  + **Veterans Treatment Courts** require regular court appearances, as well as mandatory attendance at treatment sessions, for veterans that may be struggling with, addiction, PTSD, traumatic brain injury, or military sexual trauma.[[25]](#endnote-26)

Treatment courts can be established through the passage of new legislation or established through administrative procedures at the state or local levels. Model drug court legislation designed for use within the United States and other information can be found through the National Association of Drug Court Professionals.[[26]](#endnote-27) More information about establishing drug treatment courts internationally can be found at the web site of the International Association of Drug Treatment Courts.[[27]](#endnote-28)

* **Problem Solving Courts:**[[28]](#endnote-29)Similar to drug courts, “Problem Solving Courts” (also known as “Therapeutic Courts”) address the specific needs of special populations, which can include those with SUDs who are low risk. The specific programs often adopt names that minimize stigma, such as the HOPE Court, STAR program, and WIN Court. Other specific types of problem solving courts include:
  + **Domestic violence courts** that serve persons charged with domestic violence, which is often caused or influenced by a substance use or mental health disorder.
  + **Reentry courts** that serve parolees or other persons released conditionally from jail or prison who do not necessarily have a substance use or mental health disorder but typically have other serious social service needs that must be addressed to achieve successful reintegration into the community.
  + **Human trafficking courts** that serve persons charged with sex-work offenses, who often suffer from serious trauma histories or mental health or substance use disorders, or who are victims of human trafficking, sexual exploitation, or other violence.

**Red Hook Community Justice Center**: With support from the National Institute for Justice, the National Center for State Courts completed this independent evaluation of the Red Hook Community Justice Center in 2013. The Red Hook Community Justice Center is a community court that was created to address the unique social and judicial needs of its surrounding neighborhood — the 72nd, 76th, and 78th Police Precincts in New York City. The evaluation found that the Justice Center's emphasis on ATI, including community restitution projects and social services, helped reduce the use of jail by 35% and has helped reduce recidivism among misdemeanor offenders.[[29]](#endnote-30)

**Probation: Probation, a form of** community supervision, can be used to address factors such as serious mental illness, SUDs, and trauma that can predispose individuals to criminality. Research indicates that low-risk clients do worse under supervision, and, as a result, resources should be focused on high-risk individuals to produce better outcomes. As the push to reform the justice system and drastically reduce the use of incarceration continues, community supervision methods, including probation and others, will play an important role in maintaining public safety.

**4. Measures at post-sentencing stage (e.g., probation, early release, parole, pardon with an element of treatment)**

Individuals with mental and substance use disorders involved with the criminal justice system can face many obstacles accessing quality behavioral health service. For individuals with behavioral health issues reentering the community after incarceration, those obstacles include a lack of health care, job skills, education, stable housing, and poor connection with community behavioral health providers. This may jeopardize their recovery and increase their probability of relapse and/or re-arrest. Additionally, individuals leaving correctional facilities often have lengthy waiting periods before receiving services in the community.

Frequently, many return to drug use, criminal behavior, or homelessness when these obstacles prevent access to needed services. The first three months following release from custody presents the highest risk for return to substance use, recurrence of mental health disorders, and criminal recidivism. The initial reentry period provides an important opportunity to intervene with persons who are at high risk for recidivism, who may be ambivalent about entering or continuing treatment, and who may be in crisis due to lack of financial support, unemployment, homelessness, lack of structured activities, and discontinuity of treatment services.

At federal, state, and local levels, the United States focuses on reentry services and supports for justice-involved individuals with mental and substance use disorders. As a result, these programs and services are expanding. Reentry is a key issue in the U.S. Department of Health’s Substance Abuse and Mental Health Services Administration (SAMHSA) Trauma and Justice Strategic Initiative. This initiative addresses the behavioral health needs of people involved in - or at risk of involvement in - the criminal and juvenile justice systems.

Several important federal grant programs have targeted reentry services and have supported the development of innovative and comprehensive reentry programs, including those for persons who have behavioral health disorders. These include the Residential Substance Abuse Treatment (RSAT) for State Prisoners Program, the Second Chance Act Program, the Offender Reentry Program, the Reentry Employment Opportunity Program, and many other grant programs supported by federal agencies. The Second Chance Act Program alone has funded well over 800 reentry programs and has served over 160,000 participants. Federal grant programs have facilitated the development of integrated pre-release planning, in-reach services to jails and prisons, reentry case management, and post-release housing, education, employment, and treatment services.

Reentry programs in the United States vary considerably according to the target population, type of services provided, and level of resources. Most reentry programs feature specialized case management services. Case managers conduct needs assessments and develop reentry plans, while facilitating linkages with community services, including transportation, housing, job training and other vocational services, education programs, medical services, and mental health and substance use treatment. Reentry programs either provide direct services or refer persons to behavioral health and other ancillary services. Trained peer support specialists are also frequently used to help engage persons in the recovery process, and to address barriers and to navigate between treatment, justice, and other community services. Specialized reentry programs have been developed for women, for youthful offenders, and for persons who have SUDs and/or mental disorders.

Different modalities of reentry services include one-stop multi-service reentry centers, therapeutic communities, day reporting centers and work release centers, halfway houses, reentry therapeutic courts (e.g., reentry drug courts), Housing First and other supportive and transitional housing programs, and supported employment programs. These services are often coordinated by community reentry coalitions that include diverse constituents from law enforcement, courts, public health, behavioral health treatment, and housing, employment, and education providers.

Key principles of reentry established by the U.S. Department of Justice (2016) include the following:

* Develop an individualized reentry plan, based on level of risk for recidivism and programmatic needs related to the criminal risk level.
* Provide key services prior to release from incarceration that target criminogenic needs (e.g., employment skills, education, substance abuse treatment), and responsivity issues (e.g., mental health, housing, transportation).
* Provide services to build and strengthen family/social supports that are necessary for successful reintegration to society.
* Provide access to halfway houses, supervised work release programs, and other resources to ensure continuity of care in the community.
* Provide reentry resources and information to help engage persons in community-based treatment, employment, and other ancillary services.

Research indicates that reentry programs that provide treatment for SUDs can significantly reduce recidivism and substance use and can increase the likelihood of employment and stable housing. Furthermore, persons who received follow-up SUD treatment after release from prison have significantly reduced rates of arrest and re-incarceration.[[30]](#endnote-31) Other studies indicate a return of from $4-9 in benefits for every dollar invested in reentry programs.[[31]](#endnote-32)

**RESOURCES FOR INDIVIDUALS RETURNING FROM JAILS AND PRISONS**

* **SAMHSA’s Behavioral Health Treatment Locator:** Search online for treatment facilities in the United States or U.S. Territories for substance use and/or mental health problems. https://findtreatment. samhsa.gov/
* **Self-Advocacy and Empowerment Toolkit:** Find resources and strategies for achieving personal recovery goals. http://www.consumerstar.org/resources/ pdf/JusticeMaterialsComplete.pdf
* **Obodo:** Find resources and information and make connections in the community. Users set up profiles, add photos, bookmark resources and interests, and can email other members. <https://obodo.is/>
* **Second Chance Resources Library:** Find reentry resources and information. http://secondchanceresources.org/
* **Right Path:** Resources and information for persons formerly incarcerated, and the people who help them (parole officers, community service staff, family, and friends). <http://rightpath.meteor.com/>

**RESOURCES FOR COMMUNITIES AND LOCAL JURISDICTIONS**

* **Providing a Continuum of Care and Improving Collaboration among Services:** This publication examines how systems of care for alcohol and drug addiction can collaborate to provide a continuum of care and comprehensive substance abuse treatment services. Discusses service coordination, case management, and treatment for co-occurring disorders. http://store.samhsa.gov/product/Providing-a-Continuum-of-Care-Improving-Collaboration-Among-Services/ SMA09-4388
* **A Best Practice Approach to Community Reentry from Jails for Inmates with Co-occurring Disorders: The APIC Model (2002):** This publication provides an overview of the APIC Model, a set of critical elements that, if implemented, are likely to improve outcomes for persons with co-occurring disorders who are released from jail. http://homeless. samhsa.gov/resource/a-best-practice-approach-to-community-re-entry-from-jails-for-inmates-with-co-occurring-disorders-the-apic-model-24756.aspx

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    [↑](#endnote-ref-31)
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