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Models of Prosecutor-Led Diversion Programs in the United States and Beyond

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Abstract

Diversion programs allow criminal justice actors to send defendants out of the court system, compelling them instead to attend treatment programs, participate in educational opportunities, and/or perform community service. These programs exist for both adult and juvenile offenders. Although some diversion programs are administered within the court system, prosecutors design and operate a substantial number of these programs themselves. Because the prosecutor does not need to obtain input from judges or other actors in these programs, they carry higher risks of performance problems, such as net widening and unequal application of program criteria. Furthermore, because of the local focus of most prosecutors' offices in the United States, their diversion programs differ from place to place. The published program evaluations are too often site-specific, offering few general insights about this category of programs. The fragmented literature about prosecutor-led diversion programs should expand the metrics of success for these programs and monitor the effects of the prosecutor-dominated governance structure.

INTRODUCTION

Criminal justice actors, from police to prosecutors to judges to corrections officials, routinely face the question of when to pursue something less than their power allows. That lesser response could be a warning rather than an arrest or a declination rather than a charge; it could be a sentence lower than the maximum authorized or a continuation of probation status rather than a revocation after some violation of the conditions of release. Choosing the lesser option means that a criminal justice actor either stops the criminal process altogether or pursues a less severe outcome than permitted by law.

Our review focuses on one such "something less" in the prosecutorial sphere: diversion programs led by prosecutors. The practice of using diversion programs for adult and juvenile offenders, instead of full prosecution, has grown in use and prominence and therefore deserves sustained attention (Kennedy et al. 2009). In an environment of innovation and growing investment, this review describes the common features of prosecutor-led programs and synthesizes the published assessments of those programs.

Formalized programs to divert potential defendants out of the criminal courts and into other forms of treatment or community service emerged in the United States in the mid-twentieth century (Pres. Comm. Law Enforc. Adm. Justice 1967). The idea was to conserve limited resources in criminal court for the most serious cases while addressing the failure of the courts and correctional systems to rehabilitate many criminal defendants.

Judges and prosecutors collaborated to create the earliest diversion programs (*State v. Leonardis* 1976). According to this model, after prosecutors filed criminal charges, the judge suspended the proceedings while the defendant completed some designated activities, such as attending a treatment program, paying restitution to crime victims, or performing community service (Georget. Law J. 1972, Lowry & Kerodal 2019). An employee of the court system or a pretrial services agency would monitor the defendant's progress (Kennedy et al. 2009). After the defendant successfully completed the conditions, the judge dismissed the criminal charges. No criminal convictions or sentences resulted from the dismissed charges, but the courts still exercised control over defendants while they worked through the program.

Eventually, prosecutors created diversion programs that did not involve judges at all. Prosecutors or law enforcement officers identified certain arrestees to invite into the program. If the person refused the invitation, the government proceeded with formal criminal charges and full prosecution. A person who entered the program would begin the treatment or other program that the prosecutor specified, and, if successful, she or he would avoid all criminal charges. Those who failed to complete the program on the prosecutor's terms would face the criminal charges that the prosecutor had delayed at the start (Rempel et al. 2018).

Prosecutor-led diversion programs have attracted more attention and funding in recent years. Some prosecutors, looking to promote public safety without relying so much on expensive (time-consuming) felony charges and prison sentences for so many offenders, use diversion as one method to achieve these goals. Some (but not all) prosecutors who adopt this strategy refer to themselves as progressive prosecutors (Bazelon 2019, Travis et al. 2019). They combine diversion programs with more declinations of low-level crimes, freeing up resources to prioritize serious felony charges and prison sentences for the violent crimes that most concern the community (Wright 2020).

The diversion programs we review here have a distinctive prosecutor-dominated governance structure. The prosecutor determines the general conditions for entry into these programs and an employee of the prosecutor's office screens potential applicants. Prosecutorial staff monitor the performance of those who enter and decide whether a participant has met the conditions for

successful completion. Although the prosecutor typically works with community partners from the health care and nonprofit sectors to deliver program services (Cent. Health Justice 2013, Kennedy et al. 2009), other public officials—in particular, judges—do not operate these diversion programs alongside prosecutors or weigh in on eligibility determinations. In short, there are no checks or balances, in the traditional constitutional sense, on the prosecutor's office in its management of prosecutor-led diversion programs.

The prosecutor's institutional dominance exacerbates the risk of net-widening, a concern that attaches to all diversion programs (Gorelick 1975). This commonplace phenomenon occurs when a program intended as a less intrusive alternative to a standard criminal sentence for those who would have been prosecuted is instead used primarily to expand the reach of state control. When program participants are drawn heavily from groups that otherwise would have escaped criminal charges or severe sentences, the net of the criminal justice system ensnares more people than it would have before the programs were created. This increased capture expands the range of social control over low-risk populations but also increases the cost of the system overall (Blomberg et al. 1986, Lepage & May 2017, Yale Law J. 1974).

Two other characteristics of prosecutor-led diversion programs also merit our attention. First, these programs usually are not transparent when compared to proceedings in criminal court. Prosecutors seldom reveal many data about the participants or the choices of those who operate these local programs. Second, the programs are local creations, with each one using its own metrics of success. For these reasons, it is difficult to compare programs that operate in different jurisdictions, even if they share many program objectives and structures (Lange et al. 2011, Schwalbe et al. 2012, Wong et al. 2016). In this particularized and data-scarce environment, it is also hard to tell whether a given program is administered on an equal basis for defendants of different races, genders, ages, or social classes. Although it is possible to compare the published eligibility criteria across programs—criteria that often designate certain offense types as ineligible for diversion—limited operational data make it difficult to compare how different programs actually distribute the program benefits among those who meet the declared criteria for entry.

The published studies that evaluate these diversion programs do not rise to the challenges that the governance structures create. A wave of studies from the 1970s and 1980s concentrated on recidivism and net-widening (Feeley 1983). More recent evaluations, however, are not numerous or comprehensive (Johnson et al. 2019). The publication landscape is full of single-program evaluations, many of which are technical reports produced by insiders; it is far more difficult to find assessments that apply to broad categories of programs that operate in many jurisdictions. There is too much diversity among programs—in admission criteria, conditions imposed on participants, and decisions to remove those who fail the program—to say much of anything wide-ranging about effects. Classic academic accounts by independent researchers, following standard conventions such as peer-review, are likewise scarce. In short, just as prosecutorial work in the United States is fragmented—pursued in thousands of unconnected local offices according to local priorities—the literature about prosecutor-led diversion programs is similarly fragmented and often produced in service of local priorities.

In the section titled Governance of Diversion Programs, we explain how the governance structures of prosecutor-led diversion programs lead to particular dangers that program evaluations should address when possible. The section titled How Do These Programs Work? offers a more detailed description of the day-to-day operation of prosecutor-led diversion programs that one can encounter in the United States and elsewhere. The section titled Does Prosecutor-Led Diversion Produce Results? summarizes the findings of the published literature about the impact of these programs. And in the conclusion, we suggest lines of inquiry for future study in this field.

GOVERNANCE OF DIVERSION PROGRAMS

Any number of things might count as prosecutor-led diversion programs, but in essence they are alternative channels to full prosecution. These alternative channels could begin either before charging or immediately after charging but always prior to disposition of the case. In this section, we discuss the motivations for creating diversion programs and the structural differences between programs that prosecutors lead and those that require more collaboration between prosecutors, judges, and others. Finally, we review the challenges involved in holding prosecutors accountable to legal standards and current public priorities as they design and operate these diversion programs.

Motivations to Create Diversion Programs

Diversion programs emerged because defenders argued and prosecutors agreed that the charging decision, as a binary, was too limited. Full prosecution was not the right answer for a significant portion of arrestees whose cases did not warrant declination. But prosecutors wanted to keep some control over this subpopulation, so they designed diversion programs to address their two main concerns: (*a*) Because the consequences of a criminal conviction are severe, not every person who comes to the attention of the criminal justice system deserves full prosecution, and (*b*) the criminal justice system cannot afford to treat every defendant with a one-size-fits-all approach (Rempel et al. 2018, Ulrich 2002).

With regard to the first point, there is much variety in the offender population in terms of background, amenability to treatment, and risk of causing future harm. Given this variety, we ought to have softer approaches for those whose backgrounds suggest that little is needed to incentivize law-abiding behavior in the future. Conversely, we ought to reserve the full prosecution approach for those whose backgrounds, amenability, and risk potential suggest that a more intensive form of intervention is warranted.

Diversion also responds to the long-term—sometimes lifetime—consequences that follow the full prosecution approach. The collateral consequences of conviction can stigmatize and limit the life choices of defendants long after they have finished serving the sentence imposed by the criminal court. The growth of the internet makes the impact of a conviction even greater than it was a generation ago, as many more people can now find out about the conviction. In light of the depth and breadth of those consequences—which can include, among other things, deportation, loss of the right to vote, loss of public housing, loss of food stamps, and difficulty becoming a foster parent—only those offenders whose behavior is truly outside of socially acceptable bounds should experience them (Love et al. 2018). Since the shift away from complete sealing of juvenile transcripts that occurred during the 1990s, even youthful offenders experience collateral consequences (Mears et al. 2016). Adult and youthful offenders who have transgressed in more minor ways ought to have an easier path to reentry.

With regard to the second point, the full prosecution approach is simply too costly, in terms of time and money, to apply to every offender. Punishment has squeezed the budgets of state and local governments since the politics of law and order took hold in the 1970s, when legislatures embraced—often with full support from local prosecutors—longer and more frequently used prison terms for an expansive range of criminal behavior (Natl. Res. Counc. 2014). Such spending might have made fiscal sense (apart from its moral impact) if it were efficient, i.e., if most offenders needed this heavy-handed approach to deter them from future law-breaking. But it has become increasingly clear over the past few decades that such spending is not necessary. Many offenders can be deterred from law-breaking by much less stringent and expensive interventions; some will just age out of crime without any intervention at all (Laub & Sampson 2001, Zimring 2005). And

on the flip side, even the full prosecution approach remains unproven as a mechanism of crime control: Its ability to reduce reoffending has never been proven empirically (Barkow 2019).

With these predicates in mind, prosecutors and judges devised alternative mechanisms to handle the subset of offenders who merited some form of intervention but did not need full prosecution. Those alternative mechanisms we now collectively call diversion because offenders are being diverted out of the justice system before the point of conviction (Dunford 1977, Klein 1976).

The Shift from Collaborative to Unilateral Governance

Public prosecutors have always used a de facto type of diversion. After law enforcement officers deliver a potential criminal case to the prosecutor's office, line prosecutors choose how to proceed. First, they can decline to file charges at all. Second, they can file charges in the criminal courts and pursue them to disposition (Miller 1969). Third, they can postpone the decision while waiting to see how the defendant behaves over the next few weeks or months. If the defendant has no further contact with law enforcement, the prosecutor declines to file the original charges. But if the defendant is rearrested, that further contact prompts the prosecutor to initiate the case.

Over time, this unstructured wait-and-see option grew to include formal requirements for the defendant to follow during the waiting period (Brakel 1971). In the context of corporate and white-collar crime, prosecutors sometimes enter deferred prosecution agreements or nonprosecution agreements, committing themselves to delay (and ultimately to decline) prosecution while the potential defendant engages in preventive action, provides restitution for those who suffered harm, and the like (Arlen 2016, Bronitt 2018, Spivack & Raman 2008). These agreements are customized to individual targets but are not organized as ongoing programs within prosecutors' offices that handle high volumes of criminal cases.

Whereas the prosecutor once expected the defendant only to avoid further criminal justice contact for an unspecified amount of time, offices now operate programs that call for active monitoring of defendants (Cent. Health Justice 2013, Rempel et al. 2018). Under these programs, the prosecutor identifies specific conditions for the defendant to meet and designates a time period in which those conditions need to be met (Natl. Dist. Attys. Assoc. 2009). As described in more detail below in the section titled Programmatic Requirements, the program conditions often aim to change the defendant's behavior, enabling the person to avoid crime and make better choices in the future. They also mark the defendant as a person of interest to the criminal justice system, despite the absence of a criminal conviction (Kohler-Hausmann 2018).

Formal diversion programs spread quickly in the United States, starting in the 1970s, after the President's Commission on Law Enforcement and Administration of Justice spotlighted and endorsed the nascent diversion programs that existed as of 1967 (Pres. Comm. Law Enforc. Adm. Justice 1967, Schlesinger 2013). Federal funding for diversion gave local prosecutors and judges an incentive to experiment with the device (Feeley 1983, Klein 1979). Federal funds also made it possible to develop standards for program operation and evaluate some programs from this era (Johnson et al. 2019).

Collaboration between judges and prosecutors was responsible for many of the earliest programs. These postfiling programs empowered the judge to suspend the criminal proceedings after the filing of criminal charges. The programs typically gave prosecutors the responsibility to decide which defendants to admit, whereas judges imposed conditions and court personnel monitored the defendant's compliance with those conditions. Judges dismissed charges after defendants completed all the requirements (Kennedy et al. 2009).

Evaluations of the earliest diversion programs—not limited to prosecutor-led programs—reported disappointing results (Feeley 1983, Nimmer 1974). A period of less active development

followed during the 1980s and 1990s, a time of increased sentencing severity (Johnson et al. 2019). Eventually, however, prosecutors, court personnel, and corrections officials renewed their interest in new models of diversion.

Some of the judicial enthusiasm for alternatives to traditional criminal punishments over the past few decades moved away from diversion programs and into accountability or problem-solving courts. These specialized courtrooms are labeled as drug courts, veterans' courts, and mental health courts as well as similar names that reflect the particular issues that defendants present (Dorf & Fagan 2003). In these courts, the defendant pleads guilty and the judge imposes a nonprison sentence, usually one that includes treatment for substance abuse or mental health problems. The defendant's frequent return visits to the courtroom allow the judge to monitor progress (Turner et al. 2002).

Diversion programs and problem-solving courts share some objectives, such as extended monitoring of the defendant's actions in the community. They both typically rely on risk assessment instruments to select a level of social control that fits the risk profile of the defendant. But diversion programs differ from problem-solving courts in a fundamental way: They never result in a criminal conviction for those who succeed in the program (Cent. Health Justice 2013).

These related techniques for pursuing a less severe response to crime—treatment courts and diversion programs—can coexist in a single jurisdiction. Roughly ten percent of diversion programs in the United States continue to operate under the direction of the courts (Natl. Assoc. Pretr. Serv. Agencies 2009). These court-led diversion programs are usually funded and administered at the state rather than the county level (Kennedy et al. 2009). Another group of diversion programs fall within the control of probation offices and pretrial service agencies—governmental entities that are typically funded and directed at the county level in the United States (Kennedy et al. 2009).

Other diversion programs give a leading role to law enforcement agencies. Law enforcement officers select arrestees who might have been charged and processed in the criminal courts and divert them into noncriminal programs to address the underlying causes of the conduct. A prominent example of such a program is Law Enforcement Assisted Diversion (LEAD), which began as an experiment in Seattle (Collins et al. 2017). When the police arrest people for low-level drug sales or prostitution and the arrestees meet the predetermined qualifications, they can avoid criminal charges and are instead assigned to caseworkers. They receive immediate help, such as a hot meal or a place to sleep, followed by longer-term treatment for addiction and other conditions that contributed to their criminal conduct. Police-led diversion programs also connect local residents with mental health services—sometimes treating a criminal act as the triggering event and in other cases relying on the officer to identify candidates without waiting for an incident to occur (Cent. Health Justice 2013).

Although prosecutors do play a role in the programs that fall under the direction of the courts, pretrial service agencies, or law enforcement agencies, they also create and direct diversion programs of their own. Residential drug treatment programs and mental health diversion programs are two common forms of prosecutor-led diversion (Boccaccini et al. 2005, Dynia & Sung 2000, Lange et al. 2011). In these programs, offenders typically are released from jail into a community facility for treatment and follow-up care.

Several qualities mark a diversion program as prosecutor-led. The prosecutor in such programs takes responsibility for setting the selection criteria, applying those criteria to applicants, monitoring the performance of the defendants enrolled in the program, and deciding when to terminate diversion because of the defendant's success or failure in meeting the program conditions.

The prosecutor also typically locates the funding for a prosecutor-led diversion program. In some jurisdictions, the prosecutor identifies partners in the nonprofit sector and contracts with

those organizations to operate some aspects of the program. For example, the partner might provide treatment, coordinate restitution of victims, offer restorative justice frameworks for defendants to interact with crime victims, or monitor community service (Lowry & Kerodal 2019). In more straightforward programs, such as the payment of restitution or logging of community service hours, employees of the prosecutor's office might track the progress of program participants. Ultimately, whether the program tasks are performed in the office or contracted out to community groups or private vendors, the prosecutor retains control over the program design and operation. The prosecutor decides on the operational rules of the program and the fate of defendants who take part.

In the United States, prosecutor control over diversion programs tends to give them a local—or even a parochial—quality. Prosecutor offices in almost all states are controlled at the local level, and the chief of the local office does not answer to a statewide official in a prosecutorial hierarchy. Most offices receive funding for their personnel and facilities from the county government rather than the state government (Perry & Banks 2011). Thus, the design, funding, and operation of prosecutor-led diversion programs remain in local hands, with an eye on the needs of a single community. A few prosecutor-led programs, however, do rely on models developed on a statewide basis (Kennedy et al. 2009).

Legal systems in other countries also operate diversion programs that redirect defendants out of the criminal courts before conviction. Some of those programs involve cooperation with judges to select and monitor defendants for diversion (Jehle & Wade 2006, Leroy 1992, Luna & Wade 2010). Other countries, including the Netherlands, do allow the prosecutor to select defendants for these programs without invoking the judicial system (van de Bunt & van Gelder 2012). But whatever level of control the prosecutor holds, diversion programs outside of the United States tend not to focus on local concerns. With national prosecutorial services in charge of developing and operating the programs, more national comparisons and uniformity are possible.

Weak Accountability for Prosecutor-Led Diversion

The prosecutor-dominated programs that now operate in so many jurisdictions exist in some tension with the fundamental constitutional structure of government in the United States, which prefers separate branches of government with authority to exercise checks and balances on the activities of the other branches. Divided power and forced collaboration are thought to prevent abuse of that power (Amar 2006, Berman & Bibas 2006). When prosecutors act alone, they might act contrary to the law.

And prosecutors do act alone, more or less, when it comes to the selection of charges. This is true to varying degrees in the legal systems of different countries (Luna & Wade 2010). But in the United States, judges and legislatures second-guess the prosecutor's decision to file charges or decline charges only in the rarest cases—for instance, cases involving allegations that the prosecutor made the decision based on some invidious discrimination (*United States v. Armstrong* 1996). As cases move deeper into the criminal process, judges, juries, correctional officials, and others gain the authority to block the prosecutor. But at the point of entry into the system—charging—there is no system of checks and balances on the prosecutor's autonomy.

All legal systems in democratic constitutional regimes develop their own strategies for holding prosecutors accountable to the law and the current wishes of the people, even at the point of charge selection, when other legal actors have little or no influence. In the United States, the checks come directly from the voters. Most chief prosecutors in the state courts are elected by local voters (Perry & Banks 2011). Elsewhere in the world, accountability comes from bureaucratic rules and routines, enforced by career prosecutors within national prosecutorial services (Johnson 2001).

These divergent approaches to prosecutor accountability, however, both depend on the ability of someone (the voter or the supervisor) to monitor the transparent decisions of the prosecutor.

The same concern about the weak accountability of prosecutors for their charging decisions applies with even more force to diversion programs. Diversion involves state coercion, whereas declination does not. If a prosecutor misuses authority under a diversion program, it can influence the defendant more profoundly than a declination, and perhaps just as much as a full criminal prosecution that would be supervised by a judge and jury.

Prosecutor-led diversion programs create the greatest risk of abuse because other governmental actors are not necessary to resolve a case. The prosecutor might operate the diversion program in a way that widens the net of social control, sometimes in a wasteful way. Or the prosecutor might offer unequal access to the benefits of the program or fail to provide for transparency in the program's operation. These possibilities for misuse all depend on the details of operation, a topic we now address.

HOW DO THESE PROGRAMS WORK?

When prosecutors create new alternatives to full prosecution, they first must decide two important questions: which defendants are eligible for these pathways, and among those who are eligible, what is required for the pathway to become permanent? In other words, what does the defendant have to do to forever keep the case from getting fully prosecuted? The combination of eligibility plus requirements is what yields the program. In addition to setting the contours of the program, prosecutors retain the ability to declare a program participant successful or unsuccessful. They decide when program conditions have been completed and when noncompliance with one or more conditions ought to be treated as a failure.

Eligibility

Entry into a diversion program first requires the prosecutor's office to designate eligibility criteria for the program overall. Second, someone from the prosecutor's office (perhaps in coordination with a representative from a partner organization but oftentimes not) assesses the individual offender to determine his suitability for the program. Both the criteria themselves and the suitability determination are closely linked to the prosecutor's desire to maximize the potential for success.

Criteria for entry. Today there are diversion pathways for certain types of offenders, such as those who suffer from mental health issues (Cowell et al. 2004, Huck & Morris 2017, Lange et al. 2011) or juveniles (Schwalbe et al. 2012, Wilson & Hoge 2013). Diversion is also available for certain types of offenses: DUI, drug possession, and low-level offenses, to name just a few. The eligibility requirements tend to hinge on what sort of program it is.

First, we can identify status elements of certain programs. For instance, mental health diversion programs typically require the defendant to submit to an interview in which his/her mental health issues are documented by a professional; medical records might also be necessary to establish a history of the illness (Boccaccini et al. 2005). One study from Belfast, Ireland, described community psychiatric nurses examining custody forms of approximately 5,000 detainees being held in police cells; by doing paper-based screening, they were able to identify which people needed formal assessment and which among those could use referrals to community health, social, and educational services (McGilloway & Donnelly 2004). Juvenile diversion programs, as their name implies, are offered only to offenders under a certain age. Typically, youth in the United States

who get diverted out of the system return home to receive services in the community; the goal is to help them get back on track, stay in school, avoid negative role models, and the like (Mears et al. 2016, Wilson & Hoge 2013). In Japan, by contrast, juvenile diversion is handled through the Family Court, which receives referrals from both the police and the prosecutor (Ellis & Kyo 2017).

Beyond these status requirements, most programs limit eligibility based on prior criminal history. Some programs are available only to people with no criminal record (so-called first offenders), only misdemeanors, or no crimes of violence in their background. In fact, the National Pretrial Service Agency, in its assessment of US diversion programs in the twenty-first century, concluded that the majority of programs prioritize diverting defendants with either no prior convictions or no prior felony convictions (Natl. Assoc. Pretr. Serv. Agencies 2009). The 16 programs reviewed by the National Institute of Justice in 2018 are in accord (Rempel et al. 2018). Given the ugly realities of disparate minority group contact with law enforcement, seemingly neutral constraints based on prior criminal records likely cause a disproportionate impact on defendants of color (Schlesinger 2018). Some programs now use risk assessments as a factor in selecting defendants for diversion (Johnson et al. 2019).

Perhaps most significantly, diversion programs typically adopt severity ceilings. That is, they serve offenders at the lower end of the scale in terms of crime severity. We see programs for property offenses or a range of misdemeanor offenses such as drug use, drunk driving, or prostitution. A report from the National Institute of Justice (NIJ), for example, highlights drug and misdemeanor programs in Philadelphia, Pennsylvania (the Small Amount of Marijuana Program and the Accelerated Misdemeanor Program), Maricopa County, Arizona (the Treatment Accountability for Safer Communities program for drug or marijuana cases), and Chicago, Illinois (the Cook County Drug School and the Cook County Misdemeanor Diversion Program). It also describes Operation de Novo in Minneapolis, Minnesota, which addresses property and drug diversion, and a program in Dallas, Texas, that concerns retail theft offenses (Rempel et al. 2018). Alaska has likewise created a diversion program for first-time property offenders as long as they have no history of drug or alcohol dependency (Lepage & May 2017).

Although diversion programs for people accused of nonviolent felonies have become increasingly common in the past two decades—Lowry & Kerodal (2019) report that just over half of the 220 jurisdictions they surveyed offered such a program—diversion for violent felony offenses is harder to find. One example is the Cook County Felony Diversion Program (Rempel et al. 2018). Moreover, in her study of diversion programs operating for felony defendants in 75 of the largest counties in the United States, Schlesinger included some programs for defendants who were charged with violent crimes (Schlesinger 2013).

The severity ceiling could be explained based on one (or both) of two assumptions, neither of which has an empirical foundation. The first we call likelihood of rehabilitation: People who commit only minor crimes are less committed to criminal pathways and are therefore more amenable to treatment than people who commit more serious crimes. Thus, they stand a better chance of success in the program, where reoffending is the measure of success. The second we call program risk: Those who have committed serious crimes pose a greater risk during the program period for reoffending and perhaps for hurting someone. If they were to commit such an act, it would reflect badly on the program that released them, which would threaten both the integrity of the program and the re-electability of the person in charge (Naples & Steadman 2003, Noble 2020). In other words, limiting the diversion alternative to low-level offenders is both safer for the community and likely to have a greater impact on recidivism rates. Schlesinger (2013, p. 215) notes that when prosecutors focus on rehabilitative potential, "they are less likely to offer diversion to defendants whom they perceive as having stable underlying dispositions of criminality."

German and Dutch prosecutors, in contrast to their American counterparts, divert a large number of criminal cases involving serious charges, such as burglary or aggravated assault (Jehle 2009, Subramanian & Shames 2013). These choices result from deliberate policy choices to keep most offenders out of prison. For example, Germany uses the day-fine approach, in which fines are imposed in daily units (where the daily fine amount is equal to one day of incarceration). The day fine is based on an offender's personal annual income (reflecting his or her ability to pay) and the degree of guilt. Germany also uses the penal order, which can include a fine, community service, driving restrictions, mediation, and forfeiture or confiscation of assets obtained from the criminal conduct in its diversion programs. Although diversion through penal order is technically limited to minor offenses, many of these minor offenses are considered felonies in the United States.

Like Germany, the Netherlands uses a system of fines to respond to most criminal conduct: An offender voluntarily pays a sum of money to the treasury or fulfills one or more financial conditions laid down by the prosecution to avoid criminal prosecution. These sorts of transactions are available for offenses for which the maximum penalty is less than six years in custody (van de Bunt & van Gelder 2012). Data from these countries suggest that either the severity ceiling is much higher or it does not shape diversion practices to the same extent that it does in the United States.

Application of eligibility criteria. In addition to setting forth the eligibility criteria for a given program, the prosecutor's office has the discretion to apply those criteria to program applicants. The prosecutor decides which defendants among the technically eligible population deserve to be offered diversion and spared full prosecution. But giving the prosecutor unbridled discretion to make this judgment is not the only choice available. In South Africa, for example, assessments of a juvenile's amenability to diversion are primarily made by a probation officer; the prosecutor appears at the hearing before the magistrate to offer guidance as to whether diversion should be granted, and if so, whether it should be conditional or unconditional. The ultimate decision rests with a magistrate (Wood 2003).

In addition to serving as the program gatekeeper in terms of eligibility assessments, prosecutors control one other extremely important decision: whether the defendant has to plead guilty to take advantage of diversion. If prosecutors design the diversion program to defer only the entry of judgment after court acceptance of a guilty plea, they are in essence holding the threat of a criminal sanction over the head of a diversion participant. If he/she fails the program, he/she faces immediate sentencing—he/she has no opportunity to contest guilt (Johnson et al. 2019). From a prosecution perspective, this format is appealing because it eliminates the risk of losing witnesses and evidence during the diversion period. But most outside commentators, including the World Health Organization, believe it is wrong to force offenders to give up their due process rights to receive much-needed services (Noble 2020, Porter et al. 1986).

Even if the diversion decision is made pre-plea, if prosecutors do not apply the eligibility criteria in an evenhanded way, they might offer diversion to certain defendants and refuse it to others based on legally irrelevant variables (Albonetti & Hepburn 1996). For example, Traci Schlesinger's (2013) review of state court processing statistics in the United States from 1990–2006 found that Black, Latino, Asian, and Native American defendants have reduced odds of being offered diversion when compared to White defendants with similar legal characteristics. Younger defendants also benefit from prosecutorial discretion at the eligibility determination stage. Defendants 25 and older were less likely to receive an offer of diversion than were adult defendants under the age of 25 (Schlesinger 2013). And in the context of juvenile diversion programs, Sanborn & Salerno (2005) report that a youth's age, gender, and race may have an impact on offers of diversion.

Perhaps these preferences reflect the prosecutor's intuitive assessment of which defendants present the best odds of successful program completion. But given the lasting impact of a criminal conviction and the collateral consequences that flow from it, this preference reinforces the other mechanisms by which the US criminal justice system sustains and reinforces an underclass of disadvantaged people through its formal procedures. A significant body of scholarship has identified racial and ethnic disparities at all stages of court processing (Alexander 2010, Cochran & Mears 2015, Feld 1999). Diversion efforts, especially where based on prosecutorial discretion, are likely to reflect the same trends.

Programmatic Requirements

Program requirements should seem, at the outset, to correlate with the primary goals of the diversion creator. Where the principal reason(s) for adopting diversion is cost-savings to the justice system or avoidance of collateral consequences for low-level offenders, we see considerably less in the way of programming that participants must endure. That is, just by participating they help the program achieve its goals of cost-saving and consequence avoidance (Rempel et al. 2018). These programs often include community service and restitution to victims, but not much else is required of the defendant during the diversion period. There is some empirical evidence that for most low-risk offenders, nothing more is needed to deter them from future law violations (Wilson & Hoge 2013). Therefore, this relatively light approach may be both fiscally wise and humane, even if it does not really amount to a program in the traditional sense of the word.

In contrast, jurisdictions that seek to produce graduates who have lower rates of recidivism compared to the general offender population tend to incorporate educational and training components into diversion. Although most programs aim to teach decision-making skills and educate the defendant about the relevant behavior that got him into trouble, there are also crime-specific dimensions to these programs (Rempel et al. 2018). For example, drug diversion programs typically require participants to submit to random outpatient drug-testing and attend regular Narcotics Anonymous meetings (alternatively, some might require inpatient drug rehabilitation). Prostitution-based programs like the Phoenix, Arizona, Project ROSE (Reaching Out on Sexual Exploitation) aim to teach life skills, offer trauma-based treatment classes, and provide job training, all meant to empower the attendees to pursue a line of work other than criminality in the future (Rempel et al. 2018).

Sometimes the number and frequency of these programmatic requirements can feel to participants like they are being subjected to "probation before trial" (Yale Law J. 1974, p. 843). Stated another way, the programmatic requirements might be seen to illustrate the adage, "the road to hell is paved with good intentions." Aside from the sheer burden they impose, the services provided (or mandated) might be disconnected theoretically from the underlying logic of what the program seeks to achieve. Without a clear set of principles to guide the selection of activities in which offenders must participate or the rules that offenders must follow to remain on the positive side of the diversion leaders, the programs may be committing "correctional quackery" (Latessa et al. 2015, p. 85). For example, rules requiring a certain amount of community service hours may be loosely tied to a sense that offenders need to be held accountable, but performing community service may have little to do with addressing the reasons that led an offender to commit the crime in the first place. Programs that target defendants accused of a particular crime are more likely to impose uniform conditions on all participants, whereas programs open to defendants accused of a wider range of offenses tend to allow more tailoring of conditions for each participant (Johnson et al. 2019).

Some programs, particularly those geared toward juvenile offenders, have adopted a restorative justice approach, to bring the offender face-to-face with his/her victim in a controlled setting

(Wong et al. 2016). In New South Wales, Australia, this technique is called conferencing: It aims to "reintegrate offenders into the community and to involve victims in the resolution of cases. . .empowering them and acknowledging their need for recognition" (Spooner et al. 2001, p. 286). Such an approach can also be found in San Francisco's Neighborhood Courts, Los Angeles' Neighborhood Justice Initiative (Rempel et al. 2018), and the Common Justice program found in the New York City boroughs of Brooklyn and the Bronx (Noble 2020). These programs typically receive high scores for participant and victim satisfaction, which sets them apart from standard accounts of criminal court processing. This qualitative difference can be felt even in the New York program, which is applying a restorative justice approach to violent felonies like rape and murder. According to the director, her program "deliver[s] on healing and safety at the same time" (Noble 2020, p. 88).

Termination

Aside from determining eligibility and program requirements, prosecutors control one final aspect of the diversion experience in prosecutor-led programs: the point at which noncompliance becomes failure. Not every instance of noncompliance with (or neglect of) a program requirement results in the participant's termination from the program. Prosecutors retain discretion to decide when noncompliant participants should receive a warning, when they should receive an administrative sanction, and when they should be terminated from the program. Although the termination decision in a program administered by a pretrial service agency is subject to general standards issued by a professional association (Natl. Assoc. Pretr. Serv. Agencies 2009), there is no comparable guidance for prosecutors.

Discretion likewise looms large in the decision to declare someone a success, at least in programs that have soft requirements. In programs whose core is community service hours and restitution to the victim, completion is fairly easy to document; in the Anchorage Municipal Pretrial Diversion program in the state of Alaska, for example, the average time to completion and subsequent charge dismissal was only 24 days (Lepage & May 2017). But in programs that require some degree of counseling or training, the standards by which success is judged can be somewhat nebulous. One critic of the Manhattan Project, an early diversion program in New York City, remarked that dismissals were being granted "to participants who spent twelve weeks being quiet, obedient, and uninvolved" (Yale Law J. 1974, p. 845).

The literature specific to prosecutor-led diversion programs does not discuss in depth this feature of prosecutorial discretion, even though it has significant consequences for the defendant (Johnson et al. 2019). The decision to declare someone a success means his/her case is permanently dismissed, but the decision to terminate means the defendant is placed back on the court's calendar to face full prosecution. Some prosecutors might approach the termination decision with compassion, but there is a risk that others will fail to "account for the likelihood that participants will make missteps," thus ultimately creating a system in which defendants are, and feel, set up to fail (Noble 2020, p. 89). Because persons with mental illness or drug addiction "must be expected to experience symptom fluctuations that could lead to a relapse" (Boccaccini et al. 2005, p. 836), the prosecutor's choice about whether to provide second and third chances within the diversion system is critical. Although some studies reference the percentage of diversion participants who are eventually prosecuted and convicted, the prosecutor's decision-making with regard to declaring success or failure has remained under the radar. That has caused researchers to ignore a fundamental question that was posed more than 40 years ago: "What kinds of controls, based on legal and policy considerations, exist or should be built into operational procedures to

safeguard basic rights of program participants against potential abuses of discretion" (Yale Law J. 1974, p. 832).

DOES PROSECUTOR-LED DIVERSION PRODUCE RESULTS?

Assessing whether prosecutor-led diversion programs work is more complicated than first appearances suggest. This complexity arises from three key deficits in the literature: (*a*) the heterogeneity of the programs themselves, in terms of goals and metrics; (*b*) the paucity of independent, peer-reviewed evaluation studies with robust research designs; and (*c*) the limited nature of the outputs that program evaluations consider. We discuss each of these deficits in turn.

First, in the diversion landscape, every program is idiosyncratic. Groups and individuals generally do not craft a standardized program design to implement in various jurisdictions to see how it performs. Instead, programs are typically the brainchild of someone in the jurisdiction, and that person designs the program according to his or her sense of what the jurisdiction needs in that moment. So, for example, if X County has a DUI diversion program, it was likely designed in isolation from other DUI diversion programs across the country. As a result of this heterogeneity, we can only ask whether X County's DUI diversion program reduces recidivism in X County. The answer to that question tells us little about whether diversion programs overall (or even DUI diversion programs overall) produce replicable results when it comes to reoffending. As Mears and colleagues observe in a meta-analysis of juvenile programs, "the external validity of diversion studies has been limited because the results may be specific to the particular configuration of diversion processes, activities, and services, as well as to the particular counterfactual condition" (Mears et al. 2016, p. 967).

Second, the literature in this field is replete with technical reports (Piza et al. 2020) but contains a shockingly small number of published, academic studies by independent researchers. And this observation about the pretrial diversion field generally is doubly true for prosecutor-led diversion programs in particular. Not surprisingly, the technical reports produced by program insiders tend to report more cost-savings and lower rates of recidivism than comparable studies by independent researchers. The lack of peer review to test for methodological rigor further colors our view of the reliability of the technical report findings. On balance, the best we can say is that some of the reports show modest effects from the programs, but as we discuss below, even those findings ought to be viewed with caution.

Finally, these evaluations tend to be limited to assessing rates of recidivism and cost-savings for the jurisdiction. As we discuss below, both measures are too stingy to give us a real sense of whether the programs work.

Recidivism

There are several problems with the recidivism measures used in much of the literature. To begin, researchers have focused exclusively on short-term recidivism rates for program participants, where rearrest within a specified time is the common proxy for recidivism—although the time period varies across different studies. We found no study of pretrial diversion (let alone prosecutor-led diversion) in which the review period extended past three years.

Using short-term measures, some studies have reported modest improvements in recidivism for successful program participants over nonparticipants. For example, Broner and colleagues found that treatment for mental health and substance abuse problems had a significant impact on criminal justice recidivism at both three and twelve months in a New York City program (Broner et al. 2005). Likewise, four of the five prosecutor-led programs in the NIJ Multisite study showed

a reduced likelihood of rearrest at two years from program enrollment, but only three of those were statistically significant findings (Rempel et al. 2018). At the misdemeanor level, Huck & Morris's (2017) study of a municipal court diversion program reported that successful divertees were less likely than the control group to commit future violations at the six-month, one-year, and three-year time mark. Beardslee and colleagues (2019), analyzing juvenile arrest data from three different jurisdictions known as the "Crossroads" study, found that juveniles who were processed informally after arrest (including dismissal of pending criminal charges) reported fewer later offenses than those who received a full adjudication after their initial arrests and fewer later offenses than juveniles who committed an initial offense but were never arrested.

Other evaluators have found no statistically significant impact of the diversion program on recidivism in either adult or youth populations. For instance, Broner and colleagues found, across multiple study sites in the United States, that programs to treat adults suffering from both mental illness and substance abuse generated no differences in recidivism rates (Broner et al. 2004). Similarly, Schwalbe and colleagues' meta-analysis of youth diversion programs found no statistically significant reductions (Schwalbe et al. 2012). Notably, even Wilson & Hoge (2013), who report modest effects on recidivism from a meta-analysis of youth intervention and caution programs, remark that studies with a successful research design were far less likely to report a recidivism effect than studies with weaker designs and that programs run by private agencies are the least effective. Interestingly, the null finding is sometimes cast as a positive public relations feature of diversion programs; Broner and her colleagues, for instance, assert that if there are no differences in recidivism between the diverted group and the incarcerated group, there is no public safety risk to releasing people early (Broner et al. 2004, Naples & Steadman 2003).

Even if recidivism were a robust variable, testing it in the absence of a meaningful control group presents a problem. That is, evaluations differ in the "compared to what?" component of their research design: Successful diversion program participants are rearrested at X rate, but what is the comparison group that can reveal whether X is too high or too low? (Dev. Serv. Group 2017, Lange et al. 2011). Some studies compare successful participants to program dropouts (those who were eventually terminated from the program for noncompliance). Others compare successful participants to those who experienced full prosecution from the beginning for the same crime. But neither of these control groups represents random sorting that would allow us to test for the influence of the diversion program itself on the propensity to reoffend. The choice of which defendants to offer diversion is not random; it is based on the prosecutor's prediction of success, which introduces a form of selection bias (Huck & Morris 2017). Furthermore, selection bias becomes a problem when researchers compare program graduates to program dropouts, as those who flunk the program likely had fewer resources to succeed from the start (Choi et al. 2019). For example, studies from the drug court context (Fulkerson et al. 2013, Hickert et al. 2009) have identified factors that are related to dropping out and factors that are related to successful completion. It would be unethical to conduct a randomized experiment by assigning certain defendants to the control group and other defendants to the treatment group, so we are left with a quandary—we have no way to disaggregate these other, preexisting variables, and thus no precise way to judge the effect of the treatment (the program) on the defendant's behavior.

We should also ask, given the risk of net widening posed by these programs—the risk that they sweep in defendants whose cases otherwise would have been declined rather than those whose cases would have been fully prosecuted—why the relevant control group is not the set of defendants who were never prosecuted. That is, if we want to assess the benefits of diversion, we need to ask how those benefits compare to never prosecuting the person at all. The people who were arrested but never prosecuted sometimes (and for low-level offenders, some would say often) never commit another crime (Mears et al. 2016). Their recidivism rate is close to zero. Proving

that a given diversion program improves the recidivism rate when compared to this population would therefore be a challenging task for any careful researcher; some even suggest that youth diversion programs exert a criminogenic effect on the participants, relative to nonintervention by the justice system, due to increased surveillance of the youth who participate (Mears et al. 2016, Schwalbe et al. 2012).

Relatedly, evaluators outside of the mental health context (Chung et al. 1999, Lange et al. 2011) tend not to consider public health or welfare outcomes (such as educational attainment or family stability) as distinct outputs that participation in a diversion program might influence. This should not be surprising—new arrests and convictions are easy to track, but meaningful life improvements are not. But if we really want to assess the impact of diversion on people's lives, the Institute for Innovation in Prosecution (Noble 2020) suggests that we ought to create more sophisticated measures of harm reduction. These would include "mental health outcomes, survivor perceptions of justice, community wellness, and the extent to which diversion decreases the amount of contact defendants have with the system" (Noble 2020, p. 89). The professional association for pretrial service agencies has developed an expansive list of possible metrics for program success—measures that go beyond recidivism (Kennedy & Klute 2015). But we see no indication that the data relevant to these metrics are routinely available in prosecutor-led programs or that evaluations of the programs use these metrics.

Cost-Savings

Turning toward the second type of result that diversion program advocates trumpet—fiscal impact—evaluators tend to consider whether diversion programs, as compared to full prosecution approaches for targeted populations, save money for jurisdictions (Johnson et al. 2019). The cost-savings estimate typically derives from the number of days it takes to process a case in the usual course versus the number of days it takes to process a diversion case. Evaluators then consider the quantity of resources expended by courts, prosecutors, and defense attorneys in support of each effort. For instance, in the Municipal Court diversion program in Anchorage, Alaska, diversion cases typically take less than one hour to process. Because no public defense attorneys are appointed and the cases end at arraignment, they are naturally less costly than those fully prosecuted (Lepage & May 2017). Rempel and colleagues likewise identify significant cost-savings from four of the five prosecutor-led programs they studied: Focusing on a typical case (one that normally takes a limited amount of time in the full prosecution sphere because of the lack of conflicting evidence), the researchers report that compared to full prosecution, diversion costs were lower in San Francisco by 82%, Chittenden County by 59%, and Cook County by 46% (Rempel et al. 2018).

The cost-savings claim also derives from the assumption that diverted defendants will be released from county jails quickly rather than remain in pretrial custody. Thus, they save the jurisdiction on jail costs as well as court costs. Putting the pieces together, because diverted cases leave the system far earlier, they consume far fewer justice system resources—freeing up those resources to be used for more serious crimes like murder and rape (Rempel et al. 2018). The association between diversion and lower process costs is, as one researcher stated, "intuitively appealing" (Cowell et al. 2004, p. 308). It has also been borne out in places like New York City, where a mental health diversion program resulted in reduced jail costs of just over $7,000 on average per participant and a lower overall system cost of $6,260 per person (Cowell et al. 2004).

However, like the recidivism scores, these fiscal estimates fall short of providing a comprehensive picture for three reasons. First, they often fail to account for significant startup costs that jurisdictions experience when launching these programs, and they might neglect to consider the

real costs of running quality treatment programs. For example, shortly after Memphis started a mental health diversion program, reformers touted the reduced jail costs as a program success; a few years later, though, researchers learned that the costs of mental health treatment for the diversion patients resulted in an overall net expenditure (rather than savings) of more than $6,000 per patient (Cowell et al. 2004). Lange and colleagues conclude that the effectiveness of a mental health diversion program can be predicted by the strength of the services made available to the clients (Lange et al. 2011). Stated differently, the more services that a diversion program provides, the more its clients will improve, but so too will its real-world costs increase.

Second, the only cost considered in the diversion sphere is the cost spent by the jurisdiction to run the program; costs paid by the participants are never calculated. The fees incurred by program participants can be substantial—the fees to attend meetings or training sessions, for urinalysis screening, for GED applications, etc., can all add up (Johnson et al. 2019, Noble 2020.). The mandatory nature of these fees is not in doubt; the *New York Times* reported that certain prosecutors' offices will reject an applicant who is financially unable to afford them (Dewan & Lehren 2016). Refusing to offer diversion on the basis of socioeconomic status but denying that these fees count as real program costs only exacerbates the disproportionate impact of the justice system on the poor.

Third, evaluators do not make the cost comparison between the group of diverted defendants and the group of offenders who were never prosecuted at all. If they did, they would have to ask whether the additional investment in the diversion programs achieved any sort of reduction in crime beyond what would have happened without the program. As Mears and colleagues have written in the context of youth diversion, "identifying such nonevents is difficult if not impossible" (Mears et al. 2016, p. 970).

In sum, diversion program designers feel pressure to tell a cost-savings success story to political leaders, and that pressure may lead them to embrace some strange institutional design principles or some funky accounting. They can design a program on the cheap by not providing much-needed program services and thereby inflate their bottom line. But that approach is unlikely to lead to permanent changes in behavior, as the root causes of antisocial behavior or poor decision-making remain unaddressed (Huck & Morris 2017). Or they can charge diversion participants to take advantage of those services but never report those costs on the balance sheet. Neither approach seems faithful to the idea of providing an alternative pathway to reduce the negative consequences experienced by defendants or to the goal of providing genuine cost-savings to the jurisdiction.

CONCLUSION

In this review, we have enumerated many of the shortcomings of both prosecutor-led diversion programs and the literature about those programs. The literature about program performance is unsatisfying when it comes to diversion programs generally; when we focus only on prosecutor-led diversion programs, those problems magnify. Indeed, multisite studies normally lump all program governance types together, treating prosecutor-led programs as interchangeable with programs based in the courts or pretrial service agencies. There are only a few multisite studies that focus entirely on prosecutor-led programs (Johnson et al. 2019, Rempel et al. 2018), meaning that much of our review here required us to extrapolate from the more general program evaluations.

Looking ahead, how should those prosecutor-led programs change and how could better research facilitate that change? For a start, some standardization of program eligibility criteria and programmatic requirements would make a positive difference. It would become easier to generalize about the effects of various program features if the same design produces similar results across

many different locations. The ability to draw generalizable conclusions from multisite research will make the field more attractive for independent academic research.

Local control over prosecutors' offices in the United States makes this standardization of programs more difficult than it is in other countries. In most countries, a single nationwide prosecutorial service can coordinate the use of standardized eligibility criteria and programmatic requirements for alternatives to incarceration. The United States does not have a national prosecutorial organization, but some funding streams and coordination of prosecutor-led programs already exist at the state level. State tax dollars could more intentionally limit local variety for the sake of learning more about a few commonplace program features. More development in this direction would be wise.

There could be a positive role here for federal coordination of program design. Federal tax dollars supported many local programs during the 1970s and 1980s; the Department of Justice might reinvigorate this strategy. DOJ could target funds more explicitly for purposes of selecting the most promising program designs and promoting the implementation of those select few designs across several jurisdictions. Private philanthropy might also have a role in convening prosecutors' offices and community groups from various jurisdictions to hold national meetings to help them converge on fewer models that could support more systematic study and improvement (Inst. Justice Res. Dev. 2020, Noble 2020).

Studies that evaluate program outcomes could also improve by adding new metrics for program success. There is a mismatch between the wide-ranging and ambitious (even grandiose) claims about program aspirations and the fairly shallow measures of success that studies tend to adopt: rearrest rates or cost-savings as measured across short time frames. Broader measures of individual health, education, and desistance from crime would allow researchers to test the multiple objectives of these programs (Kennedy & Klute 2015). But program funders and designers have to be cautious about growth for the sake of growth. Expansion of these programs is often tied to private vendors, who develop a vested interest in promoting diversion. Where financial viability depends on a steady stream of new customers, we risk turning our justice system into an entrepreneurial enterprise instead of a principled endeavor (Feeley 2002).

With an expanded range of program success measures to serve as dependent variables, multisite research could evaluate the effects of specific program features and defendant characteristics as independent variables. Programs that move beyond the traditional severity ceiling in their eligibility criteria—although there are only a few of them at present—represent an important focus of study. Researchers should, when the data allow, draw comparisons between the defendants admitted to the diversion program and the cohorts situated just above them (those who experience a full-fledged criminal prosecution) and just below them (those whose charges were declined). Presently, the limited effort to make the downward comparisons in the published assessments leaves us in the dark about a key feature of the programs. But this aspect of prosecutor-led diversion deserves much more attention because the prosecutor can act without requiring the input and acceptance of other state actors who may possess different perspectives and priorities.

It could be fruitful in future multisite research to compare programs with relatively strict eligibility criteria and those that leave individual prosecutors (or program managers within the prosecutor's office) more discretion to choose among the pool of defendants who meet the initial eligibility requirements. We also have much to learn about the exercise of prosecutor discretion in the exit decision—whether and when to treat the inevitable missteps of defendants as grounds for removal from the program.

Ironically, greater effort to develop and study diversion programs that have more in common with one another will, in the end, make more experimentation possible. Generalizable knowledge about defendant characteristics and the program features that tend to succeed (across a wider

range of program results) can reveal what to keep and what to discard. But first we need to build, in the words of Jeffrey Butts (2016, p. 987), "a collection of models that is consistent with the best knowledge about how and why people become entangled in the justice system and what skills they need to avoid future contact." If researchers can develop a body of research that is robust across domains, prosecutors who spearhead these programs will no longer have to settle for intuition and strictly local experience as guideposts.

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