

Pre-Arrest Diversion

A NACo Opioid Solutions Strategy Brief

“The purpose of [pre-arrest] diversion is to increase public safety by averting incarceration and its negative consequences . . . in favor of options that present a minimal risk to public safety and a greater opportunity for rehabilitation.”

— U.S. Bureau of Justice Assistance¹

What is Pre-Arrest Diversion?

Pre-arrest diversion strategies enable law enforcement officers to refer community members with unmet needs to trauma-informed case management and support services in lieu of arrest, prosecution and incarceration.² Effective pre-arrest diversion strategies increase engagement with necessary behavioral health and social services³ and have the potential to reduce crime, reduce recidivism, reduce substance use, improve quality of life and deliver significant cost savings to the community.⁴

A growing number of jurisdictions have built on the success of pre-arrest diversion efforts by enabling community members to request assistance for individuals in distress without necessitating law enforcement involvement. Such approaches enable community members to request immediate assistance from behavioral health professionals and/or peer support specialists through local emergency (9-1-1) or non-emergency (3-1-1) call systems.^{5,6}



Scan the QR code to learn about Atlanta's approach to community-initiated diversion

There are several frameworks for pre-arrest diversion that can facilitate intervention at different touch points. These include:

- **Self-referral:** a community member can initiate contact with law enforcement or other first responders without fear of arrest and receive an immediate referral to services;⁷
- **Active outreach:** community members in need of services are identified by law enforcement or other first responders and subsequently contacted by qualified behavioral health or peer support specialists;⁷
- **Post-overdose outreach:** community members who have recently survived an overdose are identified by law enforcement or other first responders, contacted by behavioral health or peer support specialists and offered naloxone and linkage to services;⁷⁻¹¹
- **Prevention referral:** a law enforcement officer or other first responder refers any community member to case management and services in order to improve that person's wellbeing and prevent future criminal justice involvement;^{4,7}
- **Intervention referral:** law enforcement officers respond to a chargeable offense committed by a community member by referring that person to case management and services while declining to file charges or holding charges in abeyance.^{4,7}

What evidence supports pre-arrest diversion?

Punitive responses to individuals with substance use disorder, including arrest, prosecution and incarceration, are associated with increased likelihood of future arrest and overdose.¹² Pre-arrest diversion programs can help counties improve public health and public safety in multiple ways. For example:

- **Pre-arrest diversion improves quality of life for community members in need.** Housing is the most significant need for individuals engaged in pre-arrest diversion, followed by basic survival needs (e.g., food, clothing), unemployment, unmet mental health needs and substance use-related concerns.¹³ People who are diverted from arrest to case management and services are more than twice as likely to be housed and 33% more likely to receive a legitimate income or benefits compared to before the individual was diverted.¹⁴
- **Pre-arrest diversion reduces recidivism and re-arrest.**¹⁴ Individuals engaged in pre-arrest diversion have 60% lower odds of re-arrest and 39% lower odds of felony arrest after diversion, compared to those who were arrested for suspected drug charges.¹⁵
- **Pre-arrest diversion is cost effective.** Diversion to appropriate health and social services reduces costs by preventing immediate arrest, subsequent arrest, health-related emergencies and other emergencies that require an urgent response.^{16,17} Multiple studies indicate that diverting a single person from arrest produces about \$2,000 in cost savings.¹⁸ For example, in 2020, pre-arrest diversion efforts in Massachusetts resulted in \$14 million in total cost savings statewide.¹⁷



Are there risks to my community or institution if we don't support pre-arrest diversion?

Yes.

People with unmet behavioral health needs represent a substantial proportion of incarcerated persons in the U.S.¹⁹ An estimated 63 percent of people sentenced in local jails are living with substance use disorder,²⁰ a rate 15 times higher than in the general population at the time of the study.²¹ Further, incarceration is a primary risk factor for overdose.²² Within the first two weeks of release, formerly incarcerated individuals are 40 times more likely to experience an overdose than the general population.²³

Pre-arrest diversion prevents exposure to the risks associated with incarceration, thereby reducing overdose risk.^{12,22-24} Communities without diversion pathways may face exacerbated overdose rates. Further, arrest and incarceration are expensive.



Arresting, booking and holding a single individual pre-trial can cost local jurisdictions tens of thousands of dollars per person per year.²⁵ With over 500,000 people held in county jails on any given day,²⁶ a lack of diversion pathways may contribute to excess costs.

What are best practices for implementing pre-arrest diversion?

- Integrate diversion principles throughout the emergency response system through strategies like emergency dispatcher training, first responder training and written police protocols.²⁷
- Invest in high-quality case management and services for diversion participants.²⁸
- Support ongoing diversion opportunities for past diversion participants. Persons with more severe behavioral health needs are more likely to have subsequent police contact after diversion and will benefit from repeated linkage with case management and treatment services should police contact reoccur.²⁹
- Train responders in trauma-informed response, as compassionate and non-coercive diversion efforts produce better outcomes.^{28,30}
- Do not use coercion (i.e., threat of police involvement or incarceration) to engage individuals in treatment. Contact with the criminal justice system interrupts access to services and increases overdose risk and involuntary treatment produces worse outcomes.^{11,30,31}
- Facilitate regular meetings between agencies involved in first response, health, behavioral health and social services to coordinate diversion procedures and service delivery.^{31,32}
- Support the creation of an emergency drop-in or diversion center with a no-refusal policy where services can be streamlined and where officers can transport the person whom they would otherwise decline to arrest but cannot leave at the scene.^{31,33}
- Implement pre-arrest diversion alongside additional diversion efforts including pre-charge, pre-trial, pre-plea and post-adjudication.^{27,34,35}

What are some examples of successful pre-arrest diversion programs?

The Policing Alternatives & Diversion Initiative (PAD), a community-based organization in Atlanta, Ga., implements alternatives to criminal justice involvement by referring residents in need to mental health and substance use services. PAD also provides direct case management services and housing support. Persons in need of these services are identified through Atlanta's 3-1-1 non-emergency services line and through pre-arrest diversion referrals from law enforcement.³⁶

Local leaders in the City of Seattle and King County, Wash. launched the first Law Enforcement Assisted Diversion (LEAD) program in the U.S in 2011.³⁷ Results of a three-year evaluation, conducted in 2015, found that LEAD participants were 58% less likely to be arrested after enrollment in the program.³⁸ Later evaluations found that LEAD participants were more than twice as likely to be sheltered and nearly 50% more likely to be on the employment continuum (i.e., in training, employed or retired) than they were before LEAD involvement.³⁹

Numerous counties have replicated the LEAD model in their unique contexts. For example, Leon County, Fla., now issues civil sanctions for offenses that would have otherwise led to arrest, allowing diversion participants to fulfill civil sanctions (such as community service) while simultaneously receiving evidence-based treatment and case management in the community.⁴⁰ Similarly, stakeholders in Jones, Story and Black Hawk counties, Iowa operate diversion programs through a partnership between law enforcement, local prosecutors and treatment providers. Paid coordinators work in each county to assist clients with treatment navigation, referrals, case management and facilitate participant success.⁴¹

These and many other model programs are described online at the Brandeis Opioid Resource Connector.



ADDITIONAL RESOURCES:

Please visit the Opioid Solutions Center for a curated list of resources, technical assistance opportunities and the sources referenced in this brief.

