

Review of Deflection Related Legislation

Although post-arrest diversion programs have claimed the lion's share of legislative attention, the last few years have seen an increasing number of states enact legislation that aids local pre-arrest diversion and deflection efforts. Generally, these laws support pre-arrest diversion and deflection by doing one or more of the following: explicitly authorizing pre-arrest diversion and deflection programs; allocating funding for pre-arrest diversion and deflection; or indirectly helping pre-arrest diversion and deflection efforts by increasing law enforcement discretion or individual protections. County officials should be aware of legislation in their state that might facilitate, fund, or otherwise aid their pre-arrest diversion and deflection endeavors. As of the end of the 2018 legislative session, the following state laws supported pre-arrest diversion and deflection:

Colorado: State law mandates that some of the tax revenue derived from marijuana sales be used to support drug and mental health treatment programs, jail alternatives, and other diversion efforts.

Florida: Communities and educational institutions are authorized to adopt a model pre-arrest diversion program, and state law provides guidelines for these programs. No particular type of diversion is mandated, and law enforcement officers are authorized to issue civil citations or utilize similar pre-arrest diversion programs for misdemeanors.

Illinois: Law enforcement agencies are authorized to establish deflection programs, which may involve post-overdose deflection, self-referral deflection, activate outreach deflection, officer prevention deflection, or an officer intervention deflection response. The Illinois Criminal Justice Information Authority is required to collect data on deflection programs, and the General Assembly can appropriate funds for local deflection programs. In addition, the Violent Crime Intelligence Task Force may identify and utilize best practices in drug-diversion programs and other community-based services to redirect low-level offenders.

Maine: A state Substance Abuse Program provides grants to municipalities and counties for projects designed to reduce substance abuse, substance abuse-related crimes and recidivism. This includes grants to municipal, county governments, or regional jails for diverting alleged low-level offenders into community-based treatment and support services.

New Jersey: Law enforcement is authorized to create law enforcement assisted addiction and recovery self-referral programs, which will be facilitated, guided, and supported by the Department of Human Services. In addition, law enforcement is authorized to divert veterans who appear to have a mental illness in lieu of filing a criminal complaint for certain low level criminal offenses.

West Virginia: An individual who was the subject of emergency medical assistance for an overdose can receive Good Samaritan protections against criminal prosecution if they complete a court approved substance abuse treatment or recovery program.

Other helpful legislation: Substance abuse Good Samaritan laws (a good resource can be found at: <https://www.samhsa.gov/capt/sites/default/files/resources/good-samaritan-law-tool.pdf>); Authority to issue citations in lieu of arrest (a good resource can be found at: <http://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx#fiftyState>)