

# NIJ's Multisite Evaluation of Prosecutor-Led Diversion Programs

## Strategies, Impacts, and Cost-Effectiveness

By Michael Rempel, Melissa Labriola, Priscillia Hunt, Robert C. Davis,  
Warren A. Reich, and Samantha Cherney



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# Executive Summary

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In recent years, a growing number of prosecutors have established pretrial diversion programs, either *pre-filing*—before charges are filed with the court—or *post-filing*—after the court process begins but before a disposition. Participating defendants must complete assigned treatment, services, or other diversion requirements. If they do, the charges are typically dismissed. With funding from the National Institute of Justice, the current study examined 16 prosecutor-led diversion programs in 11 jurisdictions across the country, and conducted impact evaluations of five programs and cost evaluations of four programs.

## Goals of Prosecutor-Led Diversion

- **Multiple Goals:** Diversion programs of the 1970s tended to prioritize defendant rehabilitation and recidivism reduction. Today, these goals occupy a less preeminent role. The most commonly endorsed goals in our sample of programs were: (1) administrative efficiency/cost savings—by routing many cases away from traditional prosecution and redirecting resources to other more serious cases; and (2) reducing convictions and collateral consequences for defendants.

## Target Populations

- **Timing of Diversion Participation:** Of 15 programs in the study, eight were post-filing, three were pre-filing, and four programs enrolled participants either prior to or after filing charges with the court depending on case specifics (*mixed model*).
- **Misdemeanors and Felonies:** Unlike programs of the 1970s, current models are not exclusively focused on the lowest level cases. Instead, nine of 15 programs we examined either targeted felonies or a mix of misdemeanors and felonies.
- **Specialist Programs:** Six of 15 programs targeted specific types of crimes, most often drug or marijuana possession, although one program in Hennepin County, MN targeted both felony-level drug and property cases and another program in Phoenix, Arizona targeted misdemeanor prostitution cases.
- **Risk-Informed Decision-Making:** The programs we examined generally made eligibility determinations based on charge and criminal history, not validated risk assessments. A notable exception was in Milwaukee, which adopted a universal risk-informed screening protocol, leading low-risk defendants to be routed to a brief, pre-

filing program and medium-risk defendants to be routed to a more intensive post filing program, with services tailored to each defendant's needs.

## Program Mandates

- **Standardized vs. Individualized:** Of 15 programs examined, five utilize a “one size fits-all” approach, whereas ten programs use individualized mandates to some degree, assigning different types of services based on defendants’ needs.
- **Educational vs. Therapeutic Models:** Thirteen of the 15 programs link at least some participants to educational classes about the relevant problem behavior, including classes about drugs, driving, theft, prostitution, weapons, health, and/or parenting. Staff at only one program cited the consistent use of evidence-based cognitive-behavioral approaches, although two additional programs use these approaches with some cases.
- **Community Restoration:** Ten of the 15 programs order at least some participants to perform community service. In addition, four programs use restorative justice groups with at least some participants., Restorative justice represents a core organizing principle of the model for San Francisco’s Neighborhood Courts diversion program and Los Angeles’ newly created Neighborhood Justice Initiative.

## Case Outcomes, Recidivism, and Cost

- **Case Outcomes:** All five programs participating in impact evaluations (two in Cook County, two in Milwaukee, and one in Chittenden County, VT) reduced the likelihood of conviction—often by a sizable magnitude. All five programs also reduced the likelihood of a jail sentence (significant in four and approaching significance in the fifth program).
- **Re-Arrest:** Four of five programs reduced the likelihood of re-arrest at two years from program enrollment (with at least one statistically significant finding for three programs and at least one finding approaching significance in the fourth). The fifth site did not change re-arrest outcomes.
- **Cost:** All four programs whose investment costs were examined (two in Cook County and one each in Chittenden and San Francisco) produced sizable cost and resource savings. Not surprisingly, savings were greatest in the two pre-filing programs examined, which do not entail any court processing for program completers. All three programs whose output costs were examined (i.e., omitting the San Francisco site) also produced output savings, mainly stemming from less use of probation and jail sentences.

## Chapter 1

# Introduction

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The traditional role of the prosecutor is to seek justice by convicting those who engage in criminal behavior and obtaining a legally proportionate sentence, selecting from a range of longstanding sentencing options, including jail or prison time, probation, or a fine. However, recent years have seen the rise of an array of initiatives in which prosecutors have embraced a broader role through activities such as engaging community members directly to identify and solve local crime problems; collaborating intensively with law enforcement on intelligence gathering and crime prevention; leading the expansion of alternatives-to-incarceration; and reimagining the meaning of prosecutorial success. Well-known models that exemplify aspects of the new prosecutorial role include community prosecution (Boland 2007; Goldkamp, Irons-Guynn, and Weiland 2003; Wolf and Worrall 2004); intelligence-driven prosecution (Tallon, Labriola, and Spadafore 2016); drug courts (Mitchell et al. 2012; Rempel 2014); mental health courts (Rossman et al. 2012); and an assortment of pretrial diversion models that allow defendants to avoid a criminal conviction in exchange for performing community service or attending social services or treatment for their needs. The current study focuses on this last category—prosecutor-led pretrial diversion programs. Through a multi-site study of 16 diversion programs in 11 prosecutorial jurisdictions, we seek to illuminate the goals, policies, impacts, and cost ramifications of this emerging approach.

## Prosecutor-Led Diversion

Today's prosecutor-led diversion programs take place either *pre-filing* (after law enforcement forwards a case to the prosecutor but before the prosecutor files formal charges) or *post-filing* (after the court process has begun but before a final case disposition). In a post-filing program, completing diversion requirements typically leads all charges to be dismissed. With pre-filing programs, completion leads a case never to be brought to court. Diversion programs seek to save scarce system resources and allow defendants to avoid the well-known collateral consequences of a conviction or incarceration, including the potential loss of housing or employment, risk of deportation for non-citizens, or a myriad of other deleterious effects on long-term income prospects, employment, or psychological well-being.



Diversion is by no means a new phenomenon. By 1977, over 200 pretrial diversion programs were estimated to exist nationwide (Feeley 1983). After significant growth in the 1970s, diversion waned in the 1980s, in part resulting from a series of negative evaluation findings. Contrary to the expected benefits, early evaluations consistently detected a lack of positive effects on conviction rates, recidivism, or cost savings (e.g., Baker and Sadd 1979; Freed et al. 1983; Salzberg and Klingberg 1983). A particularly common finding was that early diversion programs tended to target extremely low-level cases, where the charges were so minor that the defendants would not have otherwise been exposed to adverse legal outcomes (Baker and Sadd 1979; Feeley 1983). In other words, the early diversion programs tended to engage in what is commonly known as “net widening,” or imposing new treatment or service requirements on a group of defendants that, in totality, constitute more onerous conditions than the same defendants would previously have been faced. Net widening represents the *opposite* effect of that which is intended by the creators of most diversion programs, which is to provide a *less* onerous, and a more proportionate, just, and meaningful, alternative to a traditional approach to case processing that would have involved court adjudication and, potentially, conviction and incarceration.

With renewed interest in diversion currently spiking, variously reflecting the influence of ballooning court caseloads (e.g., Greenberg and Cherney 2015; Schauffler et al. 2016), concern over the collateral consequences of a conviction (e.g., NAPSA 2010), and the rise of new funding streams, such as the annual Smart Prosecution Program of U.S. Bureau of Justice Assistance, updated research is urgently needed. Yet, recent studies of recidivism impacts or cost savings are extremely few in number (e.g., for exceptions, see Broner, Mayrl, and Landsberg 2005; Cowell, Broner, and Dupont 2004; Mire, Forsyth, and Hanser 2007; and George et al. 2016).

## About the Current Study

To improve upon the limited state of research knowledge, the Center for Court Innovation, the RAND Corporation, and the Association of Prosecuting Attorneys conducted a multisite evaluation of 16 carefully selected diversion programs that were expressly created or led by prosecutors in 11 jurisdictions across the country. Through our multisite study, we sought to answer the following six research questions:

- 1. Program Goals:** Which overarching goals were more or less prominent for the prosecutors who created diversion programs?

2. **Diversion Policies:** What eligible target populations and diversion policies are now in place across the country? To what extent do existing programs incorporate evidence-based practices?
3. **Impact on Case Outcomes:** Do prosecutor-led diversion programs reduce conviction and incarceration rates for participating defendants?
4. **Impact on Recidivism:** Do prosecutor-led diversion programs reduce recidivism?
5. **Impact on Cost:** Do prosecutor-led diversion programs produce efficiencies for prosecutor's offices or other criminal justice agencies by routing defendants away from traditional court adjudication and, thereby, avoiding traditional court costs?
6. **Lessons for Prosecutors:** What are the strengths of existing diversion approaches, and what are some of the identifiable challenges or shortcomings?

## Overview of the Study Design

In-depth case studies were conducted of the 16 diversion programs listed in Table 1.1. Ten of the 11 prosecutor's offices were situated in large urban settings whose populations exceed 800,000. Some sites were predominantly African-American (Philadelphia), others were largely Hispanic/Latino (e.g., Dallas and Phoenix), and one site served a relatively homogenous white population (Chittenden County, Vermont).

Fifteen programs in ten of the 11 prosecutor's offices were examined utilizing a standardized process evaluation methodology. The methodology for the sixteenth program, run by the Los Angeles City Attorney's Office, differed due to a change of leadership during the study period, leading to a significant reorganization and expansion of diversion programming. These circumstances enabled Los Angeles to be profiled as a case-in-point of how diversion programs can be created or reconstituted in a time of change in a prosecutor's office.

In addition, five programs were selected for rigorous, quasi-experimental impact evaluations, and an overlapping four programs participated in quasi-experimental cost evaluations (see Table 1.2, right-most column).

## About This Report

The current publication provides a broad overview of all major study findings. A companion publication provides comprehensive findings from the case studies (Labriola et al. 2017). Additional planned publications will detail full results from the impact and cost evaluations.

**Table 1.1. Study Sites**

Prosecutor's Jurisdiction		Program Name	Program Start	Jurisdiction Population	Annual Cases (Est.)	Type of Study
	Northeast					
Chittenden County (VT)		<ul style="list-style-type: none"><li>• Rapid Intervention Community Court Project</li></ul>	2010	161,000	5,000	Process, Impact, Cost
Philadelphia (PA)		<ul style="list-style-type: none"><li>• Small Amount of Marijuana Program (SAM)</li><li>• Accelerated Misdemeanor Program (AMP)</li><li>• Accelerated Rehabilitative Disposition (ARD)</li></ul>	2010 2010 1972	1,567,000	51,000	Process Process Process
	Midwest					
Cook County State's Attorney's Office (IL)		<ul style="list-style-type: none"><li>• Cook County Drug School</li><li>• Cook County Misdemeanor Diversion Program</li><li>• Cook County Felony Diversion Program</li></ul>	1972 2012 2011	5,238,000	250,000	Process, Impact, Cost Process, Impact, Cost Process
Hennepin County (MN)		<ul style="list-style-type: none"><li>• Operation De Novo (Property and Drug Diversion)</li></ul>	1971	1,223,000	6,500	Process
Milwaukee County (WI)		<ul style="list-style-type: none"><li>• Diversion Program</li><li>• Deferred Prosecution Program</li></ul>	2007 2007	957,735	12,800	Process, Impact Process, Impact Impact
	South					
Dallas County Attorney's Office (TX)		<ul style="list-style-type: none"><li>• Memo Agreement Program</li></ul>	2007	2,553,000	81,000	Process
	West					
City of Los Angeles (CA)		<ul style="list-style-type: none"><li>• Community Justice Initiative</li></ul>	2013-15	3,949,000	50,000	Process (Special)
Maricopa County (AZ)		<ul style="list-style-type: none"><li>• Maricopa TASC Adult Prosecution Program</li></ul>	1989	4,168,000	30,288	Process
Phoenix City (AZ)		<ul style="list-style-type: none"><li>• Project ROSE</li></ul>	2011	1,583,000	45,000	Process
San Diego City (CA)		<ul style="list-style-type: none"><li>• Beach Area Community Court</li></ul>	2005	1,391,000	20,000	Process
San Francisco (CA)		<ul style="list-style-type: none"><li>• Neighborhood Courts</li></ul>	2011	864,816	8,600	Process, Cost

Source for Population Figures: 2015 U.S. Census update. Population figures rounded to nearest thousand.

## Chapter 2

# Design and Methodology

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This chapter summarizes the study design and methodology, respectively for the case studies, impact evaluations, and cost evaluations.

## Case Studies of 16 Diversion Programs

The aim of the case studies of 16 programs in 11 jurisdictions was to provide a portrait of prosecutor-led diversion as it exists today.

### Site Selection

We intentionally sought well-established, high-volume programs, as we wanted to investigate how prosecutor-led diversion works when it “goes to scale.” The focus was not “boutique” programs that serve few actual defendants. While we believe our findings can be generalized to smaller jurisdictions as well, by emphasizing larger prosecutor’s offices in our site selection, we both gained the capacity to reach the greatest possible sample sizes for the impact and cost studies, while also maximizing external validity with precisely the types of jurisdictions that can reach the largest numbers of defendants nationwide.

Regarding the individual diversion programs selected for study, we sought variability in: (1) *timing of pretrial diversion*: pre-filing, or prior to the filing of a court case, and post-filing, or after court appearances have begun; (2) *eligible charges*: misdemeanor and felony programs; and both programs targeting a specific type of charge (e.g., drug cases) and programs open to multiple charges; and (3) *geographic region*: our final sites included a geographically diverse sample consisting of two prosecutor’s offices in the Northeast, one in the South, three in the Midwest, and five in the West.

### Core Process Evaluation Methods

We utilized a standard set of evaluation methods to examine 15 purposefully selected diversion programs operating out of ten of our eleven selected prosecutor’s offices. (The eleventh office is discussed below.) These methods included document review, email and

phone question-and-answer sessions, and in-depth, multi-day site visits, each conducted by two members of the research team. The site visits included observations of each programs' participants and procedures as well as in-depth interviews with both high-level stakeholders and supervisors and relevant line staff—including prosecutors at both supervisory and line staff levels and individuals from partner agencies: defense attorneys, judges, probation officers, pretrial services staff, and community-based service providers.

To structure our interviews and observations, we utilized a 31-page, 103-question interview protocol (available in Labriola et al. 2017), comprehensively covering program history, all aspects of the current model, program strengths and challenges, and available data.

## **Focus Groups**

The aforementioned methods were supplemented with focus groups (protocol available in Labriola et al. 2017) with diversion participants enrolled in the following six programs from five of the study jurisdictions:

- 1. Chittenden County, Vermont:** Rapid Intervention Community Court;
- 2. Cook County, Illinois:** Felony Diversion Program;
- 3. Milwaukee County, Wisconsin:** Early Interventions Project participants, encompassing both the Diversion and Deferred Prosecution programs;
- 4. San Francisco, California:** Neighborhood Courts program; and
- 5. Hennepin County, Minnesota:** Operation DeNovo program.

## **Los Angeles**

The current Los Angeles City Attorney's Office, Mike Feuer, took office July 2013, when the current study was just underway. Our initial plan was to include Los Angeles as an eleventh study site, treated identically to the others. We instead implemented a different set of protocols designed to elicit information specifically about the ramifications of the 2013 change of leadership. Exploring the policies of this new initiative and how it served, in effect, to reconstitute and expand on prior diversion programming provided a unique case study opportunity. Results from our special study of the reconstitution of diversion programs in Los Angeles are the subject of an entire chapter in our companion report that provides a more in-depth set of findings from our case studies in all 11 selected jurisdictions.

# Impact Evaluations of Five Diversion Programs

Three sites (Cook County, Chittenden County, and Milwaukee) were selected for quasi-experimental impact evaluations on the basis of our evaluability assessments from the case study site visits, which queried staff interest and willingness to participate; data content and quality; and overall logistical feasibility of conducting such an analysis. We also sought higher volume programs with a comparatively robust and well-established model (pointing to Cook County and Milwaukee), while also favoring the inclusion of Chittenden County, which was the only relatively small jurisdiction in our original sample of 11 sites.

Five programs were included at the selected sites: two in Milwaukee (both Diversion and Deferred Prosecution); the sole program in Chittenden County (Rapid Intervention Community Court); and two programs in Cook County (Misdemeanor Deferred Prosecution Program and Drug School). The Cook County Drug School sample was split into misdemeanor and felony sub-samples, which were analyzed separately. (This split enabled creating better matched samples between diversion participants and comparison defendants for each charge severity, but, ultimately, Drug School is still a singular program model.)

For each program, we obtained a de-identified dataset including demographics, criminal histories, and instant case outcomes for a sample of participants and comparison defendants that fell within the confines of a pre-specified sampling frame (for more, see the Technical Appendix on Impact Methodology). After assembling and cleaning the data from each sample, we identified each individual's instant case as either the arrest that triggered entry into the diversion program or, for comparison defendants, the first arrest within the specified timeframe. The final disposition was then recorded for this case, and prior arrests and re-arrests (and their associated charges and severity) were then identified and summed.<sup>1</sup>

The next step was to perform a propensity score match for each sample to statistically equalize treatment and comparison groups on an array of demographic, criminal history, and

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<sup>1</sup> Substantial proportions of case dispositions were unavailable for the Cook County programs: 40% for misdemeanor Drug School cases, 30% for felony Drug School cases, and 58% for Cook County's Misdemeanor Deferred Prosecution program. No correlation was found between missing data and any background variable (e.g., date of arrest, age), so we assumed that case outcome data was missing at random. Nonetheless, the sizable quantity of missing disposition data in this site is a notable study limitation.

instant case variables (see, e.g., Rosenbaum and Rubin 1983; Rubin 1973). This procedure is described in the Technical Appendix. The results, presented and described in more detail in the Technical Appendix, indicate that propensity score matching was successful in balancing the samples of observable background variables. Having established the equivalence of the treatment and comparison groups, we were in a good position to perform an impact analysis of diversion programs on case dispositions, sentences, and re-arrest outcomes.

## Cost Evaluations of Four Programs

Three of the same programs selected for the impact evaluation were also included in the cost study: Cook County’s Drug School and Misdemeanor Deferred Prosecution programs and Chittenden’s Rapid Intervention Community Court. For data availability reasons, the two Milwaukee programs were omitted. In their place, we added the San Francisco Neighborhood Courts program. Data were obtained using administrative records and interviews with key staff. For those agencies from which we could not collect this information, we relied on available estimates in the literature specific to the jurisdictions studied. (A separate Technical Appendix on Cost Methodology provides further details.)

For each cost evaluation, we included: (1) costs that go into a case (*investment costs*) for the Prosecutor’s Office, Public Defender’s Office, and Court; and (2) costs that result from the disposition/judgment of a case (*output costs*) for the prosecutor’s office, service providers, and corrections. For this purpose, diversion is considered a type of judgment and associated costs are, therefore, treated as output costs.

Figure 2.1 shows the main stages of a case that are included in the cost analysis—intake and charging to arraignment, pretrial, trial, and judgment and lastly post-judgment. Not all cases go through every stage (e.g. trial). Therefore, for each program under study, we used data on the probability that a case will continue through each stage. In each stage, there are relevant actors (prosecution, court, public defender) for whom we collected data through interviews. In all cases, we used literature for corrections and interview service providers for their costs per person, and data on sentence length to calculate output costs (e.g., cost of jail).

### Investment Costs

We refer to activities involved in adjudicating a case as “investment costs” (Byrne et al. 2005). Using a list of potential activities to process similar cases that do and do not go

through each diversion program, relevant individuals (e.g. assistant prosecutors) identified the time they spend on each type of activity for each case. Given the uncertainty and range in reporting case processing times, individuals provided the typical time they spend on a case, as well as the minimum time (more straightforward cases) and maximum time (more complex cases). We then applied a relevant monetary value (hourly pay by job type and indirect cost rate) and aggregated to generate the average investment cost per case, which is weighted by the proportion of cases that go through three distinct pathways: (1) early plea, (2) later plea, and (3) trial. Successfully diverted cases are also treated as a distinct category.<sup>2</sup>

## **Output Costs**

We also calculated the resources spent on the disposition of cases, or output costs. For this purpose, we used the proportion of cases resulting in each disposition and average sentence and the relevant cost. Specifically, for cases that go through the pretrial diversion program, every provider (e.g., community-based service provider) had contracts with the prosecutor's office. For those providers that did not provide the cost per participant, we generated the average cost per person, dividing the annual contract amounts into the number of people in the program. For similar cases that go through the traditional route, we generated the cost by using the proportion receiving each main sentence type (jail, probation, split sentence, other diversion) for each eligible crime types, along with average sentence length and cost per unit.

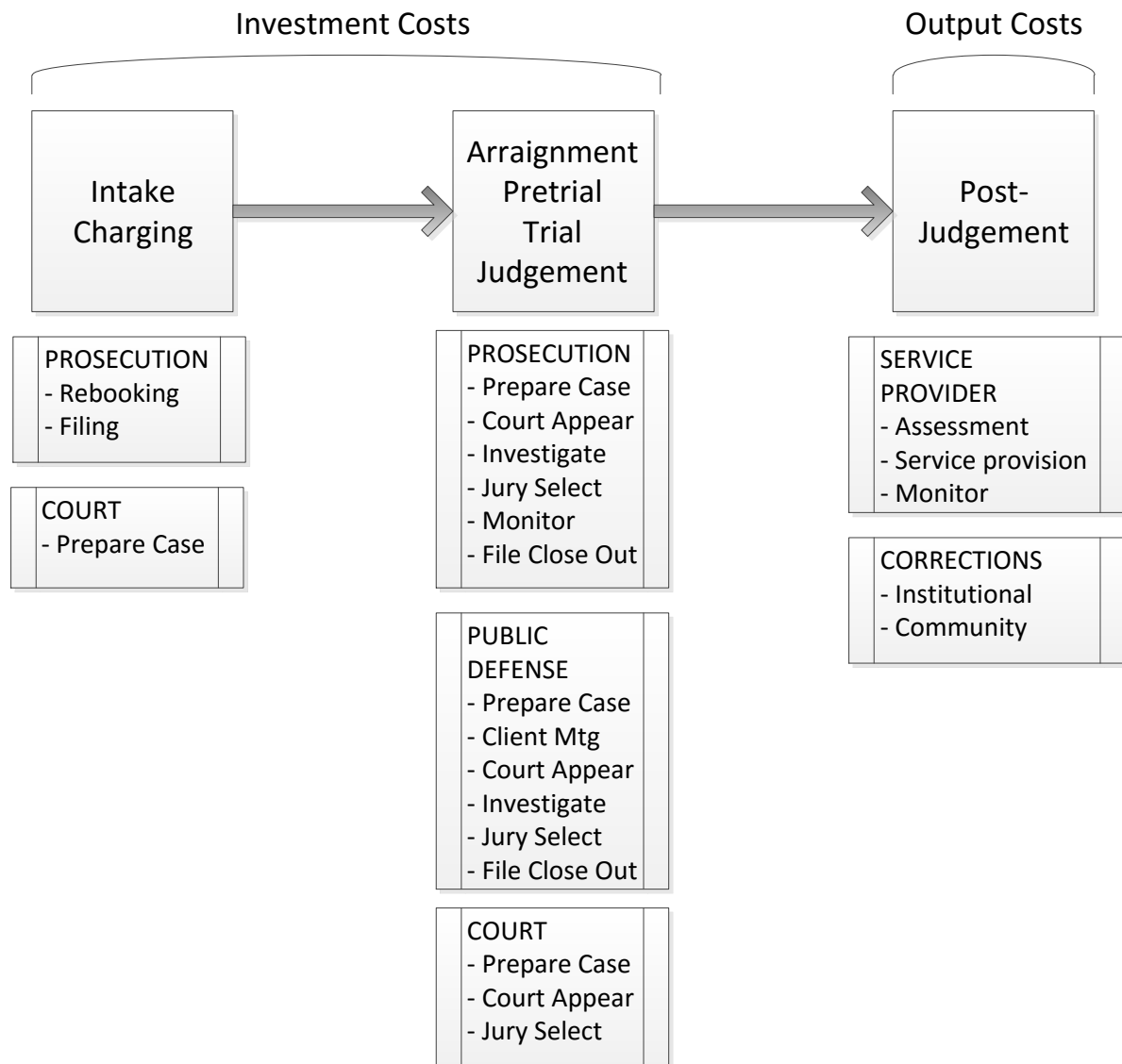
For more details on how costs were calculated for each program, and how the cost-effectiveness analysis was conducted, see the Technical Appendix on Cost Methodology.

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<sup>2</sup> The exact activities depend on the program, actor, and stage. For example, preparing a case can include activities (and related costs) such as: review arrest report, review criminal record, review evidence (e.g. video), paperwork, prepare and issue subpoenas, legal research, write decision, discovery-related work, order supplements, discuss case with witnesses. And court appearances can include judge instructions, case discussion (e.g. testimonies, physical evidence), sentence discussion, plea, waiting, pre-sentencing investigation, judge comments, and victim statements.



**Figure 2.1: General Cost Methodology**



## Chapter 3

# The Goals of Prosecutor-Led Diversion

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We expected that prosecutors might have varying rationales for diverting cases. Faced with crushing caseloads and increasingly limited resources, diversion might be appealing for reasons of resource efficiency and cost savings—i.e., routing some cases away from traditional prosecution and, as a result, saving resources for the prosecution of more serious cases. In addition, consistent with the rationale for other alternative-to-incarceration programs, prosecutors might seek to divert cases in order to link defendants to rehabilitative services that could potentially address the underlying causes of their criminal behavior and, thereby, reduce recidivism. We also assumed that some prosecutors might intend to help defendants by reducing the collateral consequences of a conviction. By requiring strict compliance with required diversion services, some prosecutors might see diversion as an effective means of promoting defendant accountability.

During semi-structured interviews, we asked program staff and stakeholders to assess the importance of the following 12 goals as well as to add other goals they considered important.

1. Hold defendants accountable for their illegal behavior;
2. Rehabilitate defendants by treating their underlying problems;
3. Reduce defendant recidivism;
4. Use prosecutorial resources more efficiently;
5. Use court resources more efficiently;
6. Provide line prosecutors with more plea bargaining options;
7. Reduce the collateral consequences of conviction for defendants;
8. Have the defendants gain insight into the harm their behavior caused;
9. Involve victims in prosecutorial decisions and outcomes;
10. Involve community members in prosecutorial decisions and outcomes;
11. Provide more discriminating responses to different types of defendants (e.g., high-risk and low-risk); and
12. Increase public confidence in the prosecutor's office.

In order to simplify the resulting information, we then collapsed the goals into seven overarching categories: (1) Administrative Efficiency/Cost Savings; (2) Reduced Collateral Consequences; (3) Community Engagement; (4) Defendant Accountability; (5) Recidivism Reduction; (6) Rehabilitation; and (7) Restorative Justice.

Results are available for all programs except the Community Justice Initiative in Los Angeles. As shown in Table 3.1, the most widely and strongly embraced goals (based on an assessment that they are “extremely important”<sup>3</sup> to program staff) were: administrative efficiency/cost savings (cited at 10 programs) and reduced collateral consequences for defendants (cited at 10 programs). These goals were followed by recidivism reduction (7 of 15), rehabilitation (7 of 15), and restorative justice (7 of 15). Detailed staff and stakeholder interview data collected during case study site visits also generally yielded themes and findings that track this order of importance across sites.<sup>4</sup>

Staff at most prosecutor-led diversion programs embraced, not one, but multiple, diverse goals; in fact, staff at nine of the 15 programs (60%) cited “extremely important” goals in at least three of the seven categories. As presented in the rightmost column in Table 3.1, we identified four *broad scope* programs with extremely important goals in five or more categories, six *moderate scope* programs with goals in three or four categories; and five *narrow scope* programs with goals in one or two of the categories.

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<sup>3</sup> Limiting the table to goals selected as “extremely important” allowed us to display and learn from variation; staff at most programs listed nearly all goals as important to at least some degree.

<sup>4</sup> During our interview protocol, staff were asked specifically to rate each goal’s importance (beginning with the initial list of 12 goals) on a Likert scale. For the most part, the Likert scale responses inform how programs are classified in Table 3.1, although in a small few instances, researchers adjusted the coding for specific sites based on more in-depth, open-ended question and answer sections of the protocol, where such interactions ultimately drew primary attention to a goal that had not initially been placed in the “extremely important” category.

**Table 3.1. Goals of Prosecutor-Led Diversion Programs**

Program Name	Goal Categories							Program Scope
	Administrative Efficiency/Cost Savings	Reduced Collateral Consequences	Community Engagement	Defendant Accountability	Recidivism Reduction	Rehabilitation	Restorative Justice	
Chittenden County (VT) Rapid Intervention Community Court (RICC)	✓	✓		✓			✓	moderate
Cook County (IL) Drug School		✓			✓			narrow
Cook County (IL) Felony Deferred Prosecution Program		✓			✓		✓	moderate
Cook County (IL) Misdemeanor Deferred Prosecution					✓			narrow
Dallas Memo Agreement Program	✓	✓						narrow
Hennepin County, MN: Operation De Novo (Property and Drug)	✓	✓					✓	moderate
Maricopa County (AZ) Treatment Assessment Screening Centers	✓	✓		✓	✓	✓		broad
Milwaukee County (WI) Diversion Program						✓		narrow
Milwaukee County (WI) Deferred Prosecution Program						✓		narrow
Philadelphia Accelerated Misdemeanor Program (AMP 1 and AMP 2)	✓	✓	✓	✓	✓	✓	✓	broad
Philadelphia Accelerated Rehabilitation Disposition	✓	✓		✓		✓	✓	broad
Philadelphia Small Amount of Marijuana (SAM)	✓	✓	✓	✓	✓	✓		broad
Phoenix Project ROSE	✓	✓			✓	✓		moderate
San Diego Beach Area Community Court (BACC)	✓		✓				✓	moderate
San Francisco Neighborhood Court (NC)	✓		✓				✓	moderate
<b>Number of programs represented in goal category</b>	<b>10</b>	<b>10</b>	<b>4</b>	<b>5</b>	<b>7</b>	<b>7</b>	<b>7</b>	

## Chapter 4

# Target Population, Program Policies, and Local Perspectives

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This chapter provides an overview of the major policies put into place across the 15 programs that we profiled through our standard case study methodology. A separate section towards the end of this chapter briefly summarizes the major components of the sixteenth featured program, the newly established Community Justice Initiative in Los Angeles. Finally, we summarize the major themes and findings from staff and stakeholder interviews at all 15 programs and from focus groups held with participants at six of the programs.

## Target Population

In general, identifying the target population requires program developers to make four fundamental decisions: (1) determining whether to establish a *pre-filing* or *post-filing* program; (2) identifying the eligible *charge severity*—felony, misdemeanor, citation, or lesser charge; and (3) targeting only select *charge types* (e.g., drugs, property, or prostitution) or many or all types; and (4) setting *criminal history restrictions* (e.g., first-time only or priors allowed). Table 4.1 indicates how these decisions played out across the 15 programs.

## Timing of Diversion: Pre-Filing or Post-Filing

Of the 15 programs in question, eight were *post-filing*, meaning that pretrial diversion takes place after a court case is officially filed; three programs were *pre-filing*, meaning that they enroll participants prior to—and in lieu of—the filing of the court case; and four programs enroll participants either pre- or post-filing depending on case specifics (*mixed model*).

In theory, pre-filing programs offer a greater opportunity to save time and resources for prosecutors and other court players—since diversion occurs prior to any court appearance. Pre-filing programs also minimize collateral consequences for defendants. For example, in pre-filing programs, defendants avoid lost time or wages while attending court dates and avoid the potentially stigmatizing psychological effects of court attendance and involvement.

Post-filing programs, on the other hand, are the only logistically or legally feasible option in some jurisdictions where cases are rapidly transferred from law enforcement to their first court appearance (e.g., in Cook County, Illinois). Where prosecutors can avail themselves of either option, post-filing programs also afford greater legal leverage, since a judge is assigned to the case and can monitor compliance and swiftly sanction noncompliance. For example, the Maricopa County TASC Program explicitly diverts some cases pre-filing and others post-filing based on the amount of legal leverage deemed appropriate in the individual case; specifically, defendants with a prior criminal history and/or prior failures to appear for scheduled court appearances are more likely to be diverted post-filing.

## **Charge and Criminal History Restrictions**

Shown in Table 4.1,<sup>5</sup> six of the programs accept only misdemeanors (or citations), three accept only felonies, and six programs take a mix of misdemeanor and felony cases.

Nine of the 15 programs (60%) do not narrowly specialize in a specific charge type. Among the remaining programs, diverting drug or marijuana possession cases is especially common: The Cook County Drug School and Maricopa TASC programs are for drug or marijuana cases; the Philadelphia Small Amount of Marijuana program is for low-level marijuana cases; the Hennepin County program has separate tracks that are respectively for felony level drug possession and property cases; and the Dallas Memo Agreement program primarily targets retail theft and marijuana possession misdemeanors. Differing from these models, Phoenix's Project ROSE targets misdemeanor prostitution cases (see pull-out box below).

As shown in Table 4.1, most programs have at least some eligibility restrictions tied to criminal history (e.g., excluding cases with prior violent convictions or excluding cases with certain numbers of prior convictions, regardless of the charge).<sup>6</sup>

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<sup>5</sup> Several programs have additional eligibility restrictions beyond what is listed. In particular, some programs target or exclude long lists of specific charges or limit eligibility based on further case specifics (e.g., whether underlying drug sales is involved or whether the victim consents to participation). Table 4.1 provides eligibility essentials, not an exhaustive list of criteria.

<sup>6</sup> Several programs have additional eligibility restrictions beyond what is reflected in Table 4.1. For instance, some programs either target or exclude long lists of specific charges, limit eligibility based on probation status, or limit eligibility based on other specifics (e.g., whether

## **Eligibility for Project Rose in Phoenix**

Phoenix's Project ROSE specializes exclusively in misdemeanor prostitution cases. Since local prostitution defendants with three prior convictions are charged with a felony, they are ineligible. In arguably the most demanding program model we observed relative to charge type and severity, Project ROSE requires participants to complete 66 hours of educational, life skills, support group, and/or trauma-informed treatment classes over six months, presenting the diversion option to potential participants as an explicit alternative to certain jail time.

## **Screening and Enrolling Cases**

Having established formal eligibility criteria, each program designates a unit or individual, in almost all cases from the prosecutor's office, to screen and enroll cases. In general, the entity that screens cases may use discretion to rule out some cases that ostensibly meet formal legal criteria, as defined above. However, indicated by annual volume numbers provided in Table 4.1, the screening process in most of our profiled programs is not so restrictive as to prevent sizable numbers of individuals from participating. Annual volume in six of the 15 profiled programs exceeds 1,000 and, at the other end of the spectrum, only Phoenix's Project ROSE enrolled less than 100 individuals in the year for which data was collected.

## **Risk and Needs Assessment**

Only four programs use a formal, validated risk assessment tool. Both Chittenden and Maricopa Counties use the Ohio Risk Assessment System (ORAS) to inform the specific

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underlying drug trafficking is involved or whether the victim consents to participation). Table 4.1 provides each program's target population essentials, not an exhaustive list of all criteria.

choice of service mandates. Milwaukee uses the LSI-R for both of its diversion programs as part of systematic, universal screening and assessment process (see pull-out box below).



**Table 4.1. Target Population**

Program Name	Filing Stage	Charge Severity	Charge Type	Major Criminal History Restrictions or Other Key Criteria	Annual Volume (2012 or 2013)
Chittenden County (VT) Rapid Intervention Community Court Project	Mixed	Misd, Fel, or Citations	Not specialized	No history of sex offenses, offenses involving bodily harm, gang offenses, or commercial drug dealing. No gun charge or domestic violence charge. Cannot currently live in a residential treatment facility.	327
Cook County (IL) Drug School	Post	Misd/Fel	Drug charge (possess. drug paraphernalia, ≤100 gm cannabis, ≤2.5 gm. other drugs)	No prior violent conviction (typically within a 10-year window) or prior drug conviction. No current open case. Current case does not involve an underlying drug dealing/manufacturing charge.	3,384
Cook County (IL) Felony Diversion Program	Post	Fel	Not specialized (limited to select nonviolent felonies)	No prior violent conviction (typically within a 10-year window), felony conviction, arrest for delivery of controlled substance. No current open case.	734
Cook County (IL) Misdemeanor Diversion Program	Post	Misd	Not specialized (but limited to nonviolent misdemeanors)	No prior violent conviction (typically within a 10-year window) or prior conviction for child-related offense. No current open case.	1,154
Dallas Memo Agreement Program	Post	Misd	Mainly retail theft or marijuana possession	No prior arrest. Select charge exclusions (e.g., no public lewdness, indecent exposure, family violence, DWI, or prostitution).	1,600
Hennepin County (MN) Operation De Novo, Property and Drug Diversion	Mixed	Fel	Drug- or property-related felonies	No prior felony conviction, no more than 3 misdemeanor convictions. No drug sales. Cannot owe more than \$5,000 to a citizen or \$10,000 to the government. Select other charge exclusions (e.g., burglary, identity theft, theft of public funds, or underlying domestic violence in the current case).	663 (drug & property diversion)
Maricopa County (AZ) TASC Adult Prosecution Program	Mixed	Fel	Drug- or marijuana-related	No prior drug offense or dangerous offense; not more than two prior convictions (any charge); no known gang membership; not on felony probation; not involved with TASC within the past year.	2,901
Milwaukee County (WI) Diversion Program	Pre	Misd/Fel	Not specialized	Risk assessment criteria: LSI-R:SV classification of low risk. Excludes select charges (e.g., violent, firearms, sex offense, drug sales).	277
Milwaukee County (WI) Deferred Prosecution Program	Post	Misd/Fel	Not specialized	Risk assessment criteria: LSI-R:SV above low risk and LSI-R of medium risk. Excludes select charges (e.g., violent, firearms, sex offense).	478
Philadelphia Accelerated Misdemeanor Program (AMP)	Post	Misd	Not specialized (but only nonviolent misd.)	No prior violent conviction (typically within a 10-year window)	5,474
Philadelphia Accelerated Rehabilitative Disposition (ARD)	Post	Misd/Fel	Not specialized	No prior conviction; not more than one prior arrest. No violent crimes with weapons, no possession cases with intent to deliver; no domestic violence cases; no DUI with injury, no for most weapons cases.	1,291
Philadelphia Small Amount of Marijuana Program (SAM)	Post	Misd	Marijuana possession <30 gm.	No violent felony convictions in past three years or within two years of parole for such crime; not in possession of a gun at time of arrest.	3,194
Phoenix Project ROSE	Pre	Misd	Prostitution	No more than 3 prior prostitution convictions, no prior ROSE completion.	86
San Diego Beach Area Community Court (BACC)	Pre	Misd/Citations	Not specialized	First time in BACC. No violent charges, sex offenses, or gang members. "Chronic" offenders or homeless persons are referred elsewhere.	150
San Francisco Neighborhood Courts (NC)	Mixed	Misd/Fel	Not specialized	Active probation or parole cases are referred on case-by-case basis. No current open case. No violent charges. Prior convictions allowed on prosecutor's individual discretion.	376

## **Universal Screening and Risk-Informed Decision-Making in Milwaukee**

In a unique model amongst all programs examined, Milwaukee County adopted a universal screening and assessment protocol that is operated by the courts and used by the District Attorney's Office to aid in producing diversion eligibility determinations as well as producing determinations of which of the two diversion programs—Diversion or Deferred Prosecution—are most suitable in each case.

The process works as follows: First, every defendant who is arrested and booked into the County's Central Criminal Justice Facility are administered the short-form LSI-R:SV assessment, a brief risk-need screener that classifies defendants as low, medium, or high risk of re-offense. Among defendants who are legally eligible for diversion, those in the low risk category are routed to the less intensive pre-filing Diversion program, which typically involves community service, restitution, and possibly a restorative justice conference. The Diversion program does *not* involve intensive treatment for underlying criminogenic needs, but then since the defendants are low-risk, such treatment is counter-indicated.

Those defendants whose risk level is medium or high on the LSI-R:SV are then administered the full-length LSI-R assessment, a comprehensive, well-validated risk-needs assessment tool that covers all of the "Central Eight" factors that have repeatedly been shown to predict re-offending, including criminal history, antisocial attitudes, antisocial peer associations, and substance abuse (Andrews and Bonta 2010; Bonta and Andrews 2007). Legally eligible defendants who are classified as medium risk on the full-length LSI-R are routed to the more intensive post-filing Deferred Prosecution program, which involves an intensive, individualized treatment plan, possibly including alcohol or drug treatment, drug testing, community service, restitution, employment counseling, or other needs-based services.

Finally, high risk defendants on the LSI-R are ineligible for both diversion programs.

As of when case study data was collected, no other program outside of Milwaukee's had adopted a similarly rigorous protocol for risk-informed decision-making. However, evaluated separately in conjunction with the Smart Prosecution Program of the Bureau of Justice Assistance, the Cook County State's Attorney's Office adopted an analogous protocol for its Misdemeanor Deferred Prosecution Program in 2015 (see Labriola, Ramdath, and Kerodal 2017).

Regardless of whether the programs assess for risk, nine of the 15 (60%) administer at least some form of needs assessment. Results are primarily used to determine appropriate services (e.g., alcohol or drug treatment, employment or educational services, need for Spanish-language programming, cognitive or behavioral treatment needs, and other service needs).

## Program Mandates

Table 4.2 provides a snapshot of the basic types of program mandates utilized by each program. Five programs have adopted a straightforward approach, linking participants to a standard set of educational classes, community service hours, or other requirements. While a “one size fits all” philosophy may seem antithetical to well-crafted treatment and rehabilitation aims, it bears reiterating that not all programs prioritized these aims (see previous chapter). Instead, many programs prioritized the benefits of greater resource efficiency for the system or a variety of other goals—most importantly, helping defendants to avoid the collateral consequences of a conviction.

Six other programs, including Milwaukee’s (see pull-out box above), use individualized mandates, tailored to the needs of each defendant. Finally, two of Cook County’s programs use a mix of standardized and individualized mandates; and Philadelphia’s Accelerated Misdemeanor Program (AMP) divides participants into one of two tracks (AMP 1 and AMP 2), the latter of which includes more intensive, individualized mandates.

Other mandate components include the following:

- **Education about the Defendant’s Problems:** Thirteen of the 15 programs link at least some participants to educational classes about the relevant problem behavior, including classes about drugs, driving, theft, prostitution, weapons, health, and/or parenting.
- **Community Service:** Ten of the 15 programs order at least some participants to perform community service.
- **Cognitive-Behavioral Therapy:** Staff at only one program (Maricopa’s TASC) explicitly cited the use of evidence-based cognitive-behavioral therapy (CBT), which seeks to change maladaptive or antisocial thoughts as well as impulsive decision-making tendencies that contribute to drug use and/or other criminal behavior. Subsequent to the timing of research interviews, we learned that some participants in San Francisco’s Neighborhood Courts program receive CBT, and at least some participants in Milwaukee’s Deferred Prosecution Program receive the same; at the time of our case

study was conducted, Milwaukee was just then seeking to add a new CBT option specifically to address criminal thinking patterns.

- **Restorative Justice:** Only four programs use restorative justice groups with at least some participants. For San Francisco’s Neighborhood Courts program (see pull-out box below) as well as Los Angeles’ newly created Neighborhood Justice Initiative, described below in a separate section, restorative justice represents the guiding philosophy of the model.

### San Francisco’s Neighborhood Courts Program

San Francisco had adopted a particularly unique diversion model due both to the neighborhood focus and to the use of *restorative justice* as a central organizing principle. As background, San Francisco is divided into ten neighborhood-based police districts. By the spring of 2012, each district established a local “Neighborhood Court,” working in partnership with a dedicated neighborhood prosecutor. Although called a “court,” the neighborhood-based sites are not technically criminal courts—the program in fact predominantly uses a pre-filing diversion model.

Individuals arrested on eligible misdemeanors or felonies are offered the opportunity to participate in Neighborhood Court. If they choose to do so, they report to their neighborhood site where they meet with trained Neighborhood Court Adjudicators—volunteer community members trained in restorative principles. During their “hearing” they accept responsibility for their behavior and discuss the harm they have caused. Volunteer adjudicators then issue individualized “directives” that participants then typically complete over the next 30-60 days. According to staff, directives can vary significantly based on the seriousness of the offense, the defendant’s needs, and the extent to which the defendant appears apologetic and conveys responsibility. Victims may also meet with the adjudicators to discuss the incident and their restorative needs. Potential mandates are letters of apology, reflective essays, community service, needs-based classes, cognitive behavior therapy groups and other programming. Any restitution owed to victim must be paid. Staff indicated that there are “hundreds” of individualized options for services or classes. Ultimately, the main goals of the program are restorative: involve community members in prosecutorial decision, have the defendants gain insight into the harm they caused, and treat the defendants as individuals. Sessions are offered during both daytime and evening hours to facilitate participation. Like many pre-filing programs, this one also aims to save prosecutorial resources for more serious cases.

**Table 4.2. Diversion Program Mandates**

	“One Size Fits All” (Universal Mandate)	Some Universal & Individualized Elements	Individualized Mandates Only	Education About Presenting Needs	Cognitive-Behavioral Therapy	Community Service	Group Counseling	Restorative Justice	Average Duration	Average Dosage
Chittenden County (VT) Rapid Intervention Community Court			X	Some		Some	Some	Some	Usually 90 days	Varies
Cook County (IL) Drug School	X			All					3 months	4 classes: 2.5 hours/class
Cook County (IL) Felony Deferred Prosecution Program		X		Some		Some	Some		9-12 months	Varies
Cook County (IL) Misdemeanor Deferred Prosecution Program		X		Some			Some		1 week to 3 months	2 appointments
Dallas Memo Agreement Program	X			Some		All	Some		60 days	24-36 hrs. community service + classes
Hennepin County, MN: Operation De Novo			X	Some		Some	Some		Varies	Varies
Maricopa County (AZ) TASC Adult Prosecution Program	X			All	All		All		24 days	1 hour/day
Milwaukee County (WI) Diversion Program		X				Some		Some	6 months	Varies (but limited: mainly community svc.)
Milwaukee County (WI) Deferred Prosecution Program		X				Some	Some		6 months	Varies (see pull-out box)
Philadelphia Accelerated Misdemeanor Program (AMP 1 and AMP 2)	AMP I		AMP 2	Some		All AMP 1/ Some AMP 2	Some	Some	AMP 1: 5-10 weeks/ AMP 2: 15-20 weeks	AMP 1: 12-18 hrs/ AMP 2: Varies
Philadelphia Accelerated Rehabilitation Disposition		X		Some		Some			6 months-2 years	Varies
Philadelphia Small Amount of Marijuana (SAM)	X			All					1 day	3-4 hours
Phoenix Project ROSE	X			All			All	All	6 months	66 hours
San Diego Beach Area Community Court (BACC)	X			All		All			2 days	3 hours/day
San Francisco Neighborhood Court (NC)		X		Some	Some	Some	Some	All	Varies	Varies (see pull-out box)

## Legal Leverage

Diversion participants who do not successfully complete program requirements risk court filing (pre-filing) or resumption of their court case (post-filing) in all 15 programs examined. Staff in every diversion program except Project ROSE in Phoenix reported giving noncompliant participants “second chances.” Participants in the Cook County’s Drug School program, for example, could miss multiple classes—but they would often have to restart the program from the beginning. Staff indicated that participants in Milwaukee’s programs receive “numerous opportunities” to make up for failed drug tests, and time was frequently extended for participants to pay restitution costs.

## Local Perspectives: Themes and Findings from Staff, Stakeholders, and Program Participants

This section provides a snapshot of the major themes and findings emerging in staff and stakeholder interviews at all 11 sites and 16 programs and in focus groups with participants in six programs: Cook County’s Felony Diversion Program; Hennepin’s Operation De Novo program; Milwaukee’s two programs; San Francisco’s Neighborhood Courts; and Chittenden’s Rapid Intervention Community Court. Complete findings may be found in Labriola et al. (2017).

### Staff and Stakeholders

**Benefits of Diversion:** When asked to summarize the strengths of their diversion programs, staff and stakeholders most often underscored: (1) speedier case processing and related cost savings; (2) reduced collateral consequences of a conviction—with respondents especially emphasizing the implications for defendants’ future employability; and (3) strong interagency collaboration, both among different justice agencies and community-based providers. In addition, staff at the San Francisco and Chittenden sites, both of which employ restorative justice approaches, emphasized the benefits of having defendants, victims, and/or community members each be able to tell their stories and have a voice in the process.

**Program Challenges:** Respondents from each site named distinct challenges, although several cross-site themes were also apparent. They included: (1) a lack of resources (e.g., lack of funding to serve more defendants, lack of space for community-based programming, and reliance on old/outdated technology; (2) need for administrative improvements—

especially a better system for service providers to report compliance information efficiently to the justice players; and (3) need for enhanced programming (e.g., more individualized programming or expanded drug and alcohol treatment slots).

## **Program Participants**

**Motivation to Participate:** Focus group participants across all sites described the decision to participate as an easy one to make, variously citing diversion as better than jail, wanting to have their court cases end more quickly, and reducing the chance of missing work or getting fired than would have been more likely to happen in the traditional process (e.g., due to a conviction or to missing work to attend court).

**Individualized Accommodations:** Focus group participants across most sites responded positively to program elements that were individualized. These elements variously included: tailoring specific services and requirements to participants' needs; allowing classes or appointments to be rescheduled based on personal circumstances or scheduling conflicts; and providing extra time to complete the program if they ran into problems. However, participants in two sites expressed the opposite view on the specific issue of scheduling, lamenting a lack of flexibility with appointment times.

**Fairness:** Focus group participants largely believed they were treated fairly by program staff. In Milwaukee, several participants agreed that they were treated "more than fairly," and one Chittenden County participant agreed that this program was "... more than fair. Fair, fair, fair, across the board." Some participants explicitly compared the fairness of diversion to the opposite experience in traditional courts. Expressing a commonly heard sentiment, one San Francisco participant stated, "[In the traditional court] they kind of forget about our rights ... It's totally different with Neighborhood Courts, they actually care."

## Chapter 5

# Impact Findings at Five Programs

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The five programs selected for the impact study, while incorporating a diverse range of specific program policies, were all relatively well-established, high-volume models.

- **Cook County Felony Drug School:** In operation since 1972, Drug School is a post-filing program for either misdemeanor or felony defendants facing drug or marijuana possession charges. Participants must attend four standardized drug education classes of two and half hours per class, with one curriculum for younger defendants ages 17-25 and another curriculum for older defendants ages 26 and up.
- **Cook County Misdemeanor Deferred Prosecution Program:** Established in 2013, this post-filing program is open to a wide range of nonviolent misdemeanor cases. Based on a short assessment conducted before enrollment, participants are assigned to two community-based appointments involving a more in-depth needs assessment and voluntary referrals for further services. Veterans are placed on a special “veterans” track.
- **Milwaukee Diversion Program:** Established in 2007, pre-filing enrollment targets a wide range of misdemeanors and felonies, as long as the LSI-R:SV risk assessment classifies the defendant as “low risk.” Participants receive a relatively low service dosage (responsive to their low risk), consisting mainly of community service, required restitution, and, possibly, attendance at a restorative justice conference.
- **Milwaukee Deferred Prosecution Program:** Also established in 2007, the post-filing Deferred Prosecution program has generally the same exclusions as those for the Diversion program, except that the target population is classified as medium risk on the full-length LSI-R. Participants can receive a range of individualized treatment and social services.
- **Chittenden County Rapid Intervention Community Court:** Since 2010, this program is open to felony, misdemeanor, and citation defendants—but mainly targets low-level charges. Based on a risk-needs assessment using the ORAS tool, participants are assigned to individualized treatment, services, or restorative justice components.

Staff from all five programs cited recidivism reduction and/or rehabilitation as an extremely important goal, and staff from the Cook Drug School and Chittenden program also cited reducing collateral consequences for the defendants (e.g., conviction or incarceration).



## Analytic Plan

Having successfully matched the program participants to comparison defendants (see Chapter 2 and the Technical Appendix on Impact Methodology), the next step was to examine program effects on: (1) instant case outcome (convicted or not); (2) use of jail; and (3) two-year re-arrest. To facilitate cross-site comparisons, we also computed odds ratios for each outcome as an estimate of effect size. Essentially, an odds ratio less than 1.00 indicates a positive effect—i.e., diversion participants were *less* likely than comparisons to have the given undesired outcome (conviction, jail, or re-arrest), whereas an odds ratio greater than 1.00 indicates a negative effect (diversion participants were more likely to have an undesired outcome). In addition, survival analyses were conducted to provide a richer comparison of re-arrest outcomes than a simple dichotomous measure of re-arrest at the two-year mark.

Although the general consistency of the results across sites (see below) is promising from the standpoint of study generalizability, it remains a limitation that only three jurisdictions and five programs were included in the evaluation. Other diversion programs may not necessarily produce similar results. Additional limitations tied to data quality and comparison group sample size, especially for Cook County, are discussed in the Technical Appendix.

## Results

### Conviction Rates

As shown in Table 5.1, the pretrial diversion programs produced a considerable decrease in the percentage of cases ending in conviction (and, therefore, in exposure to the collateral consequences of conviction). All statistical tests were significant in the expected (positive) direction. Results pointed to an especially large magnitude of impact in the Milwaukee Diversion program (9% of diversion compared to 74% of comparison group convicted), the Chittenden County Rapid Intervention Community Court (16% compared to 64% convicted), and among felony defendants who participated in the Cook County Drug School (3% compared to 63% convicted).<sup>7</sup>

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<sup>7</sup> Estimates for the Cook County Drug School programs were weighted to adjust for differential rates of missing case disposition data in the diversion and comparison samples.

Although all five programs reduced the conviction rate on balance, it remains notable that more than half of the *comparison group* in the Cook County Misdemeanor Deferred Prosecution Program and among misdemeanor defendants in the Cook County Drug School program had their cases dismissed. It is likely that some of these dismissals followed few court appearances and, ultimately, required of the defendants less time, and less onerous obligations, than diversion participation. Our impact evaluation was not explicitly designed nor was data available to make possible pinpointing the precise experience of defendants in the comparison group who had their cases dismissed. Nonetheless, it is conceivable that, in relative terms and especially in the aforementioned Cook County sites, diversion led to a degree of net widening for some defendants who might otherwise have received a dismissal without having to complete any diversion requirements.

## Use of Jail

Pretrial diversion programs were also effective in reducing the use of a jail sentence. This was largely driven by their larger percentage of dismissed cases (none of which received jail time). Overall, Milwaukee's Diversion program (4% vs. 50%) and felony defendants participating in Cook County's Felony Drug School (1% vs. 37%) produced the greatest decrease in the use of jail. On the other end of the spectrum, jail was rare among eligible misdemeanor defendants for the Cook County Drug School, either among diversion participants (zero) or matched comparisons (5%).

## Recidivism

The lower section of Table 5.1 shows that four of five programs examined—both Milwaukee programs and both Cook County programs—reduced the prevalence of two-year re-arrest and, for those re-arrested, delayed the time to re-arrest, when comparing diversion and comparison group defendants.<sup>89</sup> The fifth program, Chittenden County's, did not produce

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<sup>8</sup> The sole caveat and exception to this general conclusion is that while the Cook County Misdemeanor Deferred Prosecution program significantly reduced the two-year re-arrest rate, those program participants who were re-arrested were re-arrested after less time.

<sup>9</sup> Although not all findings were statistically significant, at least one two-year re-arrest finding reached statistical significance ( $p < .05$ ) for at least one outcome measure in the analysis of three programs, while a fourth program achieved a two-year re-arrest impact that approached significance ( $p < .10$ ).

significant differences in the occurrence of two-year re-arrest, but did significantly lengthen the time to first re-arrest.

## Summary

Taken together, the results indicate that although there is clearly variation between programs in all outcomes, the general trend appears to be towards far fewer convictions, less use of jail (mainly as a byproduct of fewer convictions and, hence, less exposure to any sentence), and reduced re-arrest for the diversion programs.

**Table 5.1. Impacts on Case Dispositions, Sentences, and Recidivism**

	<b>Milwaukee Diversion</b>		<b>Milwaukee Deferred</b>		<b>Chittenden County RICC</b>	
	<b>Diversion</b>	<b>Comparison</b>	<b>Deferred</b>	<b>Comparison</b>	<b>RICC</b>	<b>Comparison</b>
	<b>N = 139</b>	<b>N = 139</b>	<b>N = 290</b>	<b>N = 290</b>	<b>N = 268</b>	<b>N = 536</b>
<b>Case Disposition</b>						
Pled Guilty/Convicted	9%	74% <sup>d</sup>	52%	70% <sup>e</sup>	16% <sup>f</sup>	64%
Dismissed/Not Convicted	91%	26% <sup>***</sup>	48% <sup>g</sup>	30% <sup>***</sup>	84%	36% <sup>***</sup>
<b>Odds Ratio for Conviction</b>	.03		.47		.10	
<b>Sentence</b>						
<b>Of all defendants</b>						
Jail	1%	14%	27%	18%	0%	0%
Probation	0%	3%	1%	3%	3%	9%
Jail and Probation	3%	36%	12%	28%	8%	29%
Other (fine, restitution, etc.)	5%	22%	12%	21%	4%	26%
No sentence	91%	26%	48%	31%	84%	36%
Chi-square test for significance	***		***		***	
<b>Total with jail sentence</b>	4%	50% <sup>***</sup>	39%	46%+	8%	29% <sup>***</sup>
<b>Odds Ratio for Jail</b>	.04		.72		.54	
<b>Of those with a guilty disposition</b>						
Jail Only	8%	19%	51%	26%	0%	0%
Probation Only	0%	4%	3%	4%	20%	14%
Jail and Probation	33%	48%	23%	40%	51%	46%
Other (fine, restitution, etc.)	58%	29%	23%	30%	29%	40%
Chi-square test for significance	ns		***		ns	
<b>Total with jail sentence</b>	41%	67%	74%	66% <sup>***</sup>	51%	45%
<b>Recidivism</b>						
<b>Two-year Re-arrest</b>						
Any Re-arrest	17%	28% <sup>*</sup>	31%	38%+	49%	44%
Any Felony Re-arrest	7%	15% <sup>*</sup>	15%	20%	9%	8%
Any Misdemeanor Re-arrest	13%	18%	20%	25%	53%	47% <sup>h</sup>
Any Drug Re-arrest	7%	9%	7%	11%	6%	5%
<b>Days to First Re-arrest (Cox regression)</b>	538.72	346.05 <sup>i</sup>	389.06	341.31	623.39	534.51 <sup>*</sup>
<b>Odds Ratio for Two-Year Re-Arrest</b>	.56		.73		1.21	

**Table 5.1. Impacts on Case Dispositions, Sentences, and Recidivism (Cont.)**

	Cook County Felony Drug School		Cook County Misdemeanor Drug School		Cook County Misdemeanor Deferred Prosecution	
	Felony Drug School <sup>a</sup>	Comparison	Misdemeanor Drug School <sup>b</sup>	Comparison	MDPP <sup>c</sup>	Comparison
	N = 1000	N = 1000	N = 689	N = 689	N = 132	N = 132
<b>Case Disposition</b>						
Pled Guilty/Convicted	3%	63%	<1%	15%	0%	7%
Dismissed/Not Convicted	97%	37%***	99%	85%***	100%	93%
<b>Odds Ratio for Conviction</b>	.02		.02			
<b>Sentence</b>						
<b>Of all defendants</b>						
Jail	1%	26%	0%	3%		
Probation	1%	23%	<1%	10%		
Jail and Probation	<1%	11%	0%	2%		
Other (fine, restitution, etc.)	0%	<1%	<1%	1%		
No sentence	97%	39%	99%	85%		
Chi-square test for significance	***		***			
<b>Total with jail sentence</b>	1%	37%***	0%	5%***		
<b>Odds Ratio for Jail</b>	.02					
<b>Of those with a guilty disposition</b>						
Jail Only	50%	45%	0%	20%		
Probation Only	35%	36%	50%	65%		
Jail and Probation	15%	18%	0%	10%		
Other (fine, restitution, etc.)	0%	0%	50%	5%		
Chi-square test for significance	ns		ns			
<b>Total with jail sentence</b>	65%	63%	0%	30%		
<b>Recidivism</b>						
<b>Two-year Re-arrest</b>						
Any Re-arrest	48%	54%**	38%	43%+	29%	41%*
Any Felony Re-arrest	26%	32%**	10%	14%*	8%	6%
Any Misdemeanor Re-arrest	36%	41%*	32%	37%+	24%	40%**
Any Drug Re-arrest	27%	30%+	18%	23%*	8%	8%
<b>Days to First Re-arrest (Cox regr.)</b>	448.94	320.98***	478.82	404.56**	278.20	539.94***
<b>Odds Ratio for Two-Year Re-Arrest</b>	.68		.79		.59	

\*\*\* $p < .001$ . \*\* $p < .01$ . \* $p < .05$ . + $p < .10$ .

Note: It was not possible to compute sentence percentages from Cook County MDPP due to high proportions of missing data.

<sup>a</sup> For felony Drug School instant case disposition DS N = 993 and comparison N = 416; sentence DS N = 20 and comparison N = 261.

<sup>b</sup> For misdemeanor Drug School instant case disposition DS N = 661 and comparison N = 166; sentence DS N = 2 and comparison N = 20.

<sup>c</sup> For Cook Co. MDPP instant case disposition MDPP N = 79 and comparison N = 31; sentence MDPP N = 0 and comparison = <10.

<sup>d</sup> Milwaukee Diversion comparison case outcome N = 138 (1 unknown).

<sup>e</sup> Milwaukee Deferred comparison case outcome N = 288 (2 cases not resolved).

<sup>f</sup> For RICC case outcome N = 259, as 9 were coded "other" (e.g., referral to drug court).

<sup>g</sup> For Milwaukee Deferred Program 3 participant and 3 control cases were still open.

<sup>h</sup> For the Chittenden County RICC program, misdemeanor re-arrest results in fact encompass both misdemeanor and citation re-arrests.

<sup>i</sup> For Milwaukee Diversion days to re-arrest missing data from 6 participants and 6 comparisons.

## Chapter 6

# Cost Findings at Four Programs

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As described in Chapter 2, programs in the cost evaluation included three from the impact study (the two Cook County programs and Chittenden County’s) as well as San Francisco’s Neighborhood Courts program (whose model is summarized in a pull-out box in Chapter 4). Notably, Cook County’s Drug School enrolls both felony and misdemeanor defendants, but the cost evaluation focused solely on the felony cases.

## Analytic Plan

As shown in Table 6.1, costs for diversion and comparison cases are each presented as a range, with separate results for “low,” “typical,” and “high” cost cases—and with results also distinguished for the prosecutor, public defender, and court. The criteria for low, typical, and high depend on the program because the eligible case types differ. Generally speaking, low costs refer to less complex cases that resolve quickly (e.g. no conflicting information, no continuances); typical cases tend to take a relatively limited amount of time (e.g. limited conflicting information, no video evidence); and high cost cases refer to those that take more time to resolve (e.g. some conflicting information, more witnesses). Details of the criteria for each program are described in the technical appendix.

The low, typical, and high estimates for program and control cases include nearly all phases of a case (e.g. initial appearance through sentencing), and we take into account the proportion of cases that go through key cost phases (early plea or dismissal, later plea or dismissal, bench trial, jury trial).<sup>10</sup> We also account for some diversion cases that are unsuccessful in completing their mandate and are, therefore, returned to traditional adjudication. Based on program data, our estimates assume that 9% of Cook Misdemeanor Deferred Prosecution, 3% of Cook Drug School, 17% of Chittenden Rapid Intervention Community Court (RICC), and 14% of San Francisco Neighborhood Courts diversion cases fail to complete their mandate and, thus, incur added costs associated with traditional

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<sup>10</sup> We do not include post-sentencing.

prosecution. In addition, our output cost estimates for comparison cases take into account that not all comparisons are convicted; some are dismissed or found not guilty (see previous chapter).

Several study limitations are worth underlining. First, we used self-reported time spent data. While observational data would have been ideal, it was not feasible within this study. Second, for programs that cost less than the alternative, we have not taken into account the additional benefit to society of shifting their tax revenue to other cases.<sup>11</sup> Third, the diversion programs potentially produce non-tangible benefits (e.g., psychological benefits for the defendants or symbolic benefits for the system) or other tangible benefits (e.g., restitution payments to victims or socioeconomic benefits to participants) that could not be measured.

## Results

### Investment Costs

At all four sites, diversion produced significant investment cost savings. Specifically, focusing on the “typical” case and as contrasted with each program’s comparison group, diversion produced a relative investment cost reduction of a magnitude of: 82% for San Francisco’s Neighborhood Courts (from \$4,277 to \$758 for a cost differential of \$3,519 per typical case);<sup>12</sup> 59% for Chittenden County’s Rapid Intervention Community Court (from \$893 to \$366 for a cost differential of \$556 per typical case); 46% for Cook County’s Misdemeanor Deferred Prosecution Program (from \$2,132 to \$1,154 for a differential of \$978 per typical case); and, also, 38% for felony Drug School cases (from \$1,749 to \$1,081 for a differential of \$668 per case). Diversion led prosecutors, public defenders, and courts all expend fewer resources for program than control cases.

### Output Costs

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<sup>11</sup> This is formally known as “deadweight loss of taxes.” For more on how this is calculated and applied to benefit-cost analyses of government-funded programs, see Boardman 2011; and Boardman, Greenberg, Vining, and Weimar 1997.

<sup>12</sup> Our estimates of comparison cases in San Francisco had to include non-traffic misdemeanor cases that are not eligible for Neighborhood Courts and that are known to take more time of judges, staff, and attorneys (e.g. DUI). Therefore, we overestimate the benefits of the Neighborhood Courts. We cannot be certain by how much, however.

For case outputs (cost estimates available for three of the four programs), results were similarly favorable for diversion (see Table 6.1 for separate low, typical, and high estimates):

- **Chittenden County’s RICC:** Case outcomes (dispositions and sentences) cost \$519 on average (when taking into account the program failure rate and costs of returning to docket to go be processed as a comparison case), almost 15% less than similar comparison cases (\$594).
- **Cook County’s Misdemeanor Deferred Prosecution Program:** Case outcomes cost \$130 on average, representing a 27% relative reduction from the average cost of \$168 for similar comparison cases; and:
- **Cook County’s Felony Drug School:** Case outcomes cost \$296 on average, representing an 84% relative reduction from the average cost of \$1,888 for similar comparison cases.

## Costs and Program Effectiveness

The “bottom-line” summary results of the cost analysis for the three sites where the analysis extended beyond investment costs alone are shown towards the bottom of Table 6.1. The following provides a brief summary for each program:

**Chittenden County’s RICC:** Considering both investment and output costs, the total average cost differential was \$602 per case. Over the period investigated (September 2012 through December 2013), in which there were 464 diversion participants, the RICC program freed up approximately \$279,489 (or \$223,590 per year on average) in criminal justice resources that could be used for other cases. Recidivism results for the RICC indicate no differences. However, the impact analysis indicates that RICC defendants were significantly less likely than comparisons to have a conviction or jail sentence (see previous chapter), a finding that is also supported in this cost analysis. The resources made available—i.e., resulting from the differences in case dispositions and sentencing—and the time devoted to each case type by judges, attorneys, and staff are the source of the benefit to society.

**Cook County’s Misdemeanor Deferred Prosecution Program:** The average cost differential, including both investment into cases and output, indicates that diversion costs an average of \$1,026 less per person than the alternative. Further, results in the previous chapter show that diversion resulted in a reduction in the re-arrest rate. Specifically, the re-arrest rate for any new charge (within two years) for diversion cases was 29% lower than comparison



cases. Therefore, the program not only costs less in terms of investment and disposition resources used, but also costs the criminal justice system less as the result of fewer re-arrests.

**Cook County’s Felony Drug School:** The average cost differential, including both investment into cases and the output, indicates that diversion cost \$2,259 less per person for a typical case than the alternative. Results in the previous chapter show that diversion resulted in a statistically significant (at the 1% level) reduction in the re-arrest rate within two-years. The any re-arrest rate (within two years) of the diversion group was 11% less than the comparison group. Given the costs of arrests and subsequent charging and adjudication, the program led to further resource gains in the criminal justice system.

## Summary

Among other goals, pretrial diversion programs are designed to keep cases out of (or minimize their involvement in) the formal criminal justice system, thereby shifting more resources to cases with higher social and victim costs (e.g. murder, rape and sexual assault, and aggravated assault), and yet still holding defendants accountable for their role in criminal behavior and protecting public safety. Our results indicate that, on balance, all four programs were beneficial in at least some ways (see Table 6.1). Chittenden County’s RICC program appears to free up sizable resources for the system, particularly in the judicial/legal system and corrections, though with no clear impact (positive or negative) on participant recidivism. Given the number of participants in the diversion program, \$233,590 annually were made available to the judicial/legal and corrections systems. We analyzed two programs in Cook County, and they appeared to provide both cost and recidivism reduction benefits. In total, the Misdemeanor Deferred Prosecution and Felony Drug School programs freed up approximately \$1,082,040 and \$674,830 of resources per year in the judicial/legal and corrections systems, respectively. Finally, the average San Francisco Neighborhood Court case cost about \$2,200 to \$5,200 less than comparison cases, based strictly on investment costs.<sup>13</sup>

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<sup>13</sup> Although not in the scope of this study, we did inquire about output costs of Neighborhood Court cases—specifically, the cost of participation in assigned services. Interviews indicate an average cost of \$436 for diversion services (including classes and case monitoring). The cost can vary widely across individuals because some cases result in the defendant writing a letter and thus have case monitoring costs but no service expenses, whereas other defendants may have to

**Table 6.1. Summary Cost Findings, Typical Case (in dollars)**

	<b>Chittenden County RICC</b>	<b>Cook County Misdemeanor Deferred Prosecution</b>	<b>Cook County Felony Drug School</b>	<b>San Francisco Neighborhood Court</b>
<b>Cost Estimate Per Case</b>				
<b>Investment Costs for Diversion Cases*</b>	<b>366 (271-483)</b>	<b>1,154 (661-1,784)</b>	<b>1,081 (765-1,563)</b>	<b>758 (493-1,136)</b>
Prosecutor's Office	325 (236-439)	283 (158-472)	523 (370-705)	460 (281-685)
Public Defender's Office	22 (15-24)	268 (178-418)	236 (177-431)	152 (70-298)
Court	20	603 (324-893)	322 (218-427)	146 (142-153)
<b>Investment Costs for Comparison Cases</b>	<b>893 (648-1,057)</b>	<b>2,132 (1,449-3,327)</b>	<b>1,749 (1,341-2,376)</b>	<b>4,277 (2,718-6,291)</b>
Prosecutor's Office	651 (443-803)	377 (221-633)	847 (698-1,112)	2,378 (1,397-3,359)
Public Defender's Office	127 (90-139)	525 (353-980)	342 (259-528)	1,039 (461-2,072)
Court	115	1,230 (875-1,714)	560 (384-736)	860
<b>Output Costs</b>				
<b>For Diversion Cases*</b>	<b>519 (282-1,213)</b>	<b>130</b>	<b>296</b>	<b>.</b>
<b>For Comparison Cases</b>	<b>594 (393-735)</b>	<b>168 (55-365)</b>	<b>1,888 (212-3,563)</b>	<b>.</b>
<b>Estimated Cost Differential Per Case</b>				
<b>Investment cost differential</b>	<b>527 (377-574)</b>	<b>978 (788-1,543)</b>	<b>668 (576-813)</b>	<b>3,519 (2,225-5,155)</b>
<b>Output cost differential</b>	<b>75 (111-479)</b>	<b>38</b>	<b>1,591</b>	<b>.</b>
<b>Total cost differential</b>	<b>602 (488-95)</b>	<b>1,016</b>	<b>2,259</b>	<b>.</b>
<b>Estimated Cost Differential</b>	<b>223,590</b>	<b>1,082,040</b>	<b>674,830</b>	<b>.</b>

take classes and require more intensive monitoring. There is a sliding scale administration fee and classes are also paid for by defendants based on a sliding scale. For example, shop lifting classes range from \$0 to \$120 and the prostitution procurement class can range from \$0 to \$1,000. Our estimate does not take into account that some defendants pay for their directives.

Per Year				
<p><i>Notes:</i> Positive value indicates the program costs less than the alternative. Low and high estimates in parentheses. Where missing, no low or high estimates available. Red text indicates negative value.  N/A- not applicable because cannot divide into zero.  * Takes into account failure rate and cost of case returning to docket (i.e. cost of comparison case).</p>				

## Chapter 7

# Conclusions and Lessons

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This chapter summarizes ten key conclusions for the field and, specifically, for prosecutors interested in replicating diversion programs in their jurisdiction.

## Diverse Goals and Target Populations

*1. Today's prosecutor-led diversion programs can and do pursue a wide range of goals, not limited to rehabilitation and recidivism reduction.* The primary aforementioned motivation for programs established in the 1970s was to rehabilitate defendants and reduce recidivism (Baker and Sadd 1979; Feeley 1983; U.S. Department of Labor 1974). By contrast, contemporary programs are pursuing a much more variable and diverse array of goals. Specifically, we identified seven overarching goal types, each one of which was endorsed as “extremely important” by staff in at least six of 15 programs examined. The two most frequently endorsed goals were:

- **Administrative and Cost Efficiencies:** Saving time, resources, and money by diverting appropriate cases early in the criminal justice process and, thereby, redeploying prosecutorial and other resources towards the most serious and complex cases; and
- **Reduced Collateral Consequences:** Aiding defendants' life chances by reducing the likelihood of a conviction and, thereby, reducing exposure to collateral consequences.

*2. Several programs are explicitly designed to pursue goals related to restorative justice.* A surprising number of programs made restorative justice an important, or even central, priority. Five programs employed variations of restorative justice conferences, in which defendants: (a) attend a session with victims and/or community members, (b) are invited to take responsibility for the harm they caused, and (c) are intentionally treated with respect and in a way that is intended to promote reintegration. Restorative justice arguably served as the preeminent organizing principle of San Francisco's Neighborhood Courts program and Los Angeles' Neighborhood Justice Initiative. The use of restorative justice strategies represents another key area in which the programs we studied deviated in substantial ways from the earlier models of the 1970s.

***3. Several programs are also designed to pursue recidivism reduction and/or offender rehabilitation.*** Staff from seven of 15 programs identified recidivism reduction as an extremely important goal, and rehabilitation was similarly singled out by staff at six of the programs. Thus, even if prosecutor-led diversion is driven by a diverse array of goals not limited to recidivism reduction, reducing recidivism remains a common consideration.

***4. Prosecutor-led diversion is one of several increasingly popular “front-end” interventions targeting cases early in case processing, often before a case reaches the courts.*** Our study confirmed a broader trend towards diverting cases to treatment or services at an extremely early juncture in criminal case processing. Whereas, by counter-example, most adult drug courts require participating defendants to plead guilty to an offense in advance of participation (see Rossman et al. 2011), virtually all of the programs in the present study divert prior to a plea or other case disposition. Indeed, seven of the 15 programs we examined enroll participants before the prosecutor even files charges with the court, enabling program completers to avoid any and all court involvement. The rise of “pre-filing” prosecutor-led diversion dovetails with a coinciding rise of in police-led diversion one step earlier still in the process. In police-led diversion, defendants are routed away from the formal justice system after initial contact with law enforcement but before a case is forwarded to the prosecutor’s office in the first place. Recent research points to growing interest in police-led diversion, coupled with positive evaluation results of Project Lead, an increasingly popular model first developed in Seattle, Washington (see, e.g., Collins, Lonczak, and Clifasefi 2016 on Project Lead; and, see, Tallon et al. 2016 for data describing the national trend towards early police-led diversion).

***5. Today’s prosecutor-led diversion models extend both to misdemeanors and felonies.*** Diversion programs of the 1970s focused almost exclusively on extremely low level misdemeanor or lesser charges (Baker and Sadd 1979; Feeley 1983; Salzberg and Klingberg 1983). By contrast, nine of the 15 programs we examined are either felony-only programs or mixed programs that admit both misdemeanors and felony defendants. Moreover, our impact evaluation included two misdemeanor-only programs but also three that admit felonies—and we found that all three produced positive effects, including reduced recidivism—indicating that diversion can be an effective public safety strategy with a wide array of target charges.

## Promising Impacts

### ***6. Prosecutor-led diversion appears highly successful in reducing exposure to a conviction.***

All five programs in the impact evaluation reduced the conviction rate, and some of the effect sizes were quite large. Conviction rates among diversion and comparison cases were 9% vs. 74% in Milwaukee's Diversion program, 16% vs. 64% in Chittenden County's Rapid Intervention Community Court (RICC), and 3% vs. 61% among felony defendants in Cook County's Drug School. All five programs also achieved at least some reduction in the use of jail sentences, although these effects were not statistically significant at all sites.

***7. Diversion also appears highly successful in freeing up resources for criminal justice agencies—especially pre-filing programs.*** All four programs in the cost evaluation produced sizable investment savings. The greatest relative savings were achieved by the two programs that accept cases pre-filing: San Francisco's Neighborhood Courts and Chittenden's RICC program. This confirms expectations, since pre-filing programs interrupt the prosecution process at a particularly early stage. Regarding specific criminal justice agencies, public defenders and courts came out ahead in all sites. In one site, Cook County's Misdemeanor Deferred Prosecution Program (MDPP), prosecutors invested more time and cost into diversion than comparison cases—but because MDPP ultimately reduced recidivism, prosecutors recouped their investment later on. Of final interest, all three programs included in an analysis of output costs (e.g., from reduced use of probation or jail at sentencing) reduced cost on net.

***8. Diversion reduces recidivism more often than not, although positive effects appear more modest and less consistently achieved than the aforementioned effects on conviction, jail, and cost.*** Four programs, two in Milwaukee and two in Cook County, produced meaningful recidivism reductions (statistically significant or approaching significance on at least one outcome measure for all four programs). However, Chittenden County's RICC program did not reduce recidivism. Also, for the four programs seeing positive effects, the magnitudes were not as great as the magnitudes of the aforementioned large effects seen on conviction, jail, and cost outcomes. The “bottom line” is that four of five programs reduced recidivism, a clear positive finding. We merely caution that diversion programs do not appear *always* appear to reduce recidivism and, when they do, effects are often modest in magnitude relative to the achievement of other goals.

**9. Programs seeking to rehabilitate defendants might benefit from looking to Milwaukee as a model.** The Milwaukee District Attorney’s Office is unique among the prosecutor’s offices we examined for implementing a universal risk-informed decision-making protocol, including a system for matching defendants of different risk levels to diversion programming of appropriate intensity—either the brief Diversion model or more intensive Deferred Prosecution model. In addition, for those in Deferred Prosecution, treatment is individualized to assessed needs. Both Milwaukee programs reduced recidivism. Programs prioritizing rehabilitation and recidivism reduction would do well to start with Milwaukee’s system as a promising model for the implementation of successful, evidence-based practices.

## Unanswered Questions and Future Directions

**10. Where diversion reduces recidivism, future research is needed to rigorously isolate why and how.** Whereas it is unproblematic to make sense of Milwaukee’s positive recidivism impacts (see above), Cook County’s Drug School and MDPP programs also reduced recidivism—but without the benefit of a rigorous risk-needs assessment and treatment matching strategy.<sup>14</sup> Cook County’s programs likely exerted positive effects through mechanisms other than the use of evidence-based assessment and rehabilitation strategies. Our process research points to several candidate mechanisms, including:

- **Procedural Fairness:** Focus group participants in multiple sites emphasized that they were treated fairly and that program staff appeared to “care” about them.
- **Substantive Justice:** Many program staff (inclusive of Cook County, specifically) emphasized their sincere desire to aid participants by reducing their exposure to a conviction. In turn, in focus groups, participants’ comments suggested that they had gained a more positive view of the law and the system through the substantive outcome of having the chance to avoid traditional prosecution and having their case dismissed.
- **Restorative Justice:** Discussed above, several diversion models incorporated a restorative approach that sought to hold participants accountable for misconduct in ways that reintegrate rather than stigmatize. This approach too may be a promising mechanism to change defendants’ behavior.

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<sup>14</sup> Cook County implemented risk-informed decision-making in its Misdemeanor Deferred Prosecution Program in 2015, after our samples were drawn for this study’s impact evaluation.

Future research is necessary to provide more rigorous answers regarding the extent to which positive impacts can be attributed these (or other) candidate elements.

***11. The 15 programs examined through in-depth process research made little use of evidence-based cognitive-behavioral therapy; instead, educational classes predominated.***

Only a few of the 15 programs studied appeared to order diversion participants to cognitive-behavioral therapy (CBT), despite its proven positive effects (e.g., see Lipsey, Landenberger, and Wilson 2007). Conversely, 13 of 15 programs ordered at least some, if not all, program participants to non-therapeutic educational classes about the nature of defendants' problems (e.g., educational about drugs, marijuana, DUI, or prostitution). Prosecutors establishing diversion programs in the future—and especially prosecutors seeking to maximize rehabilitative or recidivism reduction benefits—may wish to consider a more CBT-based, therapeutic focus.

***12. Especially with misdemeanor programs, the potential for legally disproportionate requirements is an area of concern.***

In the course of seeking to help defendants, we detected some potential for diversion programs to apply onerous requirements relative to the legal outcomes and sentences defendants would otherwise have received (i.e., “net widening”). For example, Project ROSE in Phoenix imposed a demanding set of requirements on misdemeanor prostitution defendants. Several programs do not have a standardized dosage of required services, a strategy that offers the clear benefit of individualization and flexibility, yet a strategy that can result in excessive program length if care is not taken. Obviously, this cautionary note (echoing a major theme in research on early diversion programs from the 1970s, see, e.g., Feeley 1983) applies especially to programs serving defendants facing low-level charges with little legal exposure in the preexisting status quo. As diversion programs continue to spread, prosecutors will have to diligently navigate the competing demands of robust, evidence-based programming and legal proportionality.

***13. Pretrial diversion is a ripe area for future research.*** The present study sets the stage for a number of potentially valuable future research inquiries. First, the field could benefit from research seeking to replicate our basic process and impact findings with diversion programs run out of smaller prosecutors' offices. Second, as introduced above, now that we have found that diversion can reduce recidivism, additional research is needed to pinpoint the mechanisms through which recidivism reductions are possible (e.g., therapeutic programming, procedural fairness, avoidance of stigma and psychological harm resulting from traditional court processing, or other processes). Third, a potentially more profound



area for future inquiry could be the extent to which the rise of prosecutor-led diversion is contributing to (or dovetailing with) broader changes in the culture, embodied within individual line prosecutor and prosecutors' offices nationwide—potentially leading prosecutors to emphasize a newly broad array of goals and performance measures (e.g., avoidance of collateral consequences, holding defendants accountable for misconduct in ways other than convictions and jail time, reducing recidivism, or more efficiently deploying prosecutorial resources even if it means dismissing or declining to prosecute some cases).

A final fruitful avenue for future research could involve comparing the decision to divert a case with the competing option of declining to prosecute a case altogether. In this regard, it bears emphasizing that diversion is but one means that prosecutors have at their disposal to re-routing cases away from full prosecution. Prosecutors can also decline to file certain types of cases, usually ones involving first-time minor misconduct, *without* first requiring participation in diversion. In this regard, future research on front-end criminal justice reforms could include examinations of prosecutorial decision-making along a full continuum of options, including: (1) straight decline-to-prosecute; (2) pre-filing diversion; (3) post-filing diversion (subsequent to court involvement but prior to a disposition); (4) alternative-to-incarceration at the dispositional stage (i.e., guilty plea required to participate); and, finally, (5) traditional prosecution, disposition, and sentencing. Whereas the current study involved an in-depth examination of two of these possibilities—pre-filing and post-filing prosecutor-diversion—future research assessing when and why today's prosecutors make the choices they make among all of these aforementioned options could help to illuminate the full gamut of today's reform horizon.

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## Appendix A.

# Technical Appendix on Impact Methodology

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Data on pretrial diversion participants was obtained from the five programs, and de-identified demographic, criminal history, and recidivism data was obtained for both diversion and potential comparison defendants from the state Statistical Analysis Centers in Illinois<sup>15</sup> and Vermont, and from the Milwaukee District Attorney's Office. The Milwaukee District Attorney's Office also provided LSI-R:SV risk assessment data for both diversion and comparison defendants. This appendix describes our propensity score matching process in greater detail, whereby the samples obtained from these data sources were refined and balanced on observable background characteristics.

Propensity score matching (PSM) is a commonly used procedure (actually, family of procedures) for approximating true random assignment to treatment and comparison groups, where randomization is not feasible. A properly matched sample provides an unbiased estimate of the impact of a treatment and eliminates the need to statistically control for potentially confounding background variables. Our PSM procedure included the following steps, performed separately for each of six data sets. (Felony and misdemeanor defendants participating in the Cook County Drug School were analyzed separately.)

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<sup>15</sup> Several formal caveats and qualifications apply to data obtained from the Illinois Criminal Justice Information Authority (ICJIA), the state's Statistical Analysis Center: Only arrests occurring in Illinois are recorded. Further, only arrest information that has been submitted successfully to the CHRI System (meaning has passed through all edit checks) is available. ICJIA does not have a view of any sealed or expunged records, so the data is valid as of the date it was pulled; data pulled at a later date may produce slightly different results. The smaller the geographic unit analyzed, the more missing data and data reporting practices affect the results. Biometric-based (fingerprints) matches are the most likely to be correct. Matches based on names and dates of birth will have more false positive and negative results. Biometric matching is not possible outside of an actual CHRI System. ICJIA uses exact name matching supplemented by manual review of near matches.

1. Merge and clean the de-identified data from diversion program participants and potential comparison defendants.
2. Identify an instant case—for diversion defendants, the arrest leading to program participation; for comparisons, the first arrest in a pre-specified time window, such that all earlier arrests are priors and all subsequent arrests are re-arrests.
3. For all instant cases and priors, identify the charge type, charge severity, and final case disposition (if available). Regarding data availability, the Cook County site, extending to both the Drug School and Misdemeanor Deferred Prosecution Program (MDPP), had substantial proportions of missing disposition information, stemming from limitations in data obtained from the Illinois Criminal Justice Authority.
4. Calculate group differences in the means or frequencies on the entire array of demographic, prior arrest, and instant case variables. Where available, include other background information as well (e.g., in Milwaukee, all participants had LSI-R-SV risk scores on file).
5. Identify all background variables on which the treatment and comparison groups differ at  $p < .50$ . If the impact analyses were to be performed on the entire sample, these variables would potentially bias the estimate of the impact of treatment on study outcomes.
6. Perform a logistic regression in which group membership (treatment vs. comparison) is the binary dependent variable, and all variables identified in (5) are the predictors. Specifically, run a backward stepwise procedure that begins with all predictors in the model, then iteratively removes predictors until all remaining predictors are associated with group membership. Save the predicted probability of group membership such that values closer to 1 reflect greater likelihood of membership in (i.e., greater similarity to other members of) the treatment group.
7. Sort all participants by ascending propensity score. For each treatment group participant select one comparison with an identical (or nearly identical) score. (For each Chittenden County RICC participant we selected two comparisons from the very large comparison sample we received). Treatment cases were removed from the analysis if their propensity score fell outside the range of those from the comparison group. The tables below show that most treatment participants were selected into the impact analyses, but in Cook County Misdemeanor Drug School and Misdemeanor Deferred Prosecution, a larger proportion of treatment participants were removed by this criterion.

8. Re-compute differences between selected treatment and comparison groups on all background variables. All (or nearly all) differences should be well below the  $p < .05$  criterion.
9. If significant differences remain, repeat this procedure as necessary until this criterion is achieved.
10. Retain selected participants and comparisons for impact analyses on case outcome, use of jail, and re-arrest.

We were confident that the PSM was successful, as can be seen in the following tables that show the pre- and post-matched samples for each site. The rightmost columns show no differences at  $p < .05$  between groups on any background variable, and only three that were significant at  $p < .10$ , well within the range of random sampling error.

It should be noted that PSM can only ensure statistical equivalence between groups on variables that were actually measured. That is, it is possible that treatment and comparison groups differ on relevant background characteristics that were not measured (e.g., personal or contextual information that is statistically related to our study outcome variables). This would not be a problem had the groups been truly randomly assigned. True random assignment in field studies, however, is notoriously difficult to achieve.

Three other data quality limitations should also be noted. First, as can be seen in the footnotes to Table 5.1, there were a substantial proportion of missing case disposition and sentence data from the three Cook County data sets. For Misdemeanor and Felony Drug School, case dispositions and sentences for the entire sample (lower portion of the “sentence” section) were weighted estimates. For the MDPP sample there were too few case outcomes to make a reliable estimate (we had only 23% of case dispositions for the comparison group and had sentence information for only two participants). Second, MDPP comparison data were available from only one of the three district courts originally requested. (Cook County is divided into multiple branch and district courts, defined based on the location of the arrest.) Third, comparison cases for the two Milwaukee data sets were drawn from a larger pool of potential comparisons; specifically, we used the score from their assessment tool (LSI-R: SV) to select potential comparisons for, respectively, the Diversion and Deferred Prosecution programs before proceeding to the propensity score calculation. (The pull-out box on Milwaukee’s universal screening and assessment model in Chapter 4 explains how this site uses LSI-R risk classifications to inform diversion eligibility.)



## Milwaukee County Diversion Program Matching: Treatment and Control Groups

	Pre or Post Match			
	Pre-Matching		Post-Matching	
	Diversion	Comparison	Diversion	Comparison
Demographics	N = 196	N = 233	N = 139	N = 139
Agea	29.39	27.88	29.57	27.03+
Male	71%	75%	71%	71%
Black	49%	55%	53%	53%
White	41%	37%	40%	40%
<b>Criminal history</b>				
Arrests				
Any	.48	1.80***	.50	.60
Felony	.08	.50***	.08	.06
Misdemeanor	.27	1.05***	.29	.31
Drug	.06	.28***	.07	.07
Convictions				
Any	.32	1.26***	.35	.44
Felony	.06	.35***	.06	.06
Misdemeanor	.13	.69***	.17	.18
Drug	.07	.27***	.06	.06
<b>Assessment</b>				
LSIR total score	1.63	1.74	1.65	1.58
LSIR: 2 or more priors	10%	12%	10%	5%
LSIR: arrested before age 16	8%	7%	8%	7%
LSIR: unemployedb	58%	58%	53%	56%
LSIR: criminal friends	33%	38%	37%	38%
LSIR: alcohol/drugsc	13%	16%	11%	12%
LSIR: psych assessment	17%	18%	19%	15%
<b>Charge category</b>				
Drug possession	27%	29%	26%	26%
Other drug	14%	18%	14%	18%
Burglary	1%	1%	1%	1%
Theft	20%	20%	21%	25%
Violent	2%	0%	1%	1%
Disorderly conduct	4%	3%	4%	4%
Resisting an officer	4%	3%	3%	4%
Other charge	29%	25%	29%	22%

\*\*\*p < .001. +p < .10.

a Comparison group pre-matching N = 232.

b Diversion group pre-matching N = 154, post-matching N = 107. Comparison group pre-matching N = 187, post-matching N = 115.

c Diversion group pre-matching N = 187 post-matching N = 131. Comparison group pre-matching N = 226, post-matching N = 139.

## Milwaukee County Deferred Prosecution Matching

	Pre or Post Match			
	Pre-Matching		Post-Matching	
	Deferred Prosecution	Comparison	Deferred Prosecution	Comparison
Demographics	N = 375	N = 387	N = 290	N = 290
Age <sup>a</sup>	28.68	28.49	27.96	29.56+
Male	68%	70%	68%	67%
Black	38%	40%	39%	37%
White	57%	56%	56%	59%
<b>Criminal history</b>				
Number of Arrests				
Any	1.65	2.52***	1.77	1.73
Felony	.31	.60***	.33	.39
Misdemeanor	1.13	1.67**	1.19	1.16
Drug	.21	.49***	.23	.24
Number of Convictions				
Any	1.34	2.03***	1.45	1.36
Felony	.23	.46***	.25	.30
Misdemeanor	.77	1.11*	.81	.78
Drug	.18	.38***	.20	.19
<b>Assessment</b>				
LSIR total score	3.47	3.47	3.51	3.39
LSIR: 2 or more priors <sup>b</sup>	28%	29%	30%	25% <sup>g</sup>
LSIR: arrested before age 16	29%	30%	30%	30% <sup>g</sup>
LSIR: unemployed <sup>c</sup>	77%	80%	76%	80%
LSIR: criminal friends <sup>d</sup>	61%	60%	60%	59%
LSIR: alcohol/drugs <sup>e</sup>	48%	53%	46%	51%
LSIR: psych assessment <sup>f</sup>	41%	36%	42%	35%+
<b>Charge category</b>				
Drug possession	30%	30%	31%	30%
Other drug	8%	7%	8%	6%
Burglary	6%	6%	5%	7%
Theft	24%	26%	23%	27%
Vehicle	5%	4%	5%	3%
Violent	5%	6%	4%	7%
Disorderly conduct	8%	6%	7%	7%
Resisting an officer	2%	2%	2%	2%
Other charge	14%	13%	14%	13%

\*\*\*p < .001. \*\*p < .01. +p < .10.

a Deferred group pre-matching N = 372, post-matching N = 287.

b Comparison group pre-matching N = 386.

c Deferred group pre-matching N = 320, post-matching N = 250. Comparison group pre-matching N = 327, post-matching N = 248.

d Deferred group pre-matching N = 374. Comparison group pre-matching N = 386, post-matching N = 28

e Deferred group pre-matching N = 363, post-matching N = 275. Comparison group pre-matching N = 363, post-matching N = 282.

f Deferred group pre-matching N = 385.

g Comparison group post-matching N = 289.

### Chittenden County, VT: Propensity Score Matching

	Pre or Post Match			
	Pre-Matching		Post-Matching	
	Rapid Intervention Community Court	Comparison	Rapid Intervention Community Court	Comparison
Demographics	N = 268	N = 2510	N = 268	N = 536
Age <sup>a</sup>	37.42	36.63	37.42	37.12
Age at first CJ system contact <sup>a</sup>	25.32	25.09	25.32	25.31
Male	58%	59%	58%	63%
Black	5%	4%	5%	6%
White	91%	94%	91%	92%
<b>Criminal history</b>				
Total prior arrests				
Any	6.52	6.48	6.52	6.52
Felony	.84	.76	.84	.71
Total prior charges				
Violation of conditions/court orders	.58	.65	.58	.78
Assault	.72	.71	.72	.76
Drug possession	.42	.42	.42	.38
Other drug	.13	.10	.13	.09
DUI/motor vehicle	1.21	1.42	1.21	1.31
Burglarly/theft	1.41	1.35	1.41	1.31
Disorderly conduct	.97	.99	.97	1.01
Other	1.08	.10	1.08	.87
Total prior convictions				
Any	3.96	4.32	3.96	4.37
Felony	.75	.68	.75	.65

<sup>a</sup> Pre- and post-matching RICC N = 265.

### Cook County Felony Drug School: Propensity Score Matching

	Pre or Post Match			
	Pre-Matching		Post-Matching	
	Felony Drug School	Comparison	Felony Drug School	Comparison
Demographics	N = 1195	N = 12406	N = 1000	N = 1000
Age	27.64	34.75***	28.24	27.82
Male	80%	80%	80%	83%+
Black	50%	54%**	47%	47%
White	49%	43%***	52%	50%
<b>Criminal history</b>				
Prior arrests				
Any	4.34	6.45***	3.93	4.35
Misdemeanor	2.32	2.74***	2.14	2.19
Felony	.82	1.63***	.79	.73
Property	1.07	1.69***	.98	.90
Drug	1.22	1.90***	1.63	1.63
Violent	.64	.94***	.59	.57

\*\*\*p < .001. \*\*p < .01.

Note. Only those with felony drug instant case charges are included.

### Cook County Misdemeanor Drug School

	Pre or Post Match			
	Pre-Matching		Post-Matching	
	Misdemeanor Drug School	Comparison	Misdemeanor Drug School	Comparison
Demographics	N = 1416	N = 1485	N = 689	N = 689
Age	22.55	23.16*	22.37	22.27
Male	87%	80%***	82%	81%
Black	48%	49%	41%	45%
White	50%	49%	57%	53%
<b>Criminal history</b>				
Prior arrests				
Any	2.70	.59***	.65	.62
Misdemeanor	1.81	.39***	.45	.42
Felony	.32	.33	.07	.08
Property	.61	.14***	.17	.14
Drug	.81	.17***	.18	.19
Violent	.50	.09***	.11	.10

\*\*\*p < .001. +p < .10.

Note. Only those with misdemeanor drug instant case charges are included.

Note. Hispanic/Latino/a ethnicity was not listed in official records.

## Cook County Misdemeanor Deferred Prosecution Program: Propensity Score Matching

	Pre or Post Match			
	Pre-Matching		Post-Matching	
	MDPP	Comparison	MDPP	Comparison
Demographics	N = 1775	N = 3014	N = 713	N = 713
Age	27.89	30.33***	25.46	27.34
Male	58%	87%***	48%	54%
Black	39%	65%***	54%	49%
White	46%	34%***	22%	21%
<b>Charge category</b>				
Drug	15%	28%***	7%	7%
Property	75%	31%***	77%	77%
Violent	3%	20%***	0%	0%
Disorderly conduct	2%	2%	6%	6%
Resisting an officer	2%	4%*	0%	0%
Driving while intoxicated	0%	6%***	0%	0%
Warrant	3%	3%	10%	10%
<b>Criminal history</b>				
Prior arrests				
Misdemeanor	1.18	8.34***	1.43	1.30
Felony	.22	3.61***	.38	.38
Drug	.31	4.45***	.29	.30
Property	.71	5.06***	1.29	.73
Violent	.29	2.44***	.36	.42
Disorderly conduct	.07	.50***	.09	.03
Resisting an officer	.05	.40***	.08	.09
Driving while intoxicated	.05	.30***	.05	.03
Traffic charge	.03	.11***	.05	.01
Warrant	.08	1.04***	.15	.11

Note. No one was coded as Hispanic in the control group files.

## Appendix B.

# Technical Appendix on Cost Methodology

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This study applied a bottom-up approach to calculate costs for each program.<sup>16</sup> Not all programs could provide the exact same data, nor do the programs all work the exact same way, as some programs had activities (and thus costs) that did not occur in other programs. Below we provide details of the activities included for each program evaluation.

## Rapid Intervention Community Court (RICC), Chittenden County, Vermont

In the RICC pre-filing program, the community coordinator in the prosecutor's office screens cases for charges and risk factors (using the ORAS risk-needs assessment), and defendants meeting program eligibility criteria are offered the program; defendants refusing the offer continue with the traditional route. Upon acceptance, individuals are assigned obligations that can include an accountability component, victim restitution, service to the community, substance abuse treatment, mental health counseling, writing a letter to a family member or victim, or other services or counseling where relevant. Typically, defendants are assigned two requirements and have 90 days to complete in order to be compliant. Some services or dispositions may take longer to complete. Defendants who are compliant never have to go to court. When a defendant is not compliant, their case is returned to docket and it goes through the traditional process.

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<sup>16</sup> There are two general approaches to processing information, a top-down and a bottom-up approach, that are used in a variety of fields including examining policy implementation (Sabatier 1986). In estimating the cost of a program, a top-down approach breaks down total expenditures into a relevant unit (e.g. total labor and equipment costs) using shares that could be attributed to costs of the program. A bottom-up approach to estimating the cost of a program identifies each of the resources expended to produce the output of the program (e.g. number of hours spent sending letters), applies a relevant monetary value (e.g. hourly pay by job type), and aggregates them to generate the additional cost of providing services of the program.

The costs we estimate are “low” (lowest cost per case over the period 2011 to 2015), “typical” (mean between 2011 and 2015), and “high” (greatest cost per case over the period 2011 to 2015). We include labor and indirect expenditures per participant between 2011 and 2015. We use an average over this longer period because the program started in 2011 and expenditures were still changing, so we use a more stable average cost as the typical case cost.

## Data Collection

For the “investment costs” of the RICC cases, we obtained administrative records of the budget and number of participants. Administrative records included de-identified data on intake date, main charge code, dispositions assigned (and to which organization), end result (completed or returned to docket), and end result date. This also allowed us to determine the proportion of successful cases since our calculation of the cost of RICC cases includes costs associated with unsuccessful cases going through the traditional process.

For the investment costs of comparison cases, we used previous literature of costs to Courts, State’s Attorney’s Office, and Office of the Defender General (Schlueter et al. 2014). We use the literature estimates because an in-depth study was already conducted on the time spent for cases relevant to this study that were worked on during the time period of this study. Specifically, these costs are based on median hourly salary/benefits for judges, court clerical staff, state’s attorneys, victim advocates, and public defenders multiplied by the average processing time by crime type (property crime, drug crime, and public order/major motor vehicle crimes) for each of these job types. These costs consider different case pathways (e.g. dismissed or plea before trial, trial).

### **RICC Results: Investment Resources Used by Stakeholder Group, by Case Type**

	<b>SAO</b>	<b>PD</b>	<b>Court</b>
<b>RICC Cases</b>			
<i>Successful Cases</i>	\$219 (\$155-\$326)	\$0 (\$0-\$0)	\$0 (\$0-\$0)
<i>Unsuccessful Cases</i>	\$838 (\$630-\$990)	\$127 (\$90-\$139)	\$115 (\$115-\$115)
<i>Weighted Average**</i>	\$325 (\$236-\$439)	\$22 (\$15-\$24)	\$20 (\$20-\$20)
<b>Traditional Cases</b>			
	\$651 (\$443-\$803)	\$127 (\$90-\$139)	\$115 (\$115-\$115)

Regarding RICC case output costs, the cost to taxpayers comprises labor, equipment, and indirect costs. Specifically, labor costs include time spent on intake, case hearing, check-ins

(if needed), resource navigation meetings, completion of paperwork, communication and monitoring, and travel. Indirect expenses and minor supply and equipment costs include utilities, telephone, and lab costs (e.g. UA tests). In order to consider the range of participants and differences in costs of services, service providers responded to questions regarding the time spent and equipment costs for three groups: those who rarely attend the program, the average-intensity successful participant, and the highly-intensive successful participant (e.g. more victims, more encouragement needed to complete). We generate costs separately for those who do and do not complete the program.

Regarding output costs of non-RICC cases, we use previous detailed research (Schlueter et al. 2014). Given the crime types eligible for RICC (drug possession, retail theft, disorder), we consider the proportion of cases that are not convicted (e.g. dismissed, not guilty) that result in a sentencing cost of zero and the proportion convicted that result in costs identified in the study. We also take into account that only a proportion of felony and misdemeanor cases were defended by public defender: property (62%), drug (40%), public order/major MV (59%).

#### **RICC Results: Output Costs by Stakeholder Group, by Case Type**

<b>RICC Cases</b>		<b>Traditional Cases</b>	
Weighted Average Service Provider Cost per Case*	\$519 (\$282-\$1,030)	Not Convicted	\$0 (\$0-\$0)
Service Provider Type A	\$26 (\$6-\$86)	Convicted	\$1,074 (\$711-\$1,327)
Service Provider Type B	\$9 (\$5-\$19)	Weighted Average Output Cost per Case, Total	\$594 (\$393-\$735)
Service Provider Type C	\$101 (\$38-\$281)		
Classes (retail theft, cannabis)	\$11 (\$0-\$11)		
Treatment, Counselor	\$37 (\$21-\$105)		
Contract Cost per Case	\$335 (\$211-\$529)		

*Note:* Accounts for assignment to more than one service provider, class, and/or treatment. Includes labor cost (salary and benefits) and indirect expenses. Based on proportion of successful (0.829) and unsuccessful (0.171) cases. \*Based on proportion of RICC cases where main charge is property (0.420), drug (0.206), or public order (0.374).

## **Misdemeanor Deferred Prosecution Program (MDPP), Cook County, Illinois**



Working with the State’s Attorney Office (SAO), we started by developing a process map of activities and decisions from intake to closing the case. The main cost pathways of cases that go through MDPP and comparable misdemeanors that go through the traditional process. The MDPP intervention occurs after an initial court appearance. An Assistant State Attorney (ASA) reviews a defendant’s file for eligibility, and for those eligible, makes an offer to the defense attorney.<sup>17</sup> A defendant can accept or refuse the offer. If a defendant accepts, the preliminary hearing is waived for a 90-day adjournment to complete supervision and services. If participants are compliant, the case is dismissed by the court.<sup>18</sup> If participants do not comply, they return to the traditional court process. In the traditional process, after an individual is arrested, the defendant has an initial appearance where a bail decision is made. Then the defendant enters a plea, after which there are three, mutually exclusive paths of the traditional process as shown on the left side of the figure: 1) enter plea of guilty or no contest, or the case is dismissed; or the defendant enters a plea of not guilty and has a trial by 2) bench or 3) jury.

## Data Collection

Within these pathways, there are number of activities performed by each stakeholder group that are included in this study. Using the overview of case pathways shown in the figure above, we interviewed stakeholders (e.g. assistant prosecutors, assistant public defenders) about the type of activities they perform for cases that do and do not go through the program. We refer to activities involved in adjudicating a case as “Investment costs” since these are the resource inputs to cases (Byrne, Carey, Crumpton, Finigan, & Waller, 2005). The table below presents the activities included in the cost estimation for each stakeholder by case type. While the general activities are the same for the SAO and PDO, the tasks differ for each group. For example, both groups conduct initial case preparation, but the tasks differ such that assistant public defenders discuss the case with their client, whereas assistant prosecutors obviously do not perform such tasks. Noted in the table are details of tasks included in determining the time spent on cases for all stakeholders.

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<sup>17</sup> Sometimes, the defense attorney may approach the ASA about a deal first.

<sup>18</sup> If at first participants are not compliant, they may be offered a second chance to attend appointments.

### Activities Included in the Investment Cost Estimation<sup>19</sup>

Case Type		Activities by Stakeholder	
		Prosecutor's and Public Defender's Offices	Court
Program cases	Successful	<ul style="list-style-type: none"> <li>Initial case preparation</li> <li>Court appearances</li> </ul>	<ul style="list-style-type: none"> <li>Court appearances</li> </ul>
	Unsuccessful	<ul style="list-style-type: none"> <li>Successful case + Traditional case activities</li> </ul>	<ul style="list-style-type: none"> <li>Court appearances + Traditional case activities</li> </ul>
Traditional cases	Guilty plea / Dismiss	<ul style="list-style-type: none"> <li>Initial case preparation</li> <li>Court appearances</li> </ul>	<ul style="list-style-type: none"> <li>Court appearances</li> </ul>
	Bench trial	<ul style="list-style-type: none"> <li>Initial case preparation</li> <li>Court appearances</li> <li>Witness interview &amp; Trial Prep</li> <li>Trial</li> <li>Sentencing</li> </ul>	<ul style="list-style-type: none"> <li>Court appearances</li> <li>Trial</li> <li>Sentencing</li> </ul>
	Jury trial	<ul style="list-style-type: none"> <li>Initial case preparation</li> <li>Court appearances</li> <li>Witness interview &amp; Trial prep</li> <li>Jury selection</li> <li>Trial</li> <li>Sentencing</li> </ul>	<ul style="list-style-type: none"> <li>Court appearances</li> <li>Jury Selection</li> <li>Trial</li> <li>Sentencing</li> </ul>

Given recall bias and the resulting uncertainty in reporting case processing times, individuals reported the typical amount of time they spend on a case, as well as the minimum and maximum amount of time they could recall spending on each task. Specifically, each main activity has a set of criteria that ranges from a straightforward case with no conflicting information or continuances or non-police witnesses (minimum) to cases with some conflicting information and many appearances or continuances (maximum). The same criteria were used for interviews with the Prosecutor's and Public Defender's office.

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<sup>19</sup> Tasks included in the cost estimation, by activity listed in the table include: **Case preparation**- review arrest report, review RAP sheet, work up file, paperwork; **Court Appearance**- review case, make/receive/review MDPP offer, time in court (e.g. judge instructions, etc.), discuss case, paperwork; **Witness & Trial Prep**- review evidence, discovery, determine what to show, order supplements, discuss case with witnesses, client discussion, subpoenas; **Jury Selection**- jury instruction, discussion, selection; **Trial**- continuances, judge's instructions, trial (e.g. statements, testimonies, physical evidence); and **Sentencing**- pre-sentencing investigation, judge's instructions, judge's comments, victims' comments.

### Criteria for Low, Typical, and High Cases

	Low	Typical	High
Initial case preparation	No conflicting information	Limited conflicting information	Some conflicting information
Court appearance	1 appearance Quick appearance, no conflicting information	2 appearances Typical appearance, limited conflicting information	3 appearances Longer appearances, some conflicting information
Witness interview & Trial prep	Only police witness, no video evidence	Police and 1-2 witnesses, no video evidence	Police and 2-3 witnesses, video evidence
Jury Selection	Quick selection	Average selection	Long jury selection
Trial	No continuance, no video evidence, experienced judge and attorneys	1 continuance, no video evidence, experienced judge and attorneys	2 continuances, video evidence, longer discussions with attorneys
Sentencing	No continuance, relatively quick	No continuance, typical case	1 continuance, complex

## Method

To generate the investment costs of each stakeholder group for each case type, we start by separately calculating the investments costs for misdemeanor cases that go through the traditional process by each stakeholder group  $j$  ( $\in$  SAO, PDO, Court) as a function of the minutes  $c$  spent by individuals  $i$  ( $\in$  assistant state attorney, 1<sup>st</sup> chair state attorney, assistant public defender II, assistant public defender IV, public defense investigator, judge, court clerk, court reporter, pretrial officer, police officer, and bailiff) working directly on guilty plea/dismissed cases ( $c$ ), minutes  $d$  worked on bench trial cases, and minutes  $f$  worked on jury trial cases. The minutes spent are weighted by the proportion of guilty plea/dismissed cases ( $a$ ), bench trial cases ( $b$ ), and jury trial cases ( $1-a-b$ ). The minutes spent by job type  $i$  is multiplied by their pay rate per minute  $y_i$ , which generates the direct labor investment cost per traditional cost.

Last, this is multiplied by the indirect or overhead rate  $r$  for stakeholder group  $j$  to include the indirect labor and supplies and equipment used to adjudicate the traditional case. Our cost estimates include the indirect resources of administrative staff (e.g. accountants, administrative assistants, secretaries, paralegals) and capital and equipment needed to deliver prosecution services. The indirect rate of the Cook County SA's Office is 7.5% of direct labor (Cook County State Attorney's Office, 2016). We multiply the total cost estimate of attorneys' time on cases by this indirect rate and sum to get the costs of inputs through the SA's Office. Similarly, we add indirect costs for the Public Defender's Office using the rate

provided, 7.35%. For the Cook County Circuit Court, we add the costs of the Office of the Chief Justice that provides interpreters, law clerks and support staff, as the average indirect of the SA's Office and the Public Defender's Office.

We also calculate the resources spent on the disposition of cases, or "Output costs", and include criminal justice resources to monitor and deliver services associated with the sentence. This is calculated by using the proportion of cases resulting in each disposition and average sentence and the relevant cost. Specifically, for cases that go through the pre-trial diversion program, every program had contracts with the prosecutor office (with pre-trial services organizations). Specifically, the participant is assessed by Treatment Assessment Screening Center (TASC<sup>20</sup>) and administered the SBIRT, CAS, and the PHQ-2. Defendants are assigned to a community partner, and required to attend two appointments with the community partner. The SAO is kept apprised of whether the participant complied with the program. For the diversion cases, the State Attorney's Office provided costs per participant for MDPP (TASC and Presence Behavioral Health).

For similar cases that go through the traditional route, we generate the cost by using the proportion convicted, average length of sentence, and cost per unit of sentence. Misdemeanor statistics for Cook County indicate 87.5% of misdemeanor cases result in conviction by plea or trial (George et al., 2015), and data shows the most likely sentence is community supervision (Illinois State Commission on Criminal Justice and Sentencing reform, 2016). We use data on probation length for misdemeanors served by offense type of 513 days in 2006 (Adams, Bostwick, & Campbell, 2011), and use two standard deviations (SD=237) below the mean to generate the minimum and two standard deviations above the mean to generate the maximum. The SAO provided Cook County costs per day in 2013 for Adult Probation Department services of \$4.67 per probationer per day, which we assume is approximately the cost for Social Service Department costs per supervised individual.

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<sup>20</sup> <http://www.tasc solutions.org/>

## Direct Time Spent by Case Type, by Stakeholder Group (in Minutes)

State Attorney's Office			
MDPP Cases		Traditional Cases	
Successful Cases		Guilty Plea/Dismissal	
Misdemeanor ASA	45 (25-75)	Misdemeanor ASA	35 (20-55)
Unsuccessful Cases		Bench Trial	
Misdemeanor ASA	47.2 (27.1-77.9)	Misdemeanor ASA	120 (100-240)
1 <sup>st</sup> chair ASA	10.5 (6.4-18.3)	1 <sup>st</sup> chair ASA	120 (60-240)
		Jury Trial	
		Misdemeanor ASA	845 (560-1425)
		1 <sup>st</sup> chair ASA	780 (520-1260)

Public Defender's Office			
MDPP Cases		Traditional Cases	
Successful Cases		Guilty Plea/Dismissal	
APD II	30 (20-45)	APD II	35 (30-45)
Unsuccessful Cases		Bench Trial	
APD II	45.4 (36.8-73.2)	APD II	195 (145-390)
APD IV	8.9 (5.9-26.5)	APD IV	120 (90-300)
PD Investigator	17.14 (3.4-28.6)	PD Investigator	450 (90-750)
		Jury Trial	
		APD II	680 (415-2070)
		APD IV	600 (360-1980)
		PD Investigator	450 (90-750)

## Output Costs

Cases that do not go through MDPP cost between an estimated \$55 and \$365 (\$168 on average). Cases that successfully go through MDPP cost on average \$130. Taking into account that 9% of cases are unsuccessful and return to the traditional pathway, the weighted average output cost of a MDPP case is \$144. Therefore, program case outputs are typically an estimated \$23 less than cases that go through the traditional route.

Court			
MDPP Cases		Traditional Cases	
Successful Cases		Guilty Plea/Dismissal	
Judge	10 (5-15)	Judge	20 (15-25)
Court clerks, court reporter, and pretrial officer	30 (15-45)	Court clerks, court reporter, and pretrial officer	120 (90-150)
Police officer and bailiff	4 (2-6)	Police officer and bailiff	4 (3-5)
Unsuccessful Cases		Bench Trial	
Judge	28.7 (19.6-41.7)	Judge	150 (80-335)
Court clerks, court reporter, and pretrial officer	96.7 (68.9-132.72)	Court clerks, court reporter, and pretrial officer	340 (180-729)
Police officer and bailiff	12.3 (7.7-21.3)	Police officer and bailiff	124 (63-305)
		Jury Trial	
		Judge	570 (345-885)
		Court clerks, court reporter, and pretrial officer	1180 (710-1830)
		Police officer and bailiff	544 (333-845)

## Felony Drug School, Cook County, Illinois

The Drug School Program is a post-filing program targeting eligible drug charges (see Chapter 4). Analogous to the MDPP, we started by working with the State's Attorney Office (SAO) to develop a process map of activities and decisions from intake to closing the case. The main cost pathways of cases that go through Felony Drug School (FDS) and comparable felony drug cases that go through the traditional process. Defendants attend bond court and then, subsequently, enrollment typically happens at/just prior to the next court appearance in the preliminary hearing court. If the defendant enrolls, s/he signs a contract and receive a three-month court date. The participant then attends an appointment with the TASC office within 72 hours of accepting. They receive a program orientation and pick the program location where they will attend classes. The participant must attend all four classes to complete the program (see further details in Chapter 4). Activities included in the cost analysis over a 16-month intake window between September 5, 2012 and December 30, 2013 were broadly similar to the MDPP program.

### Data Collection

Within these pathways, there are number of activities performed by each stakeholder group that are included in this study. Using the overview of case pathways, we interviewed

stakeholders (e.g. assistant prosecutors, assistant public defenders) about the type of activities they perform for cases that do and do not go through the program. We refer to activities involved in adjudicating a case as Investment costs. The table below presents the activities included in the cost estimation for each stakeholder by case type. While the general activities are the same for the SAO and PDO, the tasks differ for each group. Noted in the table are details of tasks included in determining the time spent on cases for all stakeholders.

### Activities Included in the Investment Cost Estimation<sup>21</sup>

	Prosecutor's and Public Defender's Offices	Court
Successful	<ul style="list-style-type: none"> <li>• Bond court</li> <li>• Preliminary Hearing</li> <li>• Arraignment</li> <li>• Monitor participation</li> </ul>	<ul style="list-style-type: none"> <li>• Bond court</li> <li>• Preliminary Hearing</li> <li>• Arraignment</li> </ul>
Unsuccessful	<ul style="list-style-type: none"> <li>• Successful case + Traditional case activities</li> </ul>	<ul style="list-style-type: none"> <li>• Successful case + Traditional case activities</li> </ul>
Guilty plea / Dismiss	<ul style="list-style-type: none"> <li>• Bond court preparation &amp; appearance</li> <li>• Preliminary Hearing</li> <li>• Arraignment</li> </ul>	<ul style="list-style-type: none"> <li>• Bond court appearance</li> <li>• Preliminary Hearing</li> <li>• Arraignment</li> </ul>
Bench trial	<ul style="list-style-type: none"> <li>• Bond court preparation &amp; appearance</li> <li>• Preliminary Hearing</li> <li>• Arraignment</li> <li>• Court appearances</li> <li>• Witness interview &amp; Trial Prep</li> <li>• Trial</li> <li>• Sentencing</li> </ul>	<ul style="list-style-type: none"> <li>• Bond court appearance</li> <li>• Preliminary Hearing</li> <li>• Arraignment</li> <li>• Court appearances</li> <li>• Trial</li> <li>• Sentencing</li> </ul>
Jury trial	<ul style="list-style-type: none"> <li>• Bond court preparation &amp; appearance</li> <li>• Preliminary Hearing</li> <li>• Arraignment</li> <li>• Court appearances</li> <li>• Witness interview &amp; Trial prep</li> <li>• Jury selection</li> <li>• Trial</li> <li>• Sentencing</li> </ul>	<ul style="list-style-type: none"> <li>• Bond court appearance</li> <li>• Preliminary Hearing</li> <li>• Arraignment</li> <li>• Court appearances</li> <li>• Jury Selection</li> <li>• Trial</li> <li>• Sentencing</li> </ul>

<sup>21</sup> Tasks included in the cost estimation, by activity listed in the table include: **Bond Court:** Review police report, interview client (discuss plea), time in court (e.g. judge instructions, etc.), paperwork; **Client Conference:** Read through discovery (police report, maybe photos), talk to client, decide what subpoenas to issue; **Preliminary Hearing:** Review police report, review criminal history, prepare offer, talk to attorney, judge's instructions, plea entered, discussion, paperwork; **Arraignment:** Open file, motion for discovery, judge's instructions, enter plea, paperwork; **Monitor Participation:** Communicate with pretrial services, run background check, dismiss for successful cases, discuss and arrange appearance for incomplete cases; **Trial Preparation:** Prep/review case for court, issue subpoenas; **Trial:** jury selection, judge's instructions, trial, paperwork; and **Sentencing:** Pre-sentencing investigation, judge's instructions, judge's comments, victims' comments.

Given recall bias and the resulting uncertainty in reporting case processing times, individuals reported the typical amount of time they spend on a case, as well as the minimum and maximum amount of time they could recall spending on each task. Specifically, as shown in the table below, each main activity has a set of criteria that ranges from a straightforward case with no conflicting information or continuances or non-police witnesses (minimum) to cases with some conflicting information and many appearances or continuances (maximum). The same criteria were used for interviews with the Prosecutor's and Public Defender's office.

**Criteria for Low, Typical, and High Cases**

	<b>Low</b>	<b>Typical</b>	<b>High</b>
<b>Bond Court</b>	No conflicting information	Limited conflicting information	Some conflicting information
<b>Preliminary Hearing</b>	Quick appearance	Typical appearance	Longer appearance
<b>Arraignment</b>	Quick appearance, no conflicting information	Typical appearance, limited conflicting information	Longer appearances, some conflicting information
<b>Witness interview &amp; Trial prep</b>	Only police witness, no video evidence	Police and 1-2 witnesses, no video evidence	Police and 2-3 witnesses, video evidence
<b>Jury Selection</b>	Quick selection	Average selection	Long jury selection
<b>Trial</b>	No continuance, no video evidence, experienced judge and attorneys	1 continuance, no video evidence, experienced judge and attorneys	2 continuances, video evidence, longer discussions with attorneys
<b>Sentencing</b>	No continuance, relatively quick	No continuance, typical case	1 continuance, complex

## Method

To generate the investment costs of each stakeholder group for each case type, we start by separately calculating the investments costs for misdemeanor cases that go through the traditional process by each stakeholder group  $j$  ( $\in$  SAO, PDO, Court) as a function of the minutes  $c$  spent by individuals  $i$  ( $\in$  assistant state attorney, 1<sup>st</sup> chair state attorney, assistant public defender II, assistant public defender IV, public defense investigator, judge, court clerk, court reporter, pretrial officer, police officer, and bailiff) working directly on guilty plea/dismissed cases ( $c$ ), minutes  $d$  worked on bench trial cases, and minutes  $f$  worked on jury trial cases. The minutes spent are weighted by the proportion of guilty plea/dismissed cases ( $a$ ), bench trial cases ( $b$ ), and jury trial cases ( $1-a-b$ ). The minutes spent by job type  $i$  is



multiplied by their pay rate per minute  $y_i$ , which generates the direct labor investment cost per traditional cost.

### Direct Time Spent by Case Type, by Stakeholder Group

State's Attorney's Office			
FDS Cases		Traditional Cases	
Successful Cases		Guilty Plea/Dismissal	
Misdemeanor ASA	40 (25-55)	Misdemeanor ASA	90 (75-120)
Unsuccessful Cases		Bench Trial	
Misdemeanor ASA	101.0 (84.3-133.0)	Misdemeanor ASA	245 (205-305)
1 <sup>st</sup> chair ASA	6.9 (5.0-8.9)	1 <sup>st</sup> chair ASA	90 (60-120)
		Jury Trial	
		Misdemeanor ASA	815 (685-965)
		1 <sup>st</sup> chair ASA	480 (360-600)

Public Defender's Office			
FDS Cases		Traditional Cases	
Successful Cases		Guilty Plea/Dismissal	
APD II	20 (15-40)	APD II	23 (20-25)
Unsuccessful Cases		Bench Trial	
APD II	33.4 (27.3-53.7)	APD II	183 (140-385)
APD IV	6.9 (5.0-8.9)	APD IV	90 (60-120)
PD Investigator	17.14 (3.4-28.6)	PD Investigator	450 (90-750)
		Jury Trial	
		APD II	658 (440-2050)
		APD IV	480 (360-600)
		PD Investigator	450 (90-750)

Court			
FDS Cases		Traditional Cases	
Successful Cases		Guilty Plea/Dismissal	
Judge	3 (2-4)	Judge	6 (4-8) (4-8)
Court clerks, court reporter, and pretrial officer	18 (12-24)	Court clerks, court reporter, and pretrial officer	36 (24-48)
Police officer and bailiff	6 (4-8)	Police officer and bailiff	12 (8-16)

Court			
<i>Unsuccessful Cases</i>		<i>Bench Trial</i>	
Judge	28.7 (19.9-41.7)	Judge	150 (80-335)
Court clerks, court reporter, and pretrial officer	50.3 (34.2-66.5)	Court clerks, court reporter, and pretrial officer	228 (150-306)
Police officer and bailiff	23.4 (16.3-30.5)	Police officer and bailiff	106 (70-142)
		<i>Jury Trial</i>	
		Judge	570 (345-885)
		Court clerks, court reporter, and pretrial officer	1008 (750-1266)
		Police officer and bailiff	976 (730-1222)

Last, this is multiplied by the indirect or overhead rate  $r$  for stakeholder group  $j$  to include the indirect labor and supplies and equipment used to adjudicate the traditional case. Our cost estimates include the indirect resources of administrative staff (e.g. accountants, administrative assistants, secretaries, paralegals) and capital and equipment needed to deliver prosecution services. The indirect rate of the Cook County SA's Office is 7.5% of direct labor (Cook County State Attorney's Office, 2016). We multiply the total cost estimate of attorneys' time on cases by this indirect rate and sum to get the costs of inputs through the SA's Office. Similarly, we add indirect costs for the Public Defender's Office using the rate provided, 7.35%. For the Cook County Circuit Court, we add the costs of the Office of the Chief Justice that provides interpreters, law clerks and support staff, as the average indirect of the SA's Office and the Public Defender's Office.

We also calculate the resources spent on the disposition of cases, or "Output costs," and include criminal justice resources to monitor and deliver services associated with the sentence. For similar cases that go through the traditional route, we generate the cost by using the proportion convicted, average length of sentence, and cost per unit of sentence. Misdemeanor statistics for Cook County indicate 87.5% of misdemeanor cases result in conviction by plea or trial (George et al., 2015), and data shows the most likely sentence is community supervision (Illinois State Commission on Criminal Justice and Sentencing reform, 2016). We use data on probation length for misdemeanors served by offense type of 513 days in 2006 (Adams, Bostwick, & Campbell, 2011), and use two standard deviations (SD=237) below the mean to generate the minimum and two standard deviations above the mean to generate the maximum. The SAO provided Cook County costs per day in 2013 for Adult Probation Department services of \$4.67 per probationer per day, which we assume is approximately the cost for Social Service Department costs per supervised individual.

For felony drug case outputs cost, we use felony statistics for Cook County because data shows the greatest proportion of cases are drug cases (e.g. possession of controlled substance, manufacture or delivery of narcotic) (Kunichoff, Hing, & Peterson, n.d.), which are eligible offenses for felony drug school. This latter point is important- while individuals convicted of felony drug possession can get jail time (Saltmarsh, 2016), those eligible for felony drug school do not have prior convictions in the last 10 years and are therefore are more likely to receive probation, rather than jail. Data shown in Chapter 3 indicates 63.0% of felony cases result in conviction, and data shows the most likely sentence for eligible cases is probation. We use data on probation length for felony drug cases served by offense type of 21.4 months (standard deviation=9.5) in 2006 (Adams et al. 2011). We use the State Attorney's Office provided costs per day in 2013 for Adult Probation Department services of \$4.67 per probationer per day.

## **Output Costs**

Cases that do not go through FDS cost between an estimated \$211 and \$3,563 (\$1,888 on average). Cases that successfully go through MDPP cost on average \$240. Using that 3% of cases are unsuccessful and return to the traditional pathway, the weighted average output cost of a FDS case is \$297. Therefore, program case outputs are typically an estimated \$1,591 less than cases that go through the traditional route.

## **Neighborhood Court, San Francisco City and County, California**

The Neighborhood Court Program offered by the San Francisco City District Attorney's Office (SF DAO) involves predominantly misdemeanor cases with some felony property offenses permitted (based on the value of the theft). The most common offenses are theft, vandalism, graffiti, and prostitution. The program involves Assistant State Attorneys making eligibility decisions and offering the program.

As with all other programs for which we estimated costs, we started by working with the SF DAO to identify key cost pathways. As shown in the figure below, after a rebooker identifies a case as eligible and offers neighborhood court (NC), there is a period of time in which defendants need to accept NC. Those who accept the program go to a Community Board with a local trained panel who review the case and identify "directives" to be completed in a particular timeframe. Pretrial Services deliver services, assign offenders to sites, and monitor compliance. An individual may not accept the program in time (7 days), but there is another opportunity during the first court appearance. Similar cases that do not go through NC go through arraignment and several court appearances, including trial if they plead not guilty.

## **Data Collection**

To collect the relevant cost data, in coordination with the SF DAO, we identified the key pathways that Neighborhood Court and similar cases take in the city of San Francisco jurisdiction. Using these pathways, we discussed the list of activities performed by attorneys separately in the District Attorney's Office and Public Defender's (SF PD's) Office. The attorneys in these offices discussed among themselves the time spent on the activities.

Activities included from the DAO and PD's Office in this cost analysis are listed below. The analysis uses non-traffic misdemeanors for the comparison group, with time spent for judges and clerks and staff based on results from a workload study in 2010 (see SB 56 Working Group 2011). We compare the costs of cases that go through Neighborhood Court to similar cases that did not, over the calendar year of 2016 (for SAO and PD's office) and 2010 (for Court).

Given recall bias and the resulting uncertainty in reporting case processing times, individuals reported the typical amount of time they spend on a case, as well as the minimum and maximum amount of time they could recall spending on each task. Specifically, each main activity has a set of criteria that ranges from a straightforward case with no conflicting information or continuances or non-police witnesses (minimum) to cases with some conflicting information and many appearances, conflicting information, and many witnesses (maximum). The same criteria were used for interviews with the Prosecutor's and Public Defender's office.

## **Method**

To estimate the time spent on cases that go through the "Traditional Route," we adjusted for the proportion of cases that are disposed of before trial (at arraignment and at pre-trial settlement) and after trial. The cost of labor, salary and benefits, by job type for the DA's Office and PD's Office was provided by the DA's office. Our cost estimates also include the indirect resources of administrative staff (e.g. Accountants, Administrative Assistants, Secretaries, Librarians) and supplies and equipment needed to deliver prosecution services. The indirect rate of the San Francisco DA's and PD's Offices is 33.13% of direct labor (obtained through communication with the District Attorney's Office).

We multiplied the total cost estimate of attorneys' time on cases by this indirect rate and sum to get the costs of inputs through the DA's and PD's Office. For the San Francisco Court, we added the costs of the judges based on time spent for non-traffic misdemeanor cases in the 2010 workload study (SB 56 Working Group, 2011). Time spent by law clerks and support

staff for misdemeanors was not collected separately for traffic and non-traffic cases. However, 2016 unpublished data (at the time of this study) was available to the DA's office and preliminary findings indicate that non-traffic misdemeanor cases are 153.7% more time-consuming than the average misdemeanor (which includes traffic cases). We applied reported salaries (SF Superior Court 2016) and use the same indirect rate of the San Francisco DA's and PD's office.

### Activities Included in the Investment Cost Estimation<sup>22</sup>

Case Type	Activities by Stakeholder	
	DAO	PDO
Successful	<ul style="list-style-type: none"> <li>• Rebooking</li> <li>• Prepare case, offer NC</li> <li>• Setup NC case</li> <li>• Monitor completion</li> <li>• File close-out</li> </ul>	<ul style="list-style-type: none"> <li>• Court appearance (for late acceptance cases)</li> </ul>
Unsuccessful	<ul style="list-style-type: none"> <li>• Successful case + Traditional case activities</li> </ul>	<ul style="list-style-type: none"> <li>• Successful case + Traditional case activities</li> </ul>
Guilty plea / Dismiss	<ul style="list-style-type: none"> <li>• Case prep</li> <li>• Arraignment</li> </ul>	<ul style="list-style-type: none"> <li>• Case prep</li> <li>• Arraignment</li> </ul>
Settle at pretrial	<ul style="list-style-type: none"> <li>• Rebooking</li> <li>• Prep for &amp; Arraignment</li> <li>• Prep for &amp; Pretrial conference</li> <li>• Pre-trial settlement &amp; conference</li> <li>• File close-out</li> </ul>	<ul style="list-style-type: none"> <li>• Prep for &amp; Arraignment</li> <li>• Prep for &amp; Pretrial conference</li> <li>• Pre-trial settlement &amp; conference</li> <li>• File close-out</li> </ul>
Settle at pretrial	<ul style="list-style-type: none"> <li>• Rebooking</li> <li>• Prep for &amp; Arraignment</li> <li>• Prep for &amp; Pretrial conference</li> <li>• Pre-trial settlement &amp; conference</li> <li>• Prep for trial &amp; motions</li> <li>• Jury selection &amp; Trial</li> <li>• Prep for &amp; sentencing</li> <li>• File close-out</li> </ul>	<ul style="list-style-type: none"> <li>• Prep for &amp; Arraignment</li> <li>• Prep for &amp; Pretrial conference</li> <li>• Pre-trial settlement &amp; conference</li> <li>• Prep for trial &amp; motions</li> <li>• Jury selection &amp; Trial</li> <li>• Prep for &amp; sentencing</li> <li>• File close-out</li> </ul>

<sup>22</sup> Tasks included in the cost estimation, by activity listed in the table include: **Rebooking:** Review cases for charging and eligibility, send referral packets; **Prepare Case:** Enter case into database, review and organize file, generate letter and new citation, order evidence, contact witnesses/victims/officers, review jury instructions, investigations, communication, subpoenas, research, draft motions, prepare scripts/statements/display of evidence/etc., paperwork (e.g. facts of case, key information checks, stay away orders, memos, etc.); **Set Up Case:** Schedule hearing, serve new citation, paperwork; **Charge Case:** Notifications, provide information; **Court Appearance:** Judge instructions, time on record waived, discussion, calendaring; **Monitor:** Monitor case in computer, provide updates to court; and **File Close-out:** Paperwork.

### Direct Time Spent by Case Type, by Stakeholder Group (in Minutes)

State's Attorney's Office	
NC Cases	
Successful Cases	
Rebooker	7 (5-10)
Misdemeanor ADA	47 (31-82)
Unsuccessful Cases	
Rebooker	7 (5-10)
Misdemeanor ADA	1115.4 (658.0-1591.8)
NC Director	5.4 (2.7-8.1)
Traditional Cases	
Early Plea/Dismissal	
Misdemeanor ADA	40 (5-75)
Later Plea/Dismissal	
Misdemeanor ADA	468 (240-695)
NC Director	10 (5-15)
Jury Trial	
Misdemeanor ADA	5688 (3480-7895)
NC Director	10 (5-15)

Public Defender's Office	
NC Cases	
Successful Cases	
APD II	3 (2.5-3.7)
Unsuccessful Cases	
APD II	311.2 (146.1-619.3)
APD IV	5.4 (2.7-8.1)
Traditional Cases	
Early Plea/Dismissal	
APD II	10 (5-20)
Later Plea/Dismissal	
APD II	155 (65-240)
APD IV	10 (5-15)
Jury Trial	
APD II	1595 (760-3360)
APD IV	10 (5-15)

Note. Low and High in parentheses.

Court			
NC Cases		Traditional Cases	
Successful Cases		Judge	146
Judge	3 (2-4)	Clerk	462
Clerk	10 (8-13)		
Unsuccessful Cases			
Judge	149		
Clerk	472		