

Prosecutor-Led Pretrial Diversion

Case Studies in Eleven Jurisdictions

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



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Center for Court Innovation
520 Eighth Avenue, 18th Floor
New York, New York 10018
646.386.3100 fax 212.397.0985
www.courtinnovation.org

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For correspondence, please contact Michael Rempel, Center for Court Innovation, rempelm@courtinnoation.org.

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Executive Summary

In response to tightening state budgets, combined with persistently large criminal caseloads and local jail populations, jurisdictions around the country have been seeking alternatives to traditional case processing. One such alternative is prosecutor-led diversion, which typically involves providing treatment or services in lieu of prosecution for low-level defendants.

With funding from the National Institute of Justice, the primary focus of this study was to provide a national portrait of prosecutor-led diversion through case studies of the goals, history, policies, and practices of diversion programs implemented in 11 prosecutor's offices. In general, relatively large, high volume programs were selected for inclusion in the research, with ten of the 11 prosecutor's offices handling cases in large urban areas. The programs were also intentionally selected to provide for variation in program timing (pre- or post-filing); target population (e.g., misdemeanor, felony, or more specific types of charges); program intensity and duration; and other policies and practices.

The research was implemented by the Center for Court Innovation (CCI) in collaboration with the RAND Corporation, Association of Prosecuting Attorneys (APA), and the Police Foundation. A second phase of the same overall study, whose results are published separately, includes quasi-experimental impact and cost evaluations of programs in a more limited number of prosecutor's offices (see Rempel et al. 2017 for an overview of the entire project).

Brief Overview of the Study Design

The case studies provided in this report were designed to produce a rich understanding of contemporary prosecutor-led pretrial diversion programs nationwide. The research involved three strategies: (1) intensive case studies of 15 diversion programs run by ten prosecutors' offices across the country; (2) focus groups with diversion participants in select sites; and (3) an examination of lessons learned from an eleventh site, the Los Angeles City Attorney's Office, which experienced a change of leadership and consequent revamping of diversion programs during a period overlapping with the timing of our study.

Results from Case Studies of 15 Programs

As shown in the table below, case studies were conducted of 15 diversion programs in 10 jurisdictions—all large urban settings, except for Chittenden County, Vermont. Research methods included document review; in-person observations; semi-structured interviews of prosecutors and representatives from partner agencies; and a review of program data.

The Goals of Prosecutor-Led Diversion

- **Multiple Goals:** Whereas older diversion programs of the 1970s tended to prioritize defendant rehabilitation and recidivism reduction, these goals currently occupy a less preeminent role. Instead, each of the following seven general types of goals received support from at least six of the 15 focal programs: (1) administrative efficiency/cost savings; (2) reduced collateral consequences; (3) community engagement; (4) defendant accountability; (5) recidivism reduction; (6) rehabilitation; and (7) restorative justice.
- **Most Common Goals:** Allowing for the aforementioned goal-diversity, the most commonly endorsed goals 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—by dismissing or expunging the cases of persons who complete diversion requirements.

Program History, Structure, and Legal Context

- **Planning:** Staff affiliated with most (although not all) programs experienced little resistance from partner agencies (e.g., the judiciary, public defenders, probation, or community partners) when planning their diversion models. Stakeholders largely shared an interest in achieving the expected benefits of diversion.
- **Partnerships:** Specific partnerships with community-based agencies (or a lack thereof) varied widely. For example, Hennepin County’s Operation De Novo and Maricopa County’s TASC program were virtually self-contained, in that all services and restitution programming took place in-house. Philadelphia’s Small Amount of Marijuana program partnered with the First Judicial District Court to provide classes. Other programs maintained extensive linkages with community providers including homeless services, veteran’s affairs, mental health providers, and substance abuse treatment centers. San Francisco’s Neighborhood Courts program depended upon identifying multiple neighborhood-based locations for holding restorative justice sessions, in which neighborhood representatives served as active participants in the diversion model.

Prosecutor-Led Diversion Programs in the Study

Prosecutor's Jurisdiction	Program Name	Program Start	Timing of Diversion	Charge Severity	Charge Specialization
	Northeast				
Chittenden County (VT)	• Rapid Intervention Community Court Project	2010	Mixed model	Misd.	No
Philadelphia (PA)	• Small Amount of Marijuana Program (SAM)	2010	Post-filing	Misd.	Marijuana
	• Accelerated Misdemeanor Program (AMP)	2010	Post-filing	Misd.	No
	• Accelerated Rehabilitative Disposition (ARD)	1972	Post-filing	Misd & fel	No
	Midwest				
Cook County State's Attorney's Office (IL)	• Cook County Drug School	1972	Post-filing	Misd & fel	Drug/marij.
	• Cook County Misdemeanor Diversion Program	2012	Post-filing	Misd.	No
	• Cook County Felony Diversion Program	2011	Post-filing	Fel.	No
Hennepin County (MN)	• Operation De Novo (Property and Drug Diversion)	1971	Mixed model	Fel.	Drug & property
Milwaukee County (WI)	• Diversion Program	2007	Pre-filing	Misd & fel	No
	• Deferred Prosecution Program	2007	Post-filing	Misd & fel	
	South				
Dallas County Attorney's Office (TX)	• Memo Agreement Program	2007	Post-filing	Misd.	Mainly retail theft or marij
	West				
Maricopa County (AZ)	• Maricopa TASC Adult Prosecution Program	1989	Mixed model	Fel.	Drug/marij.
Phoenix City (AZ)	• Project Rose	2011	Pre-filing	Misd.	Prostitution
San Diego City (CA)	• Beach Area Community Court	2005	Pre-filing	Misd & Citations	No
San Francisco (CA)	• Neighborhood Courts	2011	Mixed model	Misd & fel	No

Target Population

- **Timing of Diversion:** Shown in the table above, of the 15 programs, three adopt a *pre-filing* model (diverting cases before and in lieu of initiating a criminal court case), eight adopt a *post-filing* model (after the court process is underway), and four programs enroll different participants either pre- or post-filing (i.e., *mixed model*).
- **Eligible Charges:** Unlike early programs of the 1970s, current models are not exclusively focused on the very lowest level charges. Instead, nine of the 15 programs we examined either target felonies or a mix of misdemeanors and felonies (see above). In addition, six of the 15 programs solely targeted one or two specific types of crimes, most often drug or marijuana possession, whereas the other nine programs did not specialize in

a specific charge type. (One program in Phoenix specializes in prostitution cases, and Hennepin County's De Novo program has separate tracks for drug and property felonies.)

- **Risk-Needs Assessment:** Only four programs use a formal, validated risk assessment tool. Milwaukee makes the greatest use of risk assessment to inform eligibility decisions and program requirements. In Milwaukee, low-risk defendants are routed to a brief, pre-filing Diversion Program and medium-risk defendants are routed to a higher-dosage post-filing Deferred Prosecution Program, with services in the latter program tailored to each defendant's needs. Although few programs assess for risk, nine of the 15 administer a needs assessment of some kind, primarily used to determine appropriate services.

Program Mandates

- **"One Size Fits All" Models:** Five programs use a straightforward "one size fits all" approach, linking participants to a standard set of educational classes, community service hours, or other requirements that, where completed, trigger a case dismissal.
- **Individualized Mandates:** Ten programs use individualized mandates to at least some degree, assigning different social or treatment services based on defendants' needs. (Some of these programs use some standardized and some individualized components.)
- **Specific Services and Treatment Modalities:** Thirteen of the 15 programs utilize educational classes about the relevant problem behavior, including classes about drug use, harms of DUI, theft, prostitution, weapons, health, and/or parenting. Only one program consistently uses evidence-based cognitive-behavioral therapy (CBT), although two other programs use CBT with some of their participants.
- **Community Service:** Ten programs order at least some participants to perform community service.
- **Restorative Justice:** Five programs use restorative justice groups with at least some participants, in which they attend sessions with community members and/or victims and are asked to take responsibility for their behavior. For San Francisco's Neighborhood Courts diversion program and Los Angeles' newly created Neighborhood Justice Initiative, restorative justice represents a core organizing principle of the model.

Supervision and Legal Leverage

- **Supervision:** A majority of programs required participants to meet with a case manager or probation officer.

- **Legal Ramifications of Program Completion:** In all pre-filing programs, successful completion of diversion requirements leads the cases to be closed by the prosecutor's office. Across the post-filing programs, most dismiss the cases of successful participants, although not all programs fully expunge any record of the arrest.
- **Legal Ramifications of Program Termination:** Diversion program participants who do not successfully complete program requirements risked court filing or resumption of their case in all programs we examined.

Focus Group Findings

To obtain the perspectives of program participants themselves, focus groups were held with diversion participants in five of the selected programs: Rapid Intervention Community Court (RICC) in Chittenden County, Vermont; Cook County (Illinois) Felony Diversion Program; the Early Interventions Project in Milwaukee (drawing participants from both Milwaukee's Diversion and Deferred Prosecution Programs); the Neighborhood Courts program in San Francisco, California; and Operation DeNovo in Hennepin County, Minnesota.

- **Motivation to Participate:** Focus group participants in all sites did not feel coerced to participate, reporting that they freely determined it was in their best interests. Participants variously cited diversion as better than jail, wanting to have their court cases end more quickly, and thinking they would have less chance of missing work or getting fired than in the traditional process (which could end in conviction or missing work to attend court).
- **Understanding Program Requirements:** Participants from most of the programs thought that the program requirements were adequately explained to them in advance.
- **Individualized Accommodations:** Participants across most sites responded positively to program elements that were individualized. These elements variously included: tailoring specific requirements to their needs; allowing classes or appointments to be rescheduled based on personal circumstances; and receiving 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 that the diversion program was fair, especially compared to the traditional criminal justice system. Overall, the participants had positive views about the value of pretrial diversion, although some saw its only value as a means of avoiding jail, while others felt it improved their lives in broader ways.

Lessons Learned from Los Angeles

A change in leadership within the Los Angeles City Attorney's Office in 2013 provided an opportunity to examine a major reconstitution and expansion of diversion programs. Even though diversionary programs had existed before the current City Attorney, Mike Feuer, began his tenure, he created the *Community Justice Initiative* (CJI) as an umbrella unit for diversion, restorative justice, and alternative sentencing. Under an expanded set of programs, diversion came to be routinely used in pre-filing, post-filing, and post-disposition settings with a variety of populations, including individuals arrested for drug possession, low-level misdemeanor charges, truant students, prostitution defendants, and homeless persons. Across multiple staff and stakeholder interviews, innovation and creative thinking were consistently described as the defining characteristics of the newly fashioned *Community Justice Initiative*.

Conclusion

In many respects, today's prosecutor-led diversion programs differ fundamentally from the original models that were developed almost a half century ago in the 1970s. The early programs were largely driven by the goals of rehabilitating defendants and reducing recidivism. By contrast, in today's programs, staff and stakeholders tended to focus on more immediate benefits to defendants, such as avoiding the well-known collateral consequences of a criminal record and gaining efficiency benefits by routing cases away from the traditional court process. In addition, diversion programs of the 1970s and 1980s were often criticized for focusing on extremely low level cases that would have been dismissed or declined even in the absence of diversion. In comparison, most of the 15 programs we studied accepted a wide array of charges, including both misdemeanor and felony defendants. Finally, in the programs we observed, we found that prosecutors, defense attorneys, and the court tended to work collaboratively to plan the program model and identify appropriate diversion cases.

Chapter 1

Introduction

In 2015, there were an estimated 18.1 million new criminal cases filed in the United States (Schauffler et al. 2016). The large caseload, combined with budget cuts to criminal justice agencies (Greenberg and Cherney 2017) and accelerated interest in alternatives to traditional prosecution (NAPSA 2010), have led criminal justice policymakers to search for new ways of handling their cases. Increasingly, reformers have alighted on the potential benefits of pretrial diversion programs that redirect cases away from traditional processing and, in so doing, provide relief for courts, prosecutors, and defense agencies as well as mitigate the well-documented collateral consequences of prosecution for defendants (NAPSA 2010).

About the Current Study

To produce a better understanding of the contemporary world of prosecutor-led diversion, the National Institute of Justice funded the Center for Court Innovation (CCI), the RAND Corporation, the Association of Prosecuting Attorneys, and the Police Foundation to conduct a two-phase, multi-year study. The first phase included case studies of the history, goals, policies, practices, and perceived strengths and challenges of 16 pretrial diversion programs led by 11 prosecutor's offices from across the country (see Table 1.1). The majority of programs were situated in large urban settings, with ten of the 11 prosecutors' offices serving jurisdictions whose population exceeded 800,000. Phase Two included quasi-experimental impact and cost evaluations of a more limited number of programs (see Rempel et al. 2017 for an overview of the entire project, including major findings from the impact evaluation).

The current report presents findings and conclusions from Phase One—i.e., from the case studies in 11 prosecutor's offices. The report is based on three research strategies:

- 1. In-Depth Case Studies of 15 Programs:** Intensive, multi-method case studies were conducted of 15 diversion programs in 10 of the 11 prosecutors' offices. Whereas the body of this report identifies key overarching cross-site themes and findings, and compares the 15 programs on major policy axes, Appendix C provides program-specific details through a detailed logic model on each individual program, clarifying each one's target population (i.e., eligibility criteria); inputs (resources, staffing, etc.); strategies (policies and practices); and outputs and outcomes (i.e., intended results of the program).

2. **Lessons from Changing Leadership:** A case study was also conducted of lessons learned from the eleventh prosecutor's office, the Los Angeles City Attorney's office, which underwent a change of leadership during the study period and saw significant changes and expansions in the nature and scope of diversion programming.
3. **Participant Focus Groups:** A series of focus groups gathered the perceptions of program participants in six of the 15 programs (located in five of the 11 jurisdictions).

Overview of Prosecutor-Led Pretrial Diversion

In general, pretrial diversion programs involve the use of community service, treatment, or social services in lieu of traditional prosecution. Successful program completion generally leads all criminal charges to be dismissed and/or expunged, whereas unsuccessful participation leads case to be re-routed back to traditional prosecution.

Multiple Types of Diversion

There are several basic types of pretrial diversion, based on which agency runs the program—law enforcement, prosecutors, or courts—and at which point in the criminal justice process diversion takes place—before a case ever reaches the court, after a case reaches the court but before a disposition, or after a disposition. *Police-led diversion* typically happens before a case is forwarded to either the prosecutor's office or the court, allowing defendants to participate in programming in lieu of any system involvement beyond the initial contact with an arresting police officer (Tallon, Labriola, and Spadafore 2017). By contrast, *prosecutor-led diversion*—which constitutes the focus of the present study—typically occurs at one of two later stages. In *pre-filing diversion*, the prosecutor's office receives the case from law enforcement, but the prosecutor opts not to file charges with the court so long as the defendant completes diversionary programming. In *post-filing diversion*, the prosecutor files the case with the court, typically leading to one or more court appearances, but then—generally in partnership with the court—the prosecutor suspends the normal adjudication process while diversion participation takes place.

Potential Shortcomings of Diversion

Despite the potential to create system efficiencies, link defendants to needed services, and reduce the collateral consequences of a conviction, if diversion programs are not carefully designed, they can also produce unintended negative effects. For instance, if diversion is

limited to extremely low-level misconduct that would rarely have led to a conviction or jail time within the preexisting status quo, diversion could expose defendants to more, not less, onerous requirements and consequences than traditional processing. In addition, if diversion programs pursue goals related to recidivism reduction and rehabilitation of participants, but only offer treatment classes of extremely brief duration or use treatment approaches that do not adhere to evidence-based practices, diversion may raise unrealistic behavioral change-related expectations. Of even greater concern, if diversionary services adopt a “one size fits all” approach, defendants may be required to participate in services they do not need; or, worse yet, defendants who pose a “low risk” of re-offending may be required to attend services alongside their “high risk” counterparts, potentially leading to contagion effects that *increase* recidivism (Andrews and Bonta 2010; Lowenkamp and Latessa 2004).

Table 1.1. List of Prosecutor-Led Diversion Programs in the Study

Prosecutor's Jurisdiction	Program Name	Program Start	Jurisdiction Population	Annual Misdemeanor Cases (Est.)	Annual Felony Cases (Est.)
	Northeast				
Chittenden County (VT)	• Rapid Intervention Community Court Project	2010	161,000	5,000 combined	
Philadelphia (PA)	• Small Amount of Marijuana Program (SAM)	2010	1,567,000	25,000	26,000
	• Accelerated Misdemeanor Program (AMP)	2010			
	• Accelerated Rehabilitative Disposition (ARD)	1972			
	Midwest				
Cook County State's Attorney's Office (IL)	• Cook County Drug School	1972	5,238,000	200,000	50,000
	• Cook County Misdemeanor Diversion Program	2012			
	• Cook County Felony Diversion Program	2011			
Hennepin County (MN)	• Operation De Novo (Property and Drug Diversion)	1971	1,223,000	N/A	6,500
Milwaukee County (WI)	• Diversion Program	2007	957,735	6,600	6,200
	• Deferred Prosecution Program	2007			
	South				
Dallas County Attorney's Office (TX)	• Memo Agreement Program	2007	2,553,000	55,000	26,000
	West				
City of Los Angeles (CA)	• Community Justice Initiative	2013-15	3,949,000	50,000	N/A
Maricopa County (AZ)	• Maricopa TASC Adult Prosecution Program	1989	4,168,000	N/A	30,000
Phoenix City (AZ)	• Project Rose	2011	1,583,000	45,000	N/A
San Diego City (CA)	• Beach Area Community Court	2005	1,391,000	20,000	N/A
San Francisco (CA)	• Neighborhood Courts	2011	864,816	4,300	4,300

Limited Prior Research

Surprisingly, there has been little research to date on prosecutor-led diversion programs, a fact that explains the interest of the National Institute of Justice in funding the current national-scope evaluation. Further, what little research has been completed has yielded relatively mixed findings, raising important questions about the conditions under which diversion programs can successfully translate their founders' aspirations into positive results on the ground.

Mixed Results of Early Pretrial Diversion Experiments

Formal pretrial diversion programs date back to the 1967 President's Commission on Law Enforcement. Recognizing that courts were overcrowded, the Commission recommended that first-time defendants who suffered from unemployment, alcoholism, or mental illness might benefit more from a service intervention than traditional prosecution. In response, the Department of Labor (DOL) funded two large experiments, one in New York City and one in Washington, D.C. Other federally funded experiments followed in the early 1970s, and by 1977 there were reportedly over 200 diversion programs nationwide (Feeley 1983).

These early programs placed severe restrictions on the severity of offenses accepted for diversion, with most programs focusing on minor misconduct and many programs focusing on only one or a few types of charges. These programs also generally adopted a "one size fits all" approach to treatment, with a single treatment option, usually supplied by in-house staff.

Early evaluation studies reported equivocal findings. An initial quasi-experiment suggested that the New York City diversion experiment placed nearly all participants in jobs and cut the recidivism rate in half (Vera Institute of Justice 1972). Yet, a subsequent randomized controlled trial (RCT) found no differences in case outcomes, vocational outcomes, re-arrests, or days in jail (Baker and Sadd 1979). The researchers in the follow-up RCT pointed to the possibility that these null effects resulted from eligibility criteria that largely targeted low-level cases—i.e., cases that would not have experienced adverse legal outcomes in the preexisting status quo before diversion was implemented (Baker and Sadd 1979). Another federally funded program in New Haven, Connecticut was initially touted as a model program. Yet, research found that the New Haven program was *more* expensive than post-conviction probation (Freed et al. 1973).

Some early diversion models were pre-filing, routing defendants away from the criminal justice system entirely, before beginning any court process. Others, such as a Department of Labor-funded site in San Jose (CA), operated after a court case was filed but prior to a final disposition of the criminal case. Research indicates that, as in New York City, prosecutors in San Jose only admitted defendants charged with low-level misconduct, who would otherwise have received, at most, a small fine or suspended sentence (Feeley 1983).

Given the predominance of null findings across multiple federally-funded sites in the 1970s and early 1980s, few local jurisdictions were willing to absorb the cost of pretrial diversion programs once start-up funds ran out, and the initial round of programs were frequently either terminated or substantially modified and scaled-back.

Recent Diversion Research

In recent years, few prosecutor-led diversion programs have been the subject of an in-depth and scientifically rigorous evaluation. Regarding pretrial diversion programs for adults (not limited to programs run by prosecutors), recent evaluations are both limited in number and offer inconsistent findings (see, e.g., Broner, Mayarl, and Landsberg 2005; Cowell, Broner, and Dupont 2004; Mire, Forsyth, and Hanser 2007; George et al. 2016). By comparison, juvenile diversion programs have been the subject of somewhat greater research, although most of the juvenile studies suffer from fundamental methodological problems, especially the lack of an appropriate comparison group (Butts and Buck 2002; Beck et al. 2006). Among the stronger juvenile diversion studies in the literature, a Miami program routing first-time misdemeanor juvenile defendants to a drug education program was found to produce positive recidivism outcomes over a 12-month follow-up (Dembo et al. 2008). Similarly, a juvenile diversion program in Wayne County, Michigan also found reduced re-arrests over 12 months as well as lower case processing costs, when compared to traditional prosecution (Hodges, Martin, Smith & Cooper, 2011). In 2010, Petrosino et. al. (2010) conducted a meta-analysis including 15 studies and reported that, in general, juvenile diversion participants were less likely to commit new offenses than youths processed through the juvenile justice system.

Through a multisite framework, the present study seeks to achieve a major upgrade in our understanding of what diversion programs *are* as well as, through accompanying impact research (Rempel et al. 2017), improving the state of research knowledge concerning these programs' potential to change defendant outcomes and save resources for the system.

Chapter 2

Research Design

The purpose of the multisite case studies whose results are provided in this report was to produce in-depth information on contemporary prosecutor-led diversion programs representing an array of commonly found goals, policies, and practices. Accordingly, the study began with visits to 15 individual prosecutor-led diversion programs, located within ten prosecutor's offices across eight states (two offices in Arizona, two in California, and one each in Illinois, Minnesota, Pennsylvania, Texas, Vermont, and Wisconsin). See Table 1.1 from the previous chapter for a list of the individual programs included in the study.

Most of the programs selected for study were situated in a large (i.e., > 500,000) or major (i.e., > 1,000,000) urban setting (see Table 1.1 above). The only small jurisdiction was Chittenden County, VT. Six programs were county-wide, including both a major city and its suburbs—Chittenden County, VT (Burlington); Cook County, IL (Chicago); Dallas County, TX (Dallas); Hennepin County, MN (Minneapolis/St. Paul); Maricopa County, AZ (Phoenix); and Milwaukee County, WI (Milwaukee). Program sites varied in their demographic profiles. Some were predominantly African-American (Philadelphia), others largely Hispanic/Latino (e.g., Dallas, Phoenix), and one (Chittenden County) was affluent and predominantly white.

Site Selection

With relevant results shown later in this report in Table 5.1, in planning the study and selecting the 10 prosecutor's offices and 15 diversion programs of primary interest, we sought a diverse range of programs on the following criteria:

- **Stage of Case Processing:** The final set of programs included three pre-filing (prior to the filing of a court case), eight post-filing (but pre-disposition), and four mixed models.
- **Target Population:** The final programs represented a mix of target charge severities, including six misdemeanor-only programs, three felony-only programs, and six programs that accept both misdemeanors and felonies. The programs also accepted a mix of charge *types*, with some specializing in a certain type of charge (e.g., drug or marijuana charges, property offenses, or prostitution) and other programs targeting a wide range of charges.

- **Institutional Support:** Selected programs are deeply institutionalized in their jurisdictions and serve a relatively high volume.
- **Regional representation:** Sites were selected to represent a diversity of regions across the country; prosecutor's offices included two in the Northeast, one in the South, three in the Midwest, and five in the West.

Interview Protocols

The primary tool used to document these programs was a 31-page, 103-question interview protocol (see Appendix A), supplemented with additional follow-up questions, administered on-site to key stakeholders from each program by members of the research team. The case studies also included observations of each programs' participants and processes. Interviews and observations were completed in the winter of 2014.

During each site visit, the research team conducted a series of in-depth interviews with program stakeholders. Specifically, researchers interviewed lead prosecutors in each agency as well as the attorneys doing the hands-on work of reviewing and determining the eligibility of cases referred to the diversion program. Prosecutor interviews focused on the evolution, rationale, structure, and operations of the program. Interviews were also conducted with social service or criminal justice agencies that work directly with the program (e.g., police, pretrial services, the court, probation, community-based providers) to understand the role of each agency and cross-agency compliance reporting protocols.

We sought to interview a diverse range of stakeholders at each site. Prior to site visits, the research team established a point person at each site and attempted to schedule interviews with at least one representative of affiliated community-based agencies or role within the justice system (e.g., judges, prosecutors, defense attorneys, court staff). Where possible and appropriate, the research team directly observed in-court appearances by program participants (or potential participants).

The interviews with various stakeholders included questions to elicit information across the following domains:

1. Program Environment;

2. Diversion Program History;
3. Staffing and Structure;
4. Program Goals;
5. Target Population;
6. Screening Process;
7. Clinical Assessment;
8. Program Enrollment;
9. Legal Leverage;
10. Supervision;
11. Program Oversight;
12. Partnerships;
13. Relevant State or Local Laws and Regulations;
14. Overall Program Strengths and Challenges; and
15. Program Data and Results.

Site Visit Implementation

Case study data was collected through intensive three-day, in-person site visits to each of the ten sites (three of which housed multiple programs) by two to four members of the research team. Preparatory and follow-up information were gathered as needed through pre- and post-site visit phone and e-mail consultation.

Participant Focus Groups

Five focus groups were completed with pretrial diversion participants in six programs:

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:** DeNovo program.

With the support of program staff at each site, a recruitment flyer was given to program participants that indicated the purpose of the study, who is eligible, stipends for participating, and contact information. Eligible participants contacted researchers to discuss eligibility,

incentives and logistics. All focus group participants were provided written informed consent and informed of the purpose of the interviews and the fact that participation is voluntary.

A structured focus group guide was used and focused on the participant experience (including programs and services), program strengths, and challenges (see Appendix B).

Lessons Learned from Los Angeles

The Los Angeles City Attorney's Office is responsible for prosecuting misdemeanors for the City of Los Angeles. Mike Feuer has been the City Attorney since July 2013 and has prioritized the expansion of diversion programming during his tenure. Although diversion programs existed under previous city attorneys, they expanded in both size and prominence since 2013. Notably, under City Attorney Mike Feuer, the Community Justice Initiative (CJI) was created as an umbrella initiative for all diversion, restorative justice, and alternative sentencing programs. The CJI is composed of a wide range of programs (detailed below), including prostitution diversion, neighborhood justice, administrative citation enforcement, meditation/dispute resolution, homeless and veterans programs, neighborhood school safety, truancy prevention (teen court), and gang alternative sentencing (www.lacityattorney.org/community-justice).

Our analysis of the programs in Los Angeles focused on bringing to light important lessons from the change in leadership and reconstitution of the City Attorney's office's pretrial diversion program philosophy and operations. Thus, the purpose of our case study of this particular office was specifically to gain a broader understanding of the reexamination of diversion policies that was triggered when the City Attorney's Office changed hands.

On November 16, 2016, we visited the Los Angeles City Attorney's Office and met with supervisors of many of the individual CJI-affiliated programs. We conducted two sets of interviews. First, we scheduled brief, 20-minute interviews to discuss key elements of the diversion program. Second, we completed several hour-long interviews with supervisors of relevant programs to learn more about the programs, as well as about the evolution of diversion at the City Attorney's Office, and the current operational environment. We also spoke to individuals involved in CJI management. Several of the interviewees were relatively recent hires and, thus, could not speak to the evolution of pretrial diversion; for this reason, we largely focused on current policy and practices within the newly constituted Community Justice Initiative.

Chapter 3

Program Goals

During site visits, we asked diversion program staff and affiliated interviewees to identify their programs' goals. They did so by rating the importance of each of a preset list of goals that were developed by the research team and included in the semi-structured interviews. Interviewees were also asked to comment on any other goals they felt were central to their program. Interviewees at nearly all sites added goal statements to the initial list.

Candidate Goals of Pretrial Diversion

The initial preset list of goals to which interviewees replied included the following 12:

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.

Based upon responses from the more open-ended portions of our interview protocol, we added to this list of 12 items, ultimately identifying 36 distinct goal statements. The preset items and goal statements arising from the interviewees themselves were then collapsed 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.

Administrative Efficiency/Cost Savings Goals

These goals are focused on reducing time, cost and resource burdens on prosecutors, the court system, or other criminal justice agencies. They include five items:

- Use prosecutorial resources more efficiently.
- Use court resources more efficiently.
- Provide line prosecutors with more plea bargaining options.
- Get low-level cases of first-time defendants off of court calendar; keep low level marijuana possession cases out of the trial division.
- Save money in criminal justice system.

Reduced Collateral Consequences Goals

These goals are directed at improving legal outcomes for defendants and, thus, reducing the potentially deleterious impact of these outcomes on their lives. These include three items:

- Reduce the collateral consequences of conviction for defendants.
- Enable participants to avoid a felony conviction.
- Give felony defendants a second chance, use the “carrot” of a clean felony record.

Community Engagement Goals

These goals are directed at fostering a positive relationship among both program participants and the program itself—e.g., the prosecutor’s office—with both victims and the larger community. Community engagement goals include four items:

- Involve victims in prosecutorial decisions and outcomes.
- Involve community members in prosecutorial decisions and outcomes
- Increase public confidence in the prosecutor’s office.
- Break down perceptions within the faith-based community about helping sex workers.

Defendant Accountability Goals

These goals are directed at having participants accept responsibility for their past actions. This category includes two items:

- Hold defendants accountable for their illegal behavior.
- Accountability—a lot of people haven’t had to account for anything.

Recidivism Reduction Goals

These goals involve seeking to reduce future criminal justice involvement. They include three items:

- Reduce defendant recidivism.
- Reduce probability of criminal activity in the future.
- Stay out of criminal justice system.

Rehabilitation Goals

These goals are directed at treating and addressing the underlying needs of the defendant. This was the most populated category, with a total of 12 items:

- Emotionally and theologically, we should help.
- Preserve the ability of participants to be employable.
- Rehabilitate defendants by treating their underlying problems
- Link veterans to services very early after an arrest.
- Trying to get people to successfully not use illegal substances or abuse legal drugs.
- Participants can successfully reclaim their lives.
- Since most haven't had treatment, they haven't been sober since they were 14 and can't imagine why be sober, so program can help with that.
- Case managers make referrals for services if there are underlying housing, job, etc., problems that people need addressed.
- Treatment is more appropriate option.
- Provide more discriminating responses to different types of defendants (e.g., high-risk and low-risk).
- Use the threat of prosecution to give them the tools they need to make their own opportunities.
- Provide service linkages ... to the Veteran's Administration, the John Marshall Law School Program for Veterans, or a mental health services provider—thereby informing participants of services they can continue to access in the future; deliver services.

Restorative Justice Goals

These goals point to repairing the relationship between the defendant and the community and/or between the defendant and victim. This category included a total of seven items:

- Restore defendants to law-abiding behavior.
- For property offenses: restitution; restore community and individual victims.
- Clean up the Beach Area.
- Ultimately that people realize these small things affect people in the community.
- Have the defendants gain insight into the harm their behavior caused.
- Engage participants in a “constructive process.”
- Help participants become better members of society.

Most Commonly Embraced Program Goals

The check marks in Table 3.1 show, for each of the 15 programs in the initial round of case studies (excluding Los Angeles), goals that staff rated as “extremely important.” In general, the most widely and strongly embraced goals were: administrative efficiency/cost savings (cited at 10 programs) and reduced collateral consequences for defendants (cited at ten programs). These goals were followed by recidivism reduction (7 of 15), rehabilitation (6 of 15), and restorative justice (7 of 15). In general, our more detailed staff and stakeholder interviews support this essential ordering of goal priorities across sites—with efficiency-based and collateral consequences-based goals repeatedly emphasized at multiple sites.

At the same time that some goals tended to be more commonly embraced by others, staff affiliated with most prosecutor-led diversion programs expressed that multiple goals were important, not just one or two. In fact, staff at ten of the 15 programs (67%) cited “extremely important” goals in at least three of the seven goal categories. As presented in the rightmost column in Table 3.1, we identified four *broad scope* programs with goal statements 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.

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
Number of programs represented in goal category	10	10	4	5	7	6	7	

Sample Programs

In this section, we provide a more detailed description of four different approaches to pretrial diversion. Specifically, we briefly describe a “broad” scope program (Maricopa County TASC), a “moderate” scope program (Hennepin County Operation De Novo), and two “narrow” scope programs (Dallas Memo Agreement Program and Philadelphia Accelerated Rehabilitation Disposition Program).

A Broad Scope Program: Maricopa County (AZ) Treatment and Assessment Centers

Maricopa County TASC opened in 1989 and operates in Arizona’s largest county, which includes Phoenix. “Extremely important” goal statements spanned five of the six categories, including administrative efficiency (“Use prosecutorial resources more effectively”), collateral consequences (“reduce the collateral consequences of conviction for defendants”), defendant accountability (“accountability: lot of people haven’t had to account for anything”), recidivism reduction (“Stay out of the criminal justice system”), and rehabilitative goals (“Participants can successfully reclaim their lives”).

The TASC program is a mixed model that accepts participants either at pre- or post-filing at the discretion of the Deputy County Attorney. It is open to first-time felony drug defendants, typically on a marijuana possession charge. TASC is a large organization that provides all services to program participants in-house at one location. Participants must first accept the invitation to work with TASC; roughly half do not, often because, according to interviewees, they do not think they can remain clean and sober for the length of the program. The TASC program begins with a 60-minute clinical assessment of criminal history and criminogenic needs. Defendants participate for six months (for marijuana) or one year (for narcotics), during which time they submit to regular drug tests and attend a standardized curriculum of services including case management, drug education and group and individual counseling. Participants pay a substantial fee of between \$800 and more than \$2000, depending on the nature of their offense, in addition to urinalysis costs. Successful completion of the program for post-filing participants leads to the dismissal of their charges and the sealing of their case. Successful pre-filing participants’ charges are never filed in court.

A Moderate Scope Program: Hennepin County (MN) Operation De Novo

Staff interviewed from the Hennepin County (Minnesota) Operation De Novo program endorsed or articulated goals from three of the seven categories. Administrative efficiency goals included collecting restitution money, which they believed they could accomplish more effectively than could the probation department. Operation De Novo interviewees also cited collateral consequences and restorative justice goals as “extremely important” and regarded as “very important” the goals of restoring defendants to law-abiding behavior and rehabilitating defendants by treating their underlying needs.

Hennepin County’s program is among the oldest in our sample—indeed in the nation—having been in existence since 1971. First-time felony defendants charged with a property or drug felony who meet other inclusion criteria are charged a \$200 program fee (\$175 at the time of the interview). At intake (typically around one month from the initial court date), participants receive a comprehensive assessment, which includes criminal history, mental health, substance use, and employment history. A follow-up assessment is administered to participants at four months’ post-intake. The intensity of participants’ specific mandate is determined by assessment results. Typically, mandates include counseling sessions, case management, community service, and drug testing when indicated. They also make payments toward any restitution obligations they have. Successful program completers either avoid having their case filed in court (pre-plea participants) or have their cases sealed for a fee (post-plea participants). Operation De Novo’s aims are reflected in the intensive clinical assessment and in the extensive training of their staff. At the time of the interview (October 2013), program stakeholders were planning a training initiative for Operation De Novo treatment provider staff to include additional evidence-based programming, Crisis Intervention Teams, and trauma-informed practices.

A Narrow Scope Program: Dallas Memo Agreement Program

The Dallas Memo Agreement program cited only one “extremely important” goal: to reduce the collateral consequences of conviction for the defendant. “Very important” goals included those in the administrative efficiency, community engagement, and recidivism reduction categories. The Dallas District Attorney holds the “strong belief that first offenders should be given a second chance,” and believes the Memo Agreement Program meets the three overarching goals of punishment, rehabilitation, and deterrence.

In the Dallas Memo Agreement Program, first-time defendants—typically those charged with retail theft or marijuana possession—are offered 24-36 hours of community service over 60 days in lieu of standard prosecution. Mandates may also include drug testing, substance abuse treatment, or life skills classes. Participants pay a \$500 program fee and, upon completion of their mandate, have their cases dismissed and can file for expungement for an additional fee. The multifaceted orientation of the Dallas Memo Agreement Program is supported by the interdisciplinary program team, which includes the prosecutor’s office, probation department, Volunteer Center of North Texas, and Recovery Health Corporation (see complete logic model for this and other programs in Appendix C).

A Narrow Scope Program: Philadelphia Accelerated Rehabilitation Disposition (ARD) Program

In contrast to the Maricopa and Hennepin County programs, the Philadelphia Accelerated Rehabilitation Disposition Program centers on a single stated administrative efficiency goal: to get low-level cases of first-time defendants off of court calendar. This program, like Operation De Novo, is more than 40 years old. It was initiated in 1972 as a way to free the court from having to process minor cases (typically those charged with a DUI). Although some educational classes are required for participants, Accelerated Rehabilitation Disposition does not explicitly consider itself a “treatment” program. After their case is filed in court, participants are referred to the program based on criminal history and other considerations (e.g., prior program participants are excluded). Program referrals come from a variety of sources, most commonly the defense attorney. For a fee (determined based upon the individual mandate), participants attend classes—for example, safe driving and substance abuse awareness for DUI defendants; retail theft class for defendants arrested for shoplifting). Classes are conducted by contractors and overseen by the probation department. Successful participants have their cases dismissed and, for a fee, expunged. The focused goal of this program is reflected in the straightforwardness of its case processing, where the only tailoring is in the assignment of classes based on the arraignment charge.

Chapter 4

Program History, Structure, and Legal Context

This chapter provides an overview of the programs that we visited, including information on the program history and planning, current staffing structure, as well as any relevant laws that guide the practice of the diversion program. Table 4.1 provides summary information, including when each program began and basic facts about current program staffing.

Program History and Planning

Most of the programs had been in existence for fewer than ten years at the time of our interviews. Two exceptions were Hennepin County's De Novo (1971) and Cook County's Drug School (1972) programs. In addition, most of the programs were conceived and initiated through informal working groups, some of which became more highly formalized over time. An exception was Philadelphia AMP Tier 2, which was created as part of major reforms to the Philadelphia District Attorney's office in 2011 (which laid the groundwork for both the AMP and SAM programs). These reforms led to greater involvement of the prosecutor's charging unit in the assessment of cases for pretrial diversion eligibility. AMP Tier 2 expanded on AMP Tier 1 by accepting defendants with prior convictions. Tier 2 planning was more formal as it engaged a greater number of stakeholders including the city-owned mental health management corporation.

In general, there was little opposition to these programs during start-up. Project ROSE in Phoenix cited a small group of activists opposed to criminalization of prostitution and churches in the area that were approached initially refused to have prostitutions enter for the program. In Milwaukee there was some opposition in both the DA's and Public Defender's offices, as well as opposition from the Milwaukee Police Department and the Milwaukee County Sheriff's Office. A National Institute of Corrections grant to promote evidence-based decision-making helped to blunt law enforcement objections. Through that grant, the program developed objective criteria for decision-making, and changed the protocol so that it was not personality-driven. In Dallas, the program upset one county commissioner because the commissioner believed it would take revenue away from county in court costs and fines.

Other sites recounted issues around eligibility that required negotiation between prosecutors and public defenders. Philadelphia Small Amount of Marijuana, for example, was initially opposed by some prosecutors, who believed that it was a first step toward decriminalizing marijuana.

Stakeholders also reported changes to their programs over time. Some, such as the Dallas Memo Agreement Program, reported few, minor changes over six years of operations, including allowing a few felony cases on an experimental basis. Maricopa County TASC, Philadelphia Accelerated Rehabilitation Disposition, and San Francisco Neighborhood court similarly expanded the range of eligible charges over time. Cook County Felony Deferred Prosecution expanded to two suburban courthouses. Others noted changes in day-to-day operations. The San Diego Beach Area Community Court transitioned from a format in which stakeholders “lectured” defendants to a more interactive, facilitated group discussion. Cook County Drug School likewise changed its curriculum to a more interactive format. Five years after initiating a diversion program, Milwaukee County instituted universal screening of all defendants in central detention.

In contrast, Operation De Novo—the longest-standing program in our study (housing two separate but related program tracks respectively for drug/marijuana and property cases)—went through several substantive changes over the years. It was originally a 16-month program, but was condensed to one year in the early 2000s to make it easier for participants to achieve successful program completion. In addition, budget cuts forced the program (and all county contractors) to move to a model in which pay was contingent on successful results. Operation De Novo also took over drug diversion, filling the gap left when the local drug court stopped accepting diversion cases and became solely post-adjudication. In July of 2012, the program expanded to include a property pre-charge program, in addition to their existing post-filing property and drug programs.

In summary, most of the programs in our sample were fairly recent developments emerging from a series of informal meetings among stakeholders. Most (though not all) experienced little resistance at the outset, as stakeholders were clearly attuned to the benefits of pretrial diversion. There was some evidence of “growing pains” as programs expanded their scope, volume, and protocols. The oldest program, Hennepin’s Operation De Novo, implemented several changes on multiple levels in response to a shifting budgetary and legal environment.

Oversight, Staffing, and Partnerships

Programs varied in their number of dedicated staff. On the lower end of the spectrum were the Cook County Misdemeanor Deferred Prosecution, which employed a director, two assistant state’s attorneys, and community-based program partners; and San Diego Beach Area Community Court, which employed a director, a neighborhood prosecutor, a community liaison officer, and a community provider; and the Chittenden County Rapid Intervention Community Court, which was staffed solely by two contractors.

By contrast, the more treatment-intensive programs were more staff-heavy. Maricopa TASC exemplifies this end of the spectrum, staffed by 13 TASC staff and 17 clinical staff members. Perhaps the largest staff was found in Phoenix’s Project ROSE, which utilizes a broad array of service providers (11 at the time of our site visit), including Arizona State University; the Phoenix Police Department; and Bethany Bible Church, the “home base” of ROSE operations. For nearly all of the 15 programs, there was, at minimum, a dedicated director position—typically an assistant prosecutor or director of an alternative sentencing unit.

Partnerships and linkage agreements varied widely across programs. On one hand, the Hennepin De Novo and Maricopa TASC were virtually self-contained, in that all of their service and restitution programming took place in-house. The Philadelphia Small Amount of Marijuana program only partnered with the probation department, which oversees community service. On the other hand, all three Cook County programs, both of Milwaukee’s two programs, and Chittenden County’s Rapid Intervention Community Court maintained extensive linkages with community providers including homeless services, veterans affairs, mental health providers, and substance abuse treatment centers. Philadelphia’s Accelerated Misdemeanor Program had no less than 80 community partners.

Relevant Laws

Overall, there were few restrictions on prosecutor-led diversion programs based on local or state laws. Texas law limits the fees that can be imposed by the Dallas Memo Agreement Program, and Philadelphia’s Accelerated Rehabilitation Disposition was set into motion by the Pennsylvania Supreme Court in 1972—the year this program was created. Eligibility for the Milwaukee, San Diego, and Maricopa County programs are all governed by state laws to at least some extent. Table 4.1 (next page) provides more information.

Table 4.1. Key Facts Regarding Program History, Structure, and Legal Context

Prosecutor	Program Name	Open	Staffing	Partnerships	Planning	Was there any initial opposition?	Program Oversight	Relevant Laws
Chittenden County (VT)	Rapid Intervention Community Court (RICC)	2010	2 contractors	Howard Center and CJC, and other community-based mental health, substance abuse, and other services	formal, prosecutor-led, planned by DA's Community Prosecution and Misdemeanor Bureau heads	no	Contractor	no restriction based on state or local laws
San Francisco (CA)	Neighborhood Courts	2011	1 director, 1 policy/data manager	pretrial services, community board	informal, mostly DA and PD with some input from police	yes	NC Director in the Prosecutor's Office	no restriction based on state or local laws
Hennepin County (MN)	Operation De Novo: Property & Drug Diversion Tracks	1971	County Attorney Community Prosecution Division, Public Defender's Office	none; all programming from Operation De Novo	informal, led by Public Defender, Chief Judge, County Attorney	no	Senior Attorney in the Prosecutor's Office	no restriction based on state or local laws
Milwaukee County (WI)	Diversion Program	2007	Deputy DA, 4 full-time ADAs, other community prosecutors	Justice Point for case management, treatment providers case-by-case	formal, Early Intervention Working Group: 2 private attorneys, DA staff, and PD staff	yes	Deputy DA	Wisconsin Statute of Limitations; also prohibition on diversion for OWI cases
	Deferred Prosecution Program	2007						
Dallas County Attorney's Office (TX)	Memo Agreement Program	2007	All ADAs in Misdemeanor Unit	Probation, multiple community agencies, Volunteer Center of North Texas	formal, DA Community Prosecution and Misdemeanor Unit heads and Probation	yes, little	Pretrial Diversion Program Coordinator	diversion and fees set by State statute
Maricopa County (AZ)	Maricopa County TASC Adult Prosecution Program	1989	Deputy County Attorney, 13 TASC staff, 17 clinical staff (some part-time)	TASC	unknown; involved TASC, sheriff, and PD	unknown	Division Chief	Prop 200: mandatory probation for most first-time defendants
San Diego City (CA)	Beach Area Community Court	2005 pilot, 2008 full	1 Neighborhood Prosecutor, 1 Director, 1 community liaison officer, community service provider	Discovery Pacific Beach (DPB) organizes Impact Panel and work service, Pacific Beach Rec Center delivers education	informal, led by police, City Attorney, nurse, beach patrol, park rangers	no	City Attorney	must complete impact panel and services in 5 days of citation

Table 4.1. Key Facts Regarding Program History, Structure, and Legal Context (*Continued*)

Prosecutor	Program Name	Open	Staffing	Partnerships	Planning	Was there any initial opposition?	Program Oversight	Relevant Laws
Phoenix City (AZ)	Project ROSE	2011	11 meet regularly: reps. from service agencies and ASU, Phoenix PD, Bethany Bible Church, Pros. Offc.	Bethany Bible Church & network of providers; Catholic Charities Prostitution Diversion Program delivers services	informal, Arizona State University, Prosecutor's Office, police	yes	Diversion Programs Administrator	4th prostitution offense is a felony which gets handed over to the County
Philadelphia (PA)	Small Amount of Marijuana program (SAM)	2010	1 ADAs, non-dedicated attorney or paralegal, Trial Commissioner	Court: Probation agrees not to treat SAM as a violation	informal at first, then formal: 4 stakeholders	yes	ADA	no restriction based on state or local laws
	Accelerated Misdemeanor Program (AMP I and AMP II)	AMP 1: 2010; AMP 2: 2011	Rotating Judge, community service staff (1 appears in court), 2-3 court staff, 2 dedicated PDs, 1 dedicated ADA; 2-3 social service professionals	Public Defender, 80 treatment providers as needed	informal at first until planning for AMP 2	yes	ADA	no restriction based on state or local laws
	Accelerated Rehabilitative Disposition	1972	ADA, dedicated paralegal, dedicated PD	contractors to run classes	unknown	unknown	Chief of Pretrial Unit; Probation	PA Supreme Court Rule 310 (1972)
Cook County State's Attorney's Office (IL)	Cook County Drug School	1972	Director Alt. Sentencing Unit and ASAs in Bond and prelim. hrg. courts, TASC, Gateway provider	TASC for case management; Gateway for running Drug School	unknown	unknown	Director Alternative Sentencing Unit; 2 dedicated ASAs	no restriction based on state or local laws
	Cook County Misdemeanor Diversion Program	2012	Director, Alt. Sentencing, 2 dedicated ASAs, Partners	TASC, CMHCs, Homeless Svs., Vet. Legal Support Center, VA Hospital	informal, led by Prosecutor's Office	no	Director, Alt. Sentencing & 2 dedicated ASAs	no restriction based on state or local laws
	Cook County Felony Deferred Prosecution Program	2011	Director, Alt. Sentencing, 10 dedicated ASAs, 2 full-time staff, 2 dedicated pretrial services officers, 1 TASC case manager, Probation	Probation Pretrial Services, TASC, Community-based agencies	informal, led by Prosecutor's Office	no	Director, Alternative Sentencing Unit, and 2 dedicated ASAs	no restriction based on state or local laws

Chapter 5

Target Population

This chapter summarizes essential features of the target population of each of the 15 programs featured in this report (see key facts summarized in Table 5.1).

Pre-Filing versus Post-Filing Status

Of the 15 programs we visited, eight were *post-filing*, meaning that pretrial diversion participation takes place after a court case is officially filed; three programs were *pre-filing*, meaning that the prosecutor diverts participants prior to—and in lieu of—filing a court case; and four programs enroll some participants pre- and others post-filing (*mixed model*).

We found that policymakers in each jurisdiction made decisions on whether to operate pre- or post-filing programs based on the specifics of their jurisdiction and an assessment of what staff believed would work best (or what was most practical). For instance, stakeholders in Dallas had an initially unsuccessful experience using a pre-filing model, so they switched to post-filing. In the TASC program in Maricopa County, Arizona, a post-filing model is used at the discretion of the prosecutor's office for those defendants deemed to need greater *legal oversight*. The rationale is that a post-filing model affords the prosecutor's office greater legal leverage over the participant, since a case has been filed, the court is already involved, and the potential therefore exists for a judge to impose swift sanctions for noncompliance. Given this leverage consideration, the county attorney's office in Maricopa County decides between pre- and post-filing by considering the number of pending drug cases of the defendant, nature of priors, type(s) of drug involved, and any history of failure to appear in court—with greater or more serious priors weighing the decision towards post-filing.

As another example dictated more by practical considerations, in all of the Cook County diversion programs, post-filing is the only feasible model, since screening for eligibility is conducted by the prosecutor's office at the preliminary hearing (i.e., after the court process is already underway).

Eligible Charges and Criminal Histories

Table 5.1 also shows the charges accepted by each program. Six of the programs accept only misdemeanors (or citations), four accept only felonies, and six programs accept a mix of misdemeanors and felonies. A key stakeholder in Philadelphia, speaking about the Small Amount of Marijuana (SAM) program, explained that by focusing on low-level marijuana cases in this program, the prosecutor's office can focus more on prosecuting more serious and complex cases than in the absence of a diversion program:

Misdemeanors offer the lowest risk and highest potential for success in the way that we measure it [i.e., based on dispositions]. That is, SAM offers an opportunity for an increased rate of positive misdemeanor dispositions as opposed to outright dismissals or declinations to prosecute.

Another Philadelphia stakeholder described the Accelerated Rehabilitative Disposition (ARD) program differently—in terms more favorable to the defendant who engaged in low-level criminal behavior than to the prosecutor's office per se, commenting that the purpose of the program is to provide an alternative for "... good guys who are having a bad day."

A stakeholder in Chittenden County similarly focused on the potential benefits to the defendant in explaining this program's relatively inclusive eligibility criteria: "[The] idea of diversion is to give defendants a second chance—even those with criminal history. Those are the people who need a chance and services so that they don't lose their jobs, etc."

In several of the misdemeanor programs we visited, staff and stakeholders indicated that they accept only misdemeanor cases because a felony program already existed in the jurisdiction and an analogous diversion opportunity was needed for misdemeanants.

Many programs exclude persons who are charged with committing certain types of crimes. Yet crime-type exclusions run the gamut from categorical exclusions (whole classes of crimes such as felonies) to statute-based (such as statutorily defined violent felonies) and specific offense exclusions (such as drug distribution), with significant variation from site to site. There is also wide variation around drug offenses and drug amounts. Most of these exclusions are justified by programs as promoting public safety; some offenses are considered so serious by prosecutors that they are unwilling to manage the risk that such defendants present with what is often community-based programming.

Table 5.1. Target Population

Program Name	Filing Stage	Charge Severity	Restrictions on Legal Eligibility
Chittenden County (VT) Rapid Intervention Community Court Project	Mixed	Misd/Fel	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.
Cook County (IL) Drug School	Post	Misd/Fel	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.
Cook County (IL) Felony Diversion Program	Post	Fel	No prior violent conviction (typically within a 10-year window), felony conviction, arrest for delivery of controlled substance. No current open case.
Cook County (IL) Misdemeanor Diversion Program	Post	Misd	No prior violent conviction (typically within a 10-year window) or prior conviction for child-related offense. No current open case.
Dallas Memo Agreement Program	Post	Misd	No prior arrest. Select charge exclusions (e.g., no public lewdness, indecent exposure, family violence, DWI, or prostitution).
Hennepin County (MN) Operation De Novo, Property and Drug Diversion	Mixed	Fel	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).
Maricopa County (AZ) TASC Adult Prosecution Program	Mixed	Fel	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.
Milwaukee County (WI) Diversion Program	Pre	Misd/Fel	Risk assessment criteria: LSI-R:SV classification of low risk. Excludes select charges (e.g., violent, firearms, sex offense, drug sales).
Milwaukee County (WI) Deferred Prosecution Program	Post	Misd/Fel	Risk assessment criteria: LSI-R:SV above low risk and LSI-R of medium risk. Excludes select charges (e.g., violent, firearms, sex offense).
Philadelphia Accelerated Misdemeanor Program (AMP I & AMP II)	Post	Misd	No prior violent conviction (typically within a 10-year window)
Philadelphia Accelerated Rehabilitative Disposition (ARD)	Post	Misd/Fel	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.
Philadelphia Small Amount of Marijuana Program (SAM)	Post	Misd	No violent felony convictions in past three years or within 2-years of parole; not in possession of a gun at time of arrest.
Phoenix Project Rose	Pre	Misd	No more than 3 prior prostitution convictions, no prior ROSE completion.
San Diego Beach Area Community Court (BACC)	Pre	Misd/Citations	First time in BACC. No violent charges, sex offenses, or gang members. "Chronic" defendants or homeless persons are referred elsewhere.
San Francisco Neighborhood Courts (NC)	Mixed	Misd/Fel	Active probation or parole cases considered on a case-by-case basis. No current open case. No violent charges. Prior convictions allowed on prosecutor's individual discretion.

Rather than exclude certain offenses or offense categories, some programs specify a limited number of *eligible* offenses. For instance, in Hennepin County, the program is only for first-time felony property and drug defendants (no prior felony convictions; up to three prior misdemeanor convictions). Project ROSE in Phoenix accepts only misdemeanor charges of manifesting prostitution, escort violations, or prostitution. The Cook County Drug School only accepts a limited and highly specific array of drug charges (possession of paraphernalia; attempted possession; possession of cannabis, 100 grams or less; Class 4 possession of controlled substance, 2.5 grams or less). Overall, programs generally exclude domestic violence, sex offenses, violent crimes, and gun charges. See Table 5.1 for details.

Criminal history restrictions similarly varied across the sites. All except one of the 15 programs have at least some restrictions based on criminal history, charge type, and/or charge severity. In contrast, the Philadelphia Accelerated Misdemeanor Program (AMP) is a program of exclusion; that is, cases are, by default, *included* in the program as long as they meet the eligibility criteria. There are not case-by-case exceptions to remove misdemeanors that fall within the program's eligibility criteria. That said, the most common AMP charges are possession of controlled substance, retail theft, and prostitution.

There are also a wide variety of other situational factors that may exclude individuals from participation in any given program. Some programs exclude defendants who suffer from a significant mental illness or drug use issues on the theory that such defendants may be better served and managed in a drug court or mental health court. Some programs may exclude defendants who owe an exceptional amount of restitution, on the theory that they cannot possibly pay it back in a reasonable period of time.

Identifying and Enrolling Eligible Defendants

Initial Case Screening

In each site, a specific unit or individual is charged with screening cases for eligibility. For instance, the Philadelphia District Attorney's Office has a charging unit that sees all cases immediately. It is the responsibility of the charging unit's staff to develop a charging recommendation and route cases appropriately to each of the diversion programs. On a smaller scale, in Chittenden County, Vermont, the program coordinator screens all citations from the police database and makes initial determinations. For each of the diversion programs in Cook County, a hearing is set the day after arrest. At this preliminary hearing, a

dedicated Assistant State's Attorney determines eligibility (after conferring with the victim if the crime involves a victim) and sets the restitution amount (if applicable). A brief screening tool is administered to all defendants and eligible defendants opt whether or not to participate. If defendants opt not to participate in Cook County, their case is processed per normal procedures. In San Francisco, cases are directed immediately to a re-booker employed by the prosecutor's office. The re-booker assesses all incident reports coming in and decides where within the DA's office to route each case.

Program staff were also asked if any other agency or entity is involved in the determining eligibility for the diversion program. While many of the programs indicated that some other agency—police, probation, public defender, judge—may be involved, the decision is ultimately the prosecutor's. For instance, in Dallas, the most common way for individuals to be identified is through defense attorneys. In Project Rose, police bring women arrested on a prostitution charge to Bethany Bible Church, where they are given the option of participating in diversion or being returned to jail.

As Table 5.2 indicates, in all of the programs, defendants can refuse to participate; none of the programs are mandatory. Yet the table also indicates that the reported frequency of refusal, in most programs, is infrequent (i.e., never/rarely). The most common reasons for refusing to participate are that the program participation is too long and intensive or defendants are unmotivated to enter treatment at that time. Defendants may also have to admit to guilt—not necessarily in the legal sense, but in the sense of accepting responsibility—and that may be a deterrent to entering the program. For instance, in San Francisco, one stakeholder explained:

Offenders have to agree to take responsibility for what happened and [some] do not agree they did anything wrong. So it's not necessarily they think they'll get a better legal outcome, but rather they do not agree they should take responsibility for any part of the incident.

In San Diego, one stakeholder described the difference between those who agree to diversion and those who refuse:

[Some potential participants] have enough money and don't want to do community service, therefore they just pay the citation. Military and students tend to go into the program because they don't want anything on their record.

Risk-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 choice of service mandates. Milwaukee uses the LSI-R for both of its diversion programs as part of systematic, universal screening and assessment process. In the Milwaukee process, every defendant who is arrested and booked into the County's Central Criminal Justice Facility is administered the short-form LSI-R:SV risk-need assessment, a brief screen 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 and comparatively low-dosage pre-filing Diversion program (see next chapter for details on each program's participation requirements). Those defendants whose risk level is medium or high on the LSI-R:SV, by contrast, are then administered the full-length LSI-R assessment, which is a well-known validated tool that covers all of the "Central Eight" risk-need factors that have repeatedly been shown to predict re-offending (Andrews and Bonta 2010; Bonta and Andrews 2007). Then, legally eligible defendants who are classified as medium risk on the full-length LSI-R are routed to the more intensive and higher-dosage post-filing Deferred Prosecution program. Finally, high risk defendants as classified by the LSI-R are deemed ineligible for both Milwaukee diversion programs.

At the time of the site visit to Milwaukee, the screening instrument had just changed from a local tool designed to predict pretrial crime to the LSI-R, which predicts longer-term recidivism. Team members reported being pleased with their new, evidence-based approach, but acknowledged that it still needs to be validated locally.

Regardless of whether the programs assess for risk, nine of the 15 (60%) administer a needs assessment of some kind. Results are primarily used to determine appropriate services (e.g., alcohol or drug treatment, employment or educational services, need for Spanish-language programming, or cognitive or behavioral treatment needs). For instance, all three Cook County programs feature a needs assessment of some kind. In Cook County's Misdemeanor Deferred Prosecution Program, the first part of the assessment takes place at the preliminary hearing court, typically in the hallway, prior to the preliminary hearing court appearance where the participant formally enrolls. All legally eligible and interested defendants are assessed, but it is unusual for the assessment to find that a defendant is clinically ineligible. Participants who are assigned to community mental health services during the preliminary hearing receive a subsequent, longer assessment at their first appointment.

Table 5.2. Screening and Eligibility Determination Process

Program Name	Who makes eligibility decision?	Annual Volume (2012 or 2013)	Defendant can Refuse?	Frequency of Refusals	Most Common Reason for Refusal
Chittenden County (VT) Rapid Intervention Community Court Project	Screener	327	Yes	Rarely/Never	Probation or Restitution
Cook County (IL) Drug School	ADA at bond hearing	3,384	Yes	Rarely/Never	N/A
Cook County (IL) Felony Diversion Program	ADA at bond hearing	734	Yes	Rarely/Never	Waiting for Better Legal Outcome
Cook County (IL) Misdemeanor Diversion Program	ADA at bond hearing	1,154	Yes	Rarely/Never	Waiting for Better Legal Outcome
Dallas Memo Agreement Program	ADA / Defense	1,600	Yes	Rarely/Never	Protest their Innocence
Hennepin County (MN) Operation De Novo, Adult Diversion	Screening Unit	663 (both De Novo programs)	Yes	Sometimes	Program Too Long and Intensive; Unmotivated to Enter Treatment
Maricopa County (AZ) TASC Adult Prosecution Program	Deputy County Attorney	2,901	Yes	Sometimes	Program Too Long and Intensive; Unmotivated to Enter Treatment
Milwaukee County (WI) Diversion Program	Universal Screening	277	Yes	Rarely/Never	Protest their Innocence
Milwaukee County (WI) Deferred Prosecution Program	Universal Screening	478	Yes	Rarely/Never	Protest their Innocence
Philadelphia Accelerated Misdemeanor Program (AMP I & AMP II)	Charging Unit/Diversion Unit	~ 3,000 (imprecise)	Yes	Rarely/Never	Waiting for Better Legal Outcome; Probation
Philadelphia Accelerated Rehabilitative Disposition (ARD)	Charging Unit/Diversion Unit	~ 800 (imprecise)	Yes	Rarely/Never	Program Too Long and Intensive; Funds
Philadelphia Small Amount of Marijuana Program (SAM)	Charging Unit/Diversion Unit	3,194	Yes	Rarely/Never	Protest their Innocence
Phoenix Project Rose	Police	86	Yes	Rarely/Never	Don't know
San Diego Beach Area Community Court (BACC)	Neighborhood Prosecutors / Police	150	Yes	Sometimes	Program Too Long and Intensive
San Francisco Neighborhood Courts (NC)	Rebooker	376	Yes	Sometimes	Waiting for Better Legal Outcome

Chapter 6

Program Mandates, Supervision, and Legal Leverage

This chapter details the requirements of the 15 programs, once participants are formally enrolled (“program mandates”) as well as steps taken to supervise the participants and exert legal pressure in order to incentivize compliance (“supervision and legal leverage”).

Program Mandates

Table 6.1 provides a snapshot of the basic types of program mandates utilized by each program. Five programs have adopted a straightforward “one size fits all” 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 pursued these aims in the first place (see Chapter 3). Instead, many programs prioritized the benefits of greater resource efficiency for the system or other goals designed to benefit defendants—most importantly, helping them to avoid the collateral consequences of a conviction.

Besides the five programs that have adopted a standardized set of requirements, three other programs use individualized mandates, tailored to the needs of each defendant. Of the remaining programs, both Milwaukee programs and two of Cook County’s programs use a mix of standardized and individualized mandates; and Philadelphia’s ARD and 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.

Table 6.1. Diversion Program Mandates, Required Services, and Program Duration and Dosage

	“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		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 + varying classes
Hennepin County, MN: Operation De Novo (Property and Drug)			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 commty. 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 1	AMP 2	Some		All AMP 1/Some AMP 2	Some	Some	5-10 weeks AMP 1/ 15-20 weeks AMP 2	12-18 hours AMP 1/ Varies AMP 2
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)

Specific Services and Treatment Modalities

Notable components of the program mandate and required services found across the 15 programs of interest include the following (see Table 6.1):

- **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 consistent 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. In addition, based on independent information obtained by research staff, it seems likely that at least some participants in Milwaukee’s Deferred Prosecution Program also receive CBT—and at the time our case study was conducted, Milwaukee was seeking to add a new CBT option specifically to address criminal thinking patterns. San Francisco’s Neighborhood Courts program also uses CBT with some of its participants.
- **Restorative Justice:** Only five 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.

In interviews, staff and stakeholders were asked whether there were any services or innovations they would like to introduce into their program. Five of the respondents replied in the affirmative. Responses included the following:

- Group homes and halfway houses;
- Allowing probationers to remain in the program despite minor infractions;
- Introducing a risk screening tool;
- Implementing a deferred prosecution program for prostitution cases;
- Training case managers in motivational interviewing; and
- Adding cognitive classes to change anti-social thinking.

Mandate Duration and Service/Treatment Dosage

Also shown in Table 6.1, the total duration of the program mandate (e.g., until completers can have their case dismissed) as well as the dosage of program hours or sessions required over this duration varied greatly between programs, with programs reporting anywhere from two to 24 required sessions. For the most part, program staff indicated that the length from program enrollment to completion was less than three months. On the other hand, the programs that handle felony cases tended to have a longer required dosage and duration. For instance, Hennepin County indicated that it takes approximately one year to complete program responsibilities and stakeholders at the Cook County Felony Drug School indicated that it takes approximately 9-12 months to complete.

Legal Leverage

Ongoing Supervision and Compliance Monitoring

Across programs, the prosecutor's office reported receiving routine updates on participant attendance and compliance with mandated services. For four programs, prosecutors also reported routinely sharing compliance information with the court or probation agencies.

In addition, the majority of programs require participants to meet with a case manager or probation officer at least somewhat regularly. In just under half of the programs, at least some diversion participants were subject to drug testing, although only three programs required participants to make regular court appearances for the purpose of monitoring.

Legal Ramifications of Program Completion

In all pre-filing programs (see Chapter 5), successful completion of diversion requirements leads the cases to be closed by the prosecutor's office—i.e., without ever filing the case with the court. Across the post-filing programs, most dismiss the cases of successful participants, although not all programs expunge all record of the arrest. For example, in Milwaukee's post-filing Deferred Prosecution Program, a permanent record of these individuals' arrest record is maintained, regardless of successful completion.

Legal Ramifications of Program Termination

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. However, staff of every diversion program except Project ROSE in Phoenix reported giving noncompliant participants “second chances” in response to noncompliance. 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.

Chapter 7

Program Strengths and Challenges

We asked stakeholders to identify their programs' greatest strengths and weaknesses, barriers to achieving their program's full potential, their community's perceptions of the program, and any changes they would like to see in the caseload or other program components. These questions were open-ended, allowing respondents were able to provide their own answers with no limitations imposed by the researchers. In analyzing the results, we sorted responses into post hoc categories reflecting responses. In addition, we selected specific answers that exemplify the sentiments of respondents.

Perceived Program Strengths

“For truly first time offenders, the program allows them to essentially ‘turn back the clock’. It provides people an opportunity to have a second chance with a clean record.” –San Francisco Program Director

Researchers asked the program stakeholders about the strengths of the program. The most prevalent strengths noted were specific aspects of the program. The Cook, Milwaukee, Vermont, and San Francisco program directors each mentioned collaboration between agencies as their greatest strength. Maricopa County mentioned its onsite drug testing lab and its intensive case management tools, while San Diego touted its high degree of community involvement and low participant fees. San Francisco and Vermont each mentioned that the diversion process allowed defendants and victims each to be able to tell their stories and have a voice in the process. Phoenix mentioned its use of experienced mentors.

Many of the specific program strengths mentioned were related to overall benefits to the justice system. For instance, staff and stakeholders in Dallas and San Diego stressed cost savings realized by the justice system through diversion, while San Francisco emphasized faster processing for diverted cases.

Interview respondents also mentioned the benefits to defendants. Dallas, San Diego, and San Francisco all emphasized the fact that, through their programs, defendants had the chance to clear their record and become more employable.

Perceived Program Challenges

Interviewees were also asked to identify both program weaknesses and barriers to success. The challenges and weaknesses noted, for the most part, centered around operational weaknesses, limited scope of the program, and lack of resources.

Operational weaknesses were largely idiosyncratic to particular programs. Interviewees in Dallas cited program fees that were often too steep for indigents to handle as its primary weakness. Interviewees in Milwaukee cited the need for better case management, while those in Maricopa County cited “too many second chances” given to non-compliant participants. Interviewees in San Francisco noted several weaknesses, including no system to give the police feedback on diversion outcomes and lack of diversity on the adjudicator panel. Since the timing of our site visit to San Francisco, however, this site developed a procedure for reporting results to police, expanded our recruitment strategies for the adjudicator panel, and started evening court sessions to increase adjudicator diversity.

Interviewees at two programs named limitations in program scope as a principal weakness. Interviewees from Hennepin County noted as a weakness the fact that defendants were ineligible if their case involved more than \$10,000 in property damage, while those affiliated with the Cook County diversion programs noted that the program did not have offices in all parts of the judicial district. Finally, interviewees in one program (Phoenix) cited a lack of resources as a major weakness: While a local church provided space to house the program, the program did not have a consistent source of clothing, food, and other needed items.

A related question concerned barriers to program success. Interviewees from several programs (Cook, Maricopa County, and San Francisco) said they had not experienced any barriers. Those from Hennepin County cited billing and other administrative challenges. But those most programs named a *lack of resources* as the overriding and preeminent barrier. Interviewees from Cook County reported that they lacked resources needed to expand the number of program locations within the county; specifically, Cook County’s Misdemeanor Deferred Prosecution Program only had sufficient funding to serve a select number of geographic areas within the county. In Chittenden County, Vermont, a lack of resources to

upgrade technology was seen as a barrier. Interviewees from Phoenix stated that a key start-up barrier was finding an institution willing to host program offices. For Milwaukee, it was about getting more funds for drug treatment, and in San Diego, sustainability was seen as the most significant barrier.

“Residential programs are hard to get into – treatment beds are scarce and payment problematic. Many insurers do not fund residential treatment and county funding is very limited.” –Milwaukee Program Director

Areas for Improvement

Interviewees were asked to identify changes they would make to their program. The responses fell into the four categories: changes in program management, new programming, program eligibility criteria, and increased funding.

Five interviewees suggested changes related to program management. Those from Dallas, Milwaukee, and Vermont saw a need for better coordination of compliance information between service providers and the justice system to allow for tighter case management. Interviewees from San Francisco saw a need for a policy manual to guide program operations, and interviewees from Cook County wanted broader geographic coverage, especially for its misdemeanor diversion program (see above).

Four of the responses were about enhancements to programming for participants. Interviewees from Hennepin County—home to substantial Native American and East African populations—thought that the program should provide more culturally sensitive programming. Maricopa County wanted to be able to develop more individualized programming based on information from initial client assessments, and also wanted to add community service and restorative justice program components. Milwaukee wanted expanded availability of drug and alcohol treatment.

Interviewees from three programs mentioned expanded eligibility as a potential area for change. Staff from Hennepin County wanted to expand eligibility to additional property charges (third degree burglary and auto theft). In Maricopa County, staff considered expanding eligibility to some sex crimes, but other justice system stakeholders vetoed the

idea. Similarly, staff in San Diego had considered adding to their list of eligible offenses (adding lying to a police officer, resisting arrest, theft), but various parties objected.

Finally, interviewees from two programs mentioned funding as an important area where change was needed. Interviewees from Phoenix were looking for a steady source of funding for essentials like food, drink, and clothing for program participants. Prosecutors in Milwaukee expressed that the state should provide funding for diversion programs in recognition of the potential cost savings they create for court and probation departments.

Other Areas of Interest

Stakeholders were also asked about relationships between the program and the local community. Interviewees from Cook and San Diego both reported that they had strong community support. But a more common sentiment was that the community probably did not have much awareness of the program and was minimally involved. Dallas was typical, where both prosecutors and public defenders believed that, while there was some media attention to program when it started, the community was now largely unaware of program.

Finally, program directors were asked to assess current caseload volume. Those from a majority of the programs (Cook, Dallas, Milwaukee, Phoenix, and Vermont) were comfortable with their current case volume. Those from other programs (Hennepin County, San Diego, San Francisco, and Maricopa County) felt that they could handle more cases. For example, interviewees from San Diego reported that while they lacked sufficient resources to conduct more restorative justice sessions, they could include more participants per session, meaning that volume could be somewhat higher even absent added resources.

Chapter 8

Focus Group Findings

Focus groups were conducted with participants in six programs: Cook County’s Felony Diversion Program; Hennepin’s DeNovo program; both of Milwaukee’s two programs; San Francisco’s Neighborhood Courts; and Chittenden County’s Rapid Intervention Community Court. The focus group discussions focused on participant perspectives regarding program structure, services, strengths, and ongoing challenges.

Motivation to Participate

Focus group participants heard about the local diversion programs from different sources: the public defender (Cook County, IL), the court (Hennepin, MN), program staff (Chittenden County, VT), or from multiple sources (Milwaukee, TN and San Francisco, CA).

Participants indicated that the decision to participate in pretrial diversion was an easy one to make. For example, one participant in the Chittenden County program noted “it’s the best thing that they offer around here,” while an individual in the Neighborhood Courts program in San Francisco stated, “you have to be stupid if you don’t take this option.” Cook County participants were less enthusiastic but were also clear that the choice was simple. A common thread in the discussion with Cook County participants was that they entered diversion because they wanted their court cases to go away quickly and they did not want to miss work and get fired. As one participant bluntly stated, the program was “better than being in jail.”

Perceptions of Program Components and Requirements

Participants in most of the programs agreed that the program requirements and expectations were clearly explained. As one San Francisco participant noted, “all the steps I took within the whole process of Neighborhood Court, it was explained to me beforehand, so I knew what I was expecting. I wasn’t in for any surprises.” However, some participants in Cook County noted that they might have been provided with incorrect information from their attorneys. For example, a few participants mentioned that their attorneys told them they could complete

classes online, although this was inaccurate. In Hennepin County, some participants also mentioned being unclear about the consequences of a positive urinalysis or about what would happen to the record of their case upon completion of the program. One individual stated that he “didn’t think so,” and another noted, “they didn’t even tell me about it.”

Many of the programs were specifically individualized to the participants, either in policy or practice, and sometimes both. In San Francisco and Hennepin, the directives or program goals participants had to complete were tailored to the needs of the participants from the outset. For example, a Hennepin divertee explained that her caseworker helped add a diet goal to her program. In addition, participants from both programs described them as allowing for flexibility in terms of expectations. Some participants told us that they were granted more time to complete their directives or goals when they fell off course. In Chittenden County, Vermont, a few participants mentioned that the program coordinator gave them “multiple chances to mess up, so that if they failed RICC, it would be totally understandable,” and also let them change the dates or locations of appointments to accommodate their schedules. In Milwaukee, one participant reported having been allowed to miss a mandatory class because of a death in the family.

According to participants, some programs were less flexible or accommodating, however. In particular, several individuals complained about a lack of flexibility in scheduling. They noted that they were pretty sure that classes are offered on multiple days and times but they were just assigned Saturdays, despite this conflicting with some of their work schedules.

Program flexibility and personalization was perceived as related to the fairness of the program. By and large participants felt they were treated fairly by program staff. In Milwaukee, all of the participants said they were treated fairly, and several even said they were treated “more than fairly.” In Chittenden County, participants said the same, with one participant stating that it was “More than fair. Fair, fair, fair, across the board.”

In Hennepin County, focus group participants compared the fairness of the pretrial diversion program to the fairness of the traditional court process, which they considered “inherently unfair.” Participants agreed that they were treated as people and not as numbers, in stark contrast to the way they were regarded in the traditional court system. In San Francisco, participants felt the same way. One person explained that in court:

... they kind of forget about our rights.... And then it's like we have a public defender, you know, which doesn't know nothing about our case, he just or she just read about it this morning and acts like she just knows you and what's going on in your case, and then a lawyer, you have to pay thousands and thousands of dollars for a lawyer that don't even communicate with you every day on a daily basis and tell you what's going on with your case. It's totally different with Neighborhood Courts, they actually care.

Perceptions of Program Effectiveness or Value

Participants across all programs had positive views about the value of pretrial diversion. Many participants noted that the primary benefit of pretrial diversion programs is avoiding court. Views on additional benefits were mixed. In Cook, for example, participants noted that although they liked the classes and didn't mind attending them, they didn't seem to be getting too much out of the program but appreciated that it was "better than being in jail." In Milwaukee, three participants mentioned specific improvements in their lives in addition to avoiding the formal court system. For example, one participant gained the strength to quit drugs, another completed a machinist course they would not have been able to complete due to jail, and a third gained a new appreciation for what they had been given in life.

In Chittenden, participants said that they were finally at a good place in their life and wanted to avoid further interaction with the criminal justice system. In San Francisco, while some participants emphasized that the main benefit of pretrial diversion was "getting their records cleared," others felt that the directives helped them achieve "better lives." Several participants in both Chittenden County and San Francisco mentioned the value of the Restorative Justice Boards and Neighborhood Courts, respectively, in providing support, encouragement, and empathy. One participant in San Francisco described a speech given to her by the Neighborhood Courts adjudicator, saying, "she took her time out of her day to give me this speech and I was really thankful." In Chittenden County, a participant explained that the Restorative Justice Board "helped me find out like my goals and stuff in life, and helped motivate me to do them, because you have to do this program."

Facilitators, Barriers, and Recommendations

Only two focus groups specifically discussed program elements that facilitated participant success. Participants in San Francisco and Chittenden County both emphasized their own personal motivation and effort as facilitators. In San Francisco, participants also noted that

the flexibility of the program and personalization of the directives facilitated participant success. In Vermont, the relationship of the program with other agencies, and the level of support both during and after the program were emphasized as facilitators. As a Chittenden County divertee stated:

There's just a ton of support. I mean yeah you like get help with your charges. I mean you don't just get away with it. You have to do time for it. But then after that, it's done, like you still have continued support. Like I was homeless when I like was dealing with all this stuff and they helped me get housing. Like, get into places. I have two little boys so ... They helped me with that, like, just huge stuff.

In terms of programmatic barriers to success, participants in Cook County and Milwaukee lamented the lack of flexibility with appointment times. In Cook, as discussed above, participants were concerned that the attorneys provided inaccurate information. In addition, many Cook program participants mentioned that they never received a return telephone call from their Treatment Alternatives for Safe Communities (TASC) class contact, and thus they did not complete their classes by their return to court date. One participant told us, “In the court they give you this number, call this person, start the class right away. Called this lady for about a month. She never called back.”

In Hennepin, participants pointed out that a long commute to take part in the program was a barrier for some. In San Francisco, one participant noted that homelessness was a potential impediment to program completion.

Hennepin County participants offered several suggestions for improvement, including an online system or app. for paying required fees, better accommodation of participants who need to commute some distance to take part in the program, and providing employment references.

In Chittenden County, participants pointed out that they learned about the pretrial program almost by chance. One individual explained, “no one knows anything about it. [The program coordinator is] usually in the courtroom ... at the front. And I've seen him grab other people like, yeah like he looks at the calendar call and he looks at it, so then he waits for people to come in and I see him grab people.” They suggested more coordinated advertising in order to reach more potential participants.

Chapter 9

Lessons Learned from Los Angeles

The Los Angeles City Attorney's Office proved to be a unique site as a result of a change of leadership during the first year of our study. In 2013, Mike Feuer became the City Attorney and immediately launched a systematic rethinking of all preexisting diversion initiatives. The end result was the *Community Justice Initiative*, an umbrella initiative that encompassed a large and diverse number of specific diversion programs targeted to a wide range of offenses, problems, and communities throughout Los Angeles.

This chapter briefly describes the state of diversion at the City Attorney's Office before Mr. Feuer assumed office in 2013. We then detail the development of the Community Justice Initiative, including the initiative's philosophy, culture, organizational structure, funding, and partners. Finally, we discuss the barriers and facilitators to this new initiative.

Evolution of Diversion in Los Angeles

According to a longtime employee of the City Attorney's Office, diversion was "always in the background and, depending on the prosecutor, they may or may not use it." One interviewee emphasized that line prosecutors "were always encouraged to find a sentence that was really appropriate for the community and the defendant, and then look at the individual offender to see, you know, is there something else we can do."

Alternative sentencing was especially a priority under Rocky Delgadillo, the City Attorney from 2001 to 2009. After Delgadillo left office, the City Attorney's budget was severely restrained and the number of prosecutors decreased from 301 to 195. During this period, traditional forms of prosecution were emphasized.

Finally, once City Attorney Mike Feuer took office in 2013, a number of factors contributed to a renewed emphasis on diversion. First, the passage of Proposition 47 in 2014 resulted in the re-categorization of several low-level felony charges as misdemeanors. Second, many interviewees from the City Attorney's Office stressed the impact of Mr. Feuer's personal leadership in elevating diversion as a priority. When he assumed office in 2013, he prompted a systematic examination of the various preexisting diversion programs. This review led to

the creation of the Community Justice Initiative (CJI), which “brought everyone under one umbrella.” According to interviewees, Mr. Feuer championed diversion, creative thinking, and alternative sentencing. One program supervisor explained that prior to Mr. Feuer, “a lot of restorative justice programs were not necessarily as widely accepted because it kind of cut against the grain of prosecution.”

Development of the Community Justice Initiative: Evolution of Diversion Programs Under the New City Attorney

The development of the Community Justice Initiative involved the expansion of three existing diversion programs and creation of several new programs. Also, some programs remained unchanged under the new City Attorney.

The three diversion programs that were greatly expanded were:

1. The Homeless Engagement and Response Team (HEART),
2. The Prostitution Diversion Program, and
3. The Truancy Prevention Program (TPP).

The new programs are:

1. The Neighborhood Justice Initiative,
2. Two new drug-related post-trial diversion programs,
3. A pilot related to pre-booking diversion, and
4. The community police mediation program.

The programs that have remained virtually unchanged are:

1. The Gang Alternative Sentencing program, and
2. Two mediation/dispute resolution programs: The Neighborhood Justice Program and the Rent Stabilization Ordinance (RSO) Mediation program.

Revamped and Expanded Programs

The HEART program expanded from a small-scale operation in Skid Row that only served individuals who had been living in a homeless shelter for at least 90 days and had received referrals from the shelter, to a citywide operation with a much wider scope. Now,

HEART holds periodic “ticket clinics,” in which they invite homeless individuals to come in and find out if they have any tickets or citations. They then link the individuals with service providers and volunteer organizations such as LA Conservation Core, or the Greater West Hollywood Food Coalition, to allow them to work off the tickets. Most tickets can be worked off in four hours. The “work” consisted of things like Alcoholics Anonymous counseling, job readiness programs, job readiness, group counseling, and more traditional community service. Eventually, all of the individuals’ fines and fees are suspended, and withdrawn from collection agencies. During the “ticket clinic,” other services are offered to the homeless population, ranging from showers and housing help, to silk screening classes.

The Prostitution Diversion Program is a post-plea diversion program for both prostitutes and “Johns”¹ (or customers) that used to be limited to first-time defendants. The eligibility criteria for this program was expanded to include female defendants with prior convictions. The program was also expanded geographically. In this program, Johns attend an eight-hour class in one day, while people arrested for prostitution who are first-time defendants attend eight sessions, and second-time defendants attend 18 sessions. At the “John school,” as it is colloquially called, classes are offered on the legal and health consequences of prostitution, sexual addiction, behavior modification, victim impact, and AIDS education. The participants also receive an AIDS test on the last day of the classes. The classes for sex workers first involves an assessment by a social worker, to determine what their needs are, and what they can be provided in terms of wrap-around services, such as parenting help, job training, housing, and drugs counseling. The sessions are varied, can be about issues about safety, harm reduction, HIV and AIDS, trust, boundaries, and self-esteem.

The Truancy Prevention Program (TPP) was created in 2002, although it had a different name, and has varied significantly in scope since then. Initially, the emphasis was on prosecution of parents for truancy, prevention through education, and school safety issues. Over time, resources were funneled away from the program. When Mr. Feuer became the City Attorney, he wanted a fresh perspective for, and renewed emphasis on, truancy. Recently, a pretrial diversion programs for parents was created, and was due to open in two locations in January 2017.

¹ The term “John” is used throughout the interviews.

New Programs

The Neighborhood Justice Program (NJP), one of the new diversion programs created under Mr. Feuer, is a pre-filing diversion program for first-time nonviolent defendants. Explicitly modeled after San Francisco's Neighborhood Courts program, defendants who agree to participate appear before a panel of three community members trained in principles of restorative justice. (The panels all take place in specific local communities, not a centralized court location.) Each panel discusses the given offense, the harm to the victim and community, and the participant's willingness to repair the harm. The panel then assign the participant to individualized "obligations," which must be completed in a timeframe deemed suitable by the panel. The obligations may include community service, letter-writing, counseling, addiction services, and job training.

There are also two new drug-related diversion programs, both based on statutory entitlements in California state law.

The Deferred Entry of Judgment (DEJ) program, the first of these new programs, allows first-time defendants to have their cases dismissed after 20 hours of drug education. The second program, created by Proposition 36, is for second-time defendants. After sentencing, the individual is given a term of probation, and if he or she completes a drug treatment program and related probation terms, the case is dismissed. In practice, the judge orders an off-site assessment, and most individuals do not return. Non-compliance with the judge's orders results in a growing number of individuals on bench warrant status. In Los Angeles, the City Attorney's Office has created a pilot program placing a case manager in the courthouse, "so the judge just says: Go see this guy on your way out the door, he'll help you get new services, come back with a progress report."

Another new program, that is has not been rolled out yet, combines pre-enforcement and pre-booking diversion. Essentially, the pre-enforcement component will include a mobile service team consisting of a physician or a nurse practitioner, a psychiatrist, a housing specialist, a substance use specialist, a mental health clinician, and four to eight peer case managers, who will deploy to five South Los Angeles neighborhoods in a consistent fashion to serve people who have a criminal justice history. The neighborhoods selected are those that are reasonably safe; where drug use is prevalent, but not significant gang activity, and where the team believes they can make an impact. The pre-booking diversion aspect of the program includes

a 24-hour hotline that can be used by the first responders, the LAPD following an arrest, or by community members.

In addition to the new and expanded diversion programs, other programs have been recently instituted as part of the CJI, such as the Administrative Citation Enforcement (ACE) program, which allows most violations of the municipal code to be treated as administrative citations rather than prosecuted as misdemeanors, and the Community Police Mediation Program. The Community Police Mediation Program, which is part of the Mediation/Dispute Resolution program, is a pilot intended to bring aggrieved citizens and police officers together to “to discuss misunderstandings and grievances openly and safely.

Unchanged Programs

There are also some programs that were created prior to 2013 and have remained more or less the same.

The Gang Alternative Sentencing program is a post-trial program that focuses 18-to-25 year olds who have committed misdemeanor gang crimes. Convicted offenders who participate in this program are placed on probation and work with a case manager to focus on their particular needs, as an alternative to incarceration. The case is dismissed at the end of the program, which is usually 18 months; if all terms and conditions are met. In addition, the Mediation/Dispute Resolution Program, which has existed since 1989, helps communities and neighborhoods resolve problems with the help of a trained mediator through the Neighborhood Justice Program. In addition, in 2012, right before Mr. Feuer came to the City Attorney’s Office, the Rent Stabilization Ordinance (RSO) Mediation program was created, which attempts to resolve landlord-tenant disputes.

Organizational Structure

The overarching philosophy of the Community Justice Initiative is guided by the following five principles that appear on the City Attorney’s website:

1. Engaging and partnering with our community in the work we do.
2. Doing work in the true interest of our community.
3. Creative and innovative problem-solving in the hopes of evolving our community.

4. Justice “workers” as our community leaders; and
5. Creating a culture of civic-mindedness as we partner with our communities.

Another major component of the philosophy of the Community Justice Initiative that was expressed in interviews is that alternative sentencing should not adopt a “one-size-fits all” approach. This helps to explain why some of the diversion programs are pre-filing, while others are post-filing, and yet others are post-disposition. According to the guiding philosophy, different types of crimes and populations demand different types of sentencing and diversion schemes.

Relatedly, one interviewee noted that there is not one philosophy that guides all the diversion programs. She explained that restorative justice may guide the NJP program in that “there's more [of] a direct victim. If you stole a bottle of alcohol from CVS, CVS is your victim.” The philosophy that guides HEART, which helps homeless defendants work off their citations, is about *creating* justice. It was explained that,

A person has gotten a ticket for jaywalking, that ticket was maybe \$35, when you made assessments and all that, it's over \$500, and then because you couldn't pay that, it might linger for years, it's now thousands of dollars. And as a prosecutor I'm not doing justice by making that person pay \$5,000 when he can barely pay to eat. I think we're achieving a just result when that person comes to our program and we pair them with the service provider that can give them some of the resources and opportunities that got them into that situation in the first place. So, they're there because they didn't have the food or access to mental health services, so I see it as facilitating court convictions giving people a hand up out of poverty.

There are many diversion programs in CJI serving different populations. The program supervisors are aware that the defendants come from different backgrounds, and have different levels of responsibility, and different characteristics. This is one reason why there are so many different diversion programs, tailored, as much as possible, to the specific population or type of offense.

CJI brought the varied diversion program under one umbrella, so that “all of these leaders, programs, the supervisors of the programs are aware of the other programs and how they can work together.” Innovation and creative thinking define the culture of CJI. One program supervisors explained, “Mr. Feuer wants us to go the way of

outside the box and not just repeat what has been done before, but think of new ways to develop partnerships that create diversion.” At the same time, it bears noting that whereas collaboration between specific programs was mentioned in some staff and stakeholder interviews, most programs are still operated more-or-less independently of each other, and that cooperation and communication between program supervisors occurs on an at least somewhat ad-hoc basis.

Staffing

CJI was created and implemented by Mike Feuer and Mary Clare Molidor, a Chief Assistant City Attorney. Camilo Cruz was hired as the first Director of CJI, a position he continues to hold. Each program within the CJI umbrella has a supervisor, most of whom are Deputy City Attorneys.

Each program has a different staffing model. The Neighborhood Justice Program, for example, has one attorney on its staff, as well as six administrative coordinators who act as case managers. TPP has two employees, and HEART has three support staff and one staff attorney, in addition to the supervising attorneys who lead the programs. The Prostitution Diversion Program is supervised by one attorney who is half-time on another portfolio, who has one intern, and the Gang Alternative Sentencing program has no dedicated staff.

Funding

There is variation in how the different Community Justice Initiative-affiliated programs are funded. Some are funded with internal money, while other programs rely on external grants. While the interviewees are very grateful for the grants and the opportunities they create, they also note that grant writing can be a time-consuming activity. Other sources of funding include Los Angeles County and the City of Los Angeles Housing Investment Development Unit. It is clear that funding is often an ad-hoc endeavor, with various programs seeking funding from external sources.

Partners

According to those interviewed in Los Angeles, many of the City Attorney’s Office’s diversion programs have developed strong partnerships with various nonprofits and social organizations throughout the city. For example, the case managers, referred to as “program peers” for the Gang Alternative Sentencing program, are part of a community collaborative

called the Coalition for Responsible Community Development (CRCD). One interviewee noted that the CRCD has never asked the City Attorney's office for money. He explained that "a lot of times you get all these people who want to do alternatives to jail, but there's some sort of fee they want to the city or the county... [but CRCD] get[s] nothing out of [the partnership] other than doing good work and the occasional support letter for grant funding."

The HEART program works with about 50 different service providers. They recognize the importance of their community partners and spoke about an event they held this year to honor those organizations, because it can be very easy to take them for granted. The Prostitution Diversion Program works with different service providers who run both the classes for sex workers and those for johns. The service providers for the sex worker school include the Journey Out program, the Watts Health Foundation and Unistar Services.

The pretrial diversion pilot of the Truancy Prevention Program holds hearings at FamilySource centers. These centers, funded by the Mayor of Los Angeles, are operated by nonprofit organizations and provide numerous services to their communities. Thirteen of the 16 centers employ a L.A. Unified School District Pupil Services and Attendance (PSA) counselor. The PSA counselor, and a representative from a nonprofit organization that provides services attend the hearings. They determine the barriers to attendance, and develop solutions to address the youth's challenges. One of the interviewees explained, "everything is ready as any referrals to the school to get services or the non-profit organization can provide mental health services free of charge and set up a contract and say, 'Okay, you're going to do all of these things. If you do all of these things we will not prosecute.'"

In addition to the partnerships with external service providers, the diversion programs have established important relationships with other actors and institutions in the criminal justice system. Most importantly, the judiciary has become a meaningful stakeholder in diversion. In fact, under a new law, AB-2124, a judge may divert an individual over a prosecutor's objections. While at one time, it was difficult for prosecutors to convince judges that diversion may have been a problem; the opposite can also be a challenge today. Moreover, that judges are on the same page as prosecutors, and diverting individuals into diversion programs, has been an important goal of CJI. One interviewee told us that they have been quite successful, and "the judges are now more tuned in to the various options we have."

The diversion programs also work with other actors in the system. For example, part of how the HEART program operates is that when participant have successfully completed their

work hours, the supervisor of the program drafts motions that are signed by the District Attorney before being filed in the court.

Barriers and Facilitators to Implementing the CJI

The major barrier our interviewees cited was a lack of resources. Many of the programs are understaffed. For example, the prostitution diversion program is led by an individual who is also a full-time neighborhood prosecutor for an entire police division. Interviewees from other programs also mentioned lack of staff as a major impediment to further growth.

Another related barrier cited by several interviewees was the changing political landscape in California. For example, Proposition 47, which passed in 2014, reduced several nonviolent felony charges to misdemeanors.² For the City Attorney's Office, this meant they received about 20% of the District Attorney's caseload, significantly exacerbating what was already a resource crunch facing the office. As one interviewee told us:

It's tough, because prosecutors, you don't control the incoming, you're constantly trying to adjust by setting up diversion programs, and we're seeing the defendant and also protecting the community, but every six months, you've got something else that's coming down the pike. So to me, it's very much the resources, because I think for really solid diversion programs, it's hard to expand them without any additional monies.

A major facilitator of the success of diversion programs according to one interviewee has been word of mouth. Enough people in the legal and policing communities have heard about the diversion programs that it has become part of the culture to send individuals towards diversion. Similarly, an interviewee noted that buy-in for diversion has finally occurred. She said,

The patient people have caught the vision, within our office, and within the bar and the bench. They have become the ambassadors for the program. Also they're the gatekeepers. So I think that's why it has been successful is because they've caught it, and now they carry it on for us.

² "What you need to know about Proposition 47," California Department of Corrections and Rehabilitation, <http://www.cdcr.ca.gov/news/prop47.html>.

In further explaining the value of the Prostitution Diversion program, and thus why this and other diversion programs have gained buy-in, an interviewee told us that:

It allowed us to better harness our limited resources to go after pimps, and kind of the higher level fish. I think it proved itself because of the reduction on city budge with respect to overtime and attorney costs, and LAPD overtime costs and court. I think it helps the bench because you can move cases. So it has to be done in the arraignment court, which reduces caseload. So everybody's getting something out of it. And the defendant, of course, gets a break. So I think the benefits that each of these entities have enjoyed is what sold the program. And then the service providers, they get a feeder full, a court ordered feeder full, which gives them leverage.

Another facilitator has been the strong partnerships developed by the various diversion programs. As noted above, CRCDD provides numerous services for the Gang Alternative Sentencing program.

A third facilitator of success has been having all of the alternative sentencing programs under the Community Justice Initiative (CJI) umbrella. The Director of CJI is not a lawyer, and several interviewees noted that he is able to “bring a fresh perspective, fresh eyes, and he can champion the cause” of diversion. Having the diversion programs in one place also makes it easier to communicate and maintain relationships with stakeholders and potential partners, and to provide a more holistic sentencing approach for defendants. For example, the Gang Alternative Sentencing program “used to prosecute non-gang graffiti cases, tagger cases, and we dropped that from our workload and by doing so, it created an opportunity for the non-gang member graffiti vandals to participate in NJP, because those people would qualify for that kind of restorative justice program.”

Finally, interviewees also repeatedly cited the support they have received from Mr. Feuer as a critical facilitator of success.

Conclusion and Suggestions for Improvement

Since 2013, when Mike Feuer became the Los Angeles City Attorney, the City Attorney's Office undertook a process of rethinking its pretrial diversion programs, culminating in a revamped and expanded approach, placed under the umbrella of the overarching Community Justice Initiative (CJI). CJI's progress is due to but also constrained by a number of factors, including both bureaucratic and resource constraints, balanced by a philosophical reorientation towards the value of diversion and alternative sentencing. The main barrier to the expansion of diversion at the Los Angeles City Attorney's Office (as in the 15 other programs profiled in this report) has been limited resources. Program supervisors rely on ad hoc funding mechanisms, including grants with expiration dates, which leads to continual funding uncertainty. Several programs are understaffed and are directed by prosecutors who can dedicate less than 50% of their time to the Community Justice Initiative. The "solution" of increased funding is obvious and, yet, exceptionally difficult in practice.

Chapter 10

Pretrial Diversion Yesterday and Today

In many respects, today's prosecutor-led diversion programs differ fundamentally from the original pretrial diversion models that were developed almost a half century ago in the 1970s. A primary motivation for developing the early programs was to rehabilitate defendants and reduce recidivism. The Department of Labor, for example, one of the major funders for early diversion programs, theorized that unemployment drives criminal activity and supplying an arrestee with a job in lieu of conviction and sentence would reduce the likelihood of recidivism (US Department of Labor 1974).

In what was perhaps the most sophisticated evaluation of early diversion programs, Baker and Sadd (1979:13) offer a somewhat more nuanced understanding of how pretrial diversion might trigger a reduction in defendant recidivism, proposing:

Youthful offenders' association with more hardened criminals or delinquents already in the system would increase the likelihood of their adopting deviant modes of behavior... [Further] it was thought that the official or even informal use of terms such as "criminal" or "delinquent" encouraged both the individual and others (e.g., schools and employers) to identify the individual as a deviant, and this would block his/her ability to develop a legitimate career pattern.

In sum, whether through the mechanism of providing defendants with better employment opportunities, reducing the psychological stigma of a conviction, attenuating the hold of a "criminal" or "delinquent" label by routing cases away from the traditional court process, or providing treatment to promote prosocial behaviors, early evaluations tended to focus narrowly on recidivism reduction as the primary indicator of success. And, by that indicator, the early diversion programs were largely a failure. Malcomb Feeley summed up matters bluntly in 1983 (102): "However impressive pretrial diversion programs are in theory, they accomplish very little in practice."

In stark contrast to how diversion programs used to be understood, among the programs we visited, we did not hear high expectations about lower recidivism rates resulting from diversion participation. Rather, program staff tended to focus on more immediate outcomes such as (a) expungement of criminal records to prevent a loss of access to the employment market; and (b) cheaper processing of minor crimes to save system resources for the prosecution of more serious, major offenses. All told, as shown in Chapter 3 above, staff and stakeholders from different diversion programs identified various combinations of seven overarching types of program goals, and we recorded 36 distinctive goal statements from our open-ended interviews.

The modern diversion programs in our study differed from their earlier incarnations in other ways as well. Older diversion programs tended to have restrictive guidelines about which arrestees could be accepted: Indeed, another complaint about the older programs of the 1970s and 1980s was that they “skimmed off the cream” by taking cases that were at the extreme minor end of the spectrum and often likely to have been declined or dismissed *anyway* in the absence of diversion—i.e., diversion in fact afforded the defendants more, not less, onerous requirements and outcomes than what would have resulted from traditional prosecution.

In contrast, many of the jurisdictions that we visited diverted a large volume of cases, including many that would clearly have been fully prosecuted and ended in conviction if not for the diversion opportunity. (See Rempel et al. 2017 for multisite impact evaluation findings that confirm this expectation with regard to the kinds of programs in the present study.) At the level of basic eligibility criteria, the 15 programs featured in this report included eight that were either felony-only programs or mixed programs admitting both felony and misdemeanor defendants. Clearly, the contemporary programs we examined defy the earlier characterizations in Feeley’s (1983) synthesis of pretrial diversion as a practice limited to low-level charges exclusively.

Finally, instead of having a single in-house one-size-fits-all approach to treatment, at least some of the programs in our study referred participants to a variety of services or programs run by third party community-based providers. Further, in a particularly interesting and distinctive development, several of the programs we examined made *restorative justice* an important, or even central, priority and organizational principle. 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 important ways from the earlier models of the 1970s.

Finally, based on our extensive interviews across all 11 featured jurisdictions, we found that the case volume and diversity we observed was in part facilitated because, while the programs were prosecutor-run, they had strong buy-in and support from the courts, defense, police, and other criminal justice agencies and partners. In fact, each program reflected distinctive compromises and accommodations to the logistical or substantive needs of other local players falling outside the prosecutor's office. Therefore, even as this study concerned prosecutor-led diversion, prosecutorial leadership frequently combined with inclusive planning and implementation strategies to the effect of maximizing local buy-in and program utilization across the system.

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Appendix A.

Interview Protocol Outline

I. Program Environment

- A. Provide a general program description.
- B. What are the most common local crime problems?
- C. Describe the structure of the Prosecutor's Office.
- D. How many felony and misdemeanor cases prosecuted yearly?
- E. Is an annual statistical report available?

II. Diversion Program History

- A. When did the program open?
- B. Who was the District Attorney when the program opened?
- C. Why was the program opened and which stakeholders provided the impetus?
- D. Was there any opposition to the program?
- E. Was there a formal or an informal planning team?
- F. Did you ever receive funding to help implement the program?
- G. Did you receive any technical assistance in the course of planning or operating the program?
- H. How has the program changed over time?

III. Staffing and Structure

- A. How many prosecutors work on the pretrial diversion program?
- B. Do you partner with any community-based agencies?

IV. Program Goals

- A. What are the main goals of the pretrial diversion program (includes a list and an open-ended question)
- B. Are some goals more realistic or achievable than others?

V. Target Population

- A. Does pretrial diversion participation take place pre- or post-filing? Why do you use a (pre-, post-, mixed) model?
- B. If you use a mixed model, what determines whether a defendant participates in pre- or post-filing?
- C. Which charge severity is eligible? Why did you choose to focus on this charge severity?
- D. Is there any restriction to participation related to criminal history?
- E. Is the program only available to defendants facing specific types of charges? If so, which?
- F. Are any charges expressly excluded?
- G. What are the most common charges seen in practice?
- H. Does your program have any clinical or other non-legal eligibility criteria?
- I. Are there any other types of defendants who are excluded?

VI. Screening Process

- A. Describe the screening process.
- B. Is anyone (other than your Prosecutor's Office staff) involved in eligibility decisions?
- C. Can the defendant refuse to participate? If so, about how often do they refuse?
- D. What is the most common reason for refusal to participate?

VII. Clinical Assessment

- A. Do you perform a risk or need assessment?
- B. Who is assessed?
- C. How long does the assessment take?
- D. What issues does the assessment cover? (followed by a list) Does the assessment produce a summary score?
- E. Which risk level (high, moderate, low) do you seek to enroll in your program?
- F. Can you provide a copy of the screening and assessment tools?
- G. What are the strengths and weaknesses of your current screening / eligibility approach?

VIII. Program Enrollment: At the time defendants become participants:

- A. Do they sign a contract?
- B. Do they receive a handbook or written program information?
- C. Do they receive information on what will happen to their case if they (a) complete or (b) are noncompliant?
- D. Can you provide a copy of all written material?

IX. Program Mandates

- A. Are program length and services standardized for all participants?
- B. If standardized,
 - 1. How many days / hours per day?
 - 2. Describe the program curriculum (can you provide a written copy?).
 - 3. What training/credentials do individuals have who run the program sessions?
- C. If not standardized,
 - 1. How is level and type of service determined?
 - 2. How long does it usually take to complete the program?
- D. Who actually administers the program services, and where are they held?

X. Legal Leverage

- A. What happens to a case when the defendant completes the requirements? Is the case sealed or expunged?
- B. Are participants told exactly what legal outcome will result if they complete all requirements?
- C. For participants who fail, what happens to the case?
- D. Are participants told exactly what legal outcome will result if they fail?
- E. What kind of disposition and sentence is typically imposed on failed cases?

XI. Supervision

- A. Must participants appear in court regularly? If so, how frequently?
- B. Are participants drug-tested?
- C. Must participants meet with a case manager or probation officer?
- D. Are noncompliant participants ever given a second chance to be compliant?

XII. Program Oversight

- A. What is the name of the pretrial diversion program coordinator?
- B. For how many years has s/he held this position?
- C. What professional educational credentials does s/he have?
- D. Did the current coordinator plan the program?
- E. Has the coordinator attended trainings (followed by a list, e.g., mental health disorders)
- F. Does the coordinator use outside research or program data to revise its design?
- G. Staff hiring procedure?
- H. What are the most important staff training needs?

XIII. Partnerships

- A. Please discuss the role played by each of the following stakeholders:
 - 1. Defense bar
 - 2. Court players
 - 3. Law enforcement
 - 4. Probation
 - 5. Community-based partners
 - 6. Other stakeholders
- B. If community-based providers are involved, how many do you use and under what circumstances for a specific case?

XIV. Relevant State or Local Laws and Regulations

- A. Describe any state or local laws and regulations that restrict or set parameters on your pretrial diversion program.

XV. Overall Program Strengths and Weaknesses

- A. What would you say are the greatest strengths and weaknesses of your program?
- B. What have been some of the most important barriers that you have faced in the program's history?
- C. How does your community view the program?
- D. What would you like to change about the program? Especially volume of cases?

XVI. Program Data and Results

- A. Number of defendants who participated in 2013 and since inception?
- B. Number completed and failed?
- C. About how many days on average between arrest and program entry?

- D. How long does the average program completer spend as a participant?
- E. Is there a program policy manual?
- F. Has an evaluation been conducted? If so, is it available?
- G. Do you routinely seek feedback from program participants?
- H. Do you maintain a database tracking participants?
- I. How satisfied are you with data collection and performance monitoring protocols?
- J. Do you create regular performance reports of any kind?
- K. Interest in participating in a future impact evaluation of your program?
 - 1. If yes, would you be willing to share case-level data?
 - 2. Would it be feasible for us to conduct baseline interviews with participants?
 - 3. Ideas about a comparison group?
 - 4. (List of types of information maintained in program's database)

Appendix B.

Structured Focus Group Guide

I. GENERAL PERCEPTIONS ABOUT THE PROGRAM

- Expectations (graduate/fail)
- How specifically tailored to individual
- Confusing components
- Point person if confused or have questions
- Fairness of program rules
- Fairness of treatment
- Interesting quotes

II. COMPONENTS OF THE PROGRAM

- What makes a person successful?
 - Have there been times when you wanted to quit? Why did you continue?
- Positive program components
- Negative program components
- Interesting quotes

III. MOTIVATION TO ENTER

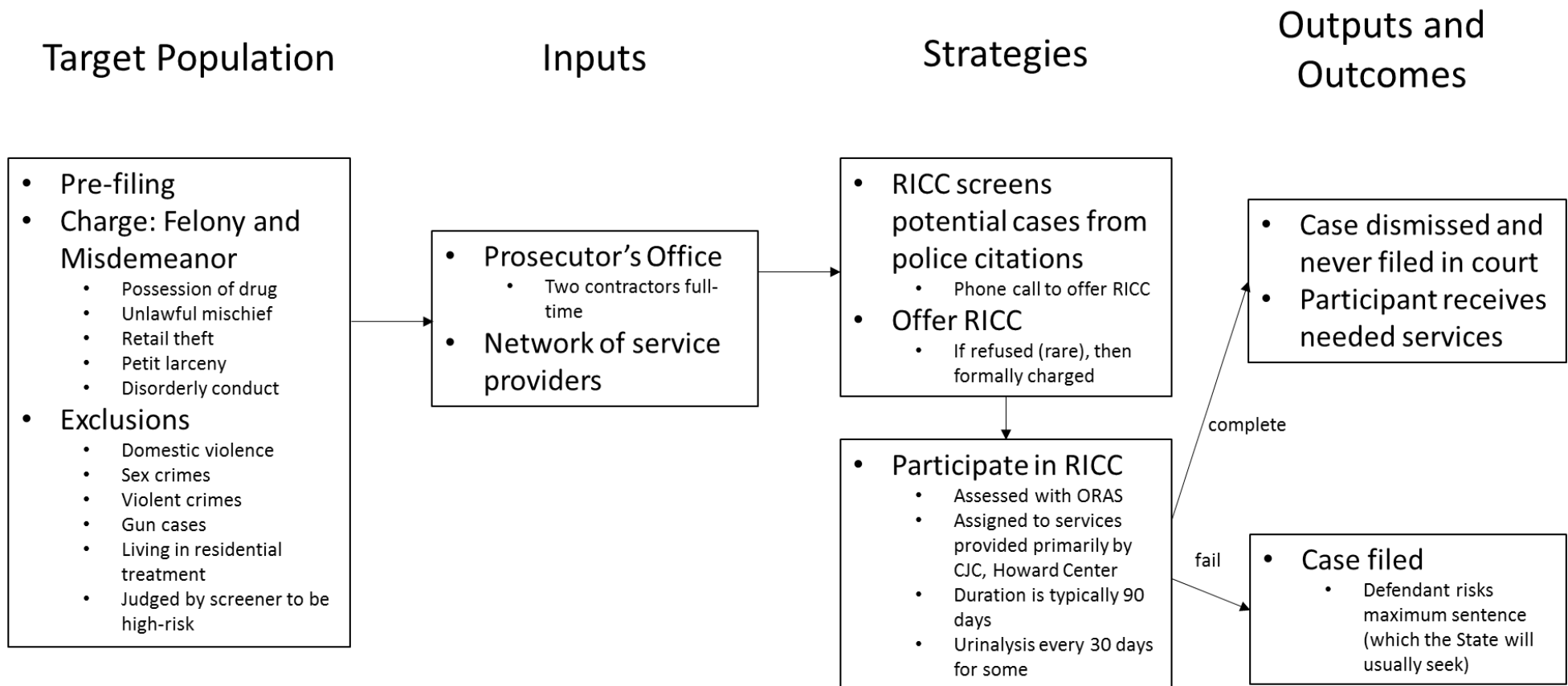
- How did you find out about the program?
- Did you want to enter the program?
- Was it your choice or somebody else's wishes?
- Interesting quotes

IV. SUGGESTIONS FOR IMPROVEMENT

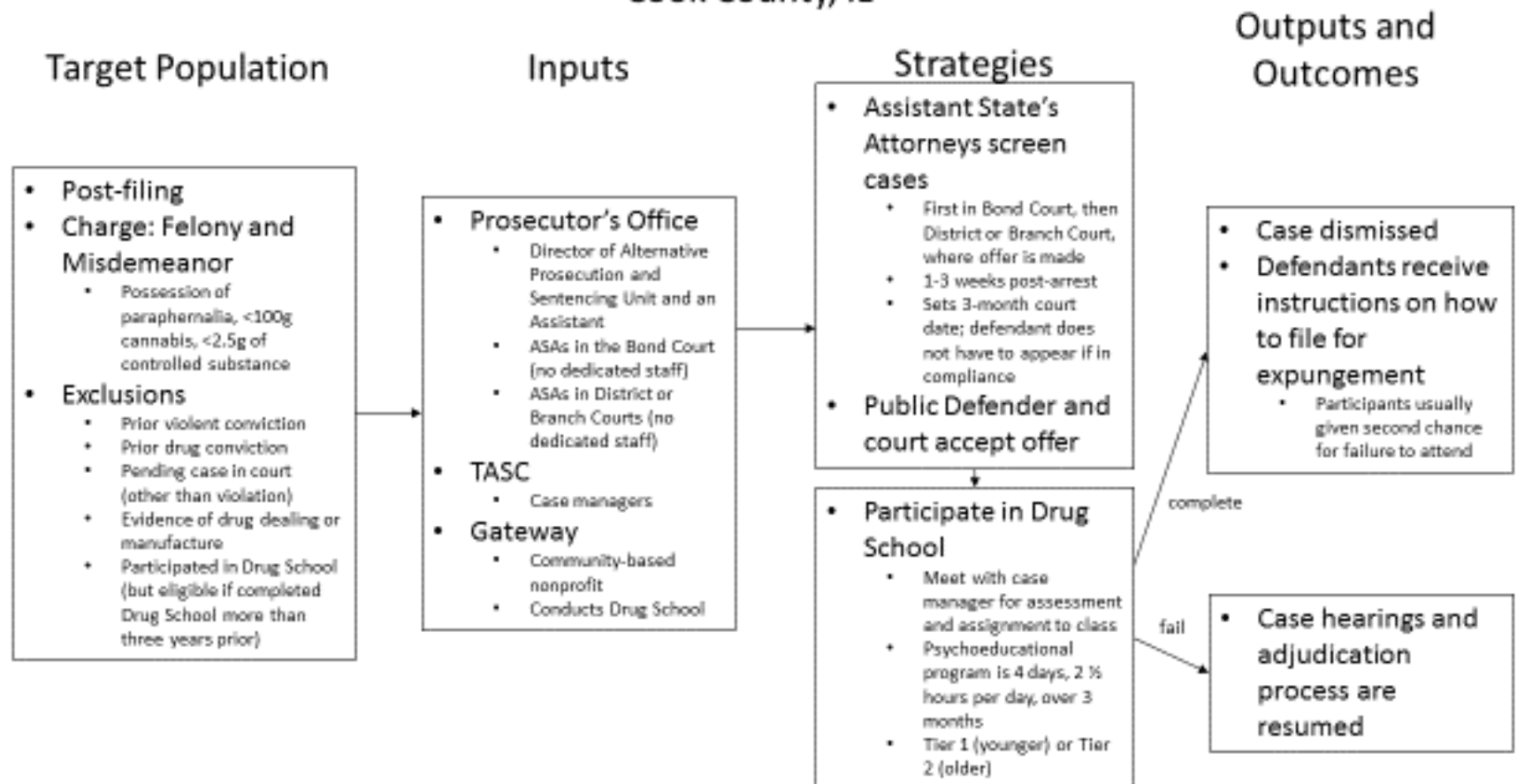
- Ways for improvement
- Additional services
- Interesting quotes

Appendix C. Program Logic Models

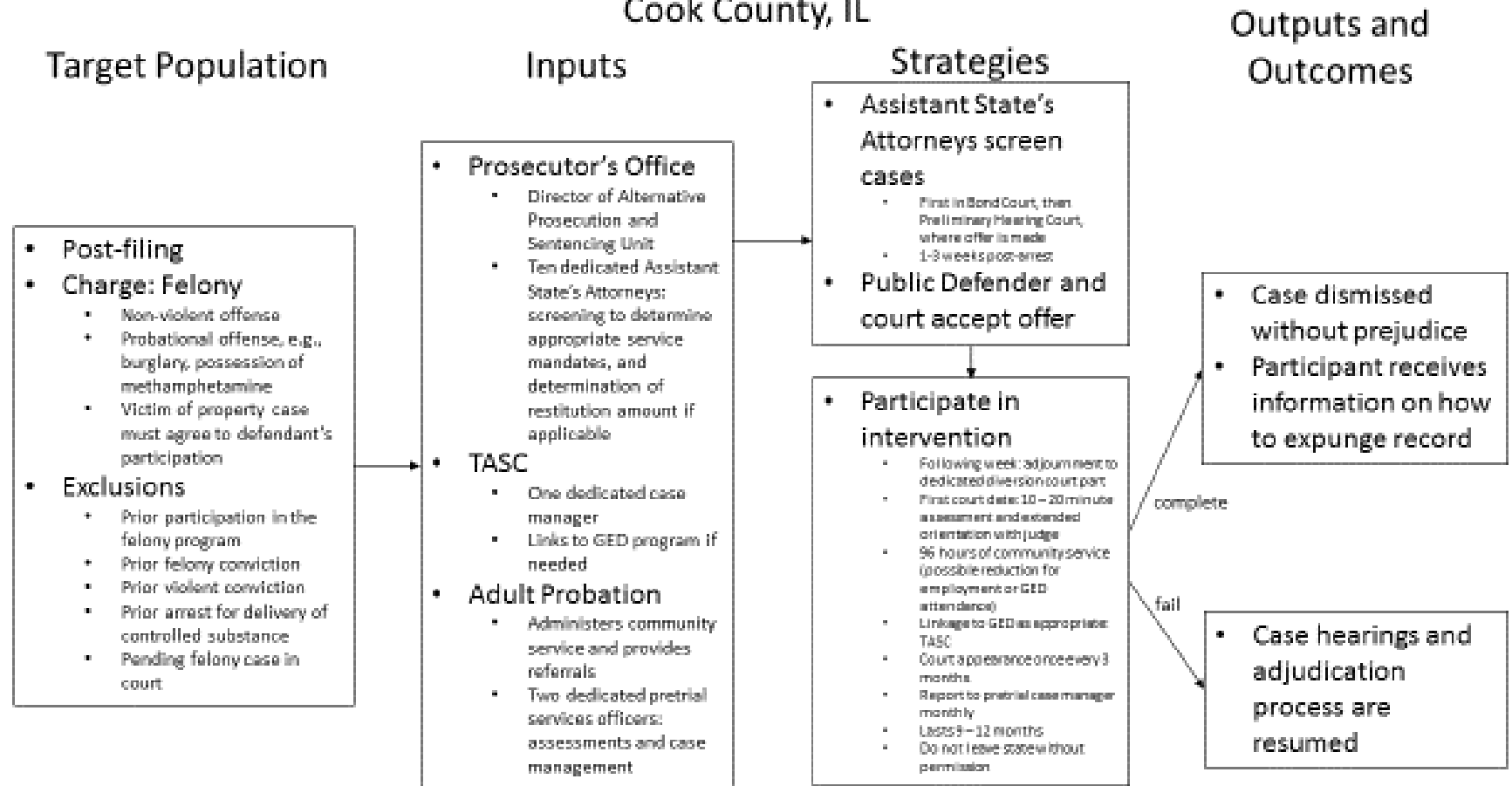
Rapid Intervention Community Court Chittenden County, VT



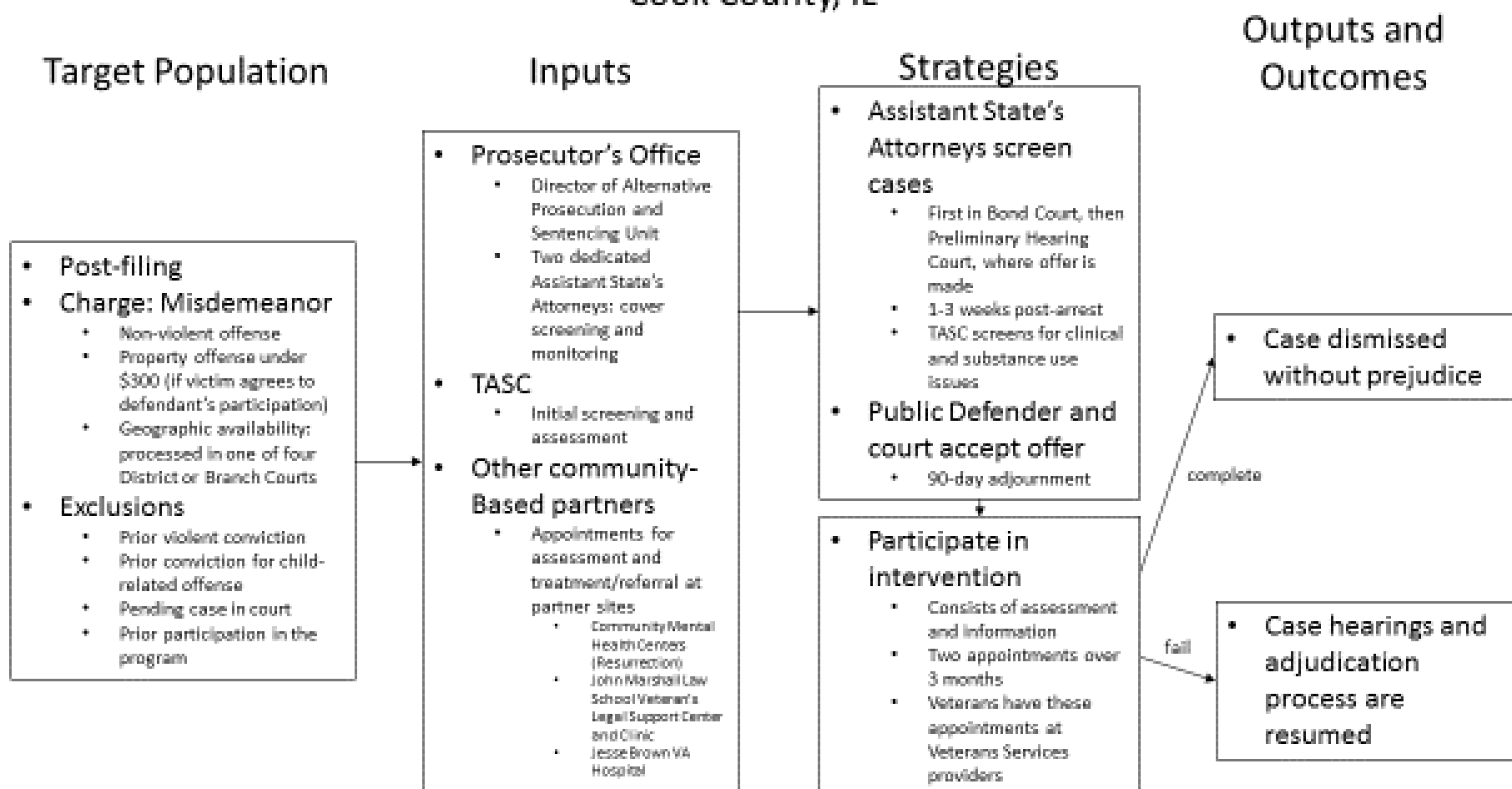
Cook County Drug School Program Cook County, IL



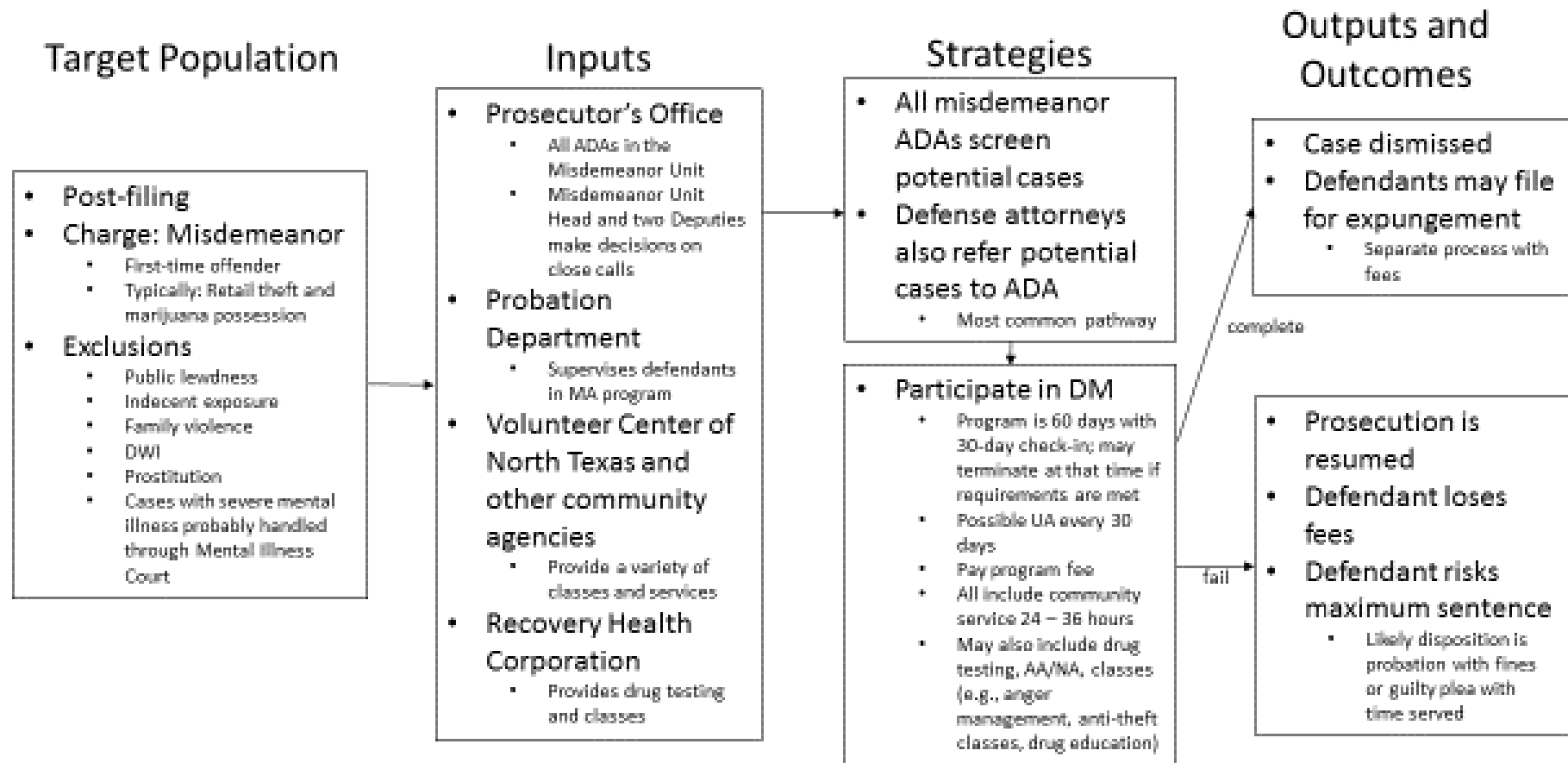
Cook County Felony Program Cook County, IL



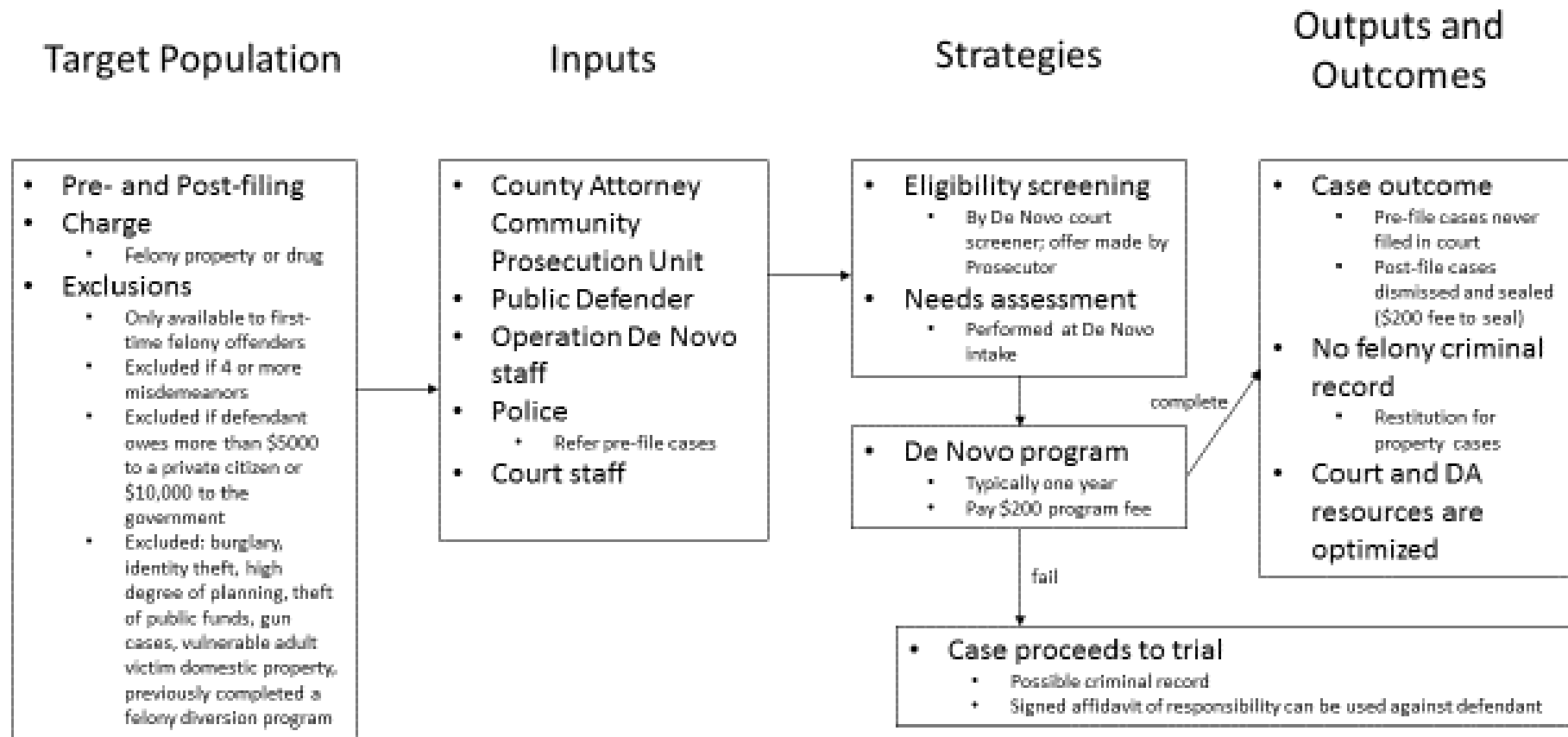
Cook County Misdemeanor Program Cook County, IL



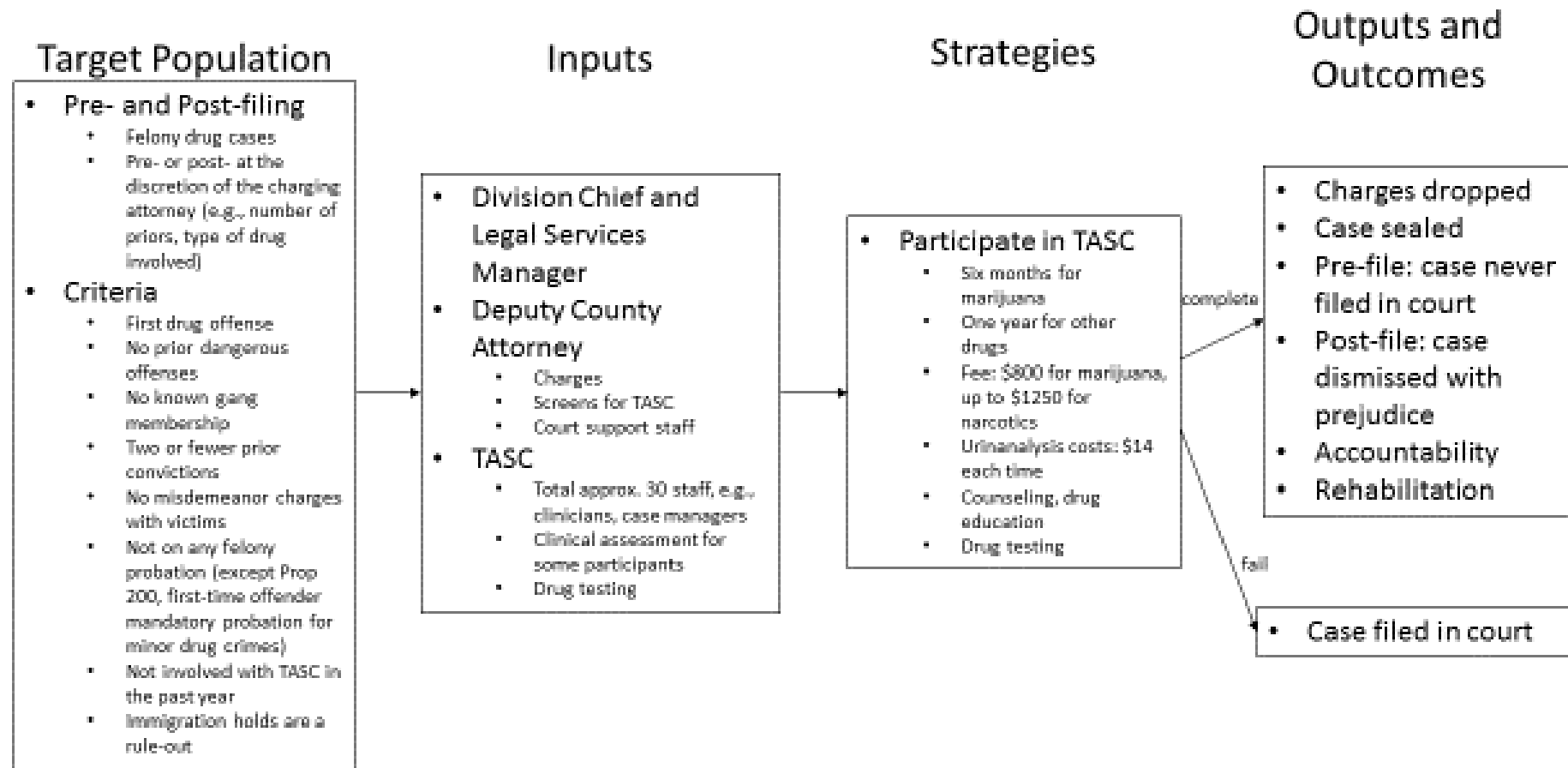
Dallas Memo Agreement Program Dallas, TX



Operation De Novo Hennepin County, Minnesota



Treatment Assessment Screening Centers (TASC) Maricopa County, AZ



Milwaukee County Diversion Program and Deferred Prosecution Program Milwaukee, WI

Target Population

- Pre- and Post-filing
- Charge: Felony and Misdemeanor
 - Eligible if very low-risk (pre-file diversion) or low-risk (post-file deferred prosecution) at screening
 - Typically theft, prostitution, drug possession
- Exclusions
 - Higher than low-risk at screening
 - Gun charge in past five years
 - History of sex offenses
 - History of offenses involving bodily harm
 - Gang offenses
 - Commercial drug dealing
 - If mental capacity is an issue

Inputs

- Prosecutor's Office
 - Overseen by Deputy APA
 - Two full-time (grant-funded) ADAs screen cases
 - Two full-time ADAs handle cases in drug court and DPA court
 - Community prosecutors and other ADAs can also make recommendations
- Justice Point
 - Case management for Treatment Alternatives and Diversion cases
- Milwaukee County Behavioral Health
 - Funds used to support drug treatment for uninsured defendants
- Provider network

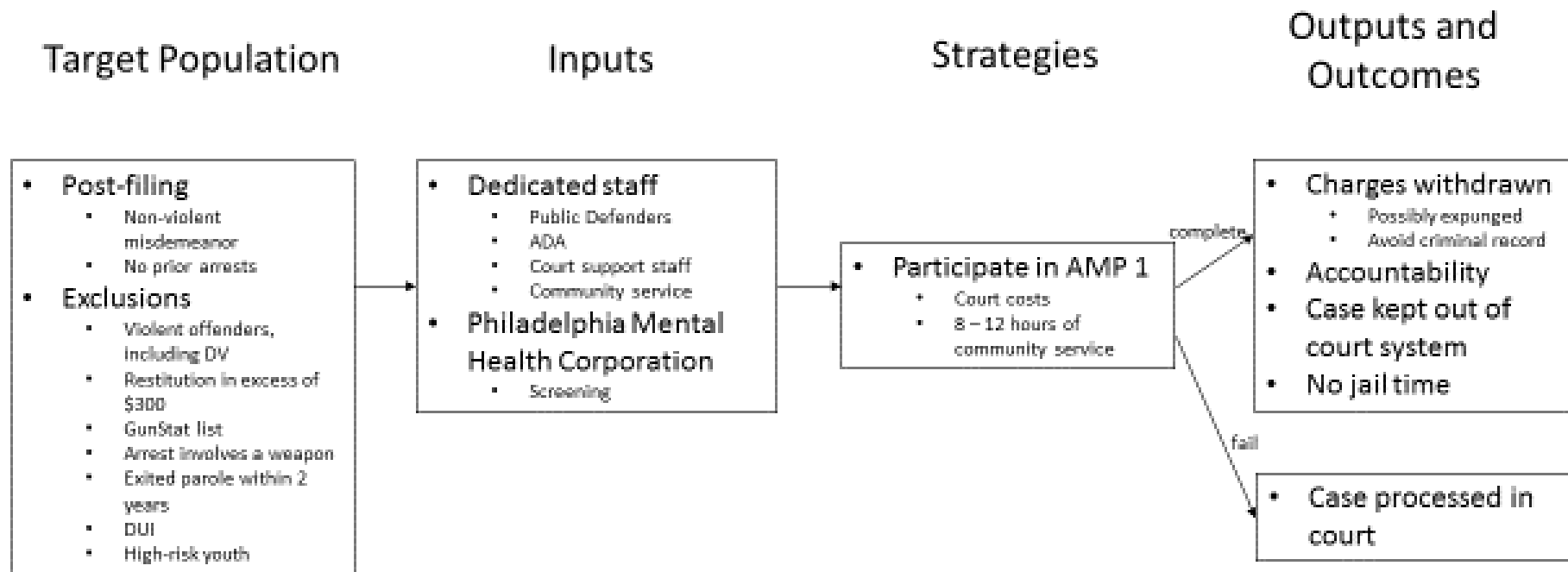
Strategies

- Universal screening by Justice Point
 - Use LSI-R: SV then LSI-R for those above low-risk
- ADA writes diversion contract with PD for eligible cases
 - Most common pathway
- Participate in Early Intervention
 - Program varies but is typically 6 months
 - Report every 1-3 months
 - Diversion: typically restitution payments, community service, may include restorative justice conference
 - Deferred Prosecution may also include drug treatment, testing, com. service, restitution

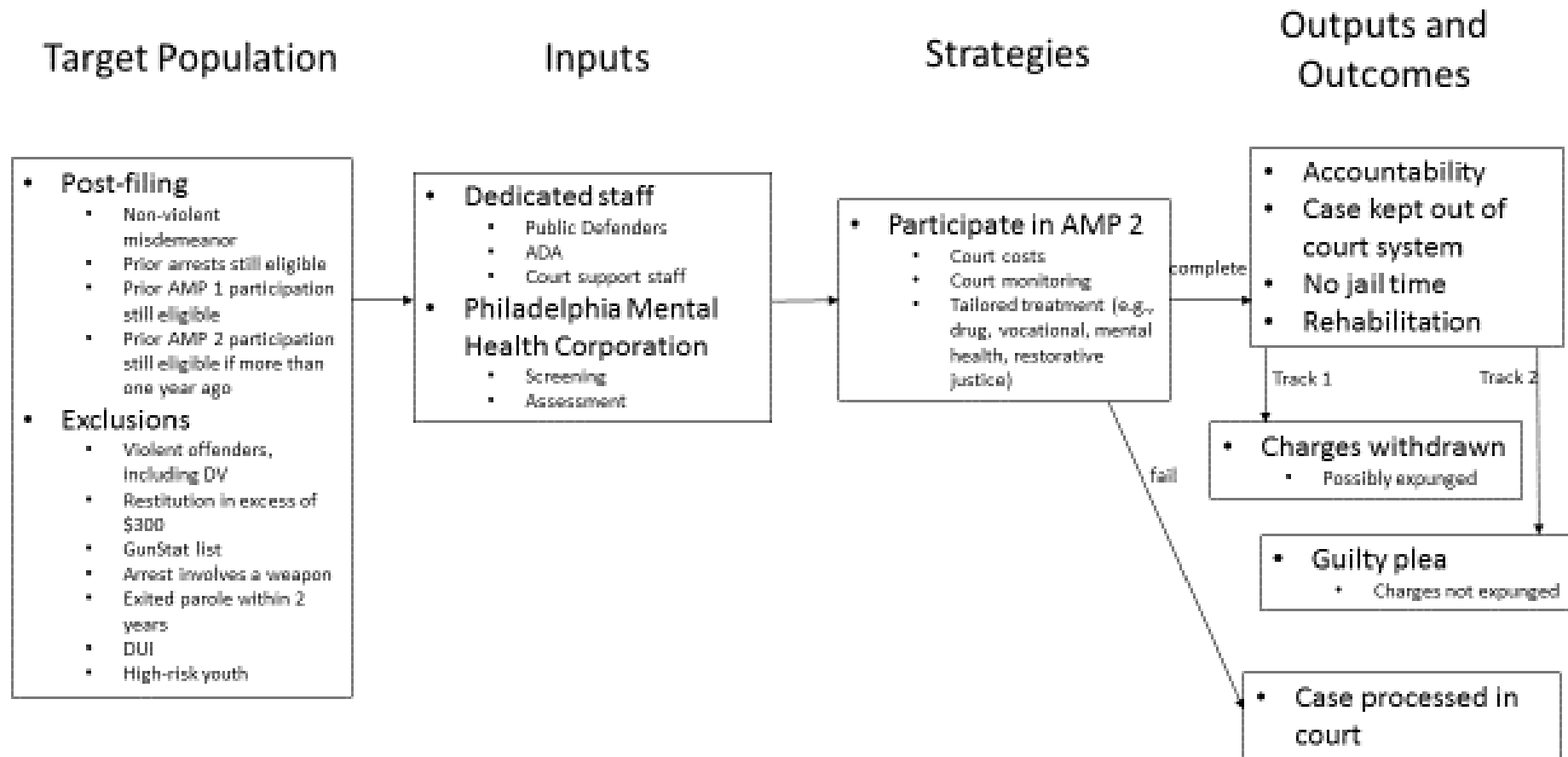
Outputs and Outcomes

- Pre-file diversion: case never filed
- Post-file deferred prosecution: case dismissed
- Record NOT expunged
- Pre-file: case is filed with court
- Post-file: prosecution is resumed

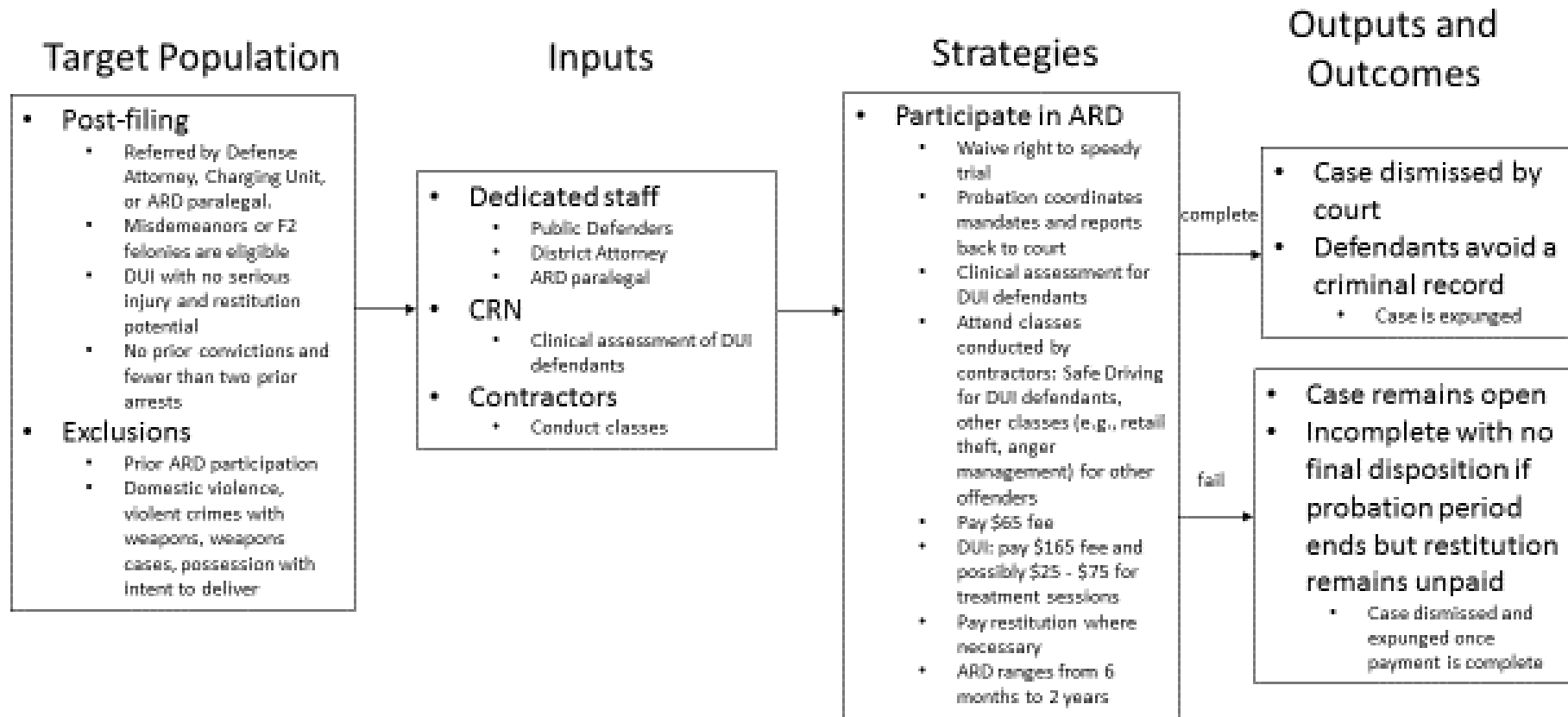
Accelerated Misdemeanor Program 1 Philadelphia, PA



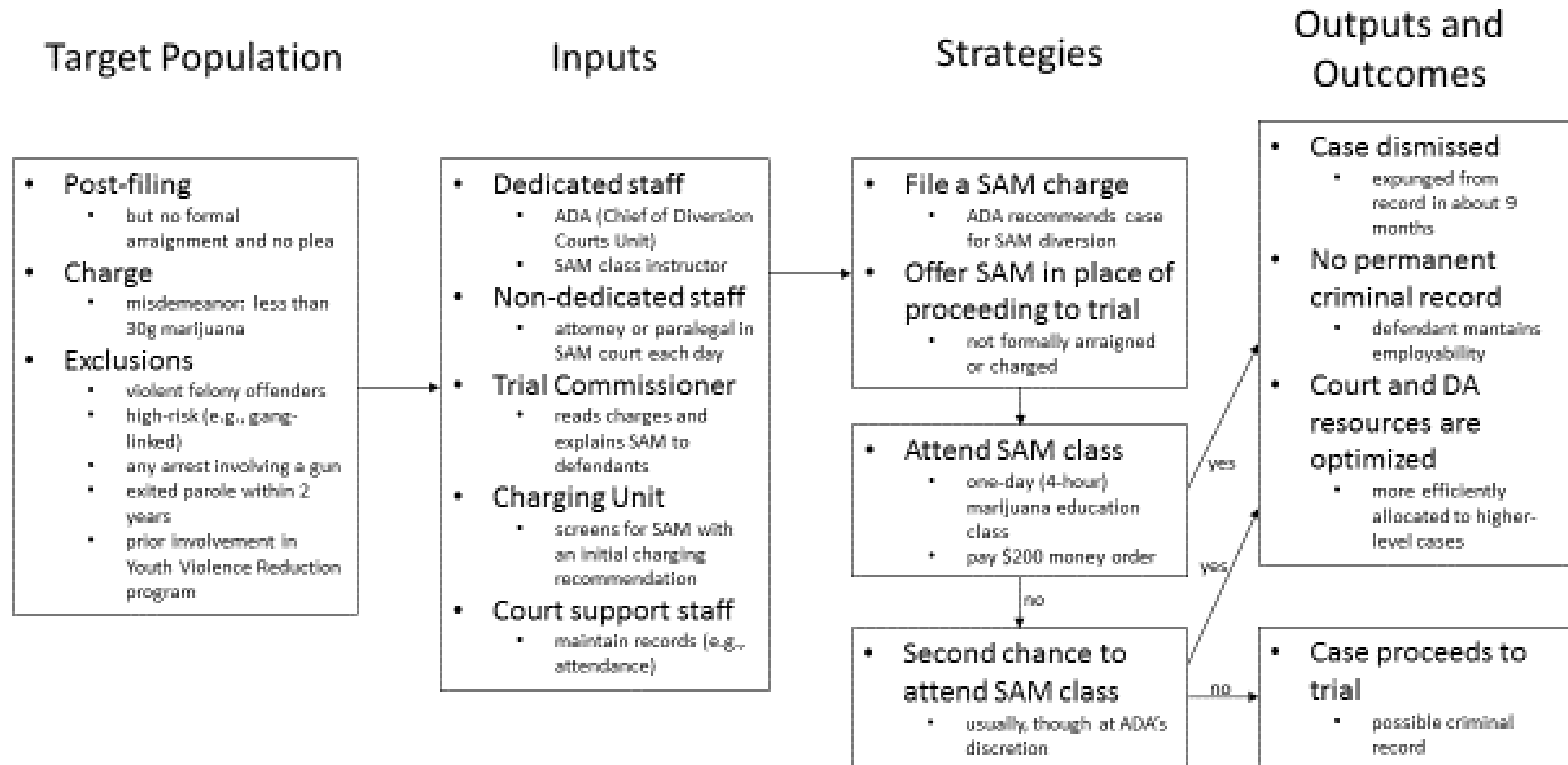
Accelerated Misdemeanor Program 2 Philadelphia, PA



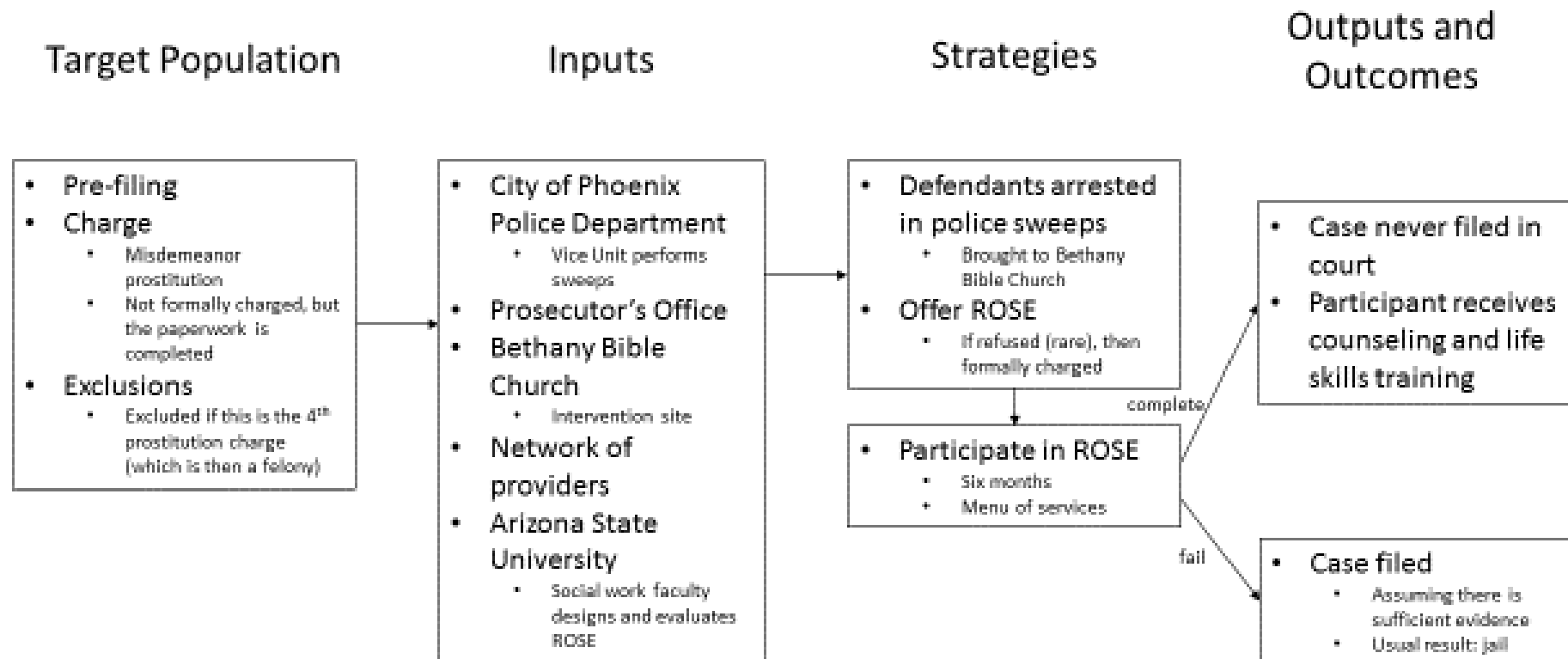
Accelerated Rehabilitation Disposition (ARD) Philadelphia, PA



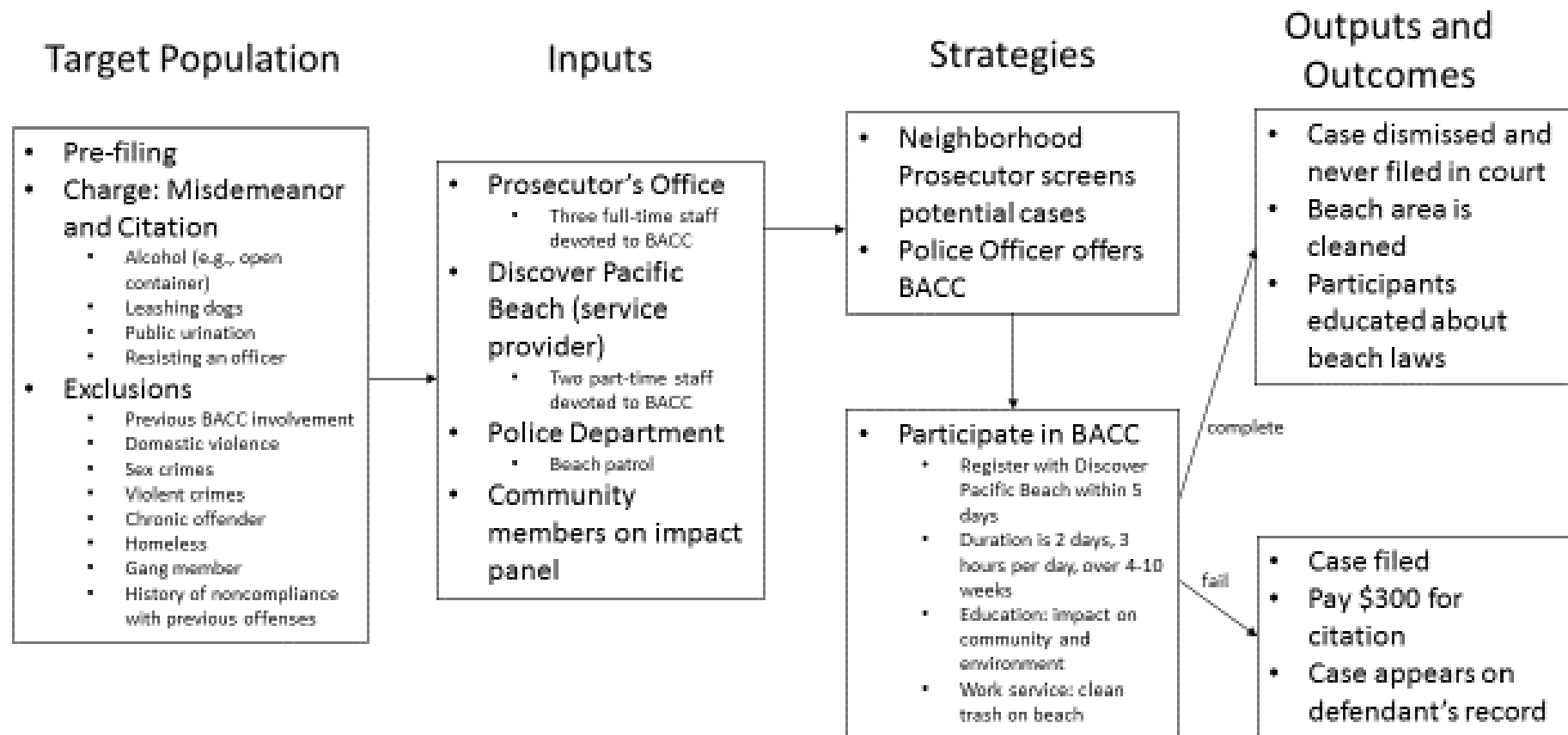
SAM: Small Amount of Marijuana Philadelphia



Project ROSE (Reaching Out to the Sexually Exploited) Phoenix, AZ



Beach Area Community Court San Diego, CA



Neighborhood Court San Francisco, CA

Target Population	Inputs	Strategies	Outputs and Outcomes
<p>Prefiling</p> <p>Charges: misdemeanor and select felony</p> <ul style="list-style-type: none"> • Theft • Vandalism/graffiti • Prostitution (buy & sell) • Embezzlement • Battery • Drug possession • Sale of alcohol/cigarettes to minor <p>Exclusions</p> <ul style="list-style-type: none"> • Probation/parole (determined case by case) • Pending case(s) • More than 10 referrals to NC • Charges involving weapons and violence • Serious mental illness 	<p>DA's Office</p> <ul style="list-style-type: none"> • 1 director, 1 administrator, 2 rebooking prosecutors, 1 division chief <p>Volunteer Adjudicators</p> <ul style="list-style-type: none"> • 65 trained community members serving in panels of 3-4 <p>SF Pretrial Diversion Project (nonprofit)</p> <ul style="list-style-type: none"> • 2 staff attend sessions, provide monitoring, connect participants to services • Multiple service offerings <p>Community Boards (nonprofit)</p> <ul style="list-style-type: none"> • 2 part-time staff provide training and TA for adjudicators <p>Host sites</p> <ul style="list-style-type: none"> • 10 sites around city (no cost) 	<p>Rebooking prosecutors screen potential cases</p> <hr/> <p>Participate in NC</p> <ul style="list-style-type: none"> • NC staff contacts individual upon referral • Hearing scheduled within 5-10 days • Directives typically completed by participant within 30-60 days • Perform community service, attend classes/services, restitution, letter of apology, reflective essay 	<p>Complete:</p> <ul style="list-style-type: none"> • Case dismissed, never filed in court • Arrest eligible for sealing • Community engaged • Victim restored • Reduced contact between low- and mid-to-high level offenders • Increased judicial/legal efficiency <hr/> <p>Fail:</p> <ul style="list-style-type: none"> • Case filed and prosecuted • Case appears on defendant's record