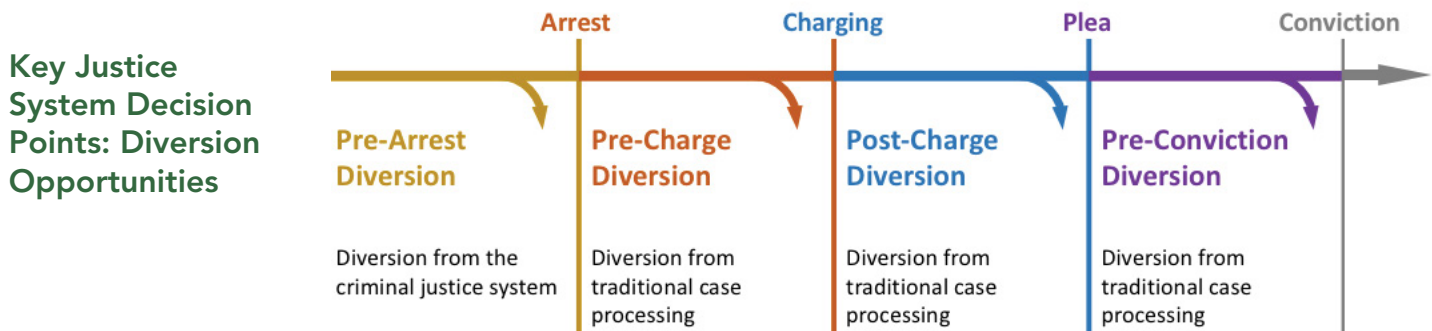


## DIVERSION 101: DO DIVERSION OPTIONS PUT PUBLIC SAFETY AT RISK?

In this series, we have examined what diversion is and what it is not and the four primary purposes of diversion. In this article, we turn our attention to a frequently expressed concern: Does diversion put public safety at risk?



Diversion options by their very nature reduce the use of incarceration (jail, prison) as a response to criminal behavior. Does this mean that public safety is jeopardized as a result of their use? We suggest that, when properly designed and administered, diversion can actually *increase* public safety. Consider the following:

- Three-quarters of prisoners released in 30 states during 2005 were rearrested for new criminal conduct within 5 years of release, and more than half had either a parole or probation violation or were convicted for a new crime that led to imprisonment within 5 years (Durose, Cooper, & Snyder, 2014).
- In a study of 79,000 individuals sentenced to state prison and 65,000 individuals sentenced to a prison diversion program, Community Control, between

1994 and 2002 in Florida, individuals sentenced to prison were 15.4% more likely to recidivate than those sentenced to Community Control (Bales & Piquero, 2012).

- Recent reviews of studies on deterrence led Durlauf & Nagin (2011) to conclude that when compared with non-custodial sanctions (e.g., probation, home confinement, diversion to treatment), incarceration can actually increase recidivism. According to a meta-analysis (Jonson, 2010), custodial sanctions are 14% more likely to result in reoffending than non-custodial sanctions.

Without question, jail- and prison-based options serve important functions in the justice system and are a necessary mechanism for responding to some individuals, particularly those who commit serious and violent crimes

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and who pose a risk of violence. However, an overreliance on incarceration can come at a high price. Not only does over-incarceration strain federal, state, and local budgets but it also creates long-term barriers for individuals with criminal convictions, even after they have served their sentence. Commonly referred to as “collateral consequences,” these penalties and sanctions are distinct from the direct consequences imposed by the court (e.g., incarceration, community supervision, fines).

According to The Heritage Foundation, “there are over 46,000 collateral consequences at the state and federal level, with 60%–70% related to employment, which stifles opportunities for success” (Malcolm & Seibler, 2017, p. 1). Furthermore, The Heritage Foundation notes: “Studies have also shown a positive correlation between collateral consequences and lower employment rates as well as higher recidivism rates. Although more research is needed, existing research strongly suggests that imposing irrational restrictions on economic opportunities for ex-offenders undermines efforts to promote public safety and a cost-effective criminal justice system” (Malcolm & Seibler, 2017, p. 4).

Among others, common collateral consequences include the following:

- Individuals in custodial settings are exposed to and affiliate with antisocial peers and are removed from prosocial ties and other protective factors in the community. This may increase their risk of recidivism post-release and, thus, threaten public safety (Cullen, Jonson, & Nagin, 2011).
- Incarceration can negatively impact offenders’ families and significant others, who oftentimes experience financial and social loss (deVuono-powell, Schweidler, Walters, & Zohrabi, 2015; Weaver & Nolan, 2015).
- Incarcerated individuals are impacted by the loss of supportive relationships, threats to their personal safety, and the collateral consequences associated with imprisonment (e.g., social stigma, impact on ability to secure and maintain stable employment and housing, both of which are also risk factors for recidivism; Travis, Western, & Redburn, 2014).

Further, there is evidence that, for some persons, mere *exposure* to the justice system—as early as the first point of law enforcement contact—can result in collateral consequences that run counter to public safety interests. This is particularly true for low risk individuals whose likelihood for reoffense can be *increased*—rather than decreased—as a result of criminal justice intervention (James, 2018). For these individuals, the deeper they penetrate the system, the greater the potential for these unintended consequences that further jeopardize public safety.

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## About This Article Series

This is the third in a series of papers that examine pre-conviction diversion options, provide clarity around their purposes, propose guiding principles, and explore their public safety and other benefits. The articles, which build upon one another, honor the foundational work that has been done by others and continue to advance our thinking and work in this area.

### Previous Articles in This Series

*What Is Diversion?*

*The Purposes of Diversion*

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The Bureau of Justice Assistance seeks to support criminal justice policymakers in the establishment of data- and policy-driven diversion options. This paper is one in a series designed to provide clarity around this important justice system issue.

This project was supported by Grant No. 2016-MU-BX-K047 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.