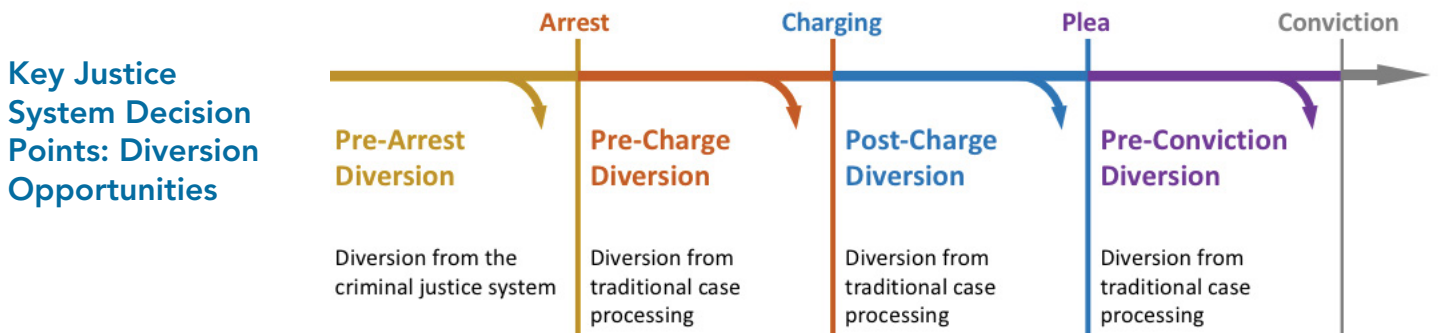




DIVERSION 101: THE GUIDING PRINCIPLES OF DIVERSION

The previous articles in this series examined what diversion is and what it is not, the four primary purposes of diversion, whether diversion contributes to public safety, how the “what works” research can be used to determine who should be considered for diversion, and the key justice system decision points at which diversion can take place. In this article, we suggest that all diversionary efforts—regardless of the shape they may take—should be built upon a set of core principles.



Principle 1: Diversion options promote fair and equitable justice; that is, they are designed specifically to provide equal access to participants regardless of race, faith, gender, sexuality, or socioeconomic status.

Diversion options should be established with clear participant selection criteria, and use objective processes and tools to identify eligible candidates. Diversion options should not unfairly limit participation to any person or group, such as only those who can pay to participate.

Principle 2: Diversion options are transparent.

Diversion options are documented in writing by a competent authority and are easily accessible to all interested stakeholders (both criminal justice professionals and the public). Data about the use of, and outcomes associated with, diversion should be available to system stakeholders and the general public while, at the same time, protecting the privacy rights of individuals presumed innocent until proven guilty.

Principle 3: Diversion options establish non-traditional ways to manage cases with prosecutorial merit.

Diversion options should not be established to impose criminal justice penalties or otherwise compromise an individual's rights or freedoms unless the individual is subject to criminal prosecution based upon the merits of the case. Therefore, only cases that are determined to be provable by a reasonable doubt are appropriate for diversion.

Principle 4: Diversion options are governed by state statute.

Diversion options should be established in accordance with applicable governing statutory provisions.

Principle 5: Diversion options are designed to ensure that, in those cases where criminal penalties are potentially involved, participants are offered representation by counsel and give informed consent.

Diversion options should be established with an "opt in" opportunity that is non-coercive. These options should be offered through a written agreement that clearly articulates the options' requirements, benefits, and potential consequences to ensure defendants understand what is expected and why; how compliance will be measured; and how noncompliance will be managed. Except for pre-arrest diversion (where those who might otherwise be arrested are diverted from the justice system entirely), potential participants should be afforded access to counsel—properly trained in managing diversion cases—to ensure full understanding of such agreements.

Principle 6: Diversion options include structured processes for victim input.

Diversion options should be established with clearly defined processes to consider community harm, victim safety, and restitution and, where appropriate, seek victim input into eligibility and participation considerations and requirements.

Principle 7: Diversion options are designed with clearly articulated goals.

Diversion options should clearly explicate their purpose(s)—whether that is to reduce the potential harm caused by traditional case processing (i.e., reduce unnecessary intervention for those whose risk to public safety may actually increase as a result of over-involvement with the criminal justice system); expedite victim restoration; increase case efficiency; reduce the costs associated with traditional case processing (reserving costly criminal justice interventions for those who pose greater risk to public safety); increase public safety through risk reduction strategies; or some combination of these purposes—and ensure that their structure and programmatic requirements align with their stated purpose(s).

Principle 8: Diversion options are informed by social science research and local data.

Although there is much yet to understand about best practices in diversion options, there is, nonetheless, a body of research from which to draw. The design of diversion options should be built upon the current available research and include, but not be limited to, establishing risk-driven—rather than offense-driven—selection criteria.

Diversion options should also be designed to collect performance measures that will allow for analysis of outcome data. Ideally, logic models will explicate the intended purpose of the strategy, the persons to be served, and the activities that will be conducted (processes and programmatic requirements) that lead to short-term success indicators and, ultimately, long-term results. Designed in this way, it will be possible to not only measure locally the relative success of diversion options against stated goals but also to contribute to the more global need for research in this important area of criminal justice policy and practice.

About This Article Series

This is the sixth 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

Do Diversion Options Put Public Safety at Risk?

Using the “What Works” Research to Determine Who Should Be Considered for Diversion

Diversion Opportunities at Key Justice System Decision Points

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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.