

## Prosecutorial Diversion Literature Review – Bibliography

This bibliography describes the background, history, goals and objectives, research findings, and implications of several law reviews, peer-reviewed publications, and technical reports that focus on prosecutorial-led diversion practices. The State’s/District/Prosecuting/U.S. Attorney is normally responsible for providing oversight to prosecutorial-led diversion (Center for Health and Justice at TASC, 2013). Prosecutorial-led diversion practices can either occur before the charges are filed with the court (i.e., pre-filing) and/or after the court process has begun but before disposition (i.e., post-filing) (Rempel et al., 2018). The cited goals of prosecutorial-led diversion are to more efficiently process court cases by reducing docket pressure, court and jail expenses; prioritize prosecutorial resources for more serious cases; avoid further contributions to over-incarceration; address the offender’s need and improve their outcomes by requiring them to seek mental health, substance abuse, or other types of treatment; and to avoid activating the stigma and subsequent collateral consequences associated with having a formal conviction (Center for Health and Justice at TASC, 2013; Fair and Just Prosecution, 2017; Rempel et al., 2018). At the same time, these practices have been shown to be disproportionately offered to white defendants (Erickson & Eckberg, 2016) and widen the net for involvement in the juvenile and criminal justice systems (Mears et al., 2016).

One of a prosecutor’s most important functions at the pre-trial stage is to determine whether to prosecute a criminal case, or instead provide the defendant the option of entering a pre-trial diversion program. Pre-trial diversion programs are typically characterized by: 1) a standardized list of eligibility factors, 2) the provision of formal training, counseling or other rehabilitative services, and 3) a dismissal of the criminal charges against the defendant upon successful completion of the program (National Association of Pretrial Services Agencies, “Promising Practices in Pretrial Diversion,” *available at*:

<https://www.pretrial.org/download/diversion/Promising%20Practice%20in%20Pretrial%20Diversion%20-%20NAPSA%202006.pdf>).

Eligibility for entry into a pre-trial diversion program varies by state and is a decision that remains ultimately at the discretion of the prosecutor. The completion requirements that a defendant must satisfactorily fulfill are also different across jurisdictions and depend in part on whether the defendant is a juvenile or adult, as well as the type of offense that has been committed. Pre-trial diversion programs often require the payment of a monetary fine, and frequently include a combination of mental health counseling, educational or professional training, and community service. Some examples of different types of pre-trial diversion programs include: “Pretrial intervention (used in Florida, Georgia, New Jersey, and South Carolina); Deferred prosecution (Arizona, Colorado, Michigan, North Carolina, Oklahoma, Washington, and Wisconsin); Accelerated rehabilitative disposition (Pennsylvania); Accelerated pretrial rehabilitation (Connecticut); Suspending imposition of sentence (Alabama and South Dakota); Probation without verdict (Pennsylvania and Wyoming); Probation before judgment (Delaware and Massachusetts); Conditional discharge (Delaware and Illinois); Intervention in lieu of conviction (Ohio); Deferred disposition (Maine)” (National Association of Pretrial

Services Agencies, “Promising Practices in Pretrial Diversion,” *available at:*

<https://www.pretrial.org/download/diversion/Promising%20Practice%20in%20Pretrial%20Diversion%20-%20NAPSA%202006.pdf>).

The specific types of prosecutorial-led diversion discussed in this Bibliography include drug treatment alternatives to incarceration (Sung, 2001; Sung & Belenko, 2006; Sung, 2011; Butzin, Saum, & Scarpitt, 2002; Hepburn, 2005), mental health programs (Redlich, Liu, Steadman, Callahan, & Robbins, 2012), programs focused on juvenile offenders (Backstrom & Walker, 2006; Eraker, 2010; Henning, 2013; Hess & Verhine, 2017; Stripp, 2016/2017); deferred or non-prosecution agreements in federal financial crime cases (Greenblum, 2005; Sheley, 2012); immigrant or undocumented defendants (Eagly, 2013; Shenoy & Khakoo, 2008) and substance abuse (Lepage & May, 2017; McWhorter & LaBahn, 2015/2016). Several of the articles and reports below implicated stakeholder buy-in as critical for the success of the diversion practice (Butzin, Saum, & Scarpitt, 2002; Sung & Belenko, 2006; Center for Health and Justice at TASC, 2013). Please see Fair and Just Prosecution (2017) and Rempel et al. (2018) for a comprehensive review of several examples of prosecutorial pre-trial diversion practices.

Pre-trial diversion programs are often utilized to provide training and resources to defendants who have committed a lower-level, non-violent crime for the first time, and are unlikely to repeat such criminal activity. These programs are meant to positively intervene in the defendant’s life by providing resources and services that will steer the defendant back towards a law-abiding path. In this way, pre-trial diversion programs give a defendant the chance to start over without a criminal record, which is a positive and desirable outcome for the individual. Moreover, if this individual successfully completes the diversion program and subsequently becomes a law-abiding member of society, then the resulting increase in public safety benefits the surrounding community as well.

### Annotated Bibliography

**Backstrom, James C. & Walker, Gary L. (2006). Celebrating 100 Years of Juvenile Court in Minnesota: The Role of The Prosecutor in Juvenile Justice: Advocacy in The Courtroom and Leadership in The Community, *Wm. Mitchell L. Rev.* 32 (963).**

In some cases, the most ideal outcome for the juvenile defendant and society at large is for the person to be prosecuted and incarcerated. In other cases, the juvenile and society at large would benefit most from the juvenile’s participation in a diversion program that provides access to educational or employment opportunities, and perhaps counseling and other social services. A prosecutor’s decision to either prosecute or instead divert the juvenile is often based on a series of factors. The National District Attorneys Association has issued National

Prosecution Standards for Juvenile Justice, which provides a list of factors to consider when making this decision, including: the type of crime at issue, the juvenile's involvement in the crime, "[t]he juvenile's age and maturity" and existing services and resources within the diversion program.

**Butzin, C. A., Saum, C. A., & Scarpitti, F. R. (2002). Factors associated with completion of a drug treatment court diversion program. *Substance use & misuse* 37 (12-13), 1615-1633.**

The authors investigated the factors that promote completion of a prosecutorial-initiated drug court diversion program among 116 first time offenders (*i.e.*, The Delaware Drug Offender Diversion Program). Participants in this sample primarily used alcohol and marijuana rather than crack cocaine or heroin and spent an average of 164 days in the program, ranging from 28 to 335 days. The results indicate that completers are more likely to be white, more educated, married (or previously married), employed, and less frequent users of drugs. The authors extend the description of education and work findings to a discussion about how possessing social capital is critical for reducing drug use and criminal behavior. The authors also describe the process by which a person is offered the option of drug court diversion, Specifically, prosecutorial officials deem someone as eligible, the offenders are offered the option to participate in the program, and state-contracted treatment providers screen them for substance abuse issues and provide recommendations pending their agreement to participate. Once in the program, they receive regular drug tests (*i.e.*, urinary analysis), and psycho-educational and outpatient counseling.

**The Center for Health and Justice at TASC. (2013). A National survey of criminal justice diversion programs and initiatives. Chicago, IL: The Center for Health and Justice at TASC.**

The goal of this report is to describe a national survey of diversion programs. Observations from this survey identified the following characteristics of diversion programs: (1) many have a common element of treatment for individuals with mental health or substance abuse issues; (2) many also focus on low-level, first-time offenders; (3) many lack overarching standards for collecting and publishing data for evaluation purposes (*i.e.*, implementation/performance, outcomes such as recidivism, or cost savings); (4) they lack standard definitions and language about programs and interventions; and (5) several jurisdictions are reactively exploring diversion practices out of necessity. The implications of these observations are to enhance substance abuse and mental health treatment, enhance data capacity, expand diversion beyond first-time and low-level offenders, and adopt shared definitions and language about the use of diversion practices. This report also provides introductory material of diversion and prosecutorial oversight, historical context, diversion goals, and processes and practices in sample sites.

**Davis, A.J. (2016). Symposium: Ethics in Criminal Practice - The Hardest Questions Today: A Conversation in Honor of Monroe Freedman the Prosecutor's Ethical Duty to End Mass Incarceration, *Hofstra L. Rev.* 44 (387) at 405.**

This article examines the state of “the mass incarceration crisis” that exists in the United States, which is in part the result of harsh federal sentencing guidelines such as mandatory minimum sentencing requirements. The author argues that increasing the utilization of pre-trial diversion is an important step towards reversing mass incarceration, and that diversion should be made available for all misdemeanor and non-violent felony offenses. This would greatly reduce the prisoner population “[s]ince about half of all prisoners are serving time for nonviolent offenses...”

**Eagly, I.V. (2013) Article: Criminal Justice For Noncitizens: An Analysis Of Variation In Local Enforcement, *N.Y.U.L. Rev.* 88 (1126).**

This article discusses how non-citizen defendants often have less pre-trial options in the criminal justice system than defendants who are U.S. citizens. In Harris County, Texas, prosecutors do not offer non-citizen defendants the option of such pre-trial alternatives to criminal prosecution as diversion or a plea bargain.

**Eraker, E.C. (2010). Cyberlaw: A. Notes: Stemming Sexting: Sensible Legal Approaches to Teenagers' Exchange of Self-Produced Pornography, *Berkeley Tech. L.J.* 25 (555).**

The evolution of state laws that have been passed to respond to the act of “sexting” is described. The article highlights the Prosecutor’s Juvenile Diversion program created in Montgomery County, Ohio, which is a program that requires offending juveniles to complete a series of requirements, including training on the appropriate and safe use of technology. In exchange for successfully completing this program, all criminal charges against the juvenile are dropped and the juvenile is no longer at risk of attaining the status of sex offender. The article discusses the use of such diversionary programs that aim to educate offenders who are not attempting to cause harm with juveniles and others who are engaged in cyberbullying.

**Fair and Just Prosecution (FJP). (2017). Issues at a glance: Promising practices in prosecutor-led diversion. Fair and Just Prosecution. Available online at <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=73a16fcf-c0fb-6d3b-32cc-d5584176126c>**

This report describes a sample of prosecutorial diversion practices for both adults and juveniles that include several alternatives to incarceration such as treatment, restorative practices, and probation. The adult programs include: 1) Drug School Diversion Program (Cook CO, IL); 2) First Time DUI Diversion Program (Wyandotte County, KS); 3) Criminal Mental Health Project: Post-Booking Jail Diversion Programs (Miami-Dade County, Florida); 4) Neighborhood Justice

Program Los Angeles, CA; 5) Milwaukee County Diversion and Deferred Prosecution Program Milwaukee County, WI; and 6) Montgomery County Pre-Trial Diversion in Montgomery County, AL. The juvenile and young adult programs include: 1) Alternatives to the Court Experience (ACE) Washington, D.C.; 2) Project Re-Direct Brooklyn, NY; 3) The 180 Program King County, WA; 4) Make it Right in San Francisco, CA; 5) Common Justice Brooklyn, NY; The Bronx, NY; 6) First Offender Prostitution Program (FOPP) San Francisco, CA; and 7) Prostitution Diversion Program (PDP) Los Angeles, CA. They also distinguish programs based on them being chemical dependency programs, mental health programs, general first-time, and low-level offender programs, juvenile and young adult diversion programs, and offenses related to prostitution programs.

**Goddard, R.G. (2014). Note: When It's the First Time Every Time: Eliminating The "Clean Slate" Of Pretrial Diversions in Domestic Violence Crimes, *Val. U.L. Rev.* 49 (267).**

While pre-trial diversion programs can provide a better outcome for the individual defendant and the community at large than criminal prosecution, some states do not allow the option of pre-trial diversion for certain types of crimes. For example, the states of North Dakota, Ohio and Utah do not allow pre-trial diversion for domestic violence cases. The author examines the harmful consequences that can result in states that *do* allow pre-trial diversion in domestic violence cases. For instance, this can lead to domestic violence offenders being allowed to purchase and possess firearms, to be used in subsequent domestic violence incidents. While pre-trial diversion is a smart and sensible option for certain types of criminal offenses, the author argues that it does not make sense for domestic violence cases.

**Greenblum, B. (2005). Note: What Happens to A Prosecution Deferred? Judicial Oversight Of Corporate Deferred Prosecution Agreements, *Colum. L. Rev.* 105 (1863) at 1864.**

This article outlines how pre-trial diversion, which originally focused on providing alternative forms of punishment and rehabilitation to juvenile defendants and defendants who had committed drug-related offenses, has been expanded over time to include cases involving corporate financial crimes. In deferred prosecution agreements involving white collar corporate crime, a prosecutor agrees not to prosecute a defendant "in exchange for an admission of wrongdoing, a commitment to rehabilitation, and, in the case of a corporation, the purging of guilty executives." The cooperation of individual defendants in criminal cases involving corporations is often critical to the successful prosecution of the case. This article describes the historical rise of deferred prosecution in federal cases and considers the impact of deferred prosecution agreements in criminal cases involving corporations.

**Henning, K. (2013). Article: Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform, *Cornell L. Rev.* 98 (383).**

Juveniles of color are often treated differently by law enforcement, prosecutors and others in the criminal justice system. In applying the National District Attorney's Association factors to determine whether to prosecute a juvenile defendant of color or instead send him or her to a diversion program, the author argues that prosecutors should try to "correct for evidence of racially disparate outcomes by" taking into consideration the systematic disadvantages the juvenile's community and family may face. Making decisions in this way can help reduce racial bias within the criminal justice system, and result in fairer and more just outcomes for the individual juveniles of color, and society at large.

**Hepburn, J. R. (2005). Recidivism among drug offenders following exposure to treatment. *Criminal Justice Policy Review*, 16(2), 237-259.**

Author conducted an outcome study of 3,328 drug offenders who were arrested and participated in the Maricopa County (Phoenix) community-based outpatient diversion program between 1989 and 1991. Using life tables and survival models, the author assessed the effects of being diversion eligible, enrolling, and completing in a diversion program on the time to failure during a 5-year follow-up period. The results indicate that being enrolling in diversion increased the time to failure compared to not enrolling, completing diversion increased the time to failure compared to entering the program and failing, and not entering the program reduced the time to failure compared to entering the program and failing.

**Hess, W. & Verhine, E. (2017). Article: South Dakota's Data-Driven, Evidence-Based Juvenile Justice Reform, *S.D. L. REV.* 62 (579).**

This article details how South Dakota's 2015 Juvenile Justice Public Safety Improvement Act revamped its juvenile justice system, in part by now requiring "mandatory diversion" for various low-level offenses and shortening the length of this diversion program down to four months. To be eligible for this mandatory diversion program, the juvenile must: have no prior criminal adjudications, no other instances of participation in a diversion program over the last year, committed a "status offense" or misdemeanor that did not involve any violence. In addition, under this South Dakota law juveniles who have committed certain crimes such as petty theft, deliberate property damage valued at less than \$400, drinking alcohol underage or truancy are additionally eligible for diversion, at the prosecutor's discretion.

**Jain, E. (2018). Article: Capitalizing on Criminal Justice, *Duke L.J.* 67 (1381).**

The author describes how the existence of a financial profit motive that sometimes exists in pre-trial diversion programs may influence a prosecutor's decision to divert or prosecute. The potential for financial gain from defendants in pre-trial diversion programs is contextualized within a larger framework of profit motives that the author argues exist throughout the criminal justice system.

Lepage, C. R., & May, J. D. (2017). The Anchorage, Alaska Municipal Pretrial Diversion Program: An Initial Assessment. *Alaska L. Rev.*, 34(1), 1-26.

This legal review describes an initial outcome and cost assessment of the Anchorage Pretrial Diversion Program for low-level offenders ( $n=91$ ) with mental illness, substance abuse disorder, or co-occurring disorders. The eligibility criteria for this program includes having a minor offense and no prior convictions. Most (98%) accepted the prosecutor's offer for pretrial diversion, and among those who accepted, 92% successfully completed the program. The most common offenses among those individuals who accept pretrial include driving without insurance (53%), and theft over \$50 (24%) and under \$50 (12%). Misconduct that involved a controlled substance only comprised 4% of the offenses. The findings from this review suggest that pretrial diversion is a swift and efficient practices for prosecutors in Anchorage. Specifically, it reports that the procedural time length from date of offense to date closed is relatively swift (i.e., 3-4 months) for most offenders. The cases of 89% percent of offenders require less than an hour of prosecutor's time to process. Furthermore, 84.2% of cases only require 2 or fewer hearings per defendant.

McWhorter, E. & LaBahn, D. (2015/2016). Article: Confronting the Elephants in The Courtroom Through Prosecutor Led Diversion Efforts, *Alb. L. Rev.* 79 (1221) at 1225.

The National Association of Pretrial Services Agencies defines pre-trial diversion as "alternative case processing programs aimed at reducing recidivism, conserving criminal justice resources, and assisting persons to make changes in their lives that will prevent entry into the criminal justice system that results in a dismissal of the charges upon successful completion." The article illustrates the positive outcomes that pre-trial diversion programs can yield through the case examples of three pre-trial diversion programs: San Francisco's Neighborhood Courts, Harris County's First Intervention and Philadelphia's Small Amounts of Marijuana program. San Francisco's program has succeeded because of its focus on reducing recidivism and providing resources to offenders who have committed lower-level crimes. Harris County and Philadelphia's pre-trial diversion programs have attained their goals of providing training and services to individuals who have violated the law through a first-time or low-level offense of marijuana possession.

National District Attorneys Association. (2009). *National Prosecution Standards (3rd Ed.)*. National District Attorneys Association.

The National Prosecution Standards indicate that a decision to screen a defendant for diversion from formal prosecution, a prosecutor considers the following factors: 1) doubt about the accused's guilt; 2) insufficiency of admissible evidence to support a conviction; 3) the negative impact of a prosecution on a victim; 4) the availability of adequate civil remedies; 5) the availability of suitable diversion and rehabilitative programs; 6) provisions for restitution; 7) likelihood of prosecution by another criminal justice authority; 8) whether non-prosecution would assist in achieving other legitimate goals, such as the investigation or prosecution of

more serious offenses; 9) the charging decisions made for similarly-situated defendants; 10) the attitude and mental status of the accused; 11) undue hardship that would be caused to the accused by the prosecution; 12) a history of non-enforcement of the applicable law; 13) failure of law enforcement to perform necessary duties or investigations; 14) the expressed desire of an accused to release potential civil claims against victims, witnesses, law enforcement agencies and their personnel, or the prosecutor and his personnel, where such desire is expressed after having the opportunity to obtain advice of counsel and is knowing and voluntary; 15) whether the alleged crime represents a substantial departure from the accused's history of living a law-abiding life; 16) whether the accused has already suffered substantial loss in connection with the alleged crime; and 17) whether the size of the loss or the extent of the harm caused by the alleged crime is too small to warrant a criminal sanction.

These guideline also indicates that the following factors should not be a part of prosecutors' consideration to screen a person from formal prosecution: 1) the prosecutor's individual or the prosecutor's office rate of conviction; 2) personal advantages or disadvantages that a prosecution might bring to the prosecutor or others in the prosecutor's office; 3) political advantages or disadvantages that a prosecution might bring to the prosecutor; 4) characteristics of the accused that have been recognized as the basis for invidious discrimination, insofar as those factors are not pertinent to the elements or motive of the crime; and 5) the impact of any potential asset forfeiture to the extent described in Standard 4-7.4.

**Oliver, W.M. & Batra, R. (2015). ARTICLE: Standards of Legitimacy in Criminal Negotiations, *Harv. Negotiation L. Rev.* 20(61) at 99.**

This article describes how judges can step in to limit the broad authority granted to prosecutors through prosecutorial discretion by examining cases in which a prosecutor has declined to offer pre-trial diversion to a defendant. This type of judicial oversight is appropriate on the grounds that a prosecutor's determination of whether to divert a defendant into an alternative diversionary program, instead of continuing to prosecute the case, means "that prosecutors are in essence engaging in a type of sentencing." Furthermore, the numerous factors a prosecutor weighs in deciding whether to divert or prosecute a defendant are both "too long and vague to provide any meaningful guidance."

**Research Working Group, Task Force on Race and the Criminal Justice System (2012). Symposium on Racial Bias and The Criminal Justice System: Preliminary Report On Race and Washington's Criminal Justice System, Seattle U. L. Rev. 35 (623).**

This task force recommends utilizing pre-trial, community-based diversion programs as a more equitable and just criminal justice response to defendants who have committed certain drug offenses.



**Radice, J. (2017). Article: The Reintegrative State, *Emory L.J.* 66 (1315).**

This article contrasts the differences in Tennessee and New York's pre-trial diversion statutes to illustrate the variation that exists among pre-trial diversion programs, in terms of eligibility and completion requirements. The author highlights some of the benefits of pre-trial diversion programs to the individual defendant, the criminal justice system and society at large. On the other hand, the potentially coercive properties of pre-trial diversion are also considered, including situations where innocent defendants agree to a pre-trial diversion program instead of taking the risk of going to trial and receiving a criminal conviction.

**Redlich, A. D., Liu, S., Steadman, H. J., Callahan, L., & Robbins, P. C. (2012). Is diversion swift? Comparing mental health court and traditional criminal justice processing. *Criminal Justice and Behavior*, 39(4), 420-433.**

Authors investigated the swiftness of a MacArthur mental health court (MHC) diversion practice. Their approach was to examine the length from initial arrest to enrollment in a mental health court program compared to the length of time from arrest to disposition using an MHC sample (n=447) and matched treatment as usual (TAU) comparison group (n=600). The four sites included in this study were San Francisco, CA (n=254), Santa Clara County, CA (n=334), Hennepin County, MN (n=248), and Marion County, IN (n=211). The authors found that MHC diversion was not swift, and in fact, took twice as long to process offenders who have mental illnesses compared to treatment as usual (or the traditional process).

**Rempel, M., Labriola, M., Hunt, P., Davis, R., Reich, W., & Cherney, S. (2018). *NIJ's Multisite Evaluation of Prosecutor-Led Diversion Programs: Strategies, Impacts, and Cost-Effectiveness*. Reported submitted to the National Institute of Justice, Department of Justice, Washington, DC.**

The authors of this NIJ report conducted a process, impact, and cost study of 15 prosecutorial-led diversion practices in several sites. First, the authors conducted a comprehensive process review of several prosecutor-led diversion practices including: Rapid Intervention Community Court Project in Vermont; Small Amount of Marijuana Program (SAM), Accelerated Misdemeanor Program (AMP), and Accelerated Rehabilitative Disposition (ARD) (all in Pennsylvania); Cook County Drug School, Cook County Misdemeanor Diversion Program, and Cook County Felony Diversion Program (all in Illinois); Operation De Novo (Property and Drug Diversion) in Minnesota; Wisconsin's Diversion Program and Deferred Prosecution Program; Texas's Memo Agreement Program; Los Angeles's Community Justice Initiative, San Diego's Beach Area Community Court, and San Francisco's Neighborhood Courts (all in California); Maricopa Treatment Accountability for Safer Communities (TASC) Adult Prosecution Program and Phoenix City's Project ROSE (both in Arizona). Please see pages 4-5 of this technical report for information on which programs have received process, impact, and cost evaluations.

The authors reviewed documents, observed current programs, conducted in-depth stakeholder and staff interviews to understand diversion program history, model, strengths and challenges, and available data. The process findings from this research indicate that the timing of the diversion was mix with over half (*i.e.*, 8) occurring during the post-filing stage. In addition, more than half of sites (*i.e.*, 9) offered diversion to both felons and misdemeanants. Most diversion programs targeted multiple types of offenders. With one exception (*i.e.*, Milwaukee), the eligibility determination for diversion was based on criminal history and current charges rather than a validated risk assessment tool. Ten sites tailored treatment to the individual rather than using a one-size-fits-all approach. While educational approaches were component of 13 programs, only one site cited the use of evidence-based cognitive behavioral approaches in their diversion practices. Second, the authors also conducted quasi-experimental impact evaluations on five programs (2 in Cook County, IL, 2 in Milwaukee, WI, and 1 in Chittenden County, VT) where data was available. The impact study findings indicated that all five diversion practices reduce the probability of reconviction and a new jail sentence. The results also showed that four out of five programs reduced the probability of re-arrest. Finally, they conducted a cost study of 2 sites in Cook County, IL, 1 in Chittenden County, VT, and 1 in San Francisco, CA). The output costs in this study included cost of probation, jail, and prison sentences. Finally, the four sites where cost evaluations were conducted all produced cost savings.

**Scott-Hayward, C.S. (2017). ARTICLE: Rethinking Federal Diversion: The Rise Of Specialized Criminal Courts, *Berkeley J. Crim. L.* 22 (47).**

This article describes the purpose and outcomes of both pre-trial and post-trial diversion in federal criminal cases. Pre-trial diversion in federal cases was originally created for juvenile defendants. Widespread variation in the prevalence of pre-trial diversion by U.S. attorneys is discussed. The author argues that there is not much existing data on the positive or negative impact of pre-trial diversion, in part because many diversion programs do not actively track such outcome indicators as recidivism rates. The fees defendants must pay as part of a pre-trial diversion program have come under some scrutiny and has prompted a recommendation against the assessment of exorbitant fees to be added into the latest version of the Model Penal Code.

**Sheley, E. (2012). Article: Perceptual Harm and the Corporate Criminal, *U. Cin. L. Rev.* 81 (225).**

Deferred prosecution agreements or non-prosecution agreements are a form of pre-trial diversion that have been used in federal financial crime cases involving corporations. These agreements are offered by the prosecutor to encourage individual employees of the corporation who are defendants in the case to cooperate in the prosecution of the case. The defendant is protected from further prosecution, in exchange for this cooperation.

**Shenoy, D. and Khakoo, S.O. (2008). Immigration Law: One Strike and You're Out! The Crumbling Distinction Between the Criminal and the Civil for Immigrants in The Twenty-First Century, *Wm. Mitchell L. Rev.* 35 (13).**

Criminal defendants who are not U.S. citizens face not only the threat of incarceration but also the possibility of deportation. In various counties within Minnesota a non-citizen's participation in a pre-trial diversion program does not eliminate the threat of deportation, even if all criminal charges are subsequently dropped. The author argues one reason for this is because participation in some of these counties' pre-trial diversion programs requires the person to admit guilt.

**Stripp, C. (2016/2017). Article: Romeo And Juliet: Tragedy in The Information Age, *Rutgers L. Rec.* 44 (73).**

The legal consequences of juveniles who send explicit photos and content by "sexting" is described, in the context of various state laws that define and penalize this act differently. Prosecutors must distinguish between the consensual and voluntary communication that may not cause actual harm and might best be responded to through a diversion program, from sexual communication that may require criminal prosecution, and which subsequently labels the juvenile defendant as a sex offender. New Jersey's diversionary approach to first-time minors who engage in sexting is contrasted with the state's criminalization of subsequent offenders, who may be prosecuted under New Jersey's child pornography laws.

**Sung, H.-E. (2001). Rehabilitating felony drug offenders through job development: A look into a prosecutor-led diversion program. *Prison Journal*, 81, 271-286.**

Describes the characteristics of 406 participants of Brooklyn's Drug Treatment Alternative-to-Prison (DTAP) program as of October 1999. This program diverts drug addicted felons into long-term residential treatment (*e.g.*, therapeutic communities) that seeks to enhance human and social capital. Specifically, DTAP's therapeutic communities provides educational and vocational training, and job counseling and placement assistance, on-site medical care, and housing assistance. In 1990, DTAP was created by the Kings County District Attorney's Office (KCDA) to divert non-violent drug felons who would normally fall under the mandatory sentencing purview of New York State's Second-Felony Offender Law. Preliminary results indicate that participants had an average regular drug use duration of 12 years and an average treatment length of 23 months. More than half (55%) of participants were addicted to heroin and the second most common primary drug was crack-cocaine. More than three-quarters of participants were unemployed before DTAP and 69% did not have a high school diploma or GED. In terms of processes of DTAP services, only 13% received a GED and 49% completed vocational training. After completing DTAP, 92% obtained employment and only 13% of those individuals who found a job were rearrested. Even among those who were unemployed, only

one-third were rearrested. This research also discusses the impact of postindustrial labor market for the future success of diversion programs that offer job skills, vocational training, and educational services.

**Sung, H. E., & Belenko, S. (2006). From diversion experiment to policy movement: A case study of prosecutorial innovation. *Journal of Contemporary Criminal Justice*, 22(3), 220-240.**

Describes the replication of the DTAP program in other jurisdictions and emphasizes the importance of recruiting political allies, continuously rejuvenating the program, research and evaluation, and maintenance of ideological vagueness for the continuation of this diversion practice. These factors were key for the success of the program. The authors also reference pre-1990s diversion programs (Court Employment Project [CEP] and Speedy Disposition Program [SDP]) which were not effective practices. Authors also discussed the evolution of DTAP. During the planning stages, Brooklyn prosecutors had to get support from several stakeholders including judges, defense attorneys, and probation and parole boards. As a part of the initial phase, the criminal defense bar voiced some concern about the possibility of DTAP to widen the net for offenders. However, treatment providers were ultimately persuaded that substance abuse treatment was the most favorable option for these individuals.

**Sung, H. E. (2011). From diversion to reentry: Recidivism risks among graduates of an alternative to incarceration program. *Criminal Justice Policy Review*, 22(2), 219-234.**

This study uses a post-matching case-control design to investigate the risk and protective factors for recidivism among a group of individuals who were released from DTAP. Specifically, 47 DTAP completers who reoffended were compared to 47 matched nonrecidivists. The results indicate that weak treatment engagement, social isolation (living with different people after treatment or living alone), having fewer children, specific health conditions (HIV/AIDS and gunshot and stab wounds), and medical needs were positively associated with reoffending.

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