

## PROSECUTOR-LED YOUTHFUL OFFENDER DIVERSION COURT MODELS

Efforts to divert youthful offenders are underway in jurisdictions across the country. Most models take the form of collaborative problem-solving courts. For example, a partnership of justice stakeholders in San Francisco established a Youth Adult Court that serves 18- to 25-year-olds.<sup>3,4</sup> There are a handful of prosecutor-led youthful offender diversion programs, but none have yet been empirically validated. Below are descriptions of a sampling of these models.

Research shows that young adults ages 18 to 24 are more impulsive, less able to control emotions, and less likely to consider the consequences of actions than older adults. The brain's prefrontal cortex—which regulates impulse control and risk-taking—is not fully developed until the mid-twenties.<sup>1,2</sup>

***“An important challenge facing our criminal justice system today is recognizing that while crimes committed by young people must be addressed, traditional punitive actions are limited and often counterproductive. These types of punitive actions do not adequately factor in differences in development between young adults and older adults.” – San Francisco District Attorney’s Office<sup>5</sup>***

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<sup>1</sup> Arain, M., Haque, M., Johal, L., Mathur, P., Nel, W., Rais, A., ... Sharma, S. (2013). Maturation of the adolescent brain. *Neuropsychiatric Disease and Treatment*, 9, 449–461.

<https://doi.org/10.2147/NDT.S39776>

<sup>2</sup> The Council of State Governments Justice Center. (2015). *Reducing recidivism and improving other outcomes for young adults in the juvenile and adult criminal justice systems*. New York, NY: Author. Retrieved from <https://csgjusticecenter.org/wp-content/uploads/2015/11/Transitional-Age-Brief.pdf>

<sup>3</sup> Henderson-Frakes, J., Leshnick, S., & Diaz, H. (2017). *An evaluation of San Francisco’s Young Adult Court (YAC): Findings of planning and early implementation*. N.p.: Social Policy Research Associates. Retrieved from [https://www.sfsuperiorcourt.org/sites/default/files/images/YAC%20Interim%20Report\\_05252017.pdf](https://www.sfsuperiorcourt.org/sites/default/files/images/YAC%20Interim%20Report_05252017.pdf)

<sup>4</sup> Clark, M., & Henderson-Frakes, J. (2018). *Evaluation of the San Francisco Young Adult Court (YAC): Outcome study addendum*. N.p.: Social Policy Research Associates. Retrieved from [http://www.bscc.ca.gov/downloads/JAG%20Final%20Evaluations%20San%20Francisco%20YAC%20Evaluation%20Outcomes%20Report\\_3.29.18.pdf](http://www.bscc.ca.gov/downloads/JAG%20Final%20Evaluations%20San%20Francisco%20YAC%20Evaluation%20Outcomes%20Report_3.29.18.pdf)

<sup>5</sup> City and County of San Francisco District Attorney. (n.d.). Young adults. Retrieved from <https://sfdistrictattorney.org/young-adults>

### Young Adult Diversion Program (YADP)

- **Jurisdiction:** Pennington County, South Dakota<sup>6,7</sup>
- **Target population:** 18–25 years old, limited criminal history, charged with nonviolent offenses
- **Services:** Tailored to participant needs; can include community service, education, counseling, and employment opportunities such as job shadowing, internships, and apprenticeships
- **Program length:** 3–4 months
- **Results:** Charges are dismissed when participant signs diversion agreement. A participant who successfully completes the program and has no new arrests in the year after program completion may file a motion to have the record wiped clean. Failure may result in refile of charges.

### Project Re-Direct<sup>8,9</sup>

- **Jurisdiction:** Kings County, New York
- **Target population:** gang-involved youths and young adults ages 14–22 charged with a first-time felony
- **Services:** Standard set of services includes mandatory supervised weekly meetings with program staff; ankle bracelet monitoring; life skills and anger management group sessions; random drug testing; substance abuse counseling; nightly curfew checks; community service; completion of high school; and regular attendance at education, employment, or both
- **Program length:** 18–24 months
- **Results:** Successful completion results in dismissal of charges. Failure may result in a prison sentence.

## EVIDENCE ON PROSECUTOR-LED DIVERSION

There is no common definition for the term “prosecutor-led diversion.” It can refer to court-based programs in which decisions are made by a joint partnership of judicial stakeholders as well as to programs that are initiated and overseen by prosecutors with sole discretion.

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<sup>6</sup> Peterson, L. (2017, April 1). New diversion program helps young adults avoid prosecution. *Black Hills Pioneer*. Retrieved from [http://www.bhpioneer.com/local\\_news/new-diversion-program-helps-young-adults-avoid-prosecution/article\\_653dab0c-1651-11e7-bf36-87a2a1ec5ba2.html](http://www.bhpioneer.com/local_news/new-diversion-program-helps-young-adults-avoid-prosecution/article_653dab0c-1651-11e7-bf36-87a2a1ec5ba2.html)

<sup>7</sup> Huntington, S. (2017, February 28). Young adult diversion program hitting on all cylinders. *Kota Territory News*. Retrieved from <http://www.kotatv.com/content/news/Young-adult-diversion-program-hitting-on-all-cylinders-415036713.html>

<sup>8</sup> The Brooklyn District Attorney’s Office. (2018). Youth diversion programs. Retrieved from <http://www.brooklynda.org/youth-diversion-programs/>

<sup>9</sup> Fair and Just Prosecution. (2017). *Promising practices in prosecutor-led diversion*. Retrieved from <https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.Diversion.9.26.pdf>

Recommended best practices for the implementation of prosecutor-led diversion programs include limiting participant contact with the justice system; relying on clinical staff to operate individualized treatment programs; rigorously tracking outcomes of program participants; avoiding imposing costs on program participants; limiting exclusionary eligibility criteria; and partnering with community groups to address substance use, mental illness, homelessness, and other related issues.<sup>10</sup>

## Implementation

Implementation assessments of prosecutor-led diversion programs are uncommon, but research does provide some findings about standards and barriers for these practices.

- There are no national standards for the implementation of prosecutor-led diversion programs.
- Programs vary widely in terms of eligibility criteria, stage at which they are offered (*i.e.*, pre-filing or post-filing), and service provision.<sup>11</sup>
- Instead of requiring participants to complete a standard set of services, many prosecutorial diversion programs take a case-by-case approach, using risk and needs assessment tools to determine program requirements.
- Tailored approaches can benefit both the individual and the community by addressing the underlying causes of the offense and reducing the cycling of offenders into and out of the justice system.
- Barriers to the effective implementation of these models include operational weaknesses (*e.g.*, high participant fees, quality of case management), limited program scope (*e.g.*, restrictive eligibility criteria), and lack of resources (*e.g.*, technology, funding).

## Results

Evaluations of prosecutor-led diversion programs provide evidence in support of their effectiveness. In 2018, the National Institute of Justice conducted impact evaluations of five programs (two in Cook County, IL, two in Milwaukee, WI, and one in Chittenden County, VT). All five reduced the probability of conviction and a new jail sentence, and four of the five reduced the probability of re-arrest.<sup>12</sup> These reports build on earlier findings from the Drug Treatment Alternative-to-Prison (DTAP) and Criminal Mental Health Project studies. A 2008 outcome evaluation of the DTAP program found that graduates not only had significantly lower

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<sup>10</sup> Fair and Just Prosecution, *op. cit.*

<sup>11</sup> Labriola, M., Reich, W. A., Davis, R. C., Hunt, P., Rempel, M., & Cherney, S. (2018). *Prosecutor-led pretrial diversion: Case studies in eleven jurisdictions*. New York City, NY: Center for Court Innovation. Retrieved from [https://www.courtinnovation.org/sites/default/files/media/documents/2017-11/pretrial\\_diversion\\_case\\_study\\_report\\_final\\_provrel.pdf](https://www.courtinnovation.org/sites/default/files/media/documents/2017-11/pretrial_diversion_case_study_report_final_provrel.pdf)

<sup>12</sup> 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*. Prepared for the U.S. Department of Justice, National Institute of Justice, Washington, DC.

5-year recidivism rates, but they were also significantly more likely to be employed.<sup>13</sup> The Criminal Mental Health Project, a prosecutor-led mental health diversion program, reported that annual recidivism rates among participants of both the misdemeanor and felony diversion programs had dropped dramatically.<sup>14</sup> A 2008 evaluation of the First Offender Prostitution Program in San Francisco also found that participation in the program lowered the rate of recidivism.<sup>15</sup>

### Costs

Recent evaluations have found that prosecutor-led diversion programs are more cost-beneficial than traditional criminal justice processing. Cost studies of four prosecutor-led diversion programs conducted by the National Institute of Justice (two in Cook County, IL, one in Chittenden County, VT, and one in San Francisco, CA) concluded that all produced cost savings. All four — particularly the two pre-filing programs— significantly reduced investment costs (costs of adjudicating a case). Of the three programs for which sufficient data were available, all reduced outcome costs (costs of disposition), primarily by reducing probation and jail sentences.<sup>16</sup> Other cost studies assessing the Anchorage Pretrial Diversion Program, the King’s County DTAP program, and the San Francisco First Offender Prostitution Program also documented significant cost savings.<sup>17,18,19</sup>

### Conclusion

Prosecutor-led diversion programs are part of a larger effort to use research to foster a more fair and just criminal justice system. Diverting individuals whose needs would be better served outside of the system addresses the underlying causes of crime and reserves system resources for those who pose a genuine threat to public safety.

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<sup>13</sup> Swern, A. J. (2008). *Drug Treatment Alternative-to-Prison (DTAP) seventeenth annual report* (King’s County, NY). Retrieved from [http://www.rashkind.com/alternatives/dir\\_06/Hynes\\_DTAP\\_Seventeenth\\_Annual\\_Report.pdf](http://www.rashkind.com/alternatives/dir_06/Hynes_DTAP_Seventeenth_Annual_Report.pdf)

<sup>14</sup> Fair and Just Prosecution, op. cit.

<sup>15</sup> Shively, M., Jalbert, S. K., Kling, R., Rhodes, W., Finn, P., Flygare, C., ... Wheeler, K. (2008). *Final report on the evaluation of the First Offender Prostitution Program*. Prepared for the U.S. Department of Justice, National Institute of Justice, Washington, DC. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/221894.pdf>

<sup>16</sup> Rempel et al., op. cit.

<sup>17</sup> Lepage, C. R., & May, J. D. (2017). The Anchorage, Alaska, municipal pretrial diversion program: An initial assessment. *Alaska Law Review*, 34, 20–21 (showing that 89% percent of offenders require less than an hour of prosecutor’s time to process, and 84.2% of cases only require 2 or fewer hearings per defendant).

<sup>18</sup> Zarkin, G. A., Dunlap, L. J., Belenko, S., & Dynia, P. A. (2005). A benefit-cost analysis of the Kings County District Attorney’s Office Drug Treatment Alternative to Prison (DTAP) program. *Justice Research and Policy*, 7(1), 1–25. <https://doi.org/10.3818/JRP.7.1.2005.1> (detailing how the DTAP program was found to be cost-beneficial in comparison to the traditional criminal justice process by a benefit-cost ratio of 2.17, and estimating it to have saved over \$88,000 over the six-year follow-up period).

<sup>19</sup> Shively et al., op. cit.

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