

DRUG OFFENSE TASK FORCE – ADULT DIVERSION WORKING GROUP
PRELIMINARY RECOMMENDATIONS PRESENTED TO THE COLORADO COMMISSION ON CRIMINAL AND
JUVENILE JUSTICE

FUND AND SUPPORT EFFECTIVE STATEWIDE ALTERNATIVES TO FILING CRIMINAL CHARGES AGAINST ADULT INDIVIDUALS WITH SUBSTANCE ABUSE DISORDERS WHO COME INTO CONTACT WITH LAW ENFORCEMENT FOR DRUG-RELATED OFFENSES.

Recommendation:

Fund and support four (4) Adult Diversion pilot programs targeting adults whose primary driver for intersecting the criminal justice system is a substance abuse disorder¹ and whose contact with law enforcement is for a drug-related offense.² Because communities in Colorado vary significantly in terms of available resources, public safety risk tolerance, and community support for this approach, the programs should be designed based on local community assets/resources and needs. In order to permit functional local control and provide the most efficient service to target populations across larger geographical areas, the program areas should be designated judicial districts. To have a meaningful statewide impact, the pilot programs must include rural districts, as that is where a lack of resources, both financial and human, presents an insurmountable hurdle to sustaining such a program.

Discussion

The group is unanimous in its assessment that addiction-driven entry into the criminal justice system is a significant and growing percentage of the criminal justice population. The group is also unanimous in its assessment that often the primary hurdle to effective intervention for people wanting to recover from their addiction and avoid future contacts with the criminal justice system, is a lack of access to necessary services. With the passage in 2019 of HB-1263, the legislature recognized the potential for excessive punishment and debilitating collateral sanctions being imposed on addicted persons whose offenses are driven primarily by their addiction. However, decreasing the traditional criminal sanctions and collateral consequences still leaves this issue unaddressed: What must the criminal justice system do with and for these offenders to facilitate rehabilitation, thereby avoiding recidivism?

Funding Adult Diversion is the Best Option

Adult diversion has the following benefits: 1) Involves all necessary stakeholders, including those already familiar with the interplay between substance abuse and criminal justice; 2) Provides opportunities for persons with an addicted disorder to take advantage of available recovery and

¹ It is recommended, subject to local needs, that this include co-occurring substance abuse/mental health disorders, as this is a very common scenario.

² It is recommended, subject to local needs, that this include any 'low impact' offense, the primary cause of which is substance abuse. For example, property crimes committed for the purpose of funding an addiction to narcotics.

rehabilitation services, and avoid involvement with the formal criminal justice system; 3) Reduces the number of cases processed through the courts; 4) Reduces if not eliminates unintended collateral consequences to normal criminal justice system involvement – employment, education and housing access can all be negatively impacted by formal involvement in the criminal justice system; 5) It can be customized to the needs, resources and priorities of the local community/jurisdiction to maximize effectiveness, including addressing relapse risk factors such as employment, housing and transportation; 6) Frees up time for criminal justice professionals to focus on crimes that involve far more harm to innocent victims, such as sexual assault and other serious violent offenses. For these reasons, the group consensus it that adult diversion is currently the most effective and easily assimilated model to build into the criminal justice system.

Current State of Adult Diversion in Colorado

A fall 2019 survey of District Attorney's Offices around the state revealed the following: Of the 22 offices surveyed, 17 submitted responses. Of those, 15 have some form of an adult diversion program, and 2 do not have such a program. Both of the jurisdictions without adult diversion are rural, and both cite a lack of funding for staff, and lack of treatment providers that are geographically and economically accessible to the target population, as the prohibitive factors. These were also cited as the main limiting factors for those offices with existing adult diversion programs of any kind – funds for staff and access to effective treatment providers/programs. The existing programs seek to accommodate approximately 50-100 persons on an active caseload, and some jurisdictions may divert as many as 600 annually. Interestingly, the size of diversion caseloads does not necessarily correlate to the size of the jurisdiction, with smaller jurisdictions having some of the higher numbers. This may speak to the necessity and effectiveness for allowing customization of a diversion program to the specific needs of the local population it serves. What also speaks to the need for local control is that at least one office reported that unilateral imposition of criteria from the funding entity in a diversion program may cause the actual target population in that jurisdiction to be significantly underserved. Lastly, it was noted in the survey that often times the target population is suffering from co-occurring disorders of substance abuse and mental health. In sum, of existing programs are hampered by a lack of resources and/or inability to customize their program to their local needs.

Recommended Pilot Model

Four pilot programs, selected appropriately, would allow for efficacy assessments of a diversity of models. As much local control as possible is recommended, for the reasons stated above. However, certain aspects should be required, and others should be preferred or encouraged.

Required aspects recommended by the group include the following:

- Consistent with the mandate in SB 19-108/CRS 16-11.3-103, must be a drug related offense, defined as any offense the primary cause of which is narcotics abuse, and involving a person with a substance abuse/addiction disorder.
- No traffic offenses;

- A mechanism to respond to substance abuse relapse with an intermediate intervention short of termination from the program;
- An access point into the program prior to arrest or formal charging;
- A mechanism for relevant stakeholder collaboration on standardized criteria for participation and program structure, including, at a minimum, the District Attorney, the Public Defender, local mental health providers and local substance abuse treatment providers, law enforcement, probation, and drug court representatives if a drug court exists in the pilot jurisdiction. To ensure proper information flow and continuity of services, and avoid duplication of services.³
- A mechanism for data tracking to measure efficacy of the program, including but not limited to recidivism rates and resolution of collateral risk factors such as employment, housing, transportation and education.
- A structure amenable to serving a diversity of offender populations, from first time offenders to high frequency system utilizers.

Preferred aspects recommended by the group include the following:

* Aspects of a harm-reduction model addressing basic needs such as housing, employment and transportation; criminogenic risk factors; and substance abuse and mental health needs, in order to provide a higher likelihood of avoiding recidivism.

* Incentivize high need and higher offense classifications, because this population represents a gap in existing adult diversion programs.

* A preference for need-based and outcome-based criteria for entry, rather than arbitrary exclusionary criteria such as making the program unavailable if the candidate previously began and failed the in the program. Customization is critical if the program is to reduce recidivism, and relapse is inherent in the recovery process.

* A preference for access points both prior to and subsequent to the filing of formal charges, including, where feasible, a route for front line officers to make direct referrals to the program on locally selected criteria.

* Focus on increasing offender access to effective treatment options/providers.

* Facilitate staffing to manage the program and to maintain an effective corp of case managers, able to customize the intervention to the individual participants needs, and trained to work with other service providers, such as the Veterans Administration, Medicaid, housing authorities and employment services.

* Housed and managed outside the traditional criminal justice system if possible, and using program managers and case managers not directly employed by law enforcement as much as possible. Collaboration is critical, but the daily operations should be managed by specific designated professionals in a non-criminal justice, rehabilitation focused environment. A “hub” model should be considered.

³ Including local judicial officials in the initial model building is encouraged, but should not be required, as that is better left as a matter of local control.