

DRUG OFFENSE TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
September 11, 2020

FY20-DR #02. Support a Public Health Model of Deflection [Policy]

Recommendation FY20-DR #02

Fund public health interventions that strengthen community resources and expand alternatives to filing criminal charges against adults and youth with substance use issues who are at risk of justice involvement. By aspiring to a public health approach — which redirects adults and youth with substance abuse issues engaging in behaviors that can lead to incurring criminal charges from the justice system entirely — this recommendation shifts priorities in funding upstream, supporting the still inadequate system for care coordination and treatment. Recognizing that funding diversion programs that are post-arrest continues to inadvertently reinforce the justice system as the point of intervention for many adults and youth with substance use disorder treatment needs, notwithstanding potential for co-occurring mental health needs, true alternatives are still needed to avoid the justice system operating as a healthcare system of intervention and care.

To facilitate this approach, implement the following:

- Priority #1: Provide funding and improve access to coordinated treatment provider and care coordination systems so that adults, youth and families can access services, interventions, supports, and treatment modalities within their community, leading to a decrease in call volume for first responders and reliance on the justice system as a point of intervention and to improved community wellness.
- Priority #2: Continue to improve training and to enhance service provider collaboration with law enforcement including but not limited to expanding co-responder and law enforcement diversion programs and deflection models that also include the critical component of care coordination, treatment when and where necessary and community engagement. Without community supported and appropriately funded alternative case management and treatment options, first responders will continue to be left without options that match the complexity of needed care.
- Priority #3: Continue to increase post-arrest diversion opportunities to create multiple “off-ramps” from criminal and juvenile justice system entanglement and prioritize programs using a harm-reduction approach to address the underlying needs of individuals, the community, and victims.

Discussion

In response to worldwide shifts in our collective experience and perspective regarding racial and ethnic equity, as well as considering the dramatic changes implemented in response to the COVID19 pandemic, this public health model recommendation seeks to shift the primary response to individuals with substance and mental health needs to the behavioral and public health systems instead of relying on the criminal and juvenile justice systems to handle these health needs. This approach allows individuals to avoid justice system entanglement, and improves health and safety outcomes for individuals and communities.

To ensure integrity to the legislative mandate to the Commission specified in Senate Bill 2019-008, please see the abandoned recommendation in Appendix 1. However, the recommendation above reflects the current perspective of the Drug Offense Task Force in response to the mandate and outlines a larger system shift in resources.

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Appendix 1: Abandoned Recommendation

This recommendation reflects the initial work by the Diversion Working Group of the Drug Offense Task Force on the legislative mandate to the Commission specified in Senate Bill 2019-008. This entire recommendation draft was abandoned and replaced by Recommendation FY20-DR #02 (Support a Public Health Model of Deflection [Policy]).

To reduce the number of persons with substance abuse issues committing offenses and entering the criminal justice system, establish statewide funding and support alternatives to filing criminal charges against adults with substance abuse issues who are contacted by law enforcement for drug-related offenses. Fund and support four (4) innovative 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 the availability of resources, public safety risk tolerance, and community support for this approach, the design of pilot program should be based on local community assets and needs. The programs should focus on early and innovative ways to redirect participants away from the criminal justice system and toward effective services. The programs could either develop new initiatives or expand and innovate existing programs, but they should not merely fund/supplant pre-existing programs. In order to permit functional local control and provide the most efficient service to target populations across larger geographical areas, the program should serve a specific judicial district.

- Programming should provide, at minimum, a four (4) year grant cycle to mitigate the obstacles common to start-up programs, such as delays in procurement, recruiting, contracting, or delays caused by intensive consensus building efforts. A four (4) year grant cycle will allow for meaningful data collection with regular efficacy assessments that inform appropriate course corrections.
- Grant applicants should have access to a CCJJ-based applicant advisor with appropriate knowledge of and experience with the public health and criminal justice systems.
- A total of four pilot projects representing a diversity of communities is recommended. Optimal diversity would include two metropolitan programs (one large and one mid-sized) and two rural programs, assuring broad and meaningful statewide impact. Rural districts are a high priority, given that the lack of financial and human resources presents the greatest challenge to sustained programming.

¹ It is recommended, subject to local needs, that this include co-occurring substance abuse/mental health disorders, given the frequency of such problems.

² It is recommended, subject to local needs, that this include any “lower impact” offense, the primary cause of which is substance abuse. For example, property crimes committed for the purpose of funding an addiction to narcotics. If programs are limited to Article 18 only (drug related offenses), the ideal target population will be neglected, as programs are inundated with persons whose triggering offense is a drug misdemeanor.

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Pilot Description: Adult Diversion (Drug Offense) Program

Statewide Framework

Characteristics include:

Four pilot programs prioritizing innovative diversion programs to facilitate model diversification; local control of the programming; and a four-year grant cycle to support the extensive investment required to initiate any diversion program.

Diversion Program Elements

While diversity and customization of programming to meet local needs are desirable characteristics of an Adult Diversion (Drug Offense) Pilot Program, specific elements of program design are strongly encouraged to foster innovation and success, as follows:

- No person should be considered for participation in programming unless there is as a basis for contact, meaning a provable crime involving 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, consistent with the mandate in §16-11.3-103, C.R.S. (Senate Bill 2019-108);
- The underlying offense for diversion participants should not include any traffic offense when that is the primary law violation;
- A mechanism to respond to individuals with substance use disorders with rapid and reliable screening that links participants with appropriate services based on need.³ Rapid access to treatment increases the chance for optimal outcomes;
- Stakeholder collaboration to identify standardized criteria for participation and program structure, including - whenever practicable - representatives of the District Attorney, the Public Defender, local community providers of mental health and substance use disorder treatment, law enforcement, probation, and a representative of the local court. Diversity of representation is intended in part to ensure appropriate information sharing, continuity of services, and the unwanted consequence of service duplication.
- A mechanism for data tracking to measure program efficacy, including but not limited to, charges diverted, length of agreement, restitution, recidivism rates to local jail(s), jail population, and number of court cases, with no less than annual reporting. Programs are encouraged to use the collected data on an ongoing basis to refine program elements that are most effective and assure participant population diversity. Data reporting must include population categories for gender identity, race, nationality, participant annual income, and household characteristics.
- Program designed to serve diverse populations, from people involved in the justice system for the first time to high frequency system utilizers and all those eighteen and older. Pilots should not include service sites with exclusionary processes or practices that discourage participation by any

³ A myriad of screening tools have been identified. Research material and recommendations are available to local jurisdiction applicants upon request from the Division of Criminal Justice. A full clinical assessment is not recommended, but a basic intake screen for diversion intake should be sufficient to identify participant needs.

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particular population group. Entry criteria should be needs based and, whenever possible, avoid arbitrary exclusions, such as limiting availability of candidates who previously participated in the same or similar programming, understanding that for many individuals, relapse is inherent in the recovery process and recidivism is likely to occur. In addition to serving diverse populations, programs should be incentivized to prioritize high need participants and higher crime type offense classifications, because this population represents a gap in existing adult diversion programs.

- The services specified need not be limited to treatment only, but may include case management and other social support services. The focus should be to increase participant access to the service options that are the most necessary and access to providers that address social determinates of health.
- Successful client completion should not be determined by accomplishment of standardized objectives, such as attendance at a specific number of sessions or completion of specific tasks, but instead could be based on lowering criminogenic needs and risks and allowing participants to create contacts that may prove useful later. Programs should emphasize principles of harm-reduction by addressing basic needs such as housing, employment and transportation, and, when critical to client success, substance abuse and mental health issues.
- Those administering programs, such as case managers, should possess the skills to customize interventions to an individual's needs and the ability to network with other service providers, such as the Veterans Administration, Medicaid, housing authorities and employment services.
- Collaboration is critical, but where practicable, daily program operations should be managed by designated professionals in a non-criminal justice, rehabilitation-focused environment. Establishing healthy connections for the participant is critical to success. Aspects of the Community Hub Model should be considered (see for example, pchi-hub.com).
- Access points to diversion both prior and subsequent to the filing of formal charges, including, where feasible and following locally derived criteria, a route for front line officers to make direct referrals to the program.
- A mechanism for compliance with the Victim's Rights Act.

Diversion Program Entry Process

Each grant proposal shall be accompanied by a description of the eligible referrers and referral processes of the proposed Adult Diversion (Drug Offense) Pilot Program. Identification of the referring entity (or entities) and process should include a brief statement addressing how the Pilot Program objectives are met through the proposed process and should identify all eligible referrers. Pilot Program objectives for referrers and process include:

- That Adult Diversion (Drug Offense) program decisions substitute for the initiation of formal court processes, whenever possible;
- That Adult Diversion (Drug Offense) services are delivered to participants at the earliest possible stage (pre-arrest and pre-filing of any criminal charge(s));
- That persons who are eligible participants must have committed a provable crime, assuring that those who have not engaged in criminal conduct are not unnecessarily engaged with criminal

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criminal justice system evolve to facilitate rehabilitation and community integration for these individuals, thereby avoiding recidivism? Diversion programs should be viewed as the proactive complement to the appropriate, but initial and primarily foundational, effort established through H.B. 2019-1263.

Funding that expands and innovates adult diversion is the best option, which 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 substance use disorder to be redirected to services that support recovery, uphold harm reduction, and avoid formal criminal justice system involvement;
- (3) Reduces the number of cases processed through the courts;
- (4) Reduces, if not eliminates, the unintended collateral consequences typical of criminal justice system involvement wherein employment, education and housing access can all be negatively impacted;
- (5) Diversion can be customized to an individual's needs and to the needs, resources and priorities of the local community/jurisdiction to maximize effectiveness, including strategies to address relapse risk factors such as employment, housing and transportation;
- (6) Increases capacity 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; and
- (7) Works on an expedited timeline compared to the traditional criminal justice intervention available through the courts, which can take several months before meaningful assessments are completed and interventions offered.

For these reasons, there is consensus that adult diversion as described in this document is currently the most effective and easily assimilated model for integration into the criminal justice system to more effectively respond to the members of our communities facing the challenges of addiction.

Current Adult Diversion Programming in Colorado

In the fall of 2019, the 22 District Attorney's Offices were surveyed regarding diversion programs and practices, and 18 responses revealed the following:

- Currently, statewide government grants total \$3.9 million for juvenile diversion and \$400,000 for adult diversion.
- Of the existing District Attorney programs, 16 have some form of adult diversion program and 2 have no program. The two jurisdictions without adult diversion are rural and cite the following factors prohibiting program creation: a lack of funding for staff and a lack of treatment providers that are geographically and economically accessible to the target population.
- Offices with any of the existing forms of adult diversion programs also cited staff funding and treatment provider/program availability as factors that restrict the number who could be served.

