



Prosecutor-led Diversion: BEST STRATEGIES FOR WORKING WITH PERSONS WITH SUBSTANCE USE DISORDER

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COSSUP Site Presenters

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 - Caleb Kramer, Commonwealth Attorney
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- Missoula County Attorney's Office, Montana
 - Ray Reiser, Pretrial Diversion Coordinator

RTI'S Overview of Presentation

- Diversion Programs
- Prosecutor-Involved Diversion
 - Goals
 - Promising Practices
 - Urban vs. Rural Program Characteristics
 - Current Evidence
 - Challenges

Diversion Programs

- Voluntary participation
- Offer treatment in lieu of formal criminal legal system processing
 - Participation & Completion → Charges dismissed
 - Refusal and/or Failure to Complete → Case processed formally through the court
- Began in US juvenile courts in the 1960s, later included adults
- Variation in target populations and types of programming

Prosecutor-Involved Diversion

- Prosecutors divert individuals before case disposition, either
 - Pre-filing –prior to the charging stage
 - Post-filing –after bringing charges

Prosecutor-Involved Diversion: Goals

- Administrative efficiency/cost savings
- Reduced collateral consequences
- Community engagement
- Defendant accountability
- Reduced recidivism
- Rehabilitation/Recovery
- Restorative justice



THE PATHWAYS PROGRAM: Deflection & Diversion

A Program of the Augusta County Commonwealth Attorney's Office

Agenda



- Program History and Development
- Program Design
- Eligibility Criteria
- Referral and Intake Procedures
- Program Goals and Outcomes
- Successes and Challenges



PATHWAYS PROGRAM

A grant-funded program within the Augusta County Commonwealths Attorney's Office (ACCAO) that seeks to deflect or divert individuals encountered by first responders and community services providers. The goal is to redirect individuals away from the criminal justice system, and reoccurring high-volume use of the medical and mental health systems, when timely treatment and access to community resources is a more appropriate option.

Rebranded from LEAD (Law Enforcement Assisted Diversion)





Program Development

2016 EBDM Policy Team

- Pursuant to NIH grant
- Region's principal criminal justice stakeholders performed a comprehensive review of local criminal justice practices
- Team explored key decision points along the criminal justice process and gathered applicable current data with a view to improve efficiencies and outcomes using research-based methods
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2018 misdemeanor pre-charge diversion

- Augusta County hired dedicated prosecutor to begin misdemeanor diversion program
- Initially first-time non-violent misdemeanors (~85% possession of marijuana)
- Screened low needs, low risk
- Minimal services implemented
- 6-month program duration, requirement to complete community service and remain charge free

2020 LEAD expansion to felony diversion

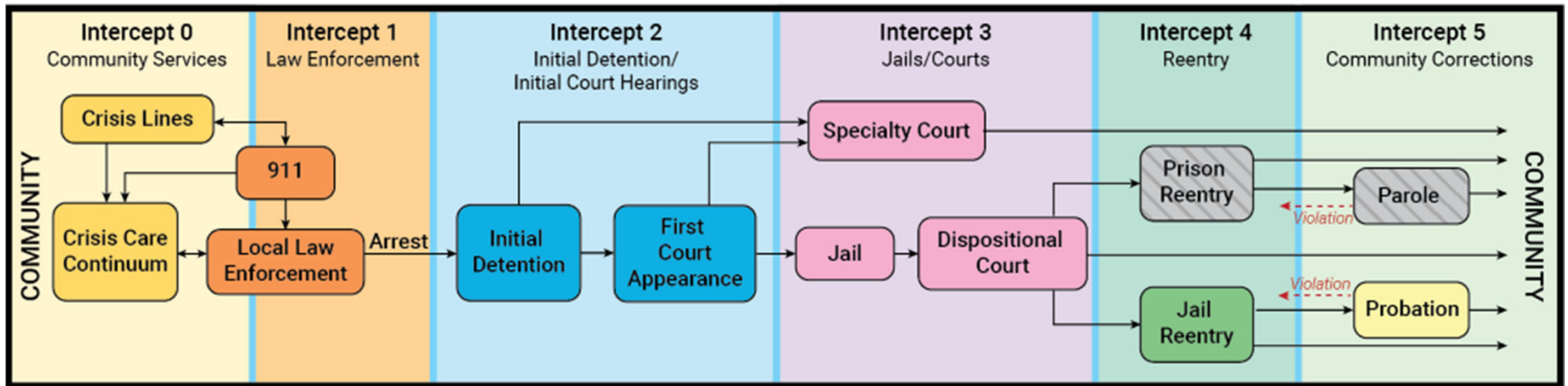
- Pursuant to COSSUP grant
- Include felony possession charges in diversion rubric
- Much higher risk and needs screened in
- Implementation of case management, comprehensive SUD recovery and wrap-around services
- 12-month program duration for felony charges

Ongoing Deflection expansion efforts

- Also funded by COSSUP
- Non-charge related, first responder, community and self-referral paths
- No charges pending, no justice implication for participants
- Services implemented based on assessed need
- 4–6-month duration, depending on need



The Sequential Intercept Model



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Who Qualifies?

- Adults with **apparent mental health and/or substance abuse issues**, whether through criminal investigation, or not. Including felony level possession of illicit drugs.
- Drug overdoses. For example, Fentanyl and more recently, Carfentanil.

Who Does NOT Qualify?



Individuals with:

- DUI charge
- Charges involving violence (e.g., battery, strangling, use of firearm and/or brandishing, etc.)
- Known history of drug distribution, or current possession which indicates persons who inject drugs (amount, scales, multiple packages, etc.)

Making A Referral

- You simply give the individual and/or family member this Pathways referral card and a rack card (Deflection), or brochure (Diversion).
- Then they have 24 hours to contact Pathways at the number provided.



The Referral Process

K.I.S. (Keep It Simple)

Email Pathways at Pathways@co.augusta.va.us with the basic information.

Or,

Call Jack at 540-280-0264

And leave the basic info on voicemail



Incident Information

Referring Officer: Sgt James Bond (#137)
Date & Time: 11/30/22 0900

Referred Person's Information

Name: John Smith
Contact #: 540-245-0666
Other Contact Person Info¹: NA

Potential Charges Information

Agency Reporting (e.g., 2022-0003249) Number: ACSO 20230000275
Potential Charge(s) (e.g., 18.2-250 Possession Schedule I/II) Possession Schedule I/II Substances
Reckless Driving 77/55

Any Additional Information² (Optional)

Officer has had multiple encounters with the individual. Has history of charges including felony eluding. Individual states he recently resumed using drugs. Was recently released from prison and is living at his mom's home in Verona.

¹ Other contact person info could include a parent, spouse, close friend and their cell number or email contact information. Typically needed if the referred person does not have their own phone, address, or email access (e.g., homeless, couch-hopping, etc.)

² Any Additional Information is anything you feel might be relevant when we are screening the individual to determine appropriateness for the program (e.g., appeared very motivated, young children are involved, supportive or non-supportive family or friends, etc.)



Program Goals



- Disrupt the cycle of individual and family crises.
- Move individuals QUICKLY into treatment; typically within ~ 72 hours of the crisis.
- Reduce time spent trying to resolve SA/MH problems. It's a process.
- Foster quick access to a broader network of treatment providers.
- Cultivate an environment with fewer recidivist emergency calls.
- Educate the community on steps they can take BEFORE the next crisis.

Pathways Community Resource Guide

Pathways Community Resource Guide



A PROGRAM OF THE AUGUSTA COUNTY COMMONWEALTH
ATTORNEY'S OFFICE

11 E. BEVERLY ST., SUITE 31, STAUNTON, VA 24401
540) 280-0264



Primary, Secondary, & Tertiary Service Areas



Buy in from Community Stakeholders



Deflection/Diversion:

- ✓ Helps the individual, and his/her family.
- ✓ Saves lives
- ✓ Helps the community
- ✓ Saves time and money by not prosecuting
- ✓ Saves the cost of incarceration and recidivism
- ✓ Makes communities safer
- ✓ Reduces homelessness in a more permanent way

Program Success



- This new expanded program started taking felony referrals in May of 2021. Since then, there have been 97 referrals to the Pathways. Of these, 36 were not assessed due to lack of engagement or program rule out criteria. The rest were inducted and referred to an appropriate level of care and services.
- 33 of these did access some level of services but were not able to complete program requirements, while the rest either successfully completed or remain in good standing.
- A preliminary recidivism analysis reveals that there have been no re-arrests participants who have successfully completed program requirements. 15% recidivism for those who accessed some services but did not complete.
- This program has had a measurable effect on the level of felony drug arrests in Augusta County. From 2016 to 2020, the number of felony drug arrests performed by the ACSO averaged 387 per year. In the 2021-2022 period when this program was active, there were an average of 285 drug arrests per year.

Challenges



- Very rarely ever received a hard “no,” but a lack of active cooperation, worse
- Major challenge is changing institutional inertia and ingrained procedures
 - Constant LEO trainings
- Getting stakeholders to work and share information “out of the silo”



Role of Prosecution

- Prosecution is a critical player, can make or break a diversion program
- Is key to obtaining a foot in the door for other stakeholders. Everyone answers the phone from “the Commonwealth’s Attorney”
 - Institutional prestige can also help in gaining stakeholder buy-in
- However, prosecutors think in very defined ways, and have a very traditionally defined role.
 - Hard for other players to think of prosecutors acting outside this role, hard for prosecutors to think outside the role themselves
- Key is to think systemically and focus on overall outcomes



THANK YOU!



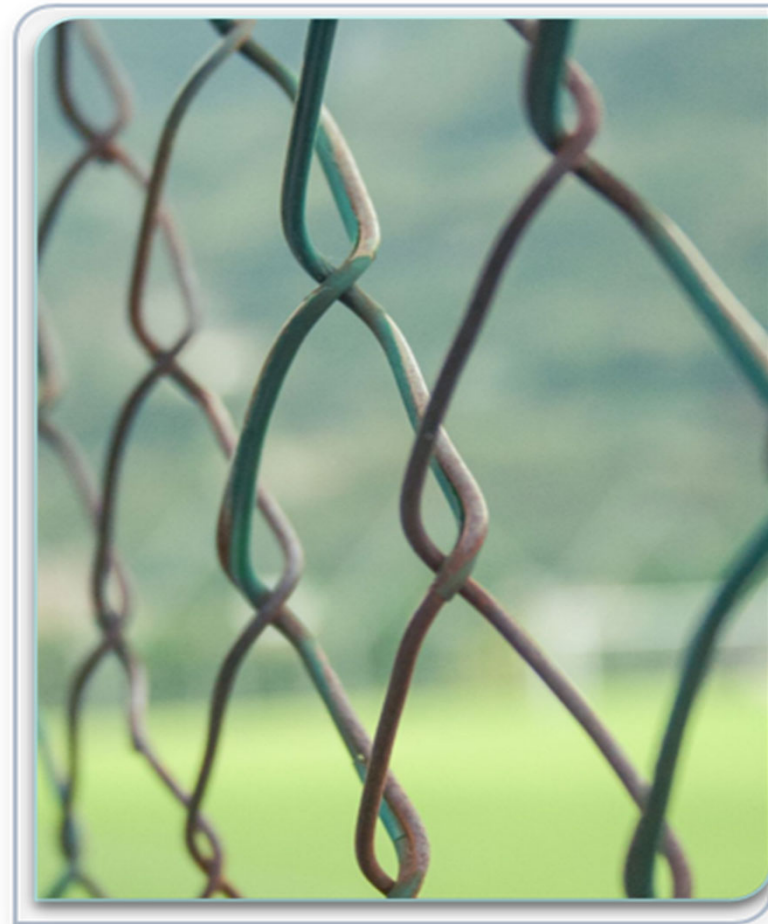
MISSOULA COUNTY ATTORNEY

CALIBRATE PRETRIAL DIVERSION PROGRAM

Ray Reiser
Pretrial Diversion Coordinator
Missoula County, Missoula, Montana

Consequences of Criminal Convictions

- Saturates the Court System
- Inundates the Corrections System
- Overpopulates Jails and Prisons
- Missoula County has a population of 119,533 (2021). The number of people currently on probation in Missoula County as of September 2022 is 1117.
- The daily cost of incarceration is approximately \$110/day/person
- Jails, probation, and supervision all serve an important role in our community



DETERRENCE

- One goal of the criminal justice system is deterrence.
- Does an individual have to be charged, convicted of a crime, and serve a sentence in order to be deterred from performing future crimes?
- Can some people be reached and deterred without the full effect of the criminal justice system?



DIVERSION

Diversion is a process that provides an alternative means to prosecution. It helps to address the root causes of why a person is in the court system. Diversion eliminates a criminal conviction and the collateral consequences.

- Fewer Court Cases
- Less Stress on the Corrections System
- Less Crowded Jails and Prisons

CALIBRATE



Is a Prosecution-involved Pretrial Diversion Program that began in Missoula in late 2019



Original funding for the program was sourced from the MacArthur Foundation



In 2021, Calibrate was awarded a COSSUP Grant

Additional Staff added

Opportunity for Chemical Dependency Evaluations

Funding for Training

Partnership with the University of Montana, Sociology Department Study



The Program has an 87% Success Rate

CHARGED VS. UNCHARGED

CHARGED



Client has legal representation or an additional point of contact.



Client is required to make court appearances. FTA result in warrants and prolonged court proceedings.

UNCHARGED



Clients can be difficult to contact.



Reluctance of Clients.

WHO?



Typical Criminal Charges for Diversion Candidates have included:

- Financial Crimes
- Property Crimes
- Drug Offenses
- Partner and Family Member Assaults, 1st

Charges not considered for Diversion are DUIs, Drug Trafficking, Violent Crimes, and Sexual Offenses

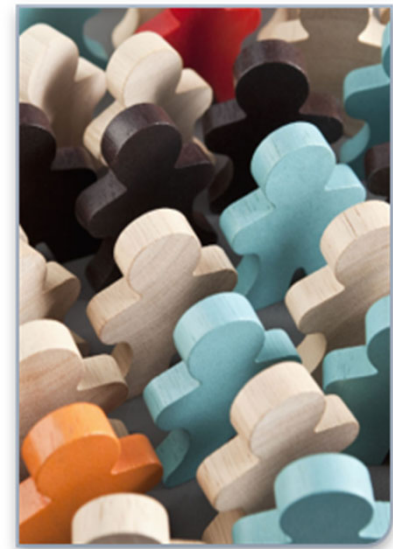
WHY?

Diversion Seeks to Address Underlying Causes

Prosecution Led Diversion Might Seem Counter to the Role of the Prosecutor

Buy-In from Stakeholders

Cooperation among Stakeholders



HOW?

Utilized APA Toolkit as a Guide for Process Development

- (diversiontoolkit.org)

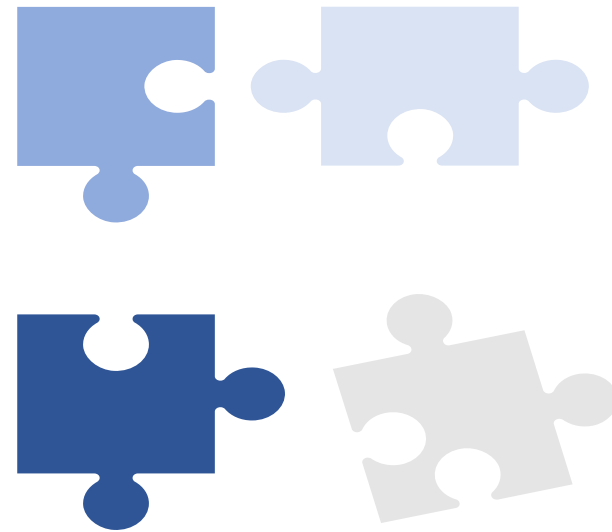
ORAS – Ohio Risk Assessment

- Assessment Scale to Determine Risk Level – Low, Moderate, High

Developed Criteria for an Individualized Case Plan

WHAT?

- Treatment for Drug and Alcohol Driven Offenses
- Financial Counseling and Treatment for Gambling Addictions
- Community Service Requirements (For Example: Carousel for Missoula, Animeals, Habitat for Humanity, Community Maintenance and Graffiti Clean-up)



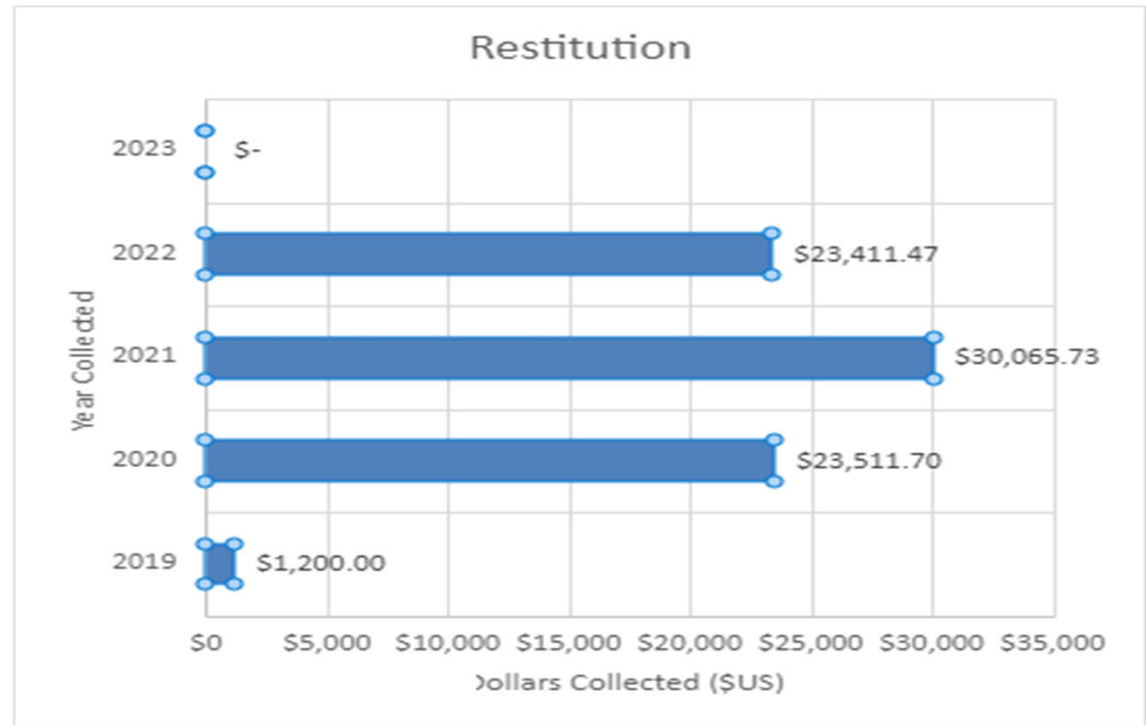
WHERE? NDAA Mapping Tool (diversion.ndaa.org)



MEASURE OF SUCCESS

When appropriate, and indicated, we often incorporate restitution into the conditions of diversion.

Recompense for loss is often one tangible step in the completion of success in diversion participation.



HOW ARE WE DOING?

	2020	2021	2022	2023
REFERRALS	108	71	116	
INTERVIEWED	56	34	43	
ADMITTED	43	32	35	
COMPLETED	12	29	27	
TERMINATED	2	3	5	
NEW ARRESTS/CITATIONS	2	2	4	
TECHNICAL VIOLATIONS	13	25	26	

THANK YOU!



Ray Reiser

Calibrate

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QUESTIONS?



Bureau of Justice Assistance's **Comprehensive Opioid, Stimulant, and Substance Use Program (COSSUP) Resource Center**

**BUREAU OF JUSTICE ASSISTANCE'S
COMPREHENSIVE OPIOID, STIMULANT, AND SUBSTANCE ABUSE PROGRAM
RESOURCE CENTER**

Supporting effective local, state, and tribal responses to illicit substance use and misuse in order to reduce overdose deaths, promote public safety, and support access to treatment and recovery services in the criminal justice system.

- Site-Based Grants
- Jail Resource Center
- COSSAP Demonstration Projects
- Training and Technical Assistance

**Reaching Rural: Advancing
Collaborative Solutions**

VISIT REACHING RURAL

EFFECTIVE COMMUNITY-LEVEL PREVENTION

FEATURED CHAMPIONS OF RECOVERY

www.cossapresources.org



THANK YOU!