

Planning a Prosecutor-Led Diversion Program

1. **Developing the Concept** - Initial program planning should begin with a review of the existing legal authority of the prosecutor's office to create and operate a prosecutor-led diversion effort¹ and a review of the office's existing caseload to identify the most frequent offenses that are committed by one-time offenders. Offenses that are deemed divertible and are committed by large numbers of individuals who have committed only one offense are prime opportunities for developing new diversion options.²

The goals and objectives of the program should also be identified along with where along the sequential intercept model the diverted cases are going to be off-ramped from the traditional criminal justice process (at the point of police contact, charge referral, prefiling, or post-filing). A decision should also be made as to whether entry of a plea or an offer of an admission is going to be required.

2. **Engaging a Research Partner** – Early engagement of a research partner in the effort is strongly advised. A research partner can assist the caseload analysis, identify evidence-based diversion practices to replicate, or help design a new program specifically tailored to the needs of the jurisdiction. They can also assist the effort to identify goals and objectives for the project and set the stage for eventual development and execution of the program's evaluation plan.
3. **Crafting the Eligibility Criteria** - Most prosecutor-led diversion programs have written eligibility criteria that identify which offenders or offenses are eligible (or not eligible) for diversion consideration. Such criteria are often based on the nature of the existing offense, the nature of criminal history, offender characteristics, and several other factors. Such criteria should clearly communicate what those standards are and be crafted in a way that generate consistent outcomes.
4. **Crafting the Program Conditions** - All prosecutor-led diversion programs include a set of conditions that participants are expected to satisfy. Those provisions include general conditions such as committing no new crimes, remaining drug or alcohol free, or reporting as required; make whole conditions such as performing community service or paying restitution; or therapeutic conditions such as attending drug or alcohol treatment or completing counselling services. Such conditions should be clearly spelled out to program participants and be included in a written Participant Contract.
5. **Building the Project Team** - With the preliminary work complete, the office should develop the project team responsible for delivering the project. A project manager should be identified and representatives of significant stakeholder groups critical to a successful implementation of the project should be included on the team. In more complex multi-agency efforts, it is often helpful to generate a Project Charter which describes the project, its goals, and resource commitments of the respective partners.

An early key responsibility of the Project Team is to confirm and refine the program's goals and objectives, eligibility criteria, and program conditions, and develop a full logic model for the program. Developing a business process model for the program may also assist re-engineering

¹ Such authority can lie in a statute, within caselaw, within a court rule, or within a prosecutor's inherent charging authority.

² A prosecutor office case management system can often produce an ad hoc or standard report that identifies, per a defined time period, the offenses committed by all offenders. By filtering on a defendant's name, it can easily identify all individuals who have committed a single offense by an offense type.

existing processes to accommodate it or to develop new ones. Such a model identifies who does what when, what documents or data is necessary for review or is produced, and how information and documents are shared.

6. **Building the Participant Screening Process** - The project team should also identify the processes by which candidates are screened for eligibility including at what point in time such screening is done, by whom it is done, and how the results of such screening are documented and shared. The screening process may have to account for individuals who are either in-custody or out-of-custody at the point screening.
7. **Developing the Restorative Justice Mandates** - If restorative justice elements are to be included in the program, the project team must identify who the providers of each of these elements are, how referrals of participants are made, and by what process progress towards completing such mandates is monitored and reported on. Memorandums of Understanding (MOU's) or contracts should be completed with any entity providing such services.
8. **Developing the Therapeutic Mandates** - If therapeutic elements are included in the program, the project team must also identify who the providers of each of these elements are, how referrals of participants are made, and by what process progress towards completing such mandates is monitored and reported on. Special attention should be given as to how HIPAA protected information is obtained and shared.³ Once again, MOU's or contracts should be completed with any entity providing such services.
9. **Creating the Evaluation Plan** - The project team should work with the research partner to fully complete the logic model for the project, including its goals and objectives, inputs and outputs, and expected outcomes. The project team should also work with the research partner to develop performance measures for the program and a research strategy for how the program's implementation and impacts are going to be evaluated.
10. **Modeling the Program** – The project team should strongly consider modeling the program as part of the planning process and prior to moving to the implementation phase of the project. Modeling involves using real live cases to test the screening process, test the application of the eligibility criteria, estimate the program population, and estimate resource needs (treatment and social services volumes). Results of the modeling should be used to further refine the program and prepare for its eventual implementation.

³ The Health Insurance Portability and Accountability Act of 1996