

Pre-Arrest Diversion for Misdemeanor Offenses

A Pathway to Justice, for All

Civil Citation Network
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Executive Summary

There is a pressing need and an underutilized opportunity for communities to provide effective alternatives to arrest. This involves reconsidering the pathway of entry into the criminal justice system that is currently responsible for 13 million misdemeanor case filings and 10 million jail bookings per year.^{1,2} The current crime control model that has guided justice practices for many decades has contributed to a veritable explosion in the number of adults who have been arrested, processed through jails, and must now live the rest of their lives with a criminal record. This problem is especially concerning for adults who have been arrested only one time for a misdemeanor offense.

Pre-arrest diversion, also known as civil citation, can address these persistent challenges in several ways. True *pre-arrest* programs prevent adults from being drawn into the traditional arrest and prosecutorial process by redirecting them prior to the initiation of a formal criminal arrest. Florida is leading the nation toward this pathway with model legislation that “encourages local communities and public or private educational institutions to implement prearrest diversion programs that afford certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record.”³ Law enforcement leaders have also publicly acknowledged the potential of pre-arrest programs to promote public safety, improve community relations, and maintain individual accountability without imposing a lifelong arrest record.⁴

Four key elements of effective pre-arrest diversion programs:

- 1. Public safety and accountability*
- 2. Avoidance of an arrest record*
- 3. Behavioral health services for early intervention*
- 4. Rigorous research and evaluation*

The *pre-arrest* diversion concept should not be confused with more common *pre-trial* programs because the *pre-trial* model commences after a formal arrest has already been recorded. In *pre-trial* programs, the diversion typically occurs post-plea and is designed to avoid further trial proceedings. These two methods are often synonymously branded as “diversion” programs, but the *pre-arrest* pathway is a new approach focused on minimal involvement in the justice system while the other continues to dispose of cases according to traditional practices which take place *post-arrest* or *pre-trial*.

Pre-arrest diversion is also a viable method for addressing the well-established connection between law enforcement contact and the presence of a mental health condition or substance use disorder.⁵ Model programs are based on an early behavioral health intervention to address underlying conditions that likely contributed to the offense. In comparison to pre-arrest, many post-booking diversion programs, especially those designated for misdemeanor offenses, simply require participants to pay a fine and complete a nominal amount of community service, overlooking potential service needs. Integrating a case management-based, behavioral health component to pre-arrest diversion will help to identify and address factors related to criminal activity. This early intervention promotes treatment engagement and reduces recidivism among adults.

To achieve success, ongoing assessment of these programs is essential because many criminal justice programs lack empirical support to document their effectiveness. Data collection, performance analysis, and rigorous evaluation are critical to ensuring their consistent operation. A detailed assessment is required to guide program refinement and achieve optimal outcomes.

Pre-arrest diversion programs serve as one method to modernize

Pre-arrest diversion is defined as an early intervention and prevention alternative to arrest for low level non-violent offenders including individuals with substance use and/or mental health disorders. These programs provide law enforcement with an alternative to arrest in the form of a referral to a community-based provider which offers assessment, appropriate services (including substance use and mental health when needed), and fulfillment of community service requirements. This approach allows participants to avoid a formal arrest record and the collateral consequences that result from involvement in the criminal justice system.

practices at the front-end of the criminal justice system. These programs promote fairness and equal access to alternatives to incarceration, offer benefits to law enforcement, provide access to services for adults, reduce jail bookings, shorten court dockets, and allow state and local leaders to serve their constituents while concentrating on the best interests of the community. Large-scale adoption of these programs represents an opportunity that should not be missed.

The Problem

Former Florida Supreme Court Chief Justice Gerald Kogan appropriately characterized the current challenge when he noted, “The future consequences of even a minor criminal conviction can change the course of a defendant’s life.”⁶ This statement applies to any arrest, regardless of conviction status. Extensive research has shown that a formal criminal record, involving arrest or conviction, can have adverse effects on many areas of adult life, including college admission decisions,⁷ military enlistment,⁸ forfeiture of licenses and certifications,⁹ educational attainment,¹⁰ family discord,¹¹ and employability.¹² To this last point, policies which introduce barriers to employment are especially problematic given their ability to compromise public safety by adversely affecting one of the most consistent predictors of desistance from crime: stable work.¹³

This issue is further complicated by the immediate accessibility of criminal records on websites, such as Instantcheckmate.com, which virtually guarantee that arrest records enter the public domain and become available to anyone with a computer.¹⁴ Considering approximately 65 million people in the US have a criminal record,¹⁵ and 72% of companies screen potential employees for criminal histories,¹⁶ it comes as no surprise that legislative initiatives have become necessary to mitigate the long-term financial consequences faced by adults who have been arrested. For instance, adult males with arrest records – regardless of charge or conviction status – earn lower salaries and are less likely to own a home compared with others who do not have a similar arrest record.¹⁷

Benefits of Pre-arrest Diversion Programs

Offer an alternative

For participants:

- No arrest record
- No traumatic arrest and jail booking experience
- Early intervention to address behavioral health needs
- An opportunity to responsibly address behavior

For law enforcement:

- A method to apply the law without an arrest
- Reduces impact on jails
- Promotes positive perceptions of police
- An opportunity to hold individuals accountable
- Promotes fairness and equity

For community leaders:

- Serves as a citizen-oriented approach to criminal justice practices
- Crime control and reduction remain the primary goals
- Long-term performance can be monitored and reviewed

It is also important to recognize that the likelihood of having an arrest record is disproportionately higher among racial and ethnic minority groups. A considerable amount of research has been conducted on this topic and the results consistently demonstrate that black youth and their adult peers are much more likely to experience an arrest compared to other racial groups.^{18,19} Naturally, the stark reality of these circumstances is evident in all areas of the criminal justice system.²⁰

Pre-arrest Diversion in Practice

The front end of the criminal justice system currently operates with great efficiency to arrest and charge adults with criminal offenses without paying much attention to the factors contributing to crime. This practice can also potentially impact future opportunities for success among people who are charged for a crime for the first time by attaching a formal criminal record to low-level offenses. Fortunately, the state of Florida has legislation authorizing the use of pre-arrest programs. Statute 901.41 provides the parameters for these programs and specifically states, “An adult who receives a civil citation or similar prearrest diversion program notice shall report for intake as required by the local prearrest diversion program and must be provided appropriate assessment, intervention, education, and behavioral health services by the program.” This is a prime example of support for an initiative that offers an alternative to arrest for adults who are accused of misdemeanor offenses, experience mental health conditions, or may have a substance use disorder. This approach addresses the needs of adults by directing them away from jails and toward behavioral health services designed to reduce the likelihood for future criminal justice contact.

Effective pre-arrest diversion programs involve partnerships between:

- 1. Community leaders*
- 2. Law enforcement officials*
- 3. Behavioral health providers*
- 4. Research and evaluation experts*

These strategies rely on the full participation of law enforcement agencies who are interested in changing the nature of how they approach adults accused of certain types of low-level offenses. After all, police officers are usually the first point-of-contact for those accused of committing a crime and some have publicly expressed their appreciation for alternatives to arrest. In a specific reference to pre-arrest diversion, one officer referred to this option as,

“a unique tool in our community to effectively enforce the law without permanently labeling an individual as a criminal.”²¹ With just a few brief questions, the discretion to utilize a pre-arrest alternative, and the partnership of a local behavioral health provider, officers can easily provide a referral to participate in a program that would 1) prevent an arrest from being recorded, 2) hold the person accountable for their actions, and 3) address potential behavioral health needs which may have contributed to the activity warranting the officer’s presence in the first place.

There are several jurisdictions that have or are currently in the process of developing this type of innovative approach. One of the most studied pre-arrest diversion programs is the Adult Civil Citation program that operated in Florida’s Second Judicial District from 2013 – 2017. A collaborative effort led by the Tallahassee Police Department, Leon County Sheriff’s Office, and DISC Village, Inc., a local community-based behavioral health provider, the program successfully delivered an alternative-to-arrest for adults accused for the first time of low-level offenses. Eligibility criteria included 1) residing in the judicial circuit, 2) no previous arrest, 3) admission of offense, and 4) voluntary agreement to participate in the program. Eligible offenses included petit theft (less than \$50), underage possession of alcohol, trespass, possession of marijuana (less than 20g), house party, providing alcohol to a minor, disorderly conduct, and simple battery/non-domestic assault. Following the issuance of a citation by a law enforcement officer, participants were required to report to DISC Village, Inc. to undergo an initial needs assessment. Guided by the results of the assessment, case managers worked with participants to complete required counseling sessions, substance use treatment programming (if necessary), relevant educational modules, community service, ensuring the payment of restitution (when applicable), and payment of program fees. For successful participants, the law enforcement agency was notified of the outcome and the formal arrest was not filed with the State Attorney’s Office. In contrast, cases involving participants who failed to complete the program requirements were referred to the State Attorney for prosecution of the original charge, resulting in traditional judicial processing that included the documentation of a formal arrest and the possibility of further sanctions associated with the legal process.

Promising results have been generated from a series of evaluations of the Adult Civil Citation program. An initial overview indicated the first 700 participants were equally distributed across gender groups, half identified as black or African American, and those who engaged in the program were 24 years of age, on average.²² This report also illustrated the steady growth in the number of citations issued while demonstrating high successful completion rates. In short, the program was provided to a large group of diverse

participants who responsibly addressed their behavior and were spared from a criminal record due to a first-time misdemeanor offense.

A subsequent assessment of the Adult Civil Citation program highlighted the fact that 84% of all participants successfully completed the requirements and only 9% of those who successfully completed the program were rearrested.²³ Additional work identified key indicators of program success and post-program arrest, with male participants and those who tested positive for drug use presenting greater risk for rearrest compared to female participants and those who did not test positive, respectively.²⁴ Participants with greater behavioral health needs, identified through assessments of potentially problematic conduct and high rates of criminal involvement, were also more likely to come into subsequent contact with the criminal justice system compared to participants who did not display similar needs.²⁵ This evidence shows drug use and behavioral health conditions increase the risk for repeat criminal justice contact among adults who participate in the pre-arrest diversion program, but these factors would not have been identified or addressed in any meaningful way had eligible adults been booked into the local detention facility and prosecuted-as-usual. This information can be used to guide the implementation of additional pre-arrest diversion programs that are focused on reducing the adverse consequences of criminal justice involvement for adults by responding to behavioral health needs.

Pre-arrest diversion programs that contain a behavioral health component are also emerging in other jurisdictions. The State Attorney's Office for the Fifth Judicial Circuit of Florida recently announced the introduction of a civil citation program that will provide adults who have committed non-violent misdemeanor offenses with an opportunity to avoid a formal arrest through participation in a behavioral intervention.²⁶ After an extensive planning period a similar announcement was recently made by the Fourth Judicial Circuit State Attorney's Office.²⁷ Although these programs remain in the early phases of development, they serve as leaders in the larger trend to provide meaningful alternatives to traditional arrest that will significantly benefit participants, law enforcement, and communities.

Conclusion

Pre-arrest diversion programs are a viable alternative to existing criminal justice practices. In a growing number of communities across the country and the State of Florida, agencies have developed these programs and are beginning to realize positive results. The benefits of these programs include using limited criminal justice resources in a more productive manner, providing fair and

equitable alternatives to arrest, holding individuals accountable for their behavior, and delivering behavioral health services to address underlying causes of criminal activity while minimizing the consequences of a formal criminal record.

These diversion programs continue to develop, but they are based on practical approaches that have been operating and proven successful in the juvenile justice system for decades. This approach requires a collaborative effort between law enforcement agencies, the State Attorney's Office, and a local behavioral health service provider. Systematic research and evaluation are required to maximize the effectiveness of these programs.

Although most adult pre-arrest diversion programs are in the earliest stages of implementation, passage of state legislation, positive evaluations, and the expansion of these programs signal the promising future ahead. Law enforcement officers have endorsed the use of alternatives to arrest,²⁸ and diversion programs offer the perfect response to recent calls for innovative efforts to alleviate the impact of justice interventions while reducing jail populations across the country.²⁹ Pre-arrest diversion programs are part of a growing trend to create alternative pathways at the front-end of the criminal justice system and they will reach their full potential with the endorsement of law enforcement officials, legislators, and community leaders.

Notes

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About the Authors

Albert Kopak holds a faculty position at the rank of full professor in the Department of Criminology and Criminal Justice at Western Carolina University. He has been conducting research on the associations between behavioral health and involvement in the criminal justice system for over 10 years, which has generated more than 70 peer-reviewed publications. Most of this work has focused on the need to address the critical role that substance use disorders play in repeat arrests and jail admissions. He is currently focused on improving the criminal justice system through behavioral health-oriented pre-arrest programs. He can be reached at amkopak@wcu.edu

Tom Olk is former Chief Executive Officer of DISC Village, Inc., a comprehensive prevention, intervention and behavioral health treatment agency. He is the founder of the statewide Juvenile Civil Citation program and the Adult Civil Citation program in Florida's Second Judicial District. Mr. Olk has also formed the Civil Citation Network, which is focused on providing alternatives to existing criminal justice practices. He can be reached at Tom.Olk@CivilCitation.Net or 850-264-6684