

Deflection and Pre-Arrest Diversion: Presenting Options for Professionals and Processes

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Developing new programs and initiatives takes time, as the community reviews the need, cost, and potential outcomes of new requests. Then there is the process of change itself. There will be challenges and opportunities and consideration of what is best for the community when seeking potential solutions. There will be differences of perspectives and a need for an objective presentation of data, information and cross-communication.

Programs and initiatives in deflection, including pre-arrest diversion, (DPAD) have been growing leaps and bounds nationally, and internationally. Positive outcomes and results, especially those programs implemented with fidelity, are supported by data and research. DPAD is an option based on a community approach, one that is inclusive and communicative, which strives to collaborate on best practices, new ideas and winning solutions.

As noted in this author's previous article with Dr. Al Kopak on possible barriers and solutions, when starting up or expanding a program¹, there may be potential roadblocks that teams may encounter and need to patiently and persistently work their way through. Some jurisdictions have indicated the following areas to be particularly challenging: presentation of new programs that may be perceived as taking too much time and bearing additional expenses, feeling of no accountability for the offender, records expungement, potential loss of fines and fees to an agency or department and clarifying that an NTA (Notice to Appear) is not the same as a DPAD program. Specifically, an NTA *does* include an arrest record and does not generally address protective factors. However, as stated in the previous article, there are options and potential solutions.

DPAD - An Option for Law Enforcement

While at first it may come across as a youthful offender getting away with a slap on the wrist and lacks accountability, and yet another initiative to learn, many law enforcement agencies have been embracing this option. Without a deflection or pre-arrest option, law enforcement can choose to arrest, cite and release with a promise to appear in court, or release. This added tool for their toolbelt is one that once the results are seen, speak for themselves.

¹ Duncan, P, Kopak, Dr A. Barriers, Challenges, Solutions and Outcomes to Implementation of Pre-Arrest Diversion (2022) https://civilcitation.com/uploads/resources/Barriers-Solutions_AK-pd3.pdf

Besides concern for lack of accountability, law enforcement administrators have other concerns such as time and cost for officer training, lack of staffing and budgetary constraints. Deflection and pre-arrest diversion saves officer time, getting them back on the street in less time than traditional arrest processing. This time-savings assists in addressing staffing and budgetary issues. Training can take place at roll calls and other training opportunity times such as academy and via written documents. DPAD provides accountability, and with reduced recidivism, will provide for less officer contacts with repeat offenders. Partnerships work to leverage resources, and communication with partners and stakeholders is enhanced.

As Pre-Arrest (or Pre-Charge) Diversion is a law enforcement-initiated program, they are instrumental in the development of criteria eligibility, MOU's, policies and procedures along with their partners. They may or may not administer the program; DPAD programs are often managed by state attorneys, community partners and other governmental agencies, such as a state youth agency or clerk of the courts. Some agencies train all officers; some have designated units and some cross train with other DPAD partners. Some law enforcement agencies work with receiving centers, such as the juvenile assessment centers (JAC) in Florida. Each community determines the model and how it can best work for them in preventing arrests, maintaining public safety, saving taxpayer dollars and reducing recidivism. Law enforcement can help create the best DPAD program for their communities!

DPAD - An Option for Schools

To help reduce the school to prison pipeline that continues to be a prevalent issue, educational professionals can partner with behavioral health specialists, social workers, law enforcement and others to provide prevention, wraparound services, and DPAD to those youth who have risk factors. Instead of criminalizing behavior, this option allows for things to be handled in a way that teaches skills and provides accountability, while maintaining their critical connection to school and their education.

While there has been a decrease in the use of School Resource Officers (SRO's) across the U.S., the opportunity remains to deflect youth away from the criminal justice system. Education and graduation rates are critical to a youth's future success. Engaging youth with tools for success, conducting risks and needs assessments and redirection to appropriate social skills and behaviors can all minimize risky behaviors leading to criminal actions. Schools are where youth spend a big portion of their day. Schools can make an important contribution in this area, are a vital part of the community and should be a partner in this collaborative community option.

D/PAD - An Option for Records Expungement

Expungement of records is an important tool for individuals to use once meeting the requirements and conditions to enable removal of offenses from their criminal history. Expungement is typically available for juveniles and adults in most court jurisdictions. The process requires understanding of timelines, legal considerations, and the inherent cost. Therein lies an opportunity to improve the process for those who qualify, especially for those who are facing numerous barriers.²

Deflection, including pre-arrest diversion, is a tool for lower level and non-violent offenses that allows for accountability and public safety without an arrest record, precluding the need for records expungement. This prevention-and early-intervention model also connects individuals to resources, especially behavioral health related, as needed. The successes of such initiatives and programs are well documented and include reduced recidivism and short and long-term cost savings.³

Many individuals in justice and behavioral health systems often face socio-economic challenges and can't afford the cost of expungement, nor an attorney to walk them through the process. Other possible barriers include daycare and transportation issues, or not being able to get time off work or school to go to court. Yet others may not remember, comprehend or know about expungement.

Another concern is that while the expungement impacts court related documents, the arrest history remains in police records. One jurisdiction is under scrutiny for sharing arrest records of those who had gone through the expungement process.⁴ This is a reality that is concerning, especially for those who go through the costly and time-consuming process for naught. It also lends itself to less credibility in the system, which in turn creates additional issues.

While there is a place for the expungement process, it is evident that for many, a DPAD program has too many benefits, including substantial time and cost savings, for it not to be

² Coleman, A. *Expunging Juvenile Records: Misconceptions, Collateral Consequences, and Emerging Practices*. (2020). <https://ojdp.ojp.gov/publications/expunging-juvenile-records.pdf>

³ Duncan, P. (2022) *Benefits of Deflection (Pre-Arrest Diversion) for Criminal Justice and Communities*. <https://civilcitation.com//uploads/resources/Benefits-of-Deflection-Final-7.pdf>

⁴ Marshall Project. (2023) https://theappeal.org/new-jersey-state-police-criminal-record-expungement/?utm_source=TMP-Newsletter&utm_campaign=65493e0578-EMAIL_CAMPAIN_2023_10_25_11_03&utm_medium=email&utm_term=0_5e02cdad9d-65493e0578-%5B%5D

included in a justice continuum. Deflection and pre-arrest diversion programs fill a necessary void to solve things at the lowest level while helping prevent future like-behaviors.

Considerations for Offsetting Potential Program Fines and Fees Loss

From a business perspective, the loss of revenue has impacts that must be mitigated. Many times, budgets are lean, and cuts come at inopportune times. There may also be staffing issues. Fines and fees help support operations. These are real items of consideration for anyone managing a budget.

A good manager also knows that by looking at data, program numbers, personal observation and regular communication with direct reports, some monies, duties and staff positions can often be reallocated. A training budget and plan should be a standing part of any organization where training can be incorporated in. One efficient way to offset training costs is by using short (10-20 minute) videos at roll calls. Sliding scale client fees for the DPAD program can offset some of the costs, and the money saved from not processing traditionally offsets the loss of fines and fees.

Ongoing and new funding streams are a strong possibility and leveraging resources with partners such as applying for grants together, doling out specific roles and responsibilities and co-locating office space are all ideas to consider. Remember to consider long-term and big picture savings such as future jail and prison expenses, health issues and mortality rates, along with the short-term savings.

Another idea that has worked for those communities who focus on collaboration is finding efficient ways to do the work, thereby reducing workloads and time in other areas. For example, law enforcement officers can get back in the field much more quickly with a DPAD program than when processing an arrest. This often also has a positive impact on overcrowded and short-staffed jail systems and backlogged court dockets from those who were deflected from the system.

Reduce duplication of paperwork and streamline processes. Find ways to absorb the work, and efficiencies to “work smarter” to make things happen. Sometimes absorbing part or the entire program into existing operations is a good fit. For example, in Florida, many juvenile jurisdictions use a Juvenile Assessment Center (JAC) to process a youth for a civil citation (PAD)

program. The JAC is also the entry for their booking centers, and program operations have merged well. ⁵ The officers are typically back out in the field within 5 minutes.

DPAD- An Option for Notice to Appear Processes

Notice to Appear (NTA's) are not the same concept as a pre-arrest program. NTA's are used in lieu of arrest. The individual gets an arrest on his record and is directed to report to court and/or pay a fine. They are typically not connected to protective factors and resources which could address risk factors for future criminality.

This is where deflection and pre-arrest programs stand apart, with better outcomes for individuals and communities. Instead of getting involved in the justice system, the individual is deflected away to a program that holds them accountable and reduces future criminal behaviors, thereby increasing public safety. Simultaneously, assessments, referrals to treatment, and other resources are provided as part of the program to address protective factors. This approach, without an arrest record, promotes health, wellness, and more opportunities for overall success.

In Closing

Deflection and pre-arrest diversion provides options for professionals in the field while handling activities at the lowest level in their communities. DPAD provides options for design, processes, procedures, shifting and leveraging of resources, and data collection and analyzation that work to improve positive outcomes for all. These options produce cost savings to the individual, family and community.

Understanding the desire for public safety, as mentioned earlier, recidivism in DPAD programs is significantly lower than traditional programs. This makes communities safer, while building relationships and increasing understanding. For example, Seattle's LEAD program data provides similar outcomes validating what other jurisdictions are reporting. ⁶ There is accountability, whether through educational classes, community service, written apologies, treatment if

⁵ Tallahassee Police Department General Order: Juvenile Civil Citation Program (2023). <https://www.talgov.com/uploads/public/documents/tpd/policies/go-71.pdf>

⁶ Collins, S., et al. (2017). *Seattle's Law Enforcement Assisted Diversion (LEAD): Program Effects on Recidivism Outcomes*. https://56ec6537-6189-4c37-a275-02c6ee23efe0.filesusr.com/ugd/6f124f_f4eed992eaff402f88ddb4a649a9f5e6.pdf

needed, a restorative justice component or other consequences as determined by the program design.

Of the many benefits of DPAD, changing and saving lives is at the top of the list. By individualizing plans to hold individuals accountable while minimizing risk factors that contribute to future criminalization, communities can re-direct individuals to appropriate behaviors with positive outcomes without an arrest record.

Once an individual has successfully completed the deflection or pre-arrest program, they are much more able to have a chance for success including housing, employment and education. One Civil Citation (pre-arrest model) graduate, after making a mistake as a teenager, is now a successful attorney working for an appeals court, with her education having been paid for. Not having an arrest record enabled her to be a productive citizen with great success! Thankfully, this did not end up being a missed opportunity. Let these successes ring true in *your* community!