

From Taxi to Takeoff

Planning and Implementing Early
Diversion in Los Angeles and Beyond

by Oceana R. Gilliam, Chidinma Ume, Dr. Darcy Hauslik,
Brett Taylor, and Lenore Lebron

Authors

Oceana R. Gilliam, MPP

Chidinma Ume, JD

Darcy Hauslik, PhD

Brett Taylor, JD

Lenore Lebron, MA

Acknowledgements

This report was supported by funding through the Microsoft Justice Reform Initiative and the MacArthur Safety and Justice Challenge.

At the Center for Justice Innovation, we would like to express our gratitude to Matthew Watkins, Julian Adler, and Katie Crank for their edits to this report, and to Samiha Meah, Emma Dayton, and our communications team for their visual design assistance.

We also wish to thank our Los Angeles County partners. The Prefiling and Rapid Diversion Programs were made possible by the collaboration of many organizations with a shared vision to advance alternatives to incarceration in Los Angeles County and nationally.

We express our gratitude to the Los Angeles County Alternatives to Incarceration Office for championing these initiatives as well as the many partners who spent countless hours building and sustaining these programs, including:

- Office of the Los Angeles County Public Defender
- Office of the Los Angeles County Alternate Public Defender
- Los Angeles County District Attorney's Office
- Los Angeles City Attorney's Office
- Santa Monica City Attorney's Office
- Los Angeles County Department of Mental Health
- Los Angeles County Sheriff's Department
- Los Angeles Police Department
- Santa Monica Police Department
- SSG/Project180
- Tarzana Treatment Centers
- HealthRIGHT 360
- Exodus Recovery Inc.
- Amity Foundation

For More Information

For correspondence, contact the Center for Justice Innovation at info@innovatingjustice.org.

November 2022

Center for Justice Innovation

520 Eighth Avenue

New York, NY 10018

p. 646.386.3100

f. 212.397.0985

innovatingjustice.org

From Taxi to Takeoff

**Planning and Implementing Early
Diversion in Los Angeles and Beyond**

**by Oceana R. Gilliam, Chidinma Ume, Darcy Hauslik, Brett
Taylor, and Lenore Lebron**

Background	1
I. About Los Angeles County’s Early Alternative to Incarceration Programs	2
The Prefiling Diversion Program	2
The Rapid Diversion Program	3
Impact of Early Diversion Efforts in Los Angeles	3
II. Summary of Recommendations	4
III. Recommendations for Creating Equitable Early Diversion Programs	5
Tip #1: Create infrastructure to effectuate diversion at the early stages of a case.	5
Tip #2: When determining eligibility criteria, prioritize the client profile over charges.	7
Tip #3: Even within the same municipality, each diversion site may operate differently. and have a distinct culture	8
Tip #4: Seek out cross-sector collaborations and expertise in the program planning phase.	10
IV. Recommendations on using data to promote equitable practices for diversion.	12
Tip #5: Use relevant and detailed data at the planning stage to ensure equity and effectiveness of programming.	12
Tip #6: Review program performance data on an ongoing basis to ensure the right people are being served.	12
Tip #7: Make data planning a team effort.	13
Tip #8: Clarify roles and responsibilities around data management.	14
VI. Conclusion	14
Endnotes	16



Photo credit: Alberto Lopez.

Background

The last several years have ushered in a seismic shift to Los Angeles County’s criminal justice landscape. At the height of the COVID-19 pandemic, LA, which has the country’s largest county jail population, achieved an unprecedented 25 percent decline in its jail population—the largest in the nation. While the jail population decreased, the percentage of people of color and people with mental health needs behind bars in LA *increased*.¹ This changing composition of the jail population mirrored a national trend.² It also illustrated a key lesson: without a parallel effort to promote racial equity and provide safe community-based care for those who need it, reducing jail populations may actually worsen disparities. To address these dual objectives, LA County’s Board of Supervisors sought to enhance programs to support the most vulnerable people in its criminal legal system. The County deepened investment in its work to build a system of alternatives to incarceration³, announcing a vision of “*Care First, Jails Last*.” In September 2020, the Los Angeles County Board of Supervisors created the Alternatives to Incarceration Office to pursue this goal and to expand the landscape of supportive social services. In the Fall of 2022, LA County plans to further its commitment by creating the inaugural Justice, Care, and Opportunities Department (JCOD), bringing all justice-related services under one roof.⁴

II. About Los Angeles County's Early Alternative to Incarceration Programs

With support from the Microsoft Justice Reform Initiative (JRI), the Center for Justice Innovation worked with LA County to scale up diversion at the early stages of criminal cases. The Center helped to launch two diversion programs in Los Angeles. In 2019, working with the Los Angeles Public Defender's Office and the Los Angeles City Attorney's Office, the Center helped launch the Rapid Diversion Program. In 2021, the Center worked with the County's Alternatives to Incarceration Office (hereinafter, JCOD-ATI) to start the Prefiling Diversion Program.

While both programs are briefly described and referenced herein, this report is intended to highlight broader takeaways for jurisdictions seeking to increase community-based care alongside criminal justice reform.

The Prefiling Diversion Program

The purpose of the Prefiling Diversion Program (PFD) is to prevent charges from being filed on people with underlying social service needs after an arrest for eligible charges. To accomplish this, PFD has placed social service providers in three County law enforcement stations in LA county: the Los Angeles Police Department - 77th Division, Santa Monica Police Department, and the Lancaster Sheriff's Station.

At the police station, people arrested on eligible charges are offered mental health, housing, and substance use disorder treatment and services where safe and appropriate, often with transportation to their destinations. By accepting these voluntary services, participants agree to adhere to treatment plans and receive case management for the mandated program length (90 days for misdemeanor charges, 180 days for felonies). During the engagement period, participants receive therapeutic services, behavioral health support, substance use and addiction services, and meet regularly with their case manager. The program also provides participants with housing as well as workforce, education, medical and other social service referrals. People who successfully complete the program avoid having their cases filed, and may, if they choose, continue to receive services even after graduation. For those who do not successfully complete the program, there is no penalty for having attempted the diversion option; instead, their cases proceed down the normal prosecutorial route.

Flowchart of a Successful Program Completion



The Rapid Diversion Program

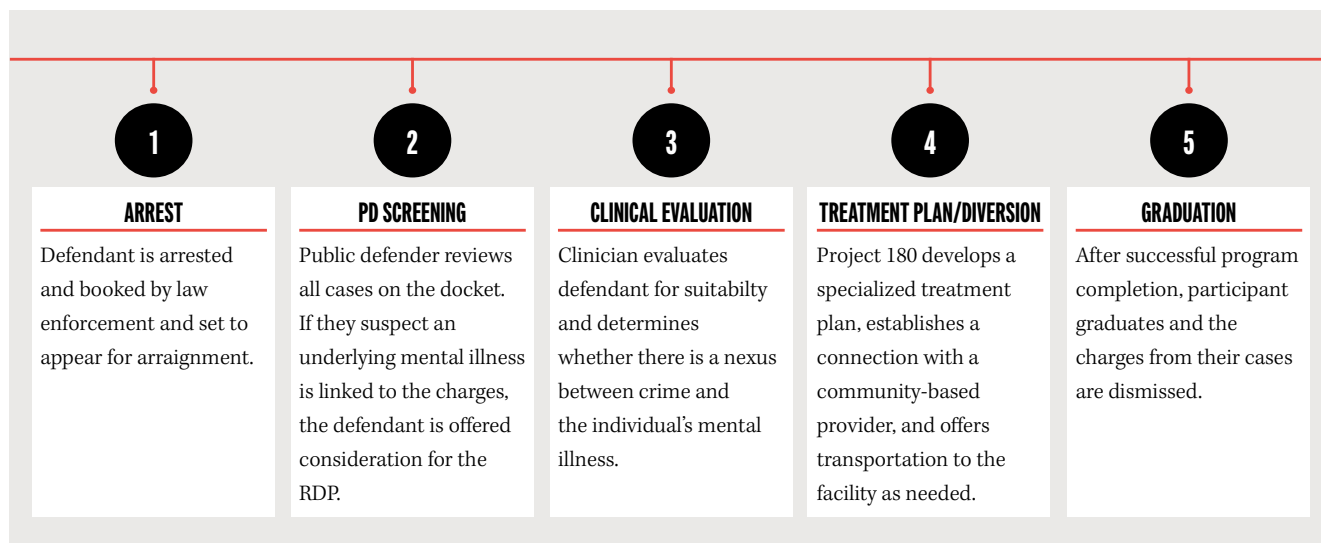
With support from the John D. and Catherine T. MacArthur Foundation’s Safety and Justice Challenge, LA County launched the Rapid Diversion Program in June 2019. RDP was created as a vehicle to effectuate the diversion opportunities that California’s mental health diversion statute⁵ affords to litigants. Rapid Diversion connects people to safe and appropriate mental health services after their cases are filed and aims to do so at the early stages of a criminal case. Participants are identified at arraignment or at any point prior to trial by their defense attorney—and in some instances by the prosecutor. The participants are then screened and linked to services by an in-court clinical team, and thereafter approved for diversion by both the prosecutor and the court. Given the statutory basis for RDP, its eligibility criteria are established by state law: candidates must be believed to have a mental health diagnosis under the Diagnostic and Statistical Manual that contributed to the charged offense.⁶ Due to the legal authority for RDP, it has longer mandates—requiring participants to stay in treatment for approximately one year on misdemeanor cases and two years on felony cases—in order to have their cases dismissed. RDP’s treatment

length also differs from Prefiling Diversion because RDP participants tend to have more serious offenses and more acute mental health needs. Like PFD, however, RDP participation is voluntary. RDP clients work with case managers who conduct regular, often weekly, check-ins and have their progress updates provided to the court and attorneys at least every three months. The Center’s technical assistance team helped the County design and expand the program to promote greater access to services in LA County. In June 2019, RDP began in just one courthouse, and the program now operates in six courthouses around the county.⁷

Impact of Early Diversion Efforts in Los Angeles

These efforts created more opportunities for people to receive care instead of incarceration for their mental health, housing, and/or substance disorder needs at their earliest points of contact with the system. For both efforts, LA County partnered with local treatment and service providers. The County projected that both diversion programs could meaningfully impact the jail population and reduce racial disparities. Grounded in lessons learned from the ways in which the pandemic reduced jail

Flowchart of the Rapid Diversion Program Process



Source: *Interrupting The Cycle Of Incarceration for Individuals with Mental Illness: An Analysis of Los Angeles County’s Rapid Diversion Program*

populations but *increased* disparities, the Center for Justice Innovation partnered with the County to center racial equity during the planning, implementation, and expansion of these programs.

Inspired by the learnings from the Prefiling and Rapid Diversion Programs—and grounded in the Center’s long history of launching and operating diversion programs⁸—this document offers concrete insights to inform the development of equitable diversion programming around the country. For practitioners aiming to create diversion programs, this document offers advice on designing early alternatives to incarceration, leveraging data to identify and connect with target populations, and working towards racially equitable outcomes.



Rapid Diversion Graduation with the MacArthur Foundation Safety and Justice Challenge Team February 2020.

III.

Summary of Recommendations

Recommendations for creating equitable early diversion programs

Tip #1

Create infrastructure to effectuate diversion at the early stages of a case.

Tip #2

When determining eligibility criteria, prioritize the client profile over charges.

Tip #3

Even within the same municipality, each diversion site may operate differently and have a distinct culture.

Tip #4

Seek out cross-sector collaborations and expertise in the program planning phase.

Recommendations for using data to promote equitable practices for diversion

Tip #5

Use relevant and detailed data at the planning stage to ensure equity and effectiveness of programming.

Tip #6

Review program performance data on an ongoing basis to ensure the right people are being served.

Tip #7

Make data planning a team effort.

Tip #8

Clarify roles and responsibilities around data management.

IV.

Recommendations for Creating Equitable Early Diversion Programs

Tip #1 Create infrastructure to effectuate diversion at the early stages of a case.

Diversion efforts can safely reduce incarceration while increasing the collaboration between system actors and the community. The opportunity to provide community-based care to people with unmet social service needs can happen at “early” stages that far precede a criminal conviction—any time before a criminal case is adjudicated, and indeed, even before criminal charges are filed. For example, LA’s Prefiling and Rapid Diversion Programs utilize police stations and courts as potential off-ramps from the traditional legal system path to social services. Both programs pursue a common objective: to expand early interventions for people with unmet needs rather than continued detention or release without any supportive resources. To accomplish this, LA co-located behavioral health care professionals in the jails and courthouse sites. For Prefiling Diversion, this meant physically converting unused breathalyzer rooms and offices into spaces for care by placing service navigators in the station. The Rapid Diversion Program embedded pairs of service navigators and clinicians in courthouses. Four roles in particular can improve the diversion infrastructure:

- **Mental Health Clinician**
screens candidates for behavioral health conditions and appropriate acuity level.⁹
- **Service Navigator**
identifies healthcare and social service needs,

finds local programs and providers, and connects clients to these organizations and services;

- **Case Manager**
supports clients one-on-one. Often the main point of contact for participants, case managers provide referrals for continuing needs (e.g. education, employment resources, benefits, and housing) and help clients stay engaged in the program. Case managers may be the first to learn whether the program is not meeting participants’ needs, and can help connect clients to new programs that may be a better fit; and
- **Driver**
takes clients to their agreed upon destinations, oftentimes directly from the police station or courthouse to appointments, referred services, and future court dates. This is especially important for jurisdictions where transportation equity is a challenge, where there is a lack of reliable public transportation, and where programs are in hard-to-access parts of the community. Although the driver’s primary role is to transport program participants, the driver frequently interacts with participants and serves as an additional level of support.

Building these roles into any diversion program—and co-locating these professionals at the booking station or courthouse where possible—can help ensure that people with specialized knowledge help connect participants to resources in a coordinated way. Further, if providers have lived experience with similar or translatable needs as the people being served, they are even more credible messengers about the impact of services. Where funding resources are limited, some roles may be consolidated into one, such as combining the service navigator or driver roles into the case manager’s function.

Without these roles, lawyers and law enforcement representatives would have less support in identifying behavioral health needs, finding services, and accessing resources. Lacking this staff, court actors may be left in an untenable position, having to navigate alternatives and connect people to available providers without the requisite time or specialization to do so.

The earlier diversion occurs, however, the more resistance program planners may encounter. Releasing people to the care of service providers directly from jail is a new concept to some justice system actors, who may be leery of alternatives to jail, especially before a criminal investigation unfolds. Additionally, making diversion programs voluntary may engender skepticism about whether people will willingly accept housing or treatment services in lieu of simply being released without additional obligations.¹⁰ There may also be concerns that releasing people to community-based care immediately from police stations, without imposing a conviction or the threat of incarceration as legal leverage to incentivize program compliance, will do little to address the “revolving door” of recidivism.¹¹ This may challenge law enforcement and the community’s confidence in the criminal legal system to address these issues.

The Center assisted LA in crafting responses to similar feedback, drawing upon lessons learned from a long history of launching diversion initiatives.¹² To encourage a voluntary approach, the Center reminded system actors that people with unmet needs would still benefit from services regardless of the case outcomes, and that engaging with the program meant that participants were committing to their own care, a significant change from the status quo. Second, the Center worked with LA to manage expectations with program stakeholders, such as law enforcement and prosecutorial offices; we acknowledged that, since the programs seek to reach a population of people with potentially

long-term challenges, some participants might not follow through with the program and in those instances, the program partners agreed to revert to the traditional prosecution route. Being candid in this way—and having a backup plan—helped to secure buy-in from integral program partners. Additionally, service providers reported that through engagement and communication—notably, sharing success stories—some officers who were initially skeptical about the program became its most vocal champions.

One of those success stories, PFD graduate Russ Vandeverdonk, remarked at the graduation, “I lost my self-control, [I] was drunk as all can be, and somehow the [Santa Monica police] officer got me into a safe haven and into the Exodus [PFD] program, and it’s great. It is a good wake-up.” He encouraged others struggling with addiction to try to seek help, even if it hadn’t worked in the past. While repurposing space in police stations to connect people to service might seem minor, it can have a significant impact on the individuals that are helped by early diversion, and also play a role in shifting the status quo of the station’s culture.

Proponents of court-based programming may also encounter resistance from some court actors who believe that conducting clinical screenings at arraignments will be too cumbersome. Program planners can respond in two ways. First, for immediate assessments, program staff can utilize the time litigants spent awaiting court appearances to conduct mental health screenings, showing that diversion can occur at this stage of the proceedings without affecting operations. Second, program staff can conduct some of the lengthier eligibility determinations offline (or between court dates), thereby avoiding concerns about the diversion efforts slowing down court days. LA utilized both of these methods for Rapid Diversion, to heed and respond to concerns raised about court efficiency.

For jurisdictions where a collaborative diversion at the pre-plea stages of a case is a new practice, actively building trust is essential. Through regular and candid communication, system partners (prosecutors, defenders, mental health and service navigation professionals) will want to meet regularly to discuss program performance, review data, and flag known or potential challenges (e.g., candidate withdraws from a program or picks up a new



Profiling Diversion Program Graduation at the Santa Monica City Attorney’s Office January 2022. Photo credit: Mayra Beltran Vasquez/ Los Angeles County.

arrest, or forecasting staffing needs). Additionally, by instituting a regular cadence of case manager check-ins and standardized progress reporting to the courts, system partners can foster communication mechanisms that ease the perceived risk of diverting people who are at the pre-plea stage. For the Rapid Diversion Program, another key component of increasing confidence was an agreement that the service provider would report clinically significant non-compliance and/or a participant leaving treatment before completion within 48-72 business hours. To help with swift communication, LA even designated point people in each courthouse to check in with RDP partners—across the various roles—proactively, and resolve issues as they arose.

Tip #2 When determining eligibility criteria, prioritize the client profile over charges

Jurisdictions can benefit from focusing on client needs, rather than a comprehensive charge eligibility list, when defining program parameters. Both Prefiling and Rapid Diversion rely on partnerships among the court actors—that is, potential cases need to be acceptable to all partners, including law enforcement, prosecutors, and, in the case of RDP, public defenders as well.¹³ Inevitably, there will be charges or situations that are excluded as inappropriate by one or more partners. But we urge jurisdictions to try to use data to project the impact of such exclusions and aim for a narrow *ineligibility* list (rather than attempting to enumerate the universe of what is eligible). We recommend this from both a practical and programmatic perspective: beginning with as much leeway as possible will generate the best outcomes in terms of program adoption and utility. For example, at the 77th Street Police Station, the PFD program’s criteria was based on an enumerated list of eligible charges. If a candidate’s charge did not appear on that list, they were not eligible for the program. While we cannot know what participation rate would have been under a different scenario, weekly data shows that, out of the close to 200 people screened for the PFD program at the 77th Police Station over a roughly nine-month period, only a small fraction qualified for the program. Program

planners should be advised that finite charge lists, coupled with exclusionary criteria, may restrict a program’s ability to reach suitable participants.

While some exclusions are to be expected, a more holistic approach to diversion planning would place potential participant needs at the forefront of eligibility decisions. We urge planners to avoid the temptation to exclude entire categories of charges without first engaging in a deep dive into what these charges might look like in practice and how such exclusions might hinder the program from accepting the participants that it is aiming to serve. We recommend an iterative and collaborative approach that brings all program partners together first at the planning phase, but also regularly after the program has launched. In the recurring meetings, partner agencies would ideally discuss how the program is functioning overall and also review cases to check in on participants’ progress. Reviewing individuals’ progress on a recurring basis allows program planners the opportunity to assess if law enforcement and provider staff are following the program protocols as well as if and when to give exceptions to those with ineligible charges.

PREFILING DIVERSION PROGRAM ELIGIBILITY

Individuals who experience behavioral health disorders, substance use needs, and/or are unhoused are eligible for the program, however, there are additional exclusionary criteria. Each individual who was considered for the PFD program was screened for the following exclusions:

- Open felony warrants
- Arson convictions
- Arrest with gun (weapon)
- Conviction or history of violent offense in the last five years
- Registered sex offense

Note: Although the PFD program has standard screening criteria for all three PFD sites that exclude serious violent or nonviolent crimes, such as DUIs and domestic violence, some sites developed additional restrictions for participation.

When crafting exclusions, partners should begin with a systematic review of the list of charges covered by each proposed “ineligible” category; the results can be illuminating. For example, many diversion programs seek to exclude sex offenses and domestic violence charges. While these exclusions might seem like common sense, the actual charges that fall under these umbrellas can be more complicated. In some jurisdictions, sex offenses may include a variety of acts that might stem from being unhoused and not afforded privacy to do daily tasks (e.g. urinating in public, indecent exposure). As both Los Angeles programs aim to serve the unhoused population—as would be the case in other jurisdictions with appreciable housing instability—broadly omitting sex offenses might interfere with this mission. A more tailored list of ineligible sex crimes, namely those that the program is not well equipped to intervene in, would be more appropriate. Similarly, many types of disputes fall under the category of domestic violence; while stakeholders might seek other, more tailored diversion programs for intimate partner violence, in California the category of domestic violence also includes a variety of altercations between any two people who are related in some way. Program planners will do well to consider whether there are types of DV conduct that would still allow for services, especially when motivated by underlying service needs. Conversely, for the types of conduct for which more protective measures would ideally be sought—e.g. protective order and behavior management programs—partners may rightfully agree to exclude common charges relating to such conduct. Substance abuse disorders can also unfortunately lead to deep familial issues, and any program seeking to address substance abuse would need appropriate leeway to intervene in related charges. The same cautions apply to other criteria for eligibility, including an individual’s criminal history; for example, the length of time since the offense should be considered in addition to the crime’s severity. Even serious crimes, if committed years—or even decades—ago, may have little bearing on who a person is today. In the end, reasoned discussion between stakeholders should yield a narrow, thoughtful list of truly ineligible charges.

Even with careful consideration, in the cases of ineligible charges or ineligible histories, it is more productive to the cause of diversion to consider framing these as *presumptive* rather than automatic exclusions so partners can still consider the cases for candidates who have needs that the program is designed to address. Exclusionary rules that are too broad might screen out individuals who would otherwise be successful participants. Within PFD, a handful of participants who, based on formal criteria, should have been excluded were mistakenly admitted to programming. Stakeholders agreed that as it was not the fault of the participants, they should be allowed to continue, and they would honor the outcome of diversion. In at least one site, after multiple “ineligible” participants successfully completed programming, the site chose to remove the related exclusions and expand eligibility moving forward. Setting the expectation that partners will pay careful attention to client profiles—and remain open to admitting people with the very needs the program is designed to serve—can help inform eligibility on an ongoing basis and refine the program’s effectiveness.

Tip #3 **Even within the same municipality, each diversion site may operate differently and have a distinct culture.**

It is important to develop a program model that can be adaptable to a local context. If you plan to launch your program in multiple locations—such as different courthouses, law enforcement stations, or even different cities within the same county—there will inevitably be some differences in how the program operates at each site. Each location will likely have a different set of court actors making decisions locally, or different trends (e.g. concentrations of certain types of charges that affect program volume) and distinct operations. While the program’s model, goals, and values should be consistent enough to create a common framework for providing services to the intended population, you should also anticipate that local differences will mean that each site’s specific practices vary. We explore some common examples of this below.

Varied Decision-Making

Diversion programs that prioritize collaboration between partners may see some variation at each site where a single jurisdiction includes different—or multiple—prosecuting and law enforcement agencies. Because each agency must agree on the program design and processes, what works for one branch of the same office may not work at another. For instance, in some areas of Los Angeles, a different law enforcement agency operates at each of the three Prefiling Diversion sites, each with their own leadership structures and preferences for how the ground operations could work. Similarly, three different prosecutor offices were involved with the partners, so the Center worked with LA JCOD-ATI to establish consistent agreements across the three offices. While most of the exclusionary criteria remained consistent as a baseline, there were some nuances to navigate. For instance, the Prefiling Program sought to make most prior convictions older than ten years allowable convictions. At least one office, however, agreed to shorten the “look back” period to five years, meaning only ineligible offenses from the last five years would disqualify participants, so that more candidates could be deemed eligible. After months of studying program outcomes, the Santa Monica site eliminated this “look back” period entirely on its misdemeanor cases, so that anyone with prior convictions was presumptively eligible for Prefiling Diversion. Similarly, each courthouse may also introduce variations.

For court-based diversion, program planners will want to assess exactly how diversion cases will flow through each courthouse. A key question is whether these cases will be handled in a single courtroom or across many. Getting a court to agree to hear all diversion cases in a single, centralized courtroom—instead of across various courtrooms—may increase the referral rate to the program because of the ease of tracking cases and the potential for a dedicated attorney to handle them. However, some courts may not agree to this, or may deem it unfeasible due to resources or court docket constraints. In these instances, we recommend that each partner organization designate a coordinator for the diversion program. The coordinator would ideally track all cases, be immediately available for court

appearances if needed, communicate proactively with other program partners, and respond to issues that may arise (e.g., providing necessary paperwork, sharing court updates, reviewing referrals, and shepherding decision-making on behalf of their office). LA’s Rapid Diversion is an example of adapting to local practices across the six active sites—some courthouses funnel all RDP cases to the arraignment court, some to a dedicated court, and others across multiple courtrooms. Program partners in each site meet regularly to discuss operations and address any persistent issues with leadership for coordination. Additionally, some agencies have a centralized point of contact, where others have dedicated attorneys in each courthouse.

For any early diversion program, those launching it must assess the needs of each site and conduct walkthroughs and test runs to determine the nuances that can effectuate cohesive local operations. Adjusting to the needs of local courthouses—and specifically, visiting them and planning with the site-based partners—engenders the trust and buy-in that can help usher in a sustainable change in local practice.

Low Numbers

Due to the COVID-19 pandemic, some jurisdictions may have seen reduced jail admissions, which may affect both the volume and the population of people entering the jail. In some locales, there may be fewer people being detained on lower-level charges, which may affect how you design your program or allocate resources. Additionally, sudden and unforeseen changes in circumstances may impact people choosing to accept diversion. The Los Angeles Superior Court enacted a bail schedule during the COVID-19 pandemic that presumptively released many people who would have previously been detained¹⁴. Some eligible participants declined services and explicitly stated that they would be released and rejected the diversion offer. Changes in jail admissions and bail policies, while difficult to forecast, may contribute to the volume of diversion acceptances, and we would recommend piloting new initiatives on a smaller scale to track this impact with greater certainty before expanding to additional sites.

While creating a diversion program that can link people to services 24/7 may fill helpful gaps in existing program connections, it may not be the best use of resources to embed a full line of staff at the diversion site if there is a low volume of candidates. However, some sites may be busier than others and need increased coverage. LA's Prefiling Diversion Program addressed this very issue with a pivot. While the program was originally designed to be in operation 24/7, sites adjusted the work schedule of navigators to better accommodate arrest flows at particular police stations. For example, in the 77th Division, a resource navigator shifted from being on-site 24/7 to a part-time presence. To fill the remaining shifts, the site integrated "on call" navigators to commute from their office nearby to the jail to assess candidates when they were identified at the jail. To determine appropriate scheduling shifts, project partners had to review arrest data and discuss the staffing and booking trends at each police station to identify the best hours for alternatives to on-site coverage.

Physical Space/Facilities Considerations

As rudimentary as it may seem, another difference between site operations may be driven by physical space. While the flow of a program may encompass the same steps across sites, carrying out these steps optimally may be affected by where key partners are positioned. For Prefiling Diversion, social service providers sat in the areas of the police station that were available and which comported with safety considerations. In one station, the service provider staff sat in close proximity to the booking location. This allowed for officers to quickly and easily flag diversion candidates for the provider, and also served as a visual reminder that staff were available to provide linkage for people who had appropriate needs. This helped with increasing communication and coordination between police and provider staff, who had to work very closely to identify and screen program candidates. At the other two sites, provider staff were located in offices outside of the main booking area. Providers were less able to determine the volume of potential candidates or even remain

visible to individuals who might be amenable to discussing their service needs. We recommend that, if possible, service linkage staff sit as close as possible to where candidates will be. If that is not possible, program planners should establish inboxes for providers to check for referrals regularly.

Regardless of the physical space set-up, you will want to do a back-end review of who is entering the space to determine if any eligible people were missed. This kind of review was especially helpful with the Prefiling Diversion Program's Santa Monica site. The Santa Monica City Attorney's Office and Police Department regularly reviewed all new arrests to determine if any eligible cases slipped through the proverbial cracks and were not referred to the service providers. They conducted additional trainings on program protocols to ensure requisite referrals were being made from officers to service providers and that the providers were being notified of new candidates in a timely fashion.

Tip #4 Seek out cross-sector collaborations and expertise in the program planning phase.

In addition to leveraging the expertise of local justice agencies, the diversion programs can also call upon the insights of diverse professionals in the planning phase. While court actors bring deep system knowledge, program planners can create a more holistic program with the perspectives of a myriad of backgrounds, such as those in:

- Social services
- Business and management
- Applied data and data visualization
- Data systems development
- Mental health/substance use disorder
- Community engagement
- Nonprofit capacity-building: contracting and data collection.

The Prefiling and Rapid Diversion are examples of this broader collaboration. Once the program models were conceived, having non-attorneys examine them from different perspectives improved their efficacy. For example, meeting with local service providers



Los Angeles County ATI Lead Provider workshop held at Exodus recovery Inc. September 2021.

who had long standing experience in working with the people the diversion programs were meant to serve helped with developing program methods and defining what a successful program looked like.

An example of transformative synergy was the design of diversion curricula. For Prefiling Diversion, law enforcement and prosecutors set some parameters to help define the eligible populations (charges, criminal history) and the length of diversion periods for each program, while the service providers shaped how the programs would meet clients' needs. By working closely with service providers, practitioners gained perspective on balancing clients' legal obligations and health needs to better provide diversion to vulnerable communities. Service providers helped to answer the difficult questions that come with working with system-impacted people, such as:

- What if a person is not responding to calls from case management—what really constitutes noncompliance?
- What is the difference between clinically significant and minor non-compliance?
- What happens when someone stops attending their program but then voluntarily reengages?

These questions helped inform how the programs recognize and mitigate harm, while also offering guidance on taking alternative approaches to non-compliance. Ultimately, PFD operated from the presumption that second chances were acceptable for people who wanted to continue engaging with programming, with consent of the program partners. We highlight two important items to note regarding any prefiling program: first, if the program

has a regular case review process, program partners should develop protocols and guidelines around what information should and should not be shared about the participant's treatment with law enforcement and/or prosecutors. Second, seldom, if ever will there be a defense attorney or other advocate there to speak on behalf of the program participant. If too much information is shared and no one is advocating on the participant's behalf, program partners may see unintended outcomes such as a participant being made to stay in a program longer than agreed or being terminated from a program rather than being reevaluated or placed in a different program. Planners should consider including representation from the defense bar as part of your planning group.

Additionally, as Rapid Diversion expanded to multiple courthouses, working with business and management professionals through the [FUSE Corps Fellowship](#) helped program partners apply business principles to the growth of the program.¹⁵ Unburdened by commonly accepted local legal practices, the fellows helped to organize the various moving parts of the expansion, working to establish roles and responsibilities among the various partners, centralizing rigorous data collection, and routinizing decision-making and communication. Leveraging the expertise of professionals with business and organizational change management may significantly improve a jurisdiction's ability to create infrastructure for sustainable and a well-functioning program.

An often-overlooked opportunity for collaboration is engaging with the community the diversion program is intended to serve. Seeking out community groups in addition to local service providers can provide more insight into the needs of the people

the diversion program wants to reach, as well as ways to engage with that population. This can also build trust for the program and increase capacity for greater community partnerships. LA's Incubation Academy¹⁶ is an example of this kind of synergy. The Academy helps to build the capacity of local community-based organizations in Los Angeles. In addition to providing training, funding, and technical assistance to CBOs, the Academy increases community partnerships through networking opportunities for organizations that are culturally- and gender-responsive and that focus on engaging with communities most impacted by the criminal legal system. Working with the Local Initiatives for Support Corporation (LISC), the Center helped train the first cohort of Incubation Academy providers to enhance their skills to work in custodial settings and the courts. These community providers, which oftentimes include people with lived experience, have become part of the network of providers who will serve PFD and RDP clients, expanding LA's service resources across a greater geographic landscape.

V.

Recommendations on Using Data to Promote Equitable Practices for Diversion

Data analysis can help to identify underlying needs and shape the design process prior to program launch. After launch, a consistent flow of data among partners is necessary to sustain the program and gives planners the ability to adjust the program as needed. The following four recommendations highlight the role of data throughout the life of a diversion program and draw on the challenges faced by both the Prefiling and Rapid Diversion Programs.

Tip #5
Use relevant and detailed data at the planning stage to ensure equity and effectiveness of programming.

When launching a program meant to achieve equity, a deeper investigation into how to meet the needs of the desired population is necessary. It is not enough to assume that because one group is overrepresented in arrests, they will necessarily benefit from diversionary programming; having a better understanding of common charges that the desired population faces and any other information about the population you wish to divert can radically shape programming. Planning teams should analyze relevant criminal justice data—including arrest volume, prior criminal histories, arrest and arraignment charges, and dispositions. For example, the Prefiling Diversion Program established that charges associated with sex work were the most common at one police station. Mid-course changes helped to account for higher numbers of participants with these charges by adjusting eligibility criteria and seeking specialized services to meet these unique needs. Though not specifically intended as a program focusing on sex work, the prevalence of these types of charges was important to the overall mission of Prefiling Diversion. Conducting a thorough charge analysis *before* a program's launch can help planners build these considerations into front-end program design.

Tip #6
Review program performance data on an ongoing basis to ensure the right people are being served.

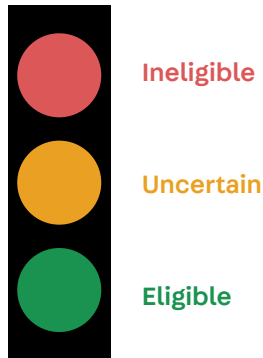
In addition to conducting data-based investigations of eligibility on the front end, we recommend reviewing aggregate program performance data on an ongoing basis to ensure program efficacy. Periodically, programs should investigate how exclusions are being used and ask several questions:

- Is the program seeing more ineligible charges than were anticipated?
- Are exclusions commonly understood by all partners?
- Do exclusion practices match what was proposed in the planning stages?

In the case of programs that seek equity in the justice system, it is also important to ask:

- Who is being excluded from programming?
- Are exclusions impacting one racial group more than another?
- Is the program reaching the population that it was intended to reach?

One helpful metaphor that was used by a Prefiling Program partner was that of a stoplight. If done correctly, most cases should be “green,” meaning they are eligible for screening, and if they have the underlying needs the program seeks to address, they should be offered programming. Some cases will present as “yellow,” meaning that someone is uncertain based on what the next steps are. It is helpful with “yellow” cases to adhere to the *presumption* of ineligibility, continue with a screening, and contact the respective prosecuting attorney office for guidance on program eligibility. When the results of the screening are in, all concerned parties can meet to determine the most appropriate course of action including flagging this case for a later intercept point or connecting them with other services. Finally, there will likely be a very small proportion of cases that are “red,” or totally ineligible for programming.



All three PFD sites experienced lower program numbers for various reasons due to the COVID-19 pandemic, program eligibility, and participants declining diversion because of the unexpected imposition of zero bail rules being among the greatest contributing factors. The county Prefiling Diversion program was ultimately not expanded, owing largely to the data: estimates of the impact of restrictions on the remaining Prefiling sites confirmed that demand would be low and that resources would be better allocated to other initiatives, especially those that could help reduce racial and ethnic disparities at the booking stage and beyond. This demonstrates the value of a data-driven approach. Monitoring the impact of programs and reach can inform meaningfully impactful policy and yield a cost effective approach to programming. Program planners will do

well to conduct a deep preliminary dive into the data to ensure the programming lives up to its goals and helps set expectations in the planning phase.

Tip #7 Make data planning a team effort.

As with any coordinated effort, it is critical to collaboratively develop data processes and a comprehensive data plan. The partners responsible for data should be involved in the initial decisions about what data would be tracked and how. Engaging all stakeholders early on, especially those involved in data collection, can help avoid confusion about data fields and ensure accuracy, consistency, and completeness in data entry, streamlining the data collection process overall. Engaging the service providers about what data points are being collected allows them to explain what is possible on the ground, and to provide clinical insight that most criminal justice program planners do not possess. Having an open dialogue around data can also facilitate better mechanisms for auditing data and communicating when inconsistencies arise.

For Prefiling Diversion, the program planners initially suggested a comprehensive list of data fields to help ATI collaboratively decide on which fields providers would collect for the diversion programs. Both steps in this process are important: generating a more exhaustive list of potentially important data fields and refining them collaboratively with the parties who will collect the information. As with any effort, time constraints during the planning process may make these steps feel unnecessary, but they will be crucial to ensuring a common understanding of what data is necessary to collect and inform what training is needed to ensure you get quality data.

Another unusual data consideration in the case of PFD were the multiple service providers who were responsible for data entry. Each provider had their own way of defining fields, entering data, storing data, and varying levels of comfort in discussing data. In programs where multiple providers are involved, it is important to prioritize training and upfront discussions of what level of data entry is possible and needed.

Clean, comprehensive data is the foundation for moving any program of this kind forward. It is also

imperative that all stakeholders, especially those responsible for data entry, have a shared understanding of not only what each data field means, but why they are important to the overall mission of the program. Better training and coordination can also help to curtail the collection of unnecessary information that will not be used to inform programming. If all stakeholders agree that the data points are relevant, there will be less pushback, and ultimately the data collected will be much more impactful.

Tip #8 **Clarify roles and responsibilities around data management**

Beyond the question of what data will be collected, planning teams should consider who will “own” the data, both in the legal sense of who is responsible for data storage and security, and in the practical sense of who will make sure that the data is complete and accurate. The data management strategy that any jurisdiction might adopt should include a systematic approach to routinely collecting and auditing data for completeness. Further, the data “owner” would ideally be empowered to review the data proactively and reach out to appropriate partners when key data has not been provided (e.g., participant information, charges, date that diversion began, or reason for declining diversion).

A clear understanding of what is expected from each stakeholder when it comes to data is imperative to the viability of a diversion program. In the case of Prefiling there was no shortage of opinions, input, and even technical assistance when it came to determining which data fields were most important or how to make data visualizations. As may often be the case with collaborations, a single entity who can handle the overall data coordination will ensure critical information is collected and organized. Ideally, one party would be responsible for centralizing the routine tasks of data management, checking with providers on data input, and updating data-tracking. At one point, when ATI and the Center entered a period of fine-tuning the program and agreed that several data fields would need to be updated and others could be deleted, changes were delayed due to the lack of an agreement about which entity was responsible for data oversight. Instead of changing

the fields to meet the needs of the program, the program partners were asked to ignore certain fields, which made the data collection and analyzing process inefficient. Jurisdictions can avoid such late-stage challenges by clearly delegating a data “owner” empowered to make these decisions and changes.

VI. Conclusion

Diversion efforts can safely reduce incarceration while increasing the collaboration between system actors and the community. The opportunity to provide community-based care to people with unmet social service needs can happen at “early” stages that far precede a criminal conviction—any time before a criminal case is adjudicated, and indeed, even before criminal charges are filed. For example, LA’s Prefiling and Rapid Diversion Programs utilize police stations and courts as potential off-ramps from the traditional legal system path to social services. Both programs pursue a common objective: to expand early interventions for people with unmet needs rather than continued detention or release without any supportive resources. To accomplish this, LA co-located behavioral health care professionals in the jails and courthouse sites. For Prefiling Diversion, this meant physically converting unused breathalyzer rooms and offices into spaces for care by placing service navigators in the station. The Rapid Diversion Program embedded pairs of service navigators and clinicians in the courthouses. Ultimately the lessons learned from the Prefiling and Rapid Diversion programs offer concrete insight on how to navigate common challenges and create opportunities for early diversion programming to flourish in any jurisdiction.

Endnotes

1. Marcellino, E. Nov. 2020. *Drop in Jail Population Due to COVID Failed to Cut Number of Black or Mentally Ill Inmates*. NBC Los Angeles. Retrieved from <https://www.nbclosangeles.com/news/coronavirus/drop-in-jail-population-due-to-covid-failed-to-cut-number-of-black-or-mentally-ill-inmates/2453499/>
2. Engel, L., Abaroa-Ellison, J., Jemison, E., & Cumberbatch, K. 2020. *Racial Disparities and COVID-19*. Retrieved from https://www.courtinnovation.org/sites/default/files/media/document/2022/NYC%20ISLG%20Report_FINAL_June22.pdf
3. Tchekmedyian, A. March 2022. *After Years of Talk, Little Progress on Closing L.A. County's Aging Jail*. Los Angeles Times. Retrieved from <https://www.latimes.com/california/story/2022-03-30/mens-central-jail-closure-update>
4. *Supervisors bring related Justice Services under one roof*. Los Angeles County Supervisor Sheila Kuehl. (n.d.). Retrieved from <https://supervisorkuehl.com/supervisors-bring-related-justice-services-under-one-roof/>
5. California Penal Code 1001.36. Retrieved from <https://casetext.com/statute/california-codes/california-penal-code/part-2-of-criminal-procedure/title-6-pleadings-and-proceedings-before-trial/chapter-28a-diversion-of-individuals-with-mental-disorders/section-100136-pretrial-diversion-for-persons-with-mental-disorders>.
6. As with Prefiling Diversion, Rapid Diversion excludes offenses classified as serious or considered violent in Los Angeles.
7. Initially, seven (7) courthouses were launched at the Clara Shortridge Foltz Criminal Court Building, Airport, East Los Angeles, Van Nuys, Long Beach, Lancaster, and Compton; however, due to an existing array of alternatives to incarceration at the East L.A. Courthouse, RDP was suspended at the East LA Courthouse and will reallocate resources to a new site at a later date.
8. *Programs*. Center for Court Innovation. (n.d.). Retrieved from <https://www.courtinnovation.org/programs>
9. People with higher acuity may need to receive higher levels of services or might need immediate connection to urgent care through existing channels outside of the programs.
10. Rector, K. May 2022. *Given a Chance to Avoid Jail and Criminal Charges, Mentally Ill, Addicted and Homeless People in L.A. Pass*. Los Angeles Times. Retrieved from <https://www.latimes.com/california/story/2022-05-20/given-chance-to-avoid-jail-and-criminal-charges-mentally-ill-addicted-and-homeless-people-in-l-a-pass>
11. Rector, K. May 2022. *Given a Chance to Avoid Jail and Criminal Charges, Mentally Ill, Addicted and Homeless People in L.A. Pass*. Los Angeles Times.
12. Adler, J., Barrett, J., Rempel, M. *The Myth of Legal Leverage? Toward a Relational Framework for Court-Based Treatment*. Retrieved from https://www.courtinnovation.org/sites/default/files/media/documents/2020-04/report_the_myth_of_legal_leverage_04232020.pdf
13. Although PFD participants are told they can consult with an attorney, the right to counsel in California does not attach until charges are filed in court.
14. Cal. Rules of Court, Emergency rule 4. Emergency Bail Schedule. Retrieved from <https://jcc.legistar.com/View.ashx?M=F&ID=8234474&GUID=79611543-6A40-465C-8B8B-D324F5CAE349>
15. *Fuse: Advancing racial equity & accelerating progress*. FUSE Corps. (n.d.). Retrieved from <https://www.fusecorps.org/>
16. *ATI Incubation Academy Academy*. Office of the CEO Los Angeles County. Retrieved from <https://ceo.lacounty.gov/ati-incubation-academy/#:~:text=The%20Los%20Angeles%20County%20Incubation,underrepresented%20and%20justice%2Dinvolved%20people>.



Center
for
Justice
Innovation

520 Eighth Avenue
New York, NY 10018
p. 646.386.3100
innovatingjustice.org