

Criminal Justice Diversion Programs: Policy Recommendations for Maryland

These recommendations were informed by a multi-stakeholder harm reduction meeting held at JHSPH in October 2015 and were developed by meeting participants. They do not necessarily represent the views of The Johns Hopkins University.

Diversion strategies include pre-arrest or pre-booking and pre-trial or post-booking programs. Pre-arrest or pre-booking substance use diversion strategies are designed to minimize use of the traditional criminal justice system in favor of drug treatment, particularly for nonviolent offenders, while still involving police in the decision making process.¹ Similarly, pre-trial or post-booking substance use diversion involves criminal justice officials (judges, prosecutors, probation officers, etc.) working cooperatively with health and human service providers. Both types of substance use diversion services aim to reduce drug use and recidivism. Drug courts are one example of such diversion programs.

Summary of current Maryland state law

Maryland's Department of Health and Mental Hygiene's pretrial services primarily address sex offender requirements and legal determinations of mental competence, rather than substance use.^{2,3,4}

General pre-trial diversion services are administered on a county-by-county basis (there are 11 within Maryland's 24 counties). These services can include completing classes and/or community service hours rather than being charged with an offense.⁵ Fifty percent of defendants who appear before a Court Commissioner are released and are therefore never seen by pretrial services. Only half of pretrial agencies make release recommendations to the judge before a bail review hearing. There is little information and data sharing on pretrial process and outcomes across the state.

In December 2015, the Open Society Institute-Baltimore announced a grant to the Baltimore Police Department to bring the LEAD (Law Enforcement Assisted Diversion) program to the City. Under the program, some drug offenders would not be arrested; instead, they would be diverted to treatment programs to avoid jail time and criminal records.⁶

Drug courts are an example of post-trial diversion utilized in Maryland. Maryland statute dictates that before or after sentencing in a criminal trial the court may order an evaluation of the defendant to assess whether they would benefit from substance use treatment.⁷ After trial, the court may also send them to a medical facility for observation if the court deems that the defendant would be endangered by confinement in jail.⁸

Maryland has thirty-six Drug Courts, which are non-adversarial and aim to restore defendants as productive, non-criminal members of society.⁹ They serve as an alternative to traditional pathways for addressing drug crimes in the state, namely jail time.¹⁰ The courts monitor defendants' progress in individualized structured drug treatment programs. Graduated sanctions may be imposed based upon defendants' compliance or non-compliance with the court ordered program. Examples of potential sanctions include community service, imposition of a curfew, electronic monitoring or house arrest, or short-term incarceration.

During the 2016 legislative session, Maryland lawmakers passed the Justice Reinvestment Act, S.B. 1005, which reforms the state's criminal justice system. It requires parole officers to evaluate whether or not defendants would benefit from substance use disorder treatment, ensures low level

offenders are more likely to be sentenced to treatment rather than jail time, allows judges to use risk assessment, and eliminates mandatory minimum sentencing for nonviolent low-risk defendants.¹¹

Research evidence

- Pre-booking diversion in Seattle's LEAD program led to 60% less recidivism in the first 6 months compared to a control group, as well as statistically significant reductions in criminal justice, legal system, and other costs.¹²
- Substance use and other types of diversion programs have been shown to reduce recidivism when they address the root causes of a defendant's criminal behavior.¹³
- Pretrial diversion services in Kentucky have saved millions of dollars in incarceration costs and have reduced burden on court dockets. The state observed a 71% rate of non-recidivism for its misdemeanor diversion programs and notes that defendants completed tens of thousands of community service hours and paid tens of thousands of dollars in restitution to victims.¹⁴
- Diversion programs have been shown to lead to positive substance use treatment outcomes for defendants.¹⁵
- The Urban Institute's US Department of Justice funded Multi-Site Adult Drug Court Evaluation has found that drug courts prevent crime and substance use across most populations.¹⁶
- Studies agree that drug courts are more effective than traditional pathways with regard to rates of re-arrest and time to re-arrest.¹⁷
- Drug court participants have lower general and drug-related crime recidivism. A systematic review of drug courts throughout the US found that on average, drug court participants have a nearly 12 percent lower general and drug-related crime recidivism rates than non-participants.¹⁸
- Strategies utilized in drug courts, including a combination of drug testing, sanctioning and treatment are effective at reducing drug use and drug-related crime recidivism, and are also cost-effective. A study evaluating Breaking the Cycle, a drug court program utilizing these strategies, found the following positive results among participants: reduction in drug use in two of three sites, reduction in drug sales and possession offenses, reduction in likelihood of arrest in the following year, and reduction in family problems in all sites. A cost-benefit analysis also showed this approach saved \$2.30 to \$5.70 for every dollar invested.¹⁹
- A randomized controlled trial of Hawaii's Opportunity Probation with Enforcement (HOPE) program and evaluations of similar smaller-scale programs in Texas and Seattle found that swift and certain sanctions, such as those utilized by drug courts, led to substantial reductions in drug use, new arrests and days behind bars among felony probationers and appear to be achievable at scale.²⁰
- Maryland's Break the Cycle initiative, a program also similar to HOPE in its focus on swift and certain sanctions for probation violators found a significantly lower likelihood and number of drug-related arrests among participants.²¹

Policy recommendations

- 1) Implement a state-wide pre-arrest diversion pilot program, expanding upon Baltimore City's LEAD program. Upon arrest, a case manager or law enforcement officer would assess arrestees, identifying any substance use treatment needs, and then divert the individual to treatment rather than completing the arrest.
- 2) Enact bail reforms, including a reduction in reliance on monetary bail, in order to address the degree to which pre-trial detention interrupts the lives of people with substance use disorders, specifically those already participating in treatment programs.
- 3) Utilize HOPE or Maryland's Break the Cycle initiative, which combine drug testing and swift but graduated sanctioning and drug treatment to reduce general recidivism, drug-related recidivism and drug use, as models for implementing criminal justice diversion strategies outlined in the Justice Reinvestment Act.

Implementation considerations

- Implementers will need to consider law enforcement workload, priorities, and budget constraints. Pre-arrest diversion may be contingent on the de-prioritization of non-violent drug possession arrests, which accounted for 43,705 arrests in Maryland in 2014.

- A statewide program like LEAD would require buy-in from criminal justice and social service agencies including police, prosecutors, drug treatment providers, community leaders, and elected officials, among others.²²
- To implement a program similar to HOPE or revitalize Maryland's Break the Cycle initiative, judges will need to be persuaded to impose sanctions, probation officers and court clerks will require training and time to adapt to new rules and the initial additional workload, and law enforcement officers will require training to execute bench warrants immediately rather than waiting for a probationer to be arrested for a new charge. Jails will also need to be convinced to accept large-numbers of short-stay inmates.²³
- Implementers should enlist stricter guidelines in structuring juvenile drug courts. Juvenile drug courts appear to have little or no effect in reducing drug-related recidivism possibly because they are less demanding and target high-risk offenders unlike adult drug courts.²⁴

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