

Pre-filing Felony Diversion in Santa Barbara County

A Feasibility Study for the Santa Barbara
District Attorney's Office

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Executive Summary

Staff from the Center for Justice Innovation completed a mixed-methods feasibility study that included meetings with the Santa Barbara District Attorney's Office (SBDA), court observation, stakeholder interviews, community member focus groups, and data review. Center staff also did a literature review and spoke with practitioners operating similar programs. Findings revealed that there are several **key aspects** that will need to be thoughtfully and strategically considered in order **to plan and implement an adult pre-filing felony diversion program** in Santa Barbara County, namely:

- A. Program eligibility guidelines
- B. Identification of potential participants
- C. Participant needs assessment and legal mechanisms to enter program
- D. Restitution and victim considerations
- E. Monitoring and supervision of participants
- F. Case resolution requirements
- G. Community participation and providing program updates
- H. Measuring program success

The report follows up the findings section by listing several **items to consider for the program planners**. Those items include:

- A. Earning stakeholder trust and buy-in
- B. Establishing equitable program design and implementation

- C. Championing stakeholder education/ Consistent program messaging
- D. Genuine community participation and involvement
- E. Issues that could negatively impact the program

The final part of the report are **next steps for the program planners** to consider when designing the pre-filing felony diversion program. The next steps include:

- A. Planning period
- B. Program operations
- C. Staffing considerations
- D. Program service providers/community partners
- E. Procedural justice
- F. Program graduation
- G. Community engagement

Center staff conclude that an adult pre-filing felony diversion program, has community and stakeholder support, is feasible to implement, and can be successfully operated by the SBDA. This is especially true if several issues are considered, including earning stakeholder trust and buy-in, establishing an equitable program design and implementation, educating stakeholders and community members using consistent messaging, and seeking genuine community participation.

Introduction

The Center for Justice Innovation promotes new thinking about how the justice system can respond more effectively to issues like substance use, mental health, and juvenile delinquency. The Center achieves its mission through a combination of operating programs throughout New York City and New Jersey, original research, and national expert assistance. The Center employs staff with diverse work backgrounds, including system-impacted people, prosecutors, defense counsel, probation officials, senior administrators of major criminal justice system agencies, social workers, technology experts, researchers, victim advocates, and mediators.

In August 2022, the Center for Justice Innovation and the SBDA began exploring a fee-for-service agreement for the Center to conduct a feasibility study regarding an adult pre-filing felony diversion program that the SBDA wants to implement throughout Santa Barbara County. The SBDA was interested in learning more about what justice system actors.

After conducting a feasibility study, Center staff identified the following overall themes:

- Stakeholders mostly believe that SBDA has the capacity to implement a pre-filing diversion program.
- Ensuring public safety and community trust should be a top priority for the SBDA.
- Local residents and justice-involved individuals are interested in building in a mentorship component to this program.
- Law enforcement wants to improve communication between officers and prosecutors, and wants to support the charging prosecutors in their diversion decisions.
- Stakeholders and residents believe that individuals and their circumstances—not just their charges—should inform diversion decisions.
- Stakeholders would like to know that the program will be launched equitably across all three filing jurisdictions.
- A participant’s diversion plan should be tailored to their unique needs.
- There are resource gaps between parts of the northern and southern sections of the county.
- If the case that initiated the participant being diverted has a restitution component to it, that must be resolved before the participant completes the diversion program.
- Public defenders are open to participating in pre-filing diversion decision making.

Also of note is that SBDA staff members themselves expressed the most reservations for implementing a pre-filing felony diversion program—more than any other stakeholder group. However, they likewise shared that they would support the program as long as it did not compromise the DA’s office’s duty to protect public safety.

Methodology

In an effort to capture as much detailed and comprehensive information as possible, researchers at the Center designed a mixed-methods research strategy. First, we conducted both semi-structured interviews and focus groups with critical stakeholders. Semi-structured interviews are an effective way to collect qualitative, open-ended data while still allowing the flexibility to discuss a broad range of topics. Similarly, focus groups allow researchers to assemble a demographically diverse group of people to participate in a guided, free-flowing discussion of ideas to tease out important details.

In total, 47 people participated in either the interviews or focus groups, which were conducted with a wide range of justice system and community stakeholders, including leadership and line staff from SBDA, members of the Santa Barbara Public Defender's Office, Santa Maria Police Officers, Santa Barbara Sheriff's Office, probation officers, a retired judge, community-based organizations, justice-involved young adults, and local community members.

Center staff used an interview guide with the one-on-one interviews and used the guide to initiate the community-based focus groups. The interviews and focus groups ultimately touched on a variety of topics, with core concepts including:

- **Background information**
Job title, tenure in that position, history of working on diversion programs
- **Case processing**
Case initiation, eligibility, charging

- **Diversion implementation**
Logistical and procedural concerns, integration plans, training
- **Stakeholder relationships**
Supporters, detractors, transparency, community involvement

Beyond the interviews and focus groups, researchers from the Center also observed the Santa Barbara County Courts. Watching the courts in action assists researchers in gathering initial information about the process to better understand how it operates, the primary actors involved, and its culture. Over several hours, the research staff observed four courtrooms—two in Santa Barbara and two in Santa Maria.

The SBDA team also provided researchers with court documents, including policy and procedure manuals and eligibility requirements, among others, for review. Finally, various stakeholders provided access to their data dashboards that included criminal justice data over time. In total, the research team reviewed the data dashboards from the County of Santa Barbara Probation, County Executive Office (jail data), Santa Barbara Sheriff's Office, and the Santa Barbara District Attorney's Office.

Findings

Findings

A. Program Eligibility

Determining program eligibility for the proposed SBDA felony pre-filing diversion program (the program) was the most challenging discussion Center staff had with system actors, service providers, and community members—collectively referred to hereinafter as stakeholders. Historically, program eligibility for any type of diversion program—whether it is pre or post filing or pre or post plea—is determined based on the current charge, and in many instances, the potential program participant’s criminal record. Acknowledging that charging decisions are not an exact science, many stakeholders agreed that a person’s social service needs should be as important in determining program eligibility as the charge the person is facing. In sum, the focus of program eligibility should be people, not charges.

Community members specifically pointed out that a person who had not had an opportunity to address their social service needs should receive strong consideration regarding program eligibility. A majority of stakeholders agreed that most of the charges that will be determined to not be eligible for the diversion program should be presumptively ineligible, but not automatically ineligible. Additionally, stakeholders did not think prior contact with the justice system should be an automatic bar to being offered the program, although it should be taken into consideration. Most stakeholders agreed that people with extensive criminal histories

and/or people who are considered part of an organized crime ring (e.g. retail theft, theft of farming equipment) should not be considered eligible for the program.

To help make the eligibility process a bit clearer, the SBDA should consider a red light/yellow light/green light approach to determining program eligibility. Red light cases would be ineligible for consideration. These would include the most serious and most violent cases that the SBDA office handles. Green light cases would be presumptively eligible for the program but could be denied if aggravating circumstances are clearly stated by the charging deputy district attorney. Examples of potential green light cases would be people facing non-violent cases and without a lengthy criminal history. Stakeholders focused more on the client profile social service needs rather than only focusing on charges when questioned about who should be eligible for the program. However, when asked specifically about which charges should be eligible, drug charges, vandalism, and some car theft cases were most frequently mentioned as those cases that should be eligible. Stakeholders had divergent opinions regarding commercial burglary and assault cases, but some stakeholders thought they should be eligible for the program. All stakeholders agreed that if restitution was a component of the case, that anyone accepting the program participants should also have to fulfill their restitution obligations as part of the agreement. This topic will be discussed in more detail later in this report.

A majority of charges would fall under the yellow light category if this system of determining eligibility is adopted by the SBDA. This would align with the program choosing to focus more on the needs of the potential program participant than the charges they are facing. Although the program is designed to be pre-filing, making a decision to divert a person facing a felony may take more time than the arrest to arraignment process allows for those held in custody. For those who are cited and released for their arraignment date, the time pressure to make a decision is not as pressing and allows for a thoughtful decision to be made regarding offering the program to a person who was cited and released. The SBDA (as well as other stakeholders) recognize that some program eligible people who are held in custody after their arrest may be arraigned before a decision to offer diversion can be made. Stakeholders wanted people in this situation to still be able to be offered diversion, even if it occurs post-arraignment. A more detailed discussion on identifying potential participants is in the next section of this report. For cases that fall under the yellow light category, stakeholders want to ensure that any identifiable victim receives notification of the potential diversion and gets an opportunity to give input to the decision; that any restitution issue—including an amount, if possible—is identified and made part of the diversion decision; and that a detailed assessment on the potential program participant’s social service needs are clearly identified before offering the diversion option.

Red light categories would be the opposite of the green light approach—they would be presumptively ineligible unless there were

clear mitigating circumstances that warranted inclusion in the diversion program. This tiered approach of eligible offenses retains significant prosecutorial discretion at charging. Leaving significant discretion to the charging district attorney does, however, present a possible issue if the charging district attorney is not bought into the program and is not inclined to closely examine the facts of a case and the needs of the defendant when making their charging decisions. By ensuring that those with authority to refer cases into pre-filing diversion are well-informed about the program and are bought-into its efficacy and potential for increased public safety, this possible barrier can be mitigated. By reinforcing the lines of communication between the arresting officer and the charging DA, discussed later in greater detail, may also help alleviate this potential barrier to program success, giving the charging DA more information and more confidence in their referral decisions.

In addition to eligibility concerns, the SBDA also has to make suitability determinations on potential program participants. As diversion programming becomes more nuanced and sophisticated, program planners recognize that not all eligible participants are suitable for a particular program. Some issues to consider for program suitability are:

- Is the potential participant willing to accomplish all of the steps necessary to complete the program?
- Is the potential participant a good match for the programming offered under the diversion program?

Relying on a quality clinical assessment is a good step towards ensuring that a potential

program participant is both eligible and suitable for the pre-filing felony diversion program.

B. Identification of Potential Participants

A robust pre-filing misdemeanor diversion program already exists that is managed by charging District Attorneys in Santa Barbara County. Although time is limited to divert a case before a filing decision is made, local prosecutors are currently able to handle this task for misdemeanors. Justice stakeholders indicated that doing the same with some felonies would not be a tremendous addition to the existing workload of prosecutors. This is especially true for cases where the accused person is not being held in custody, because, as discussed above, being out of custody extends the time when a person's initial charging hearing takes place, giving charging prosecutors additional time to make a potential diversion decision. Either way, individuals inside and outside of the Santa Barbara District Attorney's Office expressed a belief that this type of program was feasible given current workload and working conditions. Identification of potential cases to divert could happen at several touchpoints early in the life of a case, including at the time of arrest, at charging, at arraignment, or at other hearings pre-plea.

In line with the desired design of this program to be pre-filing, the most obvious times for case identification are either at the time of arrest or at the time of charging. Law enforcement stakeholders expressed interest in being consulted on those cases where they had made an arrest and the charging

prosecutor felt unsure about whether or not to offer felony diversion. Law enforcement input could conceivably happen in two ways. The first is to provide a check box or similar low-touch marker for the arresting officer to indicate their belief that this person, although arrested on a potential felony charge, may be a good fit for diversion. Second, law enforcement supported the idea of being contacted by charging prosecutors to offer their first-hand insight to prosecutors deciding whether or not to file formal felony charges or to route a felony case into diversion. In both scenarios, the ultimate decision for diversion will be made by the charging prosecutor during their filing decision.

Even if the decision to file formal felony charges has already been made, SBDA staff and others expressed interest in allowing case participants the option to still be referred into this diversionary program before they enter a plea bargain. This could be done at arraignment or at any pre-plea hearing on defense motion, prosecution's motion, or even by the court *sua sponte*. If this were to happen, a mechanism should be in place to expunge the filing record of the case if and when the accused person completes the diversionary program successfully, to keep their benefits from the program equitable with their peers who were diverted pre-filing.

C. Participant Needs Assessment and Legal Mechanisms to Enter Program

When a defendant is identified for felony diversion and accepts entry into the program,

one of the first activities in place should be the use of a validated risk-need-responsivity (RNR) assessment. Unlike pretrial risk assessment tools, an RNR tool is designed to assess the immediate needs of a case participant, the specific supports that would make them less likely to recidivate, and the recommended dosage of those supports. The outcome of an individual participant's RNR assessment will inform what referrals they should be directed to and what level of supervision is sufficient to maintain accountability without eroding their existing social supports. Using a strengths-based approach like this, a participant's strengths can be maintained and enhanced, while their needs are simultaneously addressed appropriately. It can be tempting to over-program a diversion participant, but research on the risk principle has maintained for decades that lower-risk individuals, like those likely to participate in this program, do not benefit from being over-prescribed services and supervision, and often increase their risk factors if they are over-programmed.^{[1][2]} To prevent making participants more at risk of recidivism than when they arrived, consider developing a treatment matrix that balances a participant's risk level with both their service needs and the offense at hand, to arrive at equally applied, sensible diversion requirements. See Appendix 3 for a blank risk matrix template.

Unlike many diversion programs, having participants with potential felony charges gives the court significant legal leverage to incentivize compliance. Similarly, the ultimate benefit of a felony diversion program is for a court participant to have no record of a felony on their record, including on their arrest record. Legal mechanisms must be in place

to make this goal a timely reality for successful participants, such as automatically filing for expungement of arrest records at the time of program completion. Furthermore, when making filing decisions for diversion, the SBDA must be intentional about avoiding net-widening on wobbler cases for the sake of offering felony diversion.

One potential issue unique to a pre-filing diversion program is allowing the court to maintain jurisdiction for the entirety of the program without negatively interfering with potential prosecution, should the program not be successfully completed. To maintain jurisdiction while the program is in process, the legal parties must also be mindful of the orders or stipulations entered in order to keep the case in a place where prosecution could still happen if ultimately required. Examples from other jurisdictions include all parties entering into a Stipulated Order of Continuance, an Adjournment in Contemplation of Dismissal, or for the court to hold the case in abeyance pending program completion. Local practice will dictate the most appropriate legal mechanism to keep cases before the court without unduly prejudicing either the court participant or SBDA. In addition, capping the program length at approximately one year can help prevent a potential case from becoming stale. Remember, a participant does not need to be "cured" to graduate, so case managers should be setting up participants with ongoing voluntary services once mandatory participation is complete, for continued treatment and increased efficacy.

Lastly, when considering how to address the needs of a program participant, it is important to not just address any perceived and/or

identified deficits in a person's current living situation, but to also identify their assets and strengths that will allow the clinician and case manager to rely on those positive qualities in helping the participant successfully complete the diversion program.

D. Restitution and Victim Consideration

The design of the pre-filing felony diversion program must include provisions that satisfy state law regarding victim rights and consideration of any potential restitution requirement. The SBDA is well-versed in the victim rights requirements under Marsy's Law.^[3] Regarding potential restitution obligations, a pre-filing diversion program may offer a greater ability for the program participant to satisfy their restitution obligations than being placed on probation. A probation sentence is for a set period of time and cannot be extended meaning any remaining restitution obligations have to be converted to a civil judgment against the program participant. Being in a diversion posture, the case can remain open until restitution obligations are satisfied.

E. Monitoring and Supervision

Stakeholders shared that for any diversion program to receive support from system actors and the community in general, a process must be in place to ensure that program participants are engaging in the program and making progress towards program completion without continuing to engage in harmful

behavior while at liberty in the community. Although a pre-filing diversion program is beneficial to the person avoiding having a case filed against them, it simultaneously creates an extra layer of diligence to properly monitor and supervise program participants as the participants will not be eligible to have a defense attorney assigned to the person in the program.

Creating a regular cadence of case-conferencing meetings is a method in which several existing diversion programs monitor the progress of program participants. A well-functioning case conferencing meeting has all the necessary people at the meeting, has all of the needed information to assess the progress of the program participant, and is facilitated with a goal of having the program participant successfully completing the program even if there are road bumps, missteps, and non-compliant behaviors during the pendency of the diversion program. In addition, this ongoing supervision can put prosecutors and community members at ease who may have concerns about participants being held accountable for their alleged behavior. Communicating to the public that participants will be held to more rigorous supervision standards than they would have been if their cases proceeded in a traditional manner will be important to help build support.

F. Case Resolution Requirements

A common sentiment of those interviewed was that this proposed program should not take a "cookie cutter" approach to the obligations of the program participants and that the program length should be dictated

by the needs of the participants and not an arbitrarily set length of time. The ultimate length of the program should be tailored to the needs of each individual participant, thoughtfully aligned with the results of their RNR assessment, with most stakeholders expecting the program to be resolved in about one year. As one interviewee stated, “You can’t put a timeline on healing.”

If the program does develop completion requirements based on each participant’s need, that could include having participants being involved in a mentorship program, taking part in a restorative circle, addressing mental health needs and/or substance use needs, accessing educational or vocational training, identifying ways to address the harms caused and to be accountable for their behavior including fulfilling restitution obligations.

G. Community Participation and Providing Program Updates

Stakeholders continually mentioned both a desire to be part of the community-based options that the SBDA pre-filing felony diversion program will use as part of its programming options, and to be able to receive updates regarding the progress and results of the diversion program.

Program planners should consider a variety of ways to engage the local community in the planning and operation phases of the diversion program. Additionally, a plan to routinely share updates about the diversion program should be developed prior to launch. Some opportunities to engage with local community members and organizations can occur

by creating a steering committee to advise the SBDA program manager, offering mentorship opportunities, and using restorative practices when appropriate. The program planners should also develop a feedback loop for system partners such as the law enforcement agencies, probation, the defense bar, and the court. Similarly, program planners should develop a public-facing dashboard that will allow community members to follow the progress of the diversion program.

H. Measuring Program Success

Program planners should develop a set of metrics/performance measures to help the SBDA determine if its pre-filing felony diversion program is successful. The SBDA should consult with service providers and community organizations to help determine which performance measures the program will adopt. In addition to standard measures such as program graduation rate and recidivism, other pro-social determinants such as reconnecting with family, registering in a school and/or trade program, getting a valid driver's license, and registering to vote are just some performance measures for program planners to consider as measures of success.

Items to Consider Regarding Program Design and Operations

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The following section incorporates information learned from literature review of prosecutor diversion programs and speaking with practitioners who are working at sites that utilize prosecution-led diversion programs. It should be noted that most prosecutor-led diversion programs are post-filing and those that are pre-filing are usually misdemeanor level cases or cases that funnel into proscribed dockets such as substance use disorder (drug courts) or people with mental health/mental illness needs. Researchers stated in a 2022 law review article^[4] that there were so few operational pre-filing felony diversion programs that they are unable to assess the efficacy of the programs at this time. However, the following items are gleaned both from the literature review and in speaking with practitioners operating both pre and post filing diversion programs.

A. Earning Stakeholder Trust and Buy-In

While the general consensus of the interviews indicated that stakeholders were amenable to the SBDA launching an adult pre-filing felony diversion program, there are a few key issue areas that SBDA should be aware of in order to maintain the integrity of the program and the trust of stakeholders. Namely, stakeholders pointed to four areas of reservation:

1. Community and staff buy-in
2. Equity in program implementation

3. Education and information sharing opportunities

4. Community participation and involvement

The SBDA wants to build a program that is founded on community buy-in and ownership. As such, it will be important to foster a space of learning and listening with residents and justice system actors early on in the planning and implementation phases of the diversion program. For example, the stakeholders who were interviewed for this feasibility report expressed gratitude for being thought of and included in this feasibility study. Additionally, some interviewees mentioned not having a strong connection to the SBDA office and were generally unaware of any recent updates coming from the office. This is understandable given the fact that the SBDA serves over 446,000 people, in three distinct locations: Santa Barbara, Lompoc, and Santa Maria. However, when launching a felony diversion program, intentional bridge-building among diverse stakeholders is critical to the success and reception of the program. Stakeholders across demographics and professions suggested that the SBDA should make intentional efforts to incorporate the feedback of all parts of the county in the development of the diversion program. This can be accomplished by holding listening sessions and town hall meetings with various levels of stakeholders, from residents and justice-in-

volved individuals to law enforcement and SBDA staff. Taking the time to dispel myths and to ground stakeholders in your goals will both effectively share your vision and allow others to feel involved in the process.

Restitution issues under Marsy’s Law were mentioned by several stakeholders as an important component of any diversion program. Victim services agencies stated that ensuring restitution is paid would go a long way towards getting victim support for a diversion offer to be made to a potential program participant. Interviews with defense attorneys supported this same position. It was suggested by one stakeholder that an advantage of offering diversion instead of a plea to a charge and being placed on probation is that diversion can be extended until restitution is resolved whereas a probation term can only last two years and any unresolved restitution is resolved via a civil judgment order. Framing pre-trial diversion as providing an extended opportunity for victims to obtain restitution is an important fact to raise in the above-mentioned listening sessions and town hall meetings.

B. Establishing Equitable Program Design and Implementation

One of the greatest obstacles the SBDA office may face is launching the program equitably across the county. While stakeholders expressed sympathy towards offering diversion to people with mental health, substance use, and housing needs—they were concerned about the possibility of recidivism and repeat offenses. Furthermore, some

interviewees were open to offering diversion to a broad spectrum of felony offenses, while others were very pointed about not allowing violent offenses or gun offenses into the program. Some people were amenable to allowing certain types of domestic violent cases. The interviews exhibit a diverse stretch of opinions and sentiments towards diversion and eligibility—while all interviews saw the benefit of diversion to some degree, not all were in agreement on who should be allowed to partake in diversion. To add to the layers of complexity, some SBDA offices in Santa Barbara County deal with more violent offenses than others, have more rural constituencies, people of color, and populations with differing socio-economic statuses. Additionally, the three law enforcement departments that serve the county have varying practices. All of this means that SBDA should develop a diversion program that addresses and honors the public safety concerns of residents, while remaining flexible enough to serve the unique needs of program participants and the county’s communities. Stakeholders advised the SBDA to consider strategies to listen to and respond to the concerns of people living in both parts of the county in order to successfully earn buy-in from across a diverse group of stakeholders. Specifically, stakeholders said SBDA should reach out to populations that have historically been left out of decision making processes, including, but not limited to, BIPOC, rural constituents, and small business owners. One method to do so could be regularly convening a diverse Advisory Board of community members that, rather than making concrete decisions about the program, would be a source for sharing current community needs and program perceptions as operations commence. This

recommendation is continued in point D. Likewise, as the program is implemented, it is important to carefully consider an accurate method of data collection that will include tracking participant quality of life and engagement data points.

C. Championing Stakeholder Education; Consistent Program Messaging

Interviewees frequently mentioned the need for consistent education and messaging about the proposed diversion program. Many stakeholders were unaware of the office’s current diversion programming. For those who were familiar with some of the office’s diversion programs, there was confusion about how exactly each program operated. As such, information about the SBDA’s diversion programs should be easily accessible and understandable. Specifically, law enforcement agencies expressed an interest in having training and presentations conducted at roll call to help inform officers and deputies about this program. Doing so will allow law enforcement the opportunity to ask questions and give feedback in real time, which is a critical component of participatory program planning, and opens the possibility of law enforcement stakeholders growing into program champions. Furthermore, since public safety is one of law enforcement’s primary concerns, building in regular touch points with them will help quell concerns related to potential program misinformation.

D. Genuine Community Participation and Involvement

Given the differences between the northern and southern parts of Santa Barbara County, stakeholders recommended that the SBDA actively involve both parts of the county in designing the diversion program. This should begin with educating community members on what the SBDA hopes to achieve with this program. Residents mentioned the need for a forum that would allow for feedback, questions, and collaborative planning in partnership with the SBDA. They cautioned against the SBDA conducting an insular planning process without doing due diligence to inform and involve all parts of the county. Since the SBDA seeks to build a program that is tailored to the needs of its constituents, stakeholders advised holding town hall meetings and other mechanisms that would give residents a chance to provide input about the program directly to SBDA leadership. Additionally, some stakeholders suggested creating an advisory committee made up of community members and justice system actors that would meet regularly to give feedback on the progress of the program and to advise on strategies for continual improvement. This could be the same advisory committee mentioned in point B, also tasked with keeping the SBDA apprised of public perceptions and ongoing resident needs or concerns.

E. Issues to be Aware of that Could Negatively Impact the Diversion Program

As mentioned previously, there are very few prosecution-led pre-filing felony programs that are operating in the manner the SBDA intends its program to operate. In reviewing the research literature and speaking with practitioners, here are some common issues that could negatively impact a pre-filing diversion program if they are not addressed:

- **Not addressing a participant's needs.** Many diversion programs are focused on accountability that include requirements such as community service and/or restitution. For a diversion program to be truly successful—one where the accused has no further contact with the court system rather than just completing program requirements—the program must address the most pressing needs of the program participant. The best way to address these needs is by conducting a needs assessment of all program participants. Additionally, diversion program participants responded positively to program elements that were individualized. These elements variously included: tailoring specific requirements to their needs; allowing classes or appointments to be rescheduled based on personal circumstances; and receiving extra time to complete the program if they ran into problems. Participants who were in programs without that flexibility expressed the opposite view on the specific issue of scheduling, lamenting a lack of flexibility with appointment times.
- **Over-programming a program participant.** The needs assessment of a program participant may reveal that the participant has several unmet social service needs. The inclination is to address all of those needs during the pendency of the case. By requiring a program participant to be engaged in too much programming during the same time period can overwhelm the participant and cause them to not be compliant with all of the requirements. Best practices indicate that the greatest needs should be addressed first and to make sure the participant is capable of managing all of the requirements assigned to them during the program.
- **Over-monitoring of a program participant.** A core component of all diversionary programming is to ensure that a program participant is on track to complete their obligations through regular monitoring and check-ins. However, over-monitoring can lead to an increase of technical violations and continued sanctioning of the program participant. In designing this portion of the program, planners should differentiate between non-significant and significant non-compliance and address appropriate responses for each.
- **Too many eligibility exclusions.** Program planners want their program to show success and historically, many program planners try to predict who will be successful in the program and design program exclusions around people who the planners believe will not be suitable

for the program. Clinicians and attorneys who work with people in alternative to incarceration programming, including diversion programs, state that it is difficult to predict who will and will not be successful in a program. If the sole focus of the program design is to have a high success rate of people in the program, participants who may be successful in the program could be excluded if the program has too many program exclusions.

- **Charging participants to participate in the program.**

Many diversion programs charge participants to receive the opportunity to have their cases diverted rather than prosecuted. Although charging participants who accept diversion programming may make sense from a fiscal perspective, researchers report that charging participants can lead to eligible participants declining the diversion option. If the diversion program goal is to influence behavior change, planners should design a program that does not make having a lack of financial resources a barrier to accepting the diversion option.

- **Preparing how to respond to program incompleteness by participants.**

As discussed, participants in diversion programs often deal with other external factors that may lead to them not completing the program, such as relapse, recidivism, and mental health crises. These occurrences alone do not diminish a program's overall success and impact, however practitioners planning and operating diversion programs should prepare for the inevitable program

failure. Determining program eligibility and suitability is not an exact science and the best needs assessments and clinical interviews cannot accurately predict who will and will not be successful in any program. As such, program partners should make an action plan for how to respond to the community, stakeholders, and/or media inquiries regarding any potential negative press. Additionally, program operators should work closely with service providers, law enforcement, and other key program stakeholders to ensure that proper steps are followed after a program failure.

Next Steps

Next Steps

Below are suggested action steps to guide SBDA's implementation planning:

Planning Period

- **Setting clear program goals.**
Developing clear program goals allows the program to clearly identify who it is trying to serve and what will be expected of program participants.
- **Developing measures of success.**
Identifying what will be considered a success in the program allows program planners to develop a plan to collect and measure data to see if the program is meeting the program goals.
- **Drafting program protocols and/or a policies and procedures document.**
Having a clear agreement on how the program will operate will allow everyone to have shared expectations of what is supposed to happen and when it is supposed to happen. This document will need to be reexamined to ensure it is current with program practices.
- **Creating program forms.**
Developing universal forms specific for the pre-filing felony diversion program, including participant consent forms to enter into the program, waivers to allow tracking of a participant's progress in the program, and progress reports for service providers to use to update the participant's progress, are some of the forms that will be needed to operate this diversion program. Program planners

should also be conscious of creating forms that are consistent with current office documents to allow for seamless case management.

- **Developing a data collection and storage process.**
Having a clear data collection plan in place prior to program launch will allow the SBDA team to accurately track and report on the progress of the program.

Operations

- **Identifying the target population of the program.**
Creating a clear expectation of who the program is intended to serve allows all program partners to be aware of who they should be seeking as program participants.
- **Timing of diversion offer.**
Although this is intended to be a pre-filing diversion program, will there be procedures put in place to allow entry into the program at arraignments or post-arraignment? If yes, what are those procedures? Planners must develop a process for outreach to the potential program participant while the case is in pre-filing status as the person will, in all likelihood, not yet have an attorney to act as an intermediary. It is important to be mindful that due process rights of the

potential program participant should be considered at the earliest stages of any pre-filing diversion program. Program planners should consider implementing a process that allows potential pre-filing diversion participants to consult with an attorney or advisor—if requested—prior to accepting the diversion offer.

- **Eligibility determination of program participants.**

In addition to determining who will be eligible for the program and if the initial eligibility will be solely charge based or if a past criminal history will impact eligibility decisions, program planners also need to determine what the readmission policy will be for participants who are dismissed from the program for non-performance and/or a rearrest. Additionally, will an eligible program participant be allowed to access the diversion program after being previously diverted to the program?

- **Suitability determination of program participants.**

Although a person may be eligible for the program, a person also needs to be found to be suitable for the program. Some issues that impact suitability include, but are not limited to, a person wanting to contest the charges, not wanting to engage with social services, or having the ability to comply with program expectations. The suitability determination should be a joint effort between the legal team and the service provider team.

- **Participant needs assessment process.**

To properly address any needs of a program participant, the SBDA must determine how those needs will be identified.

Utilizing a Risk/Need/Responsivity tool is one method of making these determinations. The risk portion of the tool should not be used to determine program eligibility, it should be used to ensure that the program is not placing a participant in a program that is not suited to their needs and that the SBDA is not “overprogramming” any program participants. Additionally, the SBDA needs to determine if any needs assessment will focus solely on the deficits of the participant or if it will also utilize the strengths that the participant presents.

- **Enrollment into the program.**

Developing a process as to how and when a participant officially enters the program is needed prior to program launch.

- **Monitoring of program participants.**

Having a clear process in place to monitor the success of program participants is critical to the success of this program. Having clear expectations of what information any service provider/agency will share with the SBDA as well as how to respond to non-compliance issues is needed for system partners to trust in this program.

- **Program design.**

Program planners should work with service providers and clinicians to determine the overall length of the program, the modules of service that the participant is expected to complete, and the frequency that the participant is expected to engage in the services. Many programs create tiers for program participants based on their individual needs assessment and the tiers each have its own requirements for program completion.

- **Court process protocols.**
If post-arraignment participants are allowed to enter the program, a process must be worked out with the court actors to develop a calendaring process for these cases.

Staffing Considerations

- **Determine how to staff core program positions.**
The following staffing suggestions originate from the Center’s experience with designing, launching, and managing diversion programs, The list is not exhaustive and should be tailored to the unique needs of Santa Barbara County.
- **Key service providers who can provide an array of supportive services and have the capacity to handle Santa Barbara’s diversion case flow.**
Many diversion programs use people with lived experience and/or who are formerly incarcerated in these staffing roles. Some newly formed diversion programs combine these roles e.g., program manager/clinician, case manager/driver, until case-loads require additional staffing Specific position may include:
 - **Program Manager**
Manages the overall program from the service provider perspective
 - **Resource Navigator**
May be the first point of contact for participants for services—may be placed in booking or the court.

- **Case Manager**
Advocates to support, guide and coordinate care for participants. Case Managers conduct regular visits with participants, assess their ongoing social needs, and provide updates to the program manager and lead program stakeholders. Some diversion programs report a 20-1 or 25-1 participants per case manager staffing model.
- **Trained Driver**
A person who can assist with transportation needs for program participants. Service provider should provide a company van and train drivers on safety protocol
- Key roles for program planning and case conferencing. An engaged team of partners are integral to a diversion program’s success. In addition to the service provider staffing, the following are suggested roles for planning and sustainability:
 - *At least one representative from each law enforcement agency*
 - *A program champion within the SBDA*
 - *At least one representative from the Public Defender’s office*
 - *Community residents (for planning)*
 - *Representatives from the Court, i.e. Dept. of Public Health to help coordinate services*
- In addition to roles already mentioned, program planners should consult with local researchers to develop performance measures that

will help the SBDA track the success of the diversion program.

- **Determine the most effective funding stream for staffing needs.**

Existing programs staff the positions listed above in a variety of ways:

- Staff the positions internally
 - Staff the positions via contract/consultant
 - Develop MOUs with existing governmental agencies
 - Develop MOUs with existing community-based organization
- Depending on the staffing projections, the staffing positions can be filled using a combination of the above options. Program planners should also look for federal, state, and local grants as well as private foundations for funding opportunities. Developing a relationship with the state administering agency that administers all federal justice department grants would allow the SBDA program manager to know when block grant funding opportunities are available.

Program Service Providers/ Community Resources

- **Identifying service providers and community-based organizations.** Using the goals of the SBDA pre-filing felony diversion program, program planners need to identify a wide array of service providers to use as referral

sources for program participants. Many programs use a mix of government agencies and community-based organizations to provide the more traditional substance use disorder and mental health services. Program planners should also identify organizations that can provide workforce development training, educational training, mentoring services, and restorative justice services.

- **Developing MOUs with all service providers.**

MOUs provide clear expectations of what the SBDA is responsible for and what the service providers are responsible for in the operation of the SBDA pre-filing felony diversion program. Examples of what the MOU can cover include compliance monitoring and reporting protocols and frequency of attending meetings with program planners to discuss program operations.

Procedural Justice Considerations

- **Developing clear program requirements for participants.**

All program participants should have a clear understanding of what is expected of them prior to them agreeing to enter the program. Participants should know how long the program is meant to be, what they are expected to do, and the frequency of what they are expected to do. Participants should be told of what will happen if they leave the program or are non-compliant with the agreement made prior to entering the program.

Program Graduation

- **Create a process to celebrate the successful completion of the program for participants.**

Many programs have developed graduation processes that include recognizing the work the participant put into completing the program and allowing them to bring family/loved ones to the graduation ceremony. Graduation ceremonies can occur on a cadence basis (quarterly, twice a year etc.) and have multiple participants at each graduation ceremony.

Community Engagement

- **Developing an outreach plan prior to program launch.**

Educating the public, system partners, service providers, and line staff of the SBDA was identified as a crucial component for the success of this program by many stakeholders interviewed during the feasibility study. Different messaging for each group may be needed, but all messaging needs to be consistent.

Conclusion

After meeting with SBDA leadership remotely and in person, conducting stakeholder interviews and focus groups, observing traditional court proceedings, and processing existing data, it is clear that both community members and stakeholder believe this program can be effectively implemented, and are supportive of it. In short, the launch of a prosecutor-led pre-filing felony diversion program in Santa Barbara County is absolutely feasible. SBDA leadership has the drive, skills, buy-in, and wherewithal to implement, launch, and sustain this program, especially if they are mindful of the potential issues identified in this report. Namely, to earn stakeholder trust and buy-in, to establish an equitable program design and implementation strategy, to educate stakeholders and community members using consistent messaging, and to seek genuine community participation.

SBDA's next steps should therefore focus on implementation planning, with a particular focus on information sharing with stakeholders to help support SBDA leadership to determine eligibility criteria, case flow, program design, and service provider partnerships. The SBDA would continue to benefit from additional strategic and implementation planning to support a timely and successful program design and launch.

Endnotes

- [1] NBER Working Paper Series: "Misdemeanor Prosecution." Amanda Y. Agan, Jennier L. Doleac, Anna Harvey. Revised Aug 2022.
- [2] Duru, Lovins, and Lovins, "Does reducing supervision for low-risk probationers jeopardize community safety?" Federal Probation. 2022.
- [3] California Constitution article I, § 28, section (b)
- [4] The Impact of Prosecutorial Diversion Programs on Behavioral Health Service Use and Criminal Justice System Involvement: An Evaluation of DSHS-Contracted Diversion Programs Theresa M. Becker, PhD, Paula Henzel, MA, Paige Harrison, PhD, Callie Black, MPH, Jim Mayfield, MA, Alice Huber, PhD, Barbara E.M. Felver, MES, MPA Published March 2022.

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Appendices



Appendix 1: Selected Bibliography

The Impact of Prosecutorial Diversion Programs on Behavioral Health Service Use and Criminal Justice System Involvement: An Evaluation of DSHS-Contracted Diversion Programs

Theresa M. Becker, PhD, Paula Henzel, MA, Paige Harrison, PhD, Callie Black, MPH, Jim Mayfield, MA, Alice Huber, PhD, Barbara E.M. Felver, MES, MPA

Published March 2022

Prosecutor-Led Pretrial Diversion: Case Studies in Eleven Jurisdictions

By Melissa Labriola, Warren A. Reich, Robert C. Davis, Priscillia Hunt, Samantha Cherney, and Michael Rempel

© April 2018

Annual Review of Criminology

Models of Prosecutor-Led Diversion Programs in the United States and Beyond

Ronald F. Wright and Kay L. Levine

Vol. 4 2021

Promising Practices in Prosecutor-Led Diversion

Fair and Just Prosecution

© 2017

Building exits off the highway to mass incarceration: Diversion programs explained

Prison Policy Initiative

Leah Wang and Katie Rose Quandt

July 20, 2021

Racial disparities in diversion: A research roundup

Prison Policy Initiative

Leah Wang

March 7, 2023

Appendix 2: Eligibility Determination

Certain cases will be presumptively ineligible for felony diversion. In unusual cases, the District Attorney's Office shall have the discretion to admit otherwise ineligible persons on a case by case basis where the offender does not pose a risk of danger to the community. In making this determination, the District Attorney may take into consideration the unique factors involved in a particular case, related to the defendant's criminal history, input of the victim, witnesses, and any other relevant information.

The following is a list of presumptively ineligible cases:

- Any case involving a serious felony as defined in PC 1192.7, or a violent felony as defined in PC 667.5(c)
- Any case involving animal abuse, child abuse, domestic violence, elder abuse, hate crime, human trafficking/pimping/pandering, stalking
- Any case involving theft of government funds, or financial crimes greater than \$10,000
- Any case subject to registration under PC 290
- Any case involving Arson
- Any case involving criminal street gang activity
- The case involves VC 23152, VC 23153, PC 192(c), VC 2800.2
- The case involves PC 69, PC 71, or assault on a peace officer/1st responder
- The offender possessed or used a firearm
- The offender has previously been granted diversion within the past year; is currently on diversion, probation, or parole; has been convicted of a felony within the past three years; has been convicted of a serious or violent felony under PC 1192.7 or PC 667.5 within the past 10 years; or is a PC 290 registrant
- Any offense involving a high degree of criminal sophistication, e.g. PC 32, PC 182
- Any case where the defendant personally inflicted substantial injury upon a victim
Any case where the reviewing Deputy District Attorney (DDA) believes that diversion would pose a risk of danger to the community

Appendix 3: Suitability Determination

California Rule 4.414 lays out specific criteria that can assist in evaluating an individual's eligibility for probation, while also aiding in the assessment of their suitability for felony diversion and the potential risk they might pose to the community. These guidelines may help determine whether a person qualifies as a suitable candidate for felony diversion.

A. Facts Relating to the Crime

- The nature, seriousness, and circumstances of the crime as compared to other instances of the same crime;
- Whether the offender was armed with or used a weapon;
- The vulnerability of the victim;
- Whether the offender inflicted physical or emotional injury;
- The degree of monetary loss to the victim;
- Whether the offender was an active or a passive participant;
- Whether the crime was committed because of an unusual circumstance, such as great provocation, which is unlikely to recur;
- Whether the manner in which the crime was carried out demonstrated criminal sophistication or professionalism on the part of the offender; and
- Whether the offender took advantage of a position of trust or confidence to commit the crime.

B. Facts Relating to the Offender

- Prior record of criminal conduct, whether as an adult or a juvenile, including the recency and frequency of prior crimes; and whether the prior record indicates a pattern of regular or increasingly serious criminal conduct;
- Prior performance and present status on probation, mandatory supervision, postrelease community supervision, or parole;
- Willingness to comply with the terms of probation;

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- [] Ability to comply with reasonable terms of probation as indicated by the offender's age, education, health, mental faculties, history of alcohol or other substance abuse, family background and ties, employment and military service history, and other relevant factors;
- [] The likely effect of imprisonment on the offender and his or her dependents;
- [] The adverse collateral consequences on the offender's life resulting from the felony conviction;
- [] Whether the offender is remorseful; and
- [] The likelihood that if not imprisoned the offender will be a danger to others.

Appendix 4: Best Practices Recommendations

In addition to traditional program metrics such as number of program participants, percentage of successful diversions, and recidivism data, Center staff also propose tracking social determinants of health that many programs have begun tracking. Ideally, the program will provide participants with resources they can use after the program that will redirect them away from criminal offending. As such, the following outcomes can be more predictive of behavior change than traditional program metrics as they track actual changes in day-to-day behavior of program participants. The Center for Justice Innovation’s Manhattan Justice Opportunities program shared the following measures that they track:

Program Performance

- Re-arrested during the program
 - Mandate extension due to noncompliance during program
 - Mandate reduction due to compliance during the program
 - Participants obtaining legal employment during the program
 - Participants’ housing status changes during the program
 - Participants obtaining educational achievement during program (e.g., began college, technical program or vocational program, earned degree or certificate, earned GED)
 - Participants obtaining benefits (e.g., food stamps, SSI, WIC, SSD)
 - Participants obtaining documentation (e.g., photo ID, birth certificate, SS card)
 - Participants obtaining health care
- Participants completing the program
 - Completers with no criminal conviction*
 - Completers with final disposition better than initial plea offer*
 - Non-completers that do not receive incarceration sentence
 - Participants who engage in programming outside of their mandate

Participant Perceptions Before and After Program (worse, better, same)

- Relationship with/feelings towards substance use
- Perceptions of own mental health
- Openness to engaging in treatment (for both mental health and substance use)

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- Relationships with family, friends, peers etc.
- Connections with community or supportive groups
- Dealing with problems when they arise
- Thinking before acting when upset
- Asking for help when struggling

Appendix 5: Risk Matrix Template

This document is an example of how a problem-solving court program could uniformly and equitably determine the length of programming and intensity of programming for participants, taking into account their lead charge, assessed risk level, and assessed need level. Note that, in the spirit of individualized justice, these boxes should be filled with standard recommendations that are flexible based on the individual and on their specific circumstances. Also note that while recommended services may change in accordance with a participant’s level of need, the amount of hours required (eg, community service hours) or the length of time in the program does NOT change in response to assessed level of need.

	LOW-LEVEL FELONY	MID-LEVEL FELONY	HIGH-LEVEL FELONY
Minimal Risk	[EXAMPLE] <ul style="list-style-type: none"> • Connect with a service provider • Attend court remotely 		
Low-Moderate Risk			
Moderate Risk			
Moderate-High Risk			
High Risk			[EXAMPLE] <ul style="list-style-type: none"> • A community service obligation • Long-term engagement with a service provider • Attend court in person

The activities that could constitute standard requirements for every Risk level/Felony level combination are blank in the chart above, as they would need to be set by SBDA. But this chart signifies that the overall time commitment required should be uniform, absent special situations, for participants presenting with the same Risk level and level of lead charge.

Appendix 6: Santa Barbara County Resources

HOUSING RESOURCES

LINK	PHONE	EMAIL	ADDRESS
PATH (People Assisting the Homeless) epath.org	805.979.8706	pathsantabarbara@epath.org	816 Cacique St., #3622 Santa Barbara, CA 93103
People's Self-Help Housing pshhc.org	805.962.5152	info@pshhc.org	26 E. Victoria St. Santa Barbara, CA 93101
Santa Barbara City Housing Authority hacsb.org	805.965.1071	rfredericks@hacsb.org	808 Laguna St. Santa Barbara, CA 93101
Santa Barbara Community Housing Operation chcsb.com	805.963.9644	frontdesk@chcsb.com	11 E. Haley St. Santa Barbara, CA 93101
Santa Barbara County Housing Authority hasbarco.org	805.736.3423	N/A	815 W. Ocean Ave. Lompoc, CA 93436
Willbridge willbridgesb.org	805.564.1911	lynnelle@willbridge.sbcoxmail.com	2904 State St., Ste. A Santa Barbara, CA 93105
List of Affordable Housing	santabarbaraca.gov/services/housing-human-services/affordable-housing		

CENTER FOR JUSTICE INNOVATION

TRANSITIONAL HOUSING RESOURCES

LINK	PHONE	EMAIL	ADDRESS
Domestic Violence Solutions dvsolutions.org	805.963.4458	info@dvsolutions.org	411 E. Canon Perdido Ste. 12, Santa Barbara, CA 93101
Fr. Virgil Cordano Center frvirgilocordanocenter.org	805.563.1051	info@frvirgilocordanocenter.org	4020 Calle Real, Ste. 2 Santa Barbara, CA 93110
New Beginnings sbnbcc.org	805.963.7777	kschwarz@sbnbcc.org	530 E. Montecito St. Ste. 101 Santa Barbara, CA 93103
New Beginnings (Lompoc) sbnbcc.org	805.430.8636	kschwarz@sbnbcc.org	3769 Constellation Rd. Ste. B Lompoc, CA 93436
Transition House transitionhouse.com	805.966.9668	N/A	425 E. Cota St. Santa Barbara, CA 93101

COMMUNITY GROUP RESOURCES

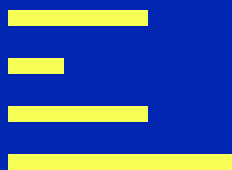
LINK	PHONE	EMAIL	ADDRESS
Fighting Back Santa Maria fbsmv.com	805.346.1774	admin@fbsmv.com	530 E. Montecito St. Ste. 101 Santa Barbara, CA 93103
Freedom 4 Youth freedom4youth.org	805.708.1292	info@freedom4youth.org	425 E. Cota St. Santa Barbara, CA 93101
Underground Scholars gauchoundergrounds.wixsite.com	N/A	gauchoundergroundscholars@gmail.com	4020 Calle Real, Ste. 2 Santa Barbara, CA 93110

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MENTAL HEALTH AND SUBSTANCE USE RESOURCES

LINK	PHONE	EMAIL	ADDRESS
American Indian Health & Services aihscorp.org	805.681.7144	appointments@aihscorp.org	4141 State St. Santa Barbara, CA 93110
Community Counseling and Education Center ccecsb.org	805.962.3363	info@ccecsb.org	923 Olive St, Ste. 1 Santa Barbara, CA 93101
Mariposa Project mariposasproject.com	805.259.7820	info@mariposasproject.com	215 W. Mission St. Santa Barbara, CA 93101
Mental Wellness Center mentalwellnesscenter.org	805.884.8440	info@mentalwellnesscenter.org	617 Garden St. Santa Barbara, CA 93101
Indigent Care Program countyofsb.org	805.681.5393	N/A	300 N. San Antonio Rd. Rm. B100 Santa Barbara, CA 93110
Pacific Pride Foundation pacificpridefoundation.org	805.963.3636	hello@pacificpridefoundation.org	608 Anacapa St., Ste. A Santa Barbara, CA 93101
Pacific Pride Foundation Santa Monica pacificpridefoundation.org	805.963.3636	hello@pacificpridefoundation.org	105 N. Lincoln St. Santa Maria, CA 93458
Path Point pathpoint.org	805.963.1086	info@pathpoint.org	315 W. Haley St., Ste. 102 Santa Barbara, CA 93101
Santa Barbara Street Medicine sbdww.org	805.455.4234	N/A	19 E. Micheltorena St. Santa Barbara, CA 93101
Transitions Mental Health Association t-mha.org	805.928.0139	info@t-mha.org	225 E. Inger Dr., Ste. 101 Santa Maria, CA 93454
Transitions Mental Health Association Lompoc t-mha.org	805.819.0460	info@t-mha.org	513 North G St. Lompoc, CA 93436

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