

Behavioral Health Diversion Interventions:

Moving from Individual Programs
to a Systems-Wide Strategy

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INTRODUCTION

People who have mental illnesses and substance use disorders are overrepresented in the criminal justice system. Indeed, the prevalence of people in jails who have serious mental illnesses is often three to six times higher than that of the general public.¹ And for people who have serious mental illnesses and co-occurring mental health and substance use disorders, up to 50 percent have had criminal justice contact.² Often, these individuals cycle through local criminal justice systems, which are frequently not equipped to provide the costly treatment and support services needed by people who have behavioral health needs. This population's frequent contacts with the criminal justice system cause a strain on local resources and typically result in their increased chances of recidivism and behavior that can negatively impact the public's safety. These repeated contacts also often cause strain on a person's wellbeing and disrupt housing, jobs, and family stability as well as negatively impacting their physical and mental health.

To address these challenges, a growing number of communities are implementing behavioral health diversion programs as alternatives to conventional criminal justice case processing and incarceration, namely, by connecting people to the appropriate community-based treatment and support services outside of the criminal justice system.³ However, implementation of these alternatives has largely been kept to individual, or one-off, recognizable programs that are often insufficient in meeting the needs of the community and reducing the over-representation of people who have behavioral health needs in the criminal justice system. To achieve the greatest impact and reduce the overall number of people who have behavioral health needs in the criminal justice system, communities must have a range of diversion programs and practices embedded within a comprehensive, coordinated strategy which offers behavioral health diversion interventions at every point in the criminal justice system⁴ and fully leverages the community's resources.

While diversion may not be appropriate or possible for every person in the criminal justice system who has a behavioral health need, a strategic, systems-wide approach (which includes input from mental illness and substance use disorder treatment system leaders) will better define which interventions are best for a community and reduce the likelihood it is using inefficient programs and practices. This publication is intended to provide these local leaders with a systems-level conceptual framework for developing a continuum of behavioral health diversion interventions that span the community's criminal justice system—starting from first contact with law enforcement through incarceration.

DEVELOPING A CROSS-SYSTEMS BEHAVIORAL HEALTH DIVERSION STRATEGY

While the opportunities for behavioral health diversion look different in communities across the country, leaders are seeking opportunities to build bridges across systems to create community-wide strategies that have the greatest impact. In some places, the leadership comes from the courts, and in others, law enforcement or the jails are leading efforts. But from wherever they "sit," these leaders are learning that the overarching elements needed to create a holistic and effective diversion response strategy include the following key components:

1. Developing and engaging collaborative partnerships
2. Understanding the community's behavioral health needs
3. Identifying existing services and supports and gaps
4. Defining key measures and collecting data
5. Leveraging funding to prioritize interventions
6. Measuring and sustaining progress

¹ H. Steadman et al., "Prevalence of Serious Mental Illness among Jail Inmates," *Psychiatric Services* 60, no. 6 (2009): 761–765.

² J. F. McGuire and R. A. Rosenheck, "Criminal history as a prognostic indicator in the treatment of homeless people with severe mental illness," *Psychiatric Services* 55, vol. 1 (2004): 55, 42–48.

³ Hallie Fader-Towe and Fred C. Osher, *Improving Responses to People with Mental Illnesses at the Pretrial Stage: Essential Elements* (New York: The Council of State Governments Justice Center, 2015), 7, <https://csgjusticecenter.org/courts/publications/improving-responses-to-people-with-mental-illnesses-at-the-pretrial-stage-essential-elements/>.

⁴ Many communities use the Sequential Intercept Model (SIM), which is a conceptual model to guide community and systemwide responses to people with mental and substance use disorders in the criminal justice system. SIM focuses on six discrete points of potential intervention (also known as intercepts) in the criminal justice system at which a person who has behavioral health needs might be screened, assessed, and connected to treatment. These six points are (0) community services, (1) law enforcement, (2) initial detention/initial court hearings, (3) jails/courts, (4) reentry, and (5) community corrections. See Policy Research Associates, *The Sequential Intercept Model: Advancing Community-Based Solutions for Justice-Involved People with Mental and Substance Use Disorders* (New York: Policy Research Associates, 2018), <https://www.prainc.com/wp-content/uploads/2018/06/PRA-SIM-Letter-Paper-2018.pdf>.

BEHAVIORAL HEALTH DIVERSION TERMINOLOGY

While diversion, particularly behavioral health diversion, is becoming more common in the U.S. as an alternative to incarceration, there are not consistent, universally accepted terms and definitions that clarify who can be diverted, to what systems or services, and who can divert someone at various points in the criminal justice system. This lack of a shared language has led to wide variance among state “diversion” statutes⁵ and local practices and often creates inconsistencies in criteria and the ways programs operate by jurisdiction. For the purposes of this publication, **behavioral health diversion** refers to adult jail diversion, whereby a person who has a behavioral health need may still have involvement with the criminal justice system (such as the courts) but spends little to no time in a jail facility and is instead connected to community-based treatment and support services either with or without court involvement or correctional supervision.⁶

OTHER COMMON BEHAVIORAL HEALTH DIVERSION DEFINITIONS INCLUDE:

Behavioral health diversion intervention: These programs and practices reduce or eliminate jail time for people who have behavioral health needs by connecting them to community-based treatment and support services. This term includes recognizable diversion programs such as mobile crisis teams and Law Enforcement Assisted Diversion (LEAD), as well as local practices that lead to a diversion-related outcome.

Pre-arrest diversion: Refers to diversion whereby a person who has initial contact with the criminal justice system (typically with law enforcement or first responders) is not arrested, but is instead connected to a behavioral health community provider or potentially given a civil citation.

Pre-booking diversion: Most commonly defined as programs and practices that can occur at any point in the criminal justice system before a person is booked into a facility and relies heavily on effective interactions between police and community mental health and substance use disorder treatment providers.⁷

Post-booking diversion: Most commonly refers to programs that are used to identify and divert people who have behavioral health needs after they have been booked into jail.⁸ Post-booking diversion interventions are typically led by either the courts or jails.

Pretrial diversion: Pretrial diversion is a type of post-booking diversion. It is commonly defined as programs and practices that occur at any level or stage of justice supervision between law enforcement contact and a plea or other disposition of the criminal case. As a result, pretrial diversion may involve multiple agencies, including jail, pretrial release, prosecutors, defense counsel, and even probation departments that operate in a pretrial capacity.⁹

This publication delineates diversion opportunities as “pre-booking” or “post-booking” because different actors become involved once someone enters a correctional facility. Distinguishing the behavioral health diversion options into just these two categories also allows a clear line to be drawn when talking about the agencies within the system leading the implementation of a diversion intervention (see Figure 1). However, diversion opportunities are also often delineated by their place in the flow of the criminal case (e.g., pre-charge, pre-arraignment, pre-plea). While not a focus of this publication, consensus on which of these process points provide a ramp for diversion is critical.

⁵ “Pretrial Diversion,” National Conference of State Legislatures, accessed September 11, 2019, <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx>.

⁶ This definition is adapted from the definition given in Judges’ Criminal Justice/Mental Health Leadership Initiative, *Judges’ Guide to Mental Health Diversion: A Reference for Justice System Practitioners* (Delmar, NY: Policy Research Associates, CMHS National GAINS Center, 2010). While some interventions can occur post-conviction (through reduced jail time or supervision for treatment compliance), this definition of diversion does not consider those interventions as diversion, but instead as reentry practices. Traditional reentry practices are an important piece of the criminal justice process; however, they are not considered diversion interventions.

⁷ CMHS National GAINS Center, *Practical Advice on Jail Diversion: Ten Years of Learnings on Jail Diversion from the CMHS National GAINS Center* (Delmar, NY: Policy Research Associates, CMHS National GAINS Center, 2007).

⁸ Ibid.

⁹ The Center for Health and Justice at Treatment Alternatives for Safe Communities (TASC), *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (Chicago: The Center for Health and Justice at TASC, 2013).

UNDERSTANDING THE COMMUNITY'S BEHAVIORAL HEALTH NEEDS

To develop a systems-wide strategy for a continuum of behavioral health diversion interventions, local leaders must identify the people who have behavioral health needs in the criminal justice system, how they flow through the criminal justice system, and the gaps in community-based treatment and support services for this population. Identifying these needs and gaps can be accomplished by conducting comprehensive process analyses and inventorying any existing services and supports for people who have behavioral health needs. Local leaders should also consider engaging stakeholders in both the criminal justice and behavioral health systems, as well as people who have lived experiences, in discussions and efforts such as collecting baseline data on programs and practices geared to people who have behavioral health needs in the criminal justice system.¹⁰

Additional data collected from law enforcement, pretrial services, courts, jail facilities, health providers, and housing continuums of care can be used to analyze the number of people who have mental illnesses, substance use disorders, and co-occurring illnesses and how this population moves through the system. This type of data analysis can reveal potential areas where one or more diversion interventions are needed as part of an overarching strategy. For example, an analysis of data may reveal that too many people with low level offenses but who have significant behavioral health needs are being booked into the jail. In this instance, local leaders may consider implementing a pre-booking diversion intervention that connects this population to community-based mental health and substance use disorder services as part of their systems-wide strategy.

Often, leaders realize the need for a more comprehensive strategy when they determine that individual programs are not efficiently meeting the needs of their community. When this occurs, it is critical to have data and information from both criminal justice and behavioral health systems so these leaders can begin to rethink coordination across the multiple systems. In fact, while a comprehensive systems-wide diversion strategy would ideally begin before any programs or practices are implemented, communities that have already implemented individual diversion programs (such as a co-responder model or a mental health court) without a formal diversion strategy in place still have plenty of opportunities to build upon these programs to develop their strategy. In these instances, local leaders should conduct a gap analysis to examine the existing diversion intervention(s), assess what needs are not being met by these interventions based on data and information collected, and determine where any additional diversion interventions can be implemented.

When leaders have a clear understanding of the community's needs and gaps in treatment and services, they are better positioned to develop a systems-wide diversion strategy that includes diversion interventions at multiple points in the criminal justice system. This process can help a jurisdiction ensure resources are aligned correctly to maximize intended goals, both through sustaining successful interventions and filling gaps.

OPPORTUNITIES FOR BEHAVIORAL HEALTH DIVERSION

Like many systems, a local community's criminal justice system is a set of connected parts consisting of different agencies. Each of these agencies (i.e., law enforcement, courts, pretrial services, and jails) has opportunities to implement behavioral health diversion interventions at their respective points in the criminal justice system. Too often, however, these interventions operate as stand-alone programs in isolation of one another, and are not implemented in coordination with the interventions that can occur in other parts of the system. As a result, many communities find that these individual interventions—while effective for the people they reach—do not produce the desired results of reducing the overall number of people who have behavioral health needs in their criminal justice system.

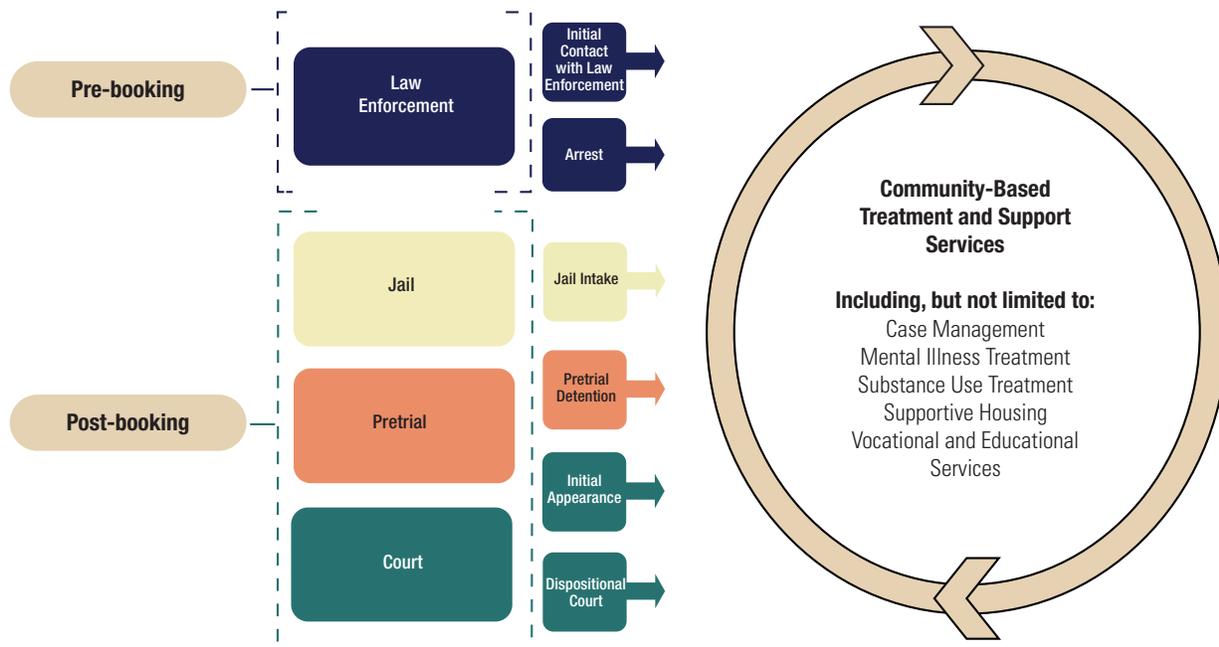
When this occurs, leaders should conduct an analysis of the behavioral health and criminal justice systems to help identify which agencies have the resources and best opportunities to implement coordinated behavioral health diversion interventions and engage new stakeholders from the different agencies to think through the communities' goals for behavioral health

¹⁰ Risè Haneberg et al., *Reducing the Number of People with Mental Illnesses in Jails* (New York: The Council of State Governments Justice Center, 2017), https://stepuptogether.org/wp-content/uploads/2017/01/Reducing-the-Number-of-People-with-Mental-Illnesses-in-Jail_Six-Questions.pdf; and "The Stepping Up Initiative," <https://stepuptogether.org>.

diversion. This analysis, in combination with information gathered about the people who have behavioral health needs in their criminal justice system and the gaps in community-based treatment and support services, can reveal which behavioral health diversion opportunities a community should prioritize and invest funding in.

Figure 1 shows the potential behavioral health diversion interventions within a community’s criminal justice system that can be used to connect people to community-based treatment and support services, organized around the specific agencies that would best lead the implementation of a diversion intervention. These opportunities range from interventions that operate prior to arrest and booking by law enforcement to those that provide alternatives to incarceration at adjudication or sentencing. Categorized by which opportunities fall under the pre-booking and post-booking diversion classifications, the larger boxes indicate which agencies can lead implementation of the behavioral health diversion interventions, while the smaller boxes to the right describe key points in the criminal justice process where a behavioral health diversion intervention could be implemented based off the agency with the best opportunity to do so. Once implemented, these interventions should all have a similar end result: the person connected to community-based treatment and support services.¹¹

FIGURE 1. BEHAVIORAL HEALTH DIVERSION OPPORTUNITIES WITHIN A LOCAL CRIMINAL JUSTICE SYSTEM LEADING TO COMMUNITY-BASED TREATMENT AND SUPPORT SERVICES



This agency-specific framework helps local leaders determine which agencies will best lead their agreed upon behavioral health diversion interventions and how those agencies can collaborate to develop the systems-wide strategy, reducing the silos that often occur when interventions are implemented without community-wide coordination. By using this framework, agencies can have a better understanding of what behavioral health diversion interventions are possible. Communities can also determine what types of interventions best address their needs and where they should focus their interventions to create diversion opportunities across the criminal justice system. A systems mapping exercise, such as Sequential Intercept Mapping (derived from SIM), can be used to identify the agencies responsible for each process point and subsequent identification of a diversion intervention. Once local leaders have an understanding of the needs of their identified population, the diversion interventions already implemented, and the capacity of community-based services organizations, they can begin to explore behavioral health diversion interventions that would provide the level of treatment and supervision needed by this population.

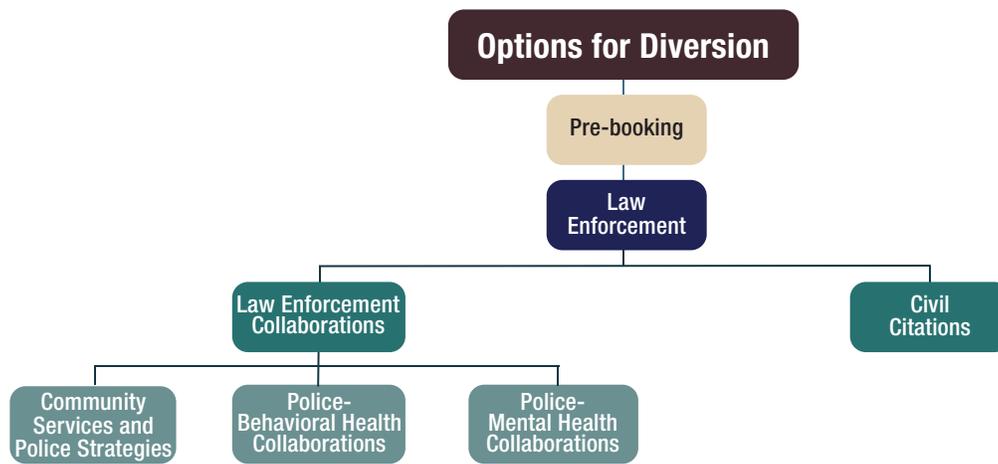
¹¹ Figure 1 highlights the agencies typically associated with each key process point in the criminal justice system of a given jurisdiction, but it is important to note that the agency responsible for each process point varies across jurisdictions. It also indicates examples of community-based treatment and support services that people should be connected to once they are diverted from the criminal justice system. Many communities have begun using Collaborative Comprehensive Case Plans to facilitate these efforts as part of a systems-wide strategy. See, "Collaborative Comprehensive Case Plans: Addressing Criminogenic Risk and Behavioral Health Needs," The Council of State Governments Justice Center, accessed September 13, 2019, <https://csjjusticecenter.org/nrrc/collaborative-comprehensive-case-plans/>.

Pre-booking Diversion Interventions

Although there are key points in the criminal justice process to divert people after they have been booked into jail, diverting people at the pre-booking stage typically results in limited or no jail time or justice involvement for an individual. Therefore, communities should consider investing in behavioral health diversion interventions at the pre-booking point in the criminal justice system if their data analysis reveals the needs of their identified population are best addressed through programs and practices that intervene early in the criminal justice process. If it is determined that a significant proportion of the population with behavioral health needs is arrested or convicted for low level offenses, for example, a pre-booking diversion intervention would allow people to be connected to community-based treatment and support services rather than booked into a jail facility. Pre-booking diversion interventions can reduce burdens on the booking and jail staff by diverting people prior to being booked into a jail, reducing the number of people who have behavioral health needs from entering a jail facility. These interventions can also reduce individual barriers to recovery. For people who have mental illnesses, jail time often means a disruption to community-based treatment, as well as any community supports, such as benefits enrollment, housing, and employment.¹²

Figure 2 illustrates the types of opportunities for pre-booking diversion interventions law enforcement agencies can implement. These interventions are often focused on law enforcement collaborations with community providers in the behavioral health system that have more knowledge and resources to treat people who have behavioral health needs.¹³

FIGURE 2. LAW ENFORCEMENT OPTIONS FOR IMPLEMENTING PRE-BOOKING DIVERSION INTERVENTIONS¹⁴



Post-booking Diversion Interventions

After an individual has been booked into jail, there are still numerous opportunities for diversion through the efforts of the jail, pretrial services, or the courts. Communities should consider investing in post-booking diversion interventions, if it is determined that existing treatment and service gaps are best addressed by the courts, jail facilities, or pretrial services. For example, a jurisdiction may determine that the people who have behavioral health needs in their community have longer lengths of stay in a jail facility or their criminal charges are largely predicated on their behavioral health need. Examples of post-booking diversion interventions can include a reduction in charges or case dismissal pending completion of a behavioral health diversion program. While these interventions will not reduce the number of jail bookings, they can significantly impact an individual's length of stay, as well as help avert the consequences of a criminal conviction.

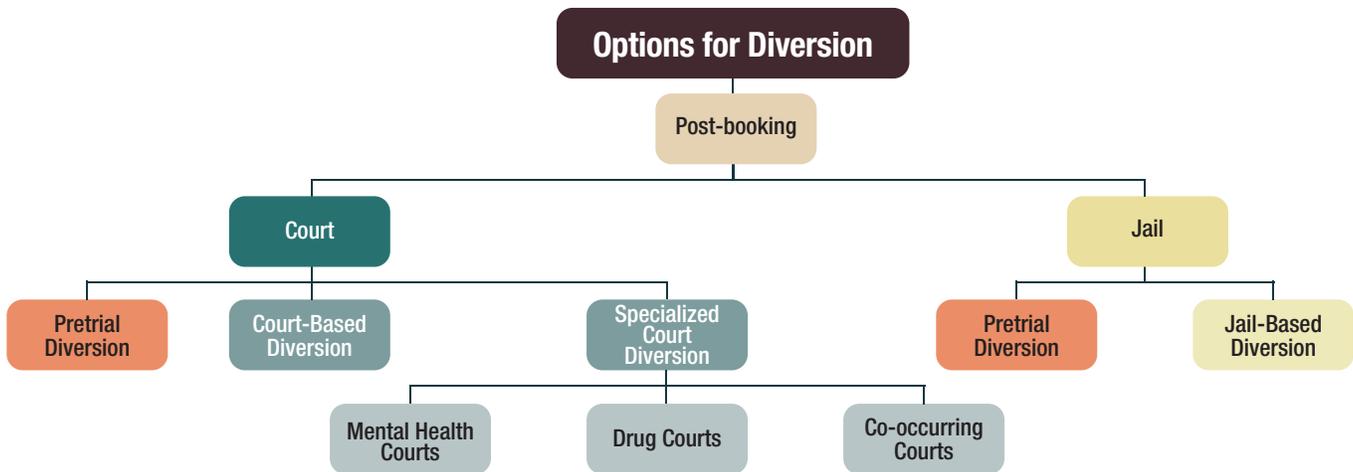
¹² Hallie Fader-Towe and Fred Osher, *Improving Responses to People with Mental Illnesses at the Pretrial Stage: Essential Elements*, 9, <https://csjusticecenter.org/courts/publications/improving-responses-to-people-with-mental-illnesses-at-the-pretrial-stage-essential-elements/>.

¹³ The Council of State Governments Justice Center, *Police-Mental Health Collaborations: A Framework for Implementing Effective Law Enforcement Responses for People Who Have Mental Health Needs* (New York: The Council of State Governments Justice Center, 2019), <https://csjusticecenter.org/wp-content/uploads/2019/04/Police-Mental-Health-Collaborations-Framework.pdf>.

¹⁴ Figure 2 uses categorizations to describe various collaborative efforts led or joined by law enforcement agencies across the country. "Community Services and Police Strategies" includes diversion interventions where a person is diverted to crisis services; "police-behavioral health collaborations" refers to diversion interventions where connecting people with substance use disorders or concerns to treatment is the primary focus; and "police-mental health collaborations" refers to diversion interventions where connecting people with mental health needs to treatment is the primary focus.

For these interventions, prosecutors, defense counsel, pretrial services staff, jail staff, judges or others working in the courts may help to identify people who meet eligibility criteria for diversion. Figure 3 illustrates some common post-booking diversion options based on the criminal justice agencies and partners that can best implement those programs and practices.

FIGURE 3. COURT AND JAIL OPTIONS FOR IMPLEMENTING POST-BOOKING DIVERSION INTERVENTIONS¹⁵



DEVELOPING A SYSTEMS-WIDE STRATEGY

Local leaders can begin developing a systems-wide strategy by engaging criminal justice and community partners in efforts to identify their behavioral health needs and gaps in services and determining the pre- and post-booking interventions that work best for them. They should use this information to inform the development of a systems-wide behavioral health diversion strategy based on what behavioral health needs they want to prioritize and which agencies are best positioned to lead and collaborate on implementing the behavioral health diversion interventions. To develop that strategy, leaders must also determine where they should focus their behavioral health diversion interventions within the various points in the criminal justice system.

The use of data, system mapping, and analysis of flow of people through a local criminal justice system can help to identify points in the criminal justice system where one or more behavioral health diversion interventions should be implemented. In addition to identifying areas to implement new programs and practices, local leaders should also examine and assess the performance of any existing efforts within the criminal justice and behavioral health systems. Combining both these efforts will help leaders develop a systems-wide strategy that includes multiple points in the criminal justice system where agencies have the ability to identify people who have behavioral health needs as well as divert them to the community-based providers that can provide the needed treatment and support services.

A thoughtful systems-wide behavioral health diversion strategy that builds a continuum of behavioral health diversion interventions into the criminal justice system will maximize the number of interventions available, ensure that the interventions offered meet the needs of the community, and more effectively reroute the appropriate people from conventional case processing and incarceration into the community-based treatment and support services that better serve their needs.

¹⁵ Although pretrial diversion is included as an intervention that can be led by either the courts or the local jail, it is often a stand-alone agency run by community supervision or a branch within the courts. The inclusion of pretrial diversion on both sides of Figure 3 reflects the variety of pretrial services administrative locations in communities. Additionally, under "specialized court diversion," it is worth noting that these programs are all pre-plea and may have a variety of program names depending on the jurisdiction. While drug courts, mental health courts, and co-occurring courts are among the most common types of specialized court diversion, jurisdictions are constantly innovating in this area, and there may be other specialized court diversions available that would be appropriate (e.g., homelessness court, opioid court, etc.).



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