



PROMISING PRACTICES:

Pre-Arrest Diversion for Emerging Adults



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Executive Summary

In this report, we collate a set of promising practices to support the implementation of pre-arraignment diversion programs for emerging adults. Emerging adults are roughly between 18-25 years of age and are uniquely situated between the developmental stages of adolescence and mature adulthood. This stage of adolescence poses a variety of challenges, because it is developmentally appropriate for this age group to be impulsive thrill seekers who are highly susceptible to peer influence and are ill equipped to assess risk or potential long-term consequences. As a result, they are overrepresented in almost every activity that involves bad judgement, such as: car crashes, accidental drownings, unintended pregnancies, and illegal behavior. The fact that this age group is maturing physically, emotionally, socially, and neurologically also creates a unique opportunity for non-punitive interventions designed to promote better life outcomes for the individuals and safer, healthier communities for everyone. We identify some of the limitations of the criminal legal system's traditional responses to undesirable behavior for emerging adults and then recommend the implementation of pre-arraignment diversion for emerging adults as an effective way to prevent further criminal legal system involvement by *responsibly* supporting positive youth development. In this report, we note the key differences between the juvenile and adult criminal legal systems - their goals, strategies, rules, procedures, and resources – and the fact that emerging adults are automatically excluded from the youth system, often limiting (if not eliminating) the opportunity to be diverted before arraignment in a developmentally appropriate manner.

We begin this report by describing the distinct developmental stage of emerging adulthood (also referred to as transition age youth) and the need to implement developmentally appropriate responses within, and adjacent to, the criminal legal system. Next, we analyze how the developmental frameworks of Positive Youth Development and Positive Youth Justice can be used to guide and inform the supports and interventions necessary to nurture young people's development, especially when designing and implementing pre-arraignment diversion programs for emerging adults. We assess and review examples of pre-arraignment diversion programs for emerging adults, noting that they are relatively rare. Finally, and perhaps most importantly, we identify 13 promising practices derived from the existing examples of, and research on, these programs:

- 1) **Focus on emerging adults (ages 18 through 25)** who would otherwise be formally prosecuted by providing pre-arraignment diversion (considered the “gold standard” of diversion).
- 2) **Make diversion the default approach** and, if deviating from the default, ensure that there is a process for review within the District Attorney’s Office and that the reasons for deviation from the default are clearly articulated and transparent. Diversion should not be prevented because of the specific offense being prosecuted, since charges tell us little about an individual’s ability to benefit from diversion.
- 3) **Allow more than one episode or incident to be diverted.** A hallmark characteristic of adolescence is inconsistency. Consequently, young people’s law-breaking behavior is often episodic, spanning days, weeks, or years. Although the criminal justice system traditionally counts these as separate offenses, the timing should not exclude young people from participating in diversion programming.
- 4) **Protect statements during diversion from being used against youths later and provide opportunities to consult with an attorney.** In order to fully participate without fear of legal consequences, statements made by a youth during the diversion process (e.g., an apology) should not be used against a youth if a case is prosecuted later. Further, emerging adults should be provided with the opportunity to consult with an attorney when deciding whether to accept diversion (and giving up some of their legal rights) and when issues arise during diversion (e.g., inappropriate requirements are imposed).
- 5) **Preclude future prosecution of the offense upon diversion completion.**

- 6) **Implement developmentally sensitive diversion program terms and conditions.** Enforce diversion terms and conditions sensibly. Expect that young people will continue to make mistakes and find proportional and thoughtful responses to both failures and successes.
- 7) **Refer cases to an accessible network of community-based providers** with expertise and experience working with emerging adults for engaging and developmentally appropriate programming.
- 8) **Tailor program choice to the unique needs and interests of each emerging adult.**
- 9) **Guarantee proper training** for staff to ensure that *all* youth feel safe and are appropriately supported. Staff should be proficient in the Positive Youth Development framework and should also be trained in useful skills (e.g., motivational interviewing).
- 10) **Empower the expert community service provider** to support the emerging adult and develop a plan for programming in collaboration with the emerging adult. Judges and prosecutors should stay out of social work as much as possible.
- 11) **Defer to short program lengths.** Research has shown that over-supervising people is counterproductive. (See burdens of Leniency)
- 12) **Review the written diversion agreement before termination** to provide the emerging adult with closure and to ensure that the scope of the diversion program remains within the agreed upon terms.
- 13) **Expunge record of system involvement (e.g., arrest) upon completion.**

These promising practices offer some guidance on the successful implementation of pre-arraignment diversion programs for emerging adults in ways that not only prevent recidivism but help build towards more positive life outcomes for young people and their communities. We close this report by identifying additional resources that may be of use for further research in this domain.

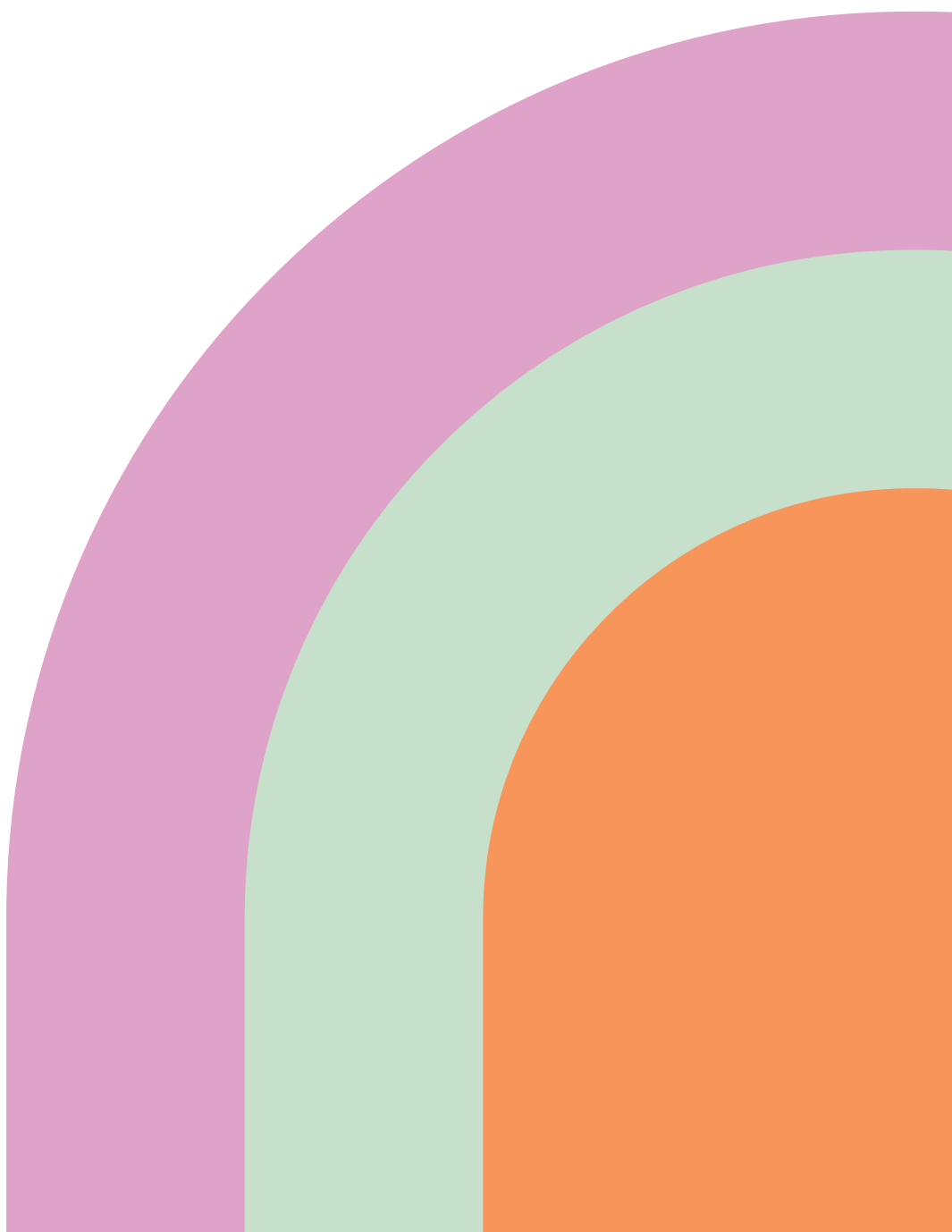
Emerging Adulthood

Informed by research from the fields of neurobiology, developmental psychology and sociology, the concept of “emerging adulthood” has not always been strictly defined, but it and a cluster of related ideas have been used to understand a developmental phase that is distinct from both early adolescence (i.e., onset of puberty) and mature adulthood. The term was originally coined by Jeffrey Jensen Arnett who defined emerging adulthood as a life phase “between adolescence and young adulthood” (Arnett, 2000). For Arnett, this phase has emerged as people have begun to get married and have children later in life, and generally includes people between 18 and 25, and potentially up to 29 years of age (Arnett, 2014). Laurence Steinberg (2014) uses the language of “extended adolescence” to characterize the period of development that extends from age 18 until the mid-twenties, also noting that people in their early twenties today take on traditional adult roles later than in previous generations. Other researchers have also argued that young adults who are 18-26 years of age today share a variety of developmental characteristics with adolescents, namely a transitory and difficult period of change that is characterized by impulsivity and risk taking and is frequently affected by trauma and adverse life experiences (Institute of Medicine, 2015). These young adults face a variety of distinct social, economic, and cultural conditions that inhibit them from easily stepping into conventional roles of adulthood, and they are subjected to risks and challenges that are distinct from younger adolescence (Institute of Medicine, 2015). Thus, in order to promote life success for court involved youth

in this age group, as well as long term public safety, emerging adults require developmentally appropriate attention, policies, and types of intervention that are tailored to address these distinct challenges.

One of the distinguishing characteristics of emerging adulthood as a developmental phase is a greater willingness to engage in risk-taking behavior (Pharo et al., 2011). As McCord et al. (2001) note, “[s]ome lawbreaking experience at some time during adolescence is nearly universal in American children” (p. 68). While emerging adults are more developed and mature than younger adolescents, they are 2-3 times more likely than the younger cohort to experience injury or death (Pharo et al., 2011). Risk-taking behavior is one of the key reasons for this disparity (Pharo et al., 2011). Explanations for this risk-taking behavior among emerging adults vary, but evidence suggests that at some point, the development of the executive, inhibitory functions of the prefrontal cortex in emerging adult brains lag behinds the more sensation-seeking functions, resulting in greater risk-taking (Pharo et al., 2011; Steinberg, 2004). This imbalance translates into a greater rate of risky, illegal behavior than mature adults (Bersani & Doherty, 2018; Scott et al., 2016). Developmentally, this behavior increases during adolescence, tends to peak at ages 18 - 19, and then declines into the mid-twenties (Bersani & Doherty, 2018; McCord et al., 2001; Scott et al., 2016). In a sense, emerging adults “grow out of” this behavior as they develop into mature adulthood.

On the flip side, research shows that emerging adults are also remarkably malleable (Steinberg, 2014). This malleability enables emerging adulthood to be an “age of opportunity” for promoting healthy growth, rather than simply a time of risk (Steinberg, 2014). If given the right support, resources, and opportunities, emerging adults are likely to flourish developmentally (Steinberg, 2014).



Positive Youth Development and Positive Youth Justice

The overarching goals of any justice system adjudicating young people are to: maximize short- and long-term public safety, provide a fair process, and to promote the long-term healthy development of the youth into productive citizens and good neighbors. The court and law enforcement are in the fortunate positions of having decades of research to inform the system’s approach, so as to achieve the best possible outcomes for the individuals and the community. Using the well-established Positive Youth Development framework to enhance our existing criminal legal system in order to make it more developmentally appropriate is the most sensible and cost-effective strategy available today. Pre-arraignment diversion fits perfectly into that framework.

Much of the research on adolescent development describes and explains that adolescence is naturally a time of poor decision making, risky behavior, and turbulence (Lerner et al., 2009). Historically, the criminal legal system has focused on treating all illegal behavior as the product of rational mature decision making that can be corrected with nothing more than the right dosage of punishment. Positive Youth Development (PYD) emerged as a framework to challenge and critique this “deficit-based” approach to conceptualizing adolescence. Instead

of emphasizing only risk factors, PYD is a “strengths-based” approach focused on adolescence being a period marked by growth, opportunities, and potential. The PYD framework asserts that with the right internal and external developmental assets, especially that of stronger connections to their communities, youth flourish and achieve positive developmental outcomes (Geldhof et al., 2015; Lerner et al., 2009). By supporting and building on the strengths and developmental assets of youth, they can acquire the Five C’s of PYD: Competence, Confidence, Connection, Character, and Caring. These Five C’s enable youth to contribute in positive ways to their communities, and over time, inevitably result in less risky behavior (Lerner et al., 2009). Positive Youth Development provides a relatively simple and straight forward guide for the actions of adults and institutions that are responsible for protecting public safety and supporting the equitable healthy development of all youth, court involved or not.

The application of the PYD framework to the domain of criminal and juvenile justice is often called Positive Youth Justice (PYJ), a term initially coined by Butts et al. (2010). Risk and deficit models of youth development are particularly common in the criminal and juvenile legal systems, where youth are framed as either anti-social delinquents or passive victims of

circumstance (Butts et al., 2010). Both of these approaches treat youth as incapable of exercising agency to improve themselves and their circumstances. As a result, youth are treated as either needing to be managed or constrained through punishment, or as primarily needing to be protected from the risk factors that could lead to negative behavior. Punishment as an aspect of teaching accountability and treatment or “interventions” as a way to address some deficits may be appropriate for some young people, but when they are relied upon without making them only a piece of a more

assets) when developing and implementing criminal justice responses, youth will develop and behave in increasingly more positive, pro-social, and responsible ways.

Traditional juvenile and criminal legal system processing is largely incompatible with the goals of PYJ, and also commonly results in outcomes contrary to conventionally understood goals of juvenile and adult criminal systems. Researchers have found that involvement with the juvenile justice system in and of itself can result in substantial harm to youth, such as higher rates

“Many young people have a history of mental health and being arrested, and their court cases are a trigger. Their cases are being treated as what’s wrong with them instead of asking what happened to them?”

– John D., More Than Words

of adult incarceration and greater risk of dropping out of high school (Aizer & Doyle, 2015; Muhammad, 2019). At the same time, research suggests that formal juvenile justice system processing produces no real reduction in crime, and tends to increase juvenile delinquency (Petrosino et al., 2010). In one study,

controlling for severity of offense, defendant criminal history, etc., youth formally charged and arraigned were more likely to be arrested again within the subsequent six months than those who underwent a less formal program such as diversion (Fine et al., 2017). McAra and McVie (2007) go so far as to argue that formal processing through the juvenile justice system - indeed any contact at all - could be considered “inherently criminogenic” (p. 318). Given their developmental similarities, the lesson of the largely negative experiences of adolescents with the juvenile justice system should be instructive when designing criminal justice system responses for emerging adults.

comprehensive youth development approach, they are doomed to an unacceptably and unnecessarily high rate of failure.

PYJ, on the other hand, “emphasizes a strength-based, developmentally-sound approach that builds on community-connections, positive peer culture and family engagement” (Butts et al., 2010, p. 5). Like PYD more generally, PYJ understands youth as both having and developing assets and strengths, as well as needing assets (i.e.- support, resources, opportunities, services) from their environment. PYD and PYJ also understand that youth need to have a meaningful opportunity to experience being an asset for their communities (Butts et al., 2010). Proponents of PYJ argue that if these assets and strengths are recognized, appreciated, promoted, and provided (external

controlling for severity of offense, defendant criminal history, etc., youth formally charged and arraigned were more likely to be arrested again within the subsequent six months than those who underwent a less formal program such as diversion (Fine et al., 2017). McAra and McVie (2007) go so far as to argue that formal processing through the juvenile justice system - indeed any contact at all - could be considered “inherently criminogenic” (p. 318). Given their developmental similarities, the lesson of the largely negative experiences of adolescents with the juvenile justice system should be instructive when designing criminal justice system responses for emerging adults.

Individuals who are able to avoid becoming entangled with the criminal legal system directly benefit by avoiding its numerous

harms, including higher rates of recidivism, difficulties finding employment, and challenges accessing housing, education, and other social services (Alexander, 2012; Fine et al., 2017). The implementation of pre-trial diversion programs for emerging adults can also have larger social benefits. This is particularly the case for challenging systemic racism in the criminal legal system. The proliferation of prisons and imprisonment in recent decades, also known as the phenomenon of “mass incarceration,” affects Black and Brown people at highly disproportionate rates (Alexander, 2012). These disproportionalities lead to a host of larger social, economic, and political costs, which Michelle Alexander (2012) has argued constitutes a second-class citizenship akin to a racial caste system. Given the elevated likelihood of emerging adults becoming involved in the criminal legal system compared to other adult age cohorts (Bersani & Doherty, 2018; Scott et al., 2016), pretrial diversion for emerging adults can play an especially significant role in challenging mass incarceration.

Review of Existing Pre-Arrestment Diversion Programs

Of all the stages of the justice system, diversion – especially pre-arrestment diversion – is arguably the most impactful, cost effective, easiest point to implement the PYD/PYJ approach so as to provide an effective and developmentally appropriate response to emerging adults. Sometimes referred to as “true diversion,” “pre-charge” diversion, or “pre-filing” diversion, pre-arrestment diversion for adolescents and emerging adults involves diversion away from criminal legal processing before a formal court date is issued. This is significant partly because it limits the youth’s inherently counterproductive contact with the court system, and it prevents the creation of an official criminal court record that would exist forever. To-date, pre-arrestment diversion has been inconsistently implemented in the U.S. and often limited in application to only the least severe charges (Annie E. Casey Foundation, 2018; Wilson & Hoge, 2013). This limitation is unfortunate, because research suggests that in most cases the severity of the charge is not a good indicator for whether pre-arrestment diversion would be the most effective strategy for reducing or eliminating future criminal behavior for the individual in question (Augustine et al., 2021; Naples & Steadman, 2003). Pre-arrestment diversion is significantly more widely available to adolescents under the age of 18 than to emerging adults (Models for Change,

2011), who are still almost universally treated identically to fully mature adults. Only recently have a small number of jurisdictions begun to provide specialized programs designed for this older adolescent population (Betancourt, 2020). While its availability to adolescents prosecuted for serious felonies is still limited, Massachusetts’ Middlesex County District Attorney’s Juvenile and Young Adult Diversion Program is an example of a pre-arrestment diversion model informed by adolescent developmental science that can be used to keep youth who are facing both misdemeanors and felonies out of the criminal legal system and involved in more positive rehabilitative processes (Betancourt, 2020; Middlesex County District Attorney’s Office, n.d.). Significantly, the Middlesex County District Attorney’s Juvenile and Young Adult Diversion Program is one of the few that also attempts to implement pre-arrestment diversion for emerging adults (Middlesex County District Attorney’s Office, n.d.). It is worth noting that the Massachusetts statewide Youth Diversion Program, launched through a partnership between the Department of Youth Services and the Office of the Child Advocate, also includes both pretrial and pre-arrestment diversion (Juvenile Justice Policy and Data Board, 2021; Office of the Child Advocate, 2021). At this time, however, this program is limited to youth who allegedly

commit crimes before their 18th birthday and does not include emerging adults (Juvenile Justice Policy and Data Board, 2021; Office of the Child Advocate, 2021).

The outcomes of pre-arraignment diversion programs for adolescents – compared to traditional juvenile justice system processing outcomes – are promising. While there is substantial variability between programs, diversion programs of all types generally result in lower rates of recidivism than traditional processing, while avoiding many of the long-term harms that come with system involvement (Wilson & Hoge, 2013). In one study, youth whose cases were processed more informally, including by pre-arraignment diversion, were less likely to be re-arrested 6 months later than those youth who subjected to formal juvenile justice processing (Fine et al., 2017). Unfortunately, the acceptance and implementation of diversion programs by prosecutors (and judges) is inconsistent, and often racially inequitable in terms of who is offered diversion (Annie E. Casey Foundation, 2018). Youth of color are less likely to be diverted than their white peers, and even seemingly racially neutral policies, such as disallowing diversion for youth accused of felonies, have been shown to produce racially disparate access to more effective and less punitive responses to delinquent and criminal activity (Annie E. Casey Foundation, 2018).

Importance of Diversion at the Pre-Arraignment Stage

Nationally and internationally, there are a growing number of adolescent pre-arraignment diversion programs and a growing body of research on the successes and best practices for these programs. Regrettably for older adolescents or emerging adults, there is a relative scarcity of both for pre-arraignment diversion programs and research on those programs. While many different kinds of pretrial diversion programs can redirect emerging adults away from formal case processing that could result in sentences to prison, they can still potentially result in a record of criminal system involvement that will appear in, for example, a Criminal Offender Record Information (CORI) search (Boston Bar Association, 2017, p. 13). Few states permit the expungement or even effective sealing of these records regardless of how many years the person goes without any additional charges. One solution to this problem is the implementation of pre-arraignment diversion programs, which can divert a case from the criminal legal

system before a court record is officially made (Boston Bar Association, 2017, pp. 11-13). In doing so, defendants are able to receive vital services, but are also more consistently able to avoid the myriad of deleterious consequences flowing from contact with the criminal legal system, including that of further, of even chronic, system involvement.

“If I had been diverted to More Than Words instead of going into the system, I would have had these opportunities before prison. I wouldn’t have had a CORI [Criminal Offender Record Information], I wouldn’t have been denied so many job opportunities. Instead, I was dehumanized with all these lost opportunities - and that leads to recidivism - and picking up more cases. It leaves you hopeless and unable to get back on track when you come out of jail as a young person.”

– Jarris, More Than Words

Pretrial diversion programs are not commonplace, but pre-arraignment diversion programs are even scarcer. Consequently, it is difficult to develop a comprehensive assessment of “best practices” since the outcomes of the practices applied to these programs still need to be evaluated. We can, however, indicate those practices that seem most promising, after assessing some of the existing pre-arraignment diversion programs for emerging adults. It is important to note that most first or second time “offenders” have engaged in typical, if illegal, adolescent behavior. Most, if not all, of their peers have engaged in similar behavior but have not been caught or arrested. The vast majority of these young people may need no more intervention than a wake-up call of being caught. It can not only be a waste of resources but even counter-productive and harmful for these young people to engage in any court mandated programming.

Examples of Existing Pre-Arrest Diversion Programs

(Note: Programs below were chosen because they apply to emerging adults, but the programs may or may not adopt or attempt to adopt the Positive Youth Development Framework)

California: Promising Adults, Tomorrow's Hope (PATH)

Promising Adults, Tomorrow's Hope (PATH) in Long Beach City is an emerging adult pre-arrest diversion program. This program is directed toward 18–24-year-olds accused of, but not yet arraigned on, misdemeanor offenses, with the exception of Driving Under the Influence and domestic violence (cases that are excluded). The rationale for this program is explicitly to address the developmentally distinct challenges of emerging adulthood. The primary points of diversion for this program are the City Prosecutor's Office and judges. The Prosecutor's Office issues a letter to young adults whom it believes are eligible for the program, asking them to contact the PATH program to discuss participation and eligibility prior to their court date. If this does not occur, an accused emerging adult may request that the prosecutor and judge permit them to participate in PATH prior to and in lieu of formal arraignment. For more severe charges, a judge may require a no contest or guilty plea, which will be withdrawn or dismissed after completion of the PATH program. Emerging adults who enter this program are required to complete a 6-hour course on driving skills and other life skills. In addition to this, they are given access, and required, to meet with an employment navigator who will help them find and sustain employment. Depending on the nature of the charge, different requirements might be imposed. For example, a charge of public urination may result in a requirement to attend Alcoholics Anonymous meetings and perform community service (Greg Hill and Associates, n.d.).

Massachusetts: Middlesex County District Attorney (MDAO) Juvenile and Young Adult Diversion Programs

The Middlesex County District Attorney Juvenile and Young Adult Diversion Programs are pre-arraignment programs that operate as an alternative to prosecution for juveniles and emerging adults. Participation is voluntary and may be offered to juveniles under 18 who would be prosecuted in the juvenile court, as well as those between 18 and 25 years of age who would be prosecuted in the adult criminal court (Middlesex County District Attorney's Office, n.d.). Charges of misdemeanors and felonies are eligible for diversion in this program, but the program does not permit certain offenses such as: offenses that carry mandatory sentences, offenses involving firearms, and school-based threats, among others (Middlesex County District Attorney's Office, n.d.). If accepted, an individual will enter into an individualized written agreement with the District Attorney's office, which specifies the character of the offense and the needs of all parties (Middlesex County District Attorney's Office, n.d.). If programming is successfully completed, the District Attorney agrees not to continue with formal criminal proceedings, and the emerging adult will not have a criminal record nor undergo formal arraignment (Middlesex County District Attorney's Office, n.d.). Failure to complete the terms of the agreement may result in formal criminal charges being pursued against the emerging adult (Middlesex County District Attorney's Office, n.d.). The program can include educational programs, counseling, writing letters of apology, community service, and restitution to victims (Middlesex County District Attorney's Office, n.d.).

Massachusetts General Laws Chapter 276A

Pursuant to Massachusetts General Laws Chapter 276A, as enacted in 2018, judges may (in consultation with the Assistant District Attorney) divert emerging adults ages 18-21 away from traditional criminal legal proceedings (Middlesex County District Attorney's Office, n.d.). While judges have a large degree of latitude in the application of this law, eligibility is normally limited to people being accused of a first offense, and only for a misdemeanor, such as a traffic violation, minor in possession of alcohol, drug possession, shoplifting, or another non-violent crime (Middlesex County District Attorney's Office, n.d.). Otherwise, eligible defendants are prevented from participating if they have a prior conviction acquired after the age of 18 (Middlesex County District Attorney's Office, n.d.), and also may be excluded if accused of most "violent" crimes, the possession or use of firearms, the violation of restraining orders, sex crimes, or a crime that has a mandatory minimum sentence, among others (Middlesex County District Attorney's Office, n.d.). Judges have latitude regarding the kinds of programs and services that a defendant

may be assigned, and can include volunteering at soup kitchens, participating in a family therapy program, or other community service options that the judge deems appropriate (Middlesex County District Attorney's Office, n.d.).

This diversion law also contains a separate provision for military veterans under the Valor Act (276A section 10) (Middlesex County District Attorney's Office, n.d.). Purportedly guided by a trauma-informed approach to understanding the experiences of military service and the mental health challenges that veterans frequently face (Kelly et al., 2014), this provision states that any veteran, at any age, who was honorably discharged and has no prior convictions may be considered for diversion, owing to the special difficulties of adjusting to civilian life after military service (Middlesex County District Attorney's Office, n.d.). This provision allows for repeated diversions since the successful completion of a diversion agreement under this law, for veterans and non-veterans alike, results in no formal criminal record or arraignment (Middlesex County District Attorney's Office, n.d.).

New York: Long Island Pre-Arrest Diversion (PAD) Program

Nassau County's District Attorney in Long Island, New York, implements its Pre-Arrest Diversion (PAD) Program to divert certain categories of adults of any age, including emerging adults, from involvement in the criminal legal system prior to formal arraignment (Genn, 2021). Potential participants in the program are identified and contacted by the Nassau County District Attorney's Community Partnership Program (CPP) (Genn, 2021). Those who wish to participate in the diversion program are interviewed for intake by social work graduate student interns (Genn, 2021). Significantly, the content of these interviews may not be used in any criminal proceedings (Genn, 2021). Also, participation in the PAD Program has no bearing on a defendant's immigration status (Genn, 2021). Adults charged with the following offenses may be eligible to participate in PAD: Criminal possession of a controlled substance in the seventh degree (a misdemeanor), petit larceny (a misdemeanor), disorderly conduct (a violation), driving with a suspended or revoked license (a misdemeanor), driving with a suspended or revoked registration (a misdemeanor), trespass (a violation), criminal trespass in the third degree (a misdemeanor), criminal possession of stolen property in the fifth degree (an misdemeanor), and criminal possession of a forged instrument in the third degree (a misdemeanor). Prior and concurrent arrests or convictions render a person ineligible for the program (Genn, 2021).

Offered at the discretion of the District Attorney's Community Partnership Program, the program's services may include substance abuse treatment, peer meetings, participation in a shoplifting prevention program (Stoplift), gang intervention, online programs, as well as social service referrals for housing, job training, food, and education. If a defendant completes the program, including its required services within 60-90 days, depending on the nature and severity of the charge, charges will be dropped, and a formal arraignment will never occur.

Promising Practices for Pre-arraignment Diversion Programs for Emerging Adults

Identifying a set of promising practices for pre-arraignment diversion programs for emerging adults requires distinguishing between different practices at each stage of the diversion process, given their different challenges and requirements.

First, we consider what constitutes promising practices for determining eligibility for pre-arraignment diversion.

Second, we identify promising practices during the implementation of pre-arraignment diversion.

Finally, we identify promising practices for the termination of pretrial diversion programs.

Promising Practices for Determining Pre-Arrest Diversion Eligibility

Eligibility determinations are an important aspect of implementing pre-arrest diversion because they help determine which populations can be diverted in the first place, and when.

PROMISING PRACTICE

Focus on emerging adults (ages 18 through 25)

Diversion programs should have clearly defined target populations consisting solely of those emerging adults who would otherwise have contact with the court system. In other words, people for whom there is clearly probable cause to file charges. This is necessary in order to prevent an inadvertent “net widening,” in which people who otherwise should not have contact with the court system are drawn into it (Prichard, 2010). This helps minimize the number of people subject to the slew of deleterious impacts that accompany criminal legal system contact, including increased future legal system involvement (Ezell, 2011; Frazier et al., 1983).

PROMISING PRACTICE

Make diversion the default approach

Diversion should be the default approach for all cases involving youth ages 18 through 25. The DA’s office should establish a review process for cases that are not offered diversion and the reasons from the deviation of this default should be clearly articulated. Further, the DA’s office should periodically review these decisions to look for patterns that might be increasing racial, ethnic, or other disparities. For example, using official or unofficial lists of suspected gang involvement to determine eligibility for diversion, raises concerns about the underlying reliability of these lists, including the transient nature of gang involvement for youth, as well as racial biases of law enforcement and stigmatization (Williams, 2015).

Felony charges and prior felony convictions are often used to exclude defendants from diversion programs. However, an analysis of a post-filing diversion program in San Francisco found that referrals to diversion programs of defendants facing felony charges decreased the likelihood of subsequent conviction for the five years following diversion when compared to similar cases that did not receive a diversion referral – *especially* for defendants between 18-25 years of age (Augustine et al., 2021). Another common exclusion implemented in many diversion programs is that of violent crimes including assault and battery, domestic violence, and sexual crimes. However, an examination of 12-month outcomes for people diverted on violent crime charges and people diverted on non-violent crime charges, Naples and Steadman (2003) found no significant differences in their outcomes in terms of recidivism. This finding casts doubt on the common exclusion of violent crimes from diversion programs. Other researchers have demonstrated that violence is not something regularly done by committed “violent offenders,” but is largely a product of social, economic, and racial inequities and the places in which these inequities are concentrated (Bersani et al., 2019).

While there are still disagreements about which models of diversion are best in cases involving intimate partner violence, researchers have demonstrated that diversionary programs for intimate partner violence cases can be successful in preventing future intimate partner violence (Cotti et al., 2020). Contradicting many of the common practices found in existing diversion programs, Wilson and Hoge (2013) found that diversion programs of any type were most effective at preventing future conviction and system involvement when they targeted “medium risk” and “high risk” individuals rather than those considered “low risk” (p. 511).

PROMISING PRACTICE

Allow more than one episode or incident to be diverted

Young people’s law-breaking behavior is often episodic, spanning a few days or even weeks. Although the criminal justice system traditionally counts these as separate offenses, the timing should not exclude young people from participating in diversion programming.

“Instead of trying to lock up young people for making mistakes, help them get help. The system makes them feel like mistakes are not OK to make, but mistakes are part of learning and growing up. Even if you have done something wrong, there should be a way to come to an agreement to get back on track. Ask the young person, What do you need? Stop messing up their lives.”

– Justice, More Than Words

PROMISING PRACTICE

Protect statements and actions during diversion from being used against youths later and provide opportunities to consult with an attorney

In many cases, especially those pertaining to illicit substance possession and use, defendants fear that disclosing sensitive information will result in that information being used against them in the future. Someone who may be amenable to a diversion program for substance use may be afraid to admit to their use, even in a medical or therapeutic setting, for fear of this information being used in future prosecution. As seen with the Long Island PAD program, for social work interns to effectively use intake interview information to guide service provision, diversion participants need to feel they can be honest without fear of state retribution (Genn, 2021).

Also, emerging adults should have access to an attorney for consultation. By accepting diversion, emerging adults are giving up their legal rights, such as a right to trial, and should be provided an opportunity to consult with a defense attorney who can provide them with information that allows them to make an informed decision. Similarly, there may be issues that arise during diversion (such as inappropriate requirements), and emerging adults should continue to have access to counsel to navigate these issues.

PROMISING PRACTICE

**Preclude future
prosecution
of the offense
upon diversion
completion**

A written diversion agreement that precludes emerging adults from future prosecution as a condition of successful completion should be provided during the initial stage of diversion. In conjunction with protecting statements and actions during diversion from being used against youth later, this promising practice can improve the willingness of youths to participate without fear.

Promising Practices *During* Pre-Arrest Diversion

Implementing promising practices during diversion is important, because without them there is a greater likelihood of participants being unable to complete a diversion program and are less likely to avoid future court involvement.

PROMISING PRACTICE

Implement developmentally appropriate program terms and conditions

Terms and conditions of a diversion program should be sensitive to the developmental needs of the participating emerging adults. Emerging adults, like younger adolescents, face environmental and socioeconomic challenges that make burdensome conditions of program completion difficult to meet (Annie E. Casey Foundation, 2018). For example, emerging adults should be required to attend only a reasonable number of meetings with diversion officials or programs. Reasonable conditions should be set pertaining to the time, location, and frequency of these meetings. Maintaining as few meetings as possible in accessible locations can minimize the chance of technical or superficial violations of the rules of a diversion program resulting in a person being re-routed back into traditional criminal justice system pathways (Anne E. Casey Foundation, 2018).

PROMISING PRACTICE

Refer cases to an accessible network of community-based providers

Networks of providers of diversion programming should be located within the emerging adult's community, and/or accessible via public transportation. This removes barriers to successful completion of diversion programs such as poverty and lack of access to transportation, which is necessary given the disproportionate rate of poverty among justice-involved emerging adults (Comfort, 2012). Local community providers also have a greater familiarity with and understanding of the circumstances and experiences of program participants.

PROMISING PRACTICE

Tailor programs to the unique needs and interests of each emerging adult

Diversion programs should be identified and selected based on the particular needs and interests of each emerging adult. While some generalized programming for life skills or job-seeking may be useful to everyone in this developmental stage, emerging adults have particular and urgent needs that diversion needs to address to be successful (Pharo et al., 2011; Steinberg, 2014). The process of tailoring programming also creates another opportunity to sort out the large number of youth who need no programming or no additional programming beyond what they are already receiving in school, after school, or in the work place.

PROMISING PRACTICE

Guarantee proper training for staff

Diversion program officers and staff must be properly trained. It is particularly important that they are trained in adolescent development, Positive Youth Development, trauma, motivational interviewing, cognitive behavioral theory (not therapy), cultural humility, diversity, equity, and inclusion, and working with LGBTQIA+ emerging adults (Irvine, 2010). A lack of such training could result in the discriminatory treatment of participants, which while harmful in itself, could also result in the participant's incompletion of the diversion program. The costs of lack of training of diversion staff could contribute to the disproportionate representation of marginalized people within the deeper end of the criminal system (Schlesinger, 2013).

Promising Practices for Termination of Pre-Arrest Diversion

During the final stage, determining how best to terminate a pre-arrest diversion program, there are several promising practices that could improve program outcomes.

PROMISING PRACTICE

Empower the expert community service provider

District Attorney's offices should partner with relevant expert community service providers or community organizations to determine the required terms and length for the successful completion of a diversion program (Annie E. Casey Foundation, 2018). The DA's Office should be limited, at most, to determining whether or not to refer a person to diversion. Empowering community service providers to design and select programming in collaboration with the emerging adult, his/her advocate, and his/her family can ensure that those service providers who are better positioned to determine the programmatic services that best serve the emerging adult's positive development have the authority to make those decisions.

PROMISING PRACTICE

Defer to short program lengths

Longer than necessary diversion program lengths should be avoided. The longer a diversionary program continues, the more opportunities there are for a participant to run afoul of the non-criminal terms and conditions of that program, as is often seen in probation systems (Anne E. Casey Foundation, 2018). Consequently, excessive program lengths may result in an unnecessary risk of further involvement with the criminal legal system. Further, as Vorenberg and Vorenberg (1973) argue, pre-arrest and pretrial diversion programs involve the

exertion of court monitoring and greater control over the lives of people who have not been convicted of a crime.

Some research supports limiting juvenile diversion programs to a maximum length of three months (Annie E. Casey Foundation, 2018). Longer program terms have demonstrated little benefit, can risk becoming onerous to the participant, increases the risk of technical violations of diversion program conditions, and could increase the likelihood of program incompleteness and thus creates the potential for counterproductive incarceration (Annie E. Casey Foundation, 2018). Comparable lessons can be drawn from research on probation, which shows that probation assignments should be limited to 9 or 10 months (Annie E. Casey Foundation, 2018; Muhammad, 2019). New York's Project Reset program is an example of the successes of shorter terms of programming, requiring some diversion programs to be completed within 3 to 4 weeks (ABC7 New York, 2019).

PROMISING PRACTICE

Review the written diversion agreement before termination

The written diversion agreement should be reviewed by the youth and the community program regularly during the duration of the diversion, including just prior to the termination of the diversion program. This helps ensure that the program requirements are regularly reassessed for appropriateness and gives both the staff and the participant the opportunity to discuss and make adjustments as necessary. These reviews also empower young people, with the assistance of counsel, to ensure that, absent good cause and a new agreement, that the diversion program requirements remain limited to those that were initially agreed upon. Regularly checking in also creates an opportunity for positive reinforcement for good performance that could even include shortening the prescribed duration of the diversion. Reviewing the agreement at the end ensures that the goals of the diversion agreement were completed to the satisfaction of all stakeholders including the emerging adult, diversion program, and the court. Because there were regular check-ins over the course of the diversionary period, in most cases this check-in will be an opportunity to acknowledge and celebrate the young person's success. Experiencing and being recognized for these kinds of achievements are important for healthy development and may have been few and far between for the youth most in need of the diversion programming in the first place. This review may also help provide a sense of closure, especially by giving young people the chance to evaluate their experience in the program.

PROMISING PRACTICE

**Expunge records
upon completion**

By agreeing to pre-arraignment diversion judges and/or prosecutors have recognized the importance of not creating yet another barrier to life success by avoiding a criminal court record. However, the young person will still have records with the police. DAs and/or the courts should enter into memoranda of understanding that for young people who are diverted, no police records, including fingerprints, will be forwarded to, or shared in anyway with, any other agency or organization local, state or federal, unless and until the young person fails on diversion and is officially arraigned. The memoranda should also include that upon successful completion of the diversion requirements, the police records will be fully expunged and, if information had previously been shared to other agencies, that requests be made to expunge these records. Even if they are not followed by a conviction, arrest records can still act as barriers to employment in a wide range of professions, such as teaching, banking, law enforcement, the practice of law, the military, and childcare. As Alexander (2012) has argued, this persistent stigma leads to long-term, population-level inequities that primarily harm African American men and their communities.

Conclusion

Emerging adulthood certainly represents distinct challenges and risks, but also contains clear opportunities for change and growth. Positive Youth Development and Positive Youth Justice-informed diversion programs can provide support for emerging adults during this period of heightened risk and opportunity. Among the different forms of diversion, pre-arraignment diversion is the best suited for preventing many of the negative life outcomes associated with formal criminal justice system involvement. These 13 promising practices can support efforts to implement pre-arraignment diversion programs for emerging adults in a way that promotes young people's development, nurtures positive life outcomes for them, and prevents future criminal legal system involvement. While these practices have compelling evidence supporting them, we must remain open to adjusting them as we learn more from future efforts to implement pre-arraignment diversion for emerging adults.

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