Addressing Privacy and Confidentiality in Deflection While Managing Risk and Legal Liability

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501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

ONDCP’s Model Acts Program Grant recipient for 2019-21 and 2021-23.
### Pathways of deflection

**Self-Referral** • Individual initiates contact with law enforcement for a treatment referral (without fear of arrest), preferably a warm handoff to treatment.  
Example: Police Assisted Addiction and Recovery Initiative (PAARI) Angel Program

**Active Outreach** • Law enforcement initially IDs or seeks individuals; a warm handoff is made to treatment provider, who engages them in treatment.  
Examples: Police Assisted Addiction and Recovery Initiative (PAARI) Arlington; Quick Response Team (QRT)

**Naloxone Plus** • Engagement with treatment as part of an overdose response or a severe substance use disorder at acute risk for opioid overdose.  
Examples: Drug Abuse Response Team (DART); Stop, Triage, Engage, Educate and Rehabilitate (STEER); Quick Response Team (QRT)

**Officer Prevention** • Law enforcement initiates treatment engagement; no charges are filed.  
Examples: Crisis Intervention Team (CIT); Law Enforcement Assisted Diversion (LEAD) Social Contact; Stop, Triage, Engage, Educate and Rehabilitate (STEER); Mobile Crisis; Co-Responders; Crisis/Triage/Assessment Centers; Veterans Diversion

*Officer Intervention* • Law enforcement initiates treatment engagement; **charges are held in abeyance or citations issued**, with requirement for completion of treatment and/or social service plan.  
Examples: Civil Citation Network (CCN); Crisis Intervention Team (CIT); Law Enforcement Assisted Diversion (LEAD) Assessment; Stop, Triage, Engage, Educate and Rehabilitate (STEER); Veterans Diversion

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Types of risks

- Legal liability
- Political / public perception
- Unequal or biased application
- Sustainability

(categories not mutually exclusive)
Legal liability

Sharing protected information
PHI, SUD treatment records, criminal records

Individuals' actions
Actions by team members or approached individuals

Harm reduction tools
Definition of “drug paraphernalia,” FTS, SSPs

Considerations for reducing/managing

- Actively encourage state/local law changes that reduce potential avenues for liability
- Determine actual extent of risk and how it compares to risks under status quo
- Make-up of deflection team(s) impact liability concerns
- Analysis, planning, and documentation about sharing information
§ 30. Exemption from civil liability. The law enforcement agency or peace officer or other first responder acting in good faith shall not, as the result of acts or omissions in providing services under Section 15 of this Act, be liable for civil damages, unless the acts or omissions constitute willful and wanton misconduct.

SECTION VIII. EXEMPTION FROM CIVIL LIABILITY.

Except as may otherwise be provided in this Act, and unless there is a finding of [gross negligence, malice, criminal intent, or lack of good faith], any law enforcement, other first responder, treatment provider, case management provider, case manager, or community member or organization shall not, as the result of acts or omissions in providing services under this Act, be subject to civil liability, administrative action, or other legal or equitable relief.
Political/public perception

“Too soft” on crime
Encouraging harm reduction
Not enough LEO discretion
“NIMBY”

Too focused on crime (vs. offering services)
Too much LEO discretion to not deflect
Checking open warrants

Considerations for reducing/managing

- Educating policymakers, public, and FRs about SUD and what deflection is/isn’t
- Clear, repeatable deflection protocols understood by all initiative partners
- Highlight success stories → some data collection
- Demonstrate effectiveness → more advanced data collection/analysis
Unequal/biased application of initiative

Who is offered deflection services?
- Compared to local population
- Compared to local justice population

Geographic areas covered by initiative

Availability and location of service providers

Considerations for reducing/managing

- Educating/training deflection team members
- More advanced data collection/analysis
- Clear, repeatable deflection protocols understood by all initiative partners
- Expansion to underserved communities → requires funding

Availability and location of service providers

Unequal/biased application of initiative

Embed diversity and equity in deflection initiative from the earliest stages—ideally before launch

Ensure equity at all levels – offer, access, use, acceptance, rejection, discharge, follow-up

Share progress and successes openly and honestly

I. Embed DIVERSITY and EQUITY from the very earliest stages as you are designing your deflection initiative, and ideally before it ever launches:

a. Ensure that all relevant stakeholders are included from early stage ideation of your initiative through to operationalization and ongoing evaluation.

b. Start with the basics and commit to collecting simple demographic data on gender, age, race, ethnicity, income, and more. Absent these quick to collect demographics, a deflection site really cannot begin to know what is going on in terms of diversity and equity. It really starts this simply.

c. Include 2-3 measurable DIVERSITY and EQUITY goals (and make them SMART) as you are putting your initiative together.

d. Use PTACC’s Core Measures for Deflection that incorporate suggested metrics for this area (www.ptaccollaborative.org; click on PTACC Deflection Starter Kit; then click on Core Measures.)

e. If you are already underway with your deflection initiative, then put in the above and start from where you are. Not doing it is the past. Correcting and doing it is the future.

II. Ensure EQUITY - offer, access, use, acceptance, rejection, discharge, and follow-up in your deflection initiative:

a. Once you are collecting your data as your deflection initiative is operational, monitor it at the systems, leadership, and line-staff level. Share it openly and without judgement. When things are going well, remember to celebrate. We are all in this together!

b. Critical and easy to overlook in this regard once a deflection initiative is operational, measure ongoing stakeholder engagement in the initiative. This will not show up in the data itself as this does not refer to participants, but to the community and organizations that actually put your initiative together. If they stick around, things are likely good. If they walk, it’s time to stop, reassess, correct, and restart.

III. Make known your progress and especially your success (and where you must still do more):

a. Doing the above first two action items is excellent! Now, it’s time to share it openly and honestly with others. This is a measure of professionalism, transparency, and integrity. It is never anything to hide or tuck away.

b. Include DIVERSITY and EQUITY indicators in the evaluation of staff and programs.

c. Include DIVERSITY and EQUITY outcomes in your deflection site’s annual report and presentation. It’s OK to let others know where you are on this. It actually inspires help and assistance.

PTACC Community, Diversity, and Equity Three Action Items for Deflection Teams
July 2022
# Data Collection/Evaluation

**Source:** PTACC Core Data Metrics for Deflection Initiatives (2018)

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### PTACC Recommended Core Measures for Five Pre-Arrest Diversion Frameworks

<table>
<thead>
<tr>
<th>Framework/Target Population</th>
<th>Law Enforcement</th>
<th>Treatment or Services</th>
<th>Community</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-Referral - Individual seeks contact with law enforcement for a treatment referral without fear of arrest, prefers a warm handoff treatment.</td>
<td>- referrals that are racial and minority representation - Number of districts/agencies making referrals - % of referrals per officer - % of referrals making referrals</td>
<td>- Racial and minority representation - Arrest rate</td>
<td>- Racial and minority representation - % of population with Med/Sel SSB or H</td>
</tr>
</tbody>
</table>

**TP:** Severe SSB, AI

| Active Outreach - Law enforcement initially responds to an individual; a warm handoff is made to treatment providers who engage them in treatment. | - Referrals that are racial and minority representation - Number of districts/agencies making referrals - % of referrals per officer - % of referrals making referrals | - Racial and minority representation - Arrest rate | - Racial and minority representation | - % of population with Med/Sel SSB or H | - Number of referrals | - Reductions in jail admissions |

**TP:** Mild/Severe SSB, AI

| Rational Plan (Supplemental Reward) - Engagement with treatment as part of an overload response in a severe substance use disorder at acute risk for opioid overdose. | - Referrals that are racial and minority representation - Number of districts/agencies making referrals - % of referrals per officer - % of referrals making referrals | - Racial and minority representation | - % of referrals | - Employment stability | - Level of functioning | - Reductions in jail admissions |

**TP:** Severe opioid SSB/Opioid OD

| Officer Prevention Referral - Law enforcement initiates treatment engagement: no charges are filed. | - Referrals that are racial and minority representation - Number of districts/agencies making referrals - % of referrals per officer - % of referrals making referrals | - Racial and minority representation | - % of referrals | - Employment stability | - Drug use reduction | - Level of functioning | - Number of referrals |

**TP:**

|  | - Referrals that are racial and minority representation - Number of districts/agencies making referrals - % of referrals per officer - % of referrals making referrals | - Racial and minority representation | - % of referrals | - Employment stability | - Drug use reduction | - Level of functioning | - Number of referrals |

**Officer Intervention Referral (severity of mental health problems/deterioration of mental health problems):** Law enforcement initiates treatment engagement; various levels of intervention are based on referrals from treatment and/or social service plan. | - Referrals that are racial and minority representation - Number of districts/agencies making referrals - % of referrals per officer - % of referrals making referrals | - Racial and minority representation | - % of referrals | - Employment stability | - Drug use reduction | - Level of functioning | - Number of referrals |

**TP:** PH or SAP

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Source: PTACC Core Data Metrics for Deflection Initiatives (2018)
§ 25. Reporting and evaluation.

(a) The Illinois Criminal Justice Information Authority, in conjunction with an association representing police chiefs and the Department of Human Services' Division of Substance Use Prevention and Recovery, shall within 6 months of the effective date of this Act:

(1) develop a set of minimum data to be collected from each deflection program and reported annually, beginning one year after the effective date of this Act, by the Illinois Criminal Justice Information Authority, including, but not limited to, demographic information on program participants, number of law enforcement encounters that result in a treatment referral, and time from law enforcement encounter to treatment engagement; and

(2) develop a performance measurement system, including key performance indicators for deflection programs including, but not limited to, rate of treatment engagement at 30 days from the point of initial contact. Each program that receives funding for services under Section 35 of this Act shall include the performance measurement system in its local plan and report data quarterly to the Illinois Criminal Justice Information Authority for the purpose of evaluation of deflection programs in aggregate.

Source: PTACC Core Data Metrics for Deflection Initiatives (2018)
Data collection/evaluation

§ 25. Reporting and evaluation.

(a) The Illinois Criminal Justice Information Authority, Division of Substance Use Prevention and Treatment, shall:

(1) develop a set of minimum data collection requirements by the Illinois Criminal Justice Information Authority, Division of Substance Use Prevention and Treatment, that requires:

(2) develop a performance measurement system at 30 days from the date of the beginning of the performance measurement system.

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Sustainability

Funding sources
Federal, state, local, philanthropic, Medicaid expansion

Adaptability
Emerging substances
Mental health and substance abuse

Considerations for reducing/managing
- Diversify funding sources
- Stand-alone budget
- Build flexibility into initiative
- Highlight success stories and program effectiveness → more advanced data collection/analysis
Addressing Privacy and Confidentiality in Deflection While Managing Risk and Legal Liability

National Criminal Justice Association and International Community Justice Association Forum on Criminal Justice (Deflection Track) November 4, 2022

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QUESTIONS?
The Global Voice of The Field of Deflection and Pre-Arrest Diversion
Who Is PTACC? What is our Cornerstone?

• **PTACC** is the global voice of the field of deflection and pre-arrest diversion.

• **PTACC provides** vision, leadership, advocacy, and education to facilitate the growth and practice of deflection and pre-arrest diversion in all its forms—including programs that incorporate co-responder and community responder models—nationally and internationally.

• **Our Cornerstone** – PTACC is open-source, open to any and all. PTACC is agnostic as to which pathway of deflection is appropriate for a jurisdiction; each community, region, and country must determine which approach(es) solves its problem, fits the local context, and can be addressed through current treatment capacity.
PTACC: Our Mission and Purpose

**PTACC Mission** – To strategically enhance the quantity and quality of community behavioral health and social service options through engagement in deflection and pre-arrest diversion.

**PTACC Purpose** - To provide vision, leadership, advocacy, and education to expand the practice of deflection and pre-arrest diversion nationally and internationally.
PTACC Resource Suite for our Field

- PTACC Visual 5 Deflection Pathways to Treatment – The first visual depiction of all known deflection and pre-arrest diversion pathways

- PTACC Core Measures of Deflection and Pre-Arrest Diversion – Recommended metrics for sites to use covering police, treatment, community, and race.

- PTACC 11 Guiding Principles for Behavioral Health Deflection and Pre-Arrest Diversion – Currently being aligned with CARF accreditation standards.

- PTACC Research Brief – The first field-wide synopsis of deflection research

- PTACC Deflection and Pre-Arrest Presentations – PAD Basics, PAD Policy, Naloxone Plus
Seminal Deflection Resources for our Field

- First Peer Reviewed Journal on Deflection
- First National Survey of Deflection Sites
- BJA National Deflection Resource Center
- COSSAP 5 Pathways of Deflection Site Case Studies
- Inaugural Police and FR Diversion National Mentor Sites

**Click on the above hyperlinks to go to that Deflection Resource**
White House Announces 2022 National Drug Control Strategy: Principle #2 Outlines the Role of Deflection
White House Announces

State Model Law to Expand Programs that Deflect People with Addiction to Care
United States Survey of Deflection Sites

REPORT OF THE NATIONAL SURVEY TO ASSESS
First Responder Deflection Programs
IN RESPONSE TO THE OPIOID CRISIS

Deflection is a strategy designed to save lives and keep individuals out of the justice system by providing pathways to treatment for those with substance use disorder (SUD) and other conditions. Its use has grown dramatically since fentanyl and other synthetic opioids became more accessible (see chart). The Center for Health and Justice (CHJ) at TASC and NORC partnered on a survey and report of more than 300 first responder agencies and their use of deflection.

KEY FINDINGS FROM THE SURVEY AND REPORT:
Characteristics of lead agency and community served by agency