

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)
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ABOUT LAPPA



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

PATHWAYS TO COMMUNITY



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)

Risks to community
of not doing anything



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

Legal liability

§ 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.

criminal records

changes the
for liability

5 ILL. COMP. STAT. 820/30

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.

Model Law Enforcement and Other First Responder Deflection Act

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

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:

- Ensure that all relevant stakeholders are included from early stage ideation of your initiative through to operationalization and ongoing evaluation.
- Start with the basics and commit to collection 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.
- Include 2-3 measurable DIVERSITY and EQUITY goals (and make them SMART) as you are putting your initiative together.
- 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.)
- 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:

- 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!
- 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):

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

PTACC RECOMMENDED CORE MEASURES FOR FIVE PRE-ARREST DIVERSION FRAMEWORKS*

FRAMEWORK/TARGET POPULATION	LAW ENFORCEMENT	TREATMENT OR SERVICES	COMMUNITY
<p>Self-Referral - Individual initiates contact with law enforcement for a treatment referral (without fear of arrest), preferable a warm handoff to treatment.</p> <p>TP: Severe SUD, MI</p>	<ul style="list-style-type: none"> % referrals that are racial and minority representation Number of districts/agencies making referrals % of districts/agencies making referrals Number of referrals per officer % of referrals per officer Number of officers making referrals 	<ul style="list-style-type: none"> Racial and minority representation Assessment Rate Initiation Rate Engagement Rate Level of functioning Housing stability Employment stability 	<ul style="list-style-type: none"> Racial and minority representation % of jail population with Mod/Sev SUD or MI LE/Community relationship Reductions in jail admissions
<p>Active Outreach - Law enforcement initially IDs or seeks individuals; a warm handoff is made to treatment provider, who engages them in treatment.</p> <p>TP: Mod/Severe SUD, MI</p>	<ul style="list-style-type: none"> % referrals that are racial and minority representation Number of districts/agencies making referrals % of districts/agencies making referrals Number of officers making referrals Number of referrals per officer % of referrals per officer 	<ul style="list-style-type: none"> Racial and minority representation Assessment Rate Initiation Rate Engagement Rate Level of functioning Housing stability Employment stability 	<ul style="list-style-type: none"> Racial and minority representation % of jail population with Mod/Sev SUD or MI LE/Community relationship Reductions in jail admissions
<p>Naloxone Plus (Supplemental Handout) - Engagement with treatment as part of an overdose response or a severe substance use disorder at acute risk for opioid overdose.</p> <p>TP: severe opioid SUDs/Opioid OD</p>	<ul style="list-style-type: none"> % referrals that are racial and minority representation Number of districts/agencies making referrals % of districts/agencies making referrals Number of referrals per officer % of referrals per officer Number of Times Officers Use Naloxone 	<ul style="list-style-type: none"> Racial and minority representation According to needs: <ul style="list-style-type: none"> Housing stability Employment stability Drug use reduction Level of functioning 	<ul style="list-style-type: none"> Racial and minority representation Naloxone kits dispersed Number of subsequent referrals Number of fatal overdoses
<p>Officer Prevention Referral - Law enforcement initiates treatment engagement; no charges are filed.</p> <p>TP: drug arrestees, drug-related behaviors, or public disorder crimes occurring in non-justice settings, MI encounters - crisis, serious and non-crisis</p>	<ul style="list-style-type: none"> % referrals that are racial and minority representation Number of districts/agencies making referrals % of districts/agencies making referrals Number of referrals per officer % of referrals per officer Number of officers making referrals 	<ul style="list-style-type: none"> Racial and minority representation Initiation Rate Engagement Rate BH needs Completion Rates 	<ul style="list-style-type: none"> Racial and minority representation Number of ED visits Reduction in jail admissions Police/community relationship
<p>Officer Intervention Referral - Law enforcement initiates treatment engagement; charges are held in abeyance or citations issued, with requirement for completion of treatment and/or social service plan.</p> <p>TP: MI or SUD</p>	<ul style="list-style-type: none"> % referrals that are racial and minority representation Number of districts/agencies making referrals % of districts/agencies making referrals Number of referrals per officer % of referrals per officer Number of officers making referrals 	<ul style="list-style-type: none"> Racial and minority representation Initiation Rate Engagement Rate BH needs Completion Rates 	<ul style="list-style-type: none"> Racial and minority representation Number of ED visits Reduction in jail admissions LE/community relationship



Source: [PTACC Core Data Metrics for Deflection Initiatives \(2018\)](#)

Data collection/evaluation

PTACC RECOMMENDED CORE MEASURES FOR FIVE PRE-ARREST DIVERSION FRAMEWORKS*

§ 25. Reporting and evaluation.

5 ILL. COMP. STAT. 820/25

(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.

<p>Law enforcement initiates treatment engagement; <u>charges are held in abeyance or citations issued</u>, with requirement for completion of treatment and/or social service plan.</p> <p>TP: MI or SUD</p>	<p>minority representation</p> <ul style="list-style-type: none"> • Number of districts/agencies making referrals • % of districts/agencies making referrals • Number of referrals per officer • % of referrals per officer • Number of officers making referrals 	<ul style="list-style-type: none"> • Initiation Rate • Engagement Rate • BH needs • Completion Rates 	<ul style="list-style-type: none"> • Number of ED visits • Reduction in jail admissions • LE/community relationship
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Source: [PTACC Core Data Metrics for Deflection Initiatives \(2018\)](#)

Data collection/evaluation

§ 25. Reporting and evaluation.

(a) The Illinois Criminal Justice Information Division of Substance Use Prevention

(1) develop a set of minimum data to be collected by the Illinois Criminal Justice Information Division for law enforcement encounters that result in a deflection program;

(2) develop a performance measurement system to evaluate engagement at 30 days from the start of a deflection program in aggregate

Model Law Enforcement and Other First Responder Deflection Act

25

justice].

(b) Standardized data and performance measures.—The standardized set of data and performance measures developed pursuant to subsection (a) shall include, at a minimum:

- (1) [Number of encounters with individuals that resulted in persons accepting entry into a deflection program];
- (2) [Number of encounters with individuals that resulted in persons declining entry into a deflection program];
- (3) [Demographic information on deflection program participants];
- (4) [Demographic information on the community in which the deflection program operates];
- (5) [To the extent allowable by law, demographic information on individuals who declined to participate in a deflection program];
- (6) [Number of encounters with individuals that resulted in the following, separately recorded for substance use disorder and mental health disorder:
 - (A) Referral to treatment;
 - (B) Engagement with treatment;

Department of Human Services'

after the effective date of this Act, the number of law enforcement participants, number of law enforcement encounters; and

, but not limited to, rate of treatment of this Act shall include the authority for the purpose of evaluation

in Rate ment Rate ds tion Rates	<ul style="list-style-type: none"> • Number of ED visits • Reduction in jail admissions • LE/community relationship
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[Deflection Initiatives \(2018\)](#)

Model Law Enforcement and Other First Responder Deflection Act

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

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QUESTIONS?

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*The Global Voice of
The Field of Deflection
and Pre-Arrest Diversion*



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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.



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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 Use and Introduction of the Word Deflection** – “[Want to Reduce Drugs and Crime? Deflect, Don't Arrest.](#)” Police Chief Magazine, 2015.
- [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](#)

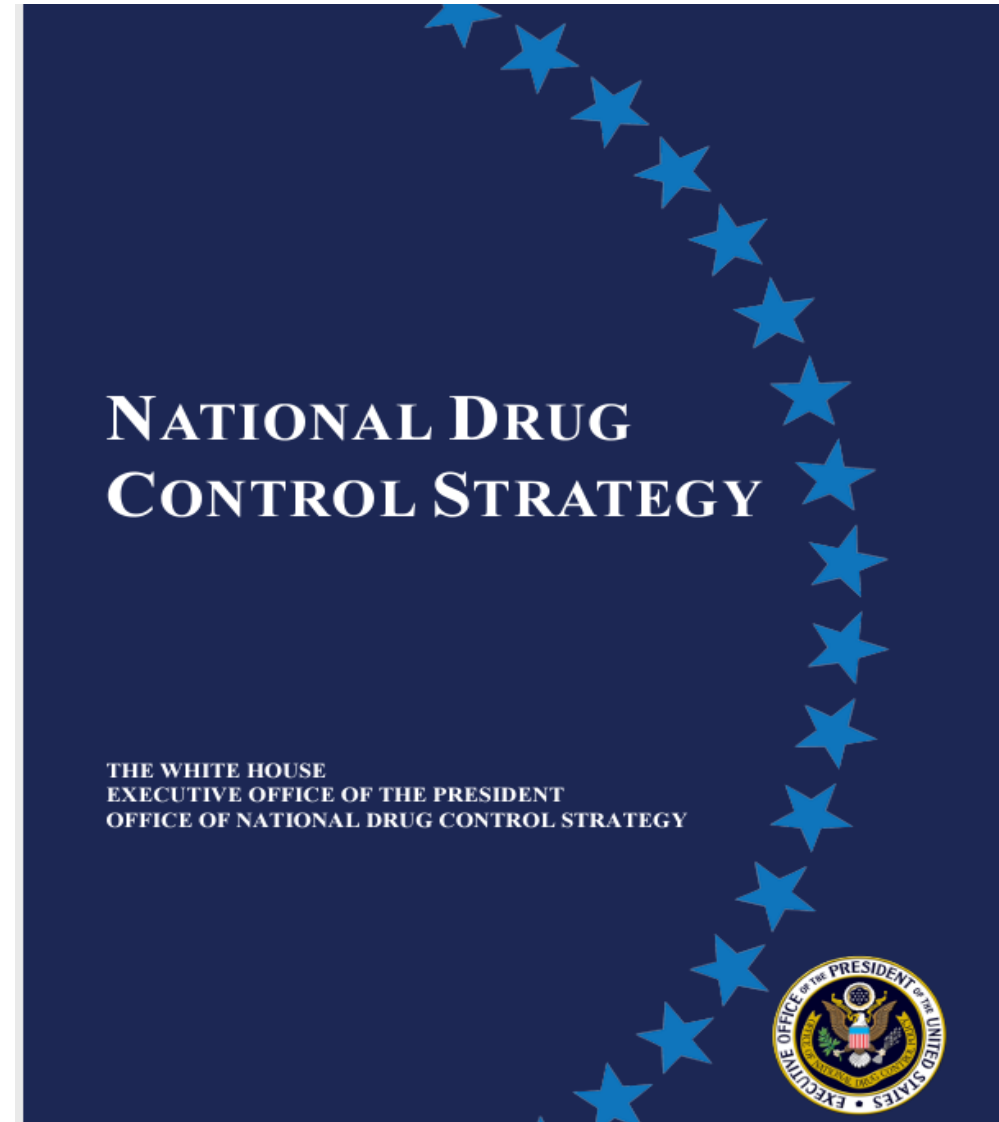
Click on the above hyperlinks to go to that Deflection Resource



White House Announces

2022 National Drug Control Strategy:

Principle #2 Outlines the Role of Deflection



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White House Announces

State Model Law to Expand Programs that Deflect People with Addiction to Care

LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

MODEL LAW ENFORCEMENT AND OTHER FIRST RESPONDER DEFLECTION ACT

SEPTEMBER 2021



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United States Survey of Deflection Sites



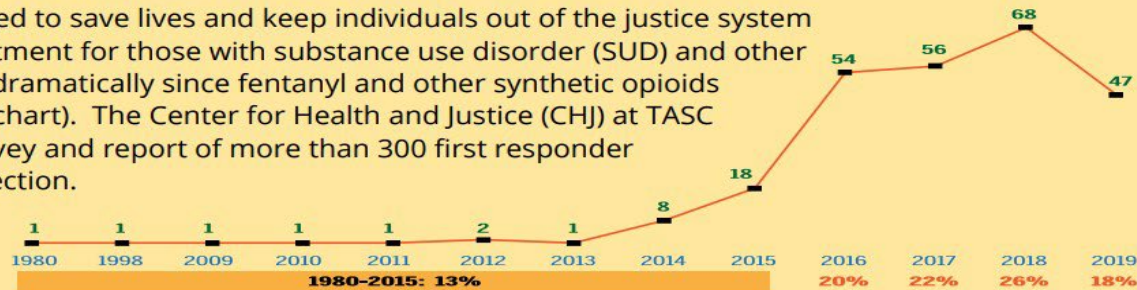
If your jurisdiction is interested in starting a deflection program, contact Ben Ekelund, Director of Consulting and Training at CHJ: bekelund@tasc.org.

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.

% DEFLECTION PROGRAMS INITIATED BY YEAR (N=259)



KEY FINDINGS FROM THE SURVEY AND REPORT:

Characteristics of lead agency and community served by agency

Free Deflection eCourse

JCOIN

An eCourse from the Justice Community Opioid Innovation Network

First Responder Deflection: A Warm Handoff to Services in the Community

JCOIN Coordination and Translation Center



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