Redefining Rehabilitation: Evaluating the Washtenaw County Pre-Plea Diversion Program

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Redefining Rehabilitation:
Evaluating the Washtenaw County Pre-Plea Diversion Program

submitted to
Professor Daniel Krauss
and
Professor Dionne Bensonsmith

by
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for
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Table of Contents

AUTHOR NOTE .......................................................................................................................... III.

ABSTRACT ................................................................................................................................. V.

INTRODUCTION ......................................................................................................................... 1

The Washtenaw County Pre-Plea Diversion Program ................................................................ 3

BACKGROUND ............................................................................................................................ 10

  Crime, Punishment, and American Mass Incarceration ......................................................... 10
  The Consequences of Mass Incarceration .............................................................................. 13
  Decarceration and the American Prosecutor ........................................................................ 18
  The Prosecutor-Led Diversion Program .............................................................................. 23
  A Typology of Prosecutor-Led Diversion Programs .......................................................... 31
  Reducing Recidivism with Diversion Programs .................................................................. 36
  The Current Research .......................................................................................................... 40

METHOD .................................................................................................................................. 42

RESULTS .................................................................................................................................. 50

DISCUSSION ............................................................................................................................... 63

  Effects of Diversion on Recidivism ...................................................................................... 63
  Diversion Program Selection ............................................................................................... 65
  Predictors of Success and Recidivism .................................................................................. 66
  Limitations .............................................................................................................................. 67
  Future Directions .................................................................................................................. 68

RECOMMENDATIONS & CHALLENGES ............................................................................. 70

  Policy Recommendations .................................................................................................... 70
  Implementation Considerations and Challenges .............................................................. 78

CONCLUSION ............................................................................................................................. 83

REFERENCES ............................................................................................................................ 86

APPENDICES ............................................................................................................................. 102
Redefining Rehabilitation:

Evaluating the Washtenaw County Pre-Plea Diversion Program

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Author Note

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Abstract

The Washtenaw County (MI) Prosecutor’s Office’s Pre-Plea Diversion Program (PPDP) aims to divert eligible misdemeanor defendants from the criminal justice system, offering rehabilitative programming to reduce reoffending and minimize the collateral consequences of a criminal conviction with case dismissal. This research assessed whether PPDP participants were less likely to be re-arrested in the six months following program completion compared to a sample of defendants facing similar charges within the same court. It was hypothesized that the PPDP would effectively reduce re-arrest, with community service and mental health counseling proving particularly impactful. Employing a quasi-experimental design, data from 90 successfully diverted adults, 17 unsuccessfully diverted adults, and 97 comparable adults charged with diversion-eligible offenses were analyzed. Chi-square analysis and linear regression was utilized to compare re-arrest rates between the successfully diverted and quasi-control groups. Additionally, exploratory linear and binomial logistic regression analyses were performed which examined disparities in diversion program selection and success, as well as re-arrest likelihood among the quasi-control sample. Results revealed a significant reduction in re-arrest among PPDP participants, with younger individuals and those with less extensive criminal histories being more likely be selected for the program. However, no demographic or individual characteristics emerged as significant predictors of successful program completion. These findings underscore the potential for diversion programs to reduce recidivism and match participants with effective rehabilitative services, suggesting avenues for future research and broader diversion program implementation.

Keywords: Diversion Programs, Misdemeanors, Recidivism, Criminal Justice, Collateral Consequences
Redefining Rehabilitation:
Evaluating the Washtenaw County Pre-Plea Diversion Program

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.

- Justice George Sutherland, *Berger v. United States* (1935)

If you treat low-level offenders as a part of the community, if you treat them according to your aspirations for them, then it really makes a difference in reducing crime. So, I’m willing to do things differently to get that result. For instance, as a prosecutor in drug court, I had to listen to medical experts and accept the fact that relapse is a normal part of recovery. That’s a bitter pill to swallow for very rules-oriented prosecutors, but I had to take that leap.

– Scott Newman, Marion County Prosecutor, Indianapolis, Indiana

In 2023, nearly 2 million people were incarcerated in America's prisons and jails, giving the United States the distinction of having the largest carceral population in the world. Of this population, one in three are confined to local jails and 70% of people incarcerated in jail have not been convicted and are presumed innocent (Wagner & Sawyer, 2024). Contributing to 25% of daily jail populations nationally are the 13 million misdemeanor charges approved by prosecutors annually (Wagner & Sawyer, 2024). Further, the criminal justice system cannot be understood separately from systemic and structural racism, with Black men four times more likely to be incarcerated in their lifetimes than white men (Robey et al., 2023). The incarceration rate of women is also a concern, growing by 834% over the last 40 years (Wagner & Sawyer, 2024). The consequences of America’s overreliance on incarceration are severe, negatively
affecting not only system-impacted individuals but their families and broader communities (Sampson & Loeffler, 2010).

While the end of mass incarceration will necessarily require policies that decrease the number of individuals serving sentences for felonies, reducing the use of incarceration for individuals charged with and convicted of misdemeanors is also an important policy goal (Epperson et al., 2023; Pettus-Davis & Epperson, 2016; Schrantz et al., 2018). One strategy is Prosecutor-Led Diversion Programs (PLDPs), which seek to redirect individuals from incarceration by addressing what are perceived to be the root causes of criminal behavior through community-based interventions, such as: mental health counseling, substance abuse treatment, and educational programming. By diverting these individuals from incarceration and matching them with effective therapeutic interventions, PLDPs can improve administrative and cost efficiency while simultaneously improving public safety. While some PLDPs serve individuals charged with both misdemeanors and felonies, most are available solely for individuals charged with misdemeanors. By intervening at the pre-and/or post-charging stage, prosecutors use relationships with law enforcement and courts to increase access to rehabilitative programming and avoid incarcerating individuals charged with eligible offenses – with the ultimate goal of reducing recidivism and exposure to the collateral consequences of a criminal conviction (Epperson et al., 2023).

This research will examine the effectiveness of PLDPs by evaluating the Washtenaw County (MI) Pre-Plea Diversion Program, located in a midwestern county of approximately 350,000 residents (U.S. Census Bureau, 2023). By evaluating the Pre-Plea Diversion Program (PPDP), this research offers insight into the effects of a personalized 6-month program on re-arrest in the six months following the completion of the program. Additionally, policies that are successful in other jurisdictions may not be successful in every jurisdiction. Thus, it is important
for local policymakers to ensure that new programs are rooted in empirical evidence and translate to the unique demographics and needs of their jurisdiction. Further, while there is wide variation in the interventions, populations served, and requirements of specific PLDPs (Epperson et al., 2023), by evaluating whether the Pre-Plea Diversion Program reduced reoffending, this research enables other jurisdictions to design and implement programs that can better maximize public safety and the rehabilitative goals of the criminal justice system simultaneously.

**The Washtenaw County Pre-Plea Diversion Program**

The present research is an evaluation of the Washtenaw County (MI) Pre-Plea Diversion Program (PPDP), a diversion program led by the Washtenaw County Prosecutor’s Office (WCPO). The PPDP was created in May 2021 (Bruckner, 2021) and currently resides in Michigan’s 15th District Court, presiding over misdemeanor cases for the City of Ann Arbor, and the 14-A3 and 14-A4 District Courts, presiding over misdemeanors for the City of Chelsea and the City of Saline. The program only existed in the 15th District Court during the time frame of this research, and thus, this research will only focus on cases from that court. The program was established with the intention to “effectively address the reason why someone has committed a crime, while holding them accountable and assisting in their rehabilitation so they do not cycle through the criminal legal system” (Washtenaw County Prosecutor’s Office, n.d.-c, n.p.). In addition to addressing the root-causes of criminal behavior and reducing recidivism, the WCPO also identified that the program aspires to improve judicial and administrative efficiency, reduce the collateral consequences of a guilty plea/criminal conviction, and increase access to rehabilitative services for defendants. The program was also structured so that it would reduce
the time required for a defendant to resolve the proceedings against them and reduce the
financial debt incurred by defendants as they process through the criminal justice system. The
Pre-Plea Diversion Program is managed by an Assistant Prosecuting Attorney (hereafter referred
to as the “diversion coordinator”) within the office who reports directly to the Chief Assistant
Prosecuting Attorney. The diversion program serves as a standalone unit alongside the
Economic Justice Unit and the Conviction Integrity and Expungement Unit. The diversion
coordinator is the only paid staff member who manages the program, and they occasionally
function in other prosecutorial roles (i.e., staffing arraignments) in limited circumstances.

The PPDP accepts defendants for the program post-filing, meaning that charges must be
filed by the prosecutor against an individual prior to their consideration for the program. While
the WCPO supports a pre-arrest diversion program, Law Enforcement Assisted Diversion and
Deflection (LEADD Washtenaw, n.d.), the PPDP is designed for individuals who have been
arrested and charged. This ensures that defendants have legal representation when deciding
whether to participate in the diversion program and for the duration for the program (A.R.,
personal communication, February 15, 2023).

The PPDP considers multiple factors when determining whether to offer the program to
potential participants, but there are few concrete rules, and the program relies instead on the
judgment of the diversion coordinator. The only prohibition against admission to the PPDP is
the nature of the charge brought against the defendant. All misdemeanor defendants are
presumed eligible unless they have been charged with Stalking, Domestic Violence, any drunk
driving offense (Operating While Intoxicated, Operating While Visibly Impaired, and operating
with an unlawful bodily alcohol level/content), and misdemeanor child abuse (Child Abuse – 4th
Degree) (Washtenaw County Prosecutor’s Office, n.d.-c). Additionally, defendants with other
pending charges or cases are examined with increased scrutiny, such that participation in the diversion program does not complicate their other cases.

Informally, the diversion coordinator considers other factors to determine a defendant’s likelihood of success in the program and the potential impact it might have on their rehabilitation. The diversion coordinator noted that the Office considers (1) the defendant’s criminal history, (2) history of failing to appear to court and probation, (3) severity of substance and alcohol abuse, (4) mental health, (5) economic instability, (6) educational background, (7) housing instability, (8) the circumstances that led to arrest, and, rarely, (9) defendant immigration status. Overall, this evaluation strives to determine the likelihood of a defendant’s successful participation in a structured diversion program. One salient theme of this decision-making process is the determination of whether the instant offense is representative of repeated actions (i.e., frequently getting intoxicated and aggressive at bars) or a one-time issue (i.e., one bad night at a bar). However, the presence or absence of any of these informal characteristics may be mitigating or aggravating in certain circumstances. For example, while one defendant had a history of 11 prior felony convictions from over 20 years-ago, they were diverted since they had been sober for a significant period of time and had recently relapsed, resulting in 2 misdemeanor charges. The diversion coordinator believed that this defendant would have benefited more from diversion than the typical criminal justice process despite the extensiveness of their criminal history.

In addition to making decisions based on public safety, the diversion coordinator attempts to evaluate whether the needs of the defendant could be addressed by the diversion program. For example, while an individual with an extensive criminal history could be a good candidate, the program would do little to alleviate the collateral consequences of a conviction
when they are likely already facing many of those disadvantages due to their prior convictions. Additionally, the diversion coordinator identified that the PPDP does not provide “intensive case management,” and therefore, the Office does not want to “set people up to fail.” For example, consider a defendant who is homebound due to their behavioral health issues; while their behavioral health issues may have led to their crimes, those issues may also serve as a barrier to their successful completion of the programming required by the PPDP and the programming may not be beneficial to the participant. Potential barriers could include the defendant’s physical and cognitive ability to perform required community service, consistently participate in therapy and classes, and undertake multiple of hours of programming on a weekly basis. The Office further identified that any concern regarding a defendant’s competency to stand trial must be addressed before the program can be undertaken (A.R., personal communication, February 15, 2023).

Assaultive crimes like Assault & Battery, Aggravated Assault, or Attempted Assault of a Police Officer also receive additional scrutiny by the diversion coordinator, making these offenses somewhat less likely to be diverted. The coordinator identified that the Office wants to meet their obligation to victims, and therefore consults with victims prior to making a diversion decision (A.R., personal communication, February 15, 2023). Victims of assaultive crimes are also permitted to make on-the-record victim impact statements at the pre-trial hearing (Washtenaw County Prosecutor’s Office, n.d.-c).

The diversion coordinator reviews all eligible cases daily from the pre-trial docket and determines eligibility by consulting a variety of sources. Cases may also be submitted for review by judges, law-enforcement, defense attorneys, and community partners. The first step is often investigating criminal and court records from Michigan’s Law Enforcement Information
Network (LEIN). Then, the diversion coordinator consults detailed, in-house records, which include police reports, eyewitness and interview information, details of the defendant’s past success on probation, information on prior charges, and the status of other pending charges in the county. Information derived from the sources helps the coordinator determine characteristics like the defendant’s state at the time of the offense (i.e., intoxication), whether the defendant has engaged in this behavior before (i.e., the defendant was removed from the victim’s home on prior occasions, but this is the first time the victim called the police), and the history of their cooperation with law-enforcement.

While the final decision for defendant selection rests with the Office, the diversion coordinator also considers their partners in probation who handle the case management for diversion and have more experience working directly with potential participants. While infrequent, the probation officer may ask the Office to review the case again, typically due to concerns over the defendant’s negative attitude toward rehabilitation and lack of commitment gleaned from their first meeting with probation. In addition, the diversion coordinator considers the concerns of the judges who allow this program to exist in their courts. Without the judges’ comfort with and support of the program, the program could not exist. (A.R., personal communication, February 15, 2023). Neither the probation officer nor the diversion coordinator employs a guided risk instrument while making selection decisions. Instead, diversion decisions are made entirely on professional judgment of the defendant’s relevant characteristics and history (R.E., personal communication, March 6, 2024).

After selection for the program, the defendant meets with the probation officer who manages their diversion plan. Together with the probation officer and the input of the WCPO, the defendant crafts a diversion plan that addresses their current needs and the reasons for their
criminal conduct. A variety of interventions are employed, including community service, drug/alcohol testing and counseling, mental health counseling, career and educational support, theft awareness classes, wellness coaching, restitution, and writing assignments (i.e., “write an essay about what you’ve learned during this process and what steps you have taken to ensure you do not come back into the justice system”). All plans are, at minimum, 6-months in length and require the signing of a diversion program agreement. Occasionally, the WCPO may elect to revise or extend the diversion plan, typically due to a defendant’s non-compliance. While rare, the defendant may at any time elect to cease participation in the program and continue their case through the normal criminal-legal process. Defendants who have quit the program or decided not to undertake it typically cite concerns over the level of commitment required (A.R., personal communication, February 15, 2023). Some early-adult defendants may also decide to seek resolution through Michigan’s Holmes Youthful Trainee Act (HYTA), which requires them to enter a plea and comply with probation. Upon successful completion of probation terms, the record is sealed, the court does not enter a judgment of conviction, and the offense is not required to be disclosed on employment, educational, and housing applications. Since the case will still be dismissed under HYTA, and their record is more confidential post-dismissal, it is an attractive option for eligible defendants (Holmes Youthful Trainee Act, 2021).

Supervision throughout the diversion program is conducted by a probation officer. There is one probation officer in the 15th District Court assigned to the PPDP and they meet with each defendant, at a minimum, once a month. The probation officer serves as the primary contact for the defendant throughout the diversion program, assisting the defendant in completing programming and helping the defendant take accountability for their rehabilitation. Specific interventions are performed by a variety of community-based and governmental organizations,
including the Washtenaw County Sheriff’s Office Community Corrections Division, the
University of Michigan University Health Services, and Catholic Social Services. Mental health
treatment modality and provider is typically at the discretion of the defendant but is commonly
performed by University of Michigan University Health Services (for students), private
providers, or Washtenaw County Community Mental Health. Crucially, there are no costs
associated with any of the programs, besides potential health insurance copayments for mental
health treatment or court-ordered restitution (R.E., personal communication, March 6, 2024).

Empirically verifying interventions that lead to the success or failure of a diversion
program are necessary for informed policymaking. Especially regarding local policymaking,
where jurisdictional differences can have strong impacts on program success, evaluating a
medium-sized jurisdiction provides important context to the literature on diversion, which
focuses primarily on large-jurisdictions. Further, the use of professional judgement to select
PPDP participants, the extensiveness of charges eligible for diversion, and the relative intensity
of diversion plans compared to other misdemeanor diversion programs makes this program
especially interesting for evaluation.
Background

To fully understand how the Washtenaw County Pre-Plea Diversion Program fits into a nationwide array of Prosecutor-Led Diversion Programs it is important to contextualize the program in the realities of American mass incarceration and decades of interventions designed to address criminal behavior without incarceration. This section first reviews the policies which led to mass incarceration and the scope of the problem today, then it will discuss the consequences of mass incarceration experienced by system-impacted individuals, families, and communities. Since reoffending among misdemeanor defendants may lead to more severe crimes and prison sentences, a discussion of these consequences is warranted in the context of diversion from the criminal justice system. Racial and gender disparities will also be discussed. Second, the political, legal, and historical characteristics of prosecutor-led decarceration and diversion will be discussed. Third, a typology of diversion programs is introduced, situating Washtenaw County’s program alongside other comparable programs. Finally, this section will offer relevant research on the effectiveness of diversion programs in reducing re-arrest and the effects of specific, commonly employed interventions.

Crime, Punishment, and American Mass Incarceration

When faced with increasing crime rates in the late 20th century, American policymakers at the state and federal levels invested substantial resources into incarceration compared to other responses to crime (Hinton, 2015; Martinson, 1974). The outcomes of this renewed focus are evident. Between 1920 and 1970, the United States’ incarcerated population expanded at a slightly faster pace than the overall population. In contrast, from 1970 to 2000, the incarcerated population surged by 500%, far outpacing the 40% growth of the general population (King et al., 2005). Scholars point to policies like mandatory minimums, "three-strikes" laws (which imposed
extremely long sentences on people charged with certain crimes following two eligible felony convictions), parole reductions, "truth-in-sentencing" laws (requiring incarcerated individuals to serve 85% of their sentence before parole-eligibility), and the increased use of incarceration for parole violators as the leading causes for this boom in incarceration (Gainsborough & Mauer, 2000; Wagner & Sawyer, 2024). It was the implementation of these policies by state and federal legislators, law-enforcement, prosecutors, and judges that contributed to the mass incarceration seen in American society today (Gainsborough & Mauer, 2000; King et al., 2005; Travis & Western, 2014).

These policy initiatives are also indicative of a change in attitude among Americans, legislators, and criminal justice practitioners. Rather than believing the core role of the criminal justice system is to rehabilitate individuals convicted of crimes, as was true for the early part of the 20th century, reform efforts sought to put greater emphasis on incapacitation, recidivism reduction, and punishing people with incarceration. Proponents believed that incarceration was an appropriate form of punishment that may meet specific rehabilitative goals but also deters individuals from committing crimes. As myths about young “superpredators” became popularized and violence swept through communities in the late 20th century (King et al., 2005), it is somewhat understandable that policymakers would turn to incarceration as a solution. Policymakers were interested in both general and specific deterrence goals by enacting severe punishments for criminal behavior. General deterrence, referring to the overall crime prevention effects of the threat of punishment, identifies the effect of criminal penalties on the community. In contrast, specific deterrence refers to the effects of punishment on the person who committed a crime. Incarceration served both forms of deterrence: It potentially changed the behavior of individuals already engaging in crime and prevented future crimes committed by other members of the public, so long as their decisions to engage in crime were affected by their awareness of
severe punishments for crime. Moreover, prisons could potentially incapacitate the most dangerous individuals (Travis & Western, 2014).

However, deterrence models of punishment assume that people are acting rationally when engage in criminal behavior while many commit crimes for irrational reasons. Often, crimes are committed under the influence of drugs or alcohol, in order to finance an addiction, as a result of mental illness, or due to feelings of sudden rage, threat, or vengeance (Travis & Western, 2014). As a result of both harsher penalties for drug-related crimes and sentencing enhancements for crimes related to gang violence or with the use of a gun, state prisons went from incarcerating just 19,600 individuals convicted of drug crimes in 1984 to 107,000 just four years later (Gainsborough & Mauer, 2000). Since individuals charged with violent crimes would have been incarcerated prior to these policy changes, the expansion of incarceration inevitably led to the incarceration of individuals charged with lower-level crimes, who may have been better served with community-based interventions (King et al., 2005).

Given the many factors that lead to criminal behavior beyond the deterrence and incapacitation effects of incarceration, it is unclear whether the increase in incarceration at the end of the 20th century resulted in lowered crime rates. In an analysis of FBI Uniform Crime Report (UCR) data, Gainsborough and Mauer (2000) identify that while the incarceration rate rose continuously from 1994-1998, the crime rate increased in the first half of the period and decreased in the second half. Additionally, the states that significantly increased incarceration were not solely those that saw substantial decreases in crime and vice-versa. An analysis by King and colleagues (2005) of incarceration and crime rates from 1991-1998 across states found no consistent relationship between the two variables, suggesting that incarceration does not have a "uniformly positive impact on reducing crime" (p. 3).
While the crime rate declined from 1991 to 2001, with the violent crime rate decreasing by 34%, homicide by 43%, and property crime by 29% (Federal Bureau of Investigation, 2001), there are factors beyond the increased use of incarceration that could have led to this decrease (King et al., 2005). For example, during this same period, many local law enforcement agencies engaged in community-based and proactive policing, which sought to forge relationships between law enforcement and neighborhood residents before crimes had been committed – reducing crime rates in the process. For example, in Boston, law enforcement worked with community leaders to reduce the number of guns in the hands of youth gangs, and at the same time, homicides committed by individuals younger than 25-years old fell by 77% from 1990 to 1999 (Eck & Maguire, 2005). Economic expansion may also have decreased crime, with unemployment rates falling even in the low-wage sector during the 1990s (Freeman & Rodgers, 1999). The recessions of the 1980s and early 1990s significantly affected low-wage workers, who were disproportionately represented in incarcerated populations during the 1990s (Beck et al., 1993). Further, the reduced use of crack cocaine during the 1990s and the resulting reduction in gang-related violence may have led to lower crime rates (King et al., 2005). Overall, it is unclear whether incarceration rate and crime rate have a strong negative correlation, and there may be many other variables that contributed to the decline of crime during the 1990s.

The Consequences of Mass Incarceration

Beyond effects on the crime rate, the increased use of incarceration has also potentially led to adverse effects on families and communities, furthering disparities in the criminal justice system, and overexposing formerly incarcerated people to the collateral consequences of a criminal record.
Some scholars have argued that prison and jail time have a criminogenic effect – that is, the experience of incarceration makes an individual more likely to engage in future criminal behavior. Since incarceration causes individuals to become dependent on institutional decision-makers, develop hypervigilance, and lose some of their ability to function productively outside of prison, many formerly incarcerated individuals struggle to reintegrate back into society (Travis & Western, 2014). While some incarcerated individuals adapt well to prison life, many develop chronic stress, increased hostility, social introversion, and a reduced ability to maintain and create new social ties, which may put those individuals at a higher risk of reoffending (Bonta & Gendreau, 1990). Additionally, jails and prisons frequently do not provide rehabilitative programming. A recent study of American jails found that 83% of people incarcerated in jail suffering from mental illness do not receive care following admission (Subramanian et al., 2015), which must be qualified by the fact that most jail stays are relatively short-term. Some theorists have also argued that incarceration serves as a "school" for criminal behavior, enabling incarcerated individuals to expand criminal networks and learn how to improve criminal techniques (Letkemann, 1973). While it is difficult to determine whether there is a true criminogenic effect of prisons, an analysis of crime rates and prison population growth from 46 states found that increases in the number of individuals released from prison are positively associated with increases in crime. Since the researchers controlled for changes in prison populations, this relationship supports the theory that time in prison increases an incarcerated individual’s risk of engaging in crime upon release (Vieraitis et al., 2007).

In addition to potentially increasing the frequency and severity of crimes committed by individuals released from prison and jail, incarceration has a negative effect on families and communities. Studies of incarcerated male parents have found that paternal incarceration is correlated with increases in mental health issues among their children, such as internalizing
disorders (i.e., depression and anxiety) (Wakefield & Wildeman, 2013), aggressive behavior, and attentional issues (Geller et al., 2012). Paternal incarceration is also associated with increases in delinquent behavior (Porter & King, 2015), early sexual behavior (Turney & Goldberg, 2019), and drug use among children (Roettger et al., 2011). Additionally, researchers have found "self-reinforcing cycle(s)" within communities with a high concentration of formerly incarcerated individuals or people with incarcerated family members. These cycles are characterized by high rates of poverty, family disruption, and unemployment driving high rates of incarceration and then, incarceration driving those same outcomes in future generations (Sampson & Loeffler, 2010). As a result, crime and incarceration become a normal feature of the neighborhood, with neighborhood residents and formerly incarcerated individuals being at a higher risk of engaging in crime and ending up in prison (Chamberlain & Boggess, 2019). Taken together, this evidence reveals that incarceration does not merely affect the individual who was in prison and jail; incarceration has widespread consequences for the livelihood of the incarcerated individual's family and neighborhood.

Moreover, the collateral repercussions of incarceration will disproportionally impact the lives, families, and communities of incarcerated individuals belonging to minority racial identities and with impoverished backgrounds. In both jails and prisons, Black individuals constitute 38% of the incarcerated population, despite representing only 12% of the overall U.S. population (Wagner & Sawyer, 2024). Within jails, Black individuals are incarcerated at a rate four times higher than their white counterparts (Subramanian et al., 2015). Some scholars have further argued that the crack and powder cocaine penalty disparity, myths about young, Black “superpredators,” and the “War on Drugs” are part of a “new Jim Crow,” articulating that the criminal justice system has been intentionally used to subjugate Black individuals (Alexander, 2020). These disparities also interact with gender. While the imprisonment rate for Black
women is 1.6 times higher than for white women, the imprisonment rate for white women has risen since 2000 alongside declines for Black and Latinx women (Monazzam & Budd, 2023). Notably, the incarceration rate for women is escalating at a swifter pace than that for men, with a growth of 834% over the last 40 years (Wagner & Sawyer, 2024). According to a 2016 Bureau of Justice Statistics report, 58% of women incarcerated in state and federal prisons are mothers to minor children (Maruschak et al., 2021). Considering incarceration is a central aspect of severely disadvantaged communities and neighborhoods (Chamberlain & Boggess, 2019), coupled with evidence suggesting the negative effects of crime and incarceration on children and families (Wakefield & Wildeman, 2013), it is clear that these disparities may persist until alternative interventions replace the current system of incarceration.

However, the consequences of incarceration do not end when an individual is released from prison. Known as “collateral consequences,” an individual’s prior criminal conviction (whether or not they served a prison sentence) can restrict their eligibility to be employed in specific industries, receive public benefits, and live in quality neighborhoods. In Michigan, where the diversion program evaluated in this research is located, there are 659 provisions in state law that permit employers and other relevant entities to bar individuals with certain criminal convictions from accessing benefits and jobs. Of these provisions, 50% require employers and other decision-makers to impose consequences on the individual, ranging from requiring the individual to complete a special driver training program to banning them from receiving a license in that industry. Many of the industries affected by these provisions could provide individuals with a criminal record with stable employment, such as health care (67 provisions), education (44 provisions), transportation (29 provisions), and construction (17 provisions) (The Council of State Governments, 2021). The imposition of licensing restrictions may pose significant barriers to employment, especially given formerly incarcerated individual’s
already-high rates of unemployment. For example, a longitudinal study of 740 males released from Illinois, Ohio, and Texas prisons found that 55% were unemployed eight months post-release, despite the majority of study participants scoring high on a measure of self-efficacy, holding a job while in prison (53%), and having spent time searching for a job after release (79%) (Visher et al., 2011).

Even among those who can find employment, a study of individuals who were employed before their incarceration found that their hourly wages decreased by 11%, annual employment by nine weeks, and annual earnings by 40% post-release (The Pew Charitable Trusts, 2010). Further, many public benefits can be terminated or suspended following incarceration (Cardwell & Gilmore, 2012), potentially causing significant, detrimental effects on those with debts and chronic illnesses. The consequences can also be seen in housing, as landlords are often unwilling to rent to those with a criminal record, and formerly incarcerated individuals are sometimes banned from residing in public housing (Human Rights Watch, 2004). A survey of formerly incarcerated individuals who are homeless in Baltimore found that 63% had owned or rented a home prior to their incarceration but were unable to do so upon release, with 41% of respondents incarcerated for less than a year (Center for Poverty Solutions, 2003). Moreover, formerly incarcerated people are 10-times more likely to be homeless than the general public (Couloute, 2018). Whether or not an individual is incarcerated, having a criminal record exposes individuals to severe – and often lifelong – consequences that reduce their ability to maintain housing, find a job, and access public benefits.

The combined results of the potentially criminogenic effect, collateral consequences, and “self-reinforcing cycle(s)” of incarceration seen in many disadvantaged communities may partially explain the high levels of recidivism among individuals released from state prisons. In a nine-year study of 401,288 individuals released from prisons in 30 states, researchers found that
83% were re-arrested in the nine years following their release. Of these individuals, 82% were arrested in the first 3-years following their release, indicating high rates of criminal behavior immediately following prison. Among those that were not arrested during the first three years following their release, 47% were arrested during years four through nine, indicating long-term challenges, as well (Alper et al., 2018). With prisons costing taxpayers nearly $80.7 billion annually (Wagner & Rabuy, 2017) despite high rates of recidivism, policymakers have begun to reconsider many of the policies that led to mass incarceration and envision new directions for the criminal justice system.

Decarceration and the American Prosecutor

In an address to the Annual Meeting of the American Bar Association in 2003, Justice Anthony Kennedy reflected a change in thinking about the use of incarceration. He remarked, "our resources are misspent, our punishments too severe, our sentences too long," and asked the attorneys present to try "to bridge the gap between proper skepticism about rehabilitation on the one hand and improper refusal to acknowledge that the more than two million inmates in the United States are human beings whose minds and spirits we must try to reach" (Kennedy, 2003, n.p.). The rise of incarceration during the late 20th century involved a change of thinking about the criminal justice system. Rising crime rates and drug abuse led to a transition from an emphasis on rehabilitation to retribution (Travis & Western, 2014). However, in his address, Justice Kennedy signaled the beginnings of a movement to design policies that reemphasized the rehabilitative role of the criminal justice system.

While mass incarceration has persisted to the present, decarceration is becoming an increasingly accepted position for policymakers of both parties. The immense costs of mass incarceration, the results of effective organizing by groups advocating for communities
overrepresented in the criminal justice system, and the evolution of social attitudes regarding crime have all contributed to this change (Pettus-Davis & Epperson, 2016). While specific proposals for decarceration have taken on many forms, they have sometimes been surprisingly met with bipartisan support. For example, in a joint op-ed on mandatory minimums, which require judges to impose a sentence of a specified length for certain offenses, Senators Rand Paul (R-KY) and Patrick Leahy (D-VT) argued that "mandatory minimums are costly, unfair and do not make our country safer. They have played a major role in overcrowding our prisons and have confined us to an unsustainable and irresponsible economic path" (Paul & Leahy, 2013). President Bush signed the Second Chance Act into law, expanding re-entry support (Bosworth, 2011), and the 2018 First Step Act, which attempted to reduce the use of incarceration at the federal level, was passed bipartisanly (Subramanian et al., 2015). A cursory glance at figures on American prisons and jails highlights the need to understand the uniqueness of American mass incarceration and the substantial need for rehabilitative programs. Of individuals incarcerated in jails, 47% do not have a high school diploma or GED, 68% have a history of drug and alcohol abuse, and 14.5% of men and 31% of women suffer from a serious mental illness such as: bipolar disorder, schizophrenia, or major depression (Subramanian et al., 2015). However, even with increased public support for decarceration, it is essential to understand the roles that specific actors in the criminal justice system play and the challenges for effective decarceration.

While decarceration takes many forms, it is frequently guided by a renewed commitment to rehabilitation, cost-effectiveness, and social justice within the criminal justice system. Pettus-Davis and Epperson (2015) define effective decarceration as the simultaneous reduction in jail and prison populations, reduction in economic and racial disparities, and maximization of public safety and public health. Other conceptions include those offered by the National Research
Council of the National Academies (2014), which outlined (i.) desert and proportionality, (ii.) parsimony, (iii.) citizenship, and (iv.) social justice as the principles that should guide decarceral policies. These principles argue that when advocating for or deciding on criminal penalties, legal decision-makers should ensure that any punishment imposed is only as severe as necessary to reflect the seriousness of the crime and the preventive or retributive goals of the punishment. Additionally, the nature of the punishment should never infringe on an individual's fundamental humanity and should reflect the social justice goals of society (i.e., equity and fairness) (Travis & Western, 2014). However, even when guided by philosophically-sound goals, decarceration cannot exist in a vacuum. When mental health care shifted from mainly relying on psychiatric hospitalization to community-based care between 1955 and 1980, many individuals with severe mental illness became homeless, incarcerated, or otherwise vulnerable. While it is unclear whether the deinstitutionalization of the 20th century directly led to the overrepresentation of individuals who suffer from severe mental illness in jails and prisons (Prins, 2011), the process of deinstitutionalization reveals that decarceration can only be successful when those diverted from incarceration are adequately reintegrated in society (Draine & Muñoz-Laboy, 2014). Decarceration requires not only a shift in policy but also a shift in community attitudes about the appropriate response to criminal behavior and strengthened infrastructure for the effective rehabilitation of people who are convicted of crimes.

When performed alongside rehabilitative interventions and within a broader infrastructure of reintegration, decarceration can be viewed as "therapeutic jurisprudence." Growing out of mental health law in the late 1980s, therapeutic jurisprudence was the study of law using social science in order to “ascertain whether the law's antitherapeutic effects can be reduced, and its therapeutic effects enhanced, without subordinating due process and other justice values” (Winick, 1997, p. 185). Broadly, therapeutic jurisprudence attempts to balance
the courts' role in carrying out justice, protecting rights, and fostering equality with an "ethic of care" that values interdependence and responsiveness to needs. Beginning with efforts by law enforcement agencies in the 1990s, more criminal justice decision-makers were attempting to build problem-solving partnerships with communities as a response to the growing numbers of incarcerated individuals suffering from mental illness and substance abuse problems (Winick, 2013). Since then, many courts have established "problem-solving courts," which seek to select a therapeutic response to crime "that promotes health and does not conflict with other normative values of the legal system" (Rottman & Casey, 1999, p. 14). In recent years, problem solving courts have become a very popular policy reform (DeVall et al., 2023). They are typically guided by "(1) immediate intervention, (2) non-adversarial adjudication, (3) hands-on judicial involvement, (4) treatment program with clear rules and structured goals, and (5) a team approach that brings together the judge, prosecutor, defense counsel, treatment provider, and correctional staff" (Rottman & Casey, 1999, p. 15). By imposing consequences for deviating from treatment plans, courts can increase adherence to rehabilitative care, ensure due-process rights are respected throughout the proceeding, and obtain the appropriate dispositional outcome for a specific individual.

As courts and law enforcement have shifted some resources to therapeutic models, such as problem-solving courts and community-oriented policing, prosecutors have also felt calls to engage in decarceration. In many respects, "prosecutors are the most powerful officials in the system" (Davis, 2018, p. 9) and influence decisions at the most critical junctures of the criminal justice system.

Following the arrest and detention of an individual suspected of breaking the law by a police officer, the case must progress through formal charges, a decision that needs to be promptly made post-arrest (Barker v. Wingo, 1972; Gerstein v. Pugh, 1975). The responsibility
falls on the prosecutor to either accept or decline the case. In order to impose charges, the prosecutor must meet the standard of probable cause, which is lower than the standard of beyond a reasonable doubt that must be met at trial in order to secure a conviction. Notably, prosecutors have "almost limitless discretion" (Davis, 2018, p. 5) when making charging decisions and may opt to reduce, increase, or dismiss the charges that led to an individual's arrest.

The initial charge serves as a baseline for the prosecutor's later decision to potentially enter plea negotiations. Since 98% of criminal cases are resolved through guilty pleas, plea negotiations demonstrate how prosecutors frequently determine the outcome of criminal cases by incentivizing the defendant to take a reduced sentence in return for pleading guilty. As a result, prosecutors do not have to take these cases to trial, prove the defendant's guilt beyond a reasonable doubt, and further stretch limited court and prosecutorial resources. Prosecutors are also incentivized by their ability to increase conviction rates through plea bargains. Ultimately, the charging decision influences bail amounts, eligibility for pretrial release without bail, eligibility for participation in diversion programs, and, further down the line, the nature of the sentence imposed (Neily, 2023).

Scholars like Angela Davis (2016) have argued that the prosecutor's ethical duty requires that prosecutors not see their job performance represented by the percentage of convictions won but by the quality of justice attained through the criminal proceeding. Davis contends that prosecutors ought to make decisions rooted in the context of mass incarceration and guided by values like cost-effectiveness and social justice. In Berger v. United States (1935), the prosecutor's ethical duty was articulated by Justice Sutherland, who wrote that the prosecutor's role "is not that it shall win a case, but that justice shall be done." Further, the American Bar Association’s Criminal Justice Standards for the Prosecutor Function stipulate that the
prosecutor is "a problem-solver responsible for considering broad goals of the criminal justice system" *Standards for the Prosecution Function, Standard 3-1.2(f) 2017*. Some prosecutors have risen to the task, as demonstrated by so-called “progressive prosecutors” winning elections across America over the last ten years. Activism by organizations like Color of Change and the ACLU, combined with increased public knowledge about the police killing of unarmed people of color and overrepresentation of individuals suffering from mental illness in prisons and jails, have allowed for "progressive prosecutors" to be elected in both urban and rural jurisdictions (Davis, 2019). The actions taken by progressive prosecutors often include not charging certain low-level offenses, eliminating cash bail, implementing diversion programs, seeking lower sentences, and requiring Assistant Prosecuting Attorneys to justify their sentencing recommendations (Krinsky, 2022).

Moreover, as more jurisdictions implement policies to reduce the use of incarceration and, thereby, the number of individuals exposed to the collateral consequences of prior incarceration and a criminal record, prosecutors serve a vital role given their power in the criminal justice system. By focusing on a pre-plea diversion program in a small Midwestern city, this research sheds further light on the effectiveness and best practices of diversion and deferred-prosecution programs.

**The Prosecutor-Led Diversion Program**

As prosecutors have begun to engage in decarceration efforts, diversion and deferred prosecution have become a frequently used tool in the arsenal of reforms. *Diversion* includes numerous different programs that introduce alternatives to the normal judicial processing of criminal cases. Diversion can occur at arrest by law-enforcement (i.e., transporting an individual suffering from mental illness to psychiatric services, rather than jail), at pre-trial, or using
problem solving/specialty courts. At pre-trial, prosecutors divert defendants to match them with community-based rehabilitative programming, reduce prosecutor and court dockets, and focus attention on more serious cases. A component of many diversion programs is deferred prosecution, which enables defendants to forestall the collateral consequences of a guilty plea and criminal conviction by permitting them to avoid prosecution, withdraw or not enter a guilty plea, and/or seek expungement if specific rehabilitative programming is completed. Deferred prosecution can occur prior to the imposition of charges by the prosecutor, prior to a guilty plea (but following charging), or following an individual’s entrance into a guilty plea (Pettus-Davis et al., 2019). While there is considerable variation in diversion and deferred prosecution programs, they emerged from similar historical and philosophical goals within the criminal justice system.

The first push towards diversion and deflection was led by President Lyndon B. Johnson in 1967, through the President’s Commission on Law Enforcement and Administration of Justice. Johnson advocated for expanding the use of alternatives to incarceration, such as diversion, that focused on the root-causes of criminal behavior (Hillsman, 1982). As momentum grew around pretrial diversion, the Vera Institute of Justice created the Manhattan Court Employment Project (CEP) in 1967. The project was guided by the belief that many misdemeanor property offenses were motivated by poverty, and if offenders received employment, their criminal behavior would cease (Vera Institute of Justice, 1971). Soon after, San Jose (CA) implemented Project Intercept, New Haven (CT) created the Pretrial Diversion Program, and one of the first substance abuse diversion programs, Treatment Alternative to Street Crime (TASC), was funded by the U.S. Department of Justice across the nation (Johnson et al., 2020). Then, in 1973, the National Advisory Commission on Criminal Justice Standards and Goals recommended that all jurisdictions establish pre-trial diversion programs (National
Advisory Commission on Criminal Justice Standards and Goals, 1973). Combined with funding from the Department of Justice and Department of Labor (Feeley & Berman, 2013), this recommendation ignited the growth of diversion programs across the nation: increasing from just 57 programs in 1974 to 148 programs in 42 states and territories by 1976 (Bellassai, 1978).

However, studies of early diversion programs found mixed results on the effectiveness of diversion at reducing reoffending, leading to a substantial decline in federal funding and reduced support of diversion by local criminal justice officials (Johnson et al., 2020). Throughout the 1980s and 1990s, as policymakers sought to make the criminal justice system more punitive and rely more heavily on incarceration, diversion was not a popular policy choice (Feeley & Berman, 2013). Nonetheless, this period in the history of diversion programs was not long-lasting, and by the early-2000s, diversion once again reemerged as a potentially effective crime control policy.

Beginning in the mid-1990s, the combined failures of social institutions and government to adequately address addiction and mental illness, alongside the use of incarceration as a response to these issues led to courts and law-enforcement being stretched thin. Prisons and jails not only became overcrowded but began to serve the role of providing care for those suffering from mental illness and addiction. As a result, policymakers were incentivized to utilize rehabilitative programming to divert people who suffered from mental illness and substance-use disorders (Miller et al., 2020) and, in the process, became more confident in their usefulness. When reflecting on diversion programs and problem-solving courts, New York’s Chief Judge Judith Kaye reflected that “outcomes – not just process and precedents – matter. Protecting the rights of an addicted mother is important. So is protecting her children and getting her off drugs” (Kaye, 2000, n.p.). Kaye argues that rehabilitation should have a place within courts and law-
enforcement, which is both necessary due to the burden of mass incarceration and desired due to the potentially positive effects on justice-involved individuals and communities.

Initially, most modern diversion programs originated as problem-solving courts that emphasized specific criminal justice issues. One of the first problem-solving courts was the “Protection from Abuse Court” in Philadelphia, which was devoted to all civil protection orders. Subsequently, Cook County (IL) introduced a domestic-violence focused court and Dade County (FL) established one of the first drug courts in 1989, sentencing certain individuals to drug treatment programs. In 1993, the Midtown Community Court in New York City opened, focusing on many minor offenses and included victims in decision-making around appropriate responses (Worrall & Nugent-Borakove, 2008). After the initial success of drug courts across the nation, Congress passed the Violent Crime Control and Law Enforcement Act of 1994, which authorized the Attorney General to fund drug courts (Violent Crime Control and Law Enforcement Act of 1994). From 1995 to 2000, the Department of Justice Drug Courts Program Office oversaw the creation of 275 drug courts. Later, specific problem-solving courts emerged in the areas of mental health, homelessness, and veteran rehabilitation (Worrall & Nugent-Borakove, 2008).

Additionally, many states adopted deferred prosecution statutes based on the Model Penal Code (American Law Institute, 2018). At least 16 states have similar laws today (Wright & Levine, 2021). In Michigan, where the diversion program evaluated in this research is located, the state legislature established a deferred prosecution program for veterans and the Holmes Youthful Trainee Act (HYTA), for young adult defendants. Both programs require the defendant to enter a guilty plea, but upon successful completion of probation, the charges are dismissed, and the record is sealed to the public (Holmes Youthful Trainee Act, 2021; Subramanian et al.,
However, given the wide discretion prosecutors possess when bringing criminal charges against an individual, most diversion programs are implemented by individual prosecutors (Wright & Levine, 2021).

Beyond state statutes and drug courts, individual prosecuting attorneys across the nation have implemented Prosecutor-Led Diversion Programs (PLDPs) with deferred prosecution programs in their jurisdictions. A multistate survey and evaluation of PLDPs across the U.S. found that there are some commonalities between programs. First, PLDPs are often used to divert individuals at the beginning of their interaction with the criminal justice system. By offering participants the opportunity to engage in programming designed to reduce recidivism and increase their ability to live as productive citizens, PLDPs allow participants to exit the criminal justice system early. Second, while the rehabilitative programming varies, it commonly includes community service, abstention from criminal activity, mental health and substance abuse counseling, the payment of restitution, and other educational programming (i.e. theft awareness classes and career counseling) relevant to the participant. Finally, PLDPs are typically only open to individuals charged with nonviolent offenses and may also require that this is their first offense or they do not have any prior felony convictions (Rempel et al., 2018).

Like other diversion programs, PLDPs can be entered pre-charge, post-charge and pre-plea, or post-plea. While PLDPs typically dismiss all charges at the completion of the program, policies about the stage in the criminal process when defendants enter the diversion program can have consequences. For PLDPs that require defendants to enter a guilty plea before beginning the program, the guilty plea may not be sealed from public view, despite the charges ultimately being dismissed. Therefore, the participant may be exposed to the collateral consequences of an arrest and criminal charge (Love, 2010). Additionally, what is visible to the public will depend
on whether a “conviction” is registered at the time of a guilty plea or at sentencing, and whether
the defendant is able to seek expungement (National Institute of Justice, 2022). However, with
increasing support for expungement relief (Porter, 2023), it is easier for defendants to minimize
the collateral consequences they face from their criminal offense – and PLDPs often play a vital
role in minimizing these consequences.

Another effect of the rise of PLDPs has been a change in views among both criminal
justice professionals and the public about the role of the prosecutor. Typically, prosecutors take
the role of “representing the state in criminal matters, seeking justice, holding offenders
accountable, imposing appropriate penal sanctions, reducing crime, ensuring social control,
deterring future crime, and rehabilitating offenders” (Nugent et al., 2004, p. 16). While this role
has not completely changed, prosecutors working with individuals diverted to a PLDP typically
find their roles demarcated by: (i.) problem solving alongside community members, non-profit
leaders, care providers, judges, and defense counsel in a team-setting, (ii.) utilizing new social
scientific research and therapies to prevent, deter, and intervene in crime, (iii.) developing
expertise in both reactive and proactive law-enforcement strategies, and (iv.) working in a less
adversarial role (see Nugent, 2004; Berman & Feinblatt, 2001).

As PLDPs change the culture of the courtroom, it not only affects prosecutors, but
everyone involved. As a result, some critics of PLDPs have argued that the team-approach
between defense counsel, judges, and prosecutors diminishes a defense attorney's ability to
“zealously” advocate for defendants. This inability for defense to advocate could be especially
problematic given that some PLDPs are constrained by concerns over a defendant’s ability to
raise procedural errors, requirements to enter a guilty plea, the cultural-appropriateness and
effectiveness of treatment options, and the length of sentences imposed on defendants who fail
the program. In a roundtable discussion held between judges, public defenders, and prosecutors in 2001, James R. Neuhard, the Director of the State Appellate Defender’s Office for Michigan, reflected on new problem-solving courts: “I fear that government will exert more control over my clients’ lives. There’s a real danger in widening the net so early in the game with so little time to make a decision about whether to opt-in or opt-out.” Law professor Kim Taylor-Thompson offered, “Problem-solving courts strike me as somewhat paternalistic in the way they pressure defendants to accept pre-ordained alternatives to incarceration” (Feinblatt & Denckla, 2001, p. 210). These statements demonstrate how in a less adversarial, problem-solving driven court, zealous advocacy for a defendant can be complicated by collaboration and paternalism. Defense attorneys may find themselves having to advocate for a client’s choice to decline a diversion program, even if that individual would strongly benefit from the treatment it offers. Additionally, if the defendant must admit guilt prior to diversion or if the program provides little flexibility in treatment modality, duration, or measures of success, a defense attorney may struggle to effectively negotiate for their client, although the program is still technically occurring at the pre-trial stage.

However, others have argued that “zealous advocacy” is a significant part of diversion programs, with defense counsel working closely with defendants as they decide whether to enter the program, advocating for reduced charges prior to entry into the program, and arguing over the length and modality of treatment. Some jurisdictions, like Seattle and Portland, have also implemented policies that permit defendants to “try out” treatment while their cases are still pending – offering them an opportunity to make an informed choice in contrast to the quick decision-making required by many plea deal and diversion offers (Feinblatt & Denckla, 2001). Other potential safeguards include ensuring that individuals who fail the diversion program are
not given significantly higher sentences than those who declined diversion and still be provided opportunities to raise procedural challenges. At minimum, the individualized, more methodical approach of a diversion program may be at least a better alternative to hasty decision-making made by judges or an overreliance on plea deals necessitated by growing court backlogs (Berman & Feinblatt, 2001).

Other concerns about PLDPs typically regard their eligibility criteria. Critics argue that many programs are too selective and may impose barriers to entry for individuals from disadvantaged backgrounds. Most PLDPs are only available to individuals charged with low-level felonies and misdemeanors, and sometimes further limited to people charged with their first offense (Subramanian et al., 2014). As a result, PLDPs are often limited in their ability to address mass incarceration. While incarceration may be the appropriate option for some individuals charged with serious offenses, restrictive PLDPs will inevitably fail to reach the 1.2 million Americans affected by felonies and serious misdemeanor convictions (Wagner & Sawyer, 2024). For individuals stuck in cycles of low-level drug and property offenses, PLDPs that are only available to first-time offenders may fail to reach individuals who would be well served by an individualized intervention to stop these cycles, rather than more time in jail or on probation. Additionally, some critics have pointed out that by requiring the payment of court and program fees, submitting formal petitions to courts, and having long waiting periods, PLDPs may inadvertently exclude individuals of lower socioeconomic status and from disadvantaged communities (Subramanian et al., 2014).
A Typology of Prosecutor-Led Diversion Programs

To situate the Washtenaw County Pre-Plea Diversion Program in a nationwide context of similar PLDPs, it is examined alongside the details of other diversion programs collected in research conducted by the Center for Court Innovation in 2018.

Labriola et al. (2018) identified several characteristics that can be used to differentiate between PLDPs. Following their survey of prosecutor-led diversion programs, this research presents a typology situating the Washtenaw County PPDP in this context. The present typology, as described in Table 1, will focus on Labriola et al.’s characteristics of:

- **Jurisdiction Size**: population of jurisdiction
- **Timing of Diversion**: pre-filing, post-filing, or mixed
- **Charge Severity**: only misdemeanors, felonies, or both
- **Charge Specialization**: i.e., only marijuana possession
- **Restrictions on legal eligibility**: criminal history exclusions, risk assessment score exclusions, or solely prosecutorial discretion
- **Average Duration**
- **Dosage**: i.e., two appointments vs. 66 hours of programming
- **Who makes eligibility decisions**: i.e., prosecutor, police, etc.

Additionally, this research adds the category of “**intensity**,” which includes an assessment of the programs’ treatment mandates, duration, and “dosage” of programming.
Table 1: Diversion Program Typology (Labriola et al., 2018)

<table>
<thead>
<tr>
<th>Program</th>
<th>Jurisdiction Size</th>
<th>Timing of Diversion</th>
<th>Charge Severity</th>
<th>Charge Specialization</th>
<th>Restrictions on Legal Eligibility</th>
<th>Who Makes Eligibility Decisions?</th>
<th>Average Duration</th>
<th>Dosage</th>
<th>Intensity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Washtenaw County (MI) Pre-Plea Diversion Program</td>
<td>369,390</td>
<td>Medium</td>
<td>Post-filing</td>
<td>Misdemeanor</td>
<td>No</td>
<td>Prosecutor Discretion</td>
<td>Prosecutor</td>
<td>6 months</td>
<td>Varies; 25-70 hrs.</td>
</tr>
<tr>
<td>Chittenden County (VT) Rapid Intervention Community Court</td>
<td>161,000</td>
<td>Medium</td>
<td>Mixed</td>
<td>Misd/Fel</td>
<td>No</td>
<td>Criminal History</td>
<td>Screener</td>
<td>Usually 90 days</td>
<td>Varies (a couple classes/week)</td>
</tr>
<tr>
<td>Cook County (IL) Drug School</td>
<td>Mixed</td>
<td>Misd/Fel</td>
<td>Drug</td>
<td>Criminal History</td>
<td>Prosecutor</td>
<td>3 months</td>
<td>4 classes: 2.5 hrs./class</td>
<td>Low</td>
<td></td>
</tr>
<tr>
<td>Cook County (IL) Felony Deferred Prosecution Program</td>
<td>Post-filing</td>
<td>Felony</td>
<td>No</td>
<td>Criminal History</td>
<td>Prosecutor</td>
<td>9-12 months</td>
<td>Varies (usually completed in initial months)</td>
<td>High</td>
<td></td>
</tr>
<tr>
<td>Cook County (IL) Misdemeanor Deferred Prosecution</td>
<td>5,238,000</td>
<td>Large</td>
<td>Post-filing</td>
<td>Misdemeanor</td>
<td>No</td>
<td>Criminal History</td>
<td>Prosecutor</td>
<td>1 week to 3 months</td>
<td>2 appointments</td>
</tr>
<tr>
<td>Dallas (TX) Memo Agreement Program</td>
<td>2,553,000</td>
<td>Large</td>
<td>Post-filing</td>
<td>Misdemeanor</td>
<td>Mainly retail theft/marijuana</td>
<td>Criminal History</td>
<td>Prosecutor/Defense</td>
<td>60 days</td>
<td>24-36 hrs. community service + classes</td>
</tr>
<tr>
<td>Location</td>
<td>Client Population</td>
<td>Type</td>
<td>Defendant Level</td>
<td>Criminal History</td>
<td>Screening Unit</td>
<td>Time in Program</td>
<td>Time Commitment</td>
<td>Notes</td>
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<td>Hennepin County (MN)</td>
<td>1,233,000</td>
<td>Large</td>
<td>Mixed</td>
<td>Felony</td>
<td>Drug and property</td>
<td>Up to 1 year</td>
<td>Varies</td>
<td>Varies</td>
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<tr>
<td>Operation De Novo (Property and Drug)</td>
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<td></td>
<td></td>
<td>Varies</td>
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<tr>
<td>Maricopa County (AZ)</td>
<td>4,168,000</td>
<td>Large</td>
<td>Mixed</td>
<td>Felony</td>
<td>Drug</td>
<td>24 days</td>
<td>1 hour/day</td>
<td>Medium (mainly community service)</td>
<td></td>
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<tr>
<td>TASC Adult Prosecution Program</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Criminal History</td>
<td>Risk Assessment</td>
<td>Risk Assessment</td>
<td></td>
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<tr>
<td>Milwaukee County (WI)</td>
<td>957,735</td>
<td>Large</td>
<td>Post-filing</td>
<td>Misd/Fel</td>
<td>No</td>
<td>6 months</td>
<td>Varies</td>
<td>Varies</td>
<td></td>
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<tr>
<td>Diversion Program</td>
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<tr>
<td>Deferred Prosecution Program</td>
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<tr>
<td>Philadelphia (PA)</td>
<td>1,567,000</td>
<td>Large</td>
<td>Post-filing</td>
<td>Misdemeanor</td>
<td>No</td>
<td>5-10 weeks</td>
<td>12-18 hours</td>
<td>Low / Varies</td>
<td></td>
</tr>
<tr>
<td>Accelerated Misdemeanor Program</td>
<td>1 and AMP 2</td>
<td>Post-filing</td>
<td>Misdemeanor</td>
<td>No</td>
<td>Criminal History</td>
<td>15-20 weeks</td>
<td>Varies (AMP 2)</td>
<td></td>
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<tr>
<td>Philadelphia (PA)</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>Prosecutor</td>
<td>6 months - 2 years</td>
<td>Varies (limited)</td>
<td></td>
</tr>
<tr>
<td>Accelerated Rehabilitation Disposition</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Prosecutor</td>
<td></td>
<td></td>
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<td>Philadelphia (PA)</td>
<td></td>
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<td></td>
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<tr>
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<td>Large</td>
<td>Post-filing</td>
<td>Misdemeanor</td>
<td>Marijuana</td>
<td>1 day</td>
<td>3-4 hours</td>
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<tr>
<td>Accelerated Misdemeanor Program</td>
<td>1 and AMP 2</td>
<td>Post-filing</td>
<td>Misdemeanor</td>
<td>No</td>
<td>Criminal History</td>
<td>15-20 weeks</td>
<td>Varies (AMP 2)</td>
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<td>Population</td>
<td>Case Size</td>
<td>Filing Stage</td>
<td>Charge Type</td>
<td>Criminal History</td>
<td>Police Disposition</td>
<td>Timeframe</td>
<td>Hours</td>
<td>Cost</td>
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<tr>
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<td>Phoenix (AZ) Project ROSE</td>
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<td>Pre-filing</td>
<td>Misdemeanor</td>
<td>Prostitution</td>
<td>Police</td>
<td>6 months</td>
<td>66</td>
<td>High</td>
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<tr>
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<td>Large</td>
<td>Pre-filing</td>
<td>Misd/Citations</td>
<td>No</td>
<td>Criminal History</td>
<td>Prosecutor / Police</td>
<td>2 days</td>
<td>3 hours/day</td>
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<tr>
<td>San Francisco (CA) Neighborhood Court</td>
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<td>Misd/Fel</td>
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<td>Prosecutor Discretion</td>
<td>Rebooker</td>
<td>Varies</td>
<td>Varies</td>
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The Center for Court Innovation research is one of the only comprehensive surveys and evaluations of adult PLDPs in recent years.¹ Nonetheless, their research focuses almost solely on large jurisdictions, with only one program in a jurisdiction with less than 500,000 residents. Since diversion programs often require community and intergovernmental partnerships to provide rehabilitative programming, these examples may not reflect the effectiveness of diversion programs in small or mid-sized jurisdictions. Likely in an effort to streamline participant selection, nearly all of these programs have significant eligibility requirements regarding the severity of a defendant’s criminal history and/or score on a risk assessment instrument. While misdemeanor-only programs typically have more relaxed entry requirements, all place explicit limits on prior arrests, convictions, and/or affiliation with gangs. Additionally, no programs that diverted a broad range of misdemeanor defendants required high intensity programming.²

At a minimum, this evaluation of the Washtenaw County Pre-Plea Diversion Program adds to the literature by contributing to a dearth of research on adult prosecutor-led diversion programs (Labriola et al., 2018). Based on this typology, this evaluation further contributes knowledge on the effectiveness of diversion programs by evaluating a program: (i.) in a mid-sized jurisdiction, (ii.) that relies on prosecutor discretion rather than extensive bright-line rules when determining defendant eligibility, and (iii.) with relatively high intensity programming for a broad-range of misdemeanor defendants.

¹ See Broner et al., 2005; Cowell et al., 2014; George et al., 2016 for other evaluations. However, this research focuses on very limited populations and programs with limited scope (i.e., solely drug and mental health diversion). ² The only misdemeanor program requiring high-intensity programming is Phoenix’s Project ROSE, but it is solely focused on prostitution charges.
Reducing Recidivism with Diversion Programs

A central mission of PLDPs is to reduce recidivism among participants. It is theorized that diversion programs that utilize evidence-based rehabilitative programming that is responsive to the needs of the participant will reduce participants’ risk of committing new crimes (Rempel et al., 2018; Zara & Farrington, 2015).

Prior to the 2nd-generation diversion programs in mid-1990s, federal funding and local official support of diversion declined following concerns that diversion programs were ineffectively rehabilitating defendants. For example, while initial evaluations of the Vera Institute’s Manhattan Court Employment Project (CEP) asserted that the program was able to find steady employment for all participants, reduce re-arrest rates by 50%, and double participants’ income (Vera Institute of Justice, 1971), concerns about the methods of these evaluations surfaced. Researchers questioned the validity of the evaluation, arguing that many evaluations of diversion programs did not include truly comparable control groups, and sometimes no control group at all (Johnson et al., 2020). Mullen (1974) reflected that it was, “virtually impossible to find naturally occurring court populations with which to compare diversion participants.” Others offered concerns over “net-widening,” where few diverted defendants would have spent any time in jail in the absence of the program and now had to complete extensive rehabilitative programming (although this programming was often shorter than comparable probation sentences) (Johnson et al., 2020). Some researchers identified that “it is ironic that diversion away from the system should result in a system with an even greater reach” (Klein, 1979, p. 184). While diversion is meant to stop behaviors that could lead to future offending and incarceration, by initiating law-enforcement contact with “at-risk” individuals who had not committed prior offenses or focusing too many interventions on low-risk
defendants, it could potentially lead to the system disrupting low-risk individuals’ lives more than normal criminal justice proceedings.

As a result, the U.S. Department of Justice funded the first randomized trial on diversion using Vera’s CEP as a case study. The results were not favorable, with researchers finding no differences between diverted and non-diverted defendants in criminal convictions and jail sentences, re-arrests, or avoidance of a criminal record (Baker & Saad, 1979). Despite these early evaluations, as local law enforcement officials, the federal government, and state legislatures strived to solve some of the administrative and cost inefficiencies of mass incarceration, the modern diversion program was born. Unlike its previous iterations, modern diversion programs have increased law enforcement buy-in and are positioned alongside intensive community-based rehabilitative infrastructure and problem-solving courts. Many are also focused specifically on individuals suffering from mental illness and substance dependence, offering courts the opportunity to develop expertise in the rehabilitation of these defendants (Johnson et al., 2020). An 8-site study of the diversion of over 2000 arrestees with comorbid mental illness and substance dependence found that these specialized diversion programs had significant, positive effects on recidivism, mental health symptoms (Broner et al., 2004), substance abuse (Lamb et al., 1996), and life satisfaction (Cosden et al., 2003). Nonetheless, whether or not diversion truly changes life course trajectories, it has continued to be justified for its role in saving money, reducing the collateral consequences of a criminal conviction, and increasing the administrative efficiency of the criminal justice system (Johnson et al., 2020; National Association of Pretrial Services Agencies, 2010).

In recent year, as diversion has expanded to include offenders beyond those suffering from mental illness or substance dependence, new evaluations of these programs have been
undertaken. A multi-state evaluation of PLDPs in Cook County (IL), Milwaukee (WI), and Chittenden County (VT) found that 3 of 5 programs significantly reduced the likelihood of re-arrest in the two years following program enrollment, compared to samples of non-diverted people charged with similar crimes. For any re-arrest in the 2 years following program completion, diverted defendants in Milwaukee (WI) were 11% less likely to be re-arrested and in Cook County (IL) diverted felony drug defendants were 6% less likely to be re-arrested and misdemeanor defendants were 12% less likely (Rempel et al., 2018). However, there is some variation even in studies of diversion programs within the same county. Another study of the Cook County Misdemeanor Deferred Prosecution Enhancement Program, which focuses on individuals charged with non-violent misdemeanors, found no effect on 2-year re-arrest (Labriola et al., 2018) compared to the 12% reduction found by Rempel (2018). Different research evaluating a Cook County diversion program focusing on individuals charged with a first-time and non-violent felony found that while there was little effect on re-arrest rates 18-months following the program, there was a significant effect for women charged with theft, reducing the likelihood of re-arrest by 76% (George et al., 2015). Notably, research leveraging two natural experiments in Harris County (TX)3 found that diversion for individuals charged with their first felony reduces recidivism by 50% and improved employment rates by 50%. It is hypothesized that diversion programs may be especially effective for individuals charged with their first felony given the stigma associated with a felony conviction and the change in life course trajectory that a first-time felony may demarcate in someone’s life (Mueller-Smith & Schnepel, 2021). Nonetheless, misdemeanor diversion programs could play a crucial role in

3 The natural experiment was the result of two changes in state-level felony diversion policies. First, in 1994, Texas reduced diversion opportunities for individuals charged with certain drug and property felonies. Second, in 2007, a ballot initiative failure resulted in an immediate increase in diversion for low-risk felony offenders. Since these policies were implemented very quickly, individuals who were charged before or after implementation experienced very different outcomes despite being extremely similar groups (Mueller-Smith & Schnepel, 2021).
diverting people from the consequences of even a short stay in jail, including the collateral consequences of a criminal record, worsened health status, and a higher risk for future criminal activity (Subramanian et al., 2015).

Considering there is wide variation among the specific interventions employed by diversion programs, it is important to address two widely used interventions: community service and mental health/drug abuse counseling. Broadly, justice-involved individuals can be described as having criminogenic and non-criminogenic needs. Criminogenic needs are ones that, if unaddressed, *directly* increase an individual’s risk of recidivism and include antisocial personality patterns, criminal networks, substance abuse, and personality disorders. In contrast, non-criminogenic needs *indirectly* affect recidivism risk (Andrews & Dowden, 2006) and are important for the long-term health and success of an individual interacting with the criminal justice system. Non-criminogenic needs include: self-esteem, chronic illnesses, and suffering from serious mental illnesses like schizophrenia and bipolar disorder (Andrews & Dowden, 2006; Zara & Farrington, 2015). It is possible that community service and mental health/substance use disorder counseling could help reduce the criminogenic needs of justice-involved individuals (i.e., antisocial personality, personality disorders, and substance abuse), while simultaneously reducing certain non-criminogenic needs (i.e., self-esteem and serious mental illnesses).

Research examining both community service and mental health/substance use disorder counseling have shown largely positive effects on recidivism. A study of 1669 juveniles sentenced to community service in Washington state found significant reductions in recidivism (Church et al., 2021). Similarly, a study of 4,246 adults in The Netherlands found that those sentenced to community service had a 46.8% reduction in recidivism compared to similar
individuals sentenced to short stays in jail (Wermink et al., 2010). A meta-analysis of 58 experimental and quasi-experimental studies found that cognitive behavioral therapy (CBT), a commonly employed therapy for the treatment of many common mental illnesses and substance dependence, resulted in a 25% reduction in recidivism compared to similar, untreated individuals. Participants were individuals convicted of crimes who were on probation, incarcerated, or on parole. Of the studies in the meta-analysis, 31 of the 58 analyzed CBT performed in the community. Additionally, the studies which found CBT to be highly effective were analyzed separately, with researchers finding that this group produced a more than 50% decrease in 12-month recidivism (Landenberger & Lipsey, 2005).

The Current Research

The present research explores the effect of a prosecutor-led, pre-plea and post-filing diversion program in Washtenaw County, Michigan on re-arrest in the 6-months following the completion of the program. To evaluate the effectiveness of the diversion program on re-arrest, it compares the 6-month re-arrest rates of all participants during the first 2-years of the program to a sample of individuals charged with diversion-eligible offenses in the county during the same period, but who were not diverted. It also compares reoffending rates based on the absence or presence of specific diversion interventions, including community service and mental health/substance abuse counseling. Based on literature suggesting the effectiveness of diversion programs at reducing recidivism for individuals charged with misdemeanors, it is hypothesized that the Washtenaw County PPDP will significantly reduce re-arrest among participants in the 6-months immediately following the completion of the program.

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Secondly, based on literature suggesting the effectiveness of conventional community service penalties for reducing recidivism, the second hypothesis is that participants required to complete community service as part of their diversion plans will have lower rates of re-arrest compared to those who are not required to do so. Community service may potentially address the criminogenic needs of increased self-control, decreased antisocial attitudes, and increased vocational skills. The act of performing tasks that improve the quality of life in the defendant’s community may offer defendants the opportunity to construct a prosocial, service-oriented identity and feel a sense of accomplishment. Further, defendants may build relationships with the organization they are volunteering with and develop career-related skills, helping them find and maintain outlets for positive community contribution.

Thirdly, based on literature suggesting the positive effects of CBT on reducing recidivism, it is hypothesized that participants required to participate in mental health and/or substance-abuse counseling will have lower rates of re-arrest. Since the modalities most commonly employed with PPDP participants is CBT (R.E., personal communication, March 6, 2024), the literature suggests that defendants required to engage in treatment will have lower rates of re-arrest compared to those who were not required to do so. Mental health and substance-abuse counseling may address the criminogenic needs of increased self-control and prosocial attitudes, and reduced negative affect, antisocial attitudes, and substance abuse.

Additionally, this research performed exploratory analyses using additional demographic and individual characteristics, including race, gender, age at arrest, extensiveness of criminal history, and the presence of other diversion plan interventions to determine their relationships with diversion program selection, success, and likelihood of re-arrest.
Method

This research is an evaluation of the Washtenaw County (MI) Pre-Plea Diversion Program (PPDP) using administrative and crime record data describing participants from the first 2 years of the program (case dismissal dates between 5/1/2021 and 4/30/2023). Criminal history data was collected using the Michigan State Police’s Internet Criminal History Access Tool (ICHAT) beginning in December 2023, allowing for re-arrest data to be collected on all participants for the 6-month period immediately following their completion of the diversion program, which is calculated using the date the prosecutor entered a *nolle prosequi*\(^5\) to the court, dismissing the charges. The primary goal of this research is to evaluate whether the PPDP reduces recidivism immediately following program completion, and the specific effects of community service and mental health counseling services on re-arrest. Additionally, this research evaluated whether disparities exist based on the defendant’s criminal record, type of charges, race, gender, and age at time of diversion.

Participants

The Washtenaw County Prosecutor’s Office (WCPO) prepared data describing 97 individuals who successfully completed the PPDP between 5/1/2021 and 4/30/2023. Seven defendants were excluded due to missing data, leaving the diverted sample at 90. Additionally, the Prosecutor Transparency Project team (a research partnership between the WCPO, University of Michigan Law School, University of Michigan Poverty Solutions, and the ACLU of Michigan) prepared a list of all individuals charged with misdemeanors eligible for diversion in Michigan’s 15\(^{th}\) District Court (the same court where the PPDP was established during the

\(^5\) *Nolle prosequi* is Latin for “not wish to prosecute,” and refers to when prosecutors dismiss charges. In this case, it is the legal action taken by the Prosecutor’s Office when a defendant successfully completes their diversion plan.
research period) from 5/1/2021 to 4/30/2022 to be used in the research as a quasi-control sample. One additional sample was obtained: the population of individuals who failed the PPDP during the research period.

**Diverted Defendants (Quasi-Experimental) Sample**

The diverted defendants sample includes all individuals who successfully completed the PPDP between 5/1/2021 and 4/30/2023 \((n = 90)\). Defendants were selected for the program based on the informal decision-making process of the Assistant Prosecuting Attorney responsible for the diversion program but must have been charged with an eligible misdemeanor. See Appendix 1 for a logic model describing how defendants are processed through the diversion program and eligibility decisions are made.

Defendants in the diverted sample \((n = 90)\) included 52 men \((57.8\%)\) and 38 women \((42.2\%)\). Defendants were mostly white \((n = 53, 58.9\%)\) and Black \((n = 28, 31.1\%)\), with some identifying as Asian or Pacific Islander \((n = 8, 8.9\%)\). Regarding ethnicity, four individuals identified as Hispanic \((4.4\%)\) and one individual identified as Middle Eastern or North African \((1.1\%)\), with all other defendants having either unknown or unlisted ethnicities. The race and ethnicity of one defendant was unknown. The average age of defendants at the time of diversion was 32 years old \((SD = 12.98)\), with the youngest defendant being 17 years old and the oldest defendant being 65 years old. Most defendants were represented by the Washtenaw County Public Defender \((n = 41, 45.6\%)\) or a private attorney \((n = 35, 38.9\%)\), with some represented by the University of Michigan Student Legal Services \((n = 11, 12.2\%)\). Two defendants were without representation \((2.2\%)\) and one defendant was represented by another non-profit counsel \((1.1\%)\).
**Diversion Program Failure Sample**

Additionally, researchers were provided with information about defendants who started the diversion program within the research time frame but failed to complete the diversion program \( (n = 17) \). Unsuccessful defendants were predominantly male \( (n = 14, 82.3\%) \), with some female \( (n = 3, 17.6\%) \). They were all Black \( (n = 9, 52.9\%) \) or white \( (n = 8, 47.1\%) \), with two white defendants also identifying as Middle Eastern or North African \( (n = 2, 11.7\%) \). The average age of the unsuccessful defendants was 26.65 \( (SD = 8.67) \), with the youngest being 18 years old and the oldest being 49 years old.

**Non-Diverted, Arrested Defendant (Quasi-Control) Sample**

The quasi-control sample was randomly selected from a list of all individuals charged with misdemeanors eligible for the PPDP in Michigan’s 15\(^{\text{th}}\) District Court from 5/1/2021 to 4/30/2022, who were not diverted \( (N = 226) \). The quasi-control sample only included the 15\(^{\text{th}}\) District Court since, at the time, the PPDP was only available in that Court (it has since expanded to other courts in the county). Additionally, individuals with other pending ineligible charges (including all felonies) were excluded. Following random selection, 97 individuals were included from the sample of 226. The timeframe of cases from which the quasi-control sample was selected is shorter than the quasi-experimental sample due to constraints around data availability for cases after charged after 4/30/2022.

While selection effects may potentially be present when comparing the quasi-control sample to the quasi-experimental sample, the control group was selected to eliminate as many confounds as possible. Other courts in the county, while without the same diversion program, have jurisdiction over areas with substantially different demographics than the City of Ann
Arbor. For example, the 14-A2 District Court has jurisdiction over the City of Ypsilanti. In Ypsilanti, 31.4% of residents are Black compared to Ann Arbor’s 6.6%. Additionally, the median family income in the City of Ypsilanti is $41,914, compared to $78,546 in the City of Ann Arbor (U.S. Census Bureau, n.d.-b). While it would have been possible to select a control group of eligible defendants in the 15th District Court in a time frame preceding the start of the diversion program, this group was not selected since the program was implemented by a prosecutor inaugurated 5 months prior to the admission of the first defendant. Additionally, the new prosecutor operated with a substantially different prosecuting philosophy, changing many charging policies in the office (Washtenaw County Prosecutor’s Office, n.d.-b).

The quasi-control sample was mostly male ($n = 72, 74.2\%$), with some defendants identifying as female ($n = 25, 25.8\%$). The sample was predominantly white ($n = 48, 49.5\%$) and Black defendants ($n = 46, 47.4\%$), with one Asian defendant (1.0\%) and one defendant with unknown race (1.0\%). Ethnicity information was not available for this sample. The average age of defendants was 36.32 years old ($SD = 12.86$), with the youngest defendant being 17 years old and the oldest defendant being 81 years old.

Sociodemographic information is provided in Table 2.
Table 2
Sociodemographic Characteristics of Participants

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<th>Diverted -- Unsuccessful</th>
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<td></td>
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<td>Age (average)</td>
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Note. N = 204.

Measures and Procedures

The Washtenaw County Prosecutor’s Office maintains data on all defendants who completed or failed the PPDP since its inception – including the offense date, date referred to diversion, date that the nolle prosequi was signed, the charge that triggered diversion, counsel, the details of their diversion plan, and some demographic information collected by law enforcement at the time of arrest (i.e., race, ethnicity, gender, and age). To maintain the
anonymity of diversion program participants, the WCPO collected Michigan State Police Internet Criminal History Access Tool (ICHAT) reports on participants and redacted personally identifiable information before sending it to the researcher. The ICHAT reports are public criminal history reports, containing information on arrests, charges, convictions, and dispositions in the state of Michigan that have not been sealed or expunged. As a result, criminal history and re-arrest data is limited to only public data from the state of Michigan and may not fully reflect a defendant’s criminal history. However, this is likely not a major concern. Under Michigan law, significant waiting periods exist before an individual can expunge an offense (i.e., seven years for felonies and five years for “serious” misdemeanors). Additionally, an individual can only expunge up to two assaultive crimes and one felony that can be punished by more than 10 years in prison. Certain crimes, like capital crimes, child abuse, criminal sexual conduct, and a second operating while impaired/intoxicated can never be expunged (Washtenaw County Prosecutor’s Office, n.d.-a). Therefore, the ICHAT report provides a reasonable measure of an individual’s interactions with the criminal justice system.

The quasi-control sample was selected from a list of all individuals charged with misdemeanors eligible for the PPDP in Michigan’s 15th District Court from 5/1/2021 to 4/30/2022. This court was the only court where the PPDP was established during the research period, and therefore is the most sociodemographically similar group to the diversion program sample. The list of defendants was compiled by researchers in the University of Michigan Law School’s Prosecutor Transparency Project and was obtained from Washtenaw County court records. Using the personally identifying information on this list, the researcher requested ICHAT reports on the group of randomly selected defendants to identify re-arrests in the 6-months following either the defendant’s conviction or the completion of the defendant’s
incarceration or probation for their earliest charge in the research period. Additionally, criminal history and demographic information was obtained using the ICHAT reports. Occasionally, missing information was obtained from court records for the 15th District Court of Michigan online case search. This research was completed in accordance with Claremont McKenna College Institutional Review Board policy and a mutually agreed upon data sharing agreement with the Washtenaw County Prosecutor’s Office.

**Defendant Demographic and Diverted Charge Data**

Demographic data for all defendants included gender (male, female), age at the time of arrest/diversion, race (Black, white, Asian or Pacific Islander), and ethnicity (Hispanic, Middle Eastern or North African) when available. Since only 6 defendants had known ethnicity information and were all racially white, they were included as white participants and ethnicity was not studied. Based on recommendations by the Washtenaw County Prosecutor’s Office, the charges that triggered diversion were classified into three categories: Non-Violent Misdemeanors, Violent Misdemeanors, and Substance Abuse Misdemeanors. A complete list of the diverted charges and their respective classifications is available in Appendix 2.

**Criminal History Data**

To establish a baseline criminal history at the time of diversion, ICHAT criminal history records were examined to determine the number and nature of a defendant’s prior arrests and convictions. This research uses a lifetime criminal history, but is limited only by public arrests, charges, and convictions that occurred in the state of Michigan. Criminal history was decomposed into arrests and convictions, and further delineated to include the number of prior
felonies, substance abuse misdemeanor, nonviolent misdemeanor, and violent misdemeanor arrests and convictions.

**Re-Arrest and Re-Conviction Data**

Using ICHAT criminal history records, any new arrests and convictions in the state of Michigan within the 6-months immediately following their successful completion of the diversion program were identified. The new arrest and conviction data was further delineated to identify the number of new felonies, substance abuse misdemeanors, nonviolent misdemeanors, and violent misdemeanors.

**Diversion Plan Data**

Individual defendant diversion plans were coded for the presence of the following conditions: “no alcohol or drug use,” “maintain employment or enroll in an educational program,” “supervision,” community service, counseling (to include mental health, substance abuse, or wellness counseling), and an essay related to their charges and plan for rehabilitation.
Results

Method of Analysis

First, differences in characteristics between the successfully diverted individual sample and the quasi-control arrested sample were compared using two-sample independent t-tests for continuous variables and chi-square analyses for categorical variables. Race was dichotomized, with white as the reference group, because there were very few non-white or Black individuals across both samples. Then, differences in characteristics between the successfully diverted individual sample and the unsuccessfully diverted sample were compared using two-sample independent t-tests and chi-square analyses. For this analysis, race was also dichotomized, with white serving as the reference group.

Then, descriptive data was examined among the successfully diverted sample to determine the prevalence of specific diversion plan interventions and re-arrest. To evaluate Hypothesis 1, that the diversion program significantly reduced 6-month re-arrest compared to the quasi-control sample, a chi-square test of independence and Fisher’s exact test was performed. To determine if the relationship between re-arrest and diversion status was moderated by criminal history, two linear regression analyses were performed. Since there was no variability in re-arrest among the successfully diverted sample (i.e., no recidivism occurred), hypotheses two and three were not examined.

Three exploratory analyses were additionally performed. First, disparities in selection into the diversion program based on age, race, gender, and criminal history were evaluated using logistic regression. Second, potential predictors for successful completion of the diversion program were evaluated using three logistic regression models. Finally, potential predictors for re-arrest among the quasi-control sample was evaluated using a series of linear regressions.
Comparison of Successfully Diverted and Arrested Control Groups

Of the successfully diverted individuals, no one was re-arrested in the 6-months following the dismissal of their charges. In the quasi-control group of arrested individuals, 30 were re-arrested in six-months following the resolution of their case (30.9%), with 10 arrested for at least one new nonviolent misdemeanor (10.5%), 10 for a new violent misdemeanor (10.5%), 4 for a new substance abuse misdemeanor (4.21%), and 20 for a new felony (21%) (defendants may have been charged with multiple offenses simultaneously).

Comparisons of the successfully diverted sample (n = 90) and the non-diverted control sample (n = 97) demonstrated significant group differences in many examined covariates. As shown in Table 3, these samples differed significantly by age at arrest (p = 0.049), gender (p = 0.017), and all examined criminal history characteristics, including the number of prior felonies (p < 0.001), nonviolent misdemeanors (p < 0.001), substance abuse misdemeanors (p < 0.001), and violent misdemeanors (p < 0.001). However, these samples were not significantly different regarding race (p = 0.197) and the instant offense (the offense leading to diversion or arrest) (p = 0.066).

Comparisons of the successfully diverted and quasi-control samples reveal that this research did not successfully identify a truly matched control group. Therefore, it is possible that group differences in reoffending may be driven by selection of low-risk defendants, rather than the treatment offered by the diversion program. Further, there was a higher proportion of female defendants in the diverted sample, and female offenders were less likely to reoffend compared to male offenders in the analysis of the quasi-control sample. However, it should be noted that the diverted group was significantly younger as well, and there was no documented relationship between age and re-arrest in the quasi-control sample. Nonetheless, these comparisons offer
insight into the variables that drove selection into the diversion program and whether selection is too narrow or broad. This question will be examined further in the exploratory analyses.

Additionally, comparisons of the successfully diverted and unsuccessful defendants reveal that the two groups are largely similar. As seen in Table 4, the only examined significant difference is age, with the failed group ($M = 26.65, SD = 8.674$) being significantly younger than the successful group ($M = 32.93, SD = 12.98, p = 0.049$). The two samples did not have significantly different criminal histories or were significantly different based on race or nature of the instant offense. Gender is trending towards significance, with more male defendants failing compared to females. It should be noted, however, that the failed group ($n = 17$) was notably smaller than the successful group ($n = 90$), and therefore, these results should be approached with caution.
### Table 3

**Comparing Characteristics of Successfully Diverted and Quasi-Control Samples**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Successful (n = 90)</th>
<th>Quasi-Control (n = 97)</th>
<th>t</th>
<th>df</th>
<th>p</th>
<th>d [95% CI]</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>M (SD)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age at arrest/diversion</td>
<td>32.93 (12.98)</td>
<td>36.32 (12.86)</td>
<td>1.66</td>
<td>185</td>
<td>0.049*</td>
<td>0.24 [0.045, 0.53]</td>
</tr>
<tr>
<td>Prior Felony Arrest</td>
<td>0.31 (1.55)</td>
<td>1.75 (3.14)</td>
<td>3.92</td>
<td>184</td>
<td>&lt;0.001**</td>
<td>0.58 [0.28, 0.87]</td>
</tr>
<tr>
<td>Prior Nonviolent Misdemeanor</td>
<td>0.24 (0.783)</td>
<td>1.01 (1.803)</td>
<td>3.71</td>
<td>184</td>
<td>&lt;0.001**</td>
<td>0.545 [0.25, 0.84]</td>
</tr>
<tr>
<td>Prior Substance Abuse Misdemeanor</td>
<td>0.07 (0.251)</td>
<td>0.38 (0.729)</td>
<td>3.8</td>
<td>184</td>
<td>&lt;0.001**</td>
<td>0.56 [0.27, 0.85]</td>
</tr>
<tr>
<td>Prior Violent Misdemeanor</td>
<td>0.07 (0.292)</td>
<td>0.56 (1.074)</td>
<td>4.23</td>
<td>184</td>
<td>&lt;0.001**</td>
<td>0.62 [0.33, 0.92]</td>
</tr>
<tr>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>52 (57.8%)</td>
<td>72 (74.2%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>38 (42.2%)</td>
<td>25 (25.8%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Race</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>53 (58.9%)</td>
<td>48 (49.5%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>37 (41.1%)</td>
<td>49 (50.5%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Instant Offense</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violent</td>
<td>29 (32.2%)</td>
<td>44 (45.3%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Violent</td>
<td>61 (67.8%)</td>
<td>53 (54.6%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Re-Arrest at 6 months</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>0 (0.0%)</td>
<td>30 (30.9%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>90 (100.0%)</td>
<td>67 (69.1%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note.** *p < 0.05, **p < 0.001*
Table 4  
Comparing Characteristics of Successfully and Unsuccessfully Diverted Samples

<table>
<thead>
<tr>
<th>Variable</th>
<th>Successful (n = 90)</th>
<th>Failed (n = 17)</th>
<th>t</th>
<th>df</th>
<th>p</th>
<th>d [95% CI]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age at arrest/diversion</td>
<td>32.93 (12.98)</td>
<td>26.65 (8.674)</td>
<td>1.673</td>
<td>105</td>
<td>0.049*</td>
<td>0.443 [-0.80, 0.963]</td>
</tr>
<tr>
<td>Prior Felony Arrest</td>
<td>0.31 (1.55)</td>
<td>0.29 (1.213)</td>
<td>0.043</td>
<td>105</td>
<td>0.483</td>
<td>0.011 [-0.507, 0.530]</td>
</tr>
<tr>
<td>Prior Nonviolent Misdemeanor Arrest</td>
<td>0.24 (0.783)</td>
<td>0.18 (0.529)</td>
<td>0.343</td>
<td>105</td>
<td>0.366</td>
<td>0.091 [-0.428, -0.609]</td>
</tr>
<tr>
<td>Prior Substance Abuse Misdemeanor Arrest</td>
<td>0.07 (0.251)</td>
<td>0 (0.00)</td>
<td>1.092</td>
<td>105</td>
<td>0.139</td>
<td>0.289 [-0.232, 0.808]</td>
</tr>
<tr>
<td>Prior Violent Misdemeanor Arrest</td>
<td>0.07 (0.292)</td>
<td>0 (0.00)</td>
<td>0.937</td>
<td>105</td>
<td>0.175</td>
<td>0.248 [-0.272, 0.767]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>n (%)</th>
<th>n (%)</th>
<th>$\chi^2$</th>
<th>df</th>
<th>p</th>
<th>V</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>52 (57.8%)</td>
<td>14 (82.4%)</td>
<td>3.654</td>
<td>1</td>
<td>0.056</td>
<td>0.185</td>
</tr>
<tr>
<td>Female</td>
<td>38 (42.2%)</td>
<td>3 (17.6%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Race</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>53 (58.9%)</td>
<td>6 (35.3%)</td>
<td>3.218</td>
<td>1</td>
<td>0.073</td>
<td>0.173</td>
</tr>
<tr>
<td>Other</td>
<td>37 (41.1%)</td>
<td>11 (64.7%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Instant Offense</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violent</td>
<td>29 (32.2%)</td>
<td>8 (47.1%)</td>
<td>1.391</td>
<td>1</td>
<td>0.238</td>
<td>0.114</td>
</tr>
<tr>
<td>Non-Violent</td>
<td>61 (67.8%)</td>
<td>9 (52.9%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Re-Arrest at 6 months</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>0 (0.0%)</td>
<td>2 (11.8%)</td>
<td>10.790</td>
<td>1</td>
<td>0.001**</td>
<td>0.318**</td>
</tr>
<tr>
<td>No</td>
<td>90 (100.0%)</td>
<td>15 (88.2%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note. *p < 0.05, **p<0.001
Descriptive Data of Successfully Diverted Defendants

Descriptive data was examined from the successfully diverted defendants to determine the prevalence of specific diversion plan interventions. The researcher did not examine every possible intervention, excluding restitution, supervision by probation (which was required of every defendant), and specific classes (i.e., Theft Awareness classes) due to missing data.

Community service was the most common intervention employed, with 67% of defendants \( (n = 60) \) required to perform community service hours. Counseling services \( (n = 45, 50\%) \) like substance abuse treatment, mental health therapy, and wellness coaching were also common. Less than half of defendants were explicitly required to abstain from drugs and alcohol \( (n = 41, 45.6\%) \), maintain education or employment \( (n = 37, 41.1\%) \), and complete an essay assignment detailing their rehabilitation \( (n = 9, 10\%) \). Additionally, no successfully diverted individuals were re-arrested in the 6-months following the completion of their diversion program. Only 3 defendants were re-arrested as of January 2024, but all these arrests occurred beyond the 6-months following their diversion. However, this conclusion should be approached with extreme caution since the time period following diversion was different for every defendant.

<table>
<thead>
<tr>
<th>Diversion Plan</th>
<th>( n )</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Alcohol or Drugs</td>
<td>41</td>
<td>45.6%</td>
</tr>
<tr>
<td>Maintain Employment &amp; Education</td>
<td>37</td>
<td>41.1%</td>
</tr>
<tr>
<td>Community Service</td>
<td>60</td>
<td>67%</td>
</tr>
<tr>
<td>Counseling</td>
<td>45</td>
<td>50%</td>
</tr>
<tr>
<td>Essay Assignment</td>
<td>9</td>
<td>10%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Re-Arrest in 6-months</th>
<th>( n )</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>No</td>
<td>90</td>
<td>100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Re-Arrest as of 1/2024</th>
<th>( n )</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>87</td>
<td>96.7</td>
</tr>
<tr>
<td>No</td>
<td>3</td>
<td>3.3</td>
</tr>
</tbody>
</table>

*Note. \( n = 90 \); Defendants may have had multiple interventions in their diversion plan.*
Hypothesis 1: Diversion Program Effect on 6-month Re-arrest

To determine if re-arrest rates between the successfully diverted and the non-diverted quasi-control group significantly differed, a chi-square test of independence and a Fisher’s exact test was performed to examine the relation between re-arrest and diversion status. Since diversion perfectly predicts re-arrest, multiple regression is not feasible for re-arrest as a dependent variable (G. Zeng & Zeng, 2021). The relation between re-arrest and diversion status was significant, $\chi^2 (1, N = 187) = 33.15, p < 0.001$. Additionally, a Fisher’s exact test determines if there is a significant association between two categorical variables (diverted and control; re-arrested or not) in a contingency table. It calculates the exact probability of observing the observed distribution of counts, or a more extreme distribution, under the null hypothesis of independence between the variables (Fisher, 1922). The results of the Fisher’s exact test ($p < 0.001$) indicate a significant association between re-arrest and diversion. As seen in Table 3, successfully diverted defendants are significantly less likely to be re-arrested.

To determine whether the effect of diversion on re-arrest was moderated by defendant criminal history, a moderator analysis was performed (Baron & Kenny, 1986). Two linear regression analyses were conducted to examine the main effects of the independent variable, diversion status (successfully diverted or not diverted), and the moderator variable, prior arrests, on re-arrest in the 6-months following dismissal or case resolution. The interaction term was computed by multiplying diversion status and prior arrests. Model 1, including main effects only, explained a significant proportion of the variance in re-arrest likelihood, $R^2 = 0.192$, $F(2, 184) = 21.853, p < 0.001$. In Model 1, both diversion status ($\beta = -0.273, p < 0.001$) and prior arrest history ($\beta = 0.260, p < 0.001$) emerged as significant predictors of re-arrest likelihood. Diversion significantly decreased the likelihood of re-arrest, and the extensiveness of criminal
history had a significant association with re-arrest likelihood. These findings indicate that individuals in the non-diverted group and those with a higher prior arrest history were associated with higher re-arrest likelihood. Model 2, which additionally included the interaction term, explained a comparable proportion of variance, $R^2 = 0.203$, $F(1, 183) = 2.511$, $p = 0.115$. However, the addition of the interaction term did not significantly improve model fit, and was not significant ($\beta = -0.117$, $p = 0.115$). In Model 2, which included the interaction term, diversion status ($\beta = -0.231$, $p = 0.003$) and prior arrest history ($\beta = 0.308$, $p < 0.001$) retained their significance.

The analysis suggests that the diversion program's impact cannot be solely attributed to prior arrests. While it remains unclear whether the reduction in re-arrest is directly linked to the diversion program or influenced by other unobserved factors, it is evident that some successfully diverted individuals, despite their prior history, did not experience rearrest as expected. This suggests that the program may have contributed to this outcome, but further investigation is needed to confirm this hypothesis and to identify potential confounding variables.

**Hypotheses 2 & 3: Community Service & Counseling Effectiveness**

Since there was no variability in re-arrest among the successfully diverted sample, hypotheses two and three cannot be examined.

**Exploratory Analyses**

Additional exploratory analyses were performed to determine whether disparities exist regarding entry into the diversion program, examine potential predictors for diversion program success, and predictors for re-arrest among the non-diverted quasi-control sample.
Disparities in Selection

To determine whether disparities in selection for the diversion program exist based on defendant race, gender, and age, a series of logistic regressions were performed (see Table 6). Since the quasi-control sample was chosen from a list of individuals charged with eligible misdemeanors in the same court as the diversion program, comparing them to the diverted sample (which combined both the successfully and unsuccessfully diverted groups) offers insight into potential disparities in selection and covariates. Regarding race, individuals of non-white races did not significantly differ from white individuals in their likelihood of selection for the diversion program \((B = -0.227, p = 0.419)\). Similarly, for gender, selection of males and females did not significantly differ \((B = 0.582, p = 0.057)\). Individuals charged with violent misdemeanors were not more or less likely to be diverted compared to those charged with non-violent misdemeanors \((B = -0.451, p = 0.117)\). However, age had a significant negative association with the likelihood of selection for the diversion program \((B = -0.024, p = 0.011)\), indicating that older individuals were less likely to be selected. As seen in Figure 1, the diverted sample included more individuals under 25 years old than the non-diverted quasi-control sample. The non-diverted, quasi-control sample included considerably more individuals aged 25-40 than the diverted sample.

While younger age was not a significant predictor of re-arrest in the quasi-control sample, one of the most well-established facts in criminology is that younger individuals are more likely to reoffend (Loeber & Farrington, 2014). As a result, a future direction for the PPDP may be including more older individuals, since they may, as a group, be less likely to reoffend compared to younger individuals. Further, the lack of re-arrests within the 6-months following
diversion program completion among diverted participants suggests that the PPDP is effectively identifying appropriate participants and employing effective interventions.

**Figure 1**
*Comparing Frequency of Age Among Diverted and Quasi-Control Non-Diverted Samples*

Logistic regressions were also performed to examine the impact of criminal history on selection for diversion. As seen in Table 6, the number of prior arrests ($B = -0.368, p < 0.001$), prior convictions ($B = -0.368, p < 0.001$), and prior felony arrests ($B = -0.368, p < 0.001$) all had significant negative associations with likelihood for diversion selection. Individuals with more prior arrests, more prior convictions, and more prior felony arrests were all significantly less likely to be selected diversion compared to those with less. While criminal history is a strong predictor of recidivism in this jurisdiction, it is not the sole predictor of reoffending risk in psychological literature (Andrews & Dowden, 2006). Especially when placed in context with the disparities of age seen in selection for diversion, the PPDP may want to consider implementing
formal consideration of other risk factors (i.e., criminal networks and antisocial cognition) to further classify individuals in the context of their criminal history.

Table 6
Logistic Regression Analyses: Diversion Program Selection

<table>
<thead>
<tr>
<th>Variable</th>
<th>B</th>
<th>SE</th>
<th>p</th>
<th>Exp(B)</th>
<th>95% CI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race (ref: white)</td>
<td>-0.227</td>
<td>0.281</td>
<td>0.419</td>
<td>0.797</td>
<td>[0.459, 1.383]</td>
</tr>
<tr>
<td>Gender (ref: Male)</td>
<td>0.582</td>
<td>0.306</td>
<td>0.057</td>
<td>1.789</td>
<td>[0.307, 1.018]</td>
</tr>
<tr>
<td>Instant Offense (ref: Violent)</td>
<td>-0.451</td>
<td>0.288</td>
<td>0.117</td>
<td>0.637</td>
<td>[0.362, 1.119]</td>
</tr>
<tr>
<td>Age</td>
<td>-0.024</td>
<td>0.011</td>
<td>0.025*</td>
<td>0.977</td>
<td>[0.957, 0.997]</td>
</tr>
<tr>
<td>Prior Arrests</td>
<td>-0.368</td>
<td>0.084</td>
<td>&lt;0.001**</td>
<td>0.692</td>
<td>[0.587, 0.815]</td>
</tr>
<tr>
<td>Prior Convictions</td>
<td>-0.450</td>
<td>0.107</td>
<td>&lt;0.001**</td>
<td>0.637</td>
<td>[0.517, 0.786]</td>
</tr>
<tr>
<td>Prior Felony Arrests</td>
<td>-0.459</td>
<td>0.138</td>
<td>&lt;0.001**</td>
<td>0.632</td>
<td>[0.482, 0.829]</td>
</tr>
</tbody>
</table>

*Note. *p < 0.05, *p<0.01

Comparison of Successfully Diverted and Unsuccessful Participants

While the sample size of unsuccessful defendants was low (n = 17) and these results should be approached with caution, a logistic regression was performed to determine if age, race, and gender of the defendant influenced the likelihood of successfully completing the diversion program using only the successful and unsuccessful diverted samples. As seen in Table 7, white defendants (B = -1.022, p = 0.071) and male defendants (B = 1.047, p = 0.134) were not significantly more or less likely to be successful. Additionally, age was not a significant predictor of success (B = 0.030, p = 0.217).

Additionally, a logistic regression was performed to determine if having a violent instant offense changed the likelihood of diversion program success. Defendants charged with a violent instant offense (B = -0.626, p = 0.243) were not significantly more or less likely to successfully complete the diversion program compared to those with non-violent or substance abuse instant
offenses. Finally, a logistic regression was performed to determine if prior arrest was associated with successful completion of the diversion program. Prior arrests were not associated with diversion program success ($B = 0.062, p = 0.707$).

Taken together, these results found no significant associations between several key examined characteristics with a defendant’s likelihood of successfully completing the diversion program. These results reveal that none of these characteristics are relevant predictors for diversion program success and, potentially, that the diversion program is accessible and appropriately structured for defendants of diverse identities and risk-levels.

### Table 7

**Logistic Regression Analyses: Diversion Program Success**

<table>
<thead>
<tr>
<th>Variable</th>
<th>$B$</th>
<th>SE</th>
<th>$p$</th>
<th>Exp($B$)</th>
<th>95% CI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race (ref: white)$^a$</td>
<td>-1.022</td>
<td>0.567</td>
<td>0.071</td>
<td>0.360</td>
<td>[0.119, 1.093]</td>
</tr>
<tr>
<td>Gender (ref: Male)$^a$</td>
<td>1.047</td>
<td>0.698</td>
<td>0.134</td>
<td>2.850</td>
<td>[0.725, 11.202]</td>
</tr>
<tr>
<td>Age$^a$</td>
<td>0.030</td>
<td>0.024</td>
<td>0.217</td>
<td>1.030</td>
<td>[0.983, 1.080]</td>
</tr>
<tr>
<td>Instant Offense (ref: Violent)</td>
<td>-0.626</td>
<td>0.536</td>
<td>0.243</td>
<td>0.535</td>
<td>[0.187, 1.528]</td>
</tr>
<tr>
<td>Prior Arrests</td>
<td>0.062</td>
<td>0.165</td>
<td>0.707</td>
<td>1.064</td>
<td>[0.770, 1.470]</td>
</tr>
</tbody>
</table>

$^a$ These variables were all entered simultaneously into the initial model.

### Re-arrest Among Quasi-Control Sample

A series of logistic regressions were performed to examine potential predictors of re-arrest in the 6-months following case resolution for the quasi-control sample. As seen in Table 8, prior arrests ($\beta = 0.284, p = 0.005$), prior convictions ($\beta = 0.235, p = 0.021$), and prior felony arrests ($\beta = 0.284, p = 0.046$) had significant positive associations with re-arrests. Additionally, men were more likely to be rearrested than women ($\beta = -0.259, p = 0.015$). A violent instant offense, prior felony convictions, age, and race were not significant predictors of re-arrest. Interaction terms between violent instant offenses and prior arrests or prior felony arrests were
not significant predictors of re-arrest. This suggests that criminal history is a strong predictor of recidivism in this jurisdiction and that male defendants are also at higher risk of recidivism.

Interestingly, age does not appear to be a strong predictor of re-arrest in this jurisdiction, suggesting that age is a risk factor that should be weighed less strongly in diversion selection decisions.

Table 8

<table>
<thead>
<tr>
<th>Variable</th>
<th>$\beta$</th>
<th>$t$</th>
<th>$p$</th>
<th>$B$</th>
<th>95% CI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>-0.089</td>
<td>-0.872</td>
<td>0.385</td>
<td>-0.007</td>
<td>[-0.023, 0.009]</td>
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<tr>
<td>Gender (ref: Male)</td>
<td>-0.259</td>
<td>-2.482</td>
<td>0.015*</td>
<td>-0.586</td>
<td>[-1.055, -0.117]</td>
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<td>Race (ref: White)</td>
<td>-0.004</td>
<td>-0.040</td>
<td>0.968</td>
<td>-0.008</td>
<td>[-0.405, 0.422]</td>
</tr>
<tr>
<td>Instant Offense (ref: Violent)</td>
<td>-0.069</td>
<td>-0.672</td>
<td>0.503</td>
<td>-0.142</td>
<td>[-0.559, 0.276]</td>
</tr>
<tr>
<td>Prior Arrests</td>
<td>0.284</td>
<td>2.891</td>
<td>0.005**</td>
<td>0.058</td>
<td>[0.018, 0.098]</td>
</tr>
<tr>
<td>Prior Convictions</td>
<td>0.235</td>
<td>2.354</td>
<td>0.021*</td>
<td>0.040</td>
<td>[0.006, 0.074]</td>
</tr>
<tr>
<td>Prior Felony Arrests</td>
<td>0.204</td>
<td>2.024</td>
<td>0.046*</td>
<td>0.067</td>
<td>[0.001, 0.133]</td>
</tr>
<tr>
<td>Prior Felony Convictions</td>
<td>0.196</td>
<td>1.934</td>
<td>0.056</td>
<td>0.073</td>
<td>[-0.002, 0.148]</td>
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<tr>
<td>Prior Arrests X Violent</td>
<td>0.052</td>
<td>0.915</td>
<td>0.362</td>
<td>0.052</td>
<td>[-0.061, 0.164]</td>
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<tr>
<td>Instant Offense</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prior Felony Arrests X Instant Offense</td>
<td>0.254</td>
<td>0.739</td>
<td>0.462</td>
<td>0.070</td>
<td>[-0.118, 0.257]</td>
</tr>
</tbody>
</table>

*Note. $^*p < 0.05, **p < 0.01$
Discussion

To evaluate whether the Washtenaw County Prosecutor’s Office Pre-Plea Diversion Program (PPDP) effectively reduced recidivism among diverted defendants, this research compared 6-month re-arrest rates of diverted defendants with re-arrest rates of comparable defendants not diverted. It appears that diversion significantly reduced re-arrest compared to non-diverted misdemeanor defendants, with no diverted defendants being re-arrested in the 6-months following the dismissal of charges. Further, it does not appear that there are any racial disparities in the selection of defendants for diversion or in likelihood of successfully completing the diversion program. However, despite their being no significant relationship between diversion program success and gender, female defendants were overrepresented in the diverted sample compared to male defendants – although this did not emerge as a significant predictor of selection through logistic regression. Age was a significant predictor of selection into the diversion program, with older defendants less likely to be selected. While younger defendants were over-represented in the sample of defendants who failed the diversion program, age was not a significant predictor of diversion program success. Additionally, criminal history, despite not being a significant predictor of diversion program success, appears to drive defendant selection into the program. Findings show promise for the program’s ability to reduce participants’ further contact with the criminal justice system and access rehabilitative services.

Effect of Diversion on Recidivism

Analysis of criminal records reveal that diverted defendants were less likely to be re-arrested than comparable, non-diverted misdemeanor defendants in the 6-months following case resolution. Since the PPDP does not employ a standardized risk-needs assessment, it is difficult
to discern the exact mechanisms that reduced re-arrest in this sample. However, the program’s treatment-matching strategy and informal risk-needs assessment does appear to be successfully contributing to the reduction of reoffending among this group of defendants, who on average are younger and with less lengthy criminal histories compared to the quasi-control sample. Since this research failed to create a truly matched quasi-control group, and since individuals with longer criminal histories are more likely to recidivate, the analysis of reoffending should be considered with caution. Nonetheless, the sample of diverted defendants were significantly younger than the quasi-control group and young age is a strong predictor of recidivism in the criminological literature (Loeber & Farrington, 2014). Therefore, these results are incredibly promising for the future of diversion programs – especially in Washtenaw County – and should be interpreted as a testament to the abilities of diversion program staff in effectively identifying promising cases and matching defendants to appropriate, effective interventions.

In addition to the effects of treatment and selection, the positive effects of diversion may also be explained by factors like reducing the effects of criminal justice labeling, increasing perceptions of procedural fairness, and increased access to substantive and restorative justice.

Labeling theory in criminology suggests that system-impacted individuals begin to view their status as an “offender” and the collateral consequences of that label as a key component of their identity. Driven by their exclusion from society (both while incarcerated and upon release) and the structural denial of legitimate opportunities for employment, housing or education, a system-impacted individual’s self-concept changes (Becker, 1997). They may deepen their involvements with deviant groups and lose motivation to engage in prosocial activities, leading to further involvement in the criminal justice system (Restivo & Lanier, 2015). Especially with younger defendants, there also appears to be a “contagion effect,” where system-impacted youth
imprint on their peers negative, antisocial attitudes and facilitate contact with deviant groups (Hoge, 2016). Labeling theory continues to be a prominent justification for diversion programs – especially the diversion of juveniles (Wilson & Hoge, 2013) – and the results of this research are consistent with the hypothesis that diversion reduces labeling, and thereby reduces reoffending.

While these factors – including the effect of labeling – must be addressed with further research, it is possible that diversion also increased defendant’s perceptions of procedural fairness and access to substantive and restorative justice. By maintaining transparent selection criteria, employing individualized supervision, and engaging the defendant in their rehabilitation plan, the PPDP may have increased defendant’s perceptions that they are being treated fairly by the justice system. Participants may also gain a more positive perception of the law and see it being leveraged in a way that positively influences their life. Further, the diversion program seeks to reintegrate individuals into society with restorative programming, such as through community service at organizations that matter to the defendant or through newfound access to a supportive network, rather than exclude and stigmatize them through traditional incarceration or probation. Decades of research has found that citizens are more likely to comply with the law when they perceive the justice system as being neutral, fair, respectful, trustworthy, and genuinely interested in their participation before decisions are made (Tyler, 2006). Nonetheless, further research is required to understand the extent to which these factors play a role in reducing reoffending among diverted individuals.

**Diversion Program Selection**

Promisingly, there does not appear to be any racial or gender disparities in selection for the diversion program. Non-white defendants were not more or less likely to be diverted than
white defendants and males were not more or less likely to be diverted than females. However, selection does appear to be somewhat driven by age, criminal history, and/or unobserved variables correlated with age or criminal history. Older individuals were significantly less likely to be selected for diversion and every examined criminal history measure was significantly associated with diversion program selection. Given the concentration of young adult students at the University of Michigan in Ann Arbor, it is unsurprising that there would be an over-concentration of younger individuals in the diversion program. Further, these individuals are less likely to have lengthy criminal records. Criminal history is also an appropriate criterion for selection, given its positive association with reoffending as seen in the quasi-control sample.

Nonetheless, the fact that no defendant was re-arrested 6-months following the completion of the diversion program indicates that selection may be too stringent. Any behavioral modification program is expected to not be completely successful, and there may be defendants who, despite their criminal history, are good candidates for diversion – even if relaxing selection standards could lead to higher aggregate re-offending rates.

**Predictors of Success & Recidivism**

The only significant difference between the successfully diverted defendants and the group of individuals who failed the diversion program is age. While there was a significantly higher concentration of younger defendants in the failed group, age nonetheless did not emerge as a significant predictor of success. Given that there was a higher concentration of younger defendants in the diversion program, it is expected that more younger individuals would also fail the diversion program. Additionally, it does not appear that race and gender were significant predictors of success, indicating that treatment modalities and diversion plans are culturally
appropriate and responsive to defendant needs. Further, the nature of the instant offense and the number of prior arrests were not significantly associated with diversion program success, leading to the conclusion that individuals with longer criminal histories or charged with a violent misdemeanor are not less likely to successfully complete the diversion program. This result also indicates that the diversion program is not engaging in the “over-programming” of low-risk defendants with intense interventions, which may have the unintended consequence of leading to more technical violations without any effect on therapeutic outcomes (Burrell & Rhine, 2013).

Analysis of reoffending among the quasi-control sample of comparable misdemeanor defendants who were not diverted reveals that criminal history is a significant predictor of reoffending in this jurisdiction. This result aligns with prior research on the labeling effects of criminal justice involvement (Becker, 1997), the collateral consequences of a criminal conviction (Alper et al., 2018; Sampson & Loeffler, 2010), and the potentially criminogenic effects of incarceration (Vieraitis et al., 2007). Interestingly, however, the nature of the instant offense was not a significant predictor of rearrest, offering evidence that individuals charged with violent misdemeanors can be successfully diverted without prohibitive risk to public safety.

Limitations

The results and implications of the present research must be considered in conjunction with the research limitations. While this evaluation of the PPDP would have been best served with a randomized-control trial, randomly exposing individuals to the collateral consequences of a criminal conviction poses ethical concerns. The difficulty of constructing a truly comparable control group for diversion program impact evaluations is severe (Mullen et al., 1974). In the absence of a truly comparable group of defendants and the amount of data required to employ
propensity score matching, this research provides an imperfect measure of the combined effects of diversion program selection and treatment on reoffending. Nonetheless, the strength of this approach is the ability to evaluate diversion program selection – an important consideration for a young diversion program such as the PPDP.

Examining reoffending in the 6-months following the successful completion of the diversion program could potentially be considered another research limitation, as incorporating a longer follow-up period may have resulted in findings that confirmed or contrasted with the results of this evaluation. It is expected that the PPDP would have an immediate impact on a low-risk, low-level offender that could be measured in the 6-months following diversion. However, this evaluation cannot speculate about the effects of the program on long-term behavior. As the PPDP matures, it is recommended that the WCPO engage in an evaluation with a longer follow-up period for measuring reoffending.

Finally, the sources of data used in this research was limited to law-enforcement and court records. As such, these records provide only a small window into a defendant’s life, behavioral patterns, and characteristics. Further research should consider other measures of defendant success beyond reoffending. Additionally, these records potentially suffer from missing data and inaccurate information and may not be truly reflective of participant’s criminal histories and reoffending. Nonetheless, these inaccuracies are likely random rather than biased towards the sample.

**Future Directions**

Future research is required on adult diversion programs – especially in smaller, less resourced jurisdictions. The literature is still unable to highlight the exact mechanisms which
make diversion programs successful or unsuccessful at improving defendant outcomes and meeting the commonly shared goals of diversion. Researchers should attempt to rigorously isolate why and how diversion impacts reoffending, which requires truly comparable control groups and evaluations of specific interventions. In this jurisdiction, future researchers may want to leverage the recent establishment of the PPDP in the 14-A3 and 14-A4 District Courts to craft a control group of defendants who were prosecuted by the current prosecutor but during the period prior to the establishment of the PPDP. Further, researchers can study how diversion affects other broader changes in the culture of the criminal justice system, such as increased trust in alternatives to incarceration, prosecutorial motivation to avoid unduly exposing individuals to the collateral consequences of a criminal conviction, and perceptions of the effective use of limited law-enforcement, community, and court resources. While this research offered a real-world re-offense evaluation, researchers should consider evaluations that assess a program’s success in meeting the administrative and cost efficiency goals cited by many courts and prosecutor’s offices. Finally, researchers should consider employing qualitative methods to document the perceptions of diversion among key stakeholders (i.e., defense attorneys, probation officers, law-enforcement officers, judges, and program providers) and the psychological effects of diversion on participants (i.e., motivation, identity formation, and perceptions of support).
Recommendations & Challenges

The results of this research are extremely promising for the future of diversion in Washtenaw County and in smaller jurisdictions across the nation. As expressed by a staff member in the diversion program, Ann Arbor has “many resources and services available, more than almost every probation department in the state. There are very few barriers for participants in the diversion program. It doesn’t cost anything to participate, we have resources for treatment, testing, housing and transportation” (R.E., personal communication, March 6, 2024) While not all small jurisdictions have similar resources to Washtenaw County, this research suggests that investing in social services and alternatives to incarceration, as well as employing individualized interventions is a promising endeavor. By establishing programs like the PPDP, jurisdictions can effectively reduce reoffending while avoiding the overexposure of individuals to the criminal justice system and the collateral consequences of a criminal conviction. Five policy recommendations are offered, such as expanding the scope of selection to include individuals with longer criminal histories, expanding the diversion program to more courts in Washtenaw County, creating diversion programs for other groups of defendants, implementing a formal risk and needs assessment, and implementing formal graduated sanctions for participant noncompliance. Additionally, considerations like the over-programming of low-risk defendants, net-widening, and procedural and privacy safeguards are discussed.

Policy Recommendations

Recommendation 1: Expand diversion to individuals with longer criminal histories.

There is no question that many Americans continue to feel the effects of punitive criminal justice policies and the repercussions of offending at a young age. While mass
incarceration continues to be a pernicious and undeniable problem in modern America, it is also decades old. Many of the people suffering from the earliest waves of punitive criminal justice policies in the late 20th century continue to cycle through the criminal justice system. The continued and multifaceted effects of systemic racism, over policing of minority communities, and mass incarceration require policies that effectively intervene in cycles of offending – even when that individual is older or has a longer criminal history.

This research reveals that there are disparities in age and criminal history in selection for the PPDP. While criminal history is a significant predictor of re-arrest in the quasi-control group of defendants, it was not a significant predictor of re-arrest or program success in the diverted samples. Criminal history should continue to be a consideration in the selection of defendants as it provides insight into the history of an individual’s interactions with the criminal justice system and their problematic behavioral patterns. However, given the success of this program in reducing reoffending and the wealth of resources available in Washtenaw County, it is recommended that a concerted effort be made to select more individuals with longer criminal histories for the PPDP. This effort should be augmented with the use of a formalized risk-and-needs assessment (see Recommendation 4), graduated sanctions for participant noncompliance (see Recommendation 5), and further flexibility for more stringent interventions to be implemented for individuals with higher risk and needs (see Recommendation 3). Given the flexibility of the PPDP as it exists, including individuals who appear to be higher risk may be especially possible in this jurisdiction. The PPDP already seems to be effective at stopping an individual’s reoffending in the 6-months post diversion program completion, and the inclusion of more defendants with longer criminal histories will enable the WCPO to improve the lives of individuals who may have spent decades cycling through incarceration.
Recommendation 2: Expand diversion to more courts in Washtenaw County, especially to the City and Township of Ypsilanti.

Currently the PPDP is available in the 15th, 14-A3, and 14-A4 District Courts of Michigan. It is strongly recommended that the WCPO advocates for the establishment of the program in the 14-A2 and 14-B District Courts, which preside over the City and Township of Ypsilanti. Demographically, Ypsilanti is an outlier in Washtenaw County. Over 30% of Ypsilanti residents are Black and the median family income is nearly half of the median family income in Ann Arbor (U.S. Census Bureau, n.d.-b). Countless surveys of U.S. incarceration indicate that mass incarceration is deeply intertwined with structural racism. In a 2022 analysis of 595 local jails, Black people made up an average of 12% of the local population, but 26% of the jail population. In over 40% of these jurisdictions, Black people made up at least four times as much of the jail population compared to the local general population. Black individuals also spend, on average, more time in jail compared to white individuals (Racial Disparities Persist in Many U.S. Jails, 2023). These racial disparities exist in Washtenaw County as well, with 52% of requests for charges submitted by police to the WCPO including a defendant of color, despite making up only 30% of the general population (Prescott et al., 2024). For the WCPO to equitably promote decarceration and harm-reduction within Washtenaw County, and to further address these racial disparities, expansion of the PPDP to the City and Township of Ypsilanti is necessary.

Recommendation 3: Explore other diversion programs, such as a felony diversion program or a high-need diversion program.

The wealth of resources and support for progressive criminal justice policies in Washtenaw County, combined with the success of the PPDP among misdemeanor, relatively
low-need defendants indicates that the WCPO should consider implementing diversion programs for other groups of defendants. While these programs must be structured differently to address higher-need, higher-risk defendants, the PPDP has laid the groundwork for the relationships, lines of communication, and advocacy required to successfully implement diversion programs with broader reach. One example is the Cook County State Attorneys’ Deferred Prosecution Program (DPP), which diverts first time non-violent felony defendants. The 12-month program is somewhat low-intensity, requiring regular court appearances, risk and needs assessment, meetings with pretrial services officers, and, typically, requirements to maintain employment or seek education. Following successful completion of all conditions, the felony charge is dismissed, and the participant may seek record expungement. While the DPP did not significantly reduce reoffending (31.4% of DPP participants were re-arrested within 18 months of admission to the program, compared to 33.5% of defendants in the control group), it did not increase reoffending while simultaneously helping defendants avoid the collateral consequences of a criminal record. In other words, the DPP, which looks remarkably similar to Washtenaw County’s PPDP, was able to reduce the negative impacts of incarceration or a criminal conviction on defendants without any increased risk to public safety (George et al., 2015).

Based on the results of the present research, it appears that Washtenaw County could effectively implement a diversion program for defendants charged with felonies and/or for higher-risk individuals (i.e., defendants with long criminal records). Further, first-time felony defendants appear to be an especially promising target population. While misdemeanor offenders are exposed to many collateral consequences of a criminal conviction, individuals convicted of felonies face consequences of higher scope and severity. Provisions in both Michigan and federal law stipulate that a felony conviction results in a loss of ability to hold
public office and gain licensure in numerous industries. Additionally, individuals convicted of a felony may face barriers to student loan and financial aid eligibility, international travel, and access to credit, loans, and mortgage. Many landlords and employers consider an applicants’ criminal history, denying stable employment and housing to individuals with felony convictions (Berson, 2013; National Inventory of Collateral Consequences of Criminal Conviction, n.d.).

In summary, the wealth of resources available in Washtenaw County, depth of expertise among diversion program staff, and preexisting community partnerships makes this jurisdiction an ideal location for a felony diversion program. When combined with formalized risk-and-needs assessment and more substantial rehabilitative programming for higher-risk defendants, a felony diversion program could substantially reduce an individual’s exposure to the collateral consequences of a felony conviction and potentially change their life-course trajectory, all without a prohibitive risk to public safety.

**Recommendation 4: Implement a Formal Risk & Needs Assessment at Multiple Stages of Defendant Processing**

The fourth recommendation is that diversion program selection should be augmented with a structured decision-making tool that reliably identifies defendant characteristics that are predictive of diversion program success – as well as the defendant’s criminogenic needs. Based on the results of this research, criminal history appears to be a main driver of diversion program selection. However, there are numerous other defendant characteristics that may provide insight into the present behavioral patterns of a defendant, and potentially mitigate a long criminal history (or aggravate their risk). Additionally, diversion program failure is ultimately a bad outcome for a defendant – and diversion should not be employed for especially high-risk or
high-need defendants. These defendants may be “set up to fail” from the beginning, with diversion merely prolonging a defendant’s involvement in the criminal justice system. Further, diverting these defendants may pose public safety risks in certain instances.

While designing such an assessment is beyond the scope of this research, it is recommended that the WCPO develops either a formalized risk assessment or structured decision-making tool (i.e., a flowchart of various factors and sources of information to consider with every defendant) that is employed by pre-trial service officers for misdemeanor defendants prior to review by the Assistant Prosecuting Attorney. Further, the results of this risk assessment – and assessments completed throughout a non-diverted defendants normal processing through the criminal justice system – should be forwarded to the defendant’s defense attorney, probation officer, and judge, so that they are empowered to “refer qualifying misdemeanor cases to the Prosecutor’s Office for consideration” (Washtenaw County Prosecutor’s Office, n.d.-c, p. 1).

The risk-needs-assessment tool or structured decision-making tool should be driven by the Risk-Need-Responsivity theory, a rehabilitative model of crime prevention with over three decades of empirical support. Risk is grounded in the theory that criminal behavior can be predicted with various static and dynamic risk factors. By assessing risk, the PPDP can identify who to target with diversion and the level of supervision/intervention required. Need refers to the criminogenic and non-criminogenic needs of a defendant, helping the PPDP identify what to target with interventions. Finally, responsivity enables the PPDP to determine how to tailor interventions to the defendant’s needs, characteristics, motivation, learning styles, and cultural background (Andrews & Bonta, 2010).

The Risk-Need-Responsivity model identifies 8 central risk factors/criminogenic needs: (1) Criminal History, (2) Antisocial Temperament/Impulsivity, (3) Criminal Thinking/Antisocial
Beliefs, (4) Criminal Peer Network/Antisocial Associates, (5) Family or Marital Problems, (6) School or Work Problems, (7) Substance Abuse, and (8) Lack of Pro-Social Leisure/Recreational Activities. Further, there are several non-criminogenic needs that should be identified, including trauma history, mental illness, low self-esteem, and medical needs. Not only do these non-criminogenic needs potentially pose ethical issues (i.e., terminal illness or concerns about a defendant’s competency to stand trial), but they can interfere with the treatment of criminogenic needs (a component of a defendant’s responsibility to rehabilitation) (Schachar, n.d.).

Informally, the PPDP staff in the WCPO and Probation Office are deeply engaged in using these principles (R.E., personal communication, March 6, 2024; Washtenaw County Prosecutor’s Office, n.d.-c). However, a formalized risk-needs assessment would enable the PPDP to identify factors that are most useful for predicting participant success and formally track common needs among participants. Combined with data on defendant success and reoffending, the WCPO could better identify which factors are the best predictors of diversion success and post-diversion reoffending in this jurisdiction, as well as which factors are not reliable predictors in Washtenaw County. Further, as the WCPO expands the scope of defendants eligible for diversion and expands into other courts, risk-needs assessments provide data that can be leveraged to identify factors leading to racial and gender disparities, as well as enable the WCPO to divert seemingly higher-risk defendants with more confidence.

When building or choosing a risk-needs assessment for the jurisdiction, the WCPO must consider the specific goals, needs, and capabilities of the jurisdiction. The WCPO must first identify the outcome of interest (i.e., successfully completing the diversion program or not reoffending 6-months following diversion). Then, the WCPO should exclude factors that are not
relevant to the diversion program and add factors relevant to the jurisdiction (i.e., access to health insurance for mental health programming or whether family/work commitments preclude participation in intensive community service hours). By formally addressing responsivity, the WCPO can hold participants accountable for their crimes, without imposing disruptions on a defendant’s life that may destabilize them and put them at a higher risk of reoffending. While it is not recommended that the WCPO blindly adopt a risk-needs assessment before validating the instrument in Washtenaw County (see National Association of Pretrial Services Agencies, 2010), there are two risk assessments in the public domain that may be especially promising for the jurisdiction. First, the Texas Christian University Criminal Thinking Scale (CTS) has been validated to predict progress in rehabilitative programming and would provide the WCPO useful information about a defendant’s level of antisocial cognition (Sease, 2022). Second, the Criminal Court Assessment Tool is a brief risk assessment tool that “flags” defendant criminogenic and non-criminogenic needs, as well as provides an overall risk score (Picard-Fritsche et al., 2018).

**Recommendation 5: Implement Formal Graduated Sanctions for Participant Noncompliance**

The final recommendation is that the WCPO adopt graduated sanctions short of diversion termination as a response to participant noncompliance. While the PPDP has lengthened diversion programs for certain defendants, having sanctions defined clearly in the participant agreement may increase the program’s ability to curb participant failure. Specific deterrence theory indicates that the “swiftness,” “certainty,” and increasing “severity” of penalties strongly deters the behaviors that the program is trying to eliminate (Akers et al., 2020). For example, if a
defendant fails a drug test, they may have additional time added to their diversion program or an increase in the number of substance abuse treatment hours required. If a defendant fails a second drug test, the sanctions will increase in severity. An evaluation of graduated sanctions employed by the Washington D.C. Superior Court Drug Intervention Program (SCDIP) found that participants assigned to a graduated sanctions program were significantly less likely to use drugs while in the program and less likely to be arrested in the year following program completion compared to the docket without graduated sanctions. Further, one interesting sanction employed by the SCDIP was requiring participants to spend 3-days watching criminal cases for a first-time drug test failure. Participants reported that this sanction increased their perceptions of the fairness of the judicial system and substantive justice (Harrell & Roman, 2001). While there may be participant behaviors that require immediate program dismissal, the use of graduated sanctions that are clearly communicated to defendants and proportionate to the offense may improve the PPDP’s ability to manage higher-risk defendants and increase the probability of participant success.

**Implementation Considerations & Challenges**

As PLDPs grow in scope and size, several natural tensions emerge: the desire to improve participants’ lives with concerns over requiring too many interventions for low-risk participants, evidence-based decarceration with the risk of replacing it with overzealous control in the community, and the desire for courts to act as collaborative problem-solvers with the right for defendants to access effective, client-centered counsel. While these tensions will likely persist in any diversion program, jurisdictions can take preemptive steps to reduce them. This section will
offer insights into how Washtenaw County and other jurisdictions can effectively implement a diversion program in recognition of these tensions.

**Appropriate Interventions & the Risk of Over-Programming**

Community corrections research has identified that the over-programming of low-risk defendants with interventions of dosage and intensity that is disproportionate to their criminogenic needs leads to more technical violations without any effect on therapeutic outcomes. As a result, these low-risk participants may fail the program or be required to undergo programming of even higher intensity due to their technical violations, causing significant disruptions in their progression and lives. While programs must balance disruption in participant’s lives (as disruption is expected with any intervention) with the defendant’s risk and needs, over-programming low-risk defendants is an especially important concern. Low-risk participants likely have stable education, employment, and prosocial relationships – all of which serve as protective factors to their rehabilitation. With disproportionate programming and increased technical violations, these defendants may experience the loss or disruption of these protective factors (Crime and Justice Institute, 2004). By engaging risk-needs assessments, constructing individualized diversion plans, and including the defendant in the construction of their plan, jurisdictions will be better prepared to reduce the over-programming of low-risk defendants. Further, diversion program should be guided by the principle that interventions are as least-restrictive as possible to achieve the goals set by the prosecutor’s office.

Additionally, programs should structure interventions around a participant’s responsibility to rehabilitation. Factors that address responsivity include cultural background, gender, motivation, cognitive and social development, and learning styles. Treatment modalities and
interventions should be chosen so that there is rapport between providers and the participant (Crime and Justice Institute, 2004; National Association of Pretrial Services Agencies, 2010). The Washtenaw County PPDP permits the participant to choose their own therapist and treatment modality with the support of their probation officer, which may increase the sense of ownership and “buy-in” the participant experiences with their rehabilitation. Further, programs and providers should be adequately vetted for their sensitivity to cultural, gender, and trauma-related issues, as well as for competence in providing the agreed-upon services (National Association of Pretrial Services Agencies, 2010).

**Net-Widening**

Ensuring that the diversion program adequately targets the appropriate population of offenders is an important challenge for practitioners. Diversion programs run the risk of “net-widening,” where instead of incarceration, diversion programs ironically increase the number of people processed through the courts and under supervision by the criminal justice system. For example, many cases that may be eligible for prosecutor-led diversion may traditionally have been dismissed or responded to with a warning or citation by law-enforcement in the absence of a diversion program. However, with the availability of a response intermediary to a warning and a criminal conviction, diversion potentially provides law-enforcement and the courts a means to supervise individuals who normally would not have been supervised. The risk runs especially high with young adults, who are known to engage in normal criminal behavior such as illegal alcohol or drug use. With the availability of a diversion program, low-risk criminal behavior by young adults that may have been responded to with a warning, may now be charged with a misdemeanor, diverted, and subjected to disruptive supervision (Mears et al., 2016). Combined
with concerns regarding the over-programming of low-risk defendants, the risk of net-widening requires that diversion programs engage in process evaluations that ensure that the appropriate target population is being selected, diverted, and appropriately rehabilitated. Further, evaluations of the diversion program’s effect on administrative efficiency may reveal whether the diversion program is leading to the arrest and charging of more individuals than previously.

**Procedural and Privacy Safeguards**

It must not be forgotten that diversion program participants are fundamentally defendants in a criminal proceeding. A defendant’s participation in a diversion program does not mean that they forego any of the procedural safeguards afforded to other criminal defendants. Ultimately, diversion involves some disruption to a participant’s life and, at minimum, increased government control over their activities. If the defendant fails the diversion program, they may be subjected to the normal processing of their case through the criminal justice system, which may result in further loss of liberty.

As a result, diversion programs must be designed to ensure that the fundamental fairness of the justice system is prioritized at every step of the process. As identified by the National Association of Pretrial Service Agencies, diversion programs should ensure that due process safeguards exist at various junctures of a participant’s diversion. First, defendants should have the right to review a prosecutor’s decision to deny diversion – especially if individuals other than the prosecutor (including the defendant themselves) are permitted to submit a case for review by the prosecutor. Second, defendants should be permitted to receive written justification for the termination of their diversion plan. Finally, defendants should be permitted to challenge the termination of their diversion before a judge (National Association of Pretrial Services
Agencies, 2010). In addition to these standards, it is also recommended that diversion programs ensure that defendants have access to counsel prior to determining whether to accept placement in a diversion program and are given adequate time to consider the offer with their attorney.

Since a major goal of pretrial diversion programs are to reduce the collateral consequences of a criminal conviction, privacy protections must be seriously considered by diversion programs. Written procedures regarding the nature and extent of information shared with criminal justice agencies should be implemented, and successfully diverted defendants should be provided resources that will assist them with accessing full expungement of their record. Additionally, since criminal proceedings will likely resume for unsuccessful defendants, it is recommended that diversion programs stipulate that information gathered during diversion be treated as confidential and not admissible as evidence in the diverted case or any subsequent proceedings. In doing so, diversion programs reduce the risk of unsuccessful defendants facing charges of increased severity or more punitive sentences than they would have faced if they had declined diversion. Nonetheless, diversion programs should also stipulate in diversion contracts that information may be shared with vetted researchers for projects approved by the appropriate Institutional Review Board, so that the program can be improved with impact and process evaluations.
Conclusion

Every year, approximately 7 million people enter America’s jails. Of these admissions, 70% are yet to be convicted of any crime (Z. Zeng, 2023), with many incarcerated for the entire time it takes for their case to resolve. Costing over $20 billion annually (Henrichson et al., 2015), the overuse of incarceration not only burdens taxpayers but exacts a heavy toll on those who are in custody. Even a short stay in jail can result in the loss of employment, housing, and the onset of trauma, irrespective of eventual case outcomes. Further, most of these collateral consequences are triggered by a criminal conviction, regardless of whether the individual was incarcerated. The reverberations of these consequences extend far beyond the individual, permeating families and communities, and disproportionately affecting marginalized groups (Subramanian et al., 2015). In response to these concerns, diversion programs have emerged to reduce the number of individuals incarcerated, reduce defendant exposure to the collateral consequences of a criminal conviction, and intervene before a defendant reoffends. Simultaneously, diversion strives to streamline limited court and law-enforcement resources, all the while saving the jurisdiction money.

The results of this research suggest that prosecutor-led diversion programs do not lead to any increased risk to public safety and are potentially highly effective at reducing recidivism. Nonetheless, designing an effective diversion program is a challenging endeavor, requiring policymakers to consider the limitations of available interventions and their ability to accurately assess defendant risk. But beyond these challenges, one concern is especially salient: the risk of net-widening. Diversion programs ought to first consider how the lowest-risk defendants in their jurisdiction are normally processed through the criminal justice system in the absence of a diversion program. If low risk defendants typically see their charges dropped, this population is
not appropriate for a diversion program, as diversion would only add to more disruption in their lives compared to the normal process. However, once policymakers can reliably identify medium-risk (and, potentially, high-risk) defendants charged with diversion-eligible offenses in their jurisdiction, this population appears to be the best suited group of defendants for diversion. Importantly, diversion would offer these defendants positive programming aimed at enhancing their lives, while also shielding them from the destabilizing collateral consequences that often accompany incarceration and a criminal conviction. Moreover, it would significantly diminish the disruption to their lives compared to prolonged periods in jail or extensive terms on probation. By providing a tailored alternative to traditional punishment, diversion holds the potential to not only benefit individual defendants but also to mitigate risks to public safety.

Ultimately, the American criminal justice system is defined by balance. Courts and prosecutors must daily balance the urge to punish with the obligation to rehabilitate. They must rectify the valuable opinions of victims with the complex calculation of what a just outcome means. And they must temper their desires to improve a person’s life with rehabilitation with the safeguards of procedural justice. Yet, we must simultaneously face the reality of over 7 million individuals annually passing through jail doors. We must face the consequences that this over-reliance on incarceration has wrought on individuals, families, and communities. The imperative for change is undeniable.

Diversion programs offer hope. They represent how the incredible power of the criminal-legal system can be leveraged to effectively reduce reoffending and improve defendant outcomes with evidence-based policymaking. Diversion programs show how the law can be transformed into a compassionate mechanism for healing. And, fundamentally, diversion
programs call on us to look beyond our traditional models of responding to crime if we hope to truly meet our obligation to ensure that justice shall be done.
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Washtenaw County Prosecutor’s Office. (n.d.-c). *Washtenaw County Prosecutor's Pre-Plea Diversion Program.*


Appendix 1
Washtenaw County Pre-Plea Diversion Program Logic Model

<table>
<thead>
<tr>
<th>Target Population</th>
<th>Inputs</th>
<th>Strategies</th>
<th>Outcomes and Outputs</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Post-filing</td>
<td>• Prosecutor’s Office</td>
<td>• Nolle prosequi entered</td>
<td></td>
</tr>
<tr>
<td>• Pre-plea</td>
<td>• Director of Pre-Plea Diversion Program (one dedicated APA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Charge: Misdemeanor</td>
<td>• Probation</td>
<td>• Participate in diversion program</td>
<td></td>
</tr>
<tr>
<td>o No Stalking, Domestic Violence, OWI, or Child Abuse-4th Degree</td>
<td>• Community Corrections (Sherriff)</td>
<td>• Minimum 1/month</td>
<td></td>
</tr>
<tr>
<td>o Must be processed in 15th or 14-A District Court</td>
<td>o Moral Reconation Therapy</td>
<td>o Drug testing for (~25% of participants) – typically if crime involved Sub. Abu. or defendant &lt; 21 y/o</td>
<td></td>
</tr>
<tr>
<td>• Exclusions</td>
<td>• Other community-based partners</td>
<td>• Meetings with probation</td>
<td></td>
</tr>
<tr>
<td>o No explicit exclusions</td>
<td>o Dawn Farm (substance abuse treatment)</td>
<td>• Minimum 1/month</td>
<td></td>
</tr>
<tr>
<td>o APA considers criminal history, history of FTA, severity of substance abuse and behavioral health issues, economic instability, immigration status, educational background, housing instability, and circumstances of arrest</td>
<td>o Washtenaw County non-profits (community service)</td>
<td>o Complete programming with community partners</td>
<td></td>
</tr>
<tr>
<td>o Probation is consulted</td>
<td>o Washtenaw County Community Mental Health</td>
<td>• Normal proceedings resumed</td>
<td></td>
</tr>
<tr>
<td>o Reaction of judge, victim, and the public is considered</td>
<td>o University of Michigan University Health Service (Wellness Coaching)</td>
<td>o Minimum 1/month</td>
<td></td>
</tr>
<tr>
<td>• Besides restitution &amp; mental health treatment copays, completely cost free program</td>
<td>o Catholic Social Services (anger management)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>o Free mental health services available</td>
<td>o Private 12-Step &amp; Theft Awareness Classes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Appendix 2

Classification of Charges

Non-Violent Misdemeanor
- Retail Fraud
- Malicious Destruction of Building
- Malicious Destruction of Personal Property
- Embezzlement
- Larceny
- Defrauding Innkeeper
- Breaking & Entering
- Operating Forgery (Fake ID)
- Fire - False Alarm
- Fraudulent Financial Transaction Device
- Disturbing the Peace
- Failure to Report and Accident
- False Pretenses

Violent Misdemeanor
- Assault & Battery
- Reckless Use of Weapons/Firearms
- Aggravated Assault
- Attempted Resisting & Obstructing a Police Officer
- Attempted Assault of a Police Officer
- Weapons/Firearms Possession Under the Influence

Substance Abuse Misdemeanor
- Disorderly Drunk