



DIVERSION

Study Highlights

January 2022

Virginia law does not preclude the creation of local diversion programs.

Legislation is not required to expand diversion in Virginia, and new laws could inadvertently hinder or restrict existing local diversion programs.

Diversion in the criminal justice system intersects with numerous other societal challenges, such as:

- Education
- Health
- Housing
- Poverty
- Racial inequities
- Trauma
- Unemployment

Virginia can support diversion by providing funding and resources for new or existing programs.

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What is diversion?

Diversion is a broad term with various definitions. For purposes of the Crime Commission's study, staff defined diversion as an initiative or process (formal or informal) that allows an adult defendant to avoid a criminal charge and/or conviction by participating in or completing certain programs or conditions.

What is the purpose of diversion?

Diversion can be used to address the root causes of crime by focusing on treatment, prevention, and rehabilitation in the criminal justice system. Diversion programs can assist with meeting a wide variety of needs, such as substance abuse treatment, mental or behavioral health treatment, domestic violence counseling, employment, and housing.

What are the benefits and challenges of diversion?

The benefits of diversion include offender rehabilitation, reduced recidivism, avoiding the collateral consequences of a criminal record, and the preservation of criminal justice system resources. However, the challenges of diversion include a lack of funding and resources, limited programming, a lack of legal counsel at the appropriate phases, and burdensome program requirements for participants.

At what point in the criminal justice system can an individual be diverted?

Staff identified four specific diversion points in the criminal justice system:

1. **Pre-Law Enforcement Encounter:** individuals receive support and treatment in the community prior to any contact with the criminal justice system.
2. **Pre-Arrest:** law enforcement officers are instructed or empowered to divert individuals into treatment for behavioral needs in lieu of arrest under certain circumstances.
3. **Pre-Charge:** prosecutors either do not file charges or suspend the prosecution of charges while an individual participates in a diversion program.
4. **Post-Charge:** occurs after an individual has entered the court system and includes both deferred adjudication and specialty dockets.

How does diversion in Virginia compare to diversion in other states?

All 50 states have implemented some form of diversion. Virginia, similar to the majority of other states, has a mix of statewide statutory diversion and locality-specific diversion programs. The majority of statewide diversion in Virginia is post-charge, while locality-specific programs have been implemented using available resources to address the specific needs of the locality.

What is needed to expand diversion across Virginia?

Expanding diversion across Virginia will require additional and ongoing resources, communication and collaboration amongst stakeholders, and infrastructure for programs and supervision, such as hiring and training staff and service providers.