

Louisiana District Attorneys Association

District Attorney Guidelines

by the Institute for Public Health and Justice in collaboration with
the Louisiana District Attorneys Association



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Models for Change

Models for Change is an effort to create successful and replicable models of juvenile justice reform through targeted investments in key states, with core support from the John D. and Catherine T. MacArthur Foundation. Models for Change seeks to accelerate progress toward a more effective, fair, and developmentally sound juvenile justice system that holds young people accountable for their actions, provides for their rehabilitation, protects them from harm, increases their life chances, and manages the risk they pose to themselves and the public. The initiative is underway in Illinois, Pennsylvania, Washington, and Louisiana.

Eight Principles of Models for Change: A Framework

Fundamental fairness

All system participants—including youthful offenders, their victims, and their families—deserve bias-free treatment.

Recognition of juvenile-adult differences

The system must take into account that juveniles are fundamentally and developmentally different from adults.

Recognition of individual differences

Juvenile justice decision makers must acknowledge and respond to individual differences in terms of young people's development, culture, gender, needs, and strengths.

Recognition of potential

Young offenders have strengths and are capable of positive growth. Giving up on them is costly for society. Investing in them makes sense.

Safety

Communities and individuals deserve to be and to feel safe.

Personal responsibility

Young people must be encouraged to accept responsibility for their actions and the consequences of those actions.

Community responsibility

Communities have an obligation to safeguard the welfare of children and young people, to support them when in need, and to help them grow into adults.

System responsibility

The juvenile justice system is a vital part of society's collective exercise of its responsibility toward young people. It must do its job effectively.

Louisiana Models for Change

Models for Change-supported reform efforts in Louisiana focus primarily on bringing about change in three areas: expanding alternatives to formal processing and secure confinement; increasing access to evidence-based services; and reducing disproportionate minority contact with the juvenile justice system. In addition, the initiative provides support for statewide efforts to ensure that work carried out at the local level through Models for Change is aligned with the state's goals for juvenile justice reform. Louisiana was the third of four states chosen to participate in the Models for Change initiative, including Pennsylvania, Illinois and Washington.

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Introduction

Throughout the reform process, the Louisiana District Attorneys Association (LDAA) has collaborated whenever possible with stakeholder agencies to support juvenile justice reform. In keeping with this dedication to reform, LDAA accepted a Models for Change grant in 2008. This grant enabled LDAA to further enhance its role in the reform process. The primary goals of the grant include:

- Evaluate the current availability and use of diversion and community based graduated sanctions in Louisiana.
- Educate District Attorneys and other juvenile justice professionals on best practices in diversion and graduated sanctions
- Develop juvenile DA diversion guidelines and recommendations on graduated sanctions in Louisiana.

In order to effectively achieve these goals, LDAA developed a ten member Juvenile Justice Task Force consisting of four elected District Attorneys and six Assistant District Attorneys.

One key goal of the grant is to develop guidelines for District Attorney Juvenile Diversion Guidelines for Louisiana prosecutors. Recognizing that “diversion” is a broad term, the LDAA Juvenile Justice Task Force narrowed the definition for purposes of this grant. For purposes of this grant, District Attorney Diversion refers to a post arrest/summons, pre adjudication alternatives to formal processing.

District Attorney Juvenile Diversion Defined

District Attorney Juvenile Diversion is defined as a formal program, used at the discretion of the District Attorney, as an alternative to formal processing of a juvenile offender. This type of program is used post-arrest/summons and prior to adjudication. These programs are not informal adjustment agreements as defined in the Louisiana Children's Code.

BENEFITS/GOALS OF DISTRICT ATTORNEY DIVERSION

Strong diversion programs are a critical component to juvenile crime prevention. There are many benefits of diversion programs including but not limited to:

- Reduction in formal prosecutions and associated costs
- Connecting youth with appropriate and effective services, i.e. mental health and substance abuse
- Keeping youth who commit delinquent offenses in their community whenever public safety allows
- Protecting the interest, well-being and safety of the public
- Encouraging youth accountability for criminal behavior with dispositions that are prompt, fair, and consistent across the state without discrimination on the basis of race, color, creed, religion, national origin, sex, age, education, economic status, sexual orientation or disability
- Providing an opportunity for community members to demonstrate their concern for young people by participating in the juvenile justice system
- Opportunities for victim participation in the juvenile justice process
- Providing restitution to victims
- Encouraging parents/guardians of the juvenile to participate in the juvenile justice process
- Keeping very low risk youth out of the criminal justice system

POINT OF PRETRIAL DIVERSION

The District Attorney must first make a determination that the charge is legally sufficient for prosecution.

Potential divertees should be eligible for pretrial diversion at the discretion of the District Attorney from the time the office of the District Attorney receives notification of arrest/summons until the time of final adjudication. Divertees should have the opportunity to consult with counsel.

The pretrial diversion option should be presented only after an initial determination has been made by the processing authority that the juvenile will be released to pretrial diversion.

A juvenile's decision to enroll in a pretrial diversion program should be voluntary.

The possibility of enrolling in a pretrial diversion program should not preclude a juvenile from considering and pursuing other strategies which may be more advantageous to him than the diversion option.

At the discretion of the District Attorney, certain offenses should not be considered for low level alternatives to formal processing such as a letter and a brief period of monitoring.

ELIGIBILITY AND ENROLLMENT

Formal eligibility guidelines may be established and reduced to writing. The guidelines should be distributed to all interested parties including prospective program participants. The written diversion contract may:

- Include all terms and conditions under which the case will be diverted;
- Be executed and signed by all parties (youth, parents, DA representative);
- Include a waiver of his/her right to a speedy trial;
- Define the duration of the program;
- Conditions that are clear and measurable (deadlines, work hours, etc.)
- Clearly express what constitutes “successful completion”
- Clearly articulate what constitutes failure and the consequences (re-filing of petition)

Eligibility criteria should be broad enough to encompass all juveniles who can benefit from the diversion option regardless of the level of supervision or services needed. Although diversion is traditionally available to certain first time, low-level offenders, additional factors to be considered in determining eligibility should include, but not be limited to:

- The seriousness of the alleged offense;
- The role of the juvenile in that offense;
- The nature and number of previous cases and the disposition of those cases;
- The juvenile’s age and maturity;
- The availability of appropriate treatment or services potentially available through the juvenile court or through diversion;
- The dangerousness or threat posed by a juvenile to the person or property of others;
- Whether the juvenile accepts responsibility for participation or involvement in the offense charges; The provision of financial restitution to the victims or willingness to complete community service in lieu thereof
- Recommendations of the referring agency, victim, and advocates for the juvenile

Enrollment in diversion programs should not be conditioned on a plea of guilty. An informal admission of guilt or of moral responsibility may be acceptable as part of a service plan. Juveniles who maintain innocence may be denied enrollment.

The District Attorney recognizes that each case is unique and deviation from program requirements may occasionally be necessary.

A standard time limit for the duration of participation in the diversion process should be established based upon the severity of the offense. No juvenile should be required to participate for a longer period except in extraordinary circumstances. The standard term should be long enough to permit change sufficient to minimize likelihood of additional arrests, but not so long as to prejudice the prosecution or defense of the case should the participant be returned to the ordinary course of prosecution.

Prior to making the decision to enroll in a diversion program, an eligible juvenile should be given the opportunity to review a copy of the general requirements of the diversion program including average program duration and possible outcomes.

SCREENING

When appropriate based upon the alleged criminal offense, a diversion candidate should be administered a validated risk screening tool to determine level of risk.

Youth who are designated “low risk” based upon a validated risk screening tool is recommended to be admitted to diversion.

The choice of validated risk screening tool should be evaluated and updated annually if necessary based upon national practices research.

DISMISSAL

Program policy should provide for a dismissal or rejection of charges upon successful completion of all program requirements.

Records relating to arrest, diversion participation, and final disposition should be sealed upon successful completion of the diversion program. Criminal justice personnel should be permitted access to such records solely to determine whether a diversion candidate has previously been diverted.

NON-COMPLETION

A participant should be able to withdraw from the program voluntarily at any time prior to its completion and elect ordinary criminal justice processing without prejudice.

The diversion program should retain the right to terminate service delivery when the participant demonstrates unsatisfactory compliance with the service plan. When such a determination is made, the participant should be returned to ordinary criminal justice processing.

Rearrests which occur during the course of diversion program participation may be grounds for termination. A review by the pretrial diversion authority at which the fact of the rearrest and all other relevant circumstances are considered together with the participant’s record of performance should ensue. The decision whether or not to terminate should occur only after weighing all relevant factors.

CONFIDENTIALITY

As a general rule, information gathered in the course of the diversion process should be considered confidential.

Programs should strive to guarantee, by means of interagency operating agreements or otherwise, that no information gathered in the course of a diversion application or participation in a diversion program will be admissible as evidence over the child’s objection in an adjudication hearing or criminal trial in the case for which diverted. Information may only be used in a disposition hearing in the court or for the purpose of a presentence investigation after a criminal conviction.

Qualified researchers and auditors should, under limited and controlled conditions, be accorded access to records in accordance with law.

Notwithstanding the general provision of confidentiality afforded participant communications, diversion personnel should avoid becoming accessories to criminal acts committed by a participant once enrolled and communicated wittingly or unwittingly during the course of the diversion process.

Notwithstanding the general provision of confidentiality, District Attorneys should share information with each other concerning persons participating in diversion programs to assist in screening and charging decisions on subsequent offenses.

RESEARCH

Juvenile diversion programs should monitor, research, and evaluate the performance and practices of their programs.

Problems and hypotheses in research and evaluation methodologies should be consistent with the goals of the individual diversion agency and the concepts of diversion in general.

Research and evaluation should:

- Follow methodology which is appropriate to the program in order to generate credible results
- Follow a format which can be easily communicated and understood
- Be conducted by individuals with appropriate expertise

VICTIM IMPACT/ACCOUNTABILITY

Diversion efforts should be aligned with the goals of balanced and restorative justice:

- holding offenders accountable to victims,
- providing competency development for offenders, and
- ensuring community safety.

When appropriate due to the nature of the offense, a Victim Impact letter is sent to all potential victims. The letter explains the juvenile diversion process and also provides the victim an opportunity to provide feedback as to both the financial and personal impact of the crime.

SERVICES

Diversion programs should utilize individualized and realistic service plans which feature achievable goals, service plan formulation should occur as soon as possible after initial contact with the participant and in consultation with the participant.

All services offered to youth should be developmentally appropriate given the age of the youth and the severity of the offense.

Whenever practicable, youth should be referred for services offered by an appropriate best practice or promising program.

MISCELLENEOUS

Nothing herein shall be construed to modify, limit or in any way inhibit the authority of the District Attorney as provided in the Louisiana Constitution of 1974 or the laws of our State.

The Institute for Public Health and Justice (IPHJ) is the Lead Entity for the John D. and Catherine T. MacArthur Foundation's Louisiana Models for Change Initiative. IPHJ is a research, education and outreach institute within the LSU Health Sciences Center in New Orleans. Its mission includes disseminating and sustaining the successful outcomes of the Initiative.

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