REASSESSING ARREST
Exploring Pre-Arrest Diversion as an Alternative to Arrest for Vulnerable Populations
This project was supported by a grant from Arnold Ventures. The opinions contained herein are those of the author(s) and do not necessarily represent the official position or policies of the funder. References to specific agencies, companies, products, or services should not be considered an endorsement by the author(s) or the funder. Rather, the references are illustrations to supplement discussion of the issues.

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Recommended citation:

Published 2020
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Introduction

For decades, arrest was the primary—if not the only—treatment that police officers were trained to use, and for good reason: arrest can be a powerful and productive remedy in situations that call for it, especially in scenarios that involve violent offenses and/or criminal acts where there is a high probability of public harm.¹

But, in many ways, arrest is like surgery: For some patients, it’s a necessary and useful treatment—the only real solution. For others, it can do more harm than good by presenting unnecessary risk when more appropriate options are available. The best solution can vary depending on the circumstances. Like doctors whose job it is to promote good health by first doing no harm, law enforcement officers must make careful decisions about when it is appropriate to arrest, and when to utilize other interventions that are likely to address the public safety issue at hand without undesired effects.

Arrest is certainly a useful and effective law enforcement strategy. Yet, a growing body of evidence suggests that arrest, especially for minor crimes, may negate its advantages and amplify its shortcomings. Particularly concerning are threats to officer and community safety, consumption of finite police resources, financial stress on offenders and the community, and severed social connections—each of which is a potential undesired outcome of arrests.²

Even as arrest remains an important and effective tool for law enforcement officers—whose public safety responsibility demands that they continue arresting suspects when it is appropriate and warranted—it is clear that there is an increasing interest in functional alternatives to arrest. In response, the International Association of Chiefs of Police (IACP), with funding from Arnold Ventures, has created this document in order to explore one such alternative that has shown early promise in the field: pre-arrest diversion. In the sections that follow, law enforcement executives will learn when and for whom pre-arrest diversion might make sense, as well as when traditional arrest remains viable.

Sources:

1 Engel, Robin et al. 2019. The Power to Arrest: Lessons from Research. Cham, Switzerland: Springer. Also available at www.theIACP.org/research.
4 Ibid.
5 Ibid.
6 Ibid.
7 Ibid.
Objectives

This document is intended to serve as a resource that law enforcement executives can use to pursue the following objectives:

- **Encouraging internal discussions on the use of arrest:** The information in this document is intended to stimulate conversations about the role of arrest in agencies’ policies, and whether there are alternatives to arrest that, in appropriate situations, can help them achieve the same law enforcement objectives with fewer financial and social costs.

- **Identifying problems and populations that may be good candidates for pre-arrest diversion:** Law enforcement officers are not clinical social workers. Yet, they play a critical front-lines role in identifying and treating social issues. By highlighting how pre-arrest diversion programs can engage and support vulnerable populations, this document seeks to raise awareness about new ways in which law enforcement officers can fulfill their mission of serving and protecting their communities.

- **Communicating with stakeholders:** Public safety is an ecosystem with many diverse stakeholders, including law enforcement executives and front-line officers, as well as policymakers, prosecutors and courts, community partners, and community residents—many of whom may be skeptical of alternatives to arrest, both in theory and in practice. In addition to informing their policies and practices internally, the information in this document may help law enforcement agencies garner external support that can assist them in their pursuit of pre-arrest diversion strategies.

- **Inspiring new approaches to complex challenges:** Law enforcement agencies must be strategic when implementing new strategies and solutions to ensure the impact on their community is positive, instead of negative. For that reason, agencies should prioritize evidence-based practices when possible—including arrest, which remains an effective remedy in many law enforcement scenarios. And yet, much can be gained from innovation and experimentation. Provided that agencies implement strategies conscientiously—with full knowledge of their empirical strengths and weaknesses, and with analytic mechanisms that they can use to evaluate and document their efficacy—the pre-arrest diversion practices discussed in this document may serve as guideposts that help law enforcement agencies pioneer new practices and programs that may develop into future best practices.
Defining Pre-Arrest Diversion

Alternatives to arrest is a developing subject within law enforcement. For that reason, it is useful to define some terms to ensure common understanding. This is especially true when it comes to pre-arrest diversion, whose nomenclature derives meaning from two words: arrest and diversion.

What is Arrest?
This document defines arrest as having occurred when an officer

1) TAKES a suspect into custody,

2) TRANSPORTS a suspect to a police facility,

3) TAKES a suspect’s identifying information,

4) CREATES a permanent record of the arrest, and

5) DETAINS the suspect until release or judicial review.


What is Diversion?
Diversion occurs when a suspect who could be taken into the criminal justice system through arrest is instead entered into alternative services and/or supervision, typically by either a police officer or a prosecutor.

Police-led diversion, otherwise known as pre-arrest diversion, similarly occurs when a law enforcement officer could take a suspect into custody—but decides not to, electing instead to connect the suspect with community-based services and supervision. These service providers often partner with the criminal justice system yet exist outside of it. It typically takes place before a suspect’s case reaches a prosecutor, thereby pre-empting a suspect’s engagement with the criminal justice system so that justice can be delivered in and by the community instead of the courts.

What About Deflection?
Because they’re similar, pre-arrest diversion and deflection are often confused. However, there is a key difference between them:

While pre-arrest diversion programs target individuals who have committed a crime and are therefore subject to charges, deflection programs target at-risk individuals who have not yet committed a crime and therefore are not eligible for charges.

Deflection stops engagement with the criminal justice system before it starts. Despite the distinction between them, this document recognizes that deflection and pre-arrest diversion share some common traits.
When Arrest is Best

Before contemplating pre-arrest diversion, law enforcement agencies should continue to recognize that there remain many situations in which arrest is appropriate, necessary, and effective, and where alternatives, therefore, would not be effective.

Although these situations can be both objective and subjective in nature, there exists ample evidence in favor of arrest. As previously mentioned, for example, arrest in the immediate term can reduce crime and increase public safety by removing suspected criminals from the street, making it impossible for them to cause additional public harm due to incapacitation. In the long term, arrest may similarly reduce crime by deterring would-be criminals from breaking the law.

To determine when arrest is suitable, police agencies should consider decision factors including state interests, public safety, offense severity, criminal history, arrest warrants, and legal mandates. Among these, perhaps the most persuasive is offense severity. Although agencies and jurisdictions must decide for themselves what eligibility requirements and criteria make sense for pre-arrest programs in their communities, the vast majority of such programs exclude from participation individuals who commit violent and felony offenses. This leaves arrest as the only appropriate law enforcement solution for such individuals.

Of course, their exclusion from alternatives means little is known about the success or failure of individuals who commit violent and felonious offenses in pre-arrest diversion programs. This leaves arrest as the only appropriate law enforcement solution for such individuals:

- The United States Sentencing Commission concludes that individuals who engage in violent criminal activity generally recidivate at a higher rate, more quickly, and for more serious crimes than do individuals who commit nonviolent offenses.
- Many jurisdictions are bound by state mandatory arrest laws that require police officers to arrest individuals who are suspected of committing certain crimes.
- Individuals who commit violent and/or felony offenses may be less likely to satisfy the requirements of pre-arrest diversion programs and, therefore, less likely to realize their rehabilitative benefits. For example, a 2017 study analyzed participants in Leon County, Florida’s Pre-Arrest Diversion/Adult Civil Citation (PAD/ACC) program and concluded that participants with greater propensity for crime or violence were less likely to complete it successfully.
- Those who sell illicit substances for profit are often ineligible for substance use treatment programs, as drug distribution exploits others and is less amenable to clinical intervention, compared to drug users who do not distribute for profit.

Evidence against pre-arrest diversion for certain crimes and criminals should not necessarily be interpreted as evidence for arrest. In many cases, pre-arrest diversion is not up to the task of public safety—whereas arrest often is. Nonetheless, which option is most appropriate varies by situation and context. The factors explained in this document are meant to help guide that decision.

11 Ibid.
13 Ibid.
Why to Consider Pre-Arrest Diversion

In recent years, the discussion around arrest and alternatives to arrest has reached peak prominence thanks to a U.S. dialogue about criminal justice reform. Emerging topics such as the decriminalization of marijuana and overcrowding in jails and prisons have generated increased interest among community leaders and scholars who want to diagnose problems in the criminal justice system, and renewed commitment among law enforcement agencies and policymakers who want to solve them. The result in many jurisdictions is a fertile field in which pre-arrest diversion can take root and may be able to help agencies achieve their most important public-safety objectives.

Lowering Crime Rates

In 2018—the most recent year for which there is data—U.S. law enforcement officers made more than 10.3 million arrests.16 Ten years prior, in 2008, U.S. law enforcement officers made more than 14 million arrests.17 This represents a 26% reduction in arrests. If arrest were inversely related to crime—such that more arrests equaled fewer violent crimes—one would expect the violent crime rate in the United States to have increased from 2008 to 2018. In fact, it decreased, falling from 458.6 violent crimes per 100,000 inhabitants in 2008 to 368.9 violent crimes per 100,000 inhabitants in 2018. As previously noted, a 2008 jail closure in Hamilton County, Ohio, likewise precipitated a decrease in arrests and, subsequently, a fall in crime.18 While neither of these examples imply a causal relationship, they do demonstrate that crime does not necessarily increase just because officers make fewer arrests. If low crime rates are not contingent on high arrest rates, there is room to consider alternatives like pre-arrest diversion.

Reducing Recidivism

In May 2018, the U.S. Department of Justice published a study of recidivism among 412,731 state prisoners and found that nearly 45% of them were arrested again within one year of being released, 68% within three years, 79% within six years, and 83% within nine years.19 In January 2019, the U.S. Sentencing Commission similarly reported that among federal prisoners, approximately 40% of individuals who had committed nonviolent offenses and nearly 64% of individuals who had committed violent offenses were arrested again within eight years of being released.20 If arrest deterred everyone from future crime, then recidivism would be low instead of high. Instead, researchers have observed, incarceration and prosecution, in some instances, may exacerbate recidivism by creating social and economic barriers for convicted criminals, many of whom struggle to obtain employment, housing, healthcare, and drug treatment as a result of their criminal records.21 Pre-arrest diversion may offer a means by which to reduce recidivism not only directly, but also indirectly by reducing the social pressures that often precipitate repeat offending.

In 2018, there were more than 10.3 million arrests, a 26% reduction from 2008 at 14 million arrests.

It decreased from 458.6 violent crimes per 100,000 inhabitants in 2008 to 368.9 violent crimes per 100,000 inhabitants in 2018.

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18 Engel, Robin et al. 2019. The Power to Arrest: Lessons from Research. Cham, Switzerland: Springer. Also available at www.theIACP.org/research.
**Increasing Efficiency**

As guardians of public safety, law enforcement officers should prioritize their responses according to public benefit. In many cases—those that involve individuals who commit violent offenses, for example—arrest is the response that will produce the greatest public good.

But law enforcement officers are also guardians of public resources. In some cases—those that involve only non-violent misdemeanors, for example—police agencies should also be willing to weigh other public concerns against the relative costs and benefits of arrest. Consider, for example, the financial implications of arrest: Mass incarceration costs U.S. taxpayers $182 billion per year, which includes not only the cost of operating prisons, jails, parole, and probation, but also policing and court costs, and costs paid by families to support incarcerated loved ones.22

Arrest doesn’t just cost money, however. It also costs time that could be reinvested into additional public-safety priorities. In fact, research indicates that making an arrest is a time-consuming process that can drain large portions of an officer’s time (estimates vary from four hours to more than 13 hours). This includes time spent handcuffing and securing the suspect, transportation time, processing time, and time spent on paperwork. The sum of these and other tasks is 60 million hours of officer time per year that could be spent on other community priorities.23

Of course, pre-arrest diversion programs also have costs, although they’re not yet well documented or understood.24 In order to make decisions that are simultaneously efficient and effective, officers should avoid a rush to judgement in favor of either arrest or pre-arrest diversion. Instead, practicing strategic and judicious thinking to evaluate the merits of both options in the context of each suspect and scenario is an important step.

**Enhancing Safety**

Although it is carried out in the name of public safety, arrest, in some instances, may actually pose additional risk to citizens instead of making them safer.

Arrests, by nature, involve confrontations between officers and suspects. Thus, any time a physical arrest occurs, there is a risk to officer, suspect, and community safety. Although it cannot eliminate risk entirely, the nonconfrontational nature of diversion makes pre-arrest diversion inherently safer for all parties involved—including bystanders, who can easily be harmed during pursuits and physical struggles.25 Reducing the use of arrest also reduces risk for all involved.

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Who Might Benefit from Pre-Arrest Diversion?

There is growing interest in the criminal justice system in exploring alternatives to arrest—including pre-arrest diversion. However, empirical evidence on alternatives to arrest so far is limited. As a result, law enforcement agencies have focused primarily on developing pilot programs that target specific vulnerable populations, where it is believed that such programs can have maximal impact with minimal risk. Evidence and experience thus far are most extensive amongst three populations: persons with mental health disorders, persons with substance use disorders, and juvenile offenders.

Persons with Mental Health Disorders

Law enforcement agencies spend significant time and manpower responding to calls for service involving persons with mental health disorders. In fact, it is estimated that as many 10% of police contacts involve persons with mental health disorders.

Given not only the frequency with which police officers encounter them, but also the nature of their challenges—mental health disorders is inherently a clinical problem, not a criminal justice issue—persons with mental health disorders are ideal candidates for pre-arrest diversion programs. The goal of such programs is to connect individuals with treatment and services that address their mental health disorders and, in so doing, keep them out of the criminal justice system. As the IACP/UC Research Center explains, police-led pre-arrest diversion programs are believed to increase the probability of positive outcomes for offenders with mental health disorders, including increased use of social services, enhanced quality of life, decreased substance use, fewer mental health symptoms, and less criminal recidivism.

Persons with Substance Use Disorders

Substance use—which often co-occurs with mental health disorders—also consumes substantial police resources and time. In fact, more than half of people incarcerated in state prisons (53%) and two-thirds of people incarcerated in local jails (68%) have substance use disorders, according to the Center for Health and Justice at Treatment Alternatives for Safe Communities (TASC). This shift—viewing substance abuse as a public health issue instead of a penal matter—has made persons with substance use disorders suitable candidates for pre-arrest diversion programs. These programs are typically collaborative efforts among law enforcement, substance use treatment providers, mental healthcare providers, and individuals with substance use issues and their families. The Center for Health and Justice at TASC reviewed existing evidence for pre-arrest diversion programs and acknowledged this area is still evolving. Nonetheless, it concluded that the most effective response to individuals with substance use issues is often a mix of “supervision, accountability, and community treatment and support.”

It is estimated that as many as 10% of police contacts involve persons with mental health disorders.

More than half (53%) of people incarcerated in state prisons and two-thirds (68%) of people incarcerated in local jails have substance use disorders

- Center for Health and Justice at Treatment Alternatives for Safe Communities (TASC)

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29 Ibid.
Juvenile Offenders

Although evidence is lacking, juveniles who commit offenses are another group of candidates for pre-arrest diversion programs. Instead of prematurely labeling youth as lifelong criminals, juvenile diversion programs seek to give young people fresh prospects by limiting their engagement with the criminal justice system.

Such programs also may help prevent overcrowding in juvenile detention facilities, connect youth with social services, increase youth compliance with probationary or restitution plans, free up bandwidth that police officers can devote to other enforcement activities, and reduce recidivism.

Although juvenile diversion programs are not universally successful, they can be effective if they’re implemented faithfully and consistently, according to the IACP/UC Research Center. Aggregated analyses of several different juvenile diversion program evaluations reveal that the outcomes of juvenile pre-arrest diversion are largely dependent on how those programs are implemented.30

Other Vulnerable Populations

To date, the vast majority of pre-arrest diversion programs have focused on the aforementioned populations—persons with mental health disorders, persons with substance use disorders, and juvenile offenders—because they may be the most amenable. The need is great and, although more research is needed to validate and standardize their efficacy, there are already templates available that law enforcement agencies can adopt and adapt.

However, police departments have opportunities to apply similar principles and strategies to other vulnerable populations for which arrest and incarceration may not be suitable. Persons experiencing homelessness, for example, are a logical target for pre-arrest diversion in many communities, where homelessness, substance use, and mental health disorders are often interrelated. If law enforcement agencies already are applying pre-arrest diversion to two of the problems, it follows that they might also apply it to the third. In particular, a 2018 meta-analysis of 43 intervention programs designed to reduce homelessness found moderate evidence in favor of case management programs—programs wherein clients are assigned to case managers who coordinate access to services—and “Housing First” programs, which provide housing to people experiencing homelessness irrespective of their sobriety.31

Similarly, potential candidates for future pre-arrest diversion programs might include other persons in crisis across a variety of situations and contexts.

31 Ibid.
**Guidelines for Program Implementation**

A review of law enforcement agencies that have successfully piloted pre-arrest diversion programs reveals some common practices that may be helpful for departments that are considering implementing their own pre-arrest diversion programs. These guidelines are as follows:

- **Establish clear objectives.** Just as law enforcement officers cannot make arrests without probable cause, they should not engage in pre-arrest diversion without clarity of purpose. Such clarity is necessary not only for defining programs’ parameters, but also for establishing benchmarks against which law enforcement agencies can measure programs’ impact and assess programs’ efficacy.

- **Advocate outcomes instead of outputs.** What makes pre-arrest diversion conceptually powerful is that it drives impacts instead of activities. In order to realize their full potential, programs must therefore seek outcomes (e.g., reduced recidivism) instead of outputs (e.g., increased civil citations).

- **Co-create with community partners.** Pre-arrest diversion programs draw their power from police-community partnerships. A critical step in establishing a pre-arrest diversion program is, therefore, organizing community stakeholders with whom law enforcement agencies can collaborate in order to deliver community-based services offered to offenders in lieu of arrest.

- **Facilitate collaborative case management.** Because it’s tailored to individuals instead of their crimes, pre-arrest diversion at its best helps citizens overcome the mental, social, and economic circumstances on which their criminal behavior is predicated. With that in mind, coordination among agencies and stakeholders through collaborative case management is a defining feature of many pre-arrest diversion programs.

- **Promote officer-clinician teaming.** A multi-disciplinary approach is key to pre-arrest diversion. A favored approach in the co-responder model of officer-clinician teaming—wherein law enforcement officers work side-by-side with social workers, behavioral health professionals, or other community-based practitioners in order to identify and triage strong candidates for pre-arrest diversion at the tip of the spear.

- **Empower officers.** Front-line law enforcement officers have the power to arrest—or not. Their education and engagement are critical to the success of pre-arrest diversion. To earn the buy-in of front-line police officers, agencies must focus equally on training (i.e., teaching officers what the benefits of pre-arrest diversion are and what makes individuals good candidates to be diverted), trust (i.e., giving officers the autonomy and discretion to decide when arrest is and is not appropriate), and time (i.e., setting expectations that results may take months or even years to manifest).

- **Leverage Community Support.** Community members aren’t just the objects of pre-arrest diversion programs. When law enforcement agencies leverage offenders’ peers and/or neighbors as stakeholders, those stakeholder can also become important actors within pre-arrest diversion programs.

- **Emphasize evidence.** Grounding pre-arrest diversion programs in evidence-based practices is an important way that law enforcement agencies can ensure quality, win over stakeholders, and drive results. Where empirical evidence does not yet exist, it’s incumbent on law enforcement agencies to create it by way of documenting practices and analyzing outcomes.
Conclusion

Arrest is a useful and necessary option, but it’s not the only approach. Like surgery, arrest can be both appropriate and effective. Nonetheless, it is important for law enforcement practitioners to be familiar with all of the options that are now becoming available, and to develop the discretion and knowledge base that’s required in order to choose the right “treatment” at the right time.

Where implemented, law enforcement agencies have demonstrated that there is value in adding pre-arrest diversion to the intervention options from which officers choose their response. While more research is needed to evaluate the effectiveness of pre-arrest diversion, its underlying intentions and theory are to address the causes of criminality instead of the effects, making pre-arrest diversion a promising option for law enforcement officers to leverage.

Empirical research can help by shedding light on how and when pre-arrest diversion should be applied, how much it costs, and what its benefits and limitations might be. While that research is still forthcoming, however, law enforcement agencies can and should pursue pre-arrest diversion programs where it makes financial, operational, and social sense to do so. In so doing, police agencies can help the profession further refine the utility of arrest and help pre-arrest diversion realize its full potential.
About the IACP

The International Association of Chiefs of Police (IACP) is a professional association for law enforcement worldwide. For more than 120 years, the IACP has been launching internationally acclaimed programs, speaking on behalf of law enforcement, conducting groundbreaking research, and providing exemplary programs and services to members across the globe.

Today, the IACP continues to be recognized as a leader in these areas. By maximizing the collective efforts of the membership, the IACP actively supports law enforcement through advocacy, outreach, education, and programs.

Through ongoing strategic partnerships across the public safety spectrum, the IACP provides members with resources and support in all aspects of law enforcement policy and operations. These tools help members perform their jobs effectively, efficiently, and safely while also educating the public on the role of law enforcement to help build sustainable community relations.

About Arnold Ventures

Arnold Ventures works to invest in evidence-based solutions that maximize opportunity and minimize injustice. Viewing philanthropy as an engine of innovation, Arnold Ventures identifies problems and searches for answers. Once an idea is tested, validated, and proven efficacious, Arnold Ventures funds policy development and technical assistance to create change. A team of subject-matter experts works in four key issue areas: Criminal Justice, Education, Health, and Public Finance. The work of Arnold Ventures is guided by evidence-based policy, research, and advocacy.

About the IACP/UC Research Center

Funded by Arnold Ventures, the IACP/UC Center for Police Research and Policy brings together renowned scholars, current and former police executives, programmatic staff, and dedicated researchers to conduct cutting-edge research and share findings with law enforcement leaders around the world.

This publication is one in a series and is based on a literature review examining the factors associated with arrest and alternatives to arrest. To access the full literature review and more information and resources from the IACP/UC Center for Police Research and Policy, please visit https://www.theiacp.org/research.