

The Outcomes of a Pretrial Diversion Program in Texas¹

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IT IS WELL-DOCUMENTED that the United States has a large number of people under correctional control, including those subject to both institutional and community supervision (Kluckow & Zeng, 2022). Such individuals can experience many negative consequences, and may be subjected to long sentences (Mauer, 2018). Incarcerated persons are stripped from their communities, including family and other supportive resources, while those on probation and parole must comply with multiple conditional requirements (Klingele, 2013). Additionally, community sanctions often function as delayed levers to prison (Phelps, 2020). The colossal number of people under criminal justice supervision creates an overwhelmed and burdensome system that frequently does more harm to justice-involved individuals than good. One method intended to reduce these consequences is the implementation of pretrial diversion programs.

Diversion programs aim to reduce constraints on the criminal legal system and lessen negative personal consequences by shortening the amount of time individuals remain justice-involved. Pretrial diversion programs intend to decrease the number of individuals processed formally through the criminal justice system (Greene & Madon, 2014). While

the goal of pretrial diversion is well-known, the specifics of how such programs operate and their impact on program participants are less clear. Somewhat unknown are details about those who participate and successfully complete pretrial diversion programs. In this study, we address these questions by examining a pretrial diversion program in one Community Supervision and Corrections Department (CSCD) in Texas. We analyze the personal and criminal case characteristics of pretrial diversion participants at this CSCD and explore the relationship between such attributes and program success. Pretrial diversion programs can have real benefit to decrease further justice system involvement, as well as in some cases avoid a conviction (Ulrich, 2002). Given the potential benefits, it is critical to explore outcomes of such programs. If individuals are successful in these programs, they should be expanded; if not, then modifications may need to be proposed.

Background

Diversion programs are known as “front-door” programs working with individuals in the early stages of the criminal justice process in hopes of preventing further involvement and future incarceration (Latessa & Lovins, 2019). Diversion programs, as originally conceived, were to provide more individualized rehabilitative services that would “eliminate criminogenic stigma associated with lengthy adversarial proceedings and ensuing convictions” (Matthews, 1988; p. 191). A quasi-experimental design study on pretrial diversion programs found

positive results in the avoidance of criminal convictions among the pretrial diversion participants (Davis et al., 2021). Pretrial diversion programs also decrease stress on the system. A mixed methods study found that staff time as well as fiscal resources were saved in the studies of pretrial programs (Zlatic, Wilkerson, & McAllister, 2010).

The types of populations served, services offered, and length of pretrial diversion vary among jurisdictions, making it difficult to conduct large-scale studies of these programs. Despite diversion’s rehabilitative roots, some diversionary programs became more punitive during the “Get Tough on Crime” era of public policy. Around this same time frame, diversion programs experienced budget cuts and thus instituted fees to shift service costs onto participants (Matthews, 1988). The use of pretrial diversionary programs has failed to fully launch within the legal system (Zlatic et al., 2010), but there are pretrial diversion programs in the majority of states. According to the National Conference of State Legislatures (2017), 48 states along with the District of Columbia have statutory pretrial diversion programs. It is important to evaluate predictors of pretrial diversion success and to explore if success varies by demographic characteristics.

There is some limited research available that shows demographic differences may influence who is offered pretrial diversion. One study using data from court processing statistics found that Black defendants had lower odds of receiving pretrial services than White defendants. This same study also

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found that younger defendants (24 years and younger) had higher odds of receiving pretrial diversion than those 25 years of age and older (Schlesinger, 2013). In survey research of prosecutors and defense attorneys, both legal and extralegal factors were found to significantly influence whether these attorneys would recommend diversion to the court. Interestingly, 58 percent of prosecutors in this survey said an individual's background and ties to community would influence their decision on whether they recommended pretrial diversion (Alarid & Montemayor, 2010). Thus, the existing research highlights that demographic differences can be seen in who is offered pretrial diversion. In this current study, we explore whether there are demographic differences in who successfully completes a pretrial diversion program in one CSCD in Texas. Specifically, we ask the following research questions: 1) Who is on pretrial supervision? 2) What are the outcomes of individuals on pretrial diversion? And 3) Who is more likely to succeed on pretrial diversion?

Methods

Data were extracted from administrative records of an adult CSCD (i.e., probation department) serving an urbanized (U.S. Census Bureau, 2010) county in Texas. The sample for this study includes all individuals participating in a pretrial diversion program with this CSCD department between 2012 and 2020. Individuals with multiple records were dropped from the analysis, as were those still on active supervision. The final sample contained data from 8,642 pretrial diversion participants. Demographic, offense, and supervision information for each participant was included in this study.

Measures

Demographics

Age. The age of each participant was calculated based on their date of placement in pretrial diversion. This is the age of each person at the start of the diversion program. Age was calculated using the date of birth and placement date contained in probation agency records. Responses ranged from 17 to 81 years old.

Gender. The gender of each participant as reflected in probation records. Only male (0) and female (1) categories existed, so that is what was used for analysis.

Race. The race of each participant was as described in their probation record. Initially, individuals were classified as White (98.3%), Black (0.5%), Asian or Pacific Islander (0.3%),

Native American or Alaskan (0.1%), or unknown/other (0.8%). Due to the small number of individuals who fell into each minority group, participants were grouped into White (0) and Non-White (1) categories for analysis.

Ethnicity. The ethnicity of each participant was recorded in the person's probation record as Hispanic (97.0%), non-Hispanic (1.8%), or Other (1.2%). Due to a lack of detail concerning what "Other" entailed, that group was dropped from our analyses. Thus, the final variable for this measure was coded as non-Hispanic (0) or Hispanic (1).

Employment Status. Probation records captured if the individual was employed or unemployed at intake, which would have occurred shortly after the person's assignment to the pretrial diversion program. The final variable for this measure was coded as Employed (0) or Unemployed (1).

Citizenship. This measure reflected if the individual was a U.S. citizen at intake. This measure initially recorded each person's country of citizenship. The most prevalent country of citizenship for diversion participants other than the United States (86.6%) was Mexico (12.9%). Other countries that were also represented from several regions of the world include Central and South America, the Caribbean, Europe, and Africa. For analysis, this variable was coded as a U.S. Citizen (0) or Non-U.S.-Citizen (1).

Marital Status. Each participant's marital status was captured at intake. Initially this variable had responses of Married, Divorced, Separated, Single (never married), Widowed, and Common Law Partner. For analysis, these categories were collapsed to: Married or Partnered (1); Divorced, Separated, or Widowed (2); and Single (3).

Number of Dependents. This is the number of dependents for which participants reported at intake that they were financially responsible. This could have included adults as well as children. Responses ranged from 0 to 21, with a mean of 1.6 and standard deviation of 1.4.

High School Completion. Participants reported whether they had received a high school diploma or equivalent (ex: GED) at intake. This variable was coded as completed high school (0) or did not complete high school (1) for analysis.

Criminal Justice Variables

Offense Seriousness. This variable reflects the seriousness of the offense associated with

an individual's pretrial diversion. Initially responses included the level and degree of the associated offense. This was recoded to reflect only the offense level for analysis; thus, the final variable was coded as misdemeanor (0) or felony (1).

Offense Type. This variable reflects the type of offense associated with an individual's pretrial diversion. Probation records included the Texas penal code and related description, which we coded to create this variable. Each offense was categorized as either a person (assault, battery, child endangerment, accident involving injury, etc.), property (theft, burglary, criminal mischief, accident involving property damage, fraud, graffiti, etc.) weapon (deadly conduct, exhibiting firearm, prohibited weapon, unlawful possession of a weapon, unlawful discharge, etc.), sex (indecency/indecent exposure, prostitution, solicitation of a minor, public lewdness, sexual assault, etc.), drugs or alcohol (possession of paraphernalia or illicit substance, intent to distribute, DUI/OWI, sale to minors, etc.), or other (driving on a suspended license, cruelty to animals, giving false identification, evading arrest, obstruction, retaliation, racing on a highway, reckless driving, bribery, etc.). These categories were collapsed into four types based on the number of individuals in each group. Person, weapon, and sex offenses were combined into a single category for the final analysis; this was done to denote "violent" offenses and because of the small number of individuals in each category (i.e., person vs. weapon vs. sex) compared to the other categories available. The final variable used for analysis was coded: (1) Drug/Alcohol, (2) Property, (3) Violent (Person/Sex/Weapon), or (4) Other.

Supervision Outcome. This was the dependent variable and recorded the status of each individual's case upon termination from the pretrial diversion program. Initially this variable included four categories—completion of pretrial diversion, death, transfer, and violation of conditions (denoting unsuccessful completion). Due to the small number of total individuals who died or were transferred (n=25), participants who fell into those two categories were excluded. Therefore, the final variable used in regression analysis was coded as either (1) completion of pretrial diversion (i.e., successful) or (2) violation of conditions (i.e., unsuccessful).

Time on Supervision. This variable was created by subtracting each individual's termination date from their placement date. This allowed us to calculate the number of months

each person participated in the pretrial diversion program. Participation ranged from 0 to 29 months (2 years 5 months), with a mean of 8.2 months and standard deviation of 5.0 months.

Court-Appointed Attorney. Whether or not an individual used a court-appointed attorney was retrieved from probation records to create this variable. This variable was coded as (0) private attorney or (1) court-appointed attorney.

Results

Regarding our first research question, many individuals in this county who participated in pretrial diversion were male (70 percent), White (99 percent) and Hispanic (98 percent), employed (78 percent), U.S. citizens (86 percent), who possessed a high school diploma or equivalent (69 percent). The average age of participants was about 26 years old ($sd=9.3$), and most had never been married or in a domestic partnership (71 percent). On average, participants reported responsibility for 1-2 dependents. Additionally, most participants were charged with misdemeanor crimes (81 percent) and did not use a court-appointed attorney (83 percent). On average, individuals participated in pretrial diversion for about 8.2 months (263 days) and had engaged in drug- or alcohol-related offenses (73 percent) (driving under the influence; manufacturing, possession, or delivery of a controlled substance; intent to distribute; selling alcohol or tobacco to minors; etc.).

Overall, the demographic characteristics of pretrial diversion participants are similar to the general makeup of adult probationers in the sample county during the years examined, which the authors examined in a separate study (forthcoming). The high percentage of White-Hispanic participants reflects the overall population makeup of the sample county, which is majority White and Hispanic according to 2020 U.S. census data. The general adult probation population also reflects such characteristics in this jurisdiction. However, compared to the general adult population of this county, a higher percentage of pretrial diversion participants are employed and have high school diplomas.

In answer to our second research question, probation pretrial diversion records for this study indicated that most participants fell into two categories—they either successfully completed pretrial diversion (about 90 percent) or were unsuccessfully terminated due to a violation of the program conditions (about 10 percent). A small minority were transferred

(0.2 percent) or died (0.1 percent) during their time in the program instead. Violations were associated with several status changes including absconding, deportation, incarceration, and new charges being filed.

Our third and final research question asks who is more likely to succeed on pretrial diversion. Our analyses examine the impact of a variety of demographic and criminal justice characteristics on an individual's chance of successfully completing pretrial diversion. Due to the small number of individuals whose diversion participation ended when they transferred or died, we limited our regression analysis to include only those who either successfully completed diversion or violated their conditions.

Prior to conducting the logistic regression, we ran several preliminary and descriptive tests comparing successful vs. unsuccessful participants in completing pretrial diversion. Table 2 (next page) displays descriptive statistics for each variable included in the logistic regression separated by diversion outcome. Chi square, t-test, and ANOVA statistics were calculated to examine the significance of differences present between the two groups as shown in the table. Results indicated that individuals who successfully completed pretrial diversion were significantly different from those who violated their conditions on all variables tested except for ethnicity. To further explore these differences, a logistic regression was conducted.

To determine the effects of demographic (age, race, ethnicity, high school completion, employment, marital status, number of dependents, citizenship) and criminal justice (supervision length, offense seriousness, offense type, and having a public defender) variables on pretrial diversion completion, we performed a logistic regression. Results are displayed in Table 3 (next spread). We first tested how the demographic variables included in this study impacted an individual's chance of successful completion, then added criminal justice variables to the model. Both models were statistically significant (Model 1: $X^2=252.25$, $p=0.000$; Model 2: $X^2=549.10$, $p=0.000$). The final model including all variables explained about 17 percent of the variance in diversion completion and correctly classified about 88.2 percent of cases.

In both models, age, gender, employment, and citizenship significantly predicted pretrial completion. Specifically, those who were older, female, employed, or a non-U.S. citizen had significantly higher chances of successfully completing diversion than individuals who

were younger, male, unemployed, or U.S. citizens. Every year increase in age was associated with a 5 percent decrease in an individual's odds of unsuccessful completion. Females were significantly less likely to unsuccessfully complete pretrial diversion than males, while unemployed persons were significantly more likely to unsuccessfully complete pretrial diversion than those employed. Likewise, non-U.S. citizens were significantly less likely to unsuccessfully complete pretrial diversion than U.S. citizens. In Model 1, ethnicity, having a high school diploma, and being divorced/separated/widowed were also significantly associated with diversion completion. Those who were Hispanic, or had a high school diploma, or were married/partnered were more likely to successfully complete diversion than those who were non-Hispanic, divorced/separated/widowed, or did not complete high school. However, these variables became non-significant in Model 2.

TABLE 1.
Sample Characteristics

Supervision Outcomes	
% Successfully Completed Pretrial Diversion	89.6
% Violated Conditions	10.4
Demographics	
% Female	30.1
% Non-White	0.8
% Hispanic	98.2
% Unemployed	22.2
% High School Diploma	68.6
% US Citizen	86.5
Marital Status	
% Married or Common Law Partners	21.0
% Divorced, Separated, or Widowed	7.8
% Single/Never Married	71.2
Average Age	26.1
Average Number of Dependents	1.6
Criminal Justice Variables	
% Felony	19.0
% With Court Appointed Attorney	16.9
Offense Type	
Violent (Person, Sex, Weapon)	6.0
Property	16.3
Drug or Alcohol	72.5
Other	5.1
Average Months on Supervision	8.2

Adding criminal justice variables in Model 2 slightly increased correct classification of cases from 87.8 percent to 88.2 percent. Pseudo-predictors of dependent variable variance (Nagelkerke R2 statistic) also increased from Model 1 ($R^2=0.08$) to Model 2 ($R^2=0.18$). Thus, the inclusion of criminal justice predictors into our analysis in addition to known demographic characteristics associated with criminal justice involvement appeared to improve our model. We found that all variables added to our analysis in Model 2 (months on supervision, offense seriousness and type, and having a court-appointed lawyer) were significantly associated with successful completion of pretrial diversion. Specifically, those under pretrial supervision for longer periods, with a felony offense, or with a court-appointed lawyer were significantly more likely to unsuccessfully complete diversion. Of note is our finding that individuals with a felony offense were 5.17 times more likely to unsuccessfully complete pretrial diversion compared to those with a misdemeanor. Further, individuals who used a court-appointed lawyer were 1.47 times

more likely to complete diversion unsuccessfully than those with a private attorney. However, compared to individuals with drug and/or alcohol offenses, those with property offenses, violent offenses (i.e., person, sex, or weapon offense types), or “other” offenses were significantly less likely to complete diversion unsuccessfully.

Discussion

This study provides a snapshot of the characteristics of pretrial diversion participants in one county in Texas and the impact of these characteristics on diversion outcome. The CSCD agency examined serves a county that is quite racially homogenous. This county was identified by the U.S. Census as majority white and Hispanic. This demographic is also reflective of who is on probation; thus, we did not uncover racial disparities. Diversion is primarily for individuals who are assessed at low-risk and have committed minor offenses (Latessa & Lovins, 2019). Thus, it would be expected that risk factors associated with future offending, such as unemployment and

low educational achievement, would be less prevalent among pretrial diversion participants. This is consistent with our results, as most participants were employed high school graduates who had committed a misdemeanor offense. Further, as reported in the literature review, attorneys heavily weigh an individual's ties to the community (Alarid & Montemayor, 2010) when considering recommending diversion. Active employment could signal community ties. Relatedly, individuals on pretrial diversion reported responsibility for approximately two dependents on average (slightly higher than the average for the general probation population of this county), which could also be suggestive of existing community ties. Further, pretrial diversion is also meant to be short term (Latessa & Lovins, 2019). This is consistent with the less than one-year (about 8 months on average) individuals in the sample spent on pretrial diversion. Interestingly, though increased age and marriage are associated with lower chances of re-offending, most pretrial diversion participants in our sample were single young adults.

In answering our second research question we found that most individuals in this sample successfully completed the pretrial diversion probation. With the third question, we see some differences in completion by demographics. Individuals who were employed had significantly higher odds of completing than individuals who were unemployed. Specifically, in our final model, unemployed individuals were almost one and half times more likely to unsuccessfully complete pretrial diversion than those who were employed. Age also mattered; in this sample older individuals were more likely to be successful. As individuals aged, their likelihood of success increased.

From this sample, pretrial diversion appears to have the most success with individuals who have fewer barriers and potentially more resources. For example, unemployed individuals and those who use a court-appointed attorney (signaling a low-income background) have higher odds of unsuccessfully completing this pretrial diversion program. Future research is needed, however, to understand why these groups are more likely to be unsuccessful. As noted in previous literature, the cost of diversion often falls on the clients (Matthews, 1988). A barrier to success may be that some individuals are not able to afford required diversionary services (ex: drug/alcohol treatment and/or monitoring), then stop attending, and are consequently violated for absconding. Aside from the financial piece, individuals with multiple

TABLE 2.
Descriptive Comparisons of Successful vs. Unsuccessful Pretrial Diversion Participants

	Successful Completion of Pretrial Diversion	Unsuccessful Completion – Violated Conditions
Demographics		
% Female**	31.4	19.4
% Non-White*	0.7	1.5
% Hispanic	98.3	97.6
% Unemployed**	20.7	35.5
% High School Diploma**	69.4	61.7
% US Citizen**	86.0	91.9
<i>Marital Status*</i>		
% Married or Common Law Partners	21.3	18.1
% Divorced, Separated, or Widowed	7.9	6.4
% Single/Never Married	70.8	75.5
Average Age**	26.4	23.2
Average Number of Dependents**	1.6	1.4
Criminal Justice Variables		
% Felony**	17.7	29.6
% With Court-Appointed Attorney**	15.9	25.6
<i>Offense Type**</i>		
Violent (Person, Sex, Weapon)	6.2	4.7
Property	17.3	8.1
Drug or Alcohol	71.2	84.6
Other	5.4	2.7
Average Months on Supervision**	8.4	6.2

*p<0.05, **p<0.01

barriers could be experiencing other challenges that make it difficult for them to comply with diversion, such as transportation constraints or needing to prioritize finding employment. These findings highlight a need for further investigation to fully understand the explanations for these differences.

The benefits of pretrial diversion programs are that they are short by design and can prevent further involvement in the criminal legal system (Greene & Madon, 2014). While they often do not fully reduce the collateral consequences of legal system contact, at a minimum they can reduce some of the collateral consequences and stigma from more severe, prolonged contact. Seeing individuals do well in pretrial diversion is good for them and for the criminal legal system. However, if those who do well are likely to have more resources and connections to the community than those who are unsuccessful, then there are unequal consequences of punishment. A comprehensive qualitative study highlights how the experience and consequences of criminal legal involvement often differ based on one's class and privilege (Clair, 2020). This pretrial diversion program may be producing similar results. Individuals with greater resources may be able to more easily access pretrial diversion and therefore more quickly exit the justice system, whereas individuals with less resources face prolonged involvement and are thus pushed further upstream to more severe consequences. This suggests another area of research to explore further: What happens to individuals who do not successfully complete pretrial? Similarly, what happens long-term to individuals who *do* successfully complete pretrial diversion? Gittner and Dennis (2022) write that there is disconnect in the "outcome of diversion" (p. 188). They recommend that greater attention be given to what happens after participation in diversion programs ends. Examining outcomes beyond recidivism for pretrial diversion participants can help us better measure whether individuals become contributing, productive, community members post-diversion. Future research may want to longitudinally explore how diversion participants fare, including examinations of both those who successfully complete diversion and those who do not.

References

- Alarid, L. F., & Montemayor, C. D. (2010). Legal and extralegal factors in attorney recommendations of pretrial diversion. *Criminal Justice Studies: Critical Journal of Crime, Law, and Society*, 23(3), 239-252.
- Clair, M. (2020). *Privilege and punishment: How race and class matter in criminal court*. Princeton: Princeton University Press.
- Davis, R. C., Reich, W. A., Rempel, M., & Labriola, M. (2021). A multisite evaluation of prosecutor-led pretrial diversion: Effects on conviction, incarceration, and recidivism. *Criminal Justice Policy Review*, 32(8), 890-909. <https://doi.org/10.1177/08874034211000403>
- Gittner, L. S., & Dennis, J. A. (2022). A public health perspective on diversion programs for justice-involved individuals with mental health issues (pp. 171 – 193). In *Handbook on pretrial justice* (C. S. Scott-Hayward, J.E. Copp, & S. Demuth Eds). Routledge.
- Greene, C., & Madon, N. S. (2014) Pretrial diversion. *The encyclopedia of criminology and criminal justice*.
- Klingele, C. (2013). Rethinking the use of community supervision. *The Journal of Criminal Law and Criminology*, 103(4), 1015–1069.
- Kluckow, R., & Zeng, Z. (2022). *Correctional populations in the United States, 2020 – Statistical tables*. Bureau of Justice Statistics. Retrieved from: <https://bjs.ojp.gov/content/pub/pdf/cpus20st.pdf>
- Latessa, E., & Lovins, B. (2019). *Corrections in the community* (7th Ed.). New York: Routledge.
- Matthews, W. G. (1988). Pretrial diversion: Promises we cannot keep. *Journal of Offender Counseling, Services & Rehabilitation*, 12(2), 191-202.
- Mauer, M. (2018). Long-term sentences: Time to reconsider the scale of punishment. Sentencing Project. *UMKC Law Review*, 87(1), 113–131.
- National Conference of State Legislatures. (2017). *Pretrial diversion*. Retrieve from: <https://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx>
- Phelps, M. S. (2020). Mass probation from micro to macro: Tracing the expansion and consequences of community supervision. *Annual Review of Criminology*, 3(1), 261-279.
- Schlesinger, T. (2013). Racial disparities in pretrial diversion: An analysis of outcomes among men charged with felonies and processed in state courts. *Race and Justice*, 3(3), 210–238. <https://doi.org/10.1177/2153368713483320>
- Ulrich, T. E. (2002). Pretrial diversion in federal court system. *Federal Probation*, 66(3), 30–36.
- Zlatic, J. M., Wilkerson, D. C., & McAllister, S. M. (2010). Pretrial diversion: The overlooked pretrial services evidence-based practice. *Federal Probation*, 74(1), 28–34.

TABLE 3.
Logistic Regression Results Predicting Successful vs. Unsuccessful Completion of Pretrial Diversion

	Model 1		Model 2	
	Odds Ratio	Standard Error	Odds Ratio	Standard Error
Age	0.95**	0.01	0.95**	0.01
Non-White	2.21	0.50	2.43	0.52
Female	0.51**	0.10	0.62**	0.11
Hispanic	0.52*	0.32	0.60	0.33
No High School Diploma	1.41**	0.09	1.19	0.09
Unemployed	1.71**	0.09	1.47**	0.09
Divorced, Separated, or Widowed	1.44*	0.18	1.34	0.19
Single	1.03	0.12	1.01	0.13
Number of Dependents	1.07	0.04	1.07	0.04
Not a US Citizen	0.56**	0.16	0.64*	0.16
Months on Supervision			0.89**	0.01
Felony			5.17**	0.12
Court-Appointed Lawyer			1.47**	0.10
Property Offense			0.40**	0.16
Violent Offense			0.34**	0.26
"Other" Offense Type			0.56**	0.20
Constant	0.89	0.39	1.27	0.40
Chi Square			Chi Square	
Model Summary	252.25**		549.10**	

*p<0.05, **p<0.01