

Principles of Prosecutor- Led Gun Diversion Programming

The National Landscape and Current Trends

Smart Decarceration Project

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Introduction

Prosecutors' offices are a critical site for criminal legal reform and decarceration, as they largely determine how individuals are processed through the criminal legal system, and have been a driving force behind mass incarceration. In recent years the notion of "progressive prosecutors" has gained significant traction, with prosecutors increasingly recognized as having significant power to repair some of the damage that has been inflicted on people involved in the criminal legal system while also addressing issues of safety and justice.

Prosecutor-led diversion programs (PLDPs) are programs that divert people charged with a variety of criminal offenses from traditional court processing if they agree to participate in program requirements in return for the dismissal of their charge(s).

PLDPs take many forms. They may be structured as pre plea (when the participant is not required to plea to the charge to enter the program) or post plea (when the participant pleads guilty in order to enter the program); accept felonies, misdemeanors, or both; target specific charges (e.g., drug, property or prostitution) or an array of charges; and range in approach, from ordering individuals to lengthy periods of drug or mental health treatment to offering short educational classes or job training.

PLDPs offer an opportunity to provide meaningful services while avoiding the direct and indirect consequences of deeper criminal legal system involvement and incarceration. Yet, PLDPs often deem "violent" charges to be ineligible for diversion programming. A common example of "violent" charges includes most gun-related cases. However, some prosecutors have begun to recognize that there is a range of types of gun charges and believe some charges to be more suitable candidates for diversion than others.

Given the complex and politicized nature of gun charges, little is known about how programs could be and are leveraged to include "higher-risk", more complex cases in order to address issues of gun-carrying and gun violence. While interest in prosecutor-led gun diversion programs (PLGDPs) has increased in the last year, little is known about what program models are commonly utilized by PLGDPs or their long-term impacts. This report seeks to address this gap by presenting an overview of program models and approaches utilized by PLGDPs that were identified through a national search conducted by the Smart Decarceration Project.

This report draws from an ongoing landscape scan of PLGDPs conducted by the Smart Decarceration Project from 2019-2021. Through an iterative process of literature reviews and meetings with stakeholders, our office has identified eight PLGDPs across the United States. This report will reference content reviews and qualitative evidence collected from interviews and program development meetings as part of an ongoing study conducted by the Smart Decarceration Project. The majority of identified programs are in large midwestern and east coast cities. The variety of models represented here exemplify that there is no standardized program model that will guarantee success, but rather that offices are responding to the unique circumstances in their cities, utilizing the resources available, and attempting to take into account participants' needs and situations. While outcome evaluations of some of these programs is emerging, ongoing research and program adaptability will develop the knowledge base on PLGDPs and suggest promising practices.

Program Development

The United States has one of the highest rates of civilian gun ownership in the world, and conversations about gun violence are ever-relevant. Across the nation, various forms of gun violence have significantly declined over the past three decades. Although many cities in the U.S. experienced an uptick in gun violence in 2020, current levels of gun violence remain considerably lower than they were in the 1990s.

Within this complicated landscape, many elected officials have made it a priority to address gun-carrying and gun violence. Differentiation between illegal gun possession and unlawful use of a weapon has been an important part of the conversation. For example, from 2009–2019 in Illinois, illegal gun possession accounted for 72% of all gun-related arrests. Prosecutors' offices are increasingly paying attention to the nuances of gun-related charges and developing alternative ways to respond to them.

PLGDPs are often developed when legal stakeholders conclude that uniformly applying typical “tough on crime” approaches is not effective at deterring gun violence. PLGDP development can be an effort on the part of prosecutors to address factors such as trauma, and how it can influence when and why individuals illegally possess a firearm. Yet, given the politicized nature of guns, there are relatively few PLGDPs across the country and even fewer that have been researched.

The origin story and structure of each PLGDP is unique. The legal framework and structure of each state or county means that prosecutors' offices have varying levels of influence over gun-related charges. For example, in some states illegal gun possession is a misdemeanor handled by a City Attorney's office, while other gun charges may be considered felonies and handled by a County or State office. Therefore, the eligible charges for each PLGDP may differ. The stakeholders in each location vary as well, and can include parties such as judges, police, defense attorneys, and community organizations.

Although many of the PLGDPs discussed in this report are still under development, one common feature among programs is the use of risk assessments and screening to determine eligibility. For instance, prior felony charges and convictions often position an individual to be deemed "high-risk" by prosecutors and subsequently ineligible for PLGDP enrollment. Oftentimes, these individuals have a criminal history, which may include prior charges or convictions, some of which may be deemed violent. However, many PLGDPs have expressed interest in expanding eligibility to a larger population once the program is established and evaluated for "low-risk" or "moderate-risk" individuals.

PLGDP approaches to service provision and programming vary widely. For instance, some programs utilize a standardized approach and enlist similar services and programming for every participant, regardless of the defendant's risk assessment score or circumstances. Other PLGDPs individualize services, programming, and even program length depending on the individual's needs.

Emerging PLGDPs have chosen to incorporate components such as cognitive-behavioral therapy, life skills or anger management training, trauma-informed services, wraparound service provisions, and restorative justice circles into programming for participants. Sites are also developing programming based on their unique environments, participants, and available resources.

Program Models

Four common program models utilized by eight PLGDPs across the United States

Our national scan identified eight PLGDPs across the United States. Examination of the program elements of each of these programs found that the most common treatment approaches used included: cognitive behavioral, life skills/anger-management training, service/resource provision, and restorative justice circles, which are all briefly summarized below.

1. Cognitive-Behavioral

Cognitive-behavioral programming in the criminal legal context is based on the idea that criminal behavior is the result of deficient or distorted thinking, inappropriate reasoning, and limitations in making rational decisions.

2. Life Skills & Anger Management Training

Anger management is often utilized in life skills training and is popular amongst identified PLGDPs. Anger management program models often involve learning to control one's reactions to anger-provoking situations including the emotional feelings of anger, the physiological arousal associated with anger, and modifying the resulting behavior.

3. Service and Resource Provision

Other PLGDPs recognize the role that limited resource and service accessibility has on gun-carrying and gun violence. Many programs use this model in combination with one of the others discussed.

4. Restorative Justice Circles

One of the identified PLGDPs utilizes restorative justice, a practice that has grown in popularity in other areas of the criminal legal system, such as treatment courts.

PLGDPs may use a combination of program models or supplement programming with additional program requirements such as case management, drug treatment and testing, or mental health treatment.

As jurisdictions continue to develop PLGDP programming, programs must continue to consider the reasons why people carry a gun, as well as what services and programming would lessen the likelihood an individual carries a gun illegally or commits an act of gun violence. As such, additional research is needed to assess which program elements are most effective and for whom.

1. Cognitive-Behavioral

Cognitive-behavioral programming, drawn from cognitive-behavioral therapy (CBT), is based on the idea that criminalized behavior is the result of deficient or distorted thinking, inappropriate reasoning, and difficulty making rational decisions. According to its developers, cognitive restructuring and social skills interventions work together to create new ways of thinking that reduce the risk of doing something hurtful or criminal.

One of the PLGDPs currently being evaluated by the Smart Decarceration Project utilizes a CBT framework throughout its programming, which also includes case management, motivational speaking modules, and psychoeducation. The program's cognitive-behavioral sessions focus on challenging and restructuring negative thoughts, understanding how thoughts influence emotions, and developing new problem-solving techniques.

The program is a partnership between a non-profit organization and the prosecutors' office, involving 82 hours of programming over the span of nine months. If the individual completes the program and commits no new offenses for a period of two years while on probation, the charge is dismissed.

Practitioners interviewed by the Smart Decarceration Project noted that many of their PLGDP participants carry a gun after witnessing or knowing that people in their communities have died from gun violence. Practitioners see the connection between a trauma response (e.g., "fight or flight") and an individual's likelihood of carrying a gun. As such, several PLGDPs have developed trauma-informed cognitive-behavioral components to their programming.

2. Life Skills & Anger Management Training

While there is little standardization of what classifies as life skills training in the context of PLGDPs, life skills training in criminal legal contexts usually involves teaching individuals "self-development, communication skills, job skill development, education, interpersonal relationship development, criminal thinking styles, stress and anger management." The rationale behind life skills training is that development of such skills gives individuals the resources to obtain educational degrees and certificates, prepare individuals to enter the workforce, and motivate individuals to stay away from negative influences, all of which system actors believe may work to reduce recidivism.

Anger management is often utilized in life skills training and is popular amongst identified PLGDPs. Anger management program models involve learning to control one's reactions to anger-provoking situations including the emotional feelings of anger, the physiological arousal associated with anger, and the resulting behavior. Programs labeled as anger management vary in content and methods but share the goal of teaching people how to control their responses to anger and triggering situations. According to its developers, anger management can address some of these impulsive acts because it is premised on cognitive restructuring—learning how to think rationally, interpret events, anticipate consequences, and distinguish the normal emotion (anger) from the resultant undesirable behavior (violence or aggression). In this way, anger management bears some similarities to cognitive-behavioral approaches.

3. Service & Resource Provision

Other PLGDPs recognize the role limited resource accessibility has on gun carrying and lack of safety. Staff working in several PLGDPs expressed an understanding that feeling unsafe in one's environment can be the result of experiencing trauma in the community. A resulting approach is to provide participants with resources that can address their traumatic experiences and/or ongoing challenges. Additionally, many PLGDPs partner with public health and social service agencies to ensure participants have access to needed resources such as housing, counseling, substance use disorder treatment, transportation, and employment. Services may include classes to help individuals understand the process to legally carry a gun in their state.

One PLGDP coordinates resources through a collaboration with non-profit organizations, the prosecutor and public defender's offices, and the county health department. Individuals in this PLGDP enter the program through a Public Defender's referral, and are connected with case coordinators who work with them to determine what services are needed throughout the program's three-month window. While the individual receives services, they do not make any contact with court actors and are not placed under supervision. The partners meet every week to collaborate on service provision, and at the conclusion of the three-month period the client is eligible to apply for expungement.

This unique cross-agency collaboration is one example of a program that attempts to consider the ecological reasons why an individual may carry a gun. Additionally, the program requires little court supervision and establishes long-term service provision independent of the legal system and PLGDP enrollment.

4. Restorative Justice Circles

Restorative justice circles are often utilized outside of the criminal legal system to address direct instances of harm (e.g. intimate partner violence). The efficacy of restorative justice in community settings has been well documented, and the practice has gained increasing attention within the criminal legal system.

One identified PLGDP has each participant take part in up to three restorative justice circles. In a restorative justice circle, trained community members meet with the individual to discuss the impact of illegal gun possession on the community, and work together to create a repair of harm agreement for the individual to complete. The repair of harm agreement is an opportunity for the individual to address their reasons for carrying a gun illegally and understand how that decision impacted the community. Individuals' needs are simultaneously assessed through a risk-assessment instrument to inform what other services are needed (e.g., cognitive-behavioral programming, outpatient treatment, etc.).

A non-profit organization focused on restorative justice manages the circles and works with the prosecutors' office to implement the program. The circle keepers (i.e., the facilitators of the circle) include (but are not limited to) formerly-incarcerated individuals. Currently, state actors (attorneys, law enforcement, etc.) are intentionally not involved in the restorative justice process.

If there are impediments to individual's ability to meet the requirements of the repair of harm agreement, the circle keeper will work with both parties to address participant barriers while still achieving the goals set by the circle. Once the requirements outlined by the repair of harm agreement are met and other programming is completed, the individual can file for expungement.

Research

Research on many forms of prosecutor-led diversion programs is quite limited, and research specific to PLDGPs is just beginning to emerge. While many of the identified PLDGPs utilize program and treatment approaches that are informed by existing evidence, we must stress that these PLDGPs have not been sufficiently evaluated to determine if the models are effective at reducing gun violence and general recidivism, or improving other important outcomes. Because many PLDGPs are in early stages of development and operation, longer-term outcome evaluations will not be possible until more participants have passed through these programs and sufficient follow-up time has elapsed.

However, formative research on these PLDGPs is currently underway, and this research will be essential to subsequent outcome studies. The Smart Decarceration Project is currently leading a research project examining four new and developing PLDGPs in the Midwest region of the U.S.

The Smart Decarceration Project's research aims to better understand the development and specific features of PLDGPs through multiple sources of data, including qualitative interviews with a variety of program stakeholders, and establishing meaningful and consistent data protocols for future quantitative analyses.

As research on PLGDPs begins to develop, several key considerations are worth noting. First, specific criminal legal features (e.g. plea requirements, length of program, opportunities for expungement) and treatment approaches (program modality, target population, and program intensity) should be clearly described, as there is no current standard model for gun diversion programs. Second, examining the local context for each PLGDP, including differences in state gun laws, local political climate, and community resources, will build knowledge on how PLGDPs may be adapted and expanded to new settings.

Third, it is essential that the voices and experiences of PLGDP participants be explored, as the acceptability and relevance of program characteristics is a key consideration in evaluation research. Finally, evaluation research should articulate and examine a range of short, medium, and long-term outcomes, to test the extent to which PLGDP programming is effectively targeting hypothesized mechanisms to reduce illegal gun possession and gun violence.

As the research base on PLGDPs builds, it will be essential to disseminate findings and knowledge to a wide range of audiences, including prosecutors' offices, other criminal legal entities, researchers, advocates, and broader public audiences. Responding to emerging evidence on PLGDPs in real time is critical to ensure that new and developing programs are evidence-informed.

If PLGDPs are to be improved and expanded to increase their impact, additional research is needed to understand the inner workings of such programs, for whom they work, and why.

The following table captures a snapshot of the eight programs identified by the Smart Decarceration Project, illustrating common characteristics and unique features across programs. This list is not exhaustive, and the Smart Decarceration Project looks forward to connecting with other emerging PLGDPs nationwide.

Table 1: National Landscape of Prosecutor-Led Gun Diversion

Program	Location	Eligibility	Pre/Post Plea & Classification	Program Model	Group or Individual	Duration	Case Outcomes & Incentives
1	East Coast	<p>First felony charge (usually a firearm possession charge)</p> <p>Prior or currently involved with street gangs</p> <p>Adult program</p>	Post-plea, felony	Life-skills/anger management (also includes firearms possession education, community service, weekly drug testing, night curfew checks, weekly group meetings)	Group	<p>18-24 months</p> <p>12 month program</p> <p>6-12 month probation (depending on program participation)</p>	Dismissal of all charges
2	East Coast	<p>First charge</p> <p>Adult program</p>	Post-plea, misdemeanor or felony (depending on circumstance)	Life skills/anger management (also includes weekly group meetings, drug testing, community service, curfew, job training, and the completion of a mandated GED program)	Mixed	<p>6-24 months</p> <p>Program and probation length are determined by probation department</p>	<p>Dismissal of all charges</p> <p>Eligible for complete expungement</p>
3	Midwest	<p>No criminal history</p> <p>No substance abuse issues</p> <p>No gang affiliation or history of violence</p> <p>Adult program</p>	Post-plea, felony	Anger management (also includes drug/alcohol evaluations reporting program)	Mixed	<p>12 months</p> <p>Program and probation length are determined by probation department</p>	<p>Guilty plea withdrawn</p> <p>Dismissal of all charges</p>
4	Midwest	<p>Low risk determined by risk assessment</p> <p>No prior gun convictions</p> <p>No prior violent felony convictions or charges of violence</p> <p>No domestic assault charges or convictions in the last 5 years</p> <p>Not currently on probation</p> <p>Adult program</p>	Pre-plea, gross misdemeanor	Trauma-informed cognitive-behavioral treatment (also includes education, job skills training, employment, and community service)	Group	<p>24 months</p> <p>6-9 months of programming and case management</p> <p>24 months of probation</p>	Expungement eligible within one-year of program/probation completion

5	Midwest	Youth program, under age 18	Pre-plea, misdemeanor or felony (depending on circumstance)	Service and resource provision (youth receive individualized services coordinated by various stakeholders that are independent from the court)	Individual	3 months 3 month programming No probation	Once services are completed record is immediately expunged and case is dismissed
6	East coast	Low-risk determined by risk assessment Several priors and gang affiliation are eligible Adult program	Pre-plea, felony	Cognitive-behavioral (also includes work, educational, and vocational training, and electronic monitoring)	Individual	6-12 months Program and probation length are determined by probation department	Not incarcerated Solely receive probation (may or may not include probation completed through diversion program)
7	Midwest	No felony background Underlying factors of the case (i.e. prior arrests) up to the discretion of the prosecutor No previous offenses of domestic battery or other violent crimes Adult program	TBD felony	Cognitive-behavioral (also includes trauma-informed individual and group counseling services)	Mixed	6 months Programming depends on risk-level Difference between low-risk and high-risk programming are the number of group sessions and length of one-on-one counseling	Complete dismissal of charges Eligible to file for expungement
8	Midwest	No background of certain gun-related offenses (e.g. reckless use of a dangerous weapon), domestic violence, crimes against children, conviction for sexual assault Low-risk for violence Adult program	Pre-plea, gross misdemeanor	Restorative Justice (also includes case management and cognitive behavioral treatment components)	Mixed	1 year	Complete dismissal of charges

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About the Smart Decarceration Project

The Smart Decarceration Project at the University of Chicago's Crown Family School of Social Work, Policy, and Practice is bridging research and practice to reduce the over reliance on incarceration while addressing the racial and behavioral health disparities in the criminal justice system. Generating real-world evidence in close collaboration with local and national stakeholders, the Smart Decarceration Project seeks to reduce the use of incarceration by developing interventions that deliver tangible impact, informing the next generation of criminal justice policies and programs, and spearheading a cross-sector movement sustained by transdisciplinary dialogue.

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