

Mapping Prosecutor-Led Diversion Case Study

The Mental Health Diversion Program: Harris County District Attorney's Office (Harris County, Texas)

October 2023

The Mental Health Diversion Program is a precharge program for people experiencing mental illness who are detained by law enforcement for low-level, nonviolent misdemeanors. It aims to divert people with mental health needs from arrest and jail and address their underlying needs through immediate treatment and long-term support.

This case study, which is part of the [Mapping Prosecutor-Led Diversion Project](#), focuses on the Mental Health Diversion Program's scope and evolution, the partnerships key to its success, and takeaways for other prosecutors and stakeholders looking to launch similar programs. The information included is based on interviews with program leadership, staff, and partners. This case study is intended as an overview of this diversion strategy and is not an assessment or evaluation.

The Mental Health Diversion Program

As Harris County's new district attorney (DA) in 2017, Kim Ogg wanted to prioritize mental health diversion, based on the belief that the criminal legal system is not designed to solve problems of mental health and should instead engage with partners to treat those challenges as a public health issue. For decades, Harris County's Neuropsychiatric Center served as a diversion location for people experiencing an acute mental health crisis; however, there were few diversion options for those with nonacute and nonemergency mental health needs. The DA's office decided to begin by diverting criminal-trespass cases after discovering that 85 percent of cases booked into the Harris County Jail in 2016 on trespassing charges were identified as experiencing a [mental health challenge or homelessness](#), and many cycled repeatedly through the jail because their underlying needs were not being addressed and were often exacerbated by incarceration. Some were held in jail because they were not competent to stand trial due to these needs. DA's office leadership led the charge in determining the case processing stage at which to divert people, which offenses would be eligible, where to secure funding, the appropriate facility for services, and which partners were needed to make the program successful. They decided on a precharge—or "no-charge"—diversion approach in order to avoid booking people in the jail entirely. The program was initially funded through a pilot program funded by the state legislature, which recognized the importance of expanding diversion options in Texas.

Although the DA's office provided key leadership, it relied on strong partnerships with other agencies, particularly the judge's office, sheriff's office, chief of police, and mayor—all of whom were interested in creating a precharge diversion center. After the law enforcement partnerships were established, they approached the Harris Center for Mental Health and IDD—the local mental health authority for Harris County, which had a long history of collaboration with law enforcement—to be the entity for housing the program and serving participants. The Judge Ed Emmett Mental Health Diversion Center opened in 2018.

In interviews, DA's office leadership spoke of the importance of being flexible and prepared to course-correct over time, and to keep expanding. Although the Mental Health Diversion Program began with an initial focus on people who would otherwise be charged with criminal trespass, eligibility expanded in mid-2019 to include other low-level offenses. As the program grew, it moved to a new facility where it is now housed alongside other programs offered by Harris County's local mental health authority, all of which serve people at the intersection of mental health needs, homelessness, and criminal legal system involvement. After observing the need for more catchment areas, the DA's office later created another postcharge diversion program for those missed by the first catchment (in the field) or second (in the processing center).

People are primarily referred to the Diversion Center by the various law enforcement agencies across Harris County. The facility's intake division is open 24/7. Officers can call the Diversion Desk to learn more about the mental health history of people they have in custody, which may inform decisions about whether to divert. A history of mental health needs is not required for diversion if they appear to need mental health care. Officers are given Crisis Intervention Team (CIT) training to help them determine whether there is an underlying mental health issue. At the point of arrest, officers contact the DA's office for a prearrest review of the suspected offense and possible charges. Once the officer and ADA have reached a determination to bring someone to the Diversion Center, their involvement in that case ends without an arrest or charges filed, and the case is handed off entirely to service providers. Harris Center leadership noted that this distinction has been critical to ensure that they are not viewed as part of the criminal legal system, which could lead clients to be hesitant about participating.

Special thanks to our partner at the Urban Institute:

Leigh Courtney
Senior Policy Associate



Mapping Prosecutor-Led Diversion Case Study

The Mental Health Diversion Program: Harris County District Attorney's Office (Harris County, Texas)

October 2023

The program is voluntary; the center is not a detention facility, and participants must be willing. There is a standardized set of intake procedures for people entering the Diversion Center. The first person to engage with each client is a peer supporter with lived experience of mental health needs and, in some cases, criminal legal system involvement. Clients are also offered a meal. This is followed by a medical assessment by a nurse and physician and evaluation by a psychiatrist and clinician. Clients with medical needs may be transferred to a medical facility for additional care, but remain eligible for diversion aftercare to continue receiving services in the community. Clients also receive a needs assessment to determine whether they need support with housing, employment, care coordination, case management, or other services. The center is staffed by a range of therapists, care coordinators, employment specialists, and others who can provide wraparound services. The program aims to transition clients from the center to aftercare within a few days; the average length of stay in the center is three to five days.

The program has made more than 9,000 diversions since its inception. Following the program's success, other jurisdictions across Texas and beyond have experimented with replicating this model. The program is now supported by a pool of funds focused on diversion. A key funding strategy has been to braid funding from various entities—such as state grants, county general revenue, and philanthropic funds—all focused on the same population, but with a different programmatic focus. The Harris Center has also partnered with various service providers that focus on these populations, such as legal aid and job training programs; some are funded by the Harris Center, and others are independently funded.

"We recognize that diversion programs like this don't just happen. It takes partnerships from leaders who also agree that it's time to stop treating mental illness as a crime and who are committed to finding paths to identify and attend to the underlying needs of these individuals. We have seen great success through positive outcomes and reduced recidivism, but there is more work to be done, and we continually look at ways to expand this program."

- District Attorney Kim Ogg

Critical Partnership and Cultural Change

Every agency involved in the program attests to the importance of cross-agency partnerships in making the program work, both in terms of coordination and ensuring buy-in from actors across the criminal legal system. In addition to the DA's office, key partners include the Harris County Judge's Office, Harris County Commissioners Court, Harris County Sheriff's Office, Houston Police Department, Harris County Housing Authority, and Harris County Criminal Justice Coordinating Council. One interviewee described it as a community resource with shared governance. Although these partnerships are not always easy, a shared vision and buy-in from all partners is essential to the program's success. Multiple interviewees commented on the importance of cooperation and compromise. They noted that it is important to care about their partners' priorities, even when they are not shared, and be willing to find ways to contribute to the outcomes their partners care about most. Interviewees noted that this often came down to building individual relationships with members of partner agencies to learn what they care about and how best to partner. Trust is also an essential ingredient to ensure that law enforcement and prosecutors feel comfortable handing cases off entirely to service providers. The program is managed by an oversight committee that has met regularly since its inception. Committee members include the DA's office, the public defender's office, Houston's two leading law enforcement agencies, and a representative from the mental health authority.

A **key contextual factor** is Harris County's long-standing policy of prearrest review by the DA's office for any charge that is a Class B misdemeanor or greater. When police interact with someone experiencing a **behavioral health crisis**, officers contact the Intake Division of the DA's office to describe the offense, the behavioral health crisis, and any factors related to probable cause so that the assistant district attorney (ADA) can make a charging decision. If the DA's office determines the person meets the eligibility criteria for mental health diversion, officers will transport them to the Mental Health Diversion Center.

Mapping Prosecutor-Led Diversion Case Study

The Mental Health Diversion Program: Harris County District Attorney's Office (Harris County, Texas)

October 2023

In these interactions, police may advise prosecutors not to charge based on the person's condition and the circumstances of the potential offense, or prosecutors may advise police not to proceed with arrest. This level of interaction between police and prosecutors before arrest is unusual and allows for diversion before charges are ever filed. It means the police can feel confident about not arresting because they know charges won't be filed anyway; it also means the DA is involved in decisionmaking at an unusually early stage. Because the program is law enforcement-initiated, officers may bring people to the Diversion Center without alerting the DA's office. Over time, law enforcement officers have become more comfortable with recommending diversion to the DA's office during prearrest calls, or simply transporting people to the Diversion Center without involving the DA.

Another key to making the program work is the ability to share certain data across agencies. Previously, decisions had to be made about diversion without any information on the person's mental health history. Now, the DA's office receives a response form indicating whether the person has been to a mental health facility or state hospital or prescribed medication. This information is based on an evaluation while people were previously in jail, including a suicide screening form completed during previous booking(s). The sheriff's department summarizes this information into a special needs response form that appears to the DA's office on an electronic feed. In order to share information, stakeholders have had to take precautions to protect sensitive health data. Because law enforcement inputs arrest notes on arrival at the Diversion Center, it is their administrative data, not protected health information, and the Harris Center can provide that data back to law enforcement. Law enforcement were the ones who decided what to track. This information is administrative data belonging to the sheriff that they may share with both prosecutors and defense attorneys, as this information may be mitigating. Although it is highly useful for making eligibility determinations, officers may divert even if there is no mental health history if they believe the person has mental health needs.

It has taken time for the culture to shift, especially among law enforcement officers. It has helped to have champions of the program in positions of leadership at law enforcement agencies, to orient the culture toward an emphasis on police as guardians rather than just punishment. Training is also an integral component to ensure officers understand both how and why to divert. Even so, Harris County is served by a number of separate law enforcement agencies that do not always see eye to eye and may prefer the ease and familiarity of making arrests over sending people to diversion. In addition to training prosecutors in what questions to ask during pre-arrest review calls with officers, the DA's office has encouraged its staff to tour the Diversion Center and observe how it works so that they understand the value and nuances of the program when they speak with law enforcement officers about diversion decisions.

Multiple interviewees noted that highlighting the program's many successes has helped build buy-in. The program has been shown to [reduce recidivism](#) while also having significant cost savings compared with arrest and detention. It has also been important to highlight that even people who are diverted multiple times are likely getting benefits from the program, and that multiple arrests and periods of incarceration have also not been effective.

Limited Program Eligibility ▼

Eligibility for the Mental Health Diversion Program was initially extremely narrow, with a focus on criminal trespass alone. Although it has since expanded, it remains limited to people suspected of low-level, nonviolent misdemeanors, such as theft, criminal mischief, and obstructing a roadway. Some domestic cases involving family members and relatives may be considered on a case-by-case basis if those involved believe diversion is the best approach. It does not include any offenses where prosecutors believe public safety could be compromised, which is determined at their discretion. People are not eligible if they have any open warrants or detainers.

As of now, the DA's office and its partners have not expanded eligibility to felony offenses, primarily because they anticipate that would not be supported by the community. But ADAs' preliminary conversations with law enforcement officers before arrest provide an opportunity to gauge the details of each individual case and use their prosecutorial discretion to assess whether a more serious charge is truly warranted, or if the case might be more appropriate for diversion.

Harris Center staff see their role as simply serving the people that law enforcement officers determine should be diverted, and they are not involved in the preliminary conversations between law enforcement and prosecutors. They have, however, led extensive trainings to help law enforcement identify people who should be diverted, and they make themselves available to consult about cases as needed through the diversion desk at the booking center. They have also advised on program design at certain stages. For instance, when the question arose whether eligibility should be limited to cases where mental health challenges were contributing factors to the offenses, Harris Center staff advised that it would be nearly impossible for even trained mental health professionals to make such determinations.

Mapping Prosecutor-Led Diversion Case Study

The Mental Health Diversion Program: Harris County District Attorney's Office (Harris County, Texas)

October 2023

Lessons Learned ▼

The following lessons about developing a mental health diversion program were informed by observations from DA's office leadership and staff and from their partners:

1

Leadership from elected officials, particularly the district attorney's office, is critical in mental health diversion. District attorneys can make this a priority and set the tone for other decisionmakers. If a DA's office has a policy against filing charges for certain cases or circumstances, law enforcement may be less likely to arrest. This is even more effective when individual officers and ADAs are able to consult about specific cases and the officers are told the ADAs will not file charges. Interviewees noted that among the jurisdictions that have replicated the Mental Health Diversion Program, the most successful seem to be those where the DAs have leaned in heavily.

2

Strong partnerships are fundamental to ensure buy-in and broad implementation. Because mental health care providers play such a key role in providing services, it is also essential to have a cooperative mental health authority. Interviewees also suggested that criminal legal system actors should take the initiative to reach out to local mental health agencies about how to engage them. Partners may also need to find ways of sharing data across agencies, which can be a challenge.

3

Training is key in order to ensure consistent implementation of the program and build buy-in from officers and ADAs on the front lines. Buy-in will not happen without training. Because so much of this program hinges on law enforcement decisions, training officers on how to recognize mental health needs is particularly crucial. The local mental health agency can be a valuable partner in providing this expertise. This training needs to be continual to ensure long-term success.

4

There is more to be done to broaden mental health diversion programs to include more serious charges. Despite this program's successes, it is limited to only the lowest-level misdemeanors. Broadening eligibility may be politically challenging, but the success of doing so with low-level cases underscores how transformative mental health care in times of crisis can be, even—or especially—in the case of addressing and preventing more serious harm.

Leigh Courtney is a senior policy associate in the Justice Policy Center at the Urban Institute whose work focuses on criminal legal system reforms as well as restorative and community-led approaches to preventing and responding to violence. She co-leads the Mapping Prosecutor-Led Diversion Project.

Mapping Prosecutor-Led Diversion Case Study

The Mental Health Diversion Program:
Harris County District Attorney's Office
(Harris County, Texas)

October 2023

Acknowledgments

This case study was funded by the Chan Zuckerberg Initiative. We are grateful to them and to all our funders, who make it possible for Urban to advance its mission.

The views expressed are those of the author and should not be attributed to the Urban Institute, its trustees, or its funders. Funders do not determine research findings or the insights and recommendations of Urban experts. Further information on the Urban Institute's funding principles is available at www.urban.org/fundingprinciples.

The Mapping Prosecutor-Led Diversion Project is a joint project between the Urban Institute and the National District Attorneys Association. This first-of-its-kind catalogue and interactive map of prosecutor-led diversion programs across the country is meant to inform a range of stakeholders, including prosecutors' offices.



NATIONAL DISTRICT ATTORNEYS ASSOCIATION
The Voice of America's Prosecutors

 (703) 549-9222  www.ndaa.org  1400 Crystal Drive | Arlington, VA