STUDY GUIDE
FOR
PRETRIAL DIVERSION PRACTIONER

This Study Guide has been put together by the NAPSA Education Committee to help individuals prepare for the NAPSA Pretrial Diversion Certification Exam. You have been sent this guide because you have registered to take this exam. Please make sure that you are very familiar with the material presented in this Study Guide. All questions on the exam will come from material that is presented here. While you will be able to consult this guide when you are taking the exam, if you are not very knowledgeable about the material beforehand you will likely have great difficulty in completing the exam within the time limit, which is one hour.

This certification exam will be dedicated exclusively to pretrial diversion/intervention i ssues. It will be divided into three sections. Section I will cover the historical and legal underpinnings of pretrial diversion/intervention. Section II will cover national standards relating to pretrial diversion, including those of the National District Attorneys Association (NDAA) and the National Association of Pretrial Services Agencies (NAPSA). Section III will cover current and best practices in pretrial diversion/intervention. Each section will have 11 questions, with each question worth 3 points. There is a final one point question at the end of the exam. A total of 85 percent, which would be 85 points out of 100, is required to pass the exam.

This Study Guide is organized to align with the three sections of the exam.

SECTION I: HISTORICAL AND LEGAL UNDERPINNINGS OF PRETRIAL DIVERSION

The first section of the certification exam will focus on the historical and legal underpinnings of pretrial diversion. It is important for pretrial diversion practitioners to understand the history behind the introduction and evolution of pretrial diversion/intervention programs, and some basic legal concepts relating to pretrial diversion.

History of Pretrial Diversion/Intervention

The idea of diverting cases from traditional prosecution has been a part of our criminal justice system since our inception as a nation. Police officers have always had the

discretion to decide to arrest an individual and refer the case to a prosecutor, or take some alternate approach, such as escorting an intoxicated person home or to social services. Prosecutors have always had the discretion to charge an individual with a criminal offense or hold the charges in abeyance for a period to see if the individual stays out of trouble. But for almost two centuries, these actions were very informal, governed by no guidelines, and subject to unfair application.

The first *formal* pretrial diversion program, though, was established in Flint, Michigan in 1965. Called the Citizen's Probation Authority (CPA) Program, this program is still in existence. Shortly after this program was implemented, a few states enacted laws allowing treatment in lieu of prosecution for certain categories of defendants.

The catalyst for the development and expansion of formal pretrial diversion/intervention programs came in 1967 with the President's Commission on Law Enforcement and Administration of Justice report, *The Challenge of Crime in a Free Society*. This report, which examined the entire criminal justice system as it existed at that time, led to transformative changes in the way that justice was being administered in the United States by law enforcement, courts, and corrections. One of the areas that the Commission looked at was prosecutors' charging decisions. The Commission noted that prosecutors, when faced with low-level offenders who may have substance abuse or mental health problems, had no options other than to either fully prosecute or dismiss the case. With either option, nothing was being done to address the underlying problems that may have been contributing to the criminal behavior. To address this, the Commission recommended that "formal, structured alternatives to pretrial incarceration be developed for the non-criminal disposition of large numbers and categories of defendants charged with crime."

As a result of this recommendation, in 1968 the U.S. Department of Labor funded pilot pretrial diversion projects in Washington, D.C. and New York City. These programs targeted first time offenders who were charged with non-violent misdemeanor offenses and who were either unemployed or underemployed. Each program offered job counseling and job placement services and each offered dismissal of charges upon successful completion of program requirements.

It was in 1970 that the Law Enforcement Assistance Administration, an agency of the U.S. Department of Justice, joined the U.S. Department of Labor in providing federal funds for the start-up of pretrial diversion programs. Over the next several years, the two federal agencies funded pretrial diversion programs in numerous jurisdictions. In 1974, the first directory of pretrial diversion programs was issued, and it identified 57 different projects in 22 states and the District of Columbia. Just one year later, 1975, when the second directory was issued, 118 projects in 31 states and the District of Columbia were identified. In the 1976 directory, a total of 148 projects in 42 states were listed. By 1980, around 200 pretrial diversion programs were in operation around the country. Most of these programs were established with funding from one of these two federal agencies.

The decade of the 1970s also saw significant developments in establishing the legal authorization for pretrial diversion/intervention. In 1970, the New Jersey Supreme Court

adopted Court Rule 3:28 in its Rules of Criminal Procedure. This rule was the first judicial authorization of statewide pretrial diversion in the nation. During the 1970s, numerous state legislatures passed laws authorizing statewide pretrial diversion. While the earliest pretrial diversion statutes focused solely on drug offenses, by 1974 states began to expand the authority of prosecutors to divert non-drug cases as well.

There were two significant events in 1973 relating to the history of pretrial diversion. The first was the decision of the National Association of Pretrial Services Agencies (NAPSA), which had been established the previous year as a professional association for pretrial release practitioners, to expand its reach to include pretrial diversion. This provided the first opportunity for diversion practitioners to work together to address common challenges and work towards common goals.

The second was the opening of the Pretrial Intervention Service Center, funded by the U.S. Department of Labor, which operated as a clearinghouse of information relating to pretrial diversion. The Center, which was run by the American Bar Association and the National District Attorneys Association, also produced monographs and other reports on pretrial diversion, and provided technical assistance to jurisdictions seeking to implement pretrial diversion programs.

It was also in the 1970s that several groups began issuing standards relating to pretrial diversion.

- In 1971, the Approved Drafts of the American Bar Association's Standards for the Prosecution Function and the Defense Function were released. These Standards, for the first time, stated that the prosecutor and defense had the responsibility to explore the feasibility of pretrial diversion in all appropriate cases.
- In 1973, the National Advisory Commission on Criminal Justice Standards and Goals issued a seven-volume report in which it called for formal pretrial diversion programs to be implemented in every jurisdiction in the country.
- In 1977, the National Association of District Attorneys (NDAA) issued its first set of National Prosecution Standards. A section of those standards addressed the prosecutor's role in pretrial diversion.
- In 1978, NAPSA issued the first edition of its Performance Standards and Goals for Pretrial Diversion.

While the fast growth of pretrial diversion/intervention programs slowed down after the 1970s, there are today hundreds of such programs operating around the country. A 2012 national survey identified 298 distinct programs in 45 states. That same survey also identified 80 statutes relating to pretrial diversion/intervention in 45 states.

And pretrial diversion is once again receiving national attention. In May 2012, NAPSA, in conjunction with the National Institute of Corrections, held a National Symposium on Pretrial Diversion in Washington, D.C. The Symposium brought together diversion practitioners, key stakeholders, government officials and funders for a two-day discussion

to identify ways to enhance and promote pretrial diversion/intervention programs in ways that incorporate evidence-based practices.

Legal Framework for Pretrial Diversion/Intervention

This part of Section I looks at the legal framework for pretrial diversion/intervention.

There are four sources of laws that have to be considered in thinking about the legal authority and limits of pretrial diversion/intervention. The first is **"constitutional law."** This is the body of law typically found in the U.S. or state constitutions, and in those court cases interpreting constitutional provisions. Constitutions are the supreme laws of their jurisdictions.

One key element of the U.S. and of all state constitutions is ***separation of powers***. These constitutions establish three branches of government – executive, legislative, and judicial – with each branch having its distinct authority and responsibilities. The separation of powers comes into play in discussing pretrial diversion because the legislature passes bills authorizing pretrial diversion, prosecutors (the executive branch) have the authority and discretion to determine who should be admitted to pretrial diversion, and the judiciary checks against any possible abuses of prosecutorial discretion.

There are several constitutional rights that must be adhered to in any pretrial diversion/intervention program. One of these is ***due process***. The Fifth and Fourteenth Amendments to the U.S. Constitution state that "No person shall…be deprived of life, liberty, or property, without due process of law." In essence, this means that every individual is entitled to fundamental fairness of laws and legal proceedings. There are two types of due process. *Procedural due process* requires the government to make sure appropriate processes are in place before depriving someone of his or her rights. In a pretrial diversion setting, this would mean that a defendant who was denied admission to a diversion/intervention program, or who was being unsuccessfully terminated, would have a fair opportunity to challenge those decisions. *Substantive due process* guarantees that individuals' rights are protected from arbitrary or unfair laws or government action. In a pretrial diversion setting, it would be a violation of substantive due process if a prosecutor was found to have arbitrarily denied a defendant enrollment in a pretrial diversion program.

The Fifth Amendment to the U.S. Constitution also says that no person "shall be compelled in any criminal case to be a witness against himself." Often referred to as the ***right against self-incrimination***, this right is implicated in pretrial diversion/intervention when defendants consider making any statements to prosecutors relating to the case, as can occur during the enrollment process. Therefore, before making any statements, defendants must be provided with clear information regarding how the statement could be used against them at trial.

The Fifth Amendment also protects against ***double jeopardy***. This right protects defendants against a second prosecution for the same offense. For example, if an offense spans two counties, and a defendant successfully completes diversion in one county, then

he cannot be charged by a prosecutor in the other county for that same offense. The courts have held that double jeopardy prohibits that second prosecution.

The Sixth Amendment guarantees a right to a ***speedy trial***, and a right to a ***trial by jury***, at which defendants have the right to ***confront witnesses*** against them. In some diversion agreements, particularly when a defendant must enter a guilty plea as a condition of enrollment, defendants must waive these rights. This amendment also gives defendants in criminal cases the right to be ***informed of the charges*** against them, information that a defendant should have before making a decision regarding enrollment in a pretrial diversion/intervention program. Finally, the Sixth Amendment guarantees defendants the right to the ***assistance of counsel***. It is with the assistance of counsel that a defendant can make informed decisions about whether to waive his or her rights to a speedy trial and participate in the diversion/intervention program.

Finally, the Fourteenth Amendment to the U.S. Constitution says that no state shall "deny any person within its jurisdiction the ***equal protection*** of the laws." In essence, this means that similarly situated individuals must be treated similarly by the government. The equal protection clause has been invoked by defendants in several cases challenging their denial of admission to diversion when similarly situated defendants have been admitted. The courts have weighed the unique situations of each case in addressing these challenges, but some courts have found that there were violations to equal protection.

The second type of law type is **"statutory law."** Statutory laws are those that are passed by the legislature of the jurisdiction and signed by the chief executive – the governor in the case of the states and the president in the case of federal laws. These laws can be amended or rescinded by the legislature at any time. As noted above, currently, at least 80 statutes relating to pretrial diversion/intervention from 45 different states have been identified.

The third type is **"case law,"** which is sometimes called the **"common law."** This includes rulings by courts creating laws and precedent, which, under a doctrine called *stare decisis*, requires certain other courts to abide by the earlier decisions. So, for instance, if the Supreme Court of the state rules that a judge can only overturn a prosecutor's decision to deny a defendant admission to diversion if the judge finds that the prosecutor abused his or her discretion, then all judges in that state are bound by that precedent.

The fourth type of law is "**court rules**." As was noted above, the New Jersey Supreme Court established the nation's first statewide pretrial diversion/intervention through a court rule.

SECTION II: NATIONAL STANDARDS RELATING TO PRETRIAL DIVERSION/INTERVENTION

The American Bar Association is currently working on a set of Standards on pretrial diversion, and these should be available soon. Once these standards are released, pretrial

diversion/intervention practitioners should carefully review them. Meanwhile, there are two existing sets of Standards that address pretrial diversion/intervention.

One of these is the National Prosecution Standards, issued by the **National District Attorneys Association** (NDAA). While these Standards address the roles and responsibilities of prosecutors in the pretrial diversion/intervention process, pretrial diversion/intervention program practitioners should also know them.

The NDAA Standards state that when deciding whether to divert a case from prosecution, the prosecutor should consider whether doing so "best serves the interests of justice." *Standard 4.3.1*. The Standards also state that prosecutors "should urge the establishment, maintenance and enhancement "of diversion/intervention programs (*Standard 4.3.3*), and "should take steps to help ensure that all diversion programs are credible and effective." *Standard 4.3.2.*

Before making a decision to divert a case, the NDAA Standards say that prosecutors "should have all relevant investigative information, personal data, case records, and criminal history information necessary to render sound and reasonable decisions on diversions of individuals from the criminal justice system." *Standard 4.3.4*.

According to the NDAA Standards, in making a diversion decision, prosecutors should consider the following factors:

- The nature, severity, or class of the offense
- Any special characteristics or difficulties of the defendant
- Whether the defendant is a first-time offender
- The likelihood that the defendant will cooperate with and benefit from the diversion program
- Whether an available program is appropriate to the needs of the defendant
- The community impact of the crime for which the defendant is charged
- Recommendation of relevant law enforcement agency
- The likelihood that the defendant will recidivate
- The extent to which the diversion will enable the defendant to maintain employment or remain in school
- The opinion of the victim
- Provisions for restitution
- The impact of the crime on the victim
- Diversion decisions with respect to similarly situated defendants (*Standard 4.3.4.)*

The NDAA Standards say that the process of diverting defendants should include:

- A signed agreement or court record specifying all requirements of the diversion
- A signed waiver by the defendant of speedy trial rights, where applicable
- The right of the prosecutor, for a designated period of time, to proceed with the criminal case when, in the prosecutor's judgment, such action would be in the interests of justice

- Appropriate mechanisms to safeguard the prosecution of the case, such as admissions of guilt, stipulations of facts, and depositions of witnesses.

In its Performance Standards and Goals for Pretrial Diversion/Intervention, the **National Association of Pretrial Services Agencies** (NAPSA) outlines how the pretrial diversion process should work. These standards represent pretrial diversion goals for every jurisdiction in the country. They make several key points, which every pretrial services practitioner should be aware of and able to articulate.

The NAPSA Standards define pretrial diversion/intervention and its purpose, and the extent to which it should be available.

They define pretrial diversion as "a voluntary option which provides alternative criminal case processing for a defendant charged with a crime that ideally, upon completion of an individualized program plan, results in the dismissal of the charge(s)" *Standard 1.1*.

This definition encompasses numerous initiatives, called by different names in different states. For example, Florida, Georgia, New Jersey and South Carolina use the term "pretrial intervention." In Arizona, Colorado, Michigan, North Carolina, Oklahoma, Washington, and Wisconsin, it is called "deferred prosecution. In Pennsylvania, it is called "accelerated rehabilitative disposition," and in Connecticut, "accelerated pretrial rehabilitation."

The NAPSA Standards say that the purpose of a pretrial diversion/intervention program is "to enhance justice and public safety through addressing the root cause of the arrest provoking behaviors of the defendant, reducing the stigma which accompanies a record of conviction, restoring victims and assisting with the conservation of court and criminal justice resources." *Standard 1.2.*

The Standards also say that "every jurisdiction should provide pretrial diversion/intervention options and designate an entity to oversee and/or administer diversion services." *Standard 1.3.*

The Standards state that "[a]ll cases considered for pretrial diversion/intervention should have prosecutorial merit." According to this standard, any case that cannot be prosecuted due to lack of merit should be dismissed, not diverted. *Standard 1.4*.

The NAPSA Standards address issues relating to a defendant's application for pretrial diversion/intervention.

The Standards say that the opportunity to apply for the program "should be available as soon as possible to eligible defendants from the point of the filing of formal charges through final adjudication." *Standard 2.1*. The Commentary to this Standard states that waiting until formal charges are filed provides greater assurance that the case has prosecutorial merit.

The Standards make clear that potential applicants for a diversion/intervention program "should have the opportunity to consult with counsel before making the decision to apply for diversion" (*Standard 2.2*), and that the "decision to apply for a pretrial diversion/intervention program should be voluntary and made with written, informed consent." *Standard 2.3*.

The NAPSA Standards address the eligibility criteria of admission to a diversion/intervention program.

The Standards state that the eligibility criteria "should be broad enough to encompass all potential participants who are amenable to the pretrial diversion/intervention option" (*Standard 3.1*), and that no defendant should be denied access to the diversion/intervention option based upon "race, ethnic background, religion, gender, disability, marital status, sexual orientation, or economic status" (*Standard 3.2*), or for "inability to pay restitution and/or program fees or inability to perform community service." *Standard 3.5*.

They state that the eligibility guidelines should be in writing (*Standard 3.3*), and that a pretrial diversion/intervention program "has an affirmative obligation to ensure that established eligibility guidelines are consistently applied." (*Standard 3.4*).

The NAPSA Standards address the enrollment process.

According to the Standards, before making a final decision to enroll, a defendant "should be given the opportunity to review the merits of his or her case along with a copy of the general program requirements, including program duration and possible outcomes." *Standard 4.1*.

The conditions of the diversion/intervention "should be fair, equitable and related to the goals of the diversion placement." *Standard 4.2*.

They state that while "an informal admission of responsibility may be acceptable as part of an intervention plan," enrollment in a program "should not be conditioned on a formal plea of guilty." *Standard 4.3*.

Defendants who are denied enrollment in a pretrial diversion/intervention program "should be afforded a review of the decision and the reasons for the denial should be provided to the defendant in writing." *Standard 4.5*.

The NAPSA Standards address the services provided and conditions imposed as part of participation in the diversion/intervention program.

The Standards state that the diversion/intervention plan "should be developed through the use of a comprehensive assessment of the defendant and address specific needs related to reducing future criminal behavior." *Standard 5.1*. The plans should be "individualized" and

have "achievable goals." *Standard 5.2*. The plans should be formulated "as soon as possible after enrollment," and "reduced to writing." *Standard 5.2*.

The requirements of the plan should be "the least restrictive possible to achieve agreed upon goals and should be structured to minimize the risk of future criminal behavior." *Standard 5.3*. The conditions should address restoring justice and reducing recidivism through approaches that include "defendant rehabilitation, community service, victim restoration and restitution." *Standard 5.4*. The plan should be revised only "when necessary," and only after consultation with the participant – and all modifications should be put in writing. *Standard 5.6*.

The NAPSA Standards address successful completion and unsuccessful termination of the diversion/intervention program.

The Standards state that completion of the program should result in dismissal of the charges. *Standard 6.1*. Upon successful completion, the participant "should have his/her criminal record sealed and/or expunged." *Standard 6.3*.

The Standards state that a defendant should be able to withdraw from the program "at any time prior to completion and elect to return to traditional criminal justice processing without prejudice." *Standard 7.1*. Likewise, the same should occur when the program terminates a participant for lack of compliance. *Standard 7.2*. When terminating a participant for non-compliance, "the program should provide written reasons for the termination decision to the participant, defense counsel, prosecutor and/or court." *Standard 7.2*. A participant facing termination should have a right to challenge that decision. *Standard 7.3*. If a participant is arrested on a new charge while in a diversion/intervention program, that "should not be grounds for automatic termination." Instead, all relevant factors should be considered and weighed in determining the participant's status. *Standard 7.4*.

The NAPSA Standards address confidentiality and privacy of data collected as part of the diversion/intervention process.

According to the Standards, "[a]s a general rule, information gathered in the course of the diversion/intervention process should be considered confidential and should not be released without the participant's prior written consent." *Standard 8.1*. Still, the Standards say that the program should make clear to the participant before enrollment in the program "what information might be released, under what conditions it might be released and to whom it might be released, both during and after participation." *Standard 8.1*.

Pretrial diversion/intervention programs "should strive to guarantee" that information collected through the diversion/intervention process not be admissible as evidence "in the diverted case or in any subsequent civil, criminal or administrative proceeding." *Standard 8.2*. The standards suggest that programs seek to accomplish this through interagency or intra-agency operating agreements. *Standard 8.2*.

The Standards recognize, however, that both the prosecution and defense have a need for information about how a participant is doing in the program. The Standards, therefore, recommend that programs establish guidelines "for determining the type of information to be contained in reports" to these parties. "Such reports should be limited only to information which is verified and necessary." *Standard 8.3*.

The Standards make clear that "qualified researchers and auditors" should have access to participant records, but only with the condition that no information that identifies individual participants be used in any report. *Standard 8.4*.

The Standards address the organizational structure of pretrial diversion/intervention programs.

The Standards state that programs should have a well-articulated mission statement and goals statement (*Standard 9.1*), should be structured to accomplish its mission and goals (*Standard 9.2*), and should have adequate resources to do so. *Standard 9.3*.

Pretrial diversion/intervention programs "should develop and operate an accurate management information system to support data collection and presentation, compliance monitoring, case management and program evaluation" (*Standard 9.8*), and should conduct periodic evaluations to determine its effectiveness in meeting its goals. *Standard 9.9*.

SECTION III: PROMISING PRACTICES

Every year, criminal courts in this country process about 20 million cases – 80 percent of which are misdemeanors. Given the volume of cases, and the number of individuals who could be good candidates for participation in pretrial diversion/intervention, it is important that diversion/intervention practices be as effective as possible.

Over the past decade, a growing emphasis has been placed on ensuring that criminal justice interventions are **evidence-based**; that is, that they are informed by what the research says--rather than by what our intuition tells us--about what works and what does not. One model is the National Institute of Correction's Evidence-Based Decision Making (EBDM) program, which has successfully reduced risks posed by defendants and offenders and reduced harm to the community by requiring that criminal justice system decisions are informed by the research. Correspondingly, pretrial diversion provides an excellent opportunity to promote meaningful, evidence-based interventions in low-risk, non-violent defendants' criminal behavior.

While there is no recent research directly focused on pretrial diversion/intervention, there are a number of key research findings from other parts of the justice system that have relevance for establishing evidence-based pretrial diversion/intervention practices. These include the following:

- Providing intensive supervision services to low-risk individuals does nothing to help reduce recidivism, and may actually increase risks of recidivism.

- Interventions that may make intuitive sense (i.e., boot camps) are often found to have little or no impact, and may actually increase risks of recidivism.
- The risk of recidivism is greatly reduced when addressing criminogenic needs; approaches that use cognitive behavioral therapy are more effective in reducing recidivism than surveillance-oriented supervision.
- Incentives and positive reinforcements are effective techniques in promoting behavioral change
- Programs that are effective in reducing recidivism have the following elements:
    - They are founded on empirically-based models of crime causation
    - They have a sound method of assessing risks and matching supervision levels to the identified risks
    - They have a sound method of assessing criminogenic need and dynamic risk factors that are linked to offending
    - The staff have good training and adequate resources.

Research has also shown great promise in the Risk/Needs Responsivity Model, which assesses each individual's risk of recidivism and needs related to substance abuse, mental health, and other social and environment conditions, and determines the appropriate type and dose of treatments necessary to maximize justice and health outcomes.

Research has identified the risk and needs factors most correlated with recidivism. These factors, ranked in the order of their correlation with recidivism, are:

1. Anti-social thoughts and beliefs
2. Pro-criminal associates and isolation from pro-social others
3. Anti-social personality
4. History of anti-social behavior
5. Family/marital issues
6. Low levels of educational, vocational or financial achievement
7. Low levels of involvement in pro-social leisure activities
8. Substance abuse

Based on these research findings, as well as laws, national standards and years of practical experience, in 2012 NAPSA released the document *Promising Practices in Pretrial Diversion*, in which it identified nine such practices. These are described below.

Promising Practice # 1: Formalized cooperative agreements between the pretrial diversion program and key stakeholders to ensure program continuity and consistency.

These agreements should outline the roles and responsibilities of each party involved in the diversion process. Having formalized agreements in place, especially regarding eligibility criteria, ensures that the program will continue as individual stakeholders move in and out of their positions. These formal agreements also provide for transparency – all system stakeholders, as well as the public at large, can see the criteria for enrollment and completion.

Promising Practice # 2: Defendant access to defense counsel before the decision to participate in pretrial diversion.

As noted earlier, a defendant's decision to enroll in a diversion/intervention program is completely voluntary. In order to make an informed decision, it is important that the defendant consult with an attorney before any decision is made.

Promising Practice # 3: Specific due process protections are incorporated into programming.

Due process protections should include the right of the defendant to be informed of the specific reasons for any decision by prosecutors to deny an application for diversion or to unsuccessfully terminate diversion – as well as the right to challenge such decisions. Due process also includes a finding by a judicial officer that a factual basis exists for the charge.

Promising Practice # 4: Broad, equitable and objective diversion eligibility criteria, applied consistently at multiple points in case processing.

Eligibility criteria should be as broad as possible to include as many defendant populations as would be appropriate. It should be equitable to the point where similarly situated defendants would have the same access to diversion. To ensure fairness in the application, the eligibility criteria should be objective.

Promising Practice # 5: Uniform and validated risk and needs assessments to determine the most appropriate and least restrictive levels of supervision and the types of services needed.

Pretrial diversion risk assessments identify a defendant's risk of future arrest and the level and type of supervision services needed to reduce that risk. Risk and needs assessments determine the most appropriate and least restrictive levels of supervision and services needed. Validating risk and needs assessment tools ensures that they actually measure and weigh factors associated empirically with recidivism or diversion non-compliance.

Promising Practice # 6: Intervention plans tailored to individual participant risks and needs developed with the participant's input.

Many diversion/intervention programs will have standard conditions for all participants, such as keeping all scheduled appointments and making restitution payments, if appropriate. Beyond these standard conditions, the conditions that are part of the intervention plan should be tailored to each individual. Conditions should relate to reducing the risks of future arrests and can include attending treatment for substance abuse, mental health, or other identified problems. As noted earlier, placing unnecessary or excessive conditions on low risk individuals accomplishes nothing, except to increase the non-compliance rate and in some cases even increase the likelihood of recidivism.

Promising Practice # 7: Graduated sanctions short of termination as responses to participant behavior.

Addressing violations through administrative, graduating sanctions, such as increasing community service hours or the level of supervision, can be effective in reducing future non-compliance and recidivism. The research makes clear that what is most important is that any responses be swift, certain and equitable.

Promising Practice # 8: Maximum possible privacy protections for participants and program records.

Privacy protections come into play in at least two key points in the diversion process. The first involves any information divulged by the defendant while enrolling for or participating in a diversion/intervention program. Since a successful diversion experience requires a participant to take responsibility for actions that led to the arrest, any statements made by participants in taking such responsibility should never be used against them in court. The second is the availability of criminal records after a participant has successfully completed diversion. Since one of the goals of diversion is to allow an individual to avoid the stigma of a criminal record, and the detrimental effects that could have on future employment prospects, successful participants are urged to seek expungement of the arrest record, when expungement is not automatic. With the current availability of criminal records through the internet, protecting these records can become more challenging. Still, diversion/intervention programs should work with prosecutors, the court and law enforcement to seek to provide the maximum privacy of these records as allowed by law.

Promising Practice #9: Independent program evaluations.

Promising practices cannot become evidence-based practices until research has demonstrated these practices to be effective at achieving their goals. Pretrial diversion/intervention programs should make evaluations by independent researchers a high priority.

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These promising practices should apply regardless of where the program is located administratively. And surveys of pretrial diversion/intervention programs show that they can be run by private, non-profit agencies, or housed in pretrial services or probation agencies or within prosecutor offices or the courts.

CONCLUSION

The material presented in this Study Guide represents the basic information that all pretrial diversion practitioners should know to have the appropriate understanding of their field of work. Please take the time to absorb the information presented here – not just

so that you can pass an exam, but so that you will have a greater appreciation for the important role that you are playing in our system of justice.