Model Deflection to Treatment Act

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SECTION I. SHORT TITLE.

This Act may be cited as the Model Deflection to Treatment Act ("Deflection Act" or "Act").

SECTION II. LEGISLATIVE FINDINGS.

(a) Recent statistics show that many millions of Americans suffer from substance use disorder, mental health disorder, or both. According to the 2017 National Survey on Drug Use and Health, within the 12 months prior to survey response, 18.7 million Americans aged 18 or older had a substance use disorder, while 44.6 million had a mental health disorder.[1] Out of these two groups, an estimated 8.5 million Americans aged 18 or older suffered from both.

(b) Meanwhile, as of September 2018, the United States' estimated incarceration rate, 655 per 100,000 people, and total incarcerated population, more than 2.1 million, are both the highest in the world.[2] If the number of adults under probation or parole is added to this number,[3] the total number of people under some type of justice supervision in the United States is over 6.5 million.

(c) These problems are interrelated. The prevalence of substance use and mental health disorders are many times higher in incarcerated populations than the general population.[4]

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[1] https://www.samhsa.gov/data/sites/default/files/nsduh-ppt-09-2018.pdf.

[2] Roy Walmsley, World Prison Population List (12th edition). International Centre for Prison Studies (November 2018), available at http://www.prisonstudies.org/sites/default/files/resources/downloads/wppl_12.pdf (last accessed May 9, 2019).

[3] As of the end of 2016, this is estimated at 4.5 million people. Danielle Kaeble. *Probation and Parole in the United States, 2016.* Bureau of Justice Statistics, U.S. Department of Justice, Office of Justice Programs: NCJ 251148 (April 2018).

[4] In data collected through National Inmate Surveys (NIS) in 2007 and 2008-09, researchers found that 58% of state prisoners and 63% of sentenced jail inmates met the criteria for drug dependence or abuse, compared to approximately 5% of the general population age 18 or older. Bronson, J. and Stroop, J. *Drug use, dependence, and abuse among state prisoners and jail inmates, 2007-2009*. Bureau of Justice Statistics, U.S. Department of Justice, Office of Justice Programs: NCJ 250546 (June 2017). The 2011-12 NIS shows 14% of prisoners and 26% of jail

(d) Law enforcement officers, traditionally given only two choices when encountering someone they believe may have a substance use or mental health disorder—arrest, or not arrest and do nothing more—now are encouraged to use alternative approaches, such as deflection to community-based treatment programs. Indeed, the International Association of Chiefs of Police recommends that for minor offenses and noncriminal behavior "[l]aw enforcement agencies should empower police officers . . . to use alternative remedies such as drug and alcohol treatment, hospitalization, and other diversionary programs, when appropriate, as these outlets can simultaneously help citizens, save money, and reduce recidivism."[5]

(e) Deflection programs provide a relatively new option to law enforcement that allows them to connect people with community-based substance use, mental health, and case management services that address their underlying problems rather than involving the justice system. In 2015, it was estimated that U.S. law enforcement had over 42 million personal encounters with people annually that do not result in incarceration[6]; countless millions of these are opportunities to make a difference.

(f) Deflection programs are still in their infancy and are considered to have formally begun in 2011. Since then, over 750 known deflection programs exist in the United States, with almost all the growth (600+ sites) having occurred only since 2015.[7] The scale and scope then of deflection as it continues to grow as a new field of practice offers exciting opportunities for communities to use to address other human service needs beyond

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inmates met the threshold for serious psychological distress in the previous 30 days, as compared to 5% of the general population. Bronson, J. and Berzofsky, M. *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12*. Bureau of Justice Statistics, U.S. Department of Justice, Office of Justice Programs: NCJ 250612 (June 2017).

[5] International Association of Chiefs of Police. 2018. *Policing in Vulnerable Populations. Practices in Modern Policing.* Washington, DC: Office of Community Oriented Policing Services.

[6] Davis, E. et al., *Contacts Between Police and the Public, 2015*. Bureau of Justice Statistics, U.S. Department of Justice, Office of Justice Programs: NCJ 251145 (October 2018) (estimating 53.5 million total encounters, out of which 12 million result in jail incarceration).

[7] Police Treatment and Community Collaborative, Field-Wide Deflection National Overview, April 2019.

substance use disorders and mental illness.

SECTION III. PURPOSE.

The [state legislature] acknowledges that substance use and mental health disorders, overdoses, and the deaths that result are persistent and growing concerns for [state] communities. Due to their constant presence in the community interacting with the public, law enforcement officers have a unique opportunity to facilitate connections to community-based behavioral health interventions that provide substance use disorder and mental health treatment and can help save and restore lives; help reduce substance use, overdose incidence, criminal offending, and recidivism; and help prevent arrests and convictions that destabilize health, families and communities, as well as increase self-sufficiency. These efforts are bolstered when pursued in partnership with licensed behavioral health treatment providers and community members or organizations. Consistent with the specific inclusion of deflection as part of the National Drug Control Strategy[8], it is the intent of the [state legislature] to authorize law enforcement to develop and implement collaborative deflection programs in [state] that offer immediate pathways to substance use disorder treatment, mental health treatment and other services for individuals in need of treatment including, where appropriate, as an alternative to traditional case processing and involvement in the criminal justice system.

SECTION IV. DEFINITIONS.

(a) For the purposes of this Act, unless the context clearly indicates otherwise, the words and phrases listed below have the meanings given them in this Section.

(b) Case management.— "Case management" means those services that assist persons suffering from substance use or mental health disorder in gaining access to needed treatment, as well as social, educational, medical, housing, vocational and other

[8] *See* Office of National Drug Control Policy, *National Drug Control Strategy* at 11 (January 2019), https://www.whitehouse.gov/wp-content/uploads/2019/01/NDCS-Final.pdf (last accessed April 26, 2019).

services. This includes but is not limited to conducting screenings and assessments, determining the diagnoses and appropriate level of care, maintaining client engagement, navigating and gaining access to various treatment modalities and community services, monitoring progress, advocating for the client, and communicating within and between systems of service providers and program partners.

(c) Community member or organization.— "Community member or organization" means an individual volunteer, resident, public office, or a not-for-profit organization, religious institution, charitable organization, or other public body committed to the improvement of individual and family mental and physical well-being and the overall social welfare of the community, and may include persons with lived experience in recovery from substance use or mental health disorder, either themselves or as family members.

(d) Community service.— "Community service" means any service accessible in a local community setting, excluding treatment, that strives to assist a person in resolving an issue, problem or challenge they are facing, such as housing, employment, vocational, food, and other social determinants needed for long term recovery and social integration. The issue, problem or challenge may be acute or chronic, and need not be clinical in nature.

(e) Deflection program.— "Deflection program" means a program in which a peace officer or member of a law enforcement agency facilitates contact between an individual and a licensed substance use disorder or mental health treatment provider in the form of a "warm handoff" for assessment and coordination of treatment planning. This facilitation includes defined criteria for eligibility and communication protocols agreed to by the law enforcement agency and the licensed treatment provider for the purpose of providing substance use disorder or mental health treatment to those persons. In some instances, this referral to treatment occurs in lieu of arrest or to prevent justice system involvement. Deflection can also include connections to housing and social services. Deflection programs should incorporate, but are not limited to, one or more of the following types of responses:

(1) a post-overdose deflection response (also called "naloxone plus," for

administration of naloxone plus treatment) initiated by a peace officer, law enforcement agency subsequent to emergency administration of medication to reverse an overdose, or in cases of severe substance use disorder with acute risk for overdose followed up promptly by rapid and closely-coordinated integration with treatment, peers, or recovery to facilitate the most rapid engagement possible;

(2) a self-referral deflection response initiated by an individual who contacts a peace officer or law enforcement agency in the acknowledgment of their substance use or mental health disorder without fear of arrest;

(3) an active outreach deflection response initiated by a peace officer or law enforcement agency as a result of proactive identification of persons thought likely to have a substance use or mental health disorder without fear of arrest or coercion for investigative purposes as a result of being contacted;

(4) an officer prevention deflection response initiated by a peace officer or law enforcement agency in response to a community call or "on view" when no criminal charges are present; and

(5) an officer intervention deflection response, initiated by a peace officer or law enforcement agency in response to a community call or "on view" when criminal charges would be founded but are held in abeyance pending engagement with treatment.

(f) Evidence-based.— "Evidence-based" means established by research as effective in achieving long-term recovery for those with substance use disorder.

(g) Law enforcement agency.— "Law enforcement agency" means a municipal police department or county sheriff's office of [state], the [state department of police], or other law enforcement agency whose officers, by statute, are granted and authorized to exercise powers similar to those conferred upon any peace officer employed by a law enforcement agency of [state].

(h) Mental health disorder.— "Mental health disorder" means any mental illness that is diagnosable currently or within the past year and of sufficient duration to meet diagnostic criteria specified within the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) but excludes developmental and substance use disorders.

(i) Peace officer.— "Peace officer" means any peace officer or member of any duly organized state, county, or municipal peace officer unit, any police force of [state], or any police force or sheriff's department whose members, by statute, are granted and authorized to exercise powers similar to those conferred upon any peace officer employed by a law enforcement agency of [state].

(j) Recovery community.— "Recovery community" means the community of people in recovery from substance use disorder and their family, friends, and allies, including volunteers who might assist with deflection efforts, as well as peer recovery specialists who are trained and often certified to perform professional recovery services and support for those in recovery.

(k) Single state authority on drugs and alcohol.— "Single state authority on drugs and alcohol" means the state agency designated by the [state] governor to plan, manage, monitor, coordinate and evaluate substance use disorder treatment and recovery support services in the state, and to administer the federal Substance Abuse Prevention and Treatment Block Grant.

(l) State administering agency on criminal justice.— "State administering agency on criminal justice" means the state agency designated to set priorities and allocate Bureau of Justice Assistance Office of Justice Program funding within that state.

(m) State mental health agency.— "State mental health agency" means the state agency responsible for assuring that children, adolescents and adults, throughout the state have the availability of and access to public-funded mental health services for those who are diagnosed with a mental health disorder or emotional disturbance and an impaired level of functioning based on a mental health assessment.

(n) Substance use disorder.— "Substance use disorder" means a pattern of use of alcohol or other drugs leading to clinical or functional impairment, in accordance with the definition in the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM–5), or in any subsequent editions.

(o) Treatment.— "Treatment" means the treatment for substance use disorder or mental health disorder with a treatment provider in accordance with an individualized assessment and clinical placement criteria, with care that includes assessment, diagnosis, case management, medical, psychiatric, psychological and social services, medication-assisted treatment, counseling, and recovery support services that is extended to persons with substance use disorder, mental health disorder, or to their families, including children.

(p) Treatment provider.— "Treatment provider" means any substance use disorder or mental health disorder treatment facility or program that is [licensed], [certified], or [approved] by [the state] to provide comprehensive substance use disorder or mental health disorder treatment and recovery support services, with or without the support of medications, in a hospital, non-hospital residential, or outpatient basis. The term also includes any physician with expertise in providing or coordinating access to comprehensive withdrawal management, medication, counseling, and long-term recovery support services.

SECTION V. AUTHORIZATION.

(a) In general.— Any law enforcement agency may establish a deflection program subject to the provisions of this Act in partnership with one or more from each of the categories: treatment providers, case management providers, community members, and organizations or other key stakeholders as advisable to carry out its program.[9]

(b) Program components.— The deflection program should include at least one of the following: a post-overdose deflection response, a self-referral deflection response, an active outreach deflection response, an officer prevention deflection response, or an officer intervention deflection response.

(c) Additional responses.— Nothing in this Act precludes a law enforcement agency from developing a deflection program response based on a model unique and responsive to local issues, substance use or mental health disorder needs and partnerships, using sound and promising, or evidence-based, practices.

(d) Case management.—Whenever appropriate and available, case management should be provided by a licensed provider or other appropriate provider and may include recovery support services.

(e) Requirements for funding.— In order to receive funding for activities as described in Section IX of this Act ("Funding"), planning for the deflection program shall include:

(1) the involvement of one or more from each of the categories: treatment providers, case management providers, community members or organization, and other key stakeholders as required to carry out its program; and

(2) an agreement with the single state authority on drugs and alcohol, state mental health agency, and state administering agency on criminal justice to share, collect

[9] The key stakeholders will differ somewhat depending on both the type(s) of deflection program being established, as well as the structure of and interrelationship between local agencies. For example, for the "naloxone plus" deflection pathway described in Section IV(e)(1), first responders are certainly key stakeholders. For the pathway described in Section IV(e)(5), key stakeholders include state and local prosecutors. In addition, once a program is defined, the key stakeholders and funded activities become clearer.

and use relevant statistical data related to the program for performance measurement, as established by the single administering agency on criminal justice in paragraph (2) of subsection (a) of Section VII of this Act ("Reporting and Performance Measurement").

SECTION VI. PROCEDURE.

(a) In general.— The law enforcement agency, treatment providers, case management providers, and community members or organizations shall establish a local deflection program plan that includes protocols and procedures for participant identification, screening, and if needed based on the screening, assessment, treatment facilitation, reporting, and ongoing monitoring of the program participants, including which partners will perform these functions.

(b) Confidentiality.— In order to promote successful treatment and recovery outcomes, treatment providers and case management providers shall share information with other entities participating in the deflection program, in adherence to applicable privacy and confidentiality laws and regulations for information exchange or release. Such laws include:

(1) the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191 (Aug. 21, 1996);

(2) 45 C.F.R. parts 160 and 164 (HIPAA Privacy and Security Rules);

(3) federal confidentiality law and regulations, 42 U.S.C. § 290dd-2, 42 C.F.R. Part 2;

(4) any relevant state law related to the privacy, confidentiality, and disclosure of protected health information, including but not limited to protected information concerning substance use and mental health disorders; and

(5) any policies or regulations of the single state authority on drugs and alcohol and state mental health agency governing the care of protection of client information.

SECTION VII. REPORTING AND PERFORMANCE MEASUREMENT.

(a) In general.— The state administering agency on criminal justice, in conjunction with the single state authority on drugs and alcohol, state mental health agency, state health department, an association representing [state] police chiefs, and the state department of human services [division/bureau/office for mental health], shall within six (6) months of the effective date of this Act: [10]

(1) develop a standardized set of minimum data to be collected from each state-funded deflection program and reported annually, beginning one year after the effective date of this Act, by the single state authority on drugs and alcohol, state mental health agency, and state administering authority, including, but not limited to, demographic information on program participants, number of law enforcement encounters that result in a substance use disorder treatment referral, the number of such encounters that result in a mental health referral, and time from law enforcement encounter to treatment engagement; and

(2) develop a performance measurement system, including key performance indicators for deflection programs including, but not limited to, rate of treatment engagement at [X, Y, and Z,] days from the point of initial contact. Each program that receives funding for services under Section IX of this Act ("Funding") shall include the performance measurement system in its local plan and report data quarterly to the state administering authority on criminal justice for the purpose of performance measurement of deflection programs in aggregate.

(b) The state administering authority on criminal justice shall make statistical data collected under subsection (a) of this Section available to the single state authority on drugs and alcohol, state mental health agency, state health department and the state department of

[10] Information useful for the development required by paragraphs (a)(1) and (a)(2) can be found in PTACC's Core Measures of Deflection, at https://www.theiacp.org/sites/default/files/all/p-r/PTACCoreMeasuresMarch2018.pdf (last accessed June 17, 2019).

human services [division/bureau/office for mental health] for inclusion in planning efforts for services to persons with criminal justice or law enforcement involvement.

SECTION VIII. EXEMPTION FROM CIVIL LIABILITY.

A law enforcement agency, peace officer, treatment provider, case management provider or community member or organization acting in good faith shall not, as the result of acts or omissions in providing services under Section V of this Act ("Authorization"), be liable for civil damages, unless the acts or omissions constitute willful and wanton misconduct.

SECTION IX. FUNDING.

(a) In general.— The [state legislature] may appropriate funds to the state administering agency on criminal justice for the purpose of funding services provided as part of deflection programs subject to subsection (d) of Section V of this Act ("Authorization").

(b) Guidelines and requirements.— The state administering agency on criminal justice may adopt guidelines and requirements to direct the distribution of funds for expenses related to deflection programs. Funding shall be made available to support both new and existing deflection programs in a broad spectrum of geographic regions in [state], including urban, suburban, and rural communities.

(c) Eligible activities.— Activities eligible for funding under this Act may include, but are not limited to, the following:

(1) activities related to program administration, coordination, or management, including, but not limited to, the development of collaborative partnerships with treatment providers and community members or organizations; collection of program data; or monitoring of compliance with a local deflection program plan;

(2) case management including case management provided prior to assessment, diagnosis, and engagement in treatment, as well as assistance navigating and gaining access to various treatment modalities and support services;

(3) Training of law enforcement officials in how to recognize and constructively engage those with substance use disorder needs and those with mental health needs to encourage them to seek treatment and other services;

(4) recovery support services that include the perspectives of persons with the experience of recovering from a substance use disorder, either themselves or as family members;

(5) transportation to a licensed treatment provider or other program partner location;

(6) program performance measurement activities;

(7) treatment; and

(8) harm reduction services, including providing naloxone.

(d) Program protocols.— Program service protocols should require specific memoranda of understanding, linkage agreements, and other necessary contracts with partners and third parties responsible for one or more program components.

(e) Family involvement.— All deflection programs shall encourage the involvement of key family members and significant others as a part of a family-based approach to treatment.

(f) Evidence-based.— All deflection programs are encouraged to refer to evidence-based practices and long-term outcome measures in the provision of substance use and mental health disorder treatment, which includes, where clinically appropriate, medications for persons suffering from substance use or mental health disorder.

SECTION X. RULES AND REGULATIONS.

State agencies and officials shall promulgate rules and regulations necessary to implement their responsibilities under this Act.

SECTION XI. SEVERABILITY.

If any provision of this Act or application thereof to any individual or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provisions or applications, and to this end, the provisions of this Act are severable.

SECTION XII. EFFECTIVE DATE.

This Act shall be effective on [specific date or reference to normal state method of determination of the effect.]