



INDIANA UNIVERSITY

# PUBLIC POLICY INSTITUTE

Center for Health and Justice Research

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## COMMUNITY VIEWS ON PROSECUTOR-LED DIVERSION PROGRAMS IN MONROE COUNTY, INDIANA

### BACKGROUND

In the criminal justice system, diversion programs provide alternatives to traditional criminal justice processing. Prosecutor-led diversion programs are designed to reduce the harmful impacts of conviction while reserving court resources for more serious cases.<sup>1</sup> In 2021, Indiana University researchers partnered with the Monroe County Prosecutor's Office on a pilot project evaluating racial and ethnic disparities across several stages of decisionmaking.<sup>2</sup> Although the study revealed little evidence of racial and ethnic disparities in prosecutorial decisions, the researchers found disparities in pretrial diversion program enrollment.

These findings motivated the current larger-scale project, Promoting Racial Justice and Transparency in Indiana. In 2022, a team including the Monroe County (Indiana) Prosecutor's Office (MCPO), the Lake County (Indiana) Prosecutor's Office (LCPO), the Monroe County (Indiana) branch of the National Association for the Advancement of Colored People (NAACP), and researchers at Indiana University (IU) received funding from Arnold Ventures<sup>3</sup> to conduct a study of prosecutorial decisionmaking for traffic and misdemeanor cases. The study has aimed to document racial and ethnic disparities across decision points, assess local diversion policy and practices, and provide public-facing data to promote transparency and accountability. Beyond collecting administrative record data across both sites, the research team gathered qualitative data in Monroe County from participants in interviews and multiple focus groups. These Monroe County qualitative data collections are the focus of this policy brief.

### KEY FINDINGS

Monroe County community members and justice-involved people who participated in focus groups think that:

- Prosecutors' decisions to offer the pretrial diversion program (PDP) and arrestees' ability to pay for PDP may explain why Black individuals are less likely to enroll in PDP compared to white individuals.
- Current PDP offense eligibility requirements are too restrictive, and criminal history is being used to exclude too many people.
- The prosecutor and other justice system leaders should have a role in reducing disparities in the county's justice system.
- There should be better data collection and tracking to identify and monitor disparities.

Justice-involved people in Monroe County who were interviewed about diversion programs:

- Decided to enroll because they want to have a clean criminal history or driving record.
- Expressed confusion about the program's structure and whether they had successfully completed all requirements.

### METHODOLOGY

#### FOCUS GROUPS AND INTERVIEWS

To understand community perceptions of prosecution and diversion programs in Monroe County, the team convened 10 focus groups with community members and justice-involved individuals. Facilitators asked focus group participants to reflect on findings from the pilot study, which identified racial and ethnic disparities in pretrial diversion.

The team also conducted 27 interviews with people who participated in two prosecutor-led diversion programs in Monroe County: the Infraction Diversion Program (IDP) and the Pretrial Diversion Program (PDP). The infraction diversion program focuses on traffic infractions, while the pretrial diversion program focuses on criminal offenses. Both programs require participants to complete certain requirements to have their case dismissed rather than risking a conviction in court.

## **FINDINGS**

### **FOCUS GROUPS WITH COMMUNITY MEMBERS AND JUSTICE-INVOLVED PEOPLE**

#### **Explaining Racial Disparities in PDP Enrollment**

Focus group facilitators shared a pilot study finding with participants that showed Black defendants were less likely to enroll in the pretrial diversion program compared to white defendants. The facilitators then asked participants to reflect on why that might be.

Most commonly, focus group participants wondered if the problem was that offers were made less often by MCPO to Black individuals compared to white individuals. The next most common idea was that the program cost could prevent people from enrolling. For example, one participant who works with justice-involved clients explained, “The fee definitely is problematic for individuals who don't have the money or don't have parents who pay for [or are] willing to help pay for the cost. That is a significant barrier, and if you can't pay, you can't participate in the program.” Less common responses to this question included suggestions that there may be a lack of trust in the prosecutor's office or the criminal justice system or that there could potentially be bias in MCPO or local justice system decisions. Participants also voiced concerns about the cost of PDP when facilitators asked them if people have equal access to justice in Monroe County. They identified the cost of PDP as a significant barrier. For example, one participant explained, “PDP is really expensive. It's like 400 something dollars. . . . And my understanding is there is an opportunity for [a] waiver of fees or financial assistance. I don't know anybody that knows that. I only know it because I work

in the system. . . . I think the amount that it takes to pay upfront is a lot and I think that can be a barrier.”

#### **Thoughts on PDP Eligibility Requirements**

Focus group facilitators presented general eligibility requirements for the PDP program and asked participants to share their thoughts on those requirements.

Problems with program eligibility emerged as a dominant theme. Focus group participants stated eligibility requirements were too restrictive. They named several types of offenses they felt should not prevent someone from joining the program. These offenses included any nonviolent misdemeanor; property crimes; drug offenses like drug possessions; and some battery offenses, excluding domestic violence.

The focus groups also believed that MCPO uses criminal history to exclude too many people from PDP. Focus group members stated that criminal history should not be weighted so heavily in these decisions. For example, one participant shared their concern that criminal history was disqualifying even when offenses were very old: “It surprised me how much that was the deciding point in a way that [the client] may have a history that's 20 years old, they may have history that's from when they were 18 [years old] and stupid, but it just was kind of like the door was shut and I couldn't, and I still can't, kind of get past that sometimes.” Members of that same focus group also wondered whether relying so heavily on criminal history rules out people who are more likely to have a criminal history, such as young Black men or low-income individuals. Another participant said, “I think there's also other factors that really impact who's arrested and it's [factors such as:] How policed is your community? Are you housed [in an area] where a lot of people use drugs?”

#### **Appropriate Responses to Disparities**

When focus group facilitators asked if participants believed that the prosecutor should have a role in reducing disparities observed in the Monroe County criminal justice system, most groups said yes. One participant explained, “I think, yes, the people, the leaders, or the main players in the system do have a responsibility to address this discrepancy and to try to even the playing field for everybody.” A majority of the focus groups also mentioned a need for better data collection and tracking to understand the PDP enrollment

disparity. For example, one participant suggested that when someone declines a PDP offer, MCPO should ask the individual why they declined to participate and ask if it is due to the program cost.

**TABLE 1. Deciding to enroll in diversion**

REASON FOR ENROLLING	PRETRIAL DIVERSION <i>n</i> =17	INFRACTION DIVERSION <i>n</i> =10
Wanted clean record	11	5
Easier than prosecution	8	2
Worried about conviction	5	–
Worried about insurance	–	9
Help make better choices	3	0
Sounded easy	1	1
Tailored to my situation	1	0

## INTERVIEWS WITH DIVERSION PROGRAM PARTICIPANTS

### Why People Enroll in Diversion Programs

Researchers asked the 27 interview participants, “What were the major factors that led you to agree to participate in this diversion program?” Table 1 shows responses for both pretrial diversion (PDP) and infraction diversion (IDP) program participants.

PDP interviewees most commonly gave two responses: they wanted a clean record and found the program was easier than the prosecution process. An 18-year-old female PDP participant explained, “It seemed fair for me to just complete, like take a class and complete community service, for the charge to be removed. That seems fair, and I didn't want to go through the trouble of, you know, paying an attorney and going to a court hearing.” About one-third of PDP interviewees also worried about receiving a conviction if they were to reject the program offer and participate in the traditional court process.

IDP participants most commonly stated they wanted a clean record. They also specifically indicated they wanted a clean record for the sake of lower car insurance rates. Participants less often stated that their reason for enrolling was because they thought the program would help them

make better choices, it sounded easy, or it was well-tailored to their situations.

### Confusion about Program and Requirements

Confusion about the structure and requirements of the diversion programs was a common theme in the interviews. The participants described difficulties finding information about the program before enrollment and understanding what they needed to do to complete the program. For instance, three IDP interviewees described difficulties finding information about the program online after receiving their ticket. Once enrolled in the diversion programs, one IDP and two PDP interviewees expressed uncertainty about whether they had done everything needed to complete it successfully.

## RECOMMENDATIONS

Based on these findings, the research team made the following recommendations:

### IMPROVE DIVERSION PROGRAM ACCESS

#### Reduce or Eliminate Diversion Program Costs

To increase access to the diversion program MCPO should find ways to reduce or eliminate diversion program costs. If costs cannot be eliminated, MCPO could consider increasing awareness of the waiver process and granting more waivers. MCPO could also consider using payment plans, allowing participants to pay periodically while they complete the program. Although these measures would create additional administrative work and result in reduced fee collection, the adjustments could improve access to diversion. They would ensure that an inability to pay does not prevent low-income people from participating. These measures could also potentially reduce racial disparities in program enrollment.

#### Reconsider Program Eligibility Requirements

Current PDP eligibility guidelines focus on a small list of minor misdemeanor offenses. People with a criminal history are generally excluded from eligibility except when prior convictions are for less serious offenses. MCPO could evaluate whether diversion eligibility criteria can be

modified to include people with a greater variety of offenses and certain kinds of criminal history records. MCPO could consider, for example, developing more detailed eligibility criteria based on the length of time since a person's last conviction. Research has shown that people with records that are about 5 to 10 years old are no more likely to come into contact with the justice system than those with no criminal history record.<sup>4</sup> Modifications to eligibility criteria that consider the length of time since a prior conviction may also reduce enrollment disparities, given that criminal history records reflect not only prior offending but also justice system behavior, including increased surveillance and calls for service in low-income minority communities.<sup>5</sup>

### **Improve Access to Program Information**

MCPO should consider improving access to information about diversion programs. This information could boost enrollment from more diverse groups, assist individuals in making informed decisions about participation, and help participants better understand how to complete the program successfully. MCPO can start by clarifying online program information and providing additional details. For example, MCPO could create a set of frequently asked questions to address common concerns among people who may be eligible for the program. MCPO staff could develop responses to questions like "How do I know if I am eligible for diversion?" "What will I be required to do if I decide to enroll?" and "What exactly will remain on my record after completing the program successfully?" Providing this information could not only help potential participants but also program staff by reducing the extent of inquiries received about common questions or concerns.

disparities result from peoples' decisions to accept offers, MCPO can investigate whether these decisions may be influenced by elements like program cost or mistrust of the criminal justice system and design interventions accordingly.

## **IMPROVE DIVERSION PROGRAM DATA COLLECTION AND EVALUATION**

### **Identify and Monitor Racial Disparities in Enrollment**

MCPO should systematically collect data on who is being offered diversion programs. This data should be utilized in future evaluations to determine whether racial disparities in PDP enrollment stem from MCPO's program offer decisions or people's choices to accept these offers. More precise identification of these disparities will aid in designing effective strategies to address racial differences in program enrollment. For instance, if disparities arise from program offers, MCPO can adjust eligibility criteria. Conversely, if

## REFERENCES

- 1 Rempel, M., Labriola, M., Hunt, P., Davis, R.C., Reich, W.A., & Cherney, S. (2018). *NIJ's multisite evaluation of prosecutor-led diversion programs: Strategies, impacts, and cost-effectiveness*. National Institute of Justice.
- 2 Diaz, C.L., Grommon, E., Rising, S., Lowder, E. M., & Narlock-Targett, S. (2022). *Monroe County racial justice data project: Final report*. Indiana University.
- 3 Founded in 2008 by Laura and John Arnold, Arnold Ventures focuses on finding “evidence-based policy solutions to maximize opportunity and minimize injustice.” <https://www.arnoldventures.org/>. Opinions or points of view expressed are those of the authors and do not necessarily reflect the official position or policies of Arnold Ventures.
- 4 Bushway, S.D., Nieuwbeerta, P., & Blokland, A. (2011). The predictive value of criminal background checks: Do age and criminal history affect time to redemption? *Criminology*, 49(1), 27–60.
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### INDIANA UNIVERSITY **PUBLIC POLICY INSTITUTE** Center for Health and Justice Research

The Center for Health and Justice Research (CHJR) works with public safety agencies, social service organizations, and residents to conduct impartial applied research on public and justice system policy choices. CHJR is housed within the IU Public Policy Institute (PPI), a multidisciplinary institute within the Paul H. O'Neill School of Public and Environmental Affairs. PPI also supports the Center for Research on Inclusion & Social Policy (CRISP), and the Manufacturing Policy Initiative (MPI).

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