
KEY POINTS

PRE-TRIAL DIVERSION AND ALTERNATIVE SANCTIONS

Alternative to Incarceration Policies

- An alternative sanction is any punishment more restrictive than traditional probation -- although probation itself is an alternative sanction -- and less punitive than incarceration.
- Pre-trial diversion is intended to redirect an arrested person from further involvement with the criminal justice system by deferring prosecution and ultimately dismissing the charge upon compliance with court-ordered conditions.
- During the past 20 years, the concept of alternatives to incarceration -- other than traditional probation -- developed as an acceptable criminal justice system response to crime.
- Initially developed as a means to reduce prison overcrowding, alternative sanctions are also intended to effectively impact the offender, court backlogs, and community safety and to reduce recidivism.

Program Overview

- There are three categories of alternatives to incarceration: (1) pre-trial diversion programs; (2) alternative sanction programs; and (3) alternative disposition programs (e.g., specialized courts).
- Almost all programs are delivered statewide by a network of contracted nonprofit, community-based agencies.
- Persons arrested for the first time with one of the statutorily targeted offenses: DUI; possession of drug or drug paraphernalia; family violence; violence by students; and crimes motivated by bigotry or bias are eligible to participate in a pre-trial diversion education program.
- Prosecution is suspended during a defendant's participation in a pre-trial diversion education program and ultimately the charge is dismissed upon successful completion.
- Alternative sanction programs are categorized as: (1) Alternative Incarceration Centers; (2) Day Incarceration Centers (program closed June 2004); (3) adult services; (4) residential treatment; (5) domestic violence; (6) special populations (e.g., sex offenders, women, Latinos);

and (7) other programs such as Zero-Tolerance Drug Program and Community Service Labor Program.

- Pre-trial defendants enroll in alternative sanction programs as a special bail release condition ordered by a judge or bail commissioner.
- Convicted offenders are admitted to an alternative sanction program: (1) as a “direct” Alternative Incarceration Program sentence; (2) as a condition of probation; or (3) as a response to a violation of probation.
- Alternative sanction programs offer various types of residential and nonresidential services including: mental health and substance abuse evaluation and treatment; individual, group, and family counseling; educational and vocational counseling and placement; life skills counseling; recreation; case planning; and referral services.
- Alternative disposition programs include the Community Court, the Drug Intervention Program, and the Mediation Program.

Program Capacity and Utilization Analysis

- No reliable capacity or client admission and satisfactory discharge data are collected on the six pre-trial diversion education programs.
- Since all defendants eligible for the pre-trial diversion education programs are served, capacity is considered unlimited and the utilization rate is always estimated at 100 percent.
- The ability of the statewide network of alternative sanction programs to meet demand is measured in two ways:
 - ***contracted capacity*** based on the number of contracted nonresidential slots and residential beds -- considered a fluid number; and
 - ***capacity to serve*** representing an estimated number of client admissions that could be served during a fiscal year by the contracted capacity.
- No significant growth in contracted alternative sanction program capacity has occurred, and it has decreased due to forced budget reductions in FY 02.
- Capacity to serve clients increased exponentially (from 16,000 in FY 00 to 26,000 in FY 04) and greatly exceeds contracted capacity.
- In FY 04, about 5,000 contracted slots and beds served almost 26,000 pre-trial and sentenced clients.
- Forced reductions due to the FY 02 budget crisis negatively impacted trends in contracted capacity and capacity to serve.

- The current statewide ratio between Department of Correction prison bed capacity and CSSD alternative sanction contracted capacity is 4:1, but the ratio between inmates in prison and defendants and offenders supervised in the community is 1:4.
- Total client population in alternative sanction programs is almost evenly divided between sentenced (55 percent) and pre-trial (45 percent).
- CSSD administratively set target rates of 90 percent program utilization and 60 percent satisfactory discharge.
- Overall, among alternative sanction programs, utilization is almost 100 percent.
 - Utilization varies between program types from a low of 88 percent in residential treatment to a high of 115 percent in the Sex Offender Program.
- Client admissions rose between FY 00 and FY 02 to almost 20,000, but dropped to less than 14,000 in FY 04 (a 27 percent decrease).
- Almost two-thirds of all client discharges are satisfactory (meaning the client successfully completed the program) meeting the target rate of 60 percent.
- There is a steady increase in admissions to the specialized court programs.
- Specialized court programs maintain a 70 percent satisfactory discharge rate.

Court Support Services Division

- CSSD is responsible for bail and probation services and pre-trial diversion, alternative sanction, and specialized court programs.
- CSSD has recently adopted an evidenced-based program strategy and established a “Center for Best Practices” to design alternative sanction programs aimed at reducing recidivism among high and medium risk defendants and offenders.
- The division has three separate units each responsible for a specific oversight and outcome monitoring function that do not have a formal collaborative working relationship.
- In FY 03, the total Alternative Incarceration Program (AIP) budget was approximately \$31 million; the total judicial branch budget was almost \$359 million.
- Total AIP appropriations have steadily increased each year since FY 90.

- Alternative Incarceration Centers account for almost half (45 percent) of the total AIP budget in FY 03 followed by residential services (31 percent) and adult services (9 percent).

Program Development and Evaluation

- CSSD is statutorily mandated to establish and determine the effectiveness of alternative sanction programs.
- The division has implemented a quality control process to measure efficiency of alternative sanction programs, but relies on outside contracted consultants to conduct studies on the effectiveness of its programs.
 - Since 1990, CSSD has contracted for only two such studies, one completed in 1996 and one on-going project scheduled to be completed in 2006.

Preliminary Findings

- The alternative sanctions concept has evolved from a way to simply address prison overcrowding to a vital component of the state's new initiative to reduce recidivism.
- Court Support Services Division statutory mandate and administrative program policy was expanded to focus on reducing recidivism.
 - CSSD adopted evidenced-based program strategy
 - No identified target recidivism rate (baseline is unknown)
 - No link between alternative sanction program contract requirements and stated objective to reduce recidivism
 - The division's CMIS system does not have capability to link recidivism outcome data (e.g., rearrest, reconviction, and re-incarceration) on an ongoing basis to program admission and discharge data
- CSSD does not appear to be meeting its mandate to evaluate the effectiveness of alternative sanction programs.
 - CSSD relies instead on outside, contracted consultants to conduct short-term studies -- only two such studies in the past 10 years
 - No reliable pre-trial diversion data

- No accurate tracking of individual defendants and offenders referred to specific alternative sanction programs
 - No identified outcome measures -- other than program completion -- for contracted programs
- CSSD is focusing alternative sanction programs at high and medium risk clients without adequate consideration of potential risks among low risk clients.
- There is a sustained high demand for alternative sanction programs, but resources have not kept pace.
 - Demand for service far exceeds contract capacity (slots and beds)
 - FY 02 forced budget reductions significantly impacted capacity
 - CSSD budget does not include Cost of Living Adjustments (COLA) for contracted programs nor does it receive state bond funds for contracted facility improvements