

## I. Background

Penobscot County is currently grappling with a growing crisis of jail overpopulation and an unsustainable financial burden on its criminal justice system. While Penobscot County officials are in the early stages of discussing the construction of a new jail to deal with this issue, expanding jail capacity often fails to address the underlying causes of incarceration, ultimately placing a long term financial and social burden on the community.

This proposal outlines a more effective approach: a self-financing diversion-based system that routes eligible individuals away from jail and into treatment, support, and accountability programs. This effort is designed as a pilot program for Penobscot County, with the aim of proving its success and subsequent adoption as a statewide model for justice and budget reform. The primary goal for the Judicial Branch in establishing this system is the dramatic reduction of case backlog, the generation of significant cost savings, and the efficient reallocation of judicial resources to higher-risk, complex litigation.

From a financial perspective, diversion is significantly less costly than incarceration and greatly reduces crime rates, eliminating the need for expanded jail infrastructure while leveraging existing community resources. From a moral standpoint, it ensures that people whose alleged offenses stem from poverty, addiction, or other remediable circumstances are not trapped in a cycle of incarceration, but instead given a meaningful opportunity for rehabilitation and reintegration.

### **The systematic crisis**

The Penobscot County jail overpopulation crisis is symptomatic of deeper, structural failures within the state's criminal justice system, characterized by unmanageable case backlog, acute understaffing, and a severe public defense crisis.

While data on the total number of pending cases in December 2025 is not yet available, the trends clearly demonstrate the judiciary's unsustainable workload. In late 2023, Penobscot County's backlog had increased by 64% since 2019, rising to 2,673 total pending cases. Of these cases, 961 were felony cases as of September 8, 2023.<sup>1</sup>

According to District Attorney Chris Almy, there were over 800 pending felony cases in August 2025, a figure comparable to the late 2023 number.<sup>2</sup> This suggests the total number of pending cases in August 2025 was likely still well over 2,000, reinforcing that the massive backlog has persisted and continues to keep individuals detained and drive up costs.

This overwhelming backlog is directly compounded by a severe resource shortage within the Judicial Branch. A 2023 workload assessment by the National Center for State Courts (NCSC) found that Maine's trial courts require at least nine more judges and 53 additional clerks simply

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<sup>1</sup> [How Penobscot County is clearing its crippling criminal case backlog](#)

<sup>2</sup> [Penobscot County legal system grappling with rising number of felony cases](#)

to keep pace with the current volume of cases being filed. This lack of personnel slows case disposition: misdemeanor cases, which are highly suitable for diversion, are noted as the slowest to move through the system, and a recommendation of jail time typically delays cases 90 to 150 days or longer.<sup>3</sup> The diversion model, by shifting cases out of the criminal docket, is crucial for restoring the timely function of the remaining court calendar.

The most fundamental issue enabling the jail crisis is the state's ongoing failure to provide adequate public defense. Although around 80% of defendants in Maine cannot afford private counsel,<sup>4</sup> in 2024, only about 37% of all new criminal cases statewide were represented by Maine Commission on Public Defense Services attorneys, leaving a large number of defendants unrepresented.<sup>5 6 7</sup> Penobscot County shoulders a disproportionate share of this crisis, holding approximately 28% of Maine's unrepresented cases as of May 2025, despite having only 11% of the state's total population.<sup>8</sup>

Because over 90% of the jail population are detained pretrial, this lack of legal representation forces unrepresented individuals to remain incarcerated, compounding the backlog and the financial burden on the county. By routing eligible cases to the supported, goal-oriented environment of the diversion court, this proposal offers a necessary mechanism to alleviate the pressure on both the public defense system and the pretrial detention facility.

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<sup>3</sup> [Maine Judge and Clerk's Office Staff Workload Assessment](#)

<sup>4</sup> [Report shows how to fix the broken defense system for Maine's poor](#)

<sup>5</sup> [MAINE JUDICIAL BRANCH 2024 ANNUAL REPORT](#)

<sup>6</sup> [MAINE COMMISSION ON PUBLIC DEFENSE SERVICES January 29, 2025](#)

<sup>7</sup> [Maine County Commissioners Association](#)

<sup>8</sup> [A Growing Crisis: The Right to Counsel Denied in Maine](#)

## II. Overview of the system

### Three-level intake screening

We propose three different stages at which an individual may be diverted from criminal prosecution. This is to ensure that opportunities for diversion are not missed and that eligibility can be assessed at multiple points in the justice process. This is a voluntary program chosen by those accused of a crime and administered through the Maine court/judicial system. One's eligibility for participation in diversion programs can be determined at three separate points:

**1. Pre-booking diversion:** An officer responding to an incident may, at the scene or immediately afterward at the station, determine that the circumstances appear to meet established diversion criteria (e.g., poverty-driven offense, caregiver status, substance use, first-time offender). In such cases, the officer may opt not to formally book the individual into jail and instead refer them directly to a designated case manager for assessment and connection to services.

a. In 2017, the Bangor Police Department launched the Law Enforcement Assisted Diversion Program (LEAD), which allows officers to divert individuals accused of low-level drug related offenses to case managers without being booked. While this program was remarkably successful at decreasing recidivism for drug-related offenders in Seattle<sup>9</sup>, it saw little success in Bangor<sup>10</sup>. This is because Bangor's implementation lacked formal evaluation protocols, and because the county lacks the infrastructure to successfully rehabilitate those charged with drug-related offenses.

i. The LEAD program should be reintroduced, with formal evaluation protocols, in addition to greater rehabilitative infrastructure. The LEAD program should be expanded to include not just drug related offenses, but those related to the other categories mentioned in this document (poverty, mental illness, caregivers, first time offenders).

ii. We will establish formal operational agreements with key local law enforcement agencies (specifically Bangor, Brewer, and Old Town) to implement this summons-in-lieu-of-arrest process. A monitoring and communication channel will be developed to confirm that participants successfully utilize the diversion opportunity.

**2. Court-directed diversion:** At or after arraignment, as the prime state actor, the court will consult with the defense and prosecution on equal footing to identify eligible cases that were not previously diverted at the pre-booking or post-booking stage. Using the established diversion criteria, the court can offer participation through a deferred disposition, restorative justice agreement, or transfer to a specialty docket. Upon acceptance, the individual's case is placed on hold while they engage with a case manager and complete required services;

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<sup>9</sup> [LEAD Program Evaluation: Recidivism Rep](#)

<sup>10</sup> [Bangor struggles to find success with program aimed at reducing drug arrests](#)

successful completion results in dismissal, reduction, or sealing of the charges, as permitted by law.

a. It is essential that these programs are tethered to a state actor, i.e. the judiciary. We believe it is within the court's authority to allocate a certain amount of its budget towards such ends. However, it is possible that certain adjustments may require legislative changes.

b. Recognizing the difficulty in having the judiciary initiate the project, our strategy will rely on a recommendation from the criminal process manager and formal approval from the local bench and state trial chiefs to secure court collaboration.

**3. Post-booking diversion:** Once a diversion path is approved by courts through advocacy from the Public Defender, a third party nonprofit agency (such as either Maine Pretrial Services (MPS) or Eastern Maine Development Corporation) will conduct a structured review to assess risk, needs, and service eligibility. Using the county's diversion criteria, (see nine-track framework below) the reviewing agency ensures participants are matched with the appropriate track (poverty-related, caregiver, substance use, first-time offender, etc.). The intake agency will then coordinate with case managers to provide immediate connection to services, with ongoing reporting and compliance monitoring shared with the court and prosecution. A partnership structure relying on memorandums of understanding (MOUs) with specialized external service providers is essential. Authorization for professional visitors to enter the jail is critical for coordinating ongoing care and services.

### **Nine-track framework**

We propose different types of diversion tracks, encompassing different categories of criminal charges in which jail time and/or prosecution is inappropriate or ineffective. The base structure of each track would be daily reporting and cooperation with a case worker team, which would build individualized plans for participants. The detailed track structure is valuable for data collection, but managing its complexity will necessitate a highly-trained, cross-functional team of specialized staff. Teams could work on several different cases at a time and include specialists such as social workers, behavioral health specialists, substance use counselors, etc. In cases where participants have needs that cannot be directly addressed by core team members, the team may arrange them with third party services. We will align the diversion tracks with recidivism risk factors and client service needs, streamlining intake through the use of a validated actuarial tool for objective assessment. We must develop a process to determine the primary factor driving the needs of individuals who meet the criteria for multiple tracks. Teams would set specific goals to be reached within specific time frames, such as completion of drug treatment programs, acquisition of employment, acquisition of secure housing, etc. Tracks would be staffed by care team members hired by the third party non-profit to provide day-to-day contact with all diversion program participants.

Successful completion leads to case dismissal and record-clearing, reducing unnecessary criminalization while creating practical and restorative outcomes for the community. Contract

disputes do not belong in criminal court, and should result in mandatory arbitration.

It is important to note that these tracks are not meant to be extensions of the traditional criminal justice system, but ways to help people avoid it.

### ***Track 1: Poverty related offenses***

Those eligible for diversion through this track would be those accused of non-violent crimes related to poverty, financial instability, homelessness, etc. If the motivation for these criminal charges can be reasonably linked to the defendant's unmet needs, or other deprivations, they will be given the ability to go through this track instead of a traditional trial.

Examples of eligible criminal charges may include: petty theft, larceny, theft of services, criminal trespassing, unpaid fines, disorderly public order violations (such as disorderly conduct linked to homelessness), criminal mischief, cases that are civil in nature or more of a contract or tort nature.

### ***Track 2: Property crimes/minor nonviolent financial offenses***

Track 2 addresses cases that resemble civil conflicts more than crimes, such as minor property damage, small thefts, or landlord-tenant disputes. Instead of prosecution, cases are routed to mediation or arbitration, where parties negotiate restitution, repayment, or behavioral agreements. Restorative justice is used when harm must be repaired, while arbitration provides binding resolutions if mediation fails.

It is worth noting that in many rural areas, it is not uncommon for the criminal justice system to be unduly utilized at the behest of those attempting to assert their property rights. Misuse of the system to such ends wastes resources and results in punishments disproportionate to the transgressions.

Methods of resolving disputes:

- Community mediation panels, where volunteer mediators from the community hear both sides and help both parties arrive at a fair compromise.
- Restorative justice circles, where accused offender, victim, and community members sit together to discuss harm, impact, and solutions. Works well for low-level property damage.
- Compulsory arbitration for cases like small thefts or disputes under a set dollar amount, the accused offender is diverted to arbitration where restitution is set instead of prosecution
- Mandatory arbitration at the beginning stages of evictions
- Decriminalization of vagrancy

### ***Track 3: Caregivers/people with dependents***

Track 3 is designed for individuals with dependents, such as parents, guardians, or those caring for children and/or people with disabilities and/or elderly relatives, whose incarceration

would cause disproportionate family harm. Eligible participants are offered community-based supervision, family counseling, and access to childcare or eldercare support.

#### ***Track 4: Substance use disorders***

Track 4 targets criminal charges linked to addiction, including possession and low level crimes allegedly committed to support drug use. Instead of jail, individuals are diverted into treatment programs, peer recovery support, and case management. When appropriate, this track uses a problem-solving court model with close monitoring, treatment compliance, and harm-reduction services. Charges are dismissed upon successful treatment engagement, with the goal of reducing substance-related recidivism and improving public health.

#### ***Track 5: First time offenses***

Track 5 provides individuals with no prior criminal record an opportunity to avoid the long-term consequences of conviction. Eligible participants complete community service, restitution, education programs, or counseling as appropriate to their offense.

Upon successful completion, charges are dismissed and the record is expunged. This track emphasizes accountability without entrenching people in the justice system, preventing one-time mistakes from leading to lifelong barriers.

#### ***Track 6: Veterans***

Track 6 serves all military veterans including those whose charges are linked to service-related conditions, such as PTSD, traumatic brain injury, or substance use. While there is already a Veterans Treatment Court in Maine, we believe it needs to be expanded. This track uses a specialized veterans court model, connecting participants with VA benefits, peer mentors, mental health care, and treatment programs.

#### ***Track 7: Juveniles***

Track 7 is designed for youth who are facing criminal charges, redirecting them from formal adjudication into restorative justice circles, mentoring, education support, and family counseling. The focus is on accountability, repairing harm, and building skills rather than punishment. Successful participation results in case closure with no permanent record.

#### ***Track 8: Mental illness***

Track 8 would focus on individuals whose criminal charges are directly tied to untreated or inadequately treated mental health conditions, such as disorderly conduct, trespassing, or minor property damage stemming from crises. Rather than channeling these individuals into jail, the program would connect them to specialized problem-solving courts or community-based treatment, modeled after successful mental health court frameworks.

### ***Track 9: Other***

There are other circumstances where applying a diversion program would be more effective in addressing a criminal charge situation than incarceration, both for the safety and security of the public and the individuals involved. An example might be a domestic violence case where an abuse victim is accused of a violent crime against an abuser. A special team would work with those charged with a crime to create criteria for and completion standards for a diversion program.

### **Procedural Protections for Participants**

The effectiveness of the diversion system, particularly its non-adversarial tracks like Restorative Justice and Arbitration, relies on the trust and cooperation of participants. It is essential that robust legal safeguards are in place to ensure that voluntary admissions or participation in rehabilitation programs cannot be used against an individual if their case fails diversion and reverts to the core criminal justice system.

We propose enacting a specific statute governing confidentiality that ensures fair treatment and encourages honest engagement:

Any information, evidence, or admissions voluntarily given during restorative justice circles, mediation, arbitration, or case management discussions should not be admissible in court if the individual's case, for whatever reason, ends up in the core criminal justice system. Colorado's confidentiality statute for restorative justice should serve as an example to follow. The essence of this proposal is that there is no adjudication of guilt during the completion of the program, and once completed, the case is dismissed.

### **Standards for timely disposition of cases**

One of the primary goals of the diversion program is to fix the issue of slow cases and large backlogs burdening the court system.

We make a Case Manager the main person in charge of moving cases along, with the goal of ensuring timely case outcome. The participant must successfully finish the personal plan set by their Case Manager, which leads to immediate dismissal or sealing of charges. This approach avoids the long, costly delays that happen when a case involves a recommendation of jail time.

The program will measure its success using clear performance goals, the main goal being the reduction of legal system reinvolverment. By effectively managing these cases with focused support and clear deadlines, the diversion program acts as a crucial way to improve judicial efficiency and get a better return on the community's investment.

### **III. Fiscal and public safety benefits**

#### **Fiscal analysis**

Based on the 2025 Penobscot County Jail Fund budget, an estimated \$65,328.18 is spent annually to incarcerate a single person. This means that it costs about \$14,110,887 annually to hold the pretrial population (216 individuals) of Penobscot County Jail.

We estimate that the annual cost of an individual's participation in a diversion program would be about 20% the annual cost of incarceration. That means an individual's participation would cost about \$13,065.64 (or \$1,088.80 monthly).

That means if 60% (130) of cases were successfully diverted, instead of costing taxpayers \$8,466,532 annually on incarceration, it would only cost them \$1,693,306 annually. That saves \$6,773,226.

If 40% (86) were diverted, \$4,582,753 would be saved.

Even if only 30% (65) were diverted, it would still save \$3,386,613 of taxpayer money, while putting the population of the jail within its capacity of 157, which eliminates the issue that supposedly necessitates the construction of a new jail.

Although an official number has not been announced for the construction costs of a new jail, the numbers \$75-80 million have been suggested. County Administrator Adkins stated that financing a project in that range, specifically a \$75 million to \$80 million bond spanning 20 years at a somewhat aggressive interest rate, would require an estimated annual payment of about \$5 million, meaning the actual cost could be close to \$100 million.<sup>11</sup> If the actual cost is even close to that, it means the establishment of case diversion programs would cost taxpayers tens of millions of dollars less than a new jail.

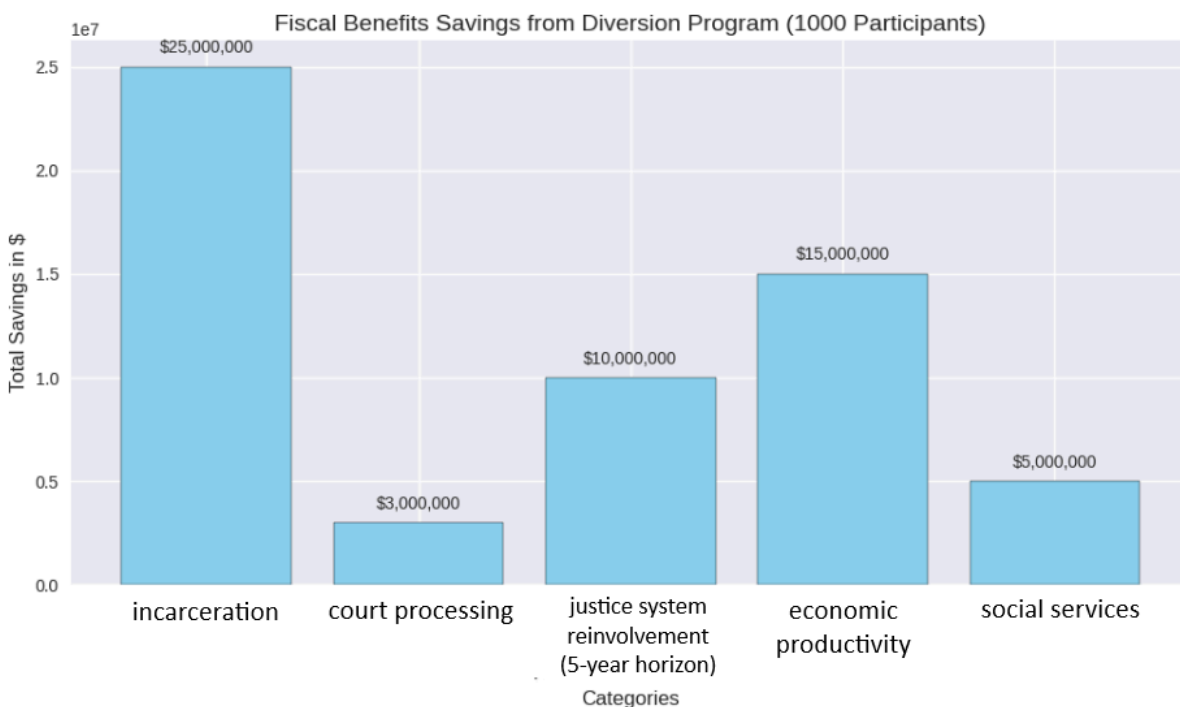
Creating diversion programs for the Penobscot County Jail would also directly address the county's growing budget crisis by reducing both incarceration and outsourcing costs. With over 90% of the jail's population held pretrial, even modest diversion of eligible individuals into supervised community-based programs could save millions annually. Each person diverted costs about one-fifth as much as incarceration, meaning that diverting just 40 to 60% of cases could save the county between \$4.5 million and \$6.8 million annually. This figure is critical because the county's portion of jail funding, the CAP contribution of \$8,594,059, is primarily paid by local property taxpayers. The massive savings from diversion are, therefore, enough to close the current \$3.4 million budget shortfall and restore financial stability without placing further demands on property taxes or cutting other essential services.

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<sup>11</sup> [New details emerge about proposed county jail in Hampden](#)



The economic success of this program is measured by its Return on Investment (ROI). We aim for an ROI greater than 1, meaning the program saves more money than it costs. We do this by tracking the program's budget against the money saved from avoiding things like jail time and court costs, as well as the long-term benefit of participants attaining gainful employment. Our data shows that the total long term benefit of comprehensive diversion can be over \$48,000,000 for 1,000 participants.



See more in our [extended fiscal analysis document](#).

## Part 2: safety analysis

According to the Maine Department of Corrections, the most recent statewide three-year recidivism rate is 21.4%. This means that roughly one in five people released from incarceration are rearrested or reconvicted within three years. By contrast, studies of pretrial diversion programs nationally and regionally show that participation in such programs can reduce recidivism by an average of about 31.5% over comparable three-year periods.<sup>12 13 14</sup> Applying that to Maine's baseline, this would mean a diversion recidivism rate of approximately 14.66%.

Using the same 216 person pretrial population, we modeled how different levels of diversion could affect overall public safety. If 60% (130) of eligible individuals were diverted, the total number of people expected to reenter the justice system would drop from about 46 to 37,

<sup>12</sup> [Shelby County \(Tennessee\) Pretrial Diversion Programs - An Evaluation](#)

<sup>13</sup> [Pretrial Adult Diversion - A Study of Impact and Process](#)

<sup>14</sup> [Evaluating The Calibrate Pretrial Program](#)

reducing the overall recidivism rate from 21.4% to 17.4%, an 18.9% improvement in public safety outcomes.

If 40% (86) were diverted, the expected recidivism rate would fall to 18.7%, with roughly 41 people reoffending instead of 46. Even diverting 30% (65) of the pretrial population would reduce recidivism to 19.4%, preventing several future offenses and lowering overall risk to the community.

## **IV. Implementation and Appropriations**

### **Statutory authority and legislative needs**

The foundation for establishing the proposed diversion system already exists within the Maine Revised Statutes, specifically [Title 4, §422](#). This statute empowers the state judiciary and the Administrative Office of the Courts (AOC) to create and manage such programs, providing the necessary legal authorization for the project's inception.

The AOC is authorized to enter into cooperative agreements with entities like the Department of Health and Human Services and the Department of Corrections, as well as local entities, to provide rehabilitative services. This directly supports the proposal's reliance on third-party non-profits for case management and services.

While Title 4, §422 provides the framework, its current primary focus on programs addressing substance use disorder may suggest there are limitations to implementing the program solely through administrative action.

If there are no other available means of implementation, the following legislative actions may be required to empower the AOC and the courts to establish the full scope of the diversion plan:

- a. Broadened Eligibility for Diversion: Amending Title 4, §422 or creating new statutory language to explicitly authorize and fund diversion programs based on factors beyond substance use disorder and mental illness. Transfers from tradition criminal calendar to special court part, suspends criminal litigations pending successful completion
- b. Procedural Confidentiality Protections: Legislation to establish a confidentiality statute that makes any information, evidence, or admissions voluntarily given during the non-judicial diversion process (e.g., restorative justice circles, arbitration) inadmissible in a criminal court if the case reverts to traditional prosecution.
- c. Public Record Sealing: New legislation that explicitly authorizes or mandates that in the event of any public record to the proceedings, those records are sealed or expunged upon successful completion of the diversion program.
- d. Judicial Funding Authority: While the AOC is authorized to staff programs, legislation may be required to formally allocate a specific portion of the state judiciary's budget toward the creation of three additional judicial positions with dedicated staff and clerks for the Penobscot County diversion court.

### **Appropriation Request**

The total cost to fund the new diversion court staff is estimated to be roughly \$383,956 annually. This is one set of three full-time positions necessary to establish the specialty diversion court part.

The Judicial Officer's pay is benchmarked against the current salary for a Maine Superior or District Court Judge. The Case Manager salary is based on compensation for comparable specialized legal support, such as a Judicial Clerk. The Court Clerk's pay is calculated using the high-end hourly rate for Court Assistants.

This detailed cost analysis reflects the estimated funding required for one set of three full-time positions necessary to establish the specialty diversion court part. A 35% multiplier is added to the total salary to cover the cost of mandated employee benefits, such as health insurance and retirement.

Position	Estimated Annual Base Salary	Rationale
Judicial Officer (Judge/Magistrate)	\$145,642	Benchmarked against current Maine District/Superior Court Judge salary.
Case Manager/Team Lead	\$76,100	Based on specialized legal support/Judicial Clerkship compensation.
Court Clerk/Special Docket Assistant	\$62,670	High-end estimate for specialized Court Assistant duties.
Subtotal Annual Salary (3 Positions)	\$284,412	
Benefits & Overhead Multiplier (35%)	\$99,544	Estimated employer costs (health insurance, retirement, etc.).
Total Appropriation Request	\$383,956	

## Grant opportunities

While legislative appropriations are necessary to secure core judicial capacity (like the three specialized staff positions), grants from external foundations allow the program to fund specialized components, such as case management infrastructure, clinical treatment services, and research and evaluation. You can see a working list of potential grants [here](#).