

Diversion Proposal for Penobscot County

Background

Penobscot County officials are in the early stages of green lighting the construction of a new jail to deal with the current crisis of overpopulation in Penobscot County Jail. While expanding jail capacity may seem like a straightforward solution, it fails to address the underlying causes of criminal justice policies and resulting incarceration and ultimately places a long-term financial and social burden on the community.

This proposal outlines a more effective approach: a diversion-based system that routes eligible individuals away from jail and into treatment, support, and accountability programs. 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.

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 with 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 Seattle¹, it saw little success in Bangor². 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; 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

¹ [LEAD Program Evaluation: Recidivism Rep](#)

² [Bangor struggles to find success with program aimed at reducing drug arrests](#)

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, houselessness, 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 with special conditions

It is important that there be procedural protections for accused participants in these programs, meaning that any information, evidence, or admissions voluntarily given during restorative justice circles, arbitration, etc., should not be admissible in court if their cases are to, for whatever reason, end up in the core criminal justice system. Colorado's confidentiality statute for restorative justice should serve as an example to follow.³ The essence of this proposal is that there is no adjudication of guilt during completion of the program, and once completed.

Expungement Clinic

An expungement clinic is essential in Penobscot County because many individuals who complete diversion programs, or who carry old, low-level charges, continue to face long-term barriers to employment, housing, and education due to their criminal records. Without record clearance, the benefits of diversion are undercut, as people remain stigmatized and economically disadvantaged, increasing the risk of recidivism. An expungement clinic would provide structured, accessible legal assistance to help eligible individuals petition for record sealing or expungement after successfully completing diversion requirements. Staffed by pro bono attorneys, law students, or public defender volunteers, the clinic would guide participants through eligibility screening, paperwork preparation, and court filings. A similar initiative⁴ saw positive results in Wilson County, North Carolina.

³ [Restorative Justice Statutes](#)

⁴ [LEAD program](#)

Funding Options

Funding direct from state and/or other governments should be prioritized and granted for justice reform programs, because it will save money over incarceration for the state and counties. Funding should certainly be available from counties, since it will be cheaper than incarceration. It may be available directly from the Department of Corrections (DOC) or other state agencies. It can also come through the Maine legislature as an experimental program. If the program succeeds in Penobscot County, it can be offered statewide for its public safety, public health, anti-poverty, and cost-cutting benefits. Given successes with similar programs in other states, there is confidence that this experiment will succeed.

We are interested in preliminary budget estimates for the cost of three full-time equivalent (FTE) staff positions.

A detailed analysis of the financial impact and savings to the state and local governments will be provided as an addendum to this proposal.

Public defense

Excessive and unnecessary arrests/convictions are not the only contributing factor to the overpopulation problem of Penobscot County Jail; the enabling foundation of it is the public defense crisis that affects the entire state, seeing as the majority of those incarcerated in the state of Maine are being held pretrial. As of May, 2025, Penobscot County alone held about 28% of Maine's pretrial population⁵ who were unrepresented by a lawyer, even though it only holds 11% of the state's overall population. The program is committed to a neutral evaluation mechanism to verify if participants have subsequent arrests or convictions. We will seek to partner with an external academic entity to strengthen the credibility of the evaluation process. The evaluation mechanism must be granted access to conviction and possibly non-conviction data (such as arrests) to accurately determine reductions in recidivism. It is important that these programs are not used as another reason for the county and state to continue to sweep the current public defense crisis under the rug by simply jailing more people in pre-trial status.

We strongly urge the courts, the criminal justice system, and all Maine people to support diversion programs such as this one rather than simply building new and larger jails as a more effective way to cut costs and taxes, reduce crime, increase public health and safety, and offer new hope and opportunities to the people of Maine.

⁵ [Maine ACLU says number of un-represented criminal defendants has 'skyrocketed'](#)

Additional material

Research and Proposals for Alternative Case Dispositions and Social Impact Funding

Society Impact NC Expungement Clinic Overview

Addressing justice related issues in Maine

Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law

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