

# When Arrest Isn't Best: Creating A Culture of Police-Led, Pre-Arrest Diversion

By Christi M. Smith



**Early diversion reduces the collateral consequences of system involvement that present barriers to remaining law abiding.**

## Introduction

Across the nation, jails and prisons are primarily occupied by individuals experiencing mental health conditions, substance-related issues and housing and employment instability.<sup>1</sup> The deinstitutionalization of mental health asylums in the 1950s and 1960s resulted in American jails and prisons becoming the de facto treatment facilities for the mentally ill.<sup>2</sup> The overrepresentation of individuals with these issues has overwhelmed the criminal justice system for decades, which prompted the federal government and private organizations to fund the Criminal Justice/Mental Health Consensus Project two decades ago. This multisystem collaboration among criminal justice, mental health and policy professions sought several outcomes:

Define the measures that state legislators, law enforcement officials, prosecutors, defense attorneys, judges, corrections administrators, community corrections officials, and victim advocates, mental health advocates, consumers, state mental health directors, and community-based providers agree will improve the response to people with mental illness who are in contact (or at high risk of involvement) with the criminal justice system.<sup>3</sup>

Despite this interagency effort and its resulting 2002 report, the problem persists. The consensus is that jails and prisons are a costly, ineffective intervention that may exacerbate negative social conditions.<sup>4</sup> Available evidence indicates that police-led deflection, which empowers police officers to use their discretion to refer individuals to the appropriate rehabilitative and social service systems instead of arrest, is a less expensive, more effective intervention for nonviolent people whose alleged law violations stem primarily from social-service issues.<sup>5</sup> Diversion is also supported by the International Association of Chiefs of Police and is currently in use at approximately 850 sites across the country.<sup>6</sup>

Police leaders attempting to incorporate data-driven strategies and best practices into their departments are likely to encounter pushback from the rank and file because deflection from the criminal justice system tends to be inconsistent with traditional recruitment messaging, training approaches and police practices. Police culture, often characterized by an “us versus them” mentality, skepticism and distrust of outsiders, is difficult, though not impossible, to change.<sup>7</sup> In order for law enforcement officers and agencies to move toward deflection and away from the historic reliance on arrest for

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law violations stemming from social-service issues, leadership must commit to the new model. For this effort to be successful, the efficacy and value of the approach must be woven into daily police practices; officers have to be trained differently and collaborative partnerships with the appropriate community-based resources need to be established. In addition, deflection can only work to the degree that robust resources are available for diversion in lieu of arrest and incarceration.

In this paper, we present the typical characteristics of police cultures, explain the concept of deflection and articulate how law enforcement leaders can cultivate organizational cultures that support police-led, pre-arrest diversion.

## Characteristics and Explanations of Police Cultures

Police officers and the departments they represent, like other professions, have nuanced traits that are often generalized to the larger majority. Although individual officers and departments may vary, the pervasiveness and rigidity of law-enforcement-specific attitudes and values that differ greatly from those of the general population have been studied for decades.<sup>8</sup>

One seminal work argued that understanding police subcultures and their origins is a crucial element in understanding police attitudes and behaviors.<sup>9</sup> This piece stated that police characterize “the public as hostile, not to be trusted, and potentially violent; this outlook requires secrecy, mutual support, and unity on the part of the police.”<sup>10</sup> Another expert on policing subcultures asserted that the characteristic traits of officers include “skepticism, cynicism and mistrust of outsiders.”<sup>11</sup>

Officers come to the profession with a wide variety of personal perspectives, some of which already align with views expressed above. Others, as cadets, develop these perspectives during the socialization process of the police academy and through their ongoing professional experiences.<sup>12</sup> Regardless of the origins of the police culture, scholars generally agree that these characteristics isolate officers from the external world and job stressors and that the solidarity can provide the support needed for officers to continue in a stressful and dangerous occupation.<sup>13</sup>

In addition to solidarity, there are other qualities that assist officers in carrying out job duties in difficult circumstances. These include a sense of camaraderie, loyalty, teamwork, support and sacrifice.<sup>14</sup> More recent research seeks to emphasize and expand upon a short list of positive attributes that are beneficial for contemporary police work and that reduce officer stress while increasing officer engagement in the community. Examples include taking initiative, having a sense of ethics, being adaptable and even-tempered, and demonstrating good verbal and nonverbal communication skills.<sup>15</sup>

These newer efforts follow decades of study examining the ways in which police culture predisposes law enforcement to negative interactions with the citizens they serve and exposes them to disproportionately high rates of divorce, substance abuse and suicide. A 2018 study found that police officers had a higher risk of suicide than any other profession and that the rate of officer death by suicide was more than triple that of officers fatally injured in the line of duty.<sup>16</sup> Thus, prioritizing officer engagement and developing positive qualities are not only life-saving for officers and the communities they serve, but may also ultimately reduce outsider distrust to the extent needed to facilitate police deflection.

Routine interactions with the community tend to be influenced by the style of policing adopted by executive leadership and by the manner in which administrators train and supervise patrol officers. In the preeminent study on police behavior, three primary styles of policing were identified. These included the watchman style, in which officers have a great deal of discretion in how they address potential law violations; the service style, in which officers view themselves as providing a service for their communities, preferring



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to use informal strategies instead of arrest; and the legalistic style, in which officers are enforcers of the law, requiring them to make arrests in response to legal violations.<sup>17</sup>

Police officers may come to the profession with a preferred style of policing, but, ultimately, the preferred style of the supervising officer is typically transmitted via the training and supervision process. The National Institute of Justice found that patrol officer behavior is heavily influenced by the style and quality of field supervision they receive.<sup>18</sup> Active supervision, characterized by leading by example and heavy involvement in field training, was the most influential factor on patrol officer behavior, for better or for worse.<sup>19</sup> For example, patrol officers with active supervisors were twice as likely as their counterparts to use force against suspects, and active supervisors were also more likely to use force than those with other styles of supervision.<sup>20</sup>

It is not difficult to understand what a monumental task it can be for police leaders to shift their departments to deflection practices. Police executives who aspire to adopt such policies and practices will need to thoughtfully and thoroughly consider all of the above factors when determining the viability of this approach for their departments.

## **Deflection: Police-Led, Pre-Arrest Diversion**

The notion that alleged law violations could be handled differently from the traditional processes of arrest, prosecution, conviction and incarceration is not a new one. A variety of strategies to address law violations that arise from mental health issues, substance abuse, homelessness or poverty have been used for the past several decades. Because the underlying cause of many crimes stems from these struggles, and considering that incarceration might exacerbate the underlying symptoms and circumstances, programs to deflect and divert individuals—at the front end of the judicial process—have been developed.<sup>21</sup>

Diversion initiatives hold individuals accountable, while prioritizing treatment and rehabilitation over conviction and incarceration. Successful program participants typically have their charges withdrawn or dismissed, which reduces the collateral consequences of a conviction one would otherwise experience.<sup>22</sup> This approach benefits the individual, saves the criminal justice system money and enhances public safety because program participants have a lower rate of re-offending than their counterparts with traditional case processing.<sup>23</sup>

Deflection can be facilitated via state statute, or it can be established by departmental policy. Owing to the growing interest in police-led diversion and the body of research that supports the efficacy of this approach, there has been a substantial increase in proposed legislation articulating the appropriate conditions that warrant deflection. According to the Legislative Analysis and Public Policy Association, as of June 2021, 25 states and the District of Columbia had some form of a deflection law in place.<sup>24</sup> Some states enacted legislation directing their municipal police departments to establish a commission to study the potential impact of implementing a deflection program, and other states that did not have deflection laws in place chose to address funding for potential programs.<sup>25</sup> Deflection does not require legislation, but officers might appreciate the clarity that laws can provide in defining the appropriate conditions for deflection and the liability provisions that protect officers who are acting in good faith.<sup>26</sup>

Though specific programs may designate different titles, eligibility criteria, target populations or operating procedures, five general types of deflection or diversion are in use: pre-police-encounter, community-based, or civilian-initiated diversion; pre-arrest or police-led deflection; pre-charge or prosecutor-led diversion; pre-trial or judge-led diversion; and alternatives to incarceration.<sup>27</sup> At their core, each effort attempts to relieve the burden on the criminal justice system and seeks to minimize the extent to which a person is immersed in the judicial system, recognizing the stigma and deleterious impacts of formal case processing.<sup>28</sup>



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Amid staffing shortages, court backlogs and the need to prioritize police resources for more serious and violent crime, conservative jurisdictions are increasingly using police deflection. Their efforts are reducing recidivism by attaching individuals to the appropriate services, and this approach also helps repair police-community relationships.<sup>29</sup> Empowering police officers to use their discretion to refer individuals to the services they need, rather than arresting them, is a more effective intervention, as evidenced by the systematic review and existing body of knowledge on deflection and diversion.<sup>30</sup>

## Creating A Culture of Deflection

As articulated above, changing police culture is extremely difficult. In fact, in 2020, one expert argued that transformational change, which is the type of change needed to create a culture of deflection, is one of the most difficult challenges police executives would face during their career.<sup>31</sup> Another researcher also argued that “a combination of strong and consistent leadership, political commitment and external pressure is needed to overcome the often powerful internal resistance to change.”<sup>32</sup> Similarly, others assert that the status quo is no longer tenable and that to really transform the organizational culture, leadership must be deliberate and persistent in rooting out old standards and behaviors in lieu of new expectations that are aligned with the vision and mission of the department.<sup>33</sup> As one expert noted, “[i]t is imperative that the new norms are the reference point upon which all daily decisions, actions, and behaviors originate, and they must be exemplified by the leaders.”<sup>34</sup>

Officers who come the profession and who are socialized to have a more positive outlook on their relationship with the communities they serve would likely be less resistant to model policies that allow officers to use their discretion to deflect citizens from the traditional judicial process. Similarly, officers and organizations that prioritize a service style of policing and leaders who actively train patrol officers on the importance of deflection would also be more apt to adopt deflection practices. But the dynamics of each police department will ultimately inform how easy or how arduous it would be to shift routine responses to social-service law violations away from arrest toward police-led diversion.

Another challenge to creating a culture of police-led diversion is the relative lack of training that officers receive in mental and behavioral health interventions, which makes it difficult for officers to confidently identify individuals who would be appropriate candidates for deflection. Despite overwhelming evidence that the vast amount of police work entails report writing, neighborhood patrol details and responding to noncriminal calls, police are routinely trained as pseudo-military members, embracing a culture of warriorship, with an emphasis on firearms, tactical skills and combat.<sup>35</sup>

Rather than expecting law enforcement officers with typical training to respond as social workers, officers should be appropriately trained to identify scenarios in which citizens can be deflected away from traditional legal processes and where de-escalation could result in significant social benefit. To address training deficiencies and in response to recent concerns over the violent outcomes of police interactions with people in crisis, the Crisis Intervention Team (CIT) specialized training model has been deployed in police departments across the country.<sup>36</sup> In the only existing study of the impact of CIT training on officer attitudes and behaviors, researchers found that “CIT-trained officers had more positive attitudes toward facilitating mental health referrals, greater subjective norms for doing so and higher perceptions of control for making referrals.”<sup>37</sup> Other scholars reiterate the need for initial and ongoing training to change the culture of policing in favor of deflection.<sup>38</sup>

Lastly, collaborative partnerships between police, behavioral health and other social service providers are critical to fostering a shift from traditional police responses to deflection. These organizations are—by design, expertise and training—better equipped



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to address homelessness, poverty, mental health issues and substance misuse as well as provide other social services.<sup>39</sup> Partnering with community-based service providers relieves the burden on law enforcement in handling the repeated nuisance offenses that stem from unaddressed social issues.<sup>40</sup> This allows police officers to focus on more serious crime.

## Conclusion

Police have come under intense scrutiny for their overly harsh response to mental health crises, low-level drug offenses and other public disorder law violations that result in use-of-force issues and lethal violence. While it is not difficult to find evidence of horrific, even deadly, police mistakes or use-of-force issues, these interactions do not accurately reflect the profession as a whole—nor do these violent interactions typify law enforcement calls for service. A review of millions of 911 calls indicates that police rarely receive calls for service for serious crimes in progress and that most calls are for nonemergencies, requests for information and reports of nuisance events.<sup>41</sup> Only two percent of these calls for service result in the use of force or the threat of force.<sup>42</sup> Police overwhelmingly spend their time responding to noncriminal matters, traffic incidents and low-level crime.<sup>43</sup>

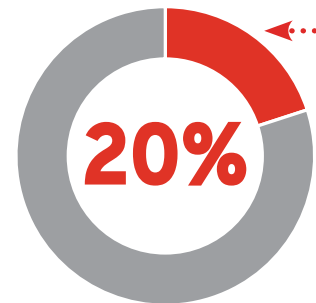
An estimated 20 percent of police calls are for acute mental health or substance use crisis situations, which law enforcement are only minimally trained to handle.<sup>44</sup> The available evidence regarding calls for service and the expectations placed upon the police to respond to social service calls is inconsistent with roles for which they are recruited and trained, which sets officers up for public critique when a scene is mismanaged. This only reinforces the “us versus them” mentality and strengthens existing police subcultures that hold negative views of the public.

In order to restore police-community relationships and enhance public safety for everyone, police departments and state legislation are increasingly seeking to implement or expand police-led diversion programs. The research on this clear: Early diversion reduces the collateral consequences of system involvement that present barriers to remaining law abiding.<sup>45</sup> Diversion also reduces the number of days a person is incarcerated, which saves valuable tax-payer dollars and improves overall quality of life for the individual.<sup>46</sup>

Creating a culture of police-led deflection is challenging but achievable. Arming police officers with additional tools to handle the myriad calls for service they receive in contemporary society is beneficial for officers and the communities they serve. Leadership must diligently prepare their officers for this change in culture, policy and practice by investing in robust recruitment and training, partnering with appropriate stakeholders and consistently demonstrating the efficacy of handling social-service related law violations with the available alternatives to arrest.

### Mental Health and Substance Use Crisis Situations

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### About the Author

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