



Due Process Protections for Diversion Programs

When designing diversion programs, policymakers should ensure that they are protecting the due process and other rights of participants. Each program will need different policies and procedures depending on its design. However, the following list highlights some of the protections that should be included.

- Diversion programs must not be unattainable for individuals who lack financial means. During the intake process, programs should assess participants' financial status, familial commitments, and work requirements. Where financial status might prevent program participation, the diversion program should address this issue by providing subsidized transportation, childcare, or other services.
- Diversion programs must not be unattainable for individuals who have disabilities. Programs should identify any problems related to disability and ensure that appropriate accommodations are in place.
- All program requirements must be the *least intrusive means possible* to facilitate successful program completion. There should be a presumption against onerous requirements like curfews, random searches, drug testing, travel restrictions, or alcohol prohibitions.
- Diversion programs must define expectations at the outset. This should include expectations for the participants, such as program length, program requirements, and potential consequences for noncompliance, expectations for those who are administering the program, and rights while participating in the program. These rights should include, at minimum, the rights to: (1) Be free from unreasonable searches and seizures; (2) Not receive punishment because a particular activity was unaffordable; (3) End program participation at any point, following the process (and with the accompanying consequences) outlined initially; and (4) Obtain outside counsel as necessary to enforce any program rule, regulation, or restriction.
- Diversion programs must explain the grounds for termination, as well as the legal and immigration consequences of such termination.
- Diversion programs must inform participants of options should any program responsibility or limitation be violated. Diversion programs must clearly state the process that is used to determine when a case manager, supervisor, or employee is in noncompliance, as well as what are the accompanying sanctions. The process used may include a hearing. In addition, all participants should understand appeal rights if an initial response is inadequate.
- Diversion programs should ensure maximum protection of private information, including program records. Program participants should understand any information sharing agreements *before* enrolling in the program.