



Community Alternative with Restorative and Educational Services

A PROSECUTOR-LED DIVERSION PROGRAM IN PLATTE COUNTY

Eric Zahnd
Platte County Prosecuting Attorney

- ▶ Why create a prosecutor-led diversion program?
- ▶ What is Platte CARES?
 - ▶ Leadership Team
 - ▶ Process
 - ▶ Phase I – Referral
 - ▶ Phase II – Activity
 - ▶ Phase III – Obey All Laws
 - ▶ Phase IV – Discharge or Dismissal
- ▶ Platte CARES vs. Treatment Courts
- ▶ Current Statistics

Why create a prosecutor-led diversion program?

- ▶ Platte County Prosecuting Attorney's Office had used informal diversion for decades
 - ▶ Low-level misdemeanor cases only
 - ▶ Minor in possession, misdemeanor marijuana, drug paraphernalia, etc.
 - ▶ Written agreement
 - ▶ Often with community service
 - ▶ Agreement not to commit future crimes
 - ▶ No real supervision or follow-up

Why create a prosecutor-led diversion program?

- ▶ State resources are stretched thin in non-violent cases
 - ▶ Court dockets are overloaded
 - ▶ Only 317 of 23,826 Missouri prison inmates are first-time, nonviolent felony offenders originally sentenced to prison
 - ▶ Probation and Parole officers' caseloads often preclude close supervision of non-violent offenders

Why create a prosecutor-led diversion program?

- ▶ First misdemeanor or felony convictions adversely impact offenders
 - ▶ Harder to get a job
 - ▶ 1 nonviolent felony conviction = 40% reduction in lifetime income
 - ▶ Drug offenses:
 - ▶ Loss of federal financial aid for college
 - ▶ Exclusion from some welfare programs
 - ▶ Inability to live in HUD housing

Why create a prosecutor-led diversion program?

- ▶ Treatment court successfully decreases recidivism
 - ▶ General recidivism rates range between 30-60%
 - ▶ Treatment court recidivism rates are typically substantially lower
 - ▶ Platte County's DWI Court recidivism rate is only 2%!
- ▶ But some crimes are not eligible for treatment court

Why create a prosecutor-led diversion program?

- ▶ 2019: Section 557.014, RSMo, ratified prosecutor-led diversion programs:
 - ▶ “Prosecuting attorney shall have the authority to . . . divert a criminal case to a prosecution diversion program...where the prosecuting attorney determines that the advantages of utilizing prosecution diversion outweigh the advantages of immediate court activity.”

Why create a prosecutor-led diversion program?

- ▶ Section 557.014, RSMo:
 - ▶ “Prosecuting attorney has the sole authority to develop diversionary program requirements.”
 - ▶ Minimum requirements include:
 - ▶ Crime is nonviolent, nonsexual, and does not involve a child victim or possession of an unlawful weapon
 - ▶ Accused must submit to all program requirements
 - ▶ Newly discovered criminal behavior may forfeit right to continued participation at the sole discretion of the prosecuting attorney

Why create a prosecutor-led diversion program?

- ▶ Section 557.014, RSMo:
 - ▶ “Prosecuting attorney has the sole authority to develop diversionary program requirements.”
 - ▶ Additional minimum requirements include:
 - ▶ Crime not a violation of current probation or parole
 - ▶ Not a traffic offense by a CDL holder or while in a commercial motor vehicle
 - ▶ “Any other criteria established by the prosecuting attorney.”

Why create a prosecutor-led diversion program?

- ▶ Section 557.014, RSMo:
 - ▶ “The responsibility and authority to screen or divert specific cases, or to refuse to screen or divert specific cases, shall rest within the sole judgment and discretion of the prosecuting attorney as part of their official duties as prosecuting attorney. The decision of the prosecuting attorney regarding diversion shall not be subject to appeal nor be raised as a defense in any prosecution of a criminal case involving the accused or defendant.”

Why create a prosecutor-led diversion program?

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Prosecutor-led diversion and the legislature's new law: The legal issues

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Prosecutors across the state are focusing more on treating and rehabilitating, and less on traditional criminal justice proceedings. In recent months, Missouri prosecutors have processed hundreds of cases, not by traditional criminal procedure, but by prosecutor-led diversion programs, including "felony redirect" and "new start" programs.² In support of this new emphasis, prosecutors in St. Louis and St. Louis County have received



What is Platte CARES?

- ▶ **Platte Community Alternative with Restorative and Educational Services.**
 - ▶ First-time, nonviolent misdemeanor or felony offenders
 - ▶ Admit wrongdoing
 - ▶ Perform community service
 - ▶ Remain crime- and drug-free
 - ▶ Employment or continue education
 - ▶ Make restitution, if applicable
 - ▶ Complete educational assignment tailored to crime committed
 - ▶ Participate in restorative justice session, if appropriate



Community Alternative with Restorative and Educational Services

Leadership Team

Leadership Team

- ▶ Platte CARES Executive Committee
 - ▶ Members:
 - ▶ Prosecuting Attorney Eric Zahnd
 - ▶ Two Assistant Prosecuting Attorneys
 - ▶ Long-time Assistant Prosecuting Attorney Amy Ashelford
 - ▶ Newer Assistant Prosecuting Attorney Brice Barnard
 - ▶ Program Coordinator Eric Allen (former Probation and Parole Officer)
 - ▶ Meets weekly
 - ▶ Governs operations of program
 - ▶ Screens and expels participants
 - ▶ Creates guidelines for success and failure (always subject to individual discretion)

Leadership Team

- ▶ Program Coordinator Eric Allen
 - ▶ “Middle man” between attorneys, victim advocates, and participants
 - ▶ Tracks referrals and conducts background checks
 - ▶ Leads intake meetings
 - ▶ Conducts home visits, follow-ups, and check-ins
 - ▶ Updates Karpel CMS and program spreadsheets
 - ▶ Handles scheduling/reminders/logistics for participants

Leadership Team

- ▶ All Assistant Prosecuting Attorneys in office
 - ▶ Identify cases for referral
 - ▶ Communicate with defense attorneys and victims about potential referrals
 - ▶ Understand and promote diversion and restorative justice

Leadership Team

- ▶ Victim Advocates
 - ▶ Contact victims to explain program and provide updates on progress
 - ▶ Document victim communication
 - ▶ Understand and promote diversion and restorative justice

Leadership Team

- ▶ Platte CARES Community Advisory Board
 - ▶ Nine Platte Countians representing:
 - ▶ Clergy
 - ▶ Criminal defense attorney
 - ▶ Law enforcement
 - ▶ Media
 - ▶ Education
 - ▶ Health care
 - ▶ Mental health care
 - ▶ Community service partner
 - ▶ Former participant (currently from our DWI Court)

Leadership Team

- ▶ Platte CARES Community Advisory Board
 - ▶ Staggered three-year terms
 - ▶ Meet quarterly
 - ▶ Receive updates on program
 - ▶ Discuss program metrics
 - ▶ Provide input on big-picture decision making



Community Alternative with Restorative and Educational Services

Process

Process

- ▶ Phase I – Referral
- ▶ Phase II – Activity
- ▶ Phase III – Obey All Laws
- ▶ Phase IV – Discharge or Dismissal



Phase I - Referral Phase

Who **CAN** get in?

▶ Most non-violent, non-drug related crimes:

- ▶ Stealing
- ▶ Receiving Stolen Property
- ▶ Tampering
- ▶ Fraudulent Use of Credit/Debit Device
- ▶ Identity Theft
- ▶ Property Damage
- ▶ Careless and Imprudent Driving

- ▶ Unlawful Use of a Weapon (in non-violent way in limited circumstances)
- ▶ Unlawful Possession of a Firearm (in limited circumstances)
- ▶ Trespassing
- ▶ Marijuana/Paraphernalia Cases not eligible for Drug Treatment Court

Phase I - Referral Phase

Who **CANNOT** get in?

- ▶ Refuse to admit guilt
- ▶ Violent offenders
 - ▶ Murder
 - ▶ Involuntary Manslaughter
 - ▶ Kidnapping
 - ▶ Assault 1st, 2nd, or 3rd Degree
- ▶ Sex Crimes
- ▶ Child Victims
- ▶ Possession of Unlawful Weapon
(*not* Unlawful Possession of a Weapon)
- ▶ Suspected offense would violate a current condition of probation or parole
- ▶ Child Support
- ▶ Qualify for an existing treatment court program (DWIs, non-marijuana drug cases, veterans, mental health)

Phase I - Referral Phase Procedure

- ▶ Screening
 - ▶ Assistant prosecuting attorney or defense attorney makes referral
 - ▶ Criminal history run
 - ▶ Screened for admission by Platte CARES Executive Committee
 - ▶ Race-blind decision (except for Program Coordinator)
- ▶ Post-Screening process
 - ▶ Referral Sheet
 - ▶ Contact victim(s)
 - ▶ If referred pre-charge, Program Coordinator sends target letter
 - ▶ Participant Questionnaire

Phase I - Referral Phase Procedure

- ▶ Intake Meeting with Program Coordinator and Assistant Prosecuting Attorney
 - ▶ APA provides overview, answers basic questions, and leaves
 - ▶ Non-confrontational: Most important thing is honesty
 - ▶ Assignments explained to participant
 - ▶ Participation fee of \$300 (no other fees for participation; waived if indigent)
 - ▶ Defense counsel *must* be present for felonies, may waive attendance (in writing) for misdemeanors.
- ▶ Executive Committee makes final “Approval” or “Denial” decision after Intake Meeting



Phase II - Activity Phase

Acceptance Paperwork

- ▶ Participant Handbook
 - ▶ General expectations of the program
- ▶ Program Contract
 - ▶ Written agreement detailing diversion plan pursuant to Section 557.014, RSMo
 - ▶ It is a binding contract, but participant can always voluntarily leave program
- ▶ Personal Accountability Letter
 - ▶ Must include:
 - ▶ Acceptance of responsibility for crime
 - ▶ Reasons for participating in Platte CARES
 - ▶ Adverse impact of criminal charge on their future
 - ▶ SMART (Specific, Measurable, Achievable, Realistic and Timely) goals
- ▶ Participant must sign and return all documents within 30 days

Phase II - Activity Phase Accountability

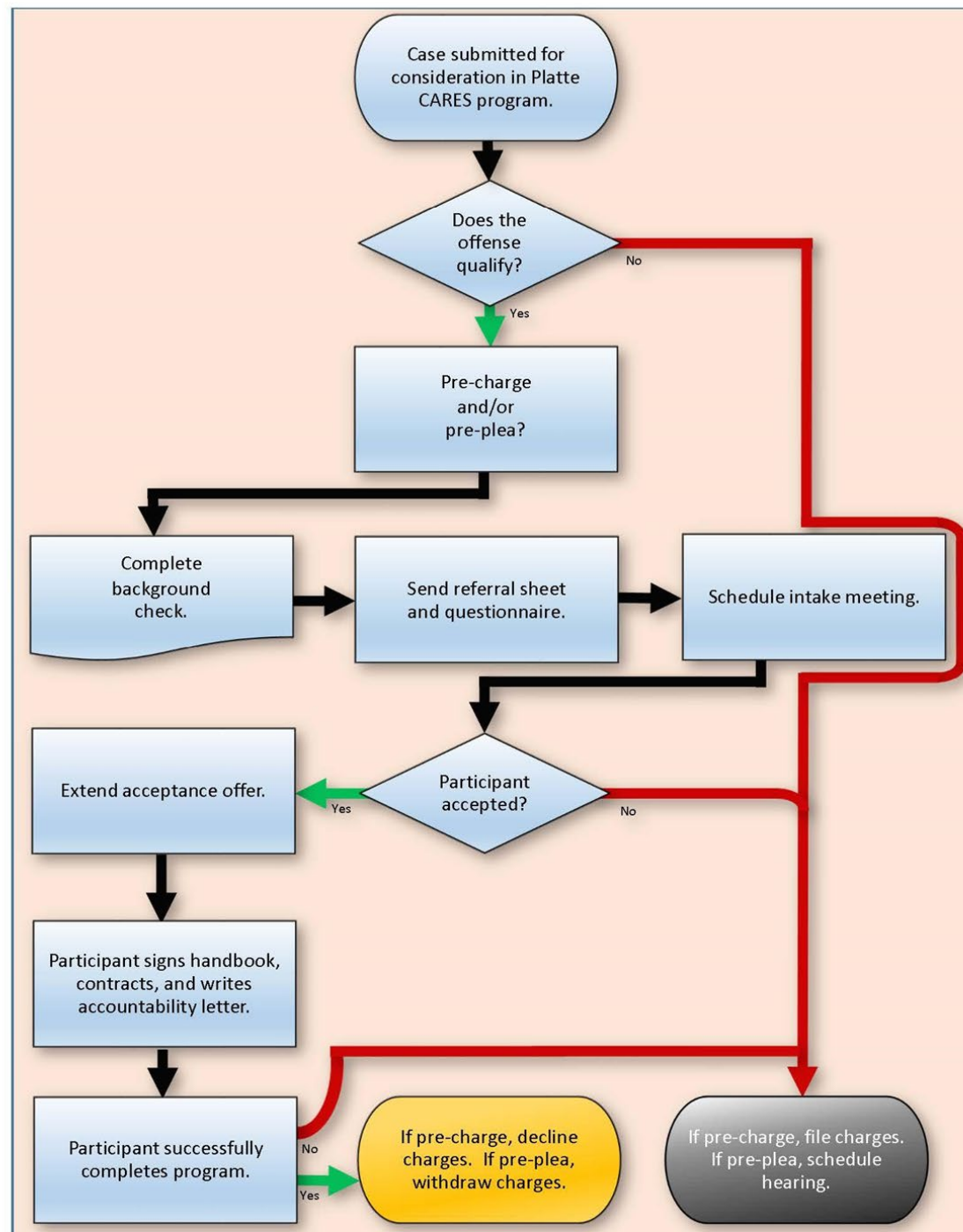
- ▶ Check-in/Self-Report to Program Coordinator
- ▶ Complete all assignments
 - ▶ Community service
 - ▶ Education or employment
 - ▶ Restitution, if applicable
 - ▶ Educational program tailored to crime committed
 - ▶ Restorative justice session, when appropriate
- ▶ Drug and/or alcohol testing, when appropriate
- ▶ No criminal activity or law enforcement contact
- ▶ Sanctions or expulsion if violations occur

Phase III - Obey All Laws Phase

- ▶ Once participants complete all assignments, they are responsible for obeying all laws and checking in with Program Coordinator
- ▶ Duration and early discharge from the program will be determined on a case-by-case basis by the Executive Committee
 - ▶ Six months to two years
 - ▶ Can be extended for up to two more years
- ▶ Each person and every case is unique:
“Different strokes for different folks.”

Phase IV - Dismissal or Discharge

- ▶ When participant is eligible to be successfully discharged, the Program Coordinator will inform them and their attorney of their graduation
- ▶ If the case is still filed, it will be dismissed
- ▶ Program Coordinator closes the file



Platte Alternative Treatment Courts (PACT)

- ▶ Drug Court
- ▶ DWI Court
- ▶ Wellness (Mental Health) Court
- ▶ Veterans Court

Platte CARES

vs. PACT Treatment Courts

- Pre-charge or Pre-plea
- No charge or dismissal
- Substance use education
- Random drug testing
- Little to no court involvement

- Post-plea
- SIS, SES, or dismissal
- Substance use disorder treatment
- Minimum 8-12 times per month
- Regular court appearances

Platte CARES Statistics

- ▶ Since March 31, 2021:
 - ▶ 137 individuals considered
 - ▶ 75 accepted
 - ▶ 59 misdemeanor offenses
 - ▶ 16 felony offenses
 - ▶ 62 rejected
 - ▶ 64% of those considered are male
 - ▶ 36% are female
 - ▶ Percentage of minority candidates considered exceeds minority population of county
 - ▶ Percentage of minority candidates admitted exceeds that of white candidates
 - ▶ Average age of participants is 24



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Questions?

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