

The *essential role* of diversionary programs in North Carolina criminal justice reform

1. The challenge: North Carolina's criminal justice system is bogged down with non-violent misdemeanors

- This disproportionately impacts Black North Carolinians
- It's costly for taxpayers and those who end up carrying a criminal record

2. The solution: Diversion is a real-world criminal justice reform that hundreds of communities have already implemented

3. Our evidence: Case studies from around the country and in our state

Agenda



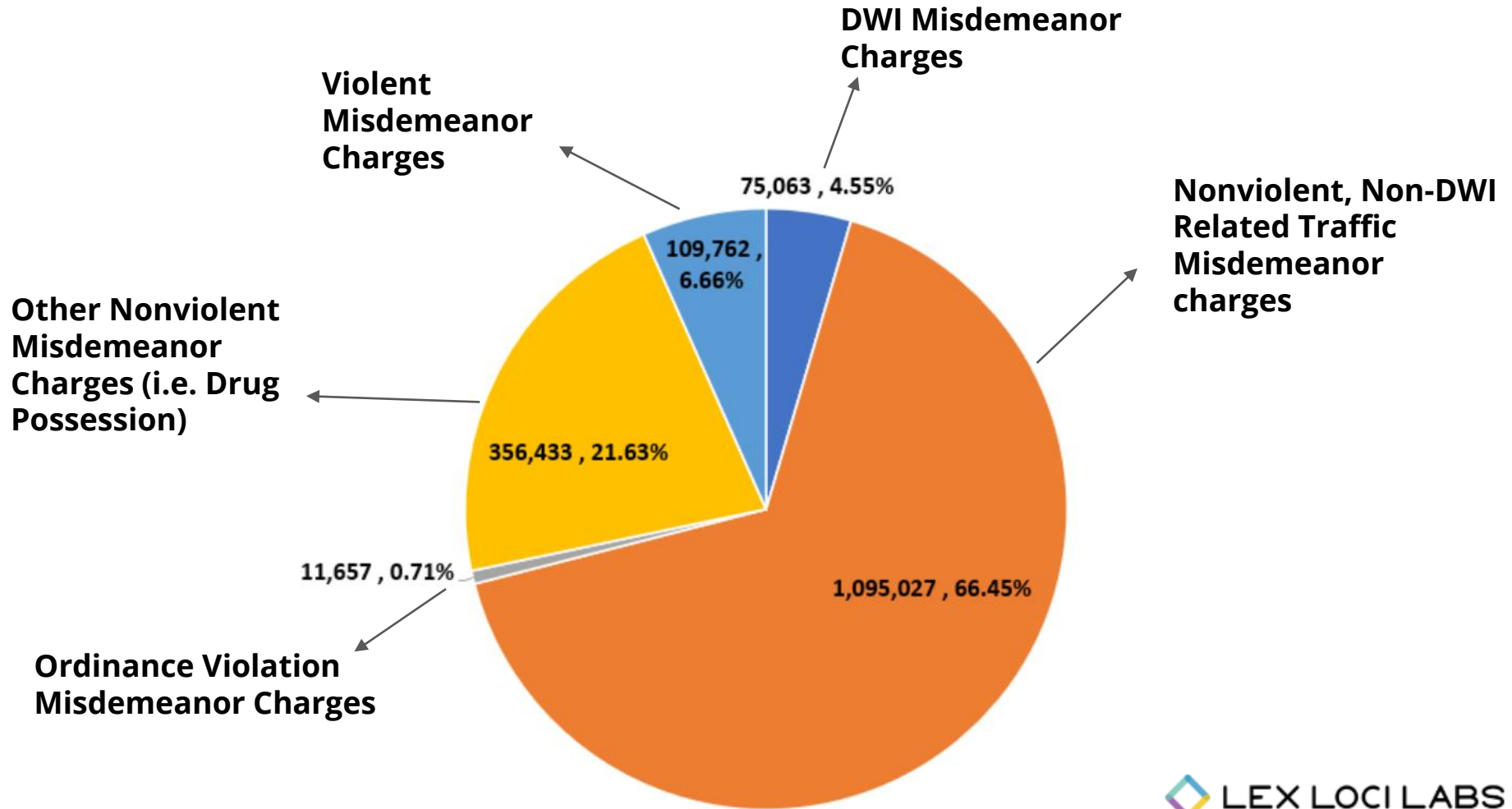
- Based in Carrboro, NC
- Founded by a former assistant state attorney general and district attorney
- We make it easy for communities to implement and manage efficient diversionary programs
- We're already working with Orange County, NC

About Lex Loci

Part 1: *The Challenge*

North Carolina has not been immune to the United States' criminal justice crisis.

- 2 million out of 10.28 million North Carolinians carry a criminal record.
- Our system is overwhelmed with misdemeanor charges: In 2019, there were 1,647,942 misdemeanor charges, compared to 342,618 felony charges statewide.
 - Only 6.7% of all misdemeanor charges were violent



- While most states hold people convicted of a misdemeanor in county jails, people convicted of a misdemeanor with sentences longer than 90 days can be sent to North Carolina's prisons, and people with sentences longer than six months must serve their full sentence in prison.
- Misdemeanors accounted for 9.1% of prison admissions in 2016.

**Misdemeanors
contribute to
North Carolina
prison
populations.**

- Black North Carolinians are imprisoned at 4.5x the rate of white North Carolinians
- 1 in 40 Black men in North Carolina was imprisoned in 2016
- According to a national study published in 2014, 49% of black men are arrested by age 23, compared to 38% of white men

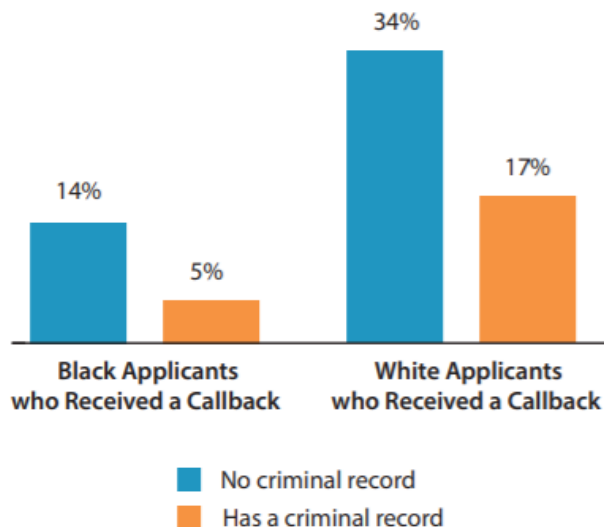
Incarceration and arrest **unduly impact Black North Carolinians.**

- A 2017 Loyola Law School study found that White Americans facing misdemeanor charges were nearly 75 percent more likely than Black defendants to have all charges carrying potential imprisonment dropped, dismissed, or reduced to lesser charges.

*Misdemeanor
charges **unduly
impact Black
Americans.***

Criminal records **unduly impact Black Americans.**

Figure 1: White applicants without a criminal record most likely to get a job callback



According to a 2013 Northwestern University study, a white applicant *with* a criminal record was more likely to get a job callback than a black applicant *without* a criminal record

Source: Pager, Devah, 2013. "The Mark of a Criminal Record," Northwestern University.

- Non-trafficking drug offenses comprised 18% of all prison admissions in 2018.
- A screening sample of sentenced people in 2016 established that 71% self-reported a need for intermediate or long-term substance-use disorder treatment.
- The state estimates that 25,000 people with severe mental illness are in jail every year.

Incarceration
**unduly impacts
North
Carolinians with
mental health
and substance
abuse disorders.**

- On average, it costs \$37,712.87 to incarcerate someone in North Carolina for one year.
- In 2018, North Carolina spent \$1.7 billion of its general fund on corrections, accounting for 8.4% of the state's general fund expenditures.
- North Carolina jails are expected to exceed capacity by 2025.

Not only is this a racial justice and mental health issue — it's a *taxpayer issue*.



LEX LOCI LABS

- Mecklenburg County, NC's pre-trial release program saved the county \$2.6 million in the 2019-2020 fiscal year by releasing 770 low-risk offenders.
- We estimate that Orange County, NC has saved as much as \$350,982 by enrolling 93 offenders in its pre-arrest diversion program.
- Since implementing prison-alternative diversion programs, Miami-Dade County's average daily jail population has dropped by one-third, allowing the county to close a jail and save an estimated \$12 million each year.

**Communities
benefit from
jailhouse *savings*.**

- 92% of employers run background checks.
- Many of the state's professional licenses and certifications are barred for people with criminal records, meaning roughly 30% of jobs across the state are out of reach.

**Charging
someone with a
misdemeanor
can cause *long-
term economic
damage.***

- The share of former offenders finding work in North Carolina within a year after release from state prison declined from 62% in 1998 to 39% in 2014.
- In 2018 -- when national unemployment was 4% -- unemployment for the formerly incarcerated was 27%.

**Charging
someone with a
misdemeanor
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term economic
damage***

Economic losses associated with criminal records and incarceration impact North Carolina communities.

- A criminal record leads to \$5,760 / per individual in forgone revenue to the community annually, primarily through lost earnings and tax revenue.
- If North Carolina reduced the impact of being incarcerated by half, the state would have an additional \$3 billion in economic activity.

The current system *isn't working...*

In North Carolina, 40 percent of people either re-offend or violate post-release supervision within two years of release from prison.

Part 2: *The Solution*

- The 2011 Justice Reinvestment Act (House Bill 642) limits the circumstances under which someone can be sentenced and imprisoned for a misdemeanor.
- The bill's passage contributed to a 19% decrease in prison admissions between 2011 and 2016.

Criminal justice reform is *already* underway in North Carolina.

Criminal justice reform is a *bipartisan* issue.

- The 2011 Justice Reinvestment Act (House Bill 642) passed 115 to 1 in the House and unanimously in the NC Senate.
- In June 2020, the Second Chance Act (HB 562), which expands eligibility for expunging non-violent offenses, passed unanimously in the House and Senate.
- In June 2020, the First Step Act (HB 511) also passed unanimously in both the House and Senate. The bill allows for greater judicial discretion in applying mandatory minimum sentences for drug crimes.

- It's been shown to be effective in addressing both violent and non-violent offenses
- It reduces recidivism
- Pre-arrest diversion saves tax dollars

**Pre-arrest
diversion is a
real-world
criminal justice
reform strategy
that works.**

- In 2010, 45 states had 80 diversion laws and 298 diversion programs
- In North Carolina there are at least 13 operating programs:
 - Burke County
 - Watauga County
 - Wilmington
 - Haywood County
 - Iredell County
 - Catawba County
 - Fayetteville police
 - Cumberland County
 - Mecklenburg County
 - New Hanover County
 - Waynesville Police
 - Orange County
 - Durham County
- 9 North Carolina cities and counties are exploring implementing pre-arrest diversion

Diversionary programs exist across the US, in communities large and small.

- In 2018, West Virginia Department of Health and Human Services expanded diversionary programs throughout the state through \$600,000 in new funding.
- Florida statute 901.41, adopted in 2019, “encourages local communities and public or private educational institutions to implement prearrest diversion programs that afford certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record”.

**State support
for diversionary
programs grows
across the US.**

Part 3: *Our Evidence*

- A 2003 Council on Crime and Justice Report established Hennepin County (home of Minneapolis) as a flagship example of the impact diversion programs could have on recidivism
- Only 6% of participants who complete Hennepin County, MN's diversion program were convicted of a new crime in the 6 months after program completion, versus 40% of those who did not complete a diversion program

Hennepin County, MN Pretrial Diversion

- This quasi-experimental study compared offenders who completed the diversion program in 2012-2013 to a comparable low-risk control group
- The recidivism rate for the diversion group was 16.6 percentage points, or 44%, lower than that of the control group
- Eau Claire County analysts estimate the risk of reoffending within three years of case disposition is 79% greater for offenders that do not complete the program

Eau Claire County, WI Program Evaluation

- Seattle's Law Enforcement Assisted Diversion (LEAD) program conducted a nonrandomized controlled evaluation to examine diversion effects on recidivism
- The evaluation included low-level drug and prostitution offenders
- Compared to the control group, participants were 60% less likely to be arrested in the six months subsequent to program entry
- Participants were 58% less likely to be arrested and 39% less likely to be charged with a felony in the two years after program entry

Seattle Diversion Program Evaluation, 2011-2014

- Carthuers Institute conducted a study using Florida Department of Juvenile Justice (DJJ) data, which excludes gun-related and sex offenses from eligible misdemeanors
- Only 4% of youth who complete pre-arrest diversion programs reoffend within 12 months
- Conversely, 11% of youth who participate in similar diversion programs as the result of an arrest reoffend within a year
- It costs \$5,000 to process one juvenile through the Florida criminal justice system, compared to \$386 to issue one pre-arrest diversion

Florida Juvenile Justice Study, June 2018

- Since 2015, Mecklenburg County has piloted a risk assessment tool that's used to make release and detention decisions
- For fiscal year 2019-2020, the jail population coordinator facilitated the release of 770 pre-trial prisoners from the county jail
- It costs \$145/day to house someone in the county jail, so the pre-trial release of these individuals equates to **\$2.6 million** in savings
- Over 90% of low-risk individuals released pre-trial did not commit a new offense

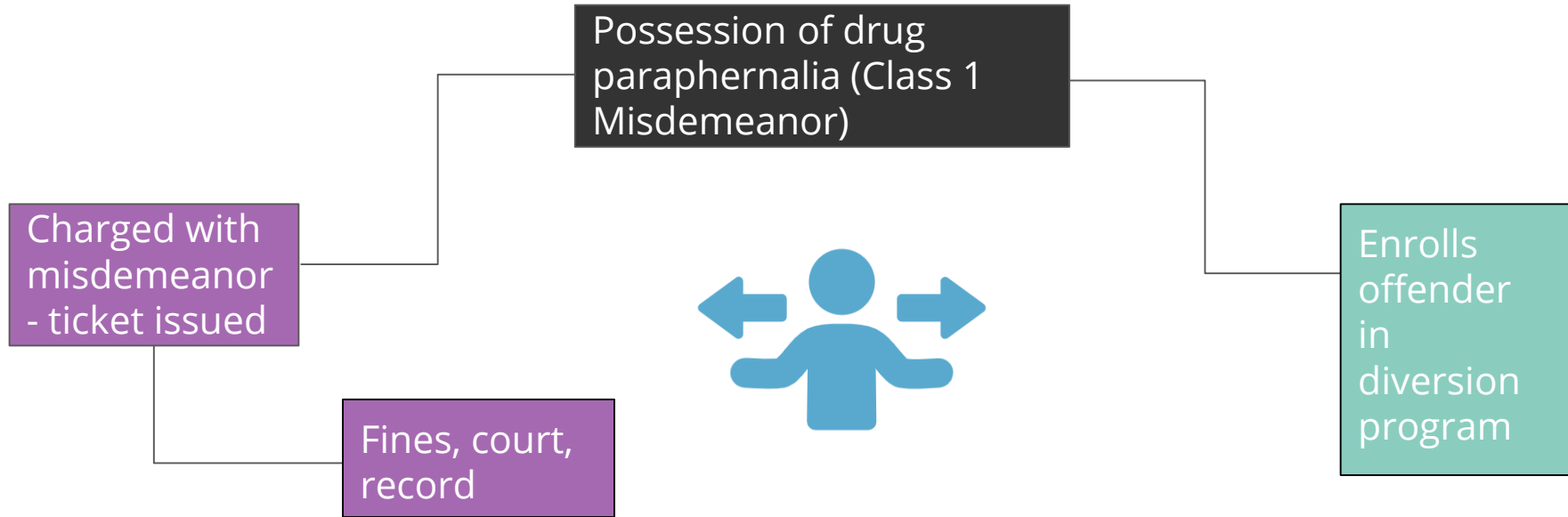
Mecklenburg County, NC Pre-Trial Services

- For fiscal year 2019 (July 1 2019 through June 30, 2020), OCPAD enrolled 93 participants
- OCPAD reports 60 successful program completions (100% success rate) with 33 participants still in compliance
- In a 6 month recidivism follow up, FY19-20 no participants were found to have committed a new offense after program completion

Orange County, NC Pre-Arrest Diversion (OCPAD)

OCPAD in Practice

Law enforcement encounters eligible misdemeanor





Law enforcement enrolls offender

Title	Statute	Class
Possession of Drug Paraphernalia	90-113.22	Class 1

[+ Add Offense](#)

General

* Referral Date	<input type="text" value="5/12/2020"/>	
* First Name	<input type="text"/>	
Middle Name	<input type="text"/>	
* Last Name	<input type="text"/>	
* Date of Birth	<input type="text" value="MM/DD/YYYY"/>	
UNC Student	<input type="checkbox"/>	
* Address	<input type="text"/>	
* Phone Number	<input type="text"/>	

- Offense
- Offender contact info
- Details of incident
- Referral info

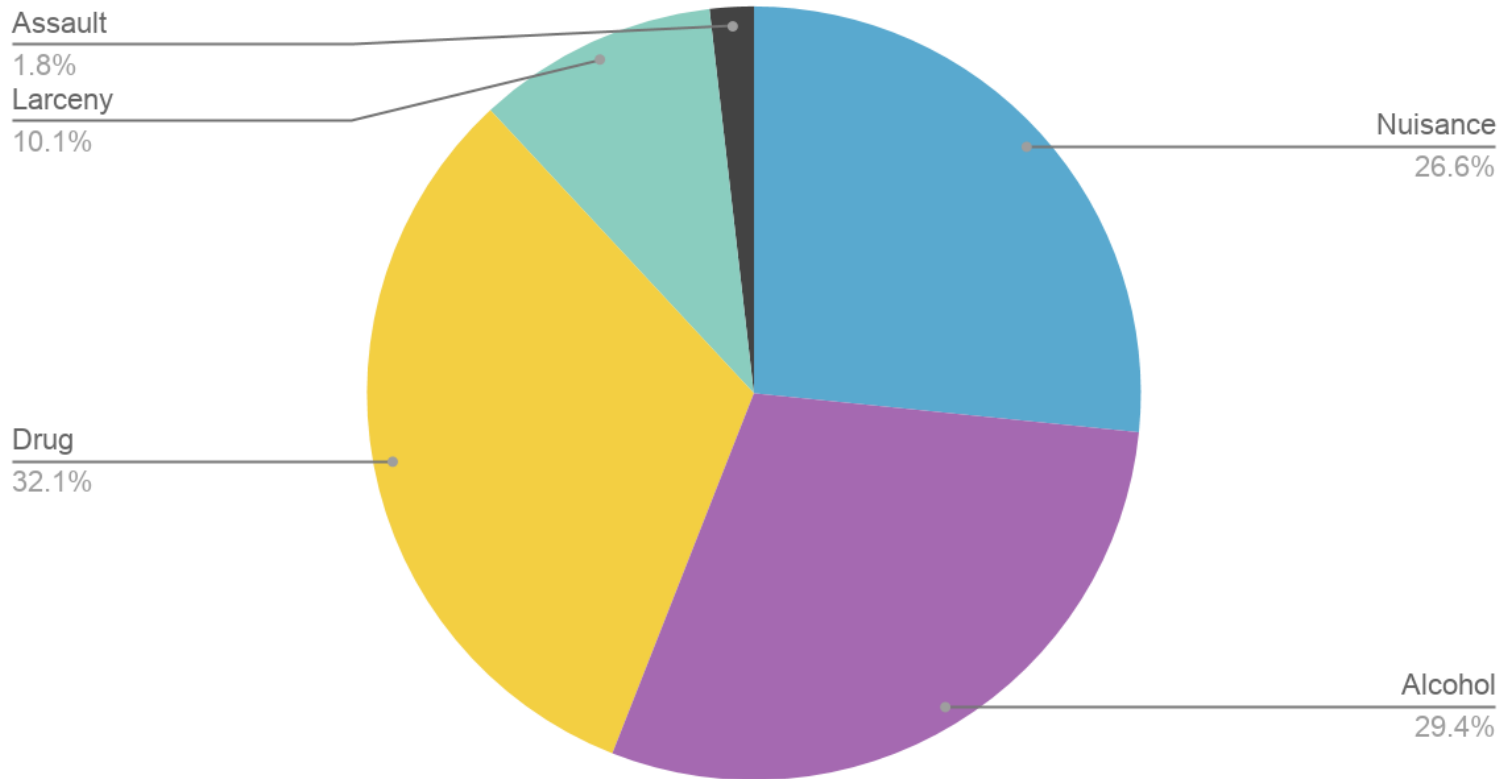
OCPAD program eligibility

- Individual must be 18 years or older
- No adult criminal charges/arrests, or convictions (juvenile record is permissible)
- No prior OC-PAD or Misdemeanor Diversion Program (MDP) involvement
- Admission of guilt is not required
- Must have committed one or more eligible misdemeanor offense (see next slide for list of eligible offenses)
- Final discretion on diversion remains with law enforcement and the Orange County District Attorney's Office

OCPAD eligible misdemeanors

- *Fraudulent Identification (offense added in 2020)
- *Underage Drinking Consume (offense added in 2020)
- *Underage Possession Alcohol/Malt Beverage (offense added in 2020)
- Simple Assault/Affray
- Possession of Drug Paraphernalia
- Simple Possession of a Controlled Substance
- Resist, Delay, Obstruct
- Second Degree Trespass
- Intoxicated and Disruptive
- Disorderly Conduct
- Shoplifting/Conceal
- Ordinance Offenses (Panhandling, Public Urination, Sleeping on Park Bench, Open Container and Noise Ordinance Violation)

Commonly Referred Offenses



Available support services

- StreetSafe Drug and Alcohol Education
- Carpe Diem Collegiate Alcohol and Drug Education
- Community Living
- Dispute Settlement Center
- Community Service
- Criminal Justice Resource Dept. – Substance Use and Behavior Assessments
- UNC Wellness/BASICS
- Pathways for Change
- Reintegration Support Network (RSN)

OCPAD referrals come from state, university and local law enforcement agencies

- Orange County Sheriff's Office (7%)
- Hillsborough Police Department (18%)
- Eno River State Park (34%)
- UNC-CH (4%)
- Carrboro Police Department (5%)
- Chapel Hill Police Department (32%)

Lessons from OCPAD and around the country

Diversion programs:

- Save communities *tax dollars* by keeping low-level offenders out of the criminal justice system.
- *Reduce crime* and connect offenders with social services.
- Make the criminal justice system more *equitable* by keeping North Carolinians of color out of courts and jails.

**Diversion
works in
communities
of all sizes.**

Lex Loci:

- Improves the efficiency of diversion programs by moving forms and databases from paper and spreadsheets to an online platform.
- Increases transparency and interagency communication with an analytics dashboard and customizable user roles.
- Shows the impact of diversion on your community through recidivism and program completion reports.

**The right tool
makes all the
difference.**

**Let's work together to make North
Carolina a *leader* in cost-effective
diversion programs.**

Here's how we can move forward:

1. Share your support for diversion programming with your district attorney.
2. Tell us what you think: we want our solution to match the specific needs of your community.

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References and Further Reading

1. [“Detailed North Carolina Statewide & County-Level Criminal Charging Data”](#), North Carolina Criminal Law: A UNC School of Government Blog.
2. [“Cost of Corrections”](#), North Carolina Department of Public Safety.
3. [“State of Working North Carolina 2019: Equity in Employment”](#), North Carolina Justice Center.
4. [“Out of Prison and Out of Work: Unemployment Among Formerly Incarcerated People”](#), Prison Policy Initiative.
5. [“The Mark of a Criminal Record”](#), *American Journal of Sociology*.
6. [“Blueprint for Smart Justice North Carolina”](#), ACLU Smart Justice.
7. [“Stepping Up: Florida’s Top Juvenile Civil Citation Efforts”](#), The Caruthers Institute.
8. [“Seattle’s Law Enforcement Assisted Diversion \(LEAD\): Program effects on recidivism outcomes”](#), *Evaluation and Program Planning*.

References and Further Reading

9. Task Force for Racial Equity in Criminal Justice, [Working Group #3, Meeting #4](#)
10. ["An Evaluation of the Eau Claire County Pre-Charge Diversion Program as Measured by Three Year Recidivism Rates"](#), Eau Claire County.
11. ["A National Survey of Criminal Justice Diversion Programs and Initiatives"](#), Center for Health and Justice at TASC.
12. ["Mental Health and Criminal Justice Case Study: Miami-Dade County"](#), National Association of Counties.