

# Federal Pretrial Diversion Program

NAPSA Conference

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# Introduction

## **Game Plan for Change Revitalizing Pretrial Diversion in the Federal System**

# Sub-Committee Members

Pretrial Services Working Group  
Sub-Committee on Pretrial Diversion

Carol Miyashiro, Chief USPSO (Hawaii)

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# Mission of Sub-Committee

The mission of the sub-committee is to promote the effective use of pretrial diversion in the federal system

# Pretrial Diversion

**Consistent with evidence-based practices, pretrial diversion is an alternative to prosecution which seeks to divert certain individuals from the traditional criminal justice process into a cost-effective program of supervision and services designed to improve defendant outcomes.**

# Objective of Presentation

- The “GAME” – *What is PTD?*
- “GAME TRENDS” –  
*PTD Past and Present*
- Winning with PTD –  
*Looking Forward*
- Q & A

# Pretrial Diversion-What is it?

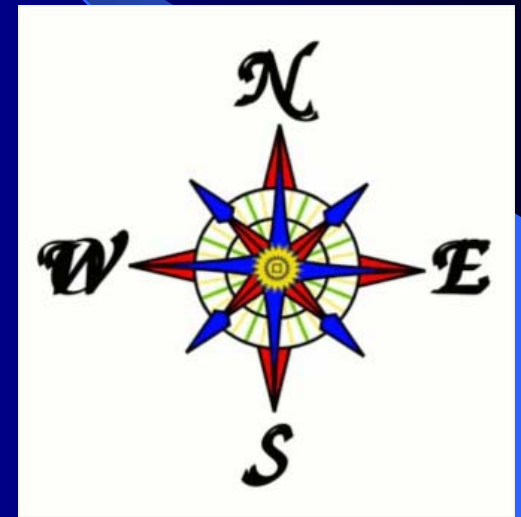
- **Legal Authority:**
  - Can be found in 18 USC 3154 (10) Provisions
- **Definition:**
  - An alternative to prosecution which seeks to divert certain candidates from traditional criminal justice processing into a program of community supervision.

# Objectives for Pretrial Diversion

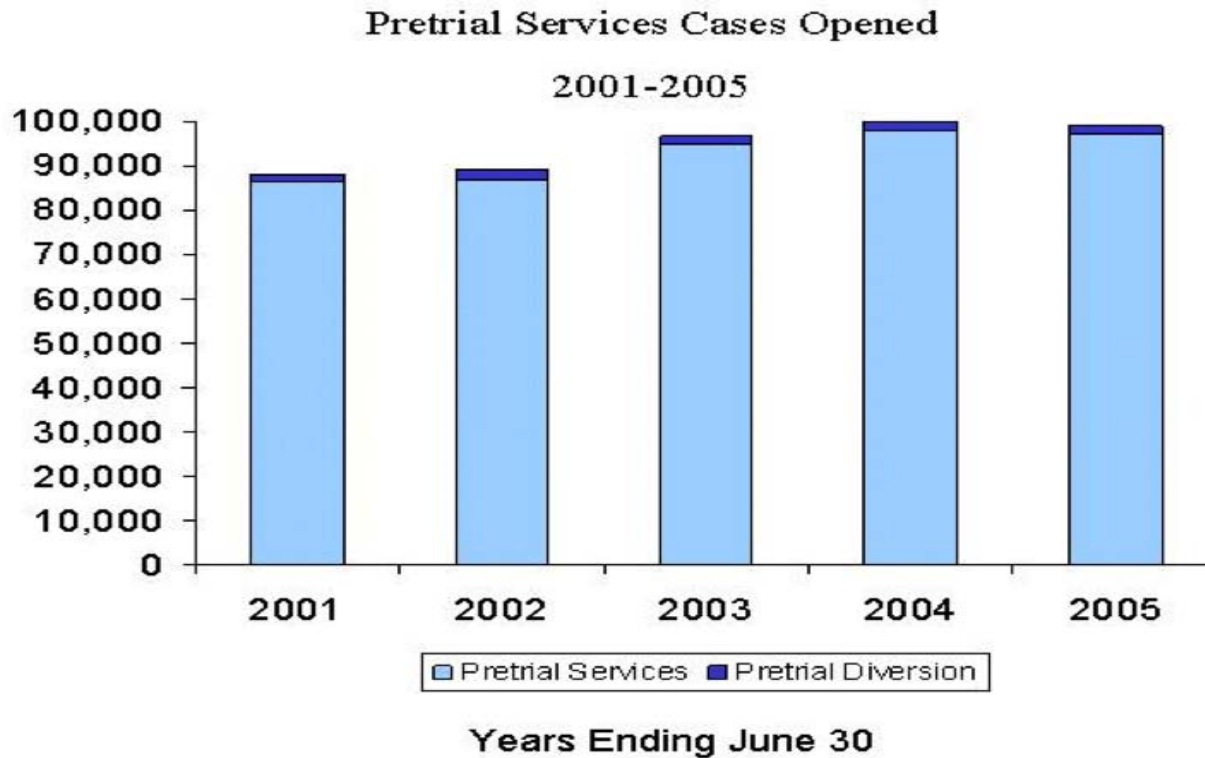
- To prevent future criminal activity
- To save prosecutorial & judicial resources for concentration on major and more serious crimes
- To provide a vehicle for restitution to communities & victims of crimes

# PAST-Where Have We Been?

- President Johnson's 1967 Commission on Law Enforcement and the Administration of Justice
- Labeling Theory
- *The Pretrial Services Act of 1982*
- Tough on Crime Era



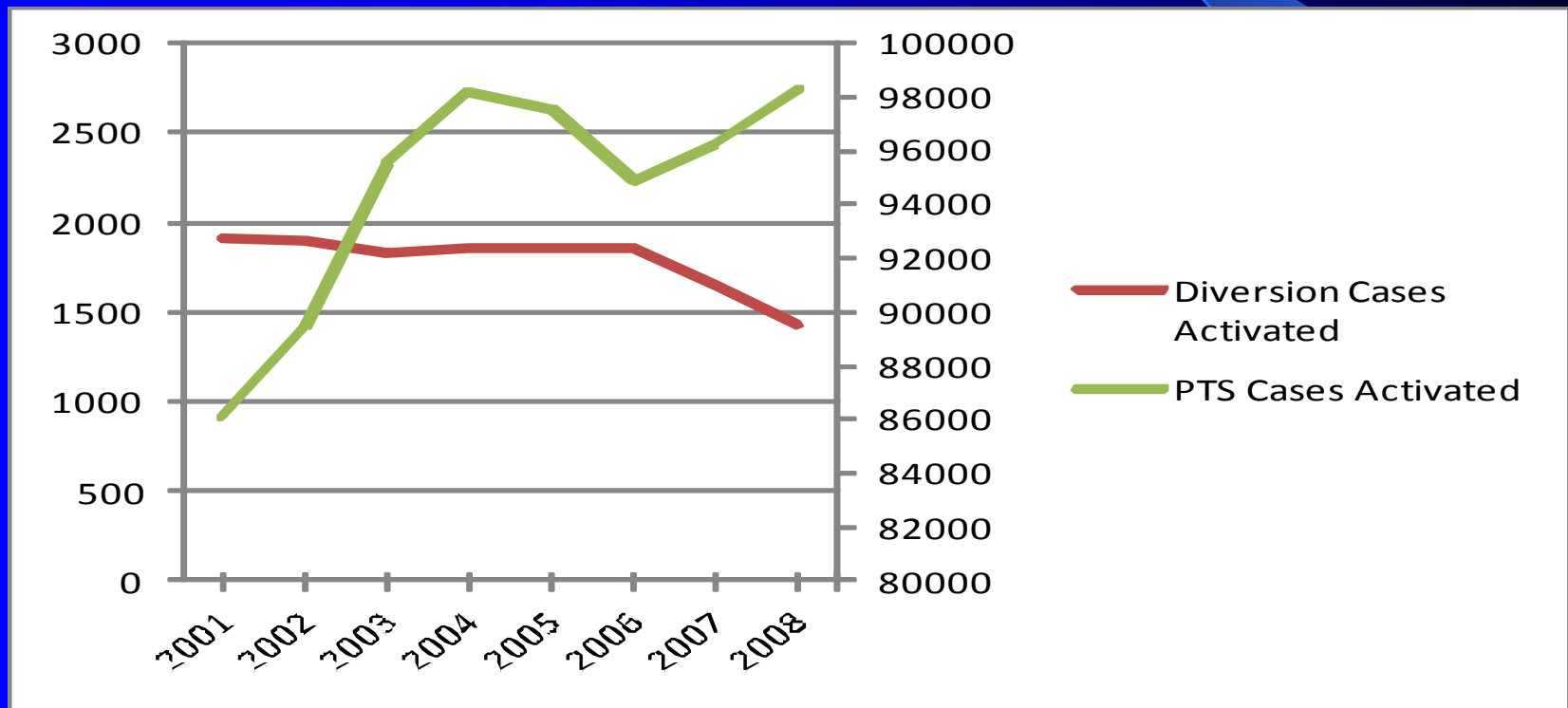
# What Took Us So Long to Evaluate?



Director's Report to the Judicial Conference, 2005

# Where Does Diversion Stand in the Federal System?

Pretrial Services and diversion cases activated in FY 2001–FY 2008



Pretrial Services Table H-1 2001-2008

# Federal Diversion Statistics (continued)

Since FY 2001:

- Pretrial services case activations have increased by more than 12,000 cases
- Diversion case activations have fallen by almost 500 cases

# Federal Diversion Statistics (continued)

## In FY 2008:

- The 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> Circuits had fewer diversion activations than some districts
- Three districts accounted for nearly 25% of all diversion activations
- Only 20 districts activated 20 or more diversion cases

Administrative Office of the U.S. Courts, Decision Support System 2009  
Pretrial Services Table H-1 2008

“There are Three Kinds of Lies: Lies, Damn Lies, and Statistics”

(Benjamin Disraeli)

# Who is Getting Diverted?

In FY 2008:

- Property offenses and fraud cases
- 338 Divertees had prior felony and misdemeanor convictions
- Females drastically over-represented
- Caucasian participants account for double any other ethnicity
- Approximately 43% of diverttees were younger than age 30

Administrative Office of the U.S. Courts, Decision Support System 2009

“Aw, people can come up with statistics to prove anything. Forty percent of all people know that”

(Homer Simpson)



# Diversion Outcomes



In FY 2008:

- 1,702 PTD cases were closed successfully
- 213 candidates were denied diversion
- 177 divertees were discharged unsuccessfully from PTD
- 119 technical violations were incurred by divertees
- 33 candidates were arrested for a new offense while under supervision

# What Do the Experts Say?

- True diversion has been greatly understudied
- PTD programs incorporating evidence-based practices show greater effectiveness
- Special population programs (e.g. mental health, substance abuse, juvenile) seem to provide a cost-effective alternative to prosecution at the state level
- Diversion can positively contribute to the ever-expanding continuum of case disposal options at the state and federal level.



# Experts (continued)



- Net-widening occurs and must be addressed
- PTD programs operate in very different manners
- Diversion has multiple, recognized limits
- Long-term impact on recidivism remains unknown

# Professional Standards



## National Association of Pretrial Services Agencies

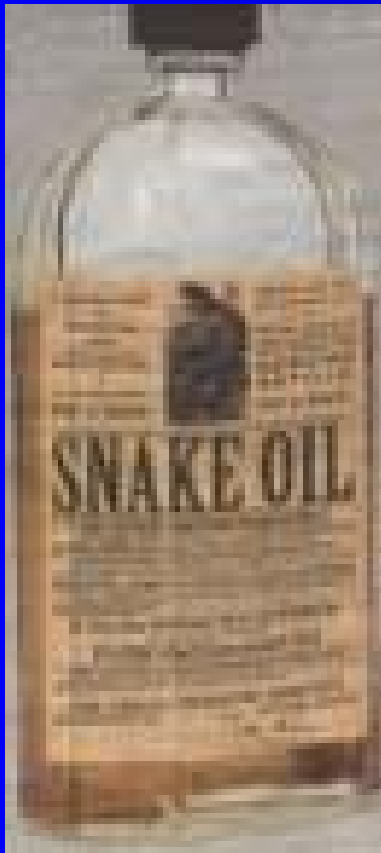
- Initially published in the 1970's, NAPSA Board of Directors made revisions to the Pretrial Diversion/ Intervention Standards in 2008 and provided tools and guidance for diversion program operation

## American Bar Association

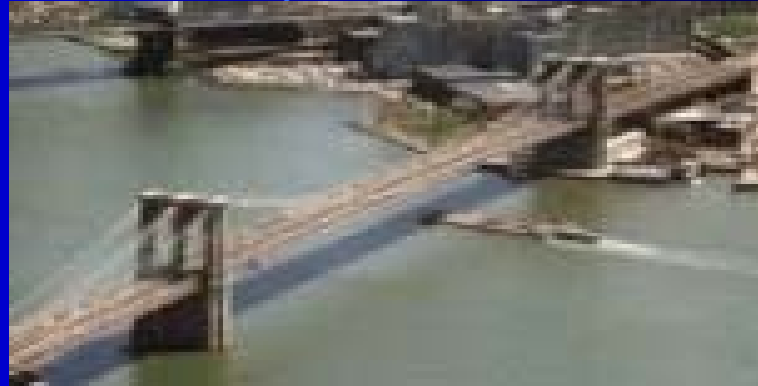
- 2002 ABA House delegates approved standards for pretrial release that include provision for pretrial diversion



# What Are You Trying to Sell Me?



Snake Oil?



The Brooklyn Bridge?



A Clunker?

# Analysis

- Diversion usage has declined substantially since implementation
- Diversion is NOT effective in every case
- Diversion seems to be effective in certain cases
- The quality of the program is as important as its participants
- Evidence-based investigation and supervision
- More research is necessary to determine federal diversion's actual cost-effectiveness and longitudinal effect on participants.

# PRESENT-Where are We Now?

## **U.S. Attorney's criteria for diversion cases:**

- Candidate must be cooperative and truthful
- Accepts responsibility for offense conduct
- Willing and able to pay restitution or perform community services if required
- Not have more than two felony convictions

# Eligibility Criteria (Continued):

## Other factors to consider:

- Adjustment to prior court supervision
- Likelihood of future criminal activity
- Seriousness of substance abuse history
- Any mental health issues that preclude participation in diversion program
- History of violence toward others
- Nature and circumstances of the alleged offense

# Role of Pretrial Services

**Through written agreements with the U.S. Attorneys Office, Pretrial Services will:**

- Fully explain diversion program requirements
- Conduct diversion investigations and verify information
- Provide diversion investigation reports and recommendations as to suitability of diversion
- Supervise divertees in the community and monitor adjustment and compliance with PTD agreement terms
- Inform U.S. Attorney of divertees' activities and any violations

# 2009 Pretrial Diversion Survey

- Chiefs in each district surveyed regarding PTD programs in their districts
- Asked what types of cases get PTD
- What are the challenges faced?
- Reasons why they may not have a PTD program in their district

Discussion of survey results

# Mission Statement

Consistent with *evidence-based practices*, pretrial diversion is an *alternative* to prosecution which seeks to divert certain individuals from the traditional criminal justice process into a *cost-effective* program of supervision and services designed to *improve defendant outcomes*.

# A WINNING GAME PLAN

- Evidence-Based Practices
- Cost-Effective Alternative to Prosecution
- Improved Outcomes

# Who Are Appropriate Candidates for PTD?

**GOAL: Objective and Research-Based Risk Assessment Tool**

Federal Pretrial Risk Assessment (DRAFT)

Developed by the Office of Probation and Pretrial Services (OPPS)

Data derived from PACTS

<b>Risk Category</b>	<b>N</b>	<b>Risk Score</b>
<b>Category 1</b>	<b>55,243</b>	<b>0 – 4</b>
<b>Category 2</b>	<b>53,193</b>	<b>5 – 6</b>
<b>Category 3</b>	<b>47,195</b>	<b>7 – 8</b>
<b>Category 4</b>	<b>20,833</b>	<b>9 – 10</b>
<b>Category 5</b>	<b>4,555</b>	<b>11</b>

# Supervision

## **Incorporating Evidence-Based Practices that Enhance Supervision Effectiveness**

- Target Interventions
- Motivational Techniques rather than Persuasion Tactics
- Programming that emphasizes Cognitive Behavioral Strategies
- Positive Reinforcements
- Community Support to positively reinforce desired new behaviors

# Outcomes

## **Pretrial Diversion**

Voluntary Participation  
Waiver of Rights  
Reduce Re-offense  
Rehabilitative Services

## **Pretrial Release**

Court-Ordered  
Legal & Constitutional Rights  
Avoid Re-arrest and FTA  
Least Restrictive Conditions

# Cost Effectiveness

**PTD as a Cost-Effectiveness  
Alternative**

# PTD Action Plan

## Game Plan for Success

- Update/Revise PTD Policies and Procedures
- Increase Awareness through Training
- U.S. Attorney Offices and Defense Attorneys
- Research and Outcome Data



Q & A



Go!

Fight!

Win!

