

# DWI PRE-TRIAL DIVERSION PROGRAM: REFERRAL AND MONITORING STRATEGIES

## Toolkit for Texas Jurisdictions

### Abstract

DWI Pre-Trial Diversion Programs are meant to redirect qualifying defendants to a program comprising supervision and community-based programming. This alternative approach to the traditional punitive process is offered to those who meet certain criteria. This toolkit includes DWI Pre-Trial Diversion treatment referral and monitoring best practices; these were determined based on a focus group discussion with Texas pre-trial staff and through research. The strategies and practices outlined in this toolkit can aid in strengthening the framework for DWI pre-trial diversion programs across Texas.

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*\*Pre-Trial Diversion Programs may also be referred to as:*

- *Pre-Trial Intervention Programs (PTI)*
- *Deferred Prosecution Agreement (DPA)*
- *Accelerated Rehabilitative Disposition (ARD)*
- *Accelerated Rehabilitation (AR)*
- *Pre-Charge Diversion*
- *Pretrial Front-End Intervention (Diversion)*

*In this toolkit, this program will henceforth be referred to as a Pre-Trial Diversion (DWI-PTD) Program.*

# Background

Pre-Trial Diversion (PTD) programs are established based upon the premise that 1) through completion of the program, eligible defendants will gain knowledge, skills, and attitudes needed to leave behind lifestyles that led them to break the law; 2) defendant(s) will be able to continue contributing to society without the strain of a criminal record, and 3) PTD programs help alleviate and effectively resolve the continued growth of statewide court dockets, saving counties time, money, and criminal justice resources (Weise-Pengelly & Dammer, 2023).

PTD programs in Texas vary across jurisdictions based on community size, funding, and services/support systems that are readily available. While not all diversion programs accept Driving While Intoxicated (DWI) cases, eligibility and acceptance terms are made on a case-by-case basis.

To better understand the referral and monitoring practices for DWI defendants at the pre-trial stage, a focus group meeting was conducted with pre-trial staff professionals. Participants included prosecutors, pre-trial supervision service staff, and diversion program coordinators who oversee DWI-PTD programs in parts of the state with the highest impaired driving crash rates. A summary of the focus group findings is listed in Figure 1.

Information in this toolkit was collected and organized based on responses received during the focus group discussion. The TTI team reviewed additional DWI-PTD program standards to substantiate the responses collected from the focus group participants. The fundamentals and inner workings of successful DWI-PTD program that emphasizes consistent monitoring and referral practices for DWI defendants in Texas can be found in this tool kit. Referral, monitoring strategies, and best practices that can be utilized at the pre-trial stage for impaired driving cases can also be found within.

The TTI team is grateful and expresses their gratitude to our pre-trial staff focus group participants, as their expertise was invaluable in creating this toolkit for Texas jurisdictions.

## Understanding of DWI-PTD Program Goals

In general, DWI-PTD programs are established:

- To discourage prospective criminal conduct and foster the recovery of certain offenders. It does so by redirecting them away from standard procedures into community monitoring and support, which may include mental health and substance abuse treatment as deemed necessary.
- To preserve prosecutorial and judicial assets.
- As a means of restoring affected communities and victims of crime if deemed appropriate. (U.S. Department of Justice, 2023).

The DWI-PTD services provided to defendants should address the root causes of their criminal behavior. For example, if it is deemed that driving under the influence of alcohol is the primary cause of the offense and is a result of an individual struggling with an alcohol use disorder, treatment services are encouraged, and appropriate referrals should occur. By receiving treatment and regular oversight, the likelihood of the individuals recidivating back into the criminal justice system is reduced (Labriola et al., 2018; Carter, 2019a).

Best Practices related to DWI-PTD programs suggest instituting pragmatic goals. Examples of goals include:

- Accountability for the committed DWI offense and community safety while keeping court docket counts low.
- Connecting individuals to suitable services by determining the origin of the problem. Focus group participants shared that individualized treatment approaches can be drafted and implemented based on assessment results. Tailoring treatment approaches based on assessments is preferred when the goal is to influence behavioral change among individuals who struggle with addiction (Hilton & Pilkoni, 2015).
- Reducing the number of convictions so defendants avoid collateral consequences, such as losing their job or hardships in finding one (Prosecutor-Led Diversion Toolkit, 2023a).

**Goal statements serve a critical purpose in informing and educating diverse audiences, such as funders, criminal justice partners, and the general public, about a program's objectives. Additionally, they play a vital role in guiding the program's design and facilitating the evaluation process. Clear communication of goals promotes collaboration towards achieving intended outcomes.**

(Prosecutor-Led Diversion Toolkit, 2023a)

- Through successful diversions, prosecutorial costs and resources can be utilized to address more severe crimes (Prosecutor-Led Diversion Toolkit, 2023a).

## DWI-PTD Program Eligibility

Identifying the DWI-PTD program structure and the defendant's needs is a crucial step in facilitating a successful diversion. The DWI-PTD program is designed for defendants who meet certain criteria. The criteria vary, but in general include:

- First-time defendants.
- Defendants who cooperate with law enforcement and pre-trial staff.
- Defendants who were not involved in a motor-vehicle crash (*this is overlooked at times if the crash involves only the defendant's vehicle and no significant damage to any other structure occurred*).
- Defendants who have not previously participated in a previous diversion program.
- Defendants' admission of guilt or a detailed explanation of why the offense was committed. This includes supporting documentation from the defendant's peers (*i.e., character references*).

**Eligibility is based on factors like the type of offense, participant's risk level, criminal record, and situational factors related to the crime or past criminal activity.**

(Prosecutor-Led Diversion Toolkit, 2023b)

In some jurisdictions, if the defendant is considered high risk based on assessments (*i.e., Texas Risk Assessment System, or TRAS*), the courts may have a different program that would be better suited to provide the correct amount of supervision and services (*i.e., DWI court*) based on the defendant's needs. Alternatively, mitigation packets can provide more in-depth justification when high-risk defendants still want to be accepted into the DWI-PTD program.

The DWI-PTD program takes place outside the courtroom, so admission of guilt is not done before a judge (Labriola et al., 2018). Yet, defendant accountability for their role in the offense is a key component for enrollment into some pre-trial programs. Admission of guilt, through verbal recounts and having character reference letters submitted by those who know the defendant committed the DWI offense helps to justify the individual's acceptance into the DWI-PTD program. The defendant's acceptance of responsibility for their actions is paramount, as the DWI-PTD program is not designed for individuals who simply want to participate to receive a dismissal. District Attorney (DA) staff typically are able to identify which defendants truly have accepted fault; and for those defendants who don't assume responsibility for their actions usually do not complete the program requirements.

When a disqualifier prevents the individual from being accepted into the DWI-PTD program, some jurisdictions consider initiating a mitigation process, which can include looking at a defendant’s assessment results to provide context as to why they should still be considered for the program.

Criminal justice stakeholders, such as prosecutors, law enforcement officers, judicial officers, court staff, and the defense counsel, may assist in identifying individuals they feel should be considered for DWI-PTD. Additionally, potential DWI-PTD candidates “may be identified at the point of arrest or police report, at in-custody booking, at arraignment, or any point up to adjudication of the case (Prosecutor-Led Diversion Toolkit, 2023b).”

## DWI-PTD Program Screening, Referral, and Monitoring Practices

### DWI-PTD Program Screening and Assessment Procedures

Having consistent and comprehensive procedures helps to provide direction for pre-trial staff before, during, and upon completion of the DWI-PTD program. The DWI-PTD processes below provide information on how jurisdictions screen or assess participants for Substance Use Disorder (SUD) and Mental Health (MH) needs.

- In some jurisdictions, the defendant applies to the DWI-PTD program via the program website. A supervisor reviews application details (*i.e., mitigation packet*). If acceptance is granted, the defendant enters the DWI-PTD program at the next court date.
- There are Texas jurisdictions where an in-house SUD assessment is done upon program acceptance.
  - Assessing the defendant for risks and needs and allowing them to meet with a Substance Abuse Counselor at the beginning of the program is an important step in their intake process; the goal behind these assessments is to address the root cause of the offense and to purposefully connect the defendant to the appropriate services.
- Other jurisdictions require defendants to complete the TRAS through the Community Supervision and Corrections Department (CSCD). A Probation Officer (PO) specifically dedicated to pre-trial offenders sends a copy of the assessment results to the DA’s office, where eligibility for the DWI-PTD is gauged.
- Some jurisdictions do not measure the defendant’s SUD or MH needs at the pre-trial level. In these cases, assessments are only completed at the sentencing stage.

## Screening and Assessment Challenges

Obtaining an assessment of a defendant before their release from custody can be challenging. Yet, it is particularly important if the individual has a SUD or an MH condition, as these could determine eligibility for participation in a DWI-PTD program. As such, it is important for agencies and their personnel to consider a process for screening individuals both in and out of custody (Prosecutor-Led Diversion Toolkit, 2023c).

Some State Attorney Offices run their DWI-PTD program without CSCD collaboration. These attorney-led programs typically perform in-house screenings for SUDs and partner with behavioral health providers who in-turn refer individuals to treatment services as a condition while completing the pre-trial program.

## General Referral and Monitoring Procedures

To provide services conducive to the defendant's needs, having a plan for where and how referral and monitoring services are provided is essential. Referral and monitoring plans provide strategic direction and efficiently connects the defendant with treatment and support options as soon as possible. The strategies shared below were identified as best practices among focus group participants:

- Clinical assessments (*i.e., Screening, Brief Intervention and Referral to Treatment, or SBIRT*) may be conducted through the CSCD or through outside providers. Results are not shared with the DA to allow the defendant to open up and be conversational with the counselor administering the assessment. If the defendant refuses to complete the assessment, the refusal is shared with the DA, informing them that the defendant has not completed the terms of the DWI-PTD program.
  - Defense Attorneys often have a list of providers the defendant can seek – including counselors and community support groups. Upon meeting with a counselor, the counselor will direct the defendant to additional services that align them with their needs based upon the results of their assessment(s).
- Referrals for further services for individuals with SUDs and MH conditions can be done through the probation department.
  - One jurisdiction reported that the amount of treatment generally comes from a counselor upon their initial assessment. Others reported that the CSCD and DA may dictate the number of hours of treatment needed to complete the DWI-PTD program.

Understanding how the defendant's progress will be monitored is important. Having a plan for who will be tracking the defendant's compliance, to whom the compliance/non-compliance will be reported to, what information is shared by treatment providers, and how often cases are to be calendared to review diversion conditions can help set the foundation for successful monitoring practices

(Prosecutor-Led Diversion Toolkit, 2023e). In most cases, CSCD provides supervision for defendants participating in the DWI-PTD programs. DWI-PTD community supervision concepts include:

- Some jurisdictions have designated POs supervising program participants, while in others, POs are assigned to supervise participants of the DWI-PTD program. Still, other jurisdictions provide in-house supervision through the DA's office. These DWI-PTD supervision positions are usually funded through the fees that are collected as part of the original offense.
- For defendants who will be monitored through the CSCD, they should meet with the CSCD soon after the DWI-PTD contract is signed.
- The DA's office DWI-PTD representative is heavily involved with the defendant's supervision under the CSCD.
- The DWI-PTD staff receives information on whether or not a defendant is complying with treatment. Unless there is a great need to share details, this is generally provided as a simple "Yes – they are complying" or "No – they are not complying" to provide confidentiality for the defendant undergoing treatment.

If a defendant participating in a DWI-PTD program is not complying with the terms of the diversion agreement, being prepared helps pre-trial staff determine whether or not the defendant should continue the DWI-PTD program. Implementing concepts such as graduated sanctions gives the defendant chances and additional opportunities to complete the program (Prosecutor-Led Diversion Toolkit, 2023e).

Monitoring best practices include:

- DWI-PTD staff notifying the DA's office of any treatment violations. The DA will decide whether or not the individual may remain in the DWI-PTD program.
  - DWI-PTD programs recognize the importance of complying with the outlined diversion agreement. If the defendant is not complying with treatment and violations occur, the DA will authorize chances to continue in the program and get back on the right track. However, if the individual is removed from treatment, they will likely be removed from the DWI-PTD program. A participant may also be removed if it is found that the DWI-PTD program is no longer the most suitable program for the defendant (*i.e., if MH conditions surface, they may be more suited for an MH court*).



## Evaluate Referral and Monitoring Practices, Measure Impact

An evaluation is “the systematic investigation of the merit, worth, or significance of an object or effort (Community Tool Box, n.d.b).” Effective program evaluations help involved stakeholders measure if the goals, objectives, and intended outcomes designated during the planning processes were met. Reviewing where procedures can be improved, refined, and strengthened is also important. Throughout the delivery of the DWI-PTD program, it is good practice to recognize and keep tabs on any lessons learned along the way, as these can help reform existing practices (Carter, 2019b).

Logic models provide a visual representation of the program purpose and include conditions related to the program, program inputs and resources, activities that will occur, outputs produced by the completion of the activities, and the effects, outcomes, and results (*short-term, mid-term, and long-term*) of the program (Community Tool Box, n.d.c). They bring the ideas and deliverables full circle, and can aid in identifying gaps prior to and during program implementation (Pierce-Danford & Guevara, 2013). Concerning developing and improving existing DWI-PTD programs, logic models can provide clarity and serve as a roadmap for how pre-trial staff can achieve the goals set forth for the diversion program administrator. Logic models can also illustrate the “theory of change” anticipated by participation in the program (Carter, 2019b).

As the logic model anticipates how the facilitation of the program is meant to ensue, it also results in the development of qualitative and quantitative metrics that can be used to measure program effectiveness (Community Tool Box, n.d.b). The use of logic models can also inform program stakeholders about needs for program improvement for all those involved. Examples of logic models and frameworks related to diversion programs include:

- [Young Adult Diversion Framework](#)
- [Cook County State’s Attorney’s Office Deferred Prosecution Program](#)
- [Community Justice Initiative Diversion Program](#)

In association with the National Institute of Corrections (NIC) and the National Association of Pretrial Services Agencies (NAPSA, 2015) Kennedy and Klute defined outcome and performance measures and critical operational data for DWI-PTD programs. Each measure includes: a description and definition, data needed to observe the metrics, and an explanation of how to calculate the measure. Recommended outcome measures include:

**“A pretrial program , with its risk- assessment, diversion and supervision components, should be continually assessed to ensure it is meeting its goals of protecting public safety and targeting justice system resources efficiently.”**

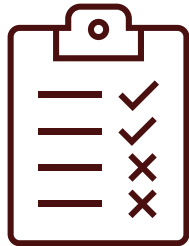
(Pierce-Danford & Guevara, 2013).

- Success Rate (*% of completions among DWI-PTD participants*)
- Safety Rate (*% of DWI-PTD participants with no new offenses for the duration of the program*)
- Post-Program Success Rate (*% of DWI-PTD participants with no offenses for a time after the program*)

Recommended performance measures include:

- Screening (*% of DWI-PTD-eligible individuals who are assessed*)
- Placement (*% of DWI-PTD-eligible individuals who are accepted into the program*)
- Compliance (*% of DWI-PTD participants who complete diversion conditions*)
- Response (*% of how often pre-trial staff communicate to participants about offender conduct and compliance*)
- Provision (*% of assessed DWI-PTD participants who were placed into services (i.e. SUD, MH)*)
- Satisfaction (*Qualitative data; stakeholders' view on supervision and services, communication efforts, and program worth*)

Tracking the number of referrals that are made (*both to the DWI-PTD program as well as to individual services*), the amount of time it takes for a defendant to be screened and be placed in a DWI-PTD program, the amount of time the participant is in the program for, and the types of exits which are made from the program (*i.e., completions, voluntary withdrawals, terminations*) are also recommended.



For more information, please reference the [Measuring for Results: Outcome and Performance Measures for Pretrial Diversion Field publication](#).

Measuring the amount of SUD and MH referrals made is a good way to track how resources are utilized. As the CSCD is often the department making those referrals, having an established relationship and communication plan with their staff is crucial if outcome and performance data is to be collected and measured. Mitigation packets and applications from defendants seeking program acceptance may also contain information on the types of services these individuals might benefit from.

## Words of Wisdom – Starting a DWI Pre-Trial Diversion Program

As the discussion ended, focus group participants expressed some “words of wisdom” for jurisdictions that want to develop a DWI-PTD program. Lessons learned include:

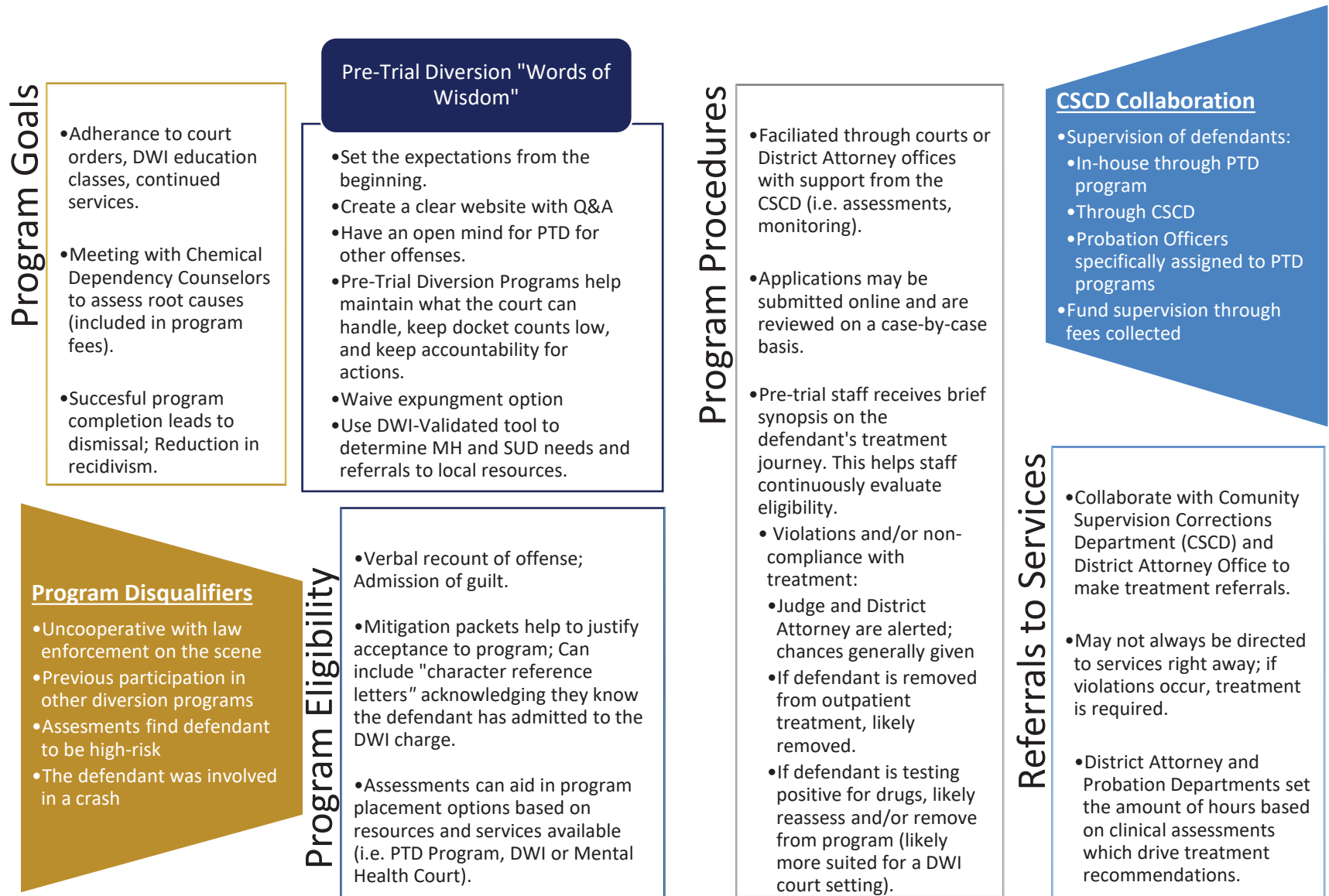
- Setting clear expectations from the beginning as to who will be accepted into the DWI-PTD program and that this criteria is shared with criminal justice stakeholders who may come in contact with potential program participants.
- Clearly define and establish program phases and explain them to the defendant.

- Any jurisdiction can run a successful diversionary program. While the program can be structured to fit the county's needs based on its resources, many of the fundamentals can be built from what other jurisdictions are already successfully doing.
- Create a clear website with frequently asked questions that guides eligible candidates on how the diversion program works.
- Have an open mind for DWI-PTD use on other offenses. Focus group respondents have found that these diversion programs work across different offenses. If they are successful for DWI offenses, they can also be successful for others.
- Documenting defendants' participation in DWI-PTD in the dismissal documents is crucial to avoid a revolving door. Some jurisdictions waive the participant's right to expunction to avoid these issues.
- One of the concerns brought up by focus group participants is the difficulty of determining if MH was a significant component of the DWI offense. Jurisdictions usually don't test for MH for various reasons. This lack of consistency in MH screening procedures leads to a lack of participant identification which complicates referral practices. One solution to that problem is incorporating clinical DWI-validated screening tools, such as the [Computerized Assessment and Referral Systems \(CARS\)](#), into the program early on. This free tool can be self-administered and, if pre-populated, can provide individualized referral sources to all those who use it in the jurisdiction.

## Additional Resources

- [Prosecution-Led Diversion Toolkit](#);  
Bureau of Justice Assistance, US Department of Justice & Association of Prosecuting Attorneys
  - [Crafting Eligibility Standards for a Prosecutor-Led Diversion Program](#);
  - Example of Program Conditions:  
[Milwaukee County Felony Deferred Prosecution Program Participant Conditions](#)
  - Example of Participant Contract:  
[Milwaukee County Felony Deferred Prosecution Program Participant Agreement](#)
- [Creating an Effective Pretrial Program: A Toolkit for Practitioners](#);  
Crime and Justice Institute & Californians for Safety and Justice's Local Safety Solutions Project
- [Pretrial Diversion and the Law: A Sampling of Four Decades of Appellate Court Rulings](#);  
Pretrial Justice Institute
- [Disposition Recommendation Matrix](#); Florida Department of Juvenile Justice
- [Overview of Prosecutor-Diversion Programs: A New Incarnation of an Old Idea](#); Office of Justice Programs

**Figure 1. Summary of Focus Group Discussion: DWI Referral and Monitoring Best Practices at the Pre-Trial Stage**



*These findings come from a focus group discussion which was conducted in August of 2023 by Texas A&M Transportation Institute staff and consisted of pre-trial staff involved in the processing of DWI cases.*

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