

# Evidence and practice briefing: Best practice in pre-court disposals for possession of drugs

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## Purpose of briefing

This briefing sets out a best practice framework for police forces to guide their use of pre-court disposals in drug possession cases for children and adults. It is based on existing good practice in police forces. We have written it in anticipation of significant changes that police forces are making to their use of pre-court disposals more generally, due to the changes to the adult formal, statutory out of court disposal framework as outlined in the Police, Crime, Sentencing and Courts Act 2022.

This best practice framework aims to (i) reduce the harms associated with drug misuse, including reducing drug related deaths; (ii) keep communities safer, by reducing re-offending and crime; (iii) reduce the costs to the criminal justice system of drug possession cases.

## Background

### Drug use in England and Wales

Data from the Office for National Statistics shows that since 2012/13 there has been a rising trend in drug use amongst adults in England and Wales. The latest figures show that 9.4% of adults aged 16 to 59 reported using a drug in the last year in 2019/20, and for those aged 16 to 24, prevalence was even higher at 21%. Cannabis, powder cocaine and nitrous oxide continue to be the most commonly used drugs in England and Wales. For example, an estimated 2.6 million people used cannabis in 2019/20, and recent trends show prevalence rates of cannabis use are now increasing (following a previous long-term decline). This is particularly evident among younger adults (16-24) where prevalence of reported use in the last year has increased by five percentage points since 2012/13, rising to 18.7% in 2019/20.

### Drug possession and the law

In 2021, the police recorded 143,400 drug possession offences of which 112,171 were for possession of cannabis.

Legal restrictions in the Misuse of Drugs Act 1971 aim to control the use and distribution of dangerous and harmful drugs,<sup>1</sup> and covers the offence of possessing illegal drugs. The police have the power to stop, detain and search people on 'reasonable suspicion' that they are in possession of a controlled drug. Possession offences involve being caught with drugs, even if they do not belong to the person they are found on.

When considering whether to charge individuals for drug possession offences, [Crown Prosecution Guidance](#) directs prosecutors to have regard to both the general public interest factors, and to refer to the [Cautioning and Diversion section of the Crown Prosecution Legal Guidance](#).<sup>2</sup>

If prosecuted in court, and found guilty, the legal penalties for possession depend on the class and quantity of the drug, and where the person and the drugs were found.

## Criminal justice disposals for drug possession

At Annex A, we set out our estimates of the criminal justice disposals for drug possession during 2020/21. They suggest that between April 2020 and March 2021:

- There were 74,000 criminal justice disposals for drug possession.
- Of these, we estimate 70% were a pre-court disposal (see Annex B for our definitions of different types of pre-court disposal). 57% were a community diversion (community diversion describes police-led, non-statutory disposals, most commonly community resolutions or activity recorded as No Further Action (NFA) Outcome 22 and a further 13% were a statutory out of court disposal.
- Of the 22,000 drug possession cases that resulted in a court sentence, 60% resulted in a fine.

When looking at a particular groups of individuals who received criminal justice disposals for drug possession, we found:

- Over 40% of all drug possession disposals were for young adults (adults aged between 18-24). Looking at all disposals for young adults across all offences, 15% are for drug possession, which is the highest category of offences for which young adults receive a criminal justice disposal (excluding summary motoring offences). The most common disposal for young adults for drug possession is a community diversion (69%).
- 20% of drug possession disposal were for people from minoritised groups. The most common disposal for people from minoritised groups for drug possession is a community diversion (51%).
- 13% of all drug possession disposals were for adult women. The most common disposal for adult women for drug possession is a community diversion (72%).
- 12% of all drug possession disposals were for children and young people under the age of 18. The most common disposal for children and young people for drug possession is a community diversion (82%).

## Pre-court disposals and drug possession

What this data suggests is that current practice across England and Wales is to use pre-court disposals for the vast majority of drug possession cases, with a particular emphasis on the use of community diversion as the main criminal justice disposal.

However, as we have previously written, pre-court disposals are an area of practice in which there is considerable variation in how police forces use them. This variation extends to issues such as who is eligible for which type of pre-court disposal, which interventions are offered, how long or short the interventions are and how police forces enforce them. It is with this in mind that led us to develop the following best practice framework for police forces to guide their use of pre-court disposals in drug possession cases.

## Evidence-based framework for pre-court disposals for drug possession

Following requests from police forces, and in anticipation of the changes to the out of court disposal framework for adults in 2023, we have drawn together our recommended framework for the use of pre-court disposals for possession of drug cases. This framework is informed by our observations of best practice across England and Wales, by our understanding of the evidence base, and our involvement in assisting the Government in the implementation of the new out of court disposal framework. This framework applies to both children and adults.

### A presumption toward the use of community diversion

In all instances, all individuals in contact with the police found in possession of a controlled drug (as defined by offences falling within s.5(1) of the Misuse of Drugs Act 1971 (the Act)) should be, by default, eligible for a community diversion (rather than a formal, statutory out of court disposal).<sup>3</sup> We suggest all police forces should adopt a presumption that all such individuals are eligible for a community diversion (either a Community Resolution or No Further Action: Outcome 22 (see section on police recording), including all ages, and regardless of previous convictions for drug possession.

## Supporting evidence

We recommend a presumption toward the use of community diversion, as it is the outcome most likely to minimise contact with the formal criminal justice system and the most likely to help individuals minimise the impact of criminal records on their future employment and education. To underline this point, we do NOT recommend that police forces should use any of the existing statutory out of court disposals nor, once the new framework is in place, either of the two new statutory out of court disposals. In our judgement, the requirement for admissions of guilt and their criminal record consequences, plus the requirement to enforce conditions within the conditional caution and diversionary caution, are too onerous for the vast majority of drug possession cases. This is why we recommend use of a community diversion.

Adoption of this presumption is in line with the Youth Justice Board's (YJB) Child First<sup>4</sup> vision, which outlines their commitment to, 'promote a childhood removed from the justice system, using pre-emptive prevention, diversion and minimal intervention. All work minimises criminogenic stigma from contact with the system'.<sup>5</sup>

As the data in this briefing suggests, the majority of drug possession cases are already disposed of through community diversion. Our recommendation that all drug possession cases are presumed to be eligible for a diversion is therefore not a substantial change from current practice.

As our data estimates (annex A) makes clear, it is likely that a significant proportion of eligible individuals will be young adults and people from minoritised communities. These populations tend to be disproportionately likely to have contact with the police, especially around drugs. This should be taken into consideration when making decisions around eligibility.

## Borderline cases

We recognise that, in individual cases, the use of statutory out of court disposals, if they are the only alternative to court prosecution, may be necessary. In previous work, we have emphasised that these decisions should be guided by gravity score ranges (rather than purely offence-based criteria), rather than hard-and-fast rules, preserving the flexibility of practitioners to make judgements on a case-by-case basis.

## Supporting evidence

As highlighted in our toolkit, there is some evidence from diversion schemes that those with overly strict eligibility criteria regarding the number and types of offences can (i) lead to very low referral numbers; (ii) unnecessarily screen out individuals who would benefit from diversion; (iii) overly complicate the referral process, dis-incentivising police from making referrals.<sup>6</sup> To guard against these issues, Thames Valley Police's starting point for referral into its Drug Diversion Pilot was that all individuals found in 'possession of a controlled drug' contrary to section 5 of the Misuse of Drugs Act 1971 would be eligible.<sup>7</sup>

The Youth Gravity Matrix (a tool used by the police to determine whether children should be considered for an out of court disposal) is currently under review. Once live, this will guide police in charging decisions for children across every force in England and Wales. This will have a significant impact on children accessing diversion and OOCs.

## Admissions

Once an individual has been found to be in possession of a controlled drug, all eligible individuals should be asked to accept a referral to a local drug support service. A formal admission of guilt should not be required. We recommend this should be recorded on the Police National Computer (PNC) and/or by the Youth Justice Service as either a Community Resolution or No Further Action: Outcome 22 (see section on police recording).

## Supporting evidence

In the context of youth diversion, commentators have long suggested that a mandatory admission criterion is an 'onerous and sometimes unhelpful pre-condition for many young people who commit low level offences', and may be 'one of the primary reasons for young people entering the formal criminal justice system unnecessarily'. Our briefing *Who should be eligible for youth diversion?* further highlights the importance of flexibility regarding admissions of guilt.<sup>8</sup>

As outlined in the Lammy Review, there is reason to believe that requiring formal admissions of guilt unnecessarily narrows the number of individuals eligible for diversion, especially those from Black, Asian and Minority Ethnic (BAME) backgrounds who tend to have lower levels of trust in the police.<sup>9</sup> This was duly taken into account by the Ministry of Justice in the eligibility criteria of their *Chance to Change* pilots.<sup>10</sup> In lieu of a formal admission, some schemes instead require an acceptance of responsibility, a more flexible alternative that could reduce the number of people unnecessarily escalated further into the criminal justice system.

In forces with established diversion schemes for drugs, acknowledgment of the possession of a controlled drug is captured in an informal, trauma-informed way. Officers will engage with a person, having a diversion referral at the forefront of their mind, thus turning a previously incriminating encounter with Police, into a positive health outcome. The Thames Valley and West Midlands schemes were positively cited within the Government's Commission for Race and Ethnic Disparities report.<sup>11</sup>

## Making referrals

We recommend that police forces ensure that police officers have a very clear script to guide their conversation with eligible individuals. This should make clear that:

- Individuals will only be referred if they accept responsibility AND accept being referred to a local drug support service or the local youth justice service;
- The acceptance of responsibility is not a formal admission of guilt and consenting to the community diversion will significantly reduce the likelihood of this offence appearing on their criminal record in the future;
- The referral into services will lead to contact with a non-criminal justice agency to assess the individual (for adults) and to contact with the YJS (for children) who will offer voluntary interventions to help them with their drug use;
- Non-attendance at these interventions could mean that they are not eligible for a community diversion in the future for at least six months.

The scripts should assist officers to ask procedurally fair, open questions that give the individual a voice in the process. Examples of these scripts can be provided to police on request.

## Supporting evidence

Research has shown that when people perceive the procedures of the justice system to be fair, they are more likely to obey the law in the future – regardless of the outcome of their case.<sup>12</sup> Procedural fairness can be improved by treating people with dignity and respect, ensuring that they understand the process, that they have a voice, and that decisions are made neutrally. In the context of pre-court diversion, special attention should be given to ensure the voice of the referred individual is heard and understood, and that what is being required of them is clearly understood. This is especially important for people under the age of 18, and for young adults (given the evidence around young adults' brain maturation and neuro-diversity).

## Referral process

All eligible individuals under the age of 18 (on the day of the referral) should be referred to the relevant youth justice service, as per existing local youth diversion processes.

For eligible individuals aged 18 or over (on the day of the referral), police should refer them to a commissioned provider, who is able to provide drug assessment and interventions (see below). This referral process should be as straightforward for police officers as possible, allowing for referrals in a range of settings, including on the street and in the custody suite.

Referrals should be made within 48 hours of contact with the police through a referral mechanism by the drug service provider. Examples of such systems include Niche, the 'Simply Book' system, and in the future, mobile phone based apps are likely to provide an alternative solution. The service provider should then make contact with the individual as quickly as possible, we suggest within 24-72 hours of the service receiving the police referral.

### Supporting evidence

Our work with police forces across the country strongly suggests that swift referral is vital for ensuring as many eligible individuals are referred as possible. Complicated, bureaucratic processes will deter officers from making referrals. Moreover, research suggests that certainty and swiftness in responding to offending are more important determinants of desistance than severity.<sup>13</sup> A 2018 review of the evidence on out of court disposals recommended that 'decisions on disposal and conditions are as closely linked to the point of arrest as possible.'<sup>14</sup> Swift referral is more likely to ensure that individuals being diverted can see a clear connection between their acceptance of responsibility for specific behaviour and the interventions. Moreover, swift referral and action which resolves the crime negates the need to bail or release under investigation individuals while they wait for actions which would be need for a prosecution take place (like the testing of confiscated drugs).

### Assessment

Following referral, individuals under the age of 18 (on the day of the referral) should be assessed by their local Youth Justice Service (YJS) to identify their assets and needs to develop a support and safety plan. Some YJSs use ASSET PLUS, while others have developed bespoke assessment tools for diversion, examples of which can be found on the Youth Justice Board Resource Hub.<sup>15</sup>

For referred individuals aged 18 or over (on the day of the referral), individuals should be assessed by the local authorities commissioned substance misuse provider, who is able to provide drug assessment and interventions (see below). These assessments should, in particular, identify the amount, usage and harms of the individual's drug use.

A trauma informed assessment of the person's drug use should have regard to the fact that, while the person may have been found with one particular drug, their alcohol use, alongside other drugs, may require more attention than the original drug for which the referral was made.

### Supporting evidence

As our evidence summaries clearly indicate, major systematic reviews have found strong support for calibrating interventions on the basis of assessed risk, especially for addressing criminogenic need (what is known in the literature as risk need responsivity). Assessment that identifies risk and needs (as well as the assets of the individuals) is a vital part of this evidence-led approach.<sup>16</sup>

### Interventions

The cohort in question will, in most cases, primarily be made up of individuals with a relatively low risk of reoffending and harm. It has been repeatedly demonstrated that employing intensive treatments – intended for those who commit high-risk offences or who persistently offend – to people who commit low-risk offences ('overdosing') may backfire, leading to further offending. We therefore want to be clear that there will be circumstances, following assessment, where no intervention is necessary. In drug possession cases, it can be easy and natural for practitioners to assume that people require treatment and interventions, where, in fact, a simple warning, referral into voluntary support, and confiscation of the drugs themselves is a more appropriate, achievable and proportionate response. This may especially be the case for young adults, who are likely to grow out of offending, and for people from minoritised communities, who have pre-existing low levels of trust in the criminal justice system. Additional, unnecessary justice contact is likely to produce a backfire effect.

Where the assessment suggests that an intervention is deemed necessary and appropriate, the emphasis should be on interventions which are (i) proportionate; (ii) educative; (iii) tailored and flexible around the individual. Moreover, interventions for all assessed individuals regardless of age should be offered on a free and voluntary basis. While interventions, where deemed necessary, will necessarily be tailored to individuals based on the assessment, the intervention should be relatively light touch, given the behaviour in question and the need to reduce the impact of labelling and to reduce contact with the criminal justice system. The focus of the interventions should be on harm reduction and drugs education. Under 18s may also benefit from the array of other available YJS interventions, such as sexual and mental health, resilience, domestic abuse, education employment and training and exploitation assessments. It is worth noting that these lessons are already underpinned by the requirement in the current Code of Practice for Adult Conditional Cautions which determines that conditions must be 'appropriate, proportionate and achievable' and 'have the objective of rehabilitation, reparation, and/or punishment'.

## Supporting evidence

There is considerable evidence in the literature on what works in reoffending, that offering drug treatment programmes to individuals with substance misuse issues has been shown to have a positive impact on reoffending. A recent meta-analysis of drug-treatment programmes, for example found that treatment reduced significantly reoffending in drug-using offenders.<sup>17</sup> However, there is also evidence that more intensive interventions that focus on the multiple problems of medium-to-high risk drug-using offenders are more likely to reduce reoffending and that men benefit more than women, and young people benefit more than older people.<sup>18</sup>

In a review of the evidence on out of court disposals, a number of 'effective interventions' are listed, including those centred on: skill development; social learning; changing relevant attitudes, behaviours, and life circumstances; and restorative justice. It also highlights two categories of interventions shown to be ineffective: first, those that hone in on the individual and their identity (e.g. psycho-analysis); and second, those that hinge on deterrence and shock therapy (e.g. scared straight programmes). While the studies this review included post-conviction interventions, many of the lessons from it are likely to apply for interventions for pre-court disposals.<sup>19</sup>

We suggest that best practice in this area seeks to balance the need for accurate assessment with making it as light-touch as possible. Assessments themselves can be experienced as part of the 'dosing' of individuals and should be seen as part of the overall weight of the intervention, and not separate from it. This is why, in youth diversion, we tend to encourage people to use bespoke assessment tools, rather than ASSET PLUS.<sup>20</sup>

## Enforcement

Police officers will make clear that non-compliance with the assessment and interventions will be recorded and could make the individual ineligible for diversion in the future for a specified period (dependant on disposal/outcome used). Any decisions around enforcement or non-compliance related to a child should be made in partnership with the local YJS.

Where an individual's case is dealt with by way of a Community Resolution, as this is a non-statutory disposal, any interventions agreed cannot be legally enforced or escalated to a higher disposal. The CR is a voluntary agreement and as such, the police have no powers to enforce it, should the individual fail to comply.<sup>21</sup>

For those who case is dealt with by way of an NFA recorded as an Outcome 22, they must complete the diversionary activity. If they fail to complete this activity and the evidential threshold has been met the police have the power to enforce a formal disposal outcome. See 'Police recording' below for more information.<sup>22</sup>

In our work with forces we have seen that in practice often the 'breach threshold' is quite flexible, with keyworkers and officers given discretion to report on engagement levels. Most speak of having a common sense/pragmatic approach towards breach. Decisions are often made in partnership and are not down to individual officer decision making.

We advise that a step-by-step guide to breach is developed in partnership with relevant agencies (namely the YJS and drug treatment providers) to ensure there is an agreed upon and consistent approach. This guide should include agreeing a method for contacting the individual, how and when (with a timeline) to chase and what do if there is no response. Examples of acceptable reasons for absences are also helpful.<sup>23</sup>

We recommend that forces ensure that their local provider and YJS records whether referred individuals attend and complete the interventions and communicate this data to the police service promptly. This information will enable the police to review how the scheme is working, highlight best practice and understand where changes are required. This anonymised feedback can then be shared more widely with other relevant partners and local stakeholders, as well as the public. We also strongly advise that cases dealt with via a drug diversion scheme should be included for review at local scrutiny panels. These panels usually include representatives from organisations such as; the police, the Crown Prosecution Service, the magistracy, Office of the Police and Crime Commissioner, Youth Justice Services, victim support agencies and the Probation Service. They review the use of OOCs on a regular basis (usually quarterly) to consider whether they are appropriate or not. Any learning and good practice is then shared more widely.

## Repeat diversion

Where individuals access the support on offer, there should be no restrictions on the number of diversion opportunities they are offered for cases of drug possession. If individuals who have completed their interventions are in contact with the police subsequently for other non-possession offences, the police should consider the general eligibility criteria in determining whether the individual can be referred for diversion. For some cases, where there have been previous offences in the last 12 months, supervisory guidance from a sergeant should be sought and consultation should occur with the YJS if relating to a child.

## Supporting evidence

Drug dependency and addiction is a complex health matter, and being found in possession of drugs by the police, a school or a university, may well be, if approached in a trauma informed way, a golden opportunity to address any underlying causes or co-occurring conditions contributing to that person's use. As the US National Institute on Drug Addiction states, "The chronic nature of addiction means that for some people, relapse, or a return to drug use after an attempt to stop, can be part of the process, but newer treatments are designed to help with lapse and relapse prevention. Relapse rates for drug use are similar to rates for other chronic medical illnesses. Treatment of chronic diseases involves changing deeply rooted behaviours, and lapse or relapse doesn't mean treatment has failed. When a person recovering from an addiction relapses, it indicates that the person needs to speak with their doctor to resume treatment, modify it, or try another treatment." In *Who should be eligible for youth diversion?*, we urge that previous diversion(s) should not be an automatic bar to diversion, a more flexible approach acknowledges the nature of childhood offending, and the potentially criminogenic effects of formal criminal justice system processing.<sup>24</sup>

## Police recording

Whether to use Community Resolutions or NFA Outcome 22 in the delivery of their drug diversion scheme is a decision for local police forces to make. We have developed this table (based on NPCC guidance) to aid in this decision making:

Disposal/outcome	Community Resolution (CR)	NFA- outcome 22
Admission of guilt required	No – an acceptance of responsibility is required.	No admission of guilt or acceptance of responsibility is required.  This is to address the lack of trust of the police and criminal justice system, by some ethnic minorities. This distrust, along with potential biases within the system has been shown to lead to a greater number of ethnic minorities adults and children receiving formal criminal justice outcomes.
Individual consent required	Yes	Yes
Considerations	No relevant offending history  No CR for the same or similar offence in the last 12 months (unless exceptional circumstances)  There is no requirement for a diversionary activity to take place.	The decision can be made at any stage of the investigation e.g. where the victim doesn't support formal action or the evidential threshold is not met for prosecution.  Can be used for deferred prosecution.  Diversionary activity must take place.
Criminal record	Not a formal conviction but may be disclosed as part of an enhanced DBS check	Not a formal conviction and not automatically disclosed.  However, it could be deemed relevant by the force/chief officer and disclosed. In these incidences, it is about the potential risk that the individual poses to vulnerable groups that are protected by the statutory safeguarding regime.
Recording	Counts as a positive detection  The additional work undertaken by police such as, assessments and referrals in to support, may not be captured on police systems. This could make it more difficult for forces to evidence the work they are doing.	Not currently measured as positive action, however the NPCC guidance states, 'Given the positive benefits derived from effective diversionary work, the lack of a positive detection should not deter you from using outcome 22.'  Using this outcome code will ensure that any additional work undertaken by the police is captured.
Repeat use	Previous offences in the last 12 months may make a CR inappropriate.  Supervisory guidance from a sergeant and consultation with the YJS in the case of a child must be sought.	Current guidance does not include advice on this, however it does state that forces should ensure that local guidance is produced by forces to inform how it is used.
Enforcement	None	The diversionary activity must be completed. If an individual fails to complete this activity and the evidential threshold has been met the police have the power to enforce a formal disposal outcome

## Implementation

We hope that this best practice framework will be useful for police forces and will help guide their future use of pre-court disposals in drug possession cases. We recognise that implementing this framework will require training, stakeholder management and engagement, effective commissioning of services and operational process changes. We are aware that many forces are changing how they are planning on delivering all pre-court disposals and we hope that this framework provides a useful guide to help them build an effective response to drug possession cases.

We can provide support to forces as they make these changes. If you want to learn more about our work or are interested in our offer of support to forces, please get in touch at [info@justiceinnovation.org](mailto:info@justiceinnovation.org)

## Annex A: criminal justice disposals for drug possession, 2020/21

Data taken from Ministry of Justice data tables

	All	Under 18s	18-24 years	Women over 18	Minoritised groups
<u>Pre-court disposals</u>					
Community diversion (estimate) (1)	42,799	7,490	21,828	7,276	7,704
Statutory OOCs	9,897	736	3,318	1,127	1,738
<u>Court processing</u>					
Proceeded against	25,429	1,345	7,410	1,779	6,640
Convicted	22,890	884	6,712	1,590	5,848
Sentenced	22,255	877	6,456	1,575	5,655
<u>Sentences</u>					
Absolute discharge	176	28	53	15	42
Conditional discharge	4,037	278	1,363	399	1,000
Fine	13,560	75	3,902	860	3,505
Total community sentence	2,039	463	494	134	526
Suspended sentence	567	0	161	39	141
Total Immediate custody	555	5	123	27	122
Total Otherwise dealt with	1,321	28	360	101	319
Total sentences	22,255	877	6,456	1,575	5,655
<b>Total disposals</b>	<b>74,951</b>	<b>9,103</b>	<b>31,602</b>	<b>9,978</b>	<b>15,097</b>

Note 1: Centre for Justice Innovation estimates developed from Home Office criminal justice outcomes data

## Annex B: Defining pre-court disposals

For a considerable time, there has been a range of activity taken by the police in response to low-level offending which does not involve taking cases to court. We use the term 'pre-court disposals' as an umbrella term for all this activity. Currently, there are three main types of disposals within this pre-court activity:

- **Community diversion:** Community diversion describes police-led, non-statutory disposals, most commonly community resolutions or recorded as NFA Outcome 22. Community diversion involves an individual involved in a low-level offending incident being offered short, simple programmes of rehabilitative, reparative or restorative interventions in exchange for avoiding being formally processed. These disposals can take place either pre-arrest or at the point of arrest.
- **Out of court disposals:** This describes those disposals which are set out in legislation. England and Wales is currently moving from an existing six tier statutory framework to a statutory two tier framework. From 2023 onwards, this statutory framework includes a lower tier disposal, the community caution,<sup>27</sup> and an upper tier disposal, the diversionary caution.<sup>28</sup>
- **Deferred prosecution:** Deferred prosecution refers to a programme of rehabilitative interventions which a person can opt to participate in when they have committed a low-level offence. Enrolling in the programme pauses the prosecution of the offence, and depending on the scheme, the offence is either revoked, or the participant receives a less serious disposal (such as a NFA Outcome 22). If the scheme is not completed, they are charged in court. The Chance to Change pilot, a deferred prosecution scheme, has recently finished, and the evaluation outcome will soon be published.

Evidence suggests, that, for the majority of individuals, where one of these pre-court disposals is used to divert them away from a more serious disposal (i.e. a diversionary caution is used as an alternative to court prosecution which may have resulted in a community sentence or prison), it is more likely than not to reduce re-offending. This process is sometimes described as de-escalation.

## Endnotes

1. Use and distribution of 'psychoactive substances' is covered by the more-recent Psychoactive Substances Act 2016.
2. They should also have regard to the Ministry of Justice's guidance on Out of Court Disposals for Adult Offenders guidance. These guidance documents will be updated.
3. The offence of possession of a controlled drug is committed when a person is unlawfully in physical possession or in control of any substance or product specified in Parts I, II or III of Schedule 2 of the Act, and had knowledge of possession of the item even if he did not know it was a controlled drug. This includes anything subject to his control, even if it was in the custody of another. Section 37(3) of the Act provides that possession includes things subject to the defendant's control, which are in the custody of another. A person found in possession of one form of drug, believing it to be another form of drug should be charged with the substantive offence of possession of the actual drug. He should not be charged with attempted possession of the drug he believed it to be.
4. <https://www.lboro.ac.uk/subjects/social-policy-studies/research/child-first-justice/>
5. Youth Justice Board (YJB): Strategic Plan 2021-2024 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/966200/YJB\\_Strategic\\_Plan\\_2021\\_-\\_2024.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966200/YJB_Strategic_Plan_2021_-_2024.pdf)
6. Centre for Justice Innovation (2020). Pre-court diversion for adults: A toolkit for practitioners
7. Thames Valley Police Journal: Diversion – Going soft on drugs? 10th December 2019 <https://policinginsight.com/features/analysis/thames-valley-police-journal-diversion-going-soft-on-drugs/>
8. Centre for Justice Innovation (2019). Who should be eligible for youth diversion?
9. Lammy, D. (2017). The Lammy Review: An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System. Ministry of Justice (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update
10. Ministry of Justice (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update
11. "Recommendation 12: Prevent harm, reduce crime and divert young people away from the criminal justice system: Develop an evidence-based pilot that diverts offences of low-level Class B drug possession into public health services." See HM Government. (2021). The report of the Commission on Race and Ethnic Disparities. Available at: <https://www.gov.uk/government/publications/the-report-of-the-commission-on-race-and-ethnic-disparities/summary-of-recommendations>
12. Tyler, T. (1990). Why people obey the law. New Haven, CT: Yale University Press.
13. See, for example: Durlauf, S. and Nagin, D. (2011). Imprisonment and Crime: Can both be reduced? *Criminology and Public Policy* 19,1, 13-54.
14. Neyroud, P. (2018). Out of Court Disposals managed by the Police: a review of the evidence. National Police Chiefs Council of England and Wales.
15. The Youth Justice Board has begun consultation with youth justice services to design a new module of AssetPlus to assess diversion and out-of-court cases in youth justice.
16. Centre for Justice Innovation (2020). Pre-court diversion for adults: A toolkit for practitioners
17. Lösel, F., Koehler, J.A., Hamilton, L., Humphreys, D.K., Akoensi, T.D. (2011). Strengthening Transnational Approaches to Reducing Reoffending: Final Report Submitted to the European Commission.
18. Holloway, K., Bennett, T. and Farrington, D. (2005). The Effectiveness of Criminal Justice and Treatment Programmes in Reducing Drug-related Crime: A Systematic Review, Home Office Online Report 26/05. London: Home Office.
19. Neyroud, P. (2018). Out of Court Disposals managed by the Police: a review of the evidence. National Police Chiefs Council of England and Wales.
20. The Youth Justice Board has begun consultation with youth justice services to design a new module of AssetPlus to assess diversion and out-of-court cases in youth justice.
21. NPCC (2022) Community Resolution (CR) Guidance. [https://justiceinnovation.org/sites/default/files/media/document/2022/npcc\\_community\\_resolution\\_guidance\\_2022.pdf](https://justiceinnovation.org/sites/default/files/media/document/2022/npcc_community_resolution_guidance_2022.pdf)
22. NPCC (2022) Outcome 22 (O22) Guidance. [https://justiceinnovation.org/sites/default/files/media/document/2022/npcc\\_outcome\\_22\\_guidance\\_2022.pdf](https://justiceinnovation.org/sites/default/files/media/document/2022/npcc_outcome_22_guidance_2022.pdf)
23. Centre for Justice Innovation (2020) Toolkit: Pre-court diversion for adults
24. Centre for Justice Innovation (2019). Who should be eligible for youth diversion?
25. The community caution will involve an individual involved in a low-level offending incident admitting to the offence, and being given a community caution with one or more conditions attached to it. These conditions can be either rehabilitative or reparative. If these conditions are not complied with, it could result in a financial penalty.
26. The diversionary caution, will involve an individual involved in a low-level offending incident admitting to the offence, and being given one or more conditions. These conditions can be rehabilitative, reparative, financial or for foreign nationals. If these conditions are not complied with, it could result in court prosecution.
27. The community caution will involve an individual involved in a low-level offending incident admitting to the offence, and being given a community caution with one or more conditions attached to it. These conditions can be either rehabilitative or reparative. If these conditions are not complied with, it could result in a financial penalty.
28. The diversionary caution, will involve an individual involved in a low-level offending incident admitting to the offence, and being given one or more conditions. These conditions can be rehabilitative, reparative, financial or for foreign nationals. If these conditions are not complied with, it could result in court prosecution.



## About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems. We are a registered UK charity.

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