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POST-CHARGE PRE-TRIAL DIVERSION:
A BIBLIOGRAPHIC REVIEW

Abstract

This report contains brief summaries of the major works on post-charge pre-trial diversion and has organized the literature into three areas: programs, evaluations and other research, and the issues involved in diversion. Each annotated document has been categorized in terms of its contents, the strategies discussed, and the types of issues raised.

The review is designed to serve as a quick and easy reference, by subject matter, to the available documentation in the area from the United States and Canada.

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I. SUMMARY: THE METHOD AND THE ORGANIZING
FRAMEWORK OF THIS REPORT

The Purpose of This Report

The purpose of this bibliography is to provide the policy maker, program planner, and researcher with a listing and description of the contents of the major literature on post-charge pre-trial diversion. An organizational framework has been developed which permits the rapid identification of the contents of each document. Programs are identified in terms of their general type of intervention and the major strategies employed. The issues raised by the commentators on diversion are classified as operational, legal, or theoretical.

The project has involved a search of the literature, initially to identify those programs which appear to fall into the category of post-charge pre-trial diversion and subsequently to develop a means of organizing the literature in a manner which meets the information needs of justice system personnel. Key words were developed which matched most closely the contents of the literature with these information requirements. Each document has been classified by these headings and then annotated in a way that permits the reader to obtain a general overview of its contents.

Thus, this review is designed to serve as a quick and easy reference, by subject matter, to the available documentation from the United States and Canada.

First, it was usually not possible to ascertain the primary focus of the program from the program descriptions, i.e., whether the program was designed to most benefit the victim, the offender or the community. Nor was it possible to extrapolate this information by examining the strategies of the program, since a certain strategy (e.g., restitution) did not necessarily mean that the program was oriented in a specific direction (i.e., towards the victim). In fact, many diversion programs appear to place equal emphasis on the offender, the community and the justice system, at least according to their statements of objectives. Certainly, many writers on restitution have noted that the primary purpose of this strategy has not yet been clarified, either theoretically or operationally.

Secondly, many program descriptions do not provide detailed information on their strategies. For example, while "referral" to community agencies is often mentioned, precise statements of the proportion of the various types of referrals to specific agencies is infrequent. For this reason, "referral" has been used as a key word but without any descriptive modifiers. (However, if the program description provided some data on the types of agencies to which participants were referred, then these are listed in the annotation.)

A third problem is the variability in the terminology employed. Definitions of program strategies based on Canadian policies have been established. However, from an examination of the literature, it becomes clear that some terms are found in the United States and not in Canada (e.g., arbitration) and vice versa (reparation is one example). Furthermore, even though the

same terminology may be used they may have different meanings. The distinction between mediation and conflict resolution, made in some Canadian policy statements, is not one that is reflected in the literature of the area.

In addition, terms are often used to describe programs which are vague or ambiguous. For example, one of the most common strategies referred to is "counselling"; as other commentators have noted, rarely is the meaning of this word defined. Indeed some critics have observed that the counselling approach may differ from counsellor to counsellor in the same program, a finding that suggests that program planners have failed to develop unified program intervention strategies. As a result of this ambiguity, the key word "counselling" includes advocacy, casework and relationship-building.

For these reasons then, the organizing framework to be described next has been altered so as to conform as far as possible to the needs of the policy maker and researcher as well as the information available in diversion programming literature.

Definitions of the Key Words

Five dimensions were developed in order to classify the material included in the bibliography: document category, program name, program type, program strategy, and issues.

Document Category: the nature of the contents of the publication being annotated. The following categories were used:

- . Program Description — the document contains one or more detailed descriptions of a pretrial diversion program.
- . Program Evaluation — publications were classified in this manner when they contained an evaluation of a specific program.
- . Program Element — some documents dealt with a strategy or approach found in diversion programming (e.g., restitution, mediation). Because there was interest expressed in issues raised by specific strategies, these documents were included even though they may not directly relate to pretrial diversion.
- . Program Survey — it was very common to find that one publication would provide descriptions, in greater or lesser detail, of a variety of programs. (If a complete description was contained in the document, it would be also classified under Program Description.)
- . Evaluation Survey — a number of articles and monographs have assessed the "state of the art" of evaluation in diversion. They analyze and comment on specific evaluations and/or provide an overview of research and evaluation problems.
- . Guidelines and Standards — a number of publications have recommended standards and guidelines for diversion programming. Included in this category are materials which provide suggestions on how to plan or implement various types of diversion programs, for example, guides for program development. At the end of the bibliography there is included a short list of additional model rules and standards which may be of use to the reader.
- . Issues — a document which included a discussion of one or more issues raised by post-charge pre-trial diversion or by a specified strategy was classified here.
- . Training Manual — a few publications were included which have been developed for the training of personnel involved in diversion.
- . Conference Report — reports of workshops and conferences were classified here.

Program Name: self-explanatory. If the document described more than one program, each is listed by name.

Program Type: Diversion programs were divided into seven different categories. Most effort was given to obtaining materials on the Deferred

Prosecution and Dispute Settlement categories because these are most relevant to the policies being developed in this country. Fewer references are provided for addict and drug diversion, and public inebriate diversion.

- . Deferred Prosecution — the majority of the American programs reported in the literature fall into this category. Deferred prosecution is often frequently termed "pretrial intervention" in the U. S. In this type of diversion, with the consent of the prosecutor, a person is diverted from court processing to a specific program (either based in the CJS or in an outside agency); the defendant is required to perform specified obligations for a specific period of time. During this period, when criminal proceedings are suspended, his performance is evaluated by program staff. At the end of the period, if he has met the conditions of his diversion, the charges against him are dismissed or otherwise disposed of without prosecution. In many programs, his criminal record is expunged. The majority of programs in this category have personnel on staff who provide manpower related services — counselling, job placement, and educational assistance. Referral to community social agencies is another major strategy.

- . Dispute Settlement — programs classified here generally deal with interpersonal disputes, although other minor criminal activity may also be considered appropriate. There is usually an identifiable victim. In these programs, complainants and defendants are brought together in an informal, non-judicial setting in front of a mediator-arbitrator who attempts to resolve the conflict between them. The decisions made by these "hearing officers", sometimes non-professional community members, may or may not be binding (that is, enforceable in the courts) depending on the program.

The features that differentiate dispute settlement programs from other forms of diversion is the mode and purpose of the intervention; informal hearings are held which attempt to conciliate, reduce tension, or negotiate settlements between disputing parties.

- . Public Inebriate Diversion — the diversion of the public drunkenness offender or Skid Row resident away from the justice system into some sort of treatment or detoxification unit.
- . Addict Diversion — the diversion of the drug dependent person from prosecution for a drug-related crime or a crime committed under the influence of drugs; included here are statutory diversion programs.
- . Drug Diversion — the diversion of the minor drug offender (e.g., persons charged with possession of small amounts of marijuana) from criminal processing.

- . Informal Probation — removing persons charged with an offence from the justice system and referring them to a specified program but without any option to reinstate official proceedings on the original charge.
- . Screening — removing persons charged with a criminal offence from the justice system but without any program obligations; in effect, alleged offenders are "diverted" out of the system with no conditions except no further rearrests. Several discussions of traditional prosecutorial screening practices were also classified here.

Program Strategies: A number of strategies or means by which diversion programs hope to reach their objectives were identified. Most of the strategies defined below have been used by the Ministry in the development of diversion policies. Many of the definitions themselves have been adapted from those developed by Ministry personnel.

- . Referral — the use of community social service agencies by the program; the direction by a program staff member of a program participant to a helping resource in the community.
- . Counselling — the provision of one-to-one assistance by a project staff member in order to enhance psychosocial functioning and to provide support and friendly advice on matters of concern to the program participant. Individual advocacy would be included here.
- . Group Work — the provision of assistance similar to the above, but in a group situation.
- . Family Therapy — an intervention by a project staff with the family of the divertee and the divertee himself in order to promote enhanced family functioning.
- . Welfare Services — the provision of monetary, housing or other emergency services to the program participant by the program staff or other personnel seconded to the program.
- . Employment — the provision of job related services to participants including job placement and counselling regarding jobs and their availability.
- . Education — the provision of vocational, remedial or other educational services to the program participant by a staff member. The information may consist of the legal, social or other consequences of breaking the law.

material published to 1974, it also assesses each report for validity and policy implications. Another valuable resource document is Kirby's recent (1978) critique of program evaluations done after 1974, and his listing of the salient research needs in the area.

In a different vein, the monograph by McGillis and Mullen (1977) on neighbourhood justice centres is essential reading for persons interested in the dispute settlement method of program intervention.

The National Pretrial Intervention Service Center has produced consistently high quality publications, particularly on the operational issues involved in diversion. Two 1977 publications, Pretrial intervention legal issues: A guide to policy development and Pretrial intervention services: A guide for program development, are both recommended for policy makers and practitioners concerned with planning and implementation.

Aaronson et al (1977) have put diversion in a new perspective, as one of several alternatives to adjudication, and their thoughtful work has drawn ideas from a far wider spectrum than is customarily found in diversion literature. (However, one might question the relevance of their "alternatives matrix" included in the report.)

Johnson (1976) provides the reader with a comprehensive examination of prosecutor-based diversion and the issues it raises.

II. AN ANNOTATED BIBLIOGRAPHY ON
POST-CHARGE PRE-TRIAL DIVERSION

DESCRIPTIONS OF DIVERSION PROGRAMS

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DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description Program Survey	Court of Common Pleas Pre-Indictment Program, Philadelphia Statutory Addict Diversion, Connecticut	Addict Diversion	Probation Services Referral	Operational Legal

REFERENCE: Bellassai, John P. and Segal, P.N. "Addict diversion: An alternative approach for the criminal justice system." Georgetown Law Review, 60, 1972, 667-710.

A major development in the treatment of addicts has been treatment of the addict-defendant before conviction by interrupting the court process and referring him to community-based treatment programs in lieu of prosecution. This paper examines the procedures by which these referrals are being made and the constitutional questions that arise out of the new practices.

The primary goals of addict diversion are much the same as those of other diversion programs: the early identification and referral of defendants in need of treatment, and the fast and inexpensive handling of cases that are more effectively handled without full criminal disposition.

Programs have been established by legislation, by court rule and some have arisen without formal authorization.

The Court of Common Pleas Pre-Indictment Program in Philadelphia deals with first offender defendants and is unusual in that it has minimal judicial supervision once diversion has occurred. All files are reviewed by a deputy District Attorney; persons who meet specified objective criteria are subpoenaed to appear for a pre-indictment hearing. The major criterion is that the defendant have no prior conviction for the crime he is currently charged with. Present at the hearing are a judge,

a deputy District Attorney, the defendant and his lawyer, his relatives or parents, staff from a liaison community rehabilitation project, and sometimes complaining witnesses.

At the hearing, the charge and the defendant's prior record are reviewed, his eligibility for diversion agreed on, and the program explained to him. If the court and prosecutor agree that he meets the eligibility criteria, he is asked whether he understands that: deferred prosecution gives him a chance to earn a discharge (if he is accepted and completes the program successfully), that if he fails, he may be indicted and tried, and that he must waive his right to a speedy trial. If the defendant agrees and with the advice of his attorney, then the record is closed and he is guaranteed that nothing he says can be used against him.

At this second stage of the hearing, the defendant is given the opportunity to state his version of the offence. The judge questions his culpability and establishes family ties, social history and present and past drug use.

There is an acceptance rate of 78%. Those who are accepted are referred to a community rehabilitation program where they receive counselling and may be placed in a treatment facility. A period of probation is set which never exceeds the statutory maximum sentence the defendant would have received if he had been indicted. The hearing judge signs an order to hold the bill of indictment for that period. Usually the sole condition of probation is no rearrests. At the end of the period, the defendant appears before the judge, criminal charges are dropped and his arrest record expunged.

In Connecticut, addict diversion was authorized by legislation which also established detailed program procedures. The defendant must meet objective eligibility criteria based on charge and prior record. The defendant who claims to be drug dependent must secure medical confirmation that he was dependent at the time of the offence. The prosecutor or court may order a medical examination. Once dependency is confirmed, the court may enter an order suspending prosecution for a maximum of 1 year for misdemeanours and 2 years for felonies. The accused is then placed in the custody of the Adult Probation Commission for inpatient or outpatient treatment. Periodic reports are made to the court. At the end of the suspension period, the court may dismiss charges if the defendant has cooperated in treatment and has "demonstrated reasonable likelihood that he will not engage in criminal behavior".

The author notes that the CJS personnel in Connecticut prefer post-plea or post-conviction addict "diversion" to treatment and, as a consequence, the legislation is rarely used. On 3% of eligibles were diverted in 1969-70.

Other programs in Illinois, Massachusetts and New York are briefly described. Two federal programs are also examined.

The final section of the article outlines the shared characteristics of addict diversion programs:

- . there are predetermined eligibility criteria which usually include prior convictions, nature of present offence, and prior treatment history;
- . formal determination of addiction occurs which may involve a medical examination, urinalysis and the views of intake workers;
- . motivational screening;
- . the concurrence of the prosecutor (except in Massachusetts);
- . control and supervision: the usual method is to put the defendant under the control of the probation department and make cooperation and progress in treatment a specific condition of probation (Philadelphia is the exception);
- . defense concessions, e.g., requiring a guilty plea in exchange for treatment raises issues such as the perpetuation of the definition of addiction-related behaviour as criminal, the punitive connotation given to referrals, and constitutional due process questions.

The author recommends that eligibility requirements be made more liberal, that punitive connotations be minimized, that treatment occur early in the CJ process, and that treatment periods be flexible. The article concludes with a discussion of constitutional problems (equal protection, right to a speedy trial, and self-incrimination).

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Community Justice Project, Kennebec County, Maine	Deferred Prosecution	Counselling Referral	

REFERENCES: Community Justice Project. "Court programs manual." Kennebec County, Maine, 1977. 21 p.

_____. "Operations manual." Kennebec County, Maine, n.d.

The Pretrial Intervention Program is part of a system-wide effort to improve the administration of justice in the county. It is one component of a variety of services including Pre-Sentence Diversion and Sentencing Alternatives.

The purpose of the PTI Project is to provide an alternative to prosecution for defendants who might be harmed by the administration of criminal sanctions, and when PTI can be expected to serve to deter criminal conduct. A criminal record is avoided.

Clients of the program are residents of the county, first offenders charged with serious misdemeanors and non-violent felonies who are motivated to help themselves. The program is voluntary; interviews are held with only those defendants who request the project's services.

After arrest and prior to a court hearing, the person may be referred by the District Attorney, police, attorney, self or family, social services, or school officials. The Court Coordinator screens each defendant who is referred and decides whether he or she meets the eligibility criteria. A 2 week continuance is requested from the court by the District Attorney, during which time the defendant undergoes a needs

assessment by a staff clinical psychologist, and the District Attorney's office conducts a "community sentiment check" to indicate whether the defendant's participation is acceptable. Both the program and the District Attorney can refuse entry to the program. If accepted, a 6 month continuance is requested. The defendant is then entitled to any services offered by the CJP, including counselling, support, advocacy, and any purchase of service deemed appropriate by the staff psychologist. Violation of the 6 month contract means the defendant is returned for prosecution. If the contract is completed successfully, the District Attorney files a motion of dismissal with the court and the defendant has a clean record.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Descriptions	4-A Program, Philadelphia Conciliation Board, Alaska	Dispute Settlement	Mediation Arbitration	

REFERENCE: Conn, Stephen and Hippler, Arthur E. "Conciliation and arbitration in the native village and urban ghetto." Judicature, 58, December 1974, 229-235.

This article contrasts two mediation-conciliation programs that exist in widely differing settings: the Arbitration as an Alternative to the Criminal Warrant Program (4-A) in Philadelphia and a conciliation board in a native village in Alaska.

Referrals in Philadelphia are made by the court administrator or lay persons (less often, a District Attorney or a judge) while in Alaska the village constable or the state magistrate refers disputants to the conciliators. In Philadelphia, persons are ordered to accept conciliation; if one person refuses in the Alaskan village, the conciliation option is waived. The professionals who arbitrate in Philadelphia can equate their authority with that of the court; in the village, the board is an informal arrangement backed by village opinion and subject to judicial approval. In the village, the arbitrators are chosen by the village council to represent the community and are familiar with the disputants, while in the city the arbitrators are trained professionals.

Both programs try to go under the surface of the dispute and attempt to place it in the larger context of the relationship between disputants. The style of arbitration is similar. While enforcement in the 4-A Program can be done by remanding the case to the courts, other less severe methods are usually used to ensure compliance

(letters and phone calls, additional arbitration meetings). In the village, the board may informally speak to the persons involved and if necessary, call for additional conciliation board meetings.

SEE ALSO:

Kole (1973) for another description of the Philadelphia program.

Stulberg (1975) for a description of the Rochester 4-A Program.

Stulberg (1977) for a discussion of the training methods used by the American Arbitration Association to train "neutrals" for 4-A program responsibilities.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Pretrial Intervention Project, Dade County, Florida	Deferred Prosecution	Counselling Referral Employment Restitution	

REFERENCE: Galvin, J. J. et al. Alternatives to prosecution. Washington, D. C.: NILECJ, October 1977, 63-68.

This project differs from other PTI programs on a number of dimensions. It primarily serves persons charged with felonies, is more oriented to counselling than to manpower services, and does not itself engage in initial screening. Instead, other CJS agencies refer prospective participants to the project.

The PTI component is one part of a twin agency; the pretrial release component provides referrals to the PTI program. Other referral sources are private attorneys and public defenders, the police, prosecutor and the courts.

Many more felony arrestees are reached by this program than other PTI programs; 12% of all felony arrests in the county were referred to the program. Drug offences (possession and others), larceny, auto theft, stolen property, and break and enter are among the types of offences included. Ordinarily offences involving personal violence exclude a defendant, but 6% of 1975 intake were offenders charged with aggravated assault, etc.; these enter the program only after agreement by the prosecutor, victim and police officer.

In all cases, the prosecutor must, of course, consent to diversion. The police officer and the victim are also contacted. Objections by the latter occur in only 3% of referrals; if there is an objection, prosecution is not deferred although the

person can enter the program as a volunteer. The defendant need not admit guilt to the charges.

Victim restitution is required; victims submit claims on their losses and these are compared to the police report. Restitution is voluntary but "in its absence the victim may register opposition to deferred prosecution" (although this has happened infrequently). Counsellors provide both referrals and personal counselling.

Starting in 1975, persons arrested for possessing small amounts of marihuana and who appear to need no services are monitored only for rearrests.

A follow-up study in 1975 showed that a rather high percentage of participants were students and that about two-thirds of the participants were employed, many full-time. A considerably higher proportion were employed 3 to 6 months after program completion. Measurable gains were also noted in skill, level of employment and length of time on present job.

Several evaluations have been done, but have been criticized strongly on methodological grounds (e.g., by Mullen et al, 1974).

SEE ALSO:

Mullen (n.d.) and National Pretrial Intervention Service Center (April 1974) for other descriptions of the Dade County PTI Project.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Project Intercept, San Jose, California	Deferred Prosecution	Employment Referral Education Counselling	

REFERENCE: Galvin, J. J. et al. Alternatives to prosecution. Washington, D. C.: NILECJ, LEAA, U. S. Department of Justice, October 1977, 59-62.

One of the 9 "second round" programs funded by the US Department of Labor, Project Intercept was established in 1971 by a private non-profit corporation.

The program serves county residents charged with misdemeanors who have no prior adult convictions and are between 18 and 26 years old. "The selection criteria favor property offenders who suffer from difficulties in finding or maintaining employment."

Like many other manpower-based programs, a program staff member is on hand in court to screen persons scheduled for arraignment. If the person fits the eligibility criteria and expresses an interest in the program, the court is requested to grant a 10 day continuance during which the project assesses the prospective client. If the project decides that the client is suitable for the program, a written recommendation is provided to the court, the prosecutor and the defense. If all agree, the defendant enters a plea of nolo contendere and the case is set down for 3 to 6 months.

Each defendant is assigned a counsellor who works out a plan largely around employment; a range of services are provided in this area, including assistance with child care, job placement or placement in training, tutoring, and referral for counselling for alcohol, drug or marital problems. The "in-house" tutoring program is managed

by the staff educational coordinator and uses volunteers; about one-third of those tutored obtained their high school equivalency. "Rap sessions" are held with new participants and police officers during the early stages of program participation. The project also serves other clients, including probationers, defendants from a minor drug offence diversion program, and walk-ins.

During the first 3 years of Project Intercept, 84% of over 600 participants received dismissal of charges. Data on recidivism suggest that successful program participants had less serious rearrests than program failures, ineligible, and eligibles who rejected diversion.

Cost per enrolled defendant was \$650 in 1974 and \$488 in 1976; while caseloads have increased, staff size was held constant.

SEE ALSO:

Abt Associates (1974) for an evaluation of the project.

National Pretrial Intervention Service Center (April 1974) for another project description.

Rovner-Piecznik (1974) and Kirby (1978) for reviews of the methodology and conclusions of the evaluations.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Mediation Diversion Program, Regina and Moose Jaw	Dispute Settlement	Mediation Restitution Community Service	

REFERENCE: John Howard Society of Saskatchewan. "Mediation Diversion Program, April-September 1977." Regina: John Howard. Mimeo. 17 p.

The first 6 months of the operation of the Mediation Diversion Program is described in this report; the program was designed to mediate the settlement of criminal complaints prior to formal prosecution.

The approval of the Attorney General of Saskatchewan was received to divert the following Criminal Code categories: theft under \$200, causing a disturbance, false pretenses, wilful damage, fraudulently obtaining food or lodgings, taking a vehicle without consent, and common assault (occurring within a continuing relationship). The majority of referrals in the first 6 months were for theft under. Persons are excluded if they have a pattern of persistent criminal behaviour, if the offence involved firearms, if the complainant or respondent lives outside the catchment area, or if the offence occasioned serious physical harm.

Most referrals are received from the prosecutor, although the police supply some clients. Referrals are made by mail and contain details of the incident, the charge, and dates of court appearance. Complainants and respondents are contacted, the project explained, and their agreement to participate requested by a project staff member. If both parties agree, a mediation meeting is scheduled at their convenience. A volunteer mediator is selected; in the first 6 months about one-half were John

Howard staff, although it is expected to involve community members as the project develops.

The mediation meeting is informal, with effort made to obtain a description of the incident or problem from each party. The mediator tries to clarify the situation and obtain agreement regarding a resolution. If an agreement is achieved, it is written down and witnessed by the parties and the mediator. The following guidelines are provided for agreements: it should be no longer than 90 days, it should be verifiable by a third party, and it should involve an action rather than the "stopping" of an activity or behaviour pattern. Settlements have included restitution (return of property), work in kind, community service, and purchase of stolen goods. While support services are available, few requests for services have come from participants.

The majority of the agreements are fulfilled at the mediation meeting or within a few days. Community service is arranged by the John Howard Regina office.

Fifty-four of 71 referrals were successfully terminated by the project; 14 cases have been referred back to the referral source and 3 have defaulted. Refusals to participate accounted for 7 of the 14 cases referred back.

Copies of the letters and participant handouts describing the project are contained at the end of the report.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	4-A Program, Philadelphia and Hartford	Dispute Settlement	Mediation Arbitration	

REFERENCE: Kole, Janet. "Arbitration as an Alternative to the Criminal Warrant." Judicature, 56, 7, 1973, 295-297.

This paper outlines the arbitration programs in Philadelphia and Hartford, "Arbitration as an Alternative to the Criminal Warrant" (4-A), of the American Arbitration Association's National Center for Dispute Settlement.

The aim is "to provide effective alternatives to the issuance of private criminal warrants using mediation, fact finding, and arbitration to improve interpersonal and intergroup relationships in conflict situations". The programs try to bring together the 2 disputing parties in the presence of a neutral outsider so that they may deal with the underlying causes of the problems.

The target group are persons against whom a private complaint has been laid, usually minor criminal cases. The intervention point is after one party has sworn out a warrant for the arrest of another. Persons involved usually have a continuing relationship.

If the court believes the dispute could be appropriately handled through mediation or arbitration, the parties are offered the opportunity to appear before an arbitrator. Arbitration is offered free of charge. Attorneys need not be present at the hearing. If the parties agree to arbitration, each signs a form stating the facts of the case and the court suspends action pending the arbitration outcome. Notices are sent to all parties who may bring lawyers if they wish. The arbitrator

exercises broad powers to mediate among the parties. Within 10 days of the hearing the arbitrator must make a decision. The court accepts the arbitrator's award and suspends whatever charges have been filed for 2 years to ensure the remedy is carried out; at that time, the charges are expunged if both parties are still satisfied with the arrangement.

In Philadelphia, hearings of private criminal warrant cases were reduced by 20%; in 1969, the 4-A Program was hearing 50 cases per month.

SEE ALSO:

Conn and Hippler (1974) for another description of the Philadelphia program.
Stulberg (1975) and McGillis and Mullen (1977) for a description of the Rochester program.
Stulberg (1977) for a discussion of the training methods used by the American Arbitration Association to train "neutrals" for 4-A program responsibilities.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Night Prosecutor Program, Columbus, Ohio	Dispute Settlement	Mediation Arbitration Family Therapy	

REFERENCE: Law Enforcement Assistance Administration. Citizen dispute settlement: An exemplary project. Washington, D. C.: U. S. Department of Justice, NILECJ, LEAA, 1974.

Cited by LEAA as an exemplary project, the Columbus Program is based on the prosecutor's discretionary power to accept or to refuse a criminal complaint. Administered by the City Attorney's office the program offers an alternative hearing process for certain types of criminal activity arising from interpersonal disputes.

The objectives of the program are: to reduce workload of law enforcement and judicial officers by handling citizen complaints through an administrative rather than a criminal process; to ease interpersonal tensions between the parties involved in a dispute by helping them to find an equitable solution to their problems without recourse to a formal judicial remedy; to avoid the occurrence and potentially damaging consequences of an arrest record resulting from minor criminal conduct.

The types of cases accepted for hearing by the hearing officers include: interpersonal disputes, minor misdemeanors, selected felonies and civil cases (e.g., landlord-tenant disputes). Bad check cases from one company are also negotiated with the hearing officer, company representative and defendant.

From 1973 onwards, cases have been taken from the summons docket by program staff; pretrial conferences have been held to determine if a hearing would resolve the matter without recourse to the court system. If the hearing is successful, the case is removed from the docket. In addition to the summons docket, referrals come from

patrol officers, the Detective Bureau, City Prosecutor's staff, Legal Aid, and from citizens.

Held in the evenings, the hearings are informal, and the skills of the hearing officers are conciliatory rather than legal in nature, (although the hearing officers are law students). There is a legal supervisor available. Attorneys and witnesses may play a part in the hearing but have no official role. The hearing officers are to facilitate conciliation by probing the underlying problems and misunderstandings. The parties may suggest a solution, or the hearing officer may resolve the dispute.

The progress of the conciliation worked out at the hearing is monitored by telephone 2 and 3 weeks after the hearing and a second hearing may be held if problems have arisen. The hearing officer and the night prosecutor can authorize the filing of a criminal complaint. Thus, if the process has not worked, the option of court referral is available.

In 1974, a family counselling service was established for those persons who required more extended counselling services after the initial hearing; seminary students hold sessions in the prosecutor's office twice a week.

Staff consists of a daytime coordinator, a secretary, two law student clerks (who work 4-12 p.m.), four law student hearing officers, a night supervisor (working 6-10 p.m.).

In 1972-3, there were over 3,600 complaints diverted; more than one-third of the complainants did not appear for their hearing. In only 2% of the cases were criminal complaints filed and in only 3% of cases did the complainant return and make a new charge against the respondent. Limited data on bad check cases and the pretrial conferences (held on cases from the summons docket) indicate that restitution to the store was made in over 60% of the former, and complaints were withdrawn in about one-quarter of the latter source of program workload.

The costs in the same year were \$80,300; an estimated cost per case is \$200.

SEE ALSO:

Palmer (1974) and (1975) for similar descriptions of the Night Prosecutor Program.
McGillis and Mullen (1977) for another detailed program description.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Citizen Dispute Settlement, Miami	Dispute Settlement	Mediation Arbitration	

REFERENCE: McGillis, Daniel and Mullen, Joan. Neighborhood Justice Centers: An analysis of potential models. Washington, D. C.: Office of Development, Testing, and Dissemination, LEAA, October 1977. 202 p.

Operated by the Administration Office of the courts in Miami, the Community Dispute Settlement Project (CDS) began in 1975 and was designed to reduce the costs associated with the court processing of interpersonal disputes and to increase assistance to citizens involved in such conflicts. It was patterned on the Columbus program.

Cases tend to involve parties who have an ongoing relationship, e.g., relatives and neighbours. Misdemeanours that are regarded as particularly amenable to the project's services are disorderly conduct, assault and battery, malicious mischief, trespass, animals, family and child, possession of stolen property, petty larceny and loitering. Civil complaints such as landlord-tenant disputes, neighbourhood problems and consumer complaints constitute one-quarter of the caseload.

The cases are referred to the CDS program by intake screening clerks in the State Attorney's office, the police, other agencies and self-referral. Four intake counsellors process incoming cases.

Hearings, conducted by professional mediators, are held on average within 7 days of the referral. Sessions follow no set approach; each party has the opportunity to state his side of the dispute during the hearing. It is emphasized to both parties

that the purpose of the hearing is to resolve the problems being experienced and that no decision regarding guilt or innocence will be made. The parties are encouraged to reach a written resolution which both parties sign. If this is not possible, the mediator does whatever possible to develop common ground.

Each case is reviewed by the original intake worker the day after the mediation session:

- . if a written resolution has been reached, the case is closed and the original charge dismissed;
- . if complainant did not appear, the charges are dismissed;
- . if respondent did not appear, the case is discussed with the complainant and rescheduled for another hearing or recommended for prosecution;
- . if no satisfactory resolution has been reached, the case is reviewed with the complainant for possible recommendation for prosecution;
- . whatever the hearing outcome, the parties may be referred to social services if requested.

During 1976, the first full year of operation, the program screened out 800 cases of the 4,149 referrals. Of the remaining cases, 65% were reported to have been resolved through hearings. 1,127 were resolved without hearings. Only 56 cases had hearings at which no resolution was obtained.

The annual budget in 1976 was \$150,000 with personnel expenses accounting for \$108,408 and mediation expenses totalling \$31,824.

The impact of CDS on court and prosecutor caseloads is not known; it is not clear what proportion of cases would have been rejected for prosecution or would have spontaneously dropped out due to the complainant's decision not to pursue the complaint. "It should be stressed that the project is likely to be providing a valuable service in the case of disputes which would not have reached the court. The project attempts to resolve disputes rather than allow them to continue and perhaps grow to significant proportions."

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Community Dispute Services Project, Rochester	Dispute Settlement	Arbitration Mediation Referral	

REFERENCE: McGillis, Daniel and Mullen, Joan. Neighborhood Justice Centers: An analysis of potential models. Washington, D. C.: Office of Development, Testing, and Dissemination, LEAA, October 1977. 202 p.

The Rochester Project serves Monroe County, New York State with an arbitration service for clients involved in interpersonal disputes, municipal ordinance violations, bad check cases, consumer complaints, large scale community disputes, and election disputes.

Guidelines for referral are:

- . prior repeated occurrences of the offence;
- . an appearance of underlying problems of which the charge is only a manifestation;
- . a family feud, neighborhood problem, fight with a friend, or a "triangle situation"; and,
- . bad check over \$25.

Established in 1973 by the Rochester branch of the American Arbitration Association (AAA), the project obtains referrals primarily from the court clerk's office. Interviews are held with plaintiffs and defendants prior to the preparation of a warrant, and efforts are made to resolve the cases at the pre-warrant stage by the clerk's office. A project staff member is on duty at the clerk's office to process referrals. Disputants are informed by letter of the procedures of the project and of the enforceability of the arbitrator's award in the civil court. Project clients must agree in writing to binding arbitration.

Hearings are scheduled within 11 days of initial contact. Trained community members serve as arbitrators; an attempt was made to select mediators with a range of demographic characteristics.

Hearing personnel attempt, wherever possible, to mediate disputes rather than arbitrate them because staff believe that there is greater likelihood that both parties will honor a settlement arrived at mutually. Disputants have the right to have an attorney present at the hearing, but this is not encouraged because of the cost and because it is felt that an attorney could turn the discussion into an adversarial rather than a mediational process. The hearing generally involves a presentation of the complaint followed by a response from the respondent. Private meetings may be held with one or both disputants during the hearing. The average hearing lasts 1 hour and 45 minutes. Second hearings may be held in complex cases or cases where additional information is required.

Once an award is made it is possible for the disputants to return and renegotiate the award if both agree that changes are desirable. If one party fails to meet the terms of the agreement, the other party can act to enforce the agreement in civil court; before this occurs, the project tries to resolve the breach. The use of the civil court sanction has been extremely rare.

The project refers disputants to social agencies where appropriate, both before and after hearings. However, there is no specific social service component to the project.

58% of the project's initial 2,042 referrals were resolved by dispute hearings; 98% of the cases processed through hearings have not returned to the project with the same problem. Due to lack of resources, no monitoring of the proportion of resolutions upheld has been performed. Data from an attitude survey indicate that less than 10% of the disputants sampled were dissatisfied with the results of the hearing.

The Community Dispute Services Project costs about \$100 per case.

SEE ALSO:

Conn and Hippler (1974) and Kole (1973) for descriptions of the similar program in Philadelphia called "4-A".

Stulberg (1977) for a discussion of the training methods used by the American Arbitration Association to train "neutrals" for dispute resolution responsibilities.

Stulberg (1975) for an earlier description of the same program, when it was known as the "4-A" Program.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Conflict Resolution Dispute Center, New York	Dispute Settlement	Mediation Arbitration Referral	

REFERENCE: McGillis, Daniel and Mullen, Joan. Neighborhood Justice Centers: An analysis of potential models. Washington, D. C.: Office of Development, Testing, and Dissemination, LEAA, October 1977. 202 p.

From 1975 the Institute for Mediation and Conflict Resolution (IMCR) has sponsored the Center, located in Harlem; it accepts referrals from Manhattan and the Bronx for mediation and arbitration of interpersonal disputes.

Referrals are received from the police, Summons Court, Criminal Court, and walk-ins. Violations and misdemeanors are accepted by the project. Most disputants have ongoing relationships. The offences include harassment, disorderly conduct, reckless endangerment, menacing, assault, etc. If Family Court matters are presented at the hearing, the Center is not permitted to arbitrate a resolution (e.g., in custody or child support). The Center has begun to take some felony cases, e.g., rape, robbery, and second degree assault.

Like other mediation projects, the Center cannot estimate what proportion of project cases would have penetrated into the CJS. The felony cases and police arrest cases would likely have been prosecuted, but many of the misdemeanor cases would have been screened out by the Summons Court.

Intake procedures vary, depending on the referral source. If the respondent has been arrested, a Center staff member reviews the case to decide if is appropriate for referral. Criminal court referrals are sent to the Center with the agreement

of the assistant DA, the legal aid attorney, the complainant, and the defendant. It is not clear from the program description whether the Center rejects any referrals.

Complainants initiate participation by signing a form detailing the problem. Respondents are sent a notice and requested to come to the Center within 72 hours. After the mediation process is explained, the respondent is requested to sign a form. A hearing is scheduled once this occurs, and is usually held within 10-14 days of the initial complaint. At the time of signing their submission forms, both parties are informed that the arbitrator's award is legally enforceable.

Mediation is the preferred settlement technique at the hearings although arbitration may be used in instances where mediation is not possible. There may be from 1 to 3 hearing officers holding a session; hearings last on average 2 hours. Private meetings may be held during the meeting. The majority of cases take one session for a settlement. Procedures for enforcing the agreement involve making a motion to the superior court to confirm the arbitrator's award; if confirmed, this motion is followed by a motion for a specific judgement in the case of monetary awards or a contempt of court action for behavioural agreements. Very few of the project's cases have required enforcement. Warnings by the project social worker have sufficed to eliminate non-compliance with the agreements.

The staff social worker makes referrals where appropriate and also serves as "the implementor of mediated agreements". The social worker contacts parties not abiding by the provisions of the arbitrator's award, and warns them of the consequences of non-compliance. In addition, all cases are contacted from 30-60 days after the hearing to determine whether the agreement is being honoured and if additional social service assistance is required.

The mediation staff receive training in mediation-arbitration techniques from the staff of the Institute for Mediation and Conflict Resolution.

During the project's first 18 months of operation, 5,150 referrals were received, and 974 cases resulted in a hearing. The other cases were resolved by the parties prior to the hearing and by the Center's social service unit through appropriate referral. Of the 974 cases, only 69 required warnings to parties for non-compliance

and 3 needed court enforcement of the agreement. Less than 6% of the cases resulted in arbitration awards (as opposed to mediated settlements).

The project budget for the 1977-8 grant period totals \$239,556.

SEE ALSO:

Wahrhaftig (1976) for a brief description of the Center.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Urban Court Program, Boston	Dispute Settlement	Mediation Restitution Referral	

REFERENCE: McGillis, Daniel and Mullen, Joan. Neighborhood Justice Centers; An analysis of potential models. Washington, D. C.: Office of Development, Testing, and Dissemination, LEAA, October 1977. 202 p.

The Justice Resource Institute in Boston administers a mediation program out of a storefront facility in Dorchester, Massachusetts (in addition, there is a disposition program and victim service component to the Program).

The mediation program uses trained citizens to assist in resolving interpersonal disputes in lieu of formal judicial intervention in those cases where a formal disposition by a court would fail to resolve the interpersonal problems motivating the criminal offence. By using citizen volunteers as mediators, the program attempts to involve the community in the remedying of community-based disputes and to educate the participants about the functions and limitations of the court. Both mediation and disposition components emphasize actual and symbolic restitution agreements.

No formal criteria for determining the eligibility of a case for mediation exist. Cases involving interpersonal disputes among family, neighbours, friends and landlords and tenants have constituted the majority of the caseload since the project began in 1975.

There are four sources of referral to the project:

- . the office of the court clerk;

- . the District Court's prosecutor's office during the screening interview with the victim;
- . the Bench during the arraignment or at an initial hearing;
- . miscellaneous sources including walk-ins and community referrals.

Over one-half of referrals are a combination of the DA and the Bench.

After a referral, a staff member explains the program to the complainant. If the parties agree, they sign a voluntary agreement form and a hearing is scheduled within 7 days. A panel of 2-3 mediators is selected once an agreement is signed.

Mediation not arbitration is the technique used at the hearing. (If a mediated settlement cannot be reached, the matter is referred back to either the clerk's or DA's office.) The chairperson of the panel explains the Mediation Project to the participants, emphasizing the confidentiality of the proceedings and the function of the hearing — to resolve the conflict in a way that satisfied both parties. Individual discussions may occur during the hearing, usually after both complainant and respondent have told their story.

If an agreement is reached, it is written up by the panel and signed by both parties and witnessed by the panel members. Copies are given to the disputants. While not a legally binding document, each party is encouraged to contact the program if the agreement is not working. The disputants are informed that a staff member will contact them in 2 weeks to see how the settlement is working.

A court hearing is necessary only if a complaint has been issued. A copy of the mediated settlement is sent to the DA and Probation; the case will either be dismissed or continued for 2-3 months and then dismissed unless the agreement has broken down.

Referrals to social services can be made at various stages of the process. Each case is assigned a Resource Coordinator who meets with each party prior to the hearing to obtain their written agreement to submit the dispute to mediation. Social service referrals may also be part of the mediated agreement.

The pool of 50 mediators are a cross-section of the community and have been trained in mediation techniques. The citizen mediators are paid a small amount per night (hearing), and work from 8-40 hours per month.

Of 458 referrals to the Mediation Project, 29% have failed to consent to mediation. Of the 302 cases mediated, 89% have resulted in a written resolution. Follow-up by project staff at 2 weeks and 3 months indicate that there have been "breakdowns" of agreements in 15% of those resolved.

The impact of the project on court workloads has not been determined; nor have the costs in relation to court processing.

SEE ALSO:

Wahrhaftig (1976) for another, briefer description of the Boston program.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	North Vancouver Adult Diversion Program	Deferred Prosecution	Probation Supervision Counselling Restitution Community Service Referral	

REFERENCE: Ministry of the Solicitor General. National inventory of diversion projects (update). (Draft). Ottawa: The Ministry, 1978

Stevenpiper, P. B. Letter to R. G. MacPherson. April 18,

This project, initiated in 1974 and operated by probation officers employed by the British Columbia Corrections Branch, diverts adults to a pre-court voluntary probation program.

The objectives of the project are:

- . to screen out of the CJS those individuals not designated as hard core offenders;
- . to deal with people within the community;
- . to reduce the cost to the community of dealing with criminal behaviour.

The factors taken into consideration by the Crown Counsel's office when deciding if a case should be diverted are: the type of offence, the age and background of the offender, the circumstances surrounding the offence, the attitude of the investigating officer and the probation officer towards diversion, the ability of the probation officer to prevent a repetition of the offence if the accused is placed on voluntary supervision, the accused admitting to the offence and showing a desire to prevent a repetition, the availability of community resources, and current community problems and expectations.

The Crown Counsel's office, upon a recommendation of the investigating RCMP officer or upon their own initiative, establishes that a case meets the eligibility criteria and that there is sufficient evidence to proceed to court. The case is referred to the probation department for investigation. After inquiring into the background of the offender and victim (if any), the circumstances of the case, and potential resources available, the probation officer submits a report to the Crown with a recommendation regarding diversion (proceed to court, voluntary probation, or no further action). A probation plan may accompany the recommendation.

If the Crown decides to divert, then the accused is asked whether he agrees to a period of voluntary supervision with conditions, such as counselling, restitution to the victim, community service, and referral to a social service agency. Voluntary probation is completed when all conditions have been fulfilled, or within a 6 month period.

If the accused fails to meet the requirements of the plan, the Crown is notified and can then decide to recommend court action on the original charge. If no further action is recommended by the probation officer, and the Crown agrees, then the matter is closed. At termination, a report is submitted to the investigating RCMP officer.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Vancouver Adult Diversion Program	Informal Probation	Counselling Restitution Community Service Referral Mediation	

REFERENCE: Ministry of the Solicitor General. National inventory of diversion project (update). (Draft) Ottawa: The Ministry, 1978.

"Vancouver Adult Diversion Program." 1978. Mimeo. 9 p.

This program, established in October 1977, functions at the post-charge pretrial level of processing.

The objectives of the program are:

- . to provide an opportunity for adult offenders to exercise personal decision making, make compensation and restitution, and to acknowledge responsibility for their actions in a manner similar to that presently provided to juveniles;
- . to allow the offender to restore his or her relationship with the community and the victim without the necessity of the formal court process;
- . to identify and establish liaison with other potential resources, private and governmental, that may facilitate and ameliorate existing diversion procedures and programs;
- . to provide an opportunity for involvement where appropriate, for citizens in decision making in CJ matters when they have been victimized;
- . to develop a screening instrument which includes eligibility criteria;
- . to develop and implement strategies which make provision for the involvement of social agencies in diversion;

- . to develop an information system which provides an information flow to all participants in the process.

The program is designed for the first offender charged with a summary conviction offence. Exceptions may be made on the recommendations of police or Crown, and supported by the program staff. The accused must informally acknowledge the "facts alleged", and "to accept responsibility for harm complained about". The accused must be willing to make commitments such as community service, restitution, compensation, and maintaining contact with the program for counselling or other assistance. Furthermore, there must be sufficient evidence to proceed with the prosecution. The accused must be a resident of Vancouver.

The majority of referrals come from the Crown or police. The Crown makes a decision based on the initial assessment of the seriousness of the offence, whether there is a legal case, and its potential for diversion. The Crown then refers the case to the Probation Office Diversion Manager for investigation and recommendation regarding diversion. A stay of proceedings is instituted at this point.

The Diversion Manager conducts a records check and a community investigation to establish the suitability of the case. The offender and victim are contacted to explain the program and the legal rights and responsibilities involved in participation. Their consent to diversion is requested.

A plan is developed not lasting more than 6 months; it may include: restitution to the victim (in money or work, the terms and conditions of which are mediated), referral to social agencies, or community service work. This plan is sent to the Crown for final decision.

If the plan is accepted, it is monitored by the Diversion Worker. Police are informed of the diversion.

There is no prosecution on any case accepted for diversion once the final decision to divert has been made by the Crown. A final report is submitted to the Crown Office upon completion of the plan.

Statistics from the first 9 months of the program's operation show that 171 persons were enrolled. Shoplifting was the most common offence category. Only one person failed to complete the program plan.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	The Court Resource Project, Boston	Deferred Prosecution	Employment Counselling Referral Education Group Work Welfare Services	

REFERENCE: Mullen, Joan. The dilemma of diversion. Washington, D. C.: NILECJ, n.d., 73-81, 93-102.

The Court Resource Project is a pretrial diversion effort modelled after the Manhattan Court Employment Program and Project Crossroads and was introduced into 4 Massachusetts courts in 1971, under funding from the US Department of Labor.

The project was designed to expand employment opportunities and reduce recidivism among selected participants. To train street people and ex-offenders as counsellors was another objective.

Eligibility guidelines include the following: 17 to 26 years old, a resident with a verifiable address, not a drug addict, unemployed or underemployed, not charged with a felony outside District Court jurisdiction, and no more than 1 or 2 prior convictions. Over one-third of the first 327 participants were charged with felonies.

Screeners spend every morning in the courts reviewing the cards of new arrests. If the defendant expresses interest at a preliminary interview, and if all relevant parties agree, a 2 week continuance is requested at arraignment. It is not necessary for the participant to admit to the offence.

The defendant is assigned a counsellor or "advocate"; they meet to discuss the participant's needs and problems. Program staff meet in case conferences to discuss services required and to make a preliminary decision regarding acceptance. At the

end of the 2 weeks, if both defendant and program staff agree, a recommendation is made to the court to put the individual in the care of the project for 90 days.

Individual counselling, career development and group work are the major services delivered by the program staff. The ex-offenders who act as advocates have small caseloads and meet once a week with their clients for counselling and supervision. A career development counsellor does direct job placement as well as referral to institutional job training programs. There is a small in-house educational component, using volunteer tutors. Clients are referred to a variety of community agencies for service assistance. A welfare worker and a rehabilitation counsellor, both from state agencies, are available on-site to assist participants.

The majority of terminations occur due to lack of cooperation (e.g., the client does not appear at the weekly group counselling sessions or go to work). Rearrest and abscondance are additional reasons.

At the end of the 90 days, the clients appear in court with a project screener. On a motion entered by the defendant and his counsel, the judge usually dismisses the charges. Between one-half and two-thirds of participants have been favourably terminated.

Advocates are expected to have weekly contact with former participants for 3 months and bimonthly for the second 3 months after termination.

In 1973, the Court Resource Project cost \$924 per accepted case and \$1,972 per case completed. 384 cases were accepted in that year.

SEE ALSO:

National Pretrial Intervention Service Center (April 1974) and Flaschner (1974) for additional program descriptions.

Rovner-Pieczenik (1974) for an assessment of the evaluation.

Abt Associates (1974) for the program evaluation.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Operation de Novo, Hennepin County, Minnesota	Deferred Prosecution	Employment Counselling Group Work Education Referral Restitution	

REFERENCE: Mullen, Joan. The dilemma of diversion. Washington, D. C.: NILECJ, n.d., 73-92.

Operation de Novo was begun in 1971 under Department of Labor funding to deal with selected defendants after arrest and before trial. Prosecution is deferred and, upon successful program completion, the court is requested to dismiss the pending charges.

The following objectives have been expressed by the project:

- . to increase substantially the employability of selected defendants;
- . to reduce substantially unemployment and recidivism among participants; and
- . to assist in effecting change in the traditional justice system.

Most participants have been unemployed or marginally employed at the time of arrest. Both juveniles and adults are eligible. The formal criteria include:

- . no extensive prior record;
- . over 12 years of age;
- . charged with a juvenile offence, misdemeanour or felony (excluding serious crimes of violence or felonies involving weapons);
- . unemployed, underemployed or a juvenile with serious school adjustment problems;
- . not addicted to drugs or alcohol;
- . not physically or emotionally unable to obtain employment.

The majority of participants have been charged with misdemeanours, and the type of charge is generally property related (petty larceny, theft).

De Novo staff members attend all arraignments in both the Municipal and District Courts. In the former, they screen information sheets prepared by the Department of Court Services and review arraignment and jail lists. Prosecutors and defense lawyers may initiate screening at this point. Candidates are interviewed and if they are willing and appear to meet program criteria, screeners request clearance from the prosecutor. If he agrees, a brief hearing is held and the judge continues the court date for 6 months and a formal case is not filed. In felonies and gross misdemeanours, a 2 week preliminary continuance is requested to permit more extensive pre-acceptance investigation. The social investigation report is given to the prosecutor and to the judge. A 12 month continuance is provided in felony cases. Discretion regarding the decision is therefore exercised by the project staff, the defendant, the prosecutor and the judiciary. The defendant does not need to admit to the offence.

The program strategies focus on employment and other manpower related services. Individual counselling, group and individual sessions on job-seeking and job-retention skills, and job placement tend to constitute the major staff activities. Part-time tutors are employed by the program for those who require educational assistance. Referral agencies include mental health services, vocational rehabilitation, welfare, and family and alcohol programs. While most counselling is individual, group sessions in street survival are held for young prostitutes.

Mullen notes that in 1973 a restitution component was initiated, and describes the situation as of early 1974: "During 1973, 48 restitution cases were accepted: 32 were assigned to counselors for full service, and 15 used de Novo as a conduit for payment only. Nearly \$8,000 was collected and only 3 or 4 cases were lost through non-compliance. Although this aspect of the project is over a year old, as these figures indicate, the project has proceeded with extreme caution. The notion of diversion, rather than probation with an order for restitution, has been accepted primarily by corporate victims."

In about two-thirds of cases, charges against defendants are dismissed; unsuccessful termination usually occurs because of a re-offence. Almost all recommendations for dismissal (99%) are accepted by the courts. Follow-up data indicate a low recidivism rate at 3 and 6 months (4% and 5% respectively); however, no conclusions can be drawn about program success because comparable data for a group of similar persons processed ordinarily are not available.

The program costs about \$700 per client (1974-5 figures) accepted into the program.

SEE ALSO:

Hudson et al (1975), McCrea and Gottfredson (1974), National District Attorneys Association (n.d.), National Pretrial Intervention Service Center (April 1974) for additional descriptions of Operation de Novo.

Rovner-Pieczenik (1974) discusses the evaluation of the program.

Abt Associates (1974) included the program as one of their PTI project evaluations.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Deferred Acceptance of a Guilty Plea, Honolulu	Screening		

REFERENCE: Narimatsu, Sharon K. "Deferred Prosecution and Deferred Acceptance of a Guilty Plea." In National District Attorneys Association, A prosecutor's manual on screening and diversionary programs. Chicago, NDAA, n.d., 225-289.

In 1969 a Deferred Prosecution Program (DPP) was initiated in the Honolulu prosecutor's office. The objectives were to "assist rather than penalize situational offenders who displayed no propensity toward criminal behavior". Also, the program was to help lessen the backlog of cases awaiting disposition and to save time and money. The program description does not specify the selection procedures precisely. Over one-half of the charges were drug possession or sale.

The prosecutor selects cases to be deferred; the selection is usually the outcome of plea bargaining. If the defendant agrees to waive his right to a speedy trial and to fulfill the only condition (of not engaging in criminal activity for a specified time period, usually 1-2 years), a nolle prosequi would be entered at the end of that period. No reporting or rehabilitative provisions were required. The defendant may be required to sign a statement of facts regarding the offence, but this was not an admission of guilt. Between April 1969 and December 1971, 54 of 68 defendant-"clients" had motions of nolle prosequi filed.

In 1970, the Deferred Acceptance of a Guilty Plea Program (DAGP) was begun and largely replaced DPP. It was initiated because prosecutors had discovered that prosecution was difficult (e.g., locating witnesses, evidence) after the case had been deferred.

Under this program, the accused agrees to and then signs a written plea of guilty to a given charge. The plea consists of:

- . a waiver of the right to protection against self-incrimination, right to a jury trial, right of accused to be confronted by witnesses against him;
- . the defendant's consent to the judge entering a judgement against him and sentencing him; and
- . an admission of guilt.

This process may be initiated by the defense or the court, and may result from plea bargaining. After the court has received the motion, a report on the defendant is requested from the Probation Department. At the receipt of the report, a hearing is held to determine suitability. Again, there is no "treatment" and the outcome is similar to DPP if no conviction occurs during the 1 year to 18 month deferrment period. If the defendant is subsequently convicted of a felony or misdemeanour involving moral turpitude during that time, the guilty plea will be accepted by the court and a sentence imposed.

Like DDP, about half the cases are drug possession or sale, and the accused are generally first offenders. The conviction rate during the deferment period is low; 3 out of 157 defendants in 1970 and 1971 were convicted of a crime involving moral turpitude within 2 years of referral date.

Mullen et al (1974) suggest: "the two experimental programs contain essentially no treatments beyond that of the threat hanging over them; nevertheless, they evidence 'success' by low recidivism rates. We have, therefore, a situation in which the prosecutor with the court is simply selecting those least likely to commit another offense and letting them return to liberty. But whether the low recidivism rates are the result of their inherent lack of criminality or of the deterrent effect of possible later prosecution cannot be determined in the absence of a control sample which would have been released unconditionally."

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Project Crossroads, Washington	Deferred Prosecution	Employment Education Counselling Referral	

REFERENCE: National Committee for Children and Youth. Project Crossroads: A final report to the Manpower Administration, U. S. Department of Labor. Washington, D. C.: National Committee, 1971. 81 p.

Initiated in 1968 under Department of Labor funding, Project Crossroads was a 3 year demonstration project which offered young first offenders intensive manpower services in the pretrial period. At the end of the initial funding period, the project became part of the DC Superior Court. The three points of focus of the project were the criminal defendant, the criminal justice system, and the community.

The experimental and demonstration objectives of the project were:

- . to demonstrate that a coordinated system of pretrial manpower services can be developed effectively with the police-court-corrections system to offer selected youthful offenders, arrested but not yet tried, an alternative to delinquency adjudication or criminal prosecution;
- . to utilize non-traditional staff;
- . to test different approaches to problems which affect program efficiency in the area of human services and the delivery of manpower services to offenders;
- . to perfect techniques for measuring the extent to which the services aid the individual to become employed and deterred from criminal activity, and the social benefits and costs of providing these services;

- . to assess the impact of the project services on its participants, the CJS, and the community at large;
- . to effect a transition of the Crossroads program, if successful, from an experimental project to a permanent PTI program for offenders in the District of Columbia court system.

The enrolment criteria for adults were:

- . males and females 16 to 40 years (as of December, 1970);
- . resident of the Washington metropolitan area;
- . unemployed, underemployed or job in jeopardy because of arrest;
- . charged with petit larceny, auto theft (attempted), false pretense, receiving stolen property, etc.;
- . must qualify for personal recognizance under the criteria of the DC Bail Agency;
- . no prior adult conviction or incarceration for more than 1 year as a juvenile.

Project staff screened all defendants detained in the court cell block before each day's arraignment and interviewed all those who met project entry criteria. If the defendant agreed, the prosecutor and defense counsel were asked for their consent and an identifying card was attached to the court papers of the defendant. When the case was called, a request for a 90 day continuance was made, and the defendant went directly from the court to the project office.

Each participant was assigned a counsellor who provided individual assistance (including home visits) and referrals to social service organizations. Job placement officers arranged interviews for defendants or vocational training, if appropriate. VISTA volunteers provided remedial education (individual tutoring) in project offices. Assistance in obtaining public school or university education was also provided.

Biweekly progress reports were provided to the court and defense counsel.

At the end of the 90 days, the project counsellor made one of 3 recommendations to the court at a disposition conference: dismissal of pending charges; extension of the continuance to allow staff more time to work with the defendant; or, reversion of the defendant to normal court processing, without prejudice, because of unsatisfactory program performance. Three-quarters of participants had their cases dismissed.

SEE ALSO:

National Pretrial Intervention Service Center (April 1974), Goldberg (1973), and "Pretrial diversion from the criminal process" (1974) for addition descriptions of Project Crossroads.

Rovner-Pieczenik (1970) for the program evaluation and Mullen et al (1974) for a criticism of these findings.

Rovner-Pieczenik (1974) for another discussion of the evaluation.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Citizens Probation Authority, Genesee County, Michigan		Probation Supervision Referral Counselling Education Restitution	

REFERENCE: Perlman, Ellis et al. "Deferred prosecution and criminal justice: A case study of the Genesee County Citizens Probation Authority." In National District Attorneys Association, A prosecutor's manual on screening and diversionary programs. Chicago: NDAA, n.d., 7-183.

This description of one of the oldest deferred prosecution programs in the US provides the reader with an uncritical account of the operations of a program that has been widely imitated. Established in 1975 as a Court of No Record, the CPA became an autonomous department in 1968, independent of court and prosecutor.

The assumption of the CPA is that not all lawbreakers are criminal and hence not all need to receive full prosecution. Through deferred prosecution, the CPA contributes to more effective allocation of the limited resources available to the CJS. By carefully selecting "situational lawbreakers", the CPA will inhibit entry into a criminal career. The program will prevent the stigma of arrest and conviction, and offers a more rational and human treatment of law violators.

The following are the criteria for program entry:

- . persons 21 years or more;
- . "the offence shall not constitute part of a continuing pattern of antisocial behavior";
- . "the offence shall not be of an assaultive or violent nature, whether in the act itself or in the possible injurious consequences of the act";
- . "moral responsibility" for the offence must be accepted by the accused;

- . restitution is required;
- . residents of an area which make close supervision possible.

The prosecutor refers all accused persons meeting these criteria to CPA staff who interview each defendant, advise him of his constitutional rights, describe the program, and ask permission to conduct a background check. If referral criteria are met and if the defendant agrees to program participation, a social history is done which includes interviews with family, employer, etc. The information collected is confidential. A "treatment plan" is developed by CPA staff and recommended to the prosecutor whose consent is required to defer prosecution. The defendant must accept a contractual relationship with the agency to participate in recommended programs. Probation supervision must be accepted for a period up to 1 year (average time is 7 months). If the defendant fails to meet the conditions of the plan, the case can be returned to the prosecutor's office and a warrant requested. If the defendant successfully completes the conditions, further prosecution is dismissed and effort made to expunge his arrest record.

Direct service and referrals are both part of the program strategies. Community agencies to which defendants are referred include employment and financial aid, psychiatric, alcoholism, planned parenthood, medical and legal aid; 40% of cases in 1971 were referred to one or more agency. CPA staff supply a "wide range of counselling services". The Probation Liaison and Training Office conducts intake interviews and performs police liaison duties. Resources are People (RAP) staff hold twice monthly meetings to inform clients, families, and agency personnel about social problems (alcoholism, family planning, etc.) and the community resources available. Staffed by 3 counsellors who work with shoplifters whose behaviour indicates social problems, RAP offers an intensive 6 month program to this client group, leaving more serious cases to the main CPA program. 16% of cases paid restitution.

This study reports on a 50% sample of all cases terminated between August 1969 and February 1971. The charges against males were predominantly shoplifting, indecent exposure, break and enter, larceny from an auto; 85% of female clients were charged with shoplifting. Each counsellor had an average monthly caseload of 150 with about once a month contact on average. In 1971, 1,272 clients were supervised at a mean

cost of \$65 per client. This rose to \$160 in 1974. Recidivism (15-24 months after leaving the program) is examined for successful probationers only; there are no data on the 10% of unsuccessful cases (i.e., terminated and referred back to the prosecutor). Just over one-fifth of CPA clients had subsequent arrests or convictions. Because of the absence of control or comparison groups, one can draw no conclusions as to whether the program services had any effect. The highly selective admission policy might be expected to produce low recidivism.

In 1969, CPA started to collect a \$100 fee for "Probation Services", waived for hardship cases. Mullen et al (1974) comments: "Given the coercion implicit in the threat of impending prosecution, a payment requirement seems a questionable practice. Moreover, to the extent that CPS is expected to maintain its low per capita costs through high caseloads and the collection of this fee, its capability to provide services to the truly disadvantaged may be marginal."

SEE ALSO:

Galvin et al (1977), National Pretrial Intervention Service Center (April 1974), and National District Attorneys Association (n.d.) for additional program descriptions. Balch (1974) for a critique of the program from a legal and operational standpoint. Rovner-Pieczenik (1974) for an assessment of the evaluation. Mullen (n.d.) for a discussion of the issues raised by the program and the evaluation. Mullen et al (1974) for a critical review of the paper annotated here.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description Issues	Drug Abuse Act, Massachusetts	Addict Diversion	Referral	Operational Legal

REFERENCE: Robertson, John A. "Pretrial diversion of drug offenders: A statutory approach." Boston University Law Review, 52, Spring 1972, 335-371.

The history and main elements of a Massachusetts law which was designed to divert drug dependent offenders from the criminal courts are discussed. There is also a detailed presentation of the way in which the statute operated after its promulgation. The material was gathered through observation and interviews.

The author suggests that there are 6 issues upon which successful diversion depends:

- . the definition of a class of eligible offenders; under the law eligibles were persons charged with a drug offence who were drug dependent and who would benefit from treatment. Juveniles and persons who committed non-drug offences were excluded.
- . screening process; voluntary pretrial examinations were available to defendants. However, there arose problems of information flow to decision-makers and of the availability of doctors skilled in diagnosing drug dependence and likely treatment success.
- . the diversion decision; after the defendant was found eligible the court was to decide whether to divert. The defendant also had to decide whether to elect the diversion option.
- . the consequences of diversion; a number of factors existed which slanted the decision towards non-diversionary outcomes. The author recommends that mandatory diversion of all first-time drug offenders be considered.

- . the problem of coordination; one of the major problems at the beginning of the implementation period was the lack of information about available facilities for treatment. Coordination and communication were lacking.
- . legal ambiguities; ambiguities in the law limited its impact.

While explicitly addressing the problem of implementing a treatment-oriented drug addict diversion statute in a US state, the paper points out areas of implementation that must be addressed by any type of diversion program that involves both the criminal process and treatment resources based in the community. The Massachusetts experience demonstrates that centralized planning and coordination of diversion programs are essential. Such programs make resource and information demands on the criminal process; the courts must be prepared administratively to coordinate resources and information flow.

SEE ALSO:

Robertson and Teitelbaum (1973) for the evaluation of the Act.

Teitelbaum (1976) for a detailed description of the act, its implementation and the evaluation.

Bellassai and Segal (1972) for a brief discussion of statutory addict diversion.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Pre-Hearing Information Service, Hennepin County, Minnesota	Deferred Prosecution	Probation Supervision	

REFERENCE: Rogers, Charles W. "Comments on development of a prosecutor diversionary system: Pre-Hearing Information Service." In National District Attorneys Association, A prosecutor's manual on screening and diversionary programs. Chicago: NDAA, n.d., 205-223.

This experimental program operated for 18 months in 1970-1. The objective was "to test the value of providing to the prosecutor an investigation service which would give him a broader factual background of the accused prior to prosecution in order to permit him to arrive at a better and more informed decision regarding the initiation of prosecution".

Suitable cases would involve the prosecutor holding a "probable cause complaint" in abeyance for a one year period of probation.

The project was unusual in that a 10% stratified random sample of all incoming cases was selected. (In addition, referrals were accepted but this group is separate from the main study.) Over 200 persons were randomly selected during the 18 months. Defense lawyers were consulted and the project explained; if the defense agreed, then an investigation into the background of the defendant was begun. Investigators examined the County Attorney's files and interviewed the defendant regarding the offence and his criminal, employment and social history. The expectations of the program were explained and the defendant's attitudes ascertained. Family and employers were sometimes interviewed. School records and any available psychological information were reviewed. Police officers who investigated the case were contacted for their views; their recommendations were given weight.

Project staff compiled written reports with recommendations and sent them to the district attorney's office for a decision.

Diversion criteria were both objective (seriousness of offence, prior record, family support, employability, etc.) and subjective (personal stability, motivation) in nature.

Sixty out of 213 investigations resulted in a diversion recommendation; it was granted by the district attorney in 56 instances. Fifty-three out of 56 defendants completed the probation successfully and had their cases dismissed.

SEE ALSO:

Mullen et al (1974) for a brief assessment of this evaluation and comments on the program.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Accelerated Rehabilitative Disposition Program, Philadelphia	Deferred Prosecution	Probation Services Referral	

REFERENCE: Specter, Arlen. "Philadelphia's Accelerated Rehabilitative Disposition Program." American Bar Association Journal, 60, September 1974, 1092-96.

The origins and functions of the Philadelphia Accelerated Rehabilitative Disposition Program (ARD) are described in this article. The program began in 1971 as an experimental program, and in 1972 the Supreme Court of Pennsylvania adopted state-wide procedures for ARD.

The program is designed to unclog the courts of lesser offences in order to free court time for the trial of repeaters and violent criminals, and to divert persons to treatment alternatives before they fall into a pattern of criminal activity.

Clients are primarily first offenders charged with non-violent crimes. The offences in 1972 included narcotic drug laws (28%), minor assault (14%), burglary (10%), and driving while intoxicated (6%).

The program is supervised by the District Attorney's Office which provides a full-time assistant DA and supporting paralegal and clerical personnel; these staff screen all arrests to determine suitability. Both defendant and complainant are informed by letter of participation. If the terms of the program are agreeable to the defendant, the case is heard by a judge at an ARD hearing. These informal hearings (heard 2 days a week) are attended by the assistant DA, the defendant, defense counsel, and representatives from local social service agencies.

The hearing is not a trial; none of the trappings of the court are used. However, the public are present. The assistant DA explains the program at the hearing: ARD gives the defendant a chance to earn full discharge if he completes it satisfactorily, that if he violates the terms of probation he can be indicted on the original charge, and that his agreement to participate involves a waiver of the right to a speedy trial. When the defendant agrees to participate, the court reporter takes no further notes until the judge announces the disposition. Nothing said by the defendant can be used against him in later proceedings.

The office contracted with H.E.L.P. Inc., a nonprofit drug treatment and referral agency to provide rehabilitative and supervisory services for ARD cases. Other agencies are used for specific problems, among them: Drug Rehabilitation Clinic, an inpatient and outpatient alcoholic treatment centre, the Center for Studies in Sexual Deviance, Jewish Family Service, Public Defenders Social Services, and a psychiatric centre.

Outright dismissal is a disposition option; in 1972, 9% of cases were dismissed.

The article concludes with some case histories to illustrate the type of offenders and the dispositions they receive.

SEE ALSO:

Specter (1973) and National Pretrial Intervention Service Center (May 1974) for identical descriptions of the program.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description Program Evaluation Issues	Drug Abuse Act, Massachusetts	Addict Diversion	Referral	Operational Legal Theoretical

REFERENCE: Teitelbaum, Phyllis M. Law as symbol: The lack of impact of a Massachusetts drug diversion statute. (Ph.D. Dissertation, Harvard) Ann Arbor, Michigan: University Microfilms, April 1976. 345 p.

This dissertation analyzes the failure of the Massachusetts Comprehensive Drug Abuse and Rehabilitation and Treatment Act to impact on the handling of drug cases in that state. This empirical and observational study found that the law's provisions were unenforced and little used by the courts. The author suggests that the law was symbolic for the legislators and interests groups they represented. Not only was the intent of the legislators ambivalent but also the content of the statute was complex and ambiguous.

The inadequate implementation was the result of competing interests of those involved in its implementation, and the freedom which the law's complexity and ambiguity gave them to implement only those sections they favoured.

Communication of the law's contents was impeded by lack of funds and its complexity. Enforcement of the law was non-existent. No office took responsibility for enforcing its provisions in the District Courts. There were few positive incentives and negative sanctions provided court officials. The availability of alternative dispositions rewarded non-compliance and punished compliance.

In addition to non-compliance being common, the law was often not understood by the

defendant even when, as required, he was notified of the provisions in court. Attorneys were also ignorant. Attorneys used the law to manipulate dispositions rather than to obtain treatment for their clients. Again, the incentive structure was not conducive to the use of the law.

Thus, there was no impact on the law's manifest purpose, to increase the treatment of drug offenders. The detailed statistical analysis shows that the failure was largely the result of court actor response. One unintended effect was to lengthen and increase continuances of trials, due to the time required for the medical examinations of potential divertees.

SEE ALSO:

Robertson (1972) for a program description.
Robertson and Teitelbaum (1973) for the evaluation of the Act.
Bellassai and Segal (1972) for a brief discussion of statutory addict diversion.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description	Manhattan Court Employment Project		Employment Referral Counselling Group Work Welfare Services	

REFERENCE: Vera Institute of Justice. Pretrial intervention: The Manhattan Court Employment Project: Final Report. New York: Vera Institute, 1972.

This report details the development of one of the first manpower pretrial intervention programs, the Manhattan Court Employment Project (MCEP), established in 1967 as an experimental program with US Department of Labour funding.

The purposes of the project were to test whether:

- . a pretrial intervention program of intensive manpower services could be introduced into an existing administration of justice and receive the cooperation of the court and the District Attorney;
- . the program could affect positive changes in the lifestyles of selected defendants with a 3 month period; and
- . non-professionals (ex-convicts and ex-addicts) could be recruited and trained to perform effectively as staff counsellors.

Participants were persons between 15 and 45 years, unemployed or underemployed, not charged with a minor or very serious offence (e.g., rape, kidnapping or arson), not alcoholics or addicts, and must not have spent more than 1 continuous year in a penal institution. About two-thirds of cases in the first 3 years were charged with misdemeanours and 30% with felonies.

The screening procedure began when arrested persons were brought to court for arraignment; project staff reviewed each case, interviewed the defendant for eligibility, and asked him if he was willing to participate. If the defendant and his lawyer agreed and if he was eligible, the prosecutor was asked to request that the case be adjourned for 90 days. About 90% of requests were granted by the court.

During the 90 days, participants receive manpower and individual and group counselling services. Job counselling and placement are the responsibility of Career Developers, who developed a core of firms willing to hire or train the hard-core unemployed. A number of referrals may be made before the participant finds a job. The employment status and salary levels of successful participants rose during their time in the project. Counselling occurred both individually and at the weekly group meetings. A social service section (manned from staff from the NY Department of Social Services) provided welfare services (e.g., public assistance, immediate financial needs, and medical and housing assistance).

At the end of the 3 months, the participant returns to court with a progress report from the program which can recommend dismissal, a further adjournment of from 1 to 3 months, or termination and the resumption of prosecution. Over the first 3 years, about one-half of enrollees were remanded back to court as terminated cases (i.e., "unsuccessful").

Evaluation by an outside evaluator focussed on recidivism of clients compared to a control group. The conclusion was reached that the program reduced the incidence of rearrest among successful participants. However, the method has been criticized by Zimring (1974).

The cost of the program per participant was \$731 and per successful or dismissed participant \$1,518.

SEE ALSO:

National Pretrial Intervention Service Center (May 1974) for a project description. Gorelick (1975) and "Pretrial diversion from the criminal process" (1974) for descriptions and assessments of the issues involved.

Zimring (1973) for a second evaluation of the project.
Zimring (1974) for a criticism of the initial evaluation and the issues raised.
Kirby (1978) for a brief description of the experimental situation recently
implemented.

Recommendations are made on the future evaluation strategies to be taken by researchers (e.g., ask participants how they feel about PTI) and on future program implementation efforts. The sponsoring agency should consider the following options:

- . define program objectives in the context of the local situation rather than apply the same solutions to all programs;
- . expand intervention points (make diversion earlier);
- . experiment with alternative service delivery strategies and avoid a standard model;
- . expand caseload levels;
- . expand eligibility criteria;
- . further integrate the program with court administration;
- . minimize the effort expended on screening;
- . re-examine termination procedures; termination should not rely on the broad discretion of project staff;
- . emphasize quality in job placements; and,
- . combine the delivery of manpower-related services with other approaches to PTI; thus, the US Department of Labour should develop cooperative funding arrangements with other funding agencies.

Among the appendices are excerpts from proposed legislation and diversion standards and some of the legal issues involved in PTI.

The projects included in the evaluation were: Atlanta PTI Project; Baltimore PTI Project; Boston Court Resource Project; Project Intercept (San Jose, Santa Rosa and Hayward, California); Cleveland Offender Rehabilitation Project; Operation de Novo (Minneapolis); Project Detour (San Antonio, Texas).

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Evaluation Survey Issues	California Diversion Programs	Deferred Prosecution		Operational

REFERENCE: Agopian, Michael W. "Evaluation of adult diversion programs: The California experience." Federal Probation, XXXI, 3, 1977, 15-22.

This paper summarizes the results of a 1974 monitoring exercise of 16 California diversion projects: pretrial diversion, residential alternatives to incarceration and alcohol and heroin detoxification programs. The author notes that it was impossible to locate 15 adult diversion programs suitable for evaluation when diversion was restricted to those efforts aimed at Pretrial Intervention (PTI).

The intake data obtained included characteristics of clientele and types of offenses. The vast majority of diversion clients were charged with very minor crimes.

There is considerable variation in the degree of penetration into the criminal justice system among these projects; ranging from the Ventura Adult Diversion Project which uses citations and a decision by the District Attorney's office whether or not a defendant is eligible to participate, to Project Intercept in Sonoma County which takes 3 court appearances before diversion is completed.

The clientele of diversion projects are minor offenders who receive services ordinarily extended to persons convicted of more serious offences. The author notes that staff/client ratios may be higher in diversion programs than in probation departments and that the diversion services are more intense because probation is much longer.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Evaluation	New York City Diversion Projects			

REFERENCE: Fishman, Robert. "Evaluation of criminal recidivism in projects providing rehabilitation and diversion services in New York City." Journal of Criminal Law and Criminology, 68, June 1977, 283-305.

This statistical analysis of data provided by New York City rehabilitative and diversion projects was "designed to allow assessment of the individual and comparative criminological effects of the primary target groups served by Criminal Justice Coordinating Council-sponsored programs".

The author concluded that the projects failed to rehabilitate their clients, particularly the young and in relation to violent crime. Recidivism was calculated for samples of participants of various projects; 41% of clients were rearrested during the 12 months after project entry.

The conclusions drawn by the author have been severely criticized by Kirby (1977) on methodological as well as other grounds.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Evaluation Survey	Manhattan Court Employment Project Monroe County PTI Project Intercept, San Jose, California New York City Diversion Projects	Deferred Prosecution		Operational Legal

REFERENCE: Kirby, M.P. "Recent research findings in pretrial diversion -- Findings 2."
Washington, D.C.: Pretrial Services Resource Center, 1978. 40 p.

This bulletin presents an overview of major research efforts in diversion, including evaluation studies and other research which provide information on client activities and program impact, published since 1974.

The author uses the "classical" definition of the deferred prosecution type of diversion: those programs which deal with adult defendants, offer an alternative to traditional CJ processing, are voluntary, occur prior to adjudication and after arrest and prosecutorial screening, offer services, and result in dismissal of charges for program completion.

Brief consideration is given to questions of research design, the findings of earlier reviews of the literature (see Mullen and Rovner-Pieczenik) and the general problem of evaluation in CJ research.

Research is divided into three categories and several examples are described in each: evaluations using proper methodology (Monroe County, and the unpublished Vera experiment in New York), evaluations using flawed methodology (San Jose, and Fishman's study of New York rehabilitation and diversion services), and special studies on social control and diversion, women and diversion, and internal diversion practices.

It is concluded that meaningful conclusions are still impossible because of the lack of empirically verified research and because of its general poor quality. Control groups are necessary to demonstrate the impact of diversion on client outcomes. Studies are often poorly written and jargon filled (and thus of little value to policy makers and administrators). There is a need to initiate program studies which assess internal diversion practices such as the assignment of clients to a referral agency and type of counselling used. The argument that diversion creates greater social control than regular processing should be empirically investigated; before that, however, the concept should be more clearly defined. The thorny issues of diversion should be dealt with in empirical terms.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Evaluation Survey Issues Program Description	Dade County PTI Citizens Probation Authority Operation Midway Operation de Novo Court Resource Program, Boston	Deferred Prosecution		Operational Legal Theoretical

REFERENCE: Mullen, Joan. The dilemma of diversion: Resource materials on adult pre-trial intervention programs. Washington, D. C.: U. S. Department of Justice, LEAA, NILECJ, n.d. 118 p.

This monograph describes adult pretrial intervention projects that deal with non-addict criminal defendants. Part I describes the (1974) "state of the art" in the evaluation of pretrial service research and synthesizes the available knowledge about pretrial diversion in terms of its objectives and practice. The programs which are discussed briefly include the Manhattan and Crossroads projects, the nine "second round" employment diversion programs, Dade County, the Citizens Probation Authority, and Operation Midway.

In her summary of the evaluation and policy issues, Mullen delineates the following areas of concern:

- . is the notion of maintaining low risk defendants in a holding pattern for 3 months to 1 year consistent with the objectives of diversion?;
- . the cost savings of the deferred prosecution approach may be more ephemeral than the proponents have suggested;
- . the implicit (or explicit) presumption of guilt that accompanies the diversion procedure may negate any mechanical efforts to avoid stigmatization;
- . termination procedures and criteria are often loosely defined and may be subject to abuse by well intentioned program staff.

There are a number of alternative reforms which could meet the same goals as diversion;

- . implementation of procedures to ensure speedy trials;
- . improved methods to expunge arrest and conviction records;
- . criminal code reform, decriminalization of existing laws;
- . development of early diversion options;
- . experimentation with broader non-diversionary release strategies and community-oriented sentencing alternatives;
- . more effective assistance of defense counsel; and
- . expanded probation resources.

Part I concludes with some recommendations regarding evaluation and research of pretrial intervention programs.

Part II of the monograph contains a description of three PTI projects as they existed in early 1974: Operation de Novo, the Court Resource Program (Boston), and the Dade County, Florida Pre-trial Intervention Project. The descriptions are based on available documentation and brief on-site visits. An overview of the three programs is provided, highlighting their similarities and differences. The selection, service delivery and termination procedures in each of the 3 programs are separately described. (See the program section of this review for a description of these projects.)

This monograph was also published as a section of Mullen et al (1974), Volume I.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Evaluation Survey Program Evaluation Program Survey Issues		Deferred Prosecution Public Inebriate Diversion Addict Diversion		Operational Legal Theoretical

REFERENCE: Mullen, Joan et al. Pretrial services: An evaluation of policy-related research. Vol. I and II. Cambridge, Mass.: Abt Associates, Inc., December 1974. Vol. I, 65 p. Vol. II, 281 p.

Volume I contains a discussion of pretrial release and pretrial diversion programs and their associated issues. The material on diversion was published elsewhere (see Mullen, n.d. for a review of the contents).

Volume II is a document-by-document review of pretrial release and diversion literature. In addition, the authors provide an overview of major developments in program implementation, evaluation and policy issues, and the research needs that arise from an examination of the deferred prosecution literature.

Critical reviews of the literature form the bulk of Volume II. Some documents or reports are described fully and critically. These were studies which contain empirical or case analysis of the outcomes or impacts of a particular program strategy. They are assessed against established criteria for internal validity, external validity and policy utility. This is the most useful section of the report, since the major diversion literature to 1974 has been analyzed and carefully assessed. There are also descriptive reviews of works not amenable to formal validation but otherwise useful in categorizing the state of the art in pretrial release or diversion programming. Finally, there are brief annotations of background documents, discussion papers, limited project descriptions or subjects tangentially related to the primary subject.

The individual reviews are divided into 5 categories: pretrial release and detention, adult deferred prosecution, juvenile diversion, diversion of the public inebriate and addict intervention.

This document is a crucial source book for researchers concerned with assessing the utility of diversion research and evaluation. It also provides a compendium of the US literature on diversion to 1974.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Evaluation Program Description Issues	Drug Abuse Act, Massachusetts	Addict Diversion	Referral	Operational

REFERENCE: Robertson, John A. and Teitelbaum, Phyllis. "Optimizing legal impact: A case study in search of a theory." Wisconsin Law Review, 3, 1973, 665-726.

This impact study of the effects of the 1971 Massachusetts statute which authorized pre- and post-trial diversion of persons charged with drug offences outlines the history of the act, its provisions, and its implementation in the first year after its passage. An empirical analysis was performed on the difference in addict diversion between the period before the effective date and 1 to 4 months after the law took effect. It was found that there was virtually no change in the amount of diversion or other treatment.

The authors suggest that so few defendants were diverted and treated because of the "funnel effect" of the legislation; few defendants had medical examinations (to establish drug dependency), fewer were found eligible, and fewer still were diverted or treated. Other factors affecting the lack of impact include: the failure of communication, insufficient treatment facilities, judicial attitudes, insufficient defendant incentives, restrictive eligibility requirements, the discretionary nature of the treatment decision, and the absence of an organized constituency to monitor implementation and engender commitment among affected actors.

The conclusion suggests that there are four factors which can optimize legal impact; legal effectiveness depends on:

- . accurate identification of a problem situation and selection of means which, if carried out, will in fact alter the situation in the desired direction;
- . communication of the law to affected persons, particularly to officials or elites directly responsible for its implementation;
- . a structure of positive and negative incentives sufficient to inspire the desired action and to counteract or circumvent inertia, resistance, and hostility;
- . existence of organizations with official and non-official mandates for directing and monitoring the implementation process.

SEE ALSO:

Robertson (1972) and Teitelbaum (1976) for further detailed discussions of this statute.

Bellassai and Segal (1972) for a more general discussion of statutory addict diversion.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Evaluation Survey Issues				Operational

REFERENCE: Roesch, Ronald. "Does adult diversion work? The failure of research in criminal justice." Crime and Delinquency, 24, January 1978, 72-80.

This paper claims that justice system officials have failed to assess adequately innovative CJS programs, with diversion programs being no exception. Using a new project in Illinois (the "Adult Diversion Project") as an example, the author describes the problems that may arise in trying to include a sophisticated evaluation component in an action-oriented project.

The general failure to evaluate the effects of diversion programs is confirmed by the reviews of diversion research (Rovner-Pieczenik, 1974 and Mullen et al, 1974), which found that many evaluations were weak methodologically. Recent research by Fishman (1977), which claims it is possible to draw definitive conclusions on the failure of diversion, also has methodological and logical flaws.

It is argued that diversion researchers should try to answer the basic question: "What treatment, by whom, is most effective for this individual with that specific problem, and under which set of circumstances?"

Experimentation (e.g., random assignment to treatment and control groups) is not yet seen as desirable by practitioners who resist these methods on humanitarian grounds. Roesch notes that only one program (the Dade County PTI Project) used a control group to assess the effect of the program on recidivism. It is suggested that without good evaluations diversion interventions cannot be justified. Better evaluations are urged to avoid the waste of money on ineffective programs; pressure groups should urge LEAA to tighten their requirements for funding new programs by insisting on adequate evaluations.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Evaluation Survey Issues	Operation de Novo Project Detour PTI Project, Atlanta PTI Project, Baltimore Court Resource Project, Boston Offender Rehabilitation Project, Cleveland Project Intercept Project Crossroads Manhattan Court Employment Project Operation Midway PTI Project, Dade County Citizens Probation Authority	Deferred Prosecution		Operational

REFERENCE: Rovner-Piecznik, Roberta. Pretrial intervention strategies: An evaluation of policy-related research and policy-maker perceptions. Washington, D.C.: American Bar Association, November 1974. 249 p.

This monograph reviews the major research and evaluation literature on pretrial intervention (PTI) projects. The objectives of the review were twofold:

- . to assess the technical adequacy of PTI program evaluations and the degree of confidence which can be placed in the program conclusions;
- . to ascertain the concerns and perceptions of criminal justice policy makers about PTI programs.

The first objective was achieved by (a) reviewing the evaluation findings from 15 demonstration PTIs and (b) assessing these findings and the generalizability of their conclusions. The second objective was realized by a national mailed questionnaire survey and 50 interviews across the U.S.

The PTI projects reviewed were: Operation de Novo, Project Detour, Atlanta PTI Project, Baltimore PTI Project, Boston Court Resource project, the Cleveland Offender Rehabilitation Project, Project Intercept (in 3 California locations), Project Crossroads, the Manhattan Court Employment Project, Operation Midway, Dade County PTI Project, New Haven Pretrial Diversion Project, and the Genesee County Citizens Probation Authority. Each program involved conditional diversion with dismissal of charges at successful completion of a short-term, community-based program.

Most evaluations have focussed on documenting participant change, recidivism, system change in the adjudication process, and cost-benefits. The following are the overall conclusions obtained from PTI program evaluations:

- . several programs were responsible for positive changes in employment status, wage and skill levels of alleged offenders during their period of program participation;
- . several programs validly demonstrated a decrease in participant recidivism during program participation;
- . it is not clear whether program participation resulted in different dispositions and sentences for participants and comparable nonparticipants;
- . it is not clear whether programs resulted in cost benefits to the CJS and the local communities;
- . cumulative findings suggest that the individual's characteristics prior to program entry play an important role in determining in-program and post-program success;
- . the evaluations did not focus on differential effectiveness of program services or staff.

The policy makers' survey asked questions on the importance of PTI compared to other increases in expenditures in CJ areas and the priorities for research in PTI programming. "It was our impression that an apparent concern about the relative effectiveness of offering services prior to or following a conviction belied a general policy maker anxiety about system change, an ambivalence about a program which dismisses criminal charges without prosecution or punishment, and a distaste for the competition for limited resources which has arisen between PTI and traditional agencies."

The report concludes with a discussion of the policy implications of current research, as well as recommendations for future evaluation research and for the improvement of PTI programs.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Evaluation	Project Crossroads	Deferred Prosecution	Employment Referral Counselling	

REFERENCE: Rovner-Pieczenik, Roberta. Project Crossroads as pretrial intervention: A program evaluation. Washington, D.C.: National Committee for Children and Youth, December 1970. 39 p.

The variables examined in this evaluation of Project Crossroads, a 3 month community-based project which diverted young adult first offenders from criminal processing, are the impact of the program on court adjudication, the employment pattern of the participants, and on their recidivism. The major strategies of the project were manpower-related services including counselling, job placement, job training and remedial education.

The evaluation strategy was to compare a participant group (upon whom data had been gathered during the project) with a comparison group who had not received project services. Employment data indicated that participation increased the accused's chance of employment. Recidivism of adult participants decreased when compared to the comparison sample; similar results were not found for juvenile offenders. Low risk cases (employed or with a good employment history) tended to be more often favourably terminated, as did older participants. Other factors assessed were family background and education.

The author concludes that the program reduced recidivism and stabilized employment for its participants.

SEE ALSO:

Mullen et al (1974) for a criticism of the evaluation methodology.
National Committee for Children and Youth (1971) for the program description.
Rovner-Pieczenik (1974) for a commentary on the evaluation.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Evaluation Issues	Drug Diversion Statute, California	Drug Diversion	Referral Probation Supervision	Operational

REFERENCE: Touche Ross and Company. Impact study of drug diversion in California. San Francisco, California: Touche Ross, 1976. 201 p. (in various pagings)

This report assesses the impact of the 1972 California Drug Diversion statute, which provided for the diversion of first-time drug offenders to education, treatment and rehabilitation programs.

The purpose of the statute was to unclog court dockets, to lower the cost of trials and the administration of justice, and to give the experimental or accidental drug user a second chance.

The study attempted to examine the workload and cost impact of the statute (Penal Code 1000) on the following California county agencies upon whom the program burden was expected to fall: probation, drug diversion programs, District Attorney's offices, municipal and superior courts, public defenders, and law enforcement. Wide variations were found in both the data available for analysis and the effects of the diversion statute. There was a low level of awareness of the legislation in many agencies. Procedures also differed greatly from area to area. There was also wide variation in response and cooperation within counties. One conclusion was that the data were insufficiently precise to estimate the impact of the statute on areas such as court workloads. Furthermore, it was difficult to separate out the effects of the law from other changes that went on in the state concurrently (e.g., changes in public attitudes towards seriousness of marihuana possession, rapid increase in violent crimes, and the tightening of criminal justice budgets which created the pressure for priorities for staff time).

The average cost of a case was \$405; the cost of successfully completed cases (85% were successful) was \$477. Processing costs, rather than supervision and service costs, constituted the majority of the expenditure.

Most of the data was based on an analysis of the 19 larger counties in the state. Statistics and costs were compared for the pre-diversion period (1971-2) with the period 1973-5.

There was some indication that the police made more arrests than they would have without the law. However, there is no firm evidence on this point. (Arrests increased 16% from one time period to the next.) Complaints filed by District Attorneys rose by 40%, even though there previously had been a sharp decline in prosecutions for the less serious drug offences.

The probation services were most affected by the legislation. Many more investigations were undertaken than in the previous period. While in the previous period these cases were typically dealt with by a guilty plea and disposed of by a fine or suspended sentence, after the legislation probation departments provided referral and monitoring services and, in some cases, close supervision and special counselling programs. Probation costs for the drug offence cases rose from \$4.6 million to \$10.3 million over the two periods.

The following recommendations were made:

- . reduce the required paperwork for probation department and other agencies by creating check off forms;
- . design and implement standardized data gathering procedures at the county and agency level;
- . improve county reporting procedures to the state office which funds drug programs;
- . standardize the responsibilities of county officials responsible for coordinating drug abuse programs;
- . establish a drug abuse advisory board in each county in order to increase communication among agencies dealing with drug abuse matters.

In the largest country, Los Angeles, the evaluators found that there was inadequate information passed on to probation officers about community drug programs, that inadequate means were available to monitor local programs, and that there was inadequate control from the probation department regarding the programs to which clients should be referred, and inadequate statistical data regarding client referrals.

SEE ALSO:

Galvin et al (1977) for a brief discussion of the evaluation and the legislation.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Evaluation Issues	Manhattan Court Employment Project	Deferred Prosecution		Operational

REFERENCE: Zimring, Franklin E. "Measuring the impact of pretrial diversion from the criminal justice system." University of Chicago Law Review, 41, Winter 1974, 224-241.

Zimring reanalyzes the evaluation data on the Manhattan Court Employment Project (as reported in Vera Institute, 1972) and then briefly presents findings (see Zimring, 1973) from his own program evaluation. In his comparison between project participants and the weekend group who did not receive project services, Zimring found that the rearrest rates were similar. "We do not know whether the similarity of rearrest rates indicates that the project has no more impact than normal criminal justice treatment or whether it is a product of the weakness of the research design. What is clear, however, is that the only way to find out is to initiate, after 7 years of project operation, random assignment procedures." Only through experimental design can we obtain reliable data on the impact of diversion.

The article concludes with a discussion of several of the trade-offs inherent in diversion programming. The question of the degree of risk presented by participants is raised and it is suggested that elaborate screening produces the "best risk" cases. Another trade-off is between the number of cases that can be diverted and the quantity of service and supervision for each subject. With scarce resources, much service can be provided to few defendants or less service to a greater number of diverted persons.

SEE ALSO:

Vera Institute of Justice (1972) for a program description.
Zimring (1973) for a full discussion of the program evaluation.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Evaluation	Manhattan Court Employment Project	Deferred Prosecution	Employment Counselling Referral	

REFERENCE: Zimring, Franklin E. "The Court Employment Project." November 1973. Mimeo. 79 p.

This research report presents the findings of an evaluation of the Manhattan Court Employment Project (MCEP). For a description of the program, see Vera Institute of Justice (1972).

In this study, the author offers an ingenious solution to the difficulty of finding an adequate comparison group: the comparison group was chosen from weekend arraignments when project staff were not working.

Clients of MCEP were younger, had fewer prior arrests, and were charged with less serious crimes than defendants generally in Manhattan.

For most participants, the degree of supervision and treatment is greater in MCEP than if they had stayed in the CJS.

There is no evidence that the project affected recidivism. Some data suggest that MCEP selects those who are less likely to recidivate. (A reanalysis by Mullen et al, 1974 of Zimring's data shows that "once the effects of age and charge have been taken into account, there is no significant treatment effect".)

Only 2% of project dismissals are reported as unemployed at time of dismissal, but 38% of participants released to schools may include a fair proportion of concealed unemployment.

Little follow-up on the participants in manpower training programs is available, but there is an indication that few participants finish training.

A majority of counselling staff have arrest or drug involvement histories. Participants with ex-offender counsellors succeed in treatment at the same rate as persons with other types of counsellors.

From 1968 to 1972, there was a consistent drop in job placements by career developers; the intensity of employment service delivery decreased over that time.

SEE ALSO:

Vera Institute of Justice (1972) for a program description.
Zimring (1974) for a discussion of the original evaluation.

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Program Description	Extra-Judicial Probation Project, Wichita County, Texas	Deferred Prosecution	Probation Services	

REFERENCE: Wichita County Probation Department. Extra-Judicial Probation Project.
Wichita County, Texas, 1975.

This program involves pretrial informal probation which includes a signed contract by the defendant, the referral agent, and the probation officer.

The objective of the program is "to afford transgressors an opportunity to redeem themselves with a minimum of loss of self-esteem and prestige, yet will in no manner compromise the rights of any injured party who might be involved, and will enable the prosecuting attorney and/or the Courts to retain needed control and jurisdiction".

The majority of defendants were charged with possession of marihuana, with misdemeanor theft and burglary being the other major categories. The program description notes that there is little or no screening of cases referred.

The diversion occurs prior to the filing of a formal petition; referrals come from the District Attorney's office, the County Attorney's office, and to a lesser extent from the Grand Jury and the County Court.

The prosecutor has control and, after obtaining the court's cooperation, obtains case dismissal upon successful completion of the contractual obligation.

The program is an extension of traditional prosecutorial discretion and appears essentially unstructured and informal in nature. Nor is it clear from the program description what are the nature of the contractual obligations agreed to by the defendant; that is, whether services or conditions other than those found in normal probation are provided.

SEE ALSO:

Mullen et al (1974) for a description and criticism of the evaluation performed on this project.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description Guidelines and Standards Issues	Pretrial Intervention Project, Hudson County, New Jersey	Deferred Prosecution	Employment Counselling Referral Probation Supervision	Operational Legal

REFERENCE: Zaloom, J. Gordon. "Pre-trial intervention under New Jersey Court Rule 3:28: Proposed guidelines for operation." Criminal Justice Quarterly, 2, Fall 1974, 178-215.

This article briefly traces the development of PTI in the United States and New Jersey and contains a detailed description of the experience of the Hudson County Pretrial Intervention Project. The New Jersey programs are based on a state Supreme Court rule first promulgated in 1970. The rule provides official sanction for PTI programs approved by the court, and gives in-court procedures for participation and termination.

The New Jersey definition of "pretrial intervention" is "a formalized program for selecting from the criminal justice process — after the filing of a complaint but before trial or entry of a plea — adult defendants who appear capable, with the assistance of supervision, counseling or other services, of showing that they are not likely in the future to commit criminal or disorderly acts; for removing such defendants from the ordinary course of prosecution by postponing further criminal proceedings for periods of 3-months to one year; and for dismissing charges against such defendants upon completion of a program of supervision, counseling or other services, and upon a showing that the interests of society may best be served by such a dismissal".

The clients of the Hudson County PTI are 18 years and over, county residents, and charged with offences in the criminal or municipal courts of the county. Excluded

defendants are those charged with heinous offences, minor violations, gambling offences, habitual offenders, and addicted persons unless enrolled in a drug abuse program. Seventy percent are charged with an indictable offence.

The PTI program diverts offenders after complaint but before trial or plea. At first court appearance, the defendant is notified of the program and is interviewed by Court Liaison (program staff) in the program office (if released on his own recognizance) or in the lock-up if ROR denied. If found acceptable, the defendant is asked to consent to a 3 month postponement and enter a Participation Agreement.

For persons who agree, there is a 3-4 week period of informal participation during which time staff assess the defendant's attitude and motivation. Records are checked for previous convictions. For those who remain at the end of this period, a report is sent to the prosecutor and an application is made for a 3 month postponement and release of the defendant into the custody of the PTI program. The reports and consents are sent to a judge for his review and for the entry of the postponement order. The judge can deny the application; if so, the defendant is instructed to return to court on his next appearance date.

The program strategies offered by the 12 counsellors include counselling, vocational placement assistance, referral to alcohol abuse or drug programs, and assistance with educational programs. However, those who require no services (that is, those who exhibit little need for employment or psychological or community adjustment assistance) are required only to undertake supervised reporting for the duration of the program. Court Liaisons are responsible for ensuring that services are secured and that participants follow through with the PTI program and the agencies to which they have been referred.

Of enrolled participants who exited the program, 70% "succeeded". Of the 1,000 applicants to the program (by the end of its second year), 50% were rejected during the screening process, 35% received dismissals (i.e., were successful) and 15% were terminated unsuccessfully. The author indicates that the program "creams" those most likely to succeed and to avoid criminal behaviour.

Zaloom also outlines some guidelines for the operation of successful PTI programs:

- . the objectives of PTI: the need for the least restrictive program requirements since deterrence, not rehabilitation, should be the purpose of PTI;
- . the need to staff programs with both professionals and non-professionals;
- . the need for a multi-problem orientation which uses existing community resources when available;
- . the need to exclude persons for which through ordinary prosecution there is the likelihood of achieving general deterrence, or the vindication of societal values, or when the degree of harm to result from prosecution is minimal;
- . enrolment should not require either informal admission of guilt or a guilty plea;
- . the program should be no longer than 12 months, during which time the person is under threat of return to ordinary prosecution;
- . information obtained through PTI involvement should not be used in subsequent proceedings to the person's disadvantage;
- . there should be written decisions made regarding applications and terminations from the program.

SEE ALSO:

Zaloom (1977) for a description of the legal situation.

"Criminal practice -- Pretrial intervention" (1978) for a description of legal issues raised by N.J. PTI projects.

National Pretrial Intervention Service Center (April 1974) for another program description.

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DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Evaluation Issues	PTI Project, Atlanta PTI Project, Baltimore Court Resource Project, Boston Project Intercept, California Offender Rehabilitation Project, Cleveland Operation de Novo, Minneapolis Project Detour, San Antonio, Texas	Deferred Prosecution	Employment Counselling	Operational Legal

REFERENCE: Abt Associates, Inc. Pretrial intervention: A program evaluation of nine manpower-based pre-trial intervention projects developed under the Manpower Administration U. S. Department of Labor; Final Report. Cambridge, Mass.: Abt, July 1974. 298 p.

This 1974 report of PTI programs funded by the Manpower Administration of the US Department of Labor (the "second round" programs after the Manhattan Court Employment Program and Project Crossroads) provides evaluation material on 8 adult and 1 juvenile PTI programs under the following headings: program goals and target groups, screening and entry, counselling services, opportunity development, termination decisions, recidivism studies, employment and income effects, the effect of intake characteristics, program service effects and program-court interaction. The outcome analysis was hampered by the evaluators' inability to obtain data on persons who were unfavourably terminated by the program: 8 of the 9 projects did not collect data on "unfavourables" or on a comparison group.

The overall program goal of the PTI projects was "to provide an alternative for handling selected defendants outside of traditional justice systems, offering intensive assistance to those in need of manpower and social adjustment services". The majority of clients were misdemeanants: individuals charged with victimless crimes, and class or social order offences, such as drunkenness, loitering, breach of the peace; or persons charged with minor criminal activities considered economically motivated, such as property-related crimes. Two opposing tendencies were noticed: some programs concentrated on the individual defendant's service requirements in selecting clients, while others placed more emphasis on matching defendant service needs to the program's

services; in the latter case, significant numbers of defendants were enrolled who had no apparent need for the services offered.

With regard to the goal of community crime reduction, the evaluators found that there was no difference between program participants (the favourably terminated) and those unfavourably terminated over the period immediately following the original arrests of both groups; however, the use of PTI did not increase the level of risk to the community and may have reduced it in the short run. The unfavourably terminated were rearrested about as frequently as favourably terminated, but their rearrests occurred sooner. (These data were drawn from a small sample from one project and are subject to a number of qualifications.)

With regard to the goal of benefitting individual participants, the evaluators concluded that employment services can be a significant factor in improving the employment status of groups traditionally at a disadvantage in the labour market. Job placement and development were the major strategies used. Job quality was subject to question. A defendant who entered the program unemployed or underemployed was likely to leave it with a lower wage and a less secure job than his higher wage, employed peer. Persons charged with violent crimes and crimes against the social order were associated with high levels of recidivism; property charges were associated with low rearrest rates.

The analysis of program service effects found that the impact of counselling services was conditioned by the nature of the participant (females, employed persons), while positive change in higher risk offenders seems associated with employment services. The evaluators concluded that a broad spectrum of services should be available to accommodate diverse participant needs; the latter should be ascertained through individual diagnosis.

With regard to program effects on the courts, it was found that because of the generally small caseloads, the programs had little effect on the courts. Court personnel were cautious about the quantitative benefits of formal PTI programs.

The conclusions of the report point out the apparent contradiction between the goals of diversion and of service delivery. If programs are to concentrate on diverting the low-risk offender, then caseloads must increase and costs reduced. If programs are to maintain and strengthen service delivery objectives, then the reverse must occur.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues				Legal

REFERENCE: Davies, Darryl T. "The pitfalls of diversion - Criticism of a modern development in an era of penal reform." Osgoode Hall Law Journal, 14, December 1976, 759-767.

Davies defines diversion broadly: "any non-judicial procedure that aims at reducing the role of the criminal court by diverting cases away from its purview and that places emphasis on restitution to the victim and the use of more informal and non-adversarial methods of handling criminal offenders". He suggests that it is premature to advocate a movement away from the present court structure and system of sanctions.

The following criticisms of diversion programming are made: procedural protections for defendants will be reduced by diversion; the citizenry's need for vengeance will be denied; the failure of the courts has been over-emphasized by critics and it would be more sensible to create alternatives to improve the sentencing process; the lack of standardization (e.g., absence of written rules) may bring abuses; there is a presumption of guilt in many diversion programs; there is the possibility that the person may participate in a diversion program when he could have been acquitted in court; there is no evidence that dispute resolution will be in the best interests of either party; it is possible that the divertee who defaults will receive a harsher punishment than if he had never participated in a diversion program; there is a possible negative effect on deterrence by eliminating public exposure in a courtroom; and, diversion expands the net of social control.

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DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey Issues		Deferred Prosecution Dispute Settlement		Operational Legal Theoretical

REFERENCE: Aaronson, David E. et al. The new justice: Alternatives to conventional adjudication. Washington, D. C.: NILECJ, LEAA, U. S. Department of Justice, November 1977. 84 p.

This monograph places diversion in a broader context, as one of several alternatives to adjudication. The objectives of the study were to identify and examine the range of alternatives to conventional adjudication, to determine the impact of these alternatives on the activities of CJ agencies, and to present an overview of organizational, legal, and evaluative issues and concerns relative to the adoption and implementation of an alternative.

The researchers searched the literature and visited a number of cities to observe their alternative procedures.

This volume contains a summary of the analysis and comparisons of the 70 models of alternatives that were examined. It was concluded that most alternatives deal with one or all of three basic sources of dysfunction in the traditional system: improper subject matter jurisdiction, ineffective disposition of defendants, and disparity in the treatment of defendants.

There are also a number of programs and approaches in the "new justice" described and analyzed, among them pretrial intervention and neighbourhood alternatives to formal adjudication.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Conference Report Issues		Dispute Settlement	Mediation Arbitration	Operational Theoretical

REFERENCE: American Bar Association. Report on the National Conference on Minor Dispute Resolution, May 1977. ABA Press, 1978. 67 p.

The conference report touches on three areas of conflict resolution: small claims courts, disputes between individuals that are resolved outside the courts, and disputes between individuals and organizations settled outside the courts. (The latter would include ombudsmen for prisoners and administrative grievance mechanisms.)

Some of the recurring themes in conflict resolution are outlined:

- . the need to develop systematic methods for measuring effectiveness of available dispute resolution mechanisms;
- . the need to involve the affected community if we want to develop a system that has acceptability and accessibility; and,
- . the need to develop screening methods to determine which types of disputes can be dealt with outside the traditional adversary system.

The chapter on "dispute settlement outside the courts" briefly describes a promising innovation, the "neighbourhood justice centre", an institution designed for effective and expeditious resolution of certain minor disputes. They can receive cases from a variety of sources including the courts; the hearings are flexible and mediation or arbitration or a combination of techniques can be used. The primary goal is to provide an informal alternative to the court process.

The report contains addresses of alternative dispute mechanisms currently in operation in the US.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues Program Description	Community Diversion Centre, Victoria, B. C.	Informal Probation	Restitution Community Service Referral Education	Operational Legal Theoretical

REFERENCE: Aubuchon, Jacqueline. "Model for community diversion." Canadian Journal of Criminology, 20, July 1978.

The rationale for community-based diversion and a description of the Victoria Community Diversion Centre (CDC) are provided in this paper. It is up to the community to effect diversion: "to bring offender and victim together in immediate consideration of the offence in its context without involving the official judicial system". Elements of the model are helping the offender to understand what led to the violation, making restitution to the victim and community, and dealing directly with the feelings of the offender and the victim in an effort to reconcile their differences.

The target of CDC is the first offender who has committed a minor property-related offence, often shoplifting. Excluded are alcoholics and drug addicts, and persons who have committed alcohol-related crimes (e.g., impaired driving) because of the absence of treatment resources in the community. The offender must be willing to participate fully in the program.

Participants can be referred by either the police or the prosecutor. Police may use their discretion to divert the accused after they are satisfied that evidence exists to warrant laying a charge. A diversion worker comes to the station; at a meeting with the officer, the accused, and the worker, the program is explained and the accused is given a choice of being charged or accepting the diversion option ("in effect an admission of guilt"). The worker attempts to explain the options in realistic terms.

Prosecutorial discretion is the second source of clients. If the prosecutor decides that the case "could be best handled by the community", a diversion worker interviews the accused and, if the latter is willing, diversion proceeds.

If the accused fails to appear at the Centre, the information is passed to the referral source which may proceed with the charge. However, if the accused begins the program and then discontinues service, or completes the program unsatisfactorily, neither the police nor the Crown will pursue the matter further.

Program components include restitution of stolen goods or money, an apology to the victim, meetings with the diversion worker to work out a reconciliation contract and to assess needs, the performance of voluntary community service, and attendance at a 3-5 hour workshop which explores the function of law in society and the responsibility of the individual. Efforts are made to involve friends and relatives in the diversion process as volunteers. Referrals to social services may also be made.

Staff consists of 5 full-time and 3 part-time workers. Over 600 persons have been diverted in 2½ years. Formal follow-up has not been done.

The advantages and possible dangers of diversion are discussed. Among the latter are the possibilities that the accused's legal rights may not be safeguarded during the referral process, persons may be referred who would otherwise have been released, and the program is seen as a threat by CJS staff. Constant communication would assist in ameliorating such dangers. Another problem is the tendency for programs to become treatment-oriented; staff must continually keep in mind they are to deal only with the offence and its consequences.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues	Citizens Probation Authority, Genesee County, Michigan	Deferred Prosecution		Operational Legal Theoretical

REFERENCE: Balch, Robert W. "Deferred prosecution: The juvenilization of the criminal justice system." Federal Probation, 38, June 1974, 46-50.

The ethical and legal aspects of deferred prosecution programs, exemplified by the Genesee County Citizens Probation Authority (CPA), are discussed with special emphasis on the risks entailed in such programs. Diversion is defined as "the suspension of formal criminal proceedings against an individual on the condition that he do something in return".

The stated emphasis on voluntary participation when the possibility of conviction exists is found to be equivocal. Like plea bargaining, deferred prosecution is inherently coercive with the latter providing more incentive since the individual does not acquire a criminal record. The written descriptions of programs emphasize the benefits of diversion to all concerned. Balch makes the analogy between such statements and the rhetoric found in the juvenile justice system.

Since participation in pretrial probation-deferred prosecution programs cannot be considered voluntary, the argument that due process rights are not violated because the accused voluntarily waived them is fallacious.

The right to counsel at the referral stage has been rejected by diversion programs such as CPA. This, too, is similar to the situation existing in the juvenile court where lawyers have been discouraged from participating because of their possible impact on the "atmosphere of rehabilitation".

The presumption of guilt found in pretrial diversion alarms the author particularly since participation in CPA may begin before formal arrest.

Deferred prosecution and the juvenile justice system are both rationalized on humanitarian and rehabilitative grounds. The author fears that the end result may be the relaxation of the standards of evidence and a presumption of guilt.

SEE ALSO:

Perlman et al (n.d.), Galvin et al (1977), National Pretrial Intervention Service Center (April 1974), and National District Attorneys Association (n.d.) for more complete descriptions of CPA.

Mullen (n.d.) for another discussion of the issues raised by the program.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues		Addict Diversion		Legal

REFERENCE: Bellasai, John P. "Protecting the confidential communications of substance abusers in pretrial programs: The broad mandate of federal law." A paper prepared for the National Conference on Pretrial Release and Diversion, Washington, D.C., May 1977. 10 p.

This conference paper details the US federal regulations governing confidentiality of records of drug and alcohol abusers. It is noted that it is important for pretrial agencies to appreciate the "shield" provided by these regulations against demands by prosecutors and judges for internal program records or communications regarding substance abusing clients.

Each rule is described and its implication for diversion projects assessed. The paper is directed primarily towards program personnel in US addict diversion programs; however, some of the legal issues it raises are also applicable to the Canadian situation.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Guidelines and Standards Issues		Deferred Prosecution		Operational Legal

REFERENCE: Birns, Harold. "Diversion from the criminal process." American Bar Association Journal, 62, September 1976. 4 p.

This article reviews the recommendations made by a subcommittee of the New York Advisory Committee on Court Administration on the operation of diversion programs. The following recommendations are discussed:

- . there should be established a centralized council on diversion composed of representatives of the judiciary, the offices of the district attorneys, probation, legal aid, and the private criminal defense bar;
- . a centralized unit should be established to screen each defendant entering the system of CJ for preliminary determination of his eligibility for diversion and to recommend appropriate rehabilitative programs to which eligible defendants could be referred;
- . a publicly enunciated set of formal guidelines should be developed presenting uniform criteria governing the diversion process;
- . the judge should actively participate in the decision to divert, to dismiss the original charge following successful program completion, or to terminate involuntarily the divertee's program participation and reinstitute prosecution;
- . defense counsel should be notified before any overture is made to the defendant, and an adequate opportunity should be afforded for legal consultation on the nature and consequences of the diversion option before he is required to make his decision;

- . before unfavourable termination and resumption of prosecution, the defendant should be afforded: written notice of the alleged violation of diversion terms; disclosure of the evidence against him; an opportunity to be heard and present evidence; the right to confront and cross-examine witnesses; a neutral hearing officer; and, a written statement of the grounds for the hearing officer's decision and the evidence he relied on;
- . records of defendants who successfully complete participation in diversion programs should be expunged, and the confidentiality of the records of the projects, with careful limitations as to access and privacy, should be preserved.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey		Screening		

REFERENCE: Brake1, Samuel J. and South, Galen R. "Diversion from the criminal process in the rural community." American Criminal Law Quarterly, 7, Spring 1969, 122-173

Screening practices for juveniles, alcoholics, and mentally disturbed persons in rural Illinois are the topic of this descriptive article. The authors suggest that the rural system of CJ is itself "diversion", for there the system functions on an informal and consensual basis. Formal diversion is an urban response to an urban milieu problem. An arrest in the rural community is the result of a system decision rather than a triggering of the decision-making process as in the city.

The case studies of two areas in Illinois suggest that the need in the rural setting is "not the legal justification for individualized treatment of certain groups, but rather a program which makes more feasible and more desirable the implementation of a system which is already inherently diversionary. The need is thus to provide for acceptable, appropriate and workable channels — be they state hospitals and community clinics for the mentally ill, detoxification centres for alcoholics, or local minimum security institutions for juveniles."

Rural-urban differences in the operation of the CJS are large, and may limit the extent to which city diversion experience can be transferred to a rural setting.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues				Operational

REFERENCE: Carter, Robert M. "The diversion of offenders." Federal Probation, December 1972, 31-36.

The origins of diversion are attributed to: the increasing recognition of justice system deficiencies; the re-discovery of "the truth that community impacts upon behavior"; and the growing demand of citizens to be active in government affairs.

The following operational problems are identified and discussed:

- . the need for guidelines;
- . the need to develop community resources and make the existing ones more available to program participants;
- . the need to determine the impact of diversion on the justice system and its component parts and to examine the need for administrative and legal changes;
- . the need to develop a methodology for evaluation of such programs.

In addition, standards must be developed for the selection of target groups and of the agencies to receive the divertees. New roles would be required of justice system personnel; e.g., probation officers would have to become familiar with community resources in order to ensure that divertees are referred to those resources which deal with their problem areas. The possibility of low community tolerance for diversion is raised; corollary questions are "how to increase tolerance?" and "who is to do it?"

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues		Screening		Legal

REFERENCE: Chasse, Kenneth L. "Diversion: An initial consideration of its position in Canadian criminal law." A paper prepared for the National Conference on Diversion, Quebec City, October 1977. 37 p.

This article discusses "informal diversion" which occurs at present and makes some proposals regarding the new formalized diversion. Reference is made to Canadian statutes and judicial decisions which have a bearing on the issues. To centralize control of prosecutorial decision making through diversion could have serious consequences in terms of the abolition of the private prosecution, the development of centralized control over police, and the abolition of accountability in law for the initiation and withdrawing or staying of proceedings. Other legal factors include the Attorney General's prosecutorial discretion, equality before the law, the compulsion to negotiate, compounding an indictable offence, double jeopardy, and the problems of self-incrimination and the right to silence. For each issue, the potential conflicts with existing law are discussed. It is concluded that post-charge diversion is most acceptable to the legal community.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues				Legal

REFERENCE: Chasse, Kenneth L. "Diversion and the prosecutor." The Crown's Newsletter, July/August 1977. 17 p.

By drawing on a variety of published sources, especially the Law Reform Commission of Canada, the diversion concept as it is emerging in Canada is discussed and some criticisms raised.

The prosecutor should insist that his consent is essential for every diversion case, in order to guarantee public accountability for the exercise of discretion not to prosecute. The deferred prosecution model makes diversion publicly accountable to the system.

Remands, not hearing evidence at preliminary inquiries, are what cause overcrowded courts. Thus, to use the rationale of excessive court workloads for diversion may be inappropriate. Decriminalization should not be a function of diversion programs; it is the prerogative of the legislature only to eliminate statutes. Nor is the concept of "stigma" an adequate rationale for diversion operating independently of the system, and with no accountability to it. There is the danger that due process will be neglected.

The criteria for diversion should include: the need to reaffirm values, the degree of injury and loss to the victim, the prevalence of that behaviour in the community, public concern at that time regarding that behaviour, and the character, age, and background of the accused.

A number of definitions of diversion are discussed; it is noted that there is lack of recognition of the legal issues raised by post-charge or pre-trial diversion. Lawyers should assist in the shaping of the diversion concept in order to avoid faulty choice of criteria for, and methods of, diversion being developed in this country. Instead of having:

fixed or objective criteria for diversion, projects should divert cases because of their particular circumstances. Diversion should be effected by project staff advising the Crown prosecutor as to the most appropriate cases for withdrawing charges or staying proceedings.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey	New Jersey PTI Programs	Deferred Prosecution		Operational Legal

REFERENCE: "Criminal practice — Pretrial intervention programs — An innovative reform of the criminal justice system." Rutgers Law Review, 28, Summer 1975, 1203-1224.

This discussion of the pretrial intervention concept as it has been implemented in New Jersey (under New Jersey Supreme Court Rule 3:28) focusses on the experience of PTI pilot programs, the New Jersey programs and procedures, and the legal and constitutional dimensions of the procedures in that state. Three areas are suggested as being of special concern. The issue as to whether a guilty plea should be a prerequisite for program participation raises the question "is PTI inherently coercive?" The need for due process hearings at the time of initial determination to allow PTI participation and at the termination decision is discussed. The respective roles of the prosecutor and the judiciary are also outlined. Court decisions relevant to these issues are cited.

The author concludes that PTI brings visibility to informal practices of noncriminal dispositions and makes possible the early availability of rehabilitation services. However, these benefits should not obscure the inherent legal and procedural irregularities of PTI programs.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Element		Restitution		Operational Legal

REFERENCE: Hudson, Joe, ed. Restitution in criminal justice. Papers presented at First International Symposium on Restitution in November, 1975 at Minneapolis. St. Paul, Minn.: Minnesota Department of Corrections, 1976.

This collection of papers provides an assessment of the place of restitution in the administration of justice. While not directly related to restitution in post-charge, pre-plea diversion programs, the concept and its application (largely in post-trial phase of legal processing) are described from a variety of perspectives.

The contents of the volume may be briefly summarized:

- . Part I provides a contemporary view of the place of the victim within the CJS and puts restitution in an historical and cross-cultural perspective;
- . Part II deals with research, operational and legal issues relevant to restitution;
- . Part III describes the use and assessment of restitution as a condition of probation;
- . Part IV deals with the use of restitution within residential community correctional programs and the way in which a restitution program could be implemented in a prison;
- . Part V summarizes the major issues and perspectives raised.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey Issues			Restitution	Operational

REFERENCE: Hudson, Joe, Galaway, Burt, and Chesney, Steve. "When criminals repay their victims: A survey of restitution programs." Judicature, 60, February 1977, 313-321.

This paper reports on a survey of 19 restitution programs in the United States and Canada. Ten of the 19 programs reported that offender rehabilitation was their primary purpose; only 4 said that providing reparation to victims was their main aim. Most programs used restitution at the sentencing stage of CJ processing. An overview of the programs is provided in terms of the nature of the restitution sanction, the amount of restitution, the procedures used to determine it, and the pros and cons of full vs. partial restitution.

The appropriate relationship of restitution to other program elements was another area touched on by the survey. Most of the programs add restitution to existing sanctions or treatments; it is most commonly used in conjunction with supervised probation in the pretrial diversion programs.

The question of the victim's role in the restitution decision is raised: Should the victim participate? (5 out of 19 programs said the victim was involved "usually"; 9 said "occasionally".) If so, what weight should be given the views of the victim? Should there be a difference between individual victims and large businesses (e.g., insurance companies)?

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues Program Description	Operation de Novo, Minneapolis	Deferred Prosecution		Operational

REFERENCE: Hudson, Joe et al. "Diversion programming in criminal justice: The case of Minnesota". Federal Probation, XXXIX, March 1975, 11-19.

Four Minnesota diversion programs are described which operate at the levels of the police, the prosecutor, the judge, and the parole board. Each of these programs use discretionary authority of justice officials to divert offenders from further penetration into the justice system. Each program is discussed in relation to the following questions:

- . What is the nature of the diversionary process and what is the individual being diverted from?
- . Who has authority to make decisions and on what basis are the decisions made?
- . What program components are used to provide services and also provide a reasonable level of public protection?

Operation de Novo is the prosecutorial diversion program described.

The authors conclude with a warning that, despite the hope that these diversionary programs are more effective at rehabilitation, there is little evidence to support the belief. Administrative discretion is open to abuse, especially when clear policies and procedures have not been established.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues				Operational Legal

REFERENCE: Jacobson, H. S. and Marshall, J. T. "Defender operated diversion - Meeting requirements of the defense function." NLADA Briefcase, 33, June 1975, 137-145.

After briefly reviewing the history and practice of diversion, the authors discuss the role of the prosecutor and the defense in diversion. Both have responsibilities for considering diversionary alternatives. Considerable resistance has been offered to the idea of defender-operated diversion. However, there are detrimental effects of prosecution operation diversion on defendants' rights. Diversion can legitimately be offered by prosecutor, defender and third party organizations. The paper concludes with a strategy for defender organizations to institute diversion programs (at the post-adjudication, pre-sentencing phase of the process).

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues Program Survey 1		Screening Deferred Prosecution		Operational Legal Theoretical

REFERENCE: Johnson, Paul H. Pretrial intervention: The administration of discretion. Criminal Justice Monograph, Vol. VII, No. 1. Huntsville, Texas: Institute of Contemporary Corrections and the Behavioral Sciences, Sam Houston State University, 1976. 40 p.

This monograph is a scholarly description of the issues and practices found in the contemporary application of pretrial intervention — the post-arrest, pre-arraignment diversion of offenders from traditional court procedures.

The first chapter traces the definition of diversion, its philosophy and the development of diversion programming which started in the United States in the middle 1960's. Pretrial diversion arose from the perception that criminal justice resources should be more effectively allocated and alternatives to normal processing could offer rehabilitative benefits to defendants.

Chapter II describes the legal framework and the issues surrounding prosecutorial discretion, starting with the history of the prosecutor's office in the US. The operational characteristics of prosecutorial functions, the legal basis of the authority for prosecutorial discretion, and the role it plays in the PTI concept are also discussed. Legal critics have attacked the low visibility of prosecutorial discretion and its unrestrained nature. Like traditional prosecutorial discretion, PTI programs are developing on an ad hoc basis "with virtually no boundaries to define limits or participant selection, delegation of prosecutorial decision-making and consistent evaluation techniques".

The third chapter examines programs, roles and structures within which discretionary administrative decisions occur. The author develops 3 administrative models of PTI (the prosecution model, the prosecution/probation model, and the court model) showing the extent of defendant involvement with the system and the roles of the personnel involved. Then, the processes of defendant selection, service delivery and disposition for each model are considered, using examples from current programs. The chapter concludes with a brief description of the constraints upon program processes (e.g., funding and accountability).

The fourth chapter considers 3 categories of issues relevant to the administration of PTI programs: the influence of organization (administrative discretion and efficiency); the importance of program planning (in terms of interagency cooperation, program duplication, the prosecutor's role and program goals, funding and evaluation); program administration (emphasis is placed on the factors of program leadership, personal interests, confidentiality of information gathered during the program, subjective decision-making of program staff, communication among members, and the difficulties of retaining staff). PTI is compared to the juvenile justice system, and the dangers inherent in the many similarities are indicated. The extent of planning affects the quality of program delivery services and the "overall balance of the organization".

The final chapter concludes that much PTI is defendant oriented, for little exists to support the claim that there are system benefits to be had (e.g., the reduction of caseloads). Whether the divertee will benefit in terms of stigma reduction is also unclear; many PTIs are so closely associated with the system — indeed, many program descriptions use the term "offender" despite the fact there has been no legal adjudication of guilt. Continued selection of low risk defendants may be self-defeating; individuals should be selected who are most in need of services. It is anticipated that courts will pay increasing attention to due process and equal protection with the expansion of diversion programs. Prosecutorial discretion will always be the cornerstone of PTI. The exercise of personal judgement is necessary and desirable. Competent administrators must be found who can properly exercise it in the manner in which it is intended.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues		Screening		Operational

REFERENCE: Kehler, Chris, Lajeunesse, Therese, and Manning, S. "Crown discretion."
 An unpublished research report prepared under the direction of K. Jobson
 and L. Robinson. Victoria, B. C.: January 1977. 111 p.

This paper presents the results of an observational and statistical study of the Crown Office in Victoria, B. C., as well as the exercise of discretion by police. The exercise of prosecutorial discretion is examined in terms of four models: legal sufficiency, efficiency, treatment and the justice model. The authors conclude that the guidelines and criteria to be developed for diversion should be in line with the justice model, rather than treatment or legal sufficiency alone. Several recommendations on the expansion of the use of diversionary options are made as a result of the research.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues Program Survey		Deferred Prosecution		Operational Legal Theoretical

REFERENCE: Klapmuts, Nora. "Diversion from the justice system." Crime and Delinquency Literature, 1, March 1974, 108-131.

Diversion is an essential part of a much broader movement of social and CJ reform. Diversion, the movement to lighten the impact of the system, satisfies both humanitarian and pragmatic concerns. The need to provide non-discriminatory justice to all levels of society is another, newer rationale. The lack of definitional clarity and the complexity of the diversion trend is emphasized in a section called "what is diversion?". Diversion has been equated with using the least restrictive alternative, referral to social services instead of criminal prosecution, pretrial release programs, and referral of predelinquents to youth service bureaus. Klapmuts argues that diversion is a misnomer since many of the alternatives described as part of the "new diversion" are conditional and revocable, more delay in criminal processing than diversion from it.

Additional questions raised by the concept are: Who should be diverted? What arrangements should be made for funding, administering and monitoring diversion programs? Who should set policy? Who defines "failure"? What are the rights of the diverted person? Is diversion effective? Will it change anything?

Programs are divided into community absorption, police alternatives and pretrial intervention; developments in each category are outlined. Diversion may not be the answer to the ills of the system. Rather, it may be a compromise or panacea for a system that needs greater reforms.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey	B.C. Diversion and Screening Programs			

REFERENCE: Lajeunesse, Therese. "Diversion - A survey." Victoria, B. C. Justice Planning and Research, 1975.

This paper provides a brief description of a number of diversion programs ("diversion" used in its broadest sense) existing in British Columbia in 1975. Program descriptions were collected through interviews with staff. The author emphasizes that the development of projects and definitions were at an early stage.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues				Operational Legal Theoretical

REFERENCE: Law Reform Commission of Canada. Diversion. Working paper 7, Ottawa: Information Canada, January 1975. 25 p.

This Law Reform Commission publication was one of the early statements in Canada of the rationale for, and benefits of, diversion. The working paper defines the various stages of diversion and tries to clarify where and how certain diversion procedures may apply. The pretrial form of diversion is emphasized; some issues that arise in pretrial settlement are examined:

- . should a charge be laid?
- . should consent be the basis of pretrial settlements?
- . should the offender be required to admit responsibility?
- . how are cases to be terminated?
- . is there "double jeopardy"?
- . is there a right to a speedy trial?
- . will the rules of evidence apply at pretrial settlement?
- . will the accused in a pretrial settlement have a criminal record?
- . how to ensure equal consideration in diversion?
- . should pretrial settlements be conducted in public?
- . will diversion programs save us money?

Despite the risks involved, it is recommended that pretrial diversion be encouraged. Programs should be based on the consent of the parties, run under the supervision of the prosecution by competent administrators, supported by community service programs, be open and accountable in their procedures, and should have counsel available to ensure that accused persons fully understand what they are consenting to.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues Program Description	East York Community Law Reform Project			Operational Legal Theoretical

REFERENCE: Law Reform Commission of Canada. Studies on diversion. Ottawa: Information Canada, 1975. 250 p.

This report presents some of the research studies that arose from the East York Community Law Reform Project, a project designed to extend the process of law reform to those most directly affected by the administration of criminal justice: the police, offenders and victims. Included are papers on:

- . the help seeking patterns of East York residents and the role of the Neighbourhood Information Centre;
- . the attitudes of Metropolitan Toronto police officers towards their work and to the CJS;
- . statistical analyses of the handling of juveniles by Youth Bureau officers and on the discretion exercised by officers in charging adult offenders.

The working paper on diversion is included in the final section.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues				Legal Theoretical

REFERENCE: Law Reform Commission of Canada. Studies on sentencing. Ottawa: Information Canada, 1974. 215 p.

This report contains three papers which represent the Commission's early work on sentencing and dispositions, and on diversion and its place in a contemporary assessment of the criminal process. It is held that "the questions of dispositions in the criminal process go beyond the traditional concerns about sentencing and involve any disposition from the reception of the complaint by the police to the release and after-care of offenders".

Contained in the volume are "The principles of sentencing and dispositions" (Working Paper 3), "Alternatives to the adversary system" by John Hogarth, and "The reform of punishment" by Paul Weiler.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey Program Descriptions Guidelines and Standards Issues	Night Prosecutor Program, Columbus Citizen Dispute Settlement, Miami Urban Court Program, Boston Conflict Resolution Dispute Center, N.Y. Community Dispute Services Project, Rochester	Dispute Settlement	Mediation Arbitration Referral	Operational Legal Theoretical

REFERENCE: McGillis, Daniel and Mullen, Joan. Neighbourhood Justice Centers: An analysis of potential models. Washington, D. C.: Office of Development, Testing, and Dissemination, LEAA, October 1977. 202 p.

The purposes of this report are to review selected dispute processing projects currently in operation, and to make recommendations for the development of "neighborhood justice centers" (NJC) which are appropriate for experimental application.

Recently projects have been developed which are similar to the broad definition of the NJC; that is, they provide a forum for the resolution of minor disputes. Common elements include: arbitration and mediation techniques; the possibility of referral to the courts (in cases of failure to conciliate); the use of social work staff and/or referral to social agencies; and fact finding and related functions of the hearings. The oldest of these (the Columbus Night Prosecutor Program) began in 1971.

A number of dispute processing projects were studied in order to provide a basis for recommendations regarding the NJC model of dispute resolution. Site visits to these programs were made; interviews and observations were the information-gathering mechanisms.

Chapter I gives an overview of dispute processing mechanisms and makes recommendations for the improvement of dispute processing in the US.

Chapter II addresses the major options regarding the operation of NJCs: the nature of the community being served, sponsoring agency, project location, case criteria issues, referral sources, intake procedures, resolution technique, project staff, hearing staff training, follow-up techniques, and costs and evaluation. The advantages and disadvantages of the various options are discussed, with concrete examples from existing projects where possible. The authors are against developing a single model for NJCs; instead, the discussion is aimed at assisting community planners in making an informed choice in implementing an NJC.

Chapter III describes in detail the history, organization and functioning of the 6 projects chosen for intensive study under the following headings: program development, proposal preparation, grant processing, program implementation, program caseload, current operations, case criteria, referral sources, resolution technique, hearing staff qualifications, project organization, staff training, goal achievement and general observations. See individual annotations for descriptions of each program.*

*One of the programs, the San Francisco Community Board Program, was still at the proposal stage at the time of publication and hence has not been annotated here.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues				Operational Theoretical

REFERENCE: Morton, M. E. and West, W. G. "The myth of community in the ideology surrounding diversion." A paper prepared for the National Conference on Diversion, Quebec City, October 1977. 15 p.

This paper raises four questions that the authors suggest should be examined by diversion proponents:

- . What are we diverting offenders to; another agency or to the community at large? There is controversy between the advocates of treatment and those who hold to the non-intervention position.
- . What is the community? There are conceptual problems around the definition of community; the image of consensus evoked by the term may be misleading. There is the danger of widely varying administration of justice if diversion is left to community control.
- . At what point in the processing of divertees should "the community" primarily be involved?
- . What is the impact of the community's involvement with offenders? There is no evidence as to whether diversion groups drawn from the community make better or worse decisions than professionals. Victim studies have provided some evidence that many community members prefer not to be involved.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Guidelines and Standards Issues				Operational

REFERENCE: National Advisory Commission on Criminal Justice Standards and Goals. "Diversion." Chapter 2, Courts Task Force Report. Washington, D.C.: LEAA, 1973, 27-41.

This report differentiates diversion from screening. Diversion "refers to halting or suspending before conviction formal criminal proceedings against a person on the condition or assumption that he will do something in return. Screening, on the other hand, involves the cessation of formal criminal proceedings and removal of the individual from the criminal justice system".

Several benefits of diversion are discussed -- its economy, the fact that it allows adjustment for inevitable overcriminalization, and that it broadens the resources that can be used to deal with offenders.

Several standards are proposed in the areas of diversion criteria and diversion procedures.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Guidelines and Standards Program Survey Issues		Deferred Prosecution Public Inebriate Diversion		Operational Legal Theoretical

REFERENCE: National Advisory Commission on Criminal Justice Standards and Goals. "Diversion from the criminal justice process." Chapter 3, Corrections Task Force Report. Washington, D.C.: LEAA, 1973, 73-97.

After stating the argument for diversion, Chapter 3 discusses the points at which diversion programs have been developed and brief program descriptions are provided for each category of program: community-based diversion, police-based diversion, and court-based diversion. Diversion programs for special problem areas (e.g., the public drunkenness offender, drug abusers and the mentally ill) are briefly described.

Proposed standards for the use of diversion are provided at the end of the chapter; they focus on the need for planning in the total system, the contents of written guidelines for diversion, and the factors to be considered in the diversion decision.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Guidelines and Standards Issues				Operational Legal

REFERENCE: National Association of Pretrial Service Agencies. "Performance standards and goals for pretrial diversion." (Draft) Prepared by the NAPSA Project on Standards and Goals for Pretrial Release and Diversion for the NAPSA Annual Conference, Washington, D.C., May 1977. 79 p.

The draft version of the pretrial diversion standards cover a wide area of concern in the implementation of the diversion concept. Directed towards adult, pre-adjudication diversion, the standards do not touch on issues which the CJS can alone answer (e.g., the roles of judges and prosecutors regarding enrollment decisions); rather, they focus on the parameters of responsibilities vested with diversion program administrators, on the philosophy of diversion options, and on minimum standards for legally and efficiently implementing their mandate.

Commentaries on most standards are also provided; some include suggestions for data collection and indices to be used in measuring program performance. Judicial decisions (US) are presented where applicable. Issues raised by diversion critics and researchers are also included.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues Guidelines and Standards	Citizens Probation Authority	Screening		Operational Legal

REFERENCE: National District Attorneys Association. Screening of criminal cases.
Chicago: NDAA, 1972. 76 p.

This compilation of materials discusses the discretionary charging decision of the prosecuting attorney. An overview of prosecutorial discretion emphasizes the policy considerations involved, as well as constitutional and legal considerations from the perspective of US case law.

The experience of the Citizens Probation Authority in Michigan is described.

The final part of the document describes current screening methods used in prosecutor's offices and then proposes new standards which would eliminate unnecessary and ineffective procedural steps as well as preserving the rights of the individual. The decision to institute the criminal process should be solely in the hands of the prosecutor. Screening should occur as close to the time of arrest as possible.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues		Deferred Prosecution		Operational Legal

REFERENCE: National District Attorneys Association. Monograph on philosophical, procedural and legal issues inherent in prosecutor diversion programs.
Chicago: NDAA, 1974. 16 p.

This practitioners' manual contains an analysis of some major issues relating to the standardization of diversion procedures, legal and constitutional issues, and the basis for diversion programs. The primary reason for diversion is not the reduction of caseloads, for that is only an incidental benefit; rather, the basic purpose is to reduce crime and provide better protection for societal values.

The need for, and value of, the standardized exercise of prosecutorial discretion is outlined. The principle of prosecutorial discretion is well established in US case law and is not a "usurpation" of legislative or judicial authority but is another form of the prosecutor's traditional discretion.

It is proposed that prosecutors use a standard of "reasonable satisfaction" of guilt when deciding whether a case is eligible for diversion. The major criterion in deciding whether to divert should be "whether commission of that offense is serious enough to warrant a standard criminal prosecution as opposed to a diversion program". Other factors are: the propriety or nature of the motives of the complainant; the fact that the offence has been prosecuted only infrequently in the past; the fact that the offender may be prosecuted for the same or related offence in a different jurisdiction. Also to be considered are the offender's cooperation with law enforcement and his reimbursing the injured party.

Prosecutors should work with police in developing uniform rules and should encourage police to file written reports when exercising their discretion. The results of diversion should be put in writing and periodically reviewed by the prosecutor.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues				Legal

REFERENCE: Denis, Gerard. "Study on the legality of the Conciliation Project between the CSSMM (Social Services Centre of Metropolitan Montreal) and the Municipal Court of Montreal." Montreal, April 22, 1977. Mimeo. 20 p.

This opinion on the legality of a proposed conciliation project in Montreal analyzes the case law and statutes which bear upon the issues raised by the agreement between Le Centre de services sociaux de Montreal metropolitain and the Chief Prosecutor of the Municipal Court of Montreal.

The author finds that the agreement would be illegal if implemented, because it would contravene a number of sections of the Criminal Code of Canada. The rationale for this argument is discussed in detail.

SEE ALSO:

Proulx (n.d.) for another opinion of the legality of the Conciliation Project.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey Issues		Dispute Settlement		Operational Legal Theoretical

REFERENCE: Fisher, Eric A. "Community courts: An alternative to conventional criminal adjudication." American University Law Review, 24, Summer 1975, 1253-1291.

The increase in community involvement in the criminal justice system is reflected in the movement towards greater citizen involvement in the courts. The article surveys arbitration-mediation programs in operation in the United States and the functions of courts in other settings: university courts, prison and labour union disciplinary hearings, and some foreign examples (drawn from the USSR, Cuba, China and East Germany).

The likelihood of acceptance of the community court concept is discussed and a model community court proposed. The community court should be an alternative not an adjunct to the system. It would alleviate congestion and delay in the formal courts, and could serve to promote conciliation of interpersonal disputes and the reintegration of delinquents.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Element Issues			Restitution	Operational

REFERENCE: Galaway, Burt. "Is restitution practical?" Federal Probation, XXXI, September 1977, 3-8.

The practical and operational issues involved in implementing a restitution program are discussed. Two methods of determining the amount of restitution are identified: the arbitration model in which a neutral expert arrives at the figure, and the negotiation model in which the victim and offender are brought together and an amount is negotiated between them. There is also the question as to whether money should be paid for intangibles such as "pain and suffering".

Another concern is the enforcing of the sanction once established, especially for the indigent offender and the reluctant, solvent offender. Whether to take victim culpability into account is a third major issue. Galaway emphasizes the need for review and assessment of restitution programming experience.

Recommendations are made on each issue raised. For example, there should be no major problems in enforcing restitution orders if installment payments are authorized and the implementation of the agreement is monitored. The problem of the indigent offender can be ameliorated by the use of job finding services, public employment and personal service restitution. The reluctant offender can be dealt with by a more severe sanction if he refuses to complete the restitution order.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Element Issues			Restitution	Operational Theoretical

REFERENCE: Galaway, Burt. "The use of restitution." Crime and Delinquency, 23, 1, 1977, 56-67.

This review of the contemporary application of restitution in corrections (in pretrial diversion, as a condition of probation, and as part of residential correctional programs) outlines some of the issues involved in the concept -- including the lack of specificity of the concept, its purpose, the relationship of restitution to other criminal justice sanctions, and the role of the victim.

Among the pretrial programs that require restitution are Project de Novo, Project Remand, the Pima County Adult Diversion Program, the American Arbitration Association's Dispute Settlement Centers, and the Night Prosecutor Program in Columbus.

A framework which specifies the different types of restitution is required (e.g., whether the recipient is the victim or the community, and whether the reimbursement is monetary or in service). Clarification of the intended beneficiary of restitution should be attempted; is it the victim, the offender who receives less severe sanctions, or the CJS which experiences reduced workloads? Another possible purpose might be the reduction in the need for vengeance in the administration of the criminal law because, in restitution, the offender is perceived as a responsible person.

Those involved in restitution programs and theory must specify the kinds of offenders and offences appropriate for restitution, the instances when restitution is appropriate as a sole sanction, when it should be combined with other sanctions, and when it is

inappropriate. The degree of victim involvement should be specified more than it has in the past.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues Program Survey Guidelines and Standards		Dispute Settlement Public Inebriate Diversion Deferred Prosecution Drug Diversion		Operational Legal Theoretical

REFERENCE: Galvin, John, J. et al. Alternatives to prosecution. Vol. 3, Instead of jail: Pre- and post-alternatives to jail incarceration. Washington, D.C.: NILECJ, LEAA, U.S. Department of Justice, 1977. 94 p.

This volume focusses on three major areas of concern to both policy makers and program personnel: the policy issues relating to diversion, the planning of diversion programs, and the ways in which the diversion concept is currently being put into practice.

Part I outlines the rationales for diversion, the pros and cons put forward by its supporters and skeptics, and the pivotal policy issues raised by such programs. Three kinds of concerns should be considered when planning policy: legal and ethical, law enforcement, and economic; the authors suggest that a policy or practice has to pass at least some minimal tests in each area if it is to prove viable. The 1977 diversion standards recommended for adoption by the National Association of Pretrial Service Agencies are provided.

Part II suggests that the planning of diversion programs should give consideration to organizational arrangements, priorities in case selection, prospective workloads and related organizational and staffing requirements. Suggestions for program planners are given in each category, based on experience from established programs. Current knowledge about the effects of diversion is summarized; the need for thorough, on-going program evaluation is emphasized.

The advantages and disadvantages of differing approaches to diversion are discussed in Part III. In this section, the various types of diversion programming are reviewed with examples provided from US practice. Examples are presented in the following categories: citizen dispute settlement, public inebriate diversion, drunk driving, the vocationally disadvantaged, and the diversion of drug offenders.

This document provides a valuable discussion of both policy and practical issues related to the implementation of pretrial diversion, and also gives an up-to-date summary of the major approaches that have been attempted in various areas of diversion programming.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues				Operational Theoretical

REFERENCE: Glinfort, E. K. "Formal criminal justice diversion." A paper prepared for the November 1974 Meeting of the Continuing Committee of the Deputy Ministers Responsible for Corrections. 16 p.

This paper outlines the rationale for diversion and its objectives as stated in a variety of sources. It is pointed out that the objectives are often competing and make a clear direction in terms of an operational approach next to impossible. The relationship of diversion to such concepts as decriminalization is also touched on.

The problem of operationalizing diversion is discussed in terms of the protections to the alleged offender and the effect on the community.

The following definition of diversion was developed by the author: "Formal criminal justice diversion refers to the routine suspension of further criminal justice processing at any point of decision-making from first contact with police to final discharge for any predetermined category of offender otherwise liable to such continued processing, coupled with referral to a community program, open as well to community referrals, on condition that further processing will be terminated if he fulfills obligations specified by the program."

The need for entry criteria and program guidelines is emphasized. A systematic approach to the selection of suitable diversion candidates is proposed: "small, clearly identifiable target groups or areas which could be perceived by the decision makers as sufficiently homogeneous to permit routine referral to a specific community program".

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey Issues	Project Crossroads	Deferred Prosecution		Operational Legal

REFERENCE: Goldberg, Nancy E. "Pre-trial diversion: Bilk or bargain?"
NLADA Briefcase, 31, November-December 1973, 6-15.

Goldberg provides an overview of the issues involved in pretrial, prosecutorial diversion programs as they existed in the early 1970's.

The basis of most programs is prosecutorial discretion: intake in such "court based" programs as Project Crossroads occurs at the point of prosecutorial decision-making. The main features of Project Crossroads are discussed: the type of offences (misdemeanours), the 90 day intensive rehabilitation program, the confidentiality requirements, and the fact that the participation of failed divertees may be noted in pre-sentence reports when their cases come to trial. Project Crossroads eventually became a component of the District of Columbia Superior Court, after originally being under the administrative auspices of an outside agency.

A number of reservations are expressed about pretrial diversion. There is a need for safeguards around issues such as: the invasion of privacy of an individual not yet adjudicated guilty of an offense; the possible adverse effect of participation should an individual be charged with an offence in the future; the danger that a person's statements made to program staff may be susceptible to inspection by a court; the effect of taking an essentially judicial function outside of the criminal justice system and the possible abuse of discretion in the low profile procedures of administrative agencies; and the need for defense counsel becoming an integral part of diversion procedures. The decision to cooperate in a pretrial diversion program is in some respects similar to a plea bargain in that the decision may result in the waiver of some rights.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues	Manhattan Court Employment Project			Operational Legal Theoretical

REFERENCE: Gorelick, J.S. "Pre-trial diversion: The threat of expanding social control." Harvard Civil Rights-Civil Liberties Law Review, 10, 1975, 181-214.

This article analyzes diversion in terms of its three basic components:

- . its goal of rehabilitating rather than punishing;
- . its assumption that an individual's dangerousness is more important than his culpability in determining the appropriate response of the criminal law;
- . its reliance on discretionary practices to avoid the procedures of normal criminal processing.

There is tension between the theory of diversion and its goal of reducing the scope of the criminal law. Diversion is incompatible with the three traditional checks on government control: the requirement of criminal culpability before the government can intervene in the life of the citizen, the concept of proportionality between crime and punishment, and the provision of due process to ensure accurate fact-finding and protection against the arbitrary use of power.

Current diversion programs are described in terms of who is diverted, screening and entry procedures, counselling and services, and termination procedures. The Manhattan Court Employment Project is discussed.

The trend towards diversion is related to the juvenile court system and indeterminate sentencing; all are manifestations of allegiance to the same rehabilitative trend.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Training Manual Guidelines and Standards		Dispute Settlement	Mediation Arbitration	

REFERENCE: Grassroots Citizen Dispute Resolution Clearinghouse. Community Board Program: Training sessions, June 1977. Pittsburgh, Pa.: The Clearinghouse. 110 p.

This manual was developed for use in training sessions for community residents who are learning to mediate in citizen disputes, and includes role playing suggestions and other guidelines for mediators. Exercises to increase communication skills are provided, as well as a description of how a Community Board panel works. Sample forms that could be used by the Boards are also contained in the manual.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues Program Survey		Addict Diversion Public Inebriate Diversion Deferred Prosecution		Operational Legal Theoretical

REFERENCE: Harlow, Eleanor. "Diversion from the criminal justice system." Crime and Delinquency Literature, April 1970, 136-164.

This article is an early overview of the rationale for diversion, diversion programs, and the issues as they existed in the late 1960's. Included are program categories that would no longer be identified as purely diversionary, e.g., civil commitment for narcotics addicts. Two sections describe programs for addicts and the chronic drunkenness offender. The legal and theoretical issues around diversion are discussed in terms of juvenile and petty misdemeanor offenders.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues		Deferred Prosecution		Legal

REFERENCE: Skoler, Daniel L. "Protecting the rights of defendants in pretrial intervention programs." Criminal Law Bulletin, 10, July-August 1974, 473-492.

While recognizing that pretrial intervention programs are promising innovations, the author anticipates the possible legal challenges to PTI in the US. In 1974 it was estimated that 25 areas had active PTI programs, diverting about 10,000 defendants annually into services-oriented programs. Skoler explores whether and how the rights of the accused are being protected under PTI with respect to selection, participation and termination.

Deferred prosecution programs share some features which raise important civil rights concerns:

- . the accused remains under CJS control with his liberty dependent on conformity to the demands of the program;
- . the accused remains subject to prosecution for alleged criminal conduct if he fails to meet requirements for successful completion or if he fails to convince the prosecutor or judge that his participation merits dismissal of the prosecution;
- . the accused must waive or at least postpone assertion of certain constitutional protections available to those accused of crime.

The following "civil liberties" issues are discussed:

- . the rights of the accused when under the program's jurisdiction such as the right to a speedy trial, to due process, and to equal protection;
- . the way in which projects terminate unsuccessful participants;
- . the practice of demanding a formal plea of guilty as a condition of diversion participation;
- . the need for legal counsel at the initial decision to enter the PTI program, at the hearing or procedure by which the unsuccessful or doubtful case is terminated and returned to normal processing for prosecution.

It is concluded that the therapeutic and legally advantageous characteristics of PTI do not obviate the need for concern with such issues.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Description Program Element	4-A Program, Rochester	Dispute Settlement	Arbitration Mediation	

REFERENCE: Stulberg, Joseph B. "A civil alternative to criminal prosecution."
Albany Law Review, 39, 3, 1975, 359-376.

This article provides a detailed description of the philosophy, procedures, experience and personnel of the Rochester, New York, Arbitration as an Alternative to the Criminal Warrant Program (4-A), which began in 1973.

The Rochester 4-A project is voluntary and begins when the aggrieved party seeks criminal prosecution against another person by filing a complaint at the court. If the Complaint Clerk finds that the situation fits the project criteria (misdemeanor and an ongoing relationship between parties), the program is explained to the complainant. Personnel from the District Attorney's office review all forms and have the right of approval. A form is sent to the accused informing him that he has 10 days to elect the arbitration option; he is advised to consult a lawyer.

At the arbitration hearing, a combination of mediation and arbitration techniques are used, depending on the situation. There are 50 trained arbitrators available from all levels of the community. The 4-A program is different from many other diversion programs in that an admission of guilt or moral responsibility is not required. On average, there are 22 days between the complaining party's submitting to arbitration and a hearing. The hearing can be concluded either by an arbitrator's aware or a consent agreement among the parties; over 60% of hearings resulted in consent agreements. Conduct is not assessed in terms of guilt or innocence. Parties may be seen alone or together during the hearing.

The second part of the paper discusses the concept of neutrality in adjudication and the ways in which the 4-A program attempts to ensure the neutrality among its arbitrators.

SEE ALSO:

Conn and Hippler (1974) and Kole (1973) for descriptions of the Philadelphia 4-A program. Stulberg (1977) for a discussion of the training methods used to train "neutrals" for 4-A program responsibilities.

McGillis and Mullen (1977) for a more recent description of the Rochester program, now apparently called "Community Dispute Services Project".

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Training Manual		Dispute Settlement	Mediation Arbitration	

REFERENCE: Stulberg, Joseph B. "Training impartial intervenors to resolve community disputes." New York: American Arbitration Association, 1977. Mimeo. 10 p.

This paper briefly outlines the methods used by the American Arbitration Association to train persons as "neutrals" for the purpose of mediating-arbitrating disputes (termed "med/arb" by the author). The topics included in the training program are the selection of the participants, the pre-training preparation, and the training format. This program has been used in Rochester, San Francisco and Akron.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey Issues				Operational Theoretical

REFERENCE: Vorenberg, E. W. and Vorenberg, J. "Early diversion from the criminal justice system: Practice in search of a theory." In L. E. Ohlin, Ed., Prisoners in America, Englewood Cliffs, N.J.: Prentice-Hall, 1973.

The meaning of the term diversion is discussed, what is known about the programs or approaches to it, and what issues must be considered regarding the concept and its application. Early diversion is a way of starting the correctional process sooner than has been possible in the past. There are several underlying assumptions of diversion:

- . every effort should be made to avoid relieving the offender of the responsibility of managing his own life since the goal of corrections is to make him better able to cope on his own.
- . labelling theory has hypothesized that by imposing the status of criminal, recidivism becomes more likely. Diversion attempts to avoid that process.

Diversion programs are described in relation to the point at which diversion can occur: police diversion, from pretrial detention, pretrial diversion, post-conviction diversion, and "special population" diversion programs (juveniles, drug users, drunks, and psychiatrically disturbed persons).

Issues to be taken into account in deciding what scope and form diversion should include:

- . the effect on deterrence;

- . the failure to restrain (i.e., not taking dangerous people out of circulation);
- . diversion to what? (administrative and funding agencies have not considered the nature of the services to be provided);
- . who makes the diversion decision? (it is possible that there will be broad un-reviewable discretion that puts unfair burdens on the accused and which does not reflect the interests of society and the rehabilitative needs of the offender);
- . the lack of evaluation (two reasons seem to be lack of research funds and reluctance of programs to be intensively evaluated).

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey Conference Report	Conflict Resolution Dispute Center, New York Family and Neighborhood Services, Newark, N.J. Bar-Citizen Dispute Settlement Program, Orlando, Florida Urban Court Program, Boston Community Assistance Program, Chester, Pennsylvania	Dispute Settlement	Mediation Arbitration	

REFERENCE: Wahrhaftig, Paul, ed. Citizen Dispute Resolution Workshop: Report. Philadelphia, June 1976. Pittsburgh, Pa.: Pennsylvania Pretrial Justice Program, American Friends Service Committee, 1976. 37 p.

This report presents brief descriptions of five programs which use conflict resolution techniques to settle interpersonal disputes which have come to the attention of the system. Not all, however, are within the definition of post-charge pre-plea diversion used in this bibliography.

The Insitutute for Mediation and Conflict Resolution (IMCR) Dispute Center in New York is one example of a community-based mediation program which was designed as an alternative to arrest and court involvement. Over 50 residents have been trained as mediators for cases which are referred by officers of two precincts; in some instances the defendant has been arrested for a misdemeanor and the hearing is held while the arraignment hearing is delayed. Nine out of 10 cases are mediated. If there is any problem in enforcing the settlement decided on at the hearing, a social worker may intervene. Sometimes settlements involve restitution, both monetary and non-monetary.

Another program, the Newark Municipal Court's Family and Neighborhood Services, obtains 50% of its referrals from police, although the Court Clerk also refers some clients, as do other agencies. Informal evening hearings are held 3 times a week; the complaint is discussed with the counsellor assigned to the case. Attempts are made to resolve the underlying reason for the dispute.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues Guidelines and Standards		Deferred Prosecution Addict Diversion Public Inebriate Diversion Dispute Settlement		Operational

REFERENCE: Watkins, Ann M. Cost analysis of correctional standards: Pretrial diversion. Vol. I and II. Washington, D. C.: U. S. Department of Justice, NILECJ, LEAA, October 1975. Vol. I, 22 p. Vol. II, 63 p.

The purpose of these two volumes, as indicated in the preface, is to analyze and estimate the costs of implementing the standards outlined in the National Advisory Commission on Criminal Justice Standards and Goals Corrections report and to provide cost guidelines and cost estimation techniques for use by jurisdictions in assessing the costs of their diversion activities.

Volume I provides a brief background on the standards, discusses the findings of the cost analysis of these standards, and highlights the policy implications of the analysis.

Volume II reports the cost and resource implications of correctional standards related to pretrial diversion programs, and is intended to be used by analysts, by providing them with detailed technical descriptions of estimation techniques applicable in analyzing the costs of diversion in any particular local jurisdiction. Costs are presented for two types of diversion program: employment and drug diversion. (Less detailed analysis is provided for alcohol diversion, mental illness diversion, and conflict intervention activities providing arbitration and counselling.) Sample budgets, data sources, specific budget items, average costs, and averted costs are provided for each. External costs and opportunity costs incurred in diversion activities are analyzed, as well as other CJS expenditures that may arise because of diversion programs.

Some conclusions drawn from the analysis are:

- . the type of activity chosen by diversion program (e.g., employment or drug treatment) will determine the costs;
- . based on available data, criminal justice expenditures per client for employment diversion range between \$795 and \$1,079, and for drug diversion between \$655 and \$817;
- . external costs often exceed CJ costs;
- . external costs vary widely depending on the type of service to which the diversion client is referred and the treatment modality used;
- . the opportunity costs are probably high for the individual client but low for society as a whole: the risk to society of increased crime committed by clients is minimal;
- . the averted costs (that is, the benefits) depend on the path the defendant would have followed had there been no diversion alternative. The averted CJ costs are low for diversion activities whose clients would not have gone to trial;
- . the decision maker should consider (and his analyst should estimate) the total costs of diversion, not just CJ expenditures.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Guidelines and Standards Issues		Public Inebriate Diversion		Operational

REFERENCE: Weis, Charles W. Diversion of the public inebriate from the criminal justice system. Washington, D.C.: LEAA, NILECJ, U.S. Department of Justice, September 1973.

This "prescriptive package" outlines guidelines to help communities establish a diversion program for public inebriates and other residents of Skid Row. Oriented towards the program planner, the major topics include: mobilizing community support, securing financial resources (a listing of U.S. funding sources), medical evaluation and subacute detoxification services, Shelter services, intermediate care, residential living facilities, aftercare, women's home, evaluation, and coordination and administration. For each type of service that might be chosen, there are suggested program strategies, staff requirements, and costs.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues		Deferred Prosecution		Legal

REFERENCE: Zaloom, J. Gordon. "New Jersey's PTI cases: Institutionalization in process." A paper prepared for the National Conference on Pretrial Release and Diversion, Washington, D.C., May 1977.

This paper reviews the development of diversion programming in New Jersey in terms of the projects and the case law that has arisen in response to some of the legal/constitutional issues raised by PTI programs in the areas of prosecutorial discretion, eligibility criteria, and rejection appeals. The effects of the rules and court decisions on the operation of the programs is also outlined.

The New Jersey Supreme Court decision which sparked much of the change is also included.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey Program Description Issues	PTI Program, Atlanta PTI Program, Baltimore Court Resource Project, Boston Project Intercept Project Crossroads PTI Project, Dade County Operation de Novo Project FOUND (Baltimore) PTI Project, Hudson County, N.J. Court Rehabilitation Project, Syracuse	Deferred Prosecution	Employment Counselling Referral Education	Operational Theoretical

REFERENCE: National Pretrial Intervention Service Center. Descriptive profiles on selected pretrial criminal justice intervention programs. Washington, D.C.: American Bar Association Commission on Correctional Facilities and Services, April 1974. 49 p.

This monograph contains profiles of 10 diversion programs prepared by the Clearinghouse staff of the NPISC. It is limited to deferred prosecution projects which have: formalized eligibility criteria, structured delivery of service components (including job placement, vocational training, career counselling and related supportive assistance), and dismissal of criminal charges for successful participants. The publication is intended for criminal justice planners and officials, policy makers, and others interested in implementing or revising pretrial programs.

The philosophy and theory of PTI programs are discussed; the projects emphasize the utility of manpower service delivery schemes to achieve participant social and economic stability, and the use of existing community resources for services to the divertees. There are three beneficiaries of PTI: the justice system which can conserve prosecution resources and reduce court case backlog; the participant, who should receive positive resocialization; and the public, which benefits from the close community supervision received by the divertee.

The triggering mechanism of these programs is prosecutorial discretion in charging. Participants are involved for 3 to 6 months. With one exception, each project intervenes at the criminal court pre-arraignment stage. Priority is given to first offender misdemeanants, and often there are additional criteria involving age, residency, the type of criminal offence, and unemployed or underemployed status.

The auspices of the 10 projects vary; 4 are court-based models, 5 are sponsored by independent consulting firms, and 1 is administered by a state employment agency. All operate out of community-based offices detached from the referral unit.

Most projects have two screening interviews; the first to determine if the defendant fits the admission guidelines and the second to determine motivation. Usually, the process involves court authorization of a minimum two week continuance and recognition release to prepare a social history. On average over the 10 programs, one-half of the cases screened receive provisional acceptance (varying from 35% in Project Crossroads, to 80% in the Court Resource Project).

Only 4 of the 10 projects budgeted for evaluation and evaluation has been typically of low priority in the action phase. Statistical forms are used by many projects but little use is made of the information for management and evaluation purposes. Most evaluation plans propose that data be collected on the reduction of recidivism, employment stability, and benefit-cost analysis.

The 10 projects which are described in some detail are: Atlanta PTI Program, Baltimore PTI Program, Boston Court Resource Project, Project Intercept, Project Crossroads, Dade County PTI Project, Operation de Novo, Project FOUND (Baltimore), Hudson County PTI Project, and the Syracuse Court Rehabilitation Project.

Each project is described under the following headings: authorization and establishment (establishment, sponsorship and funding); eligibility criteria (age and prior record, included and excluded offences, other criteria, special referrals and operating agreements); program duration; termination (successful, extensions, and unsuccessful); staff, participant screening and selection; project services (counseling, vocational training, remedial education, job placement, other supportive services); project research and evaluation (structure and studies issued); and, participant characteristics and results (recidivism, manpower, and costs).

This document is a valuable resource tool for those interested in operational details of the major diversion programs operating on the deferred prosecution model.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues		Deferred Prosecution	Restitution	Operational Legal

REFERENCE: National Pretrial Intervention Service Center. Pretrial intervention legal issues: A guide to policy development. Washington, D. C.: ABA, February 1977. 54 p.

This volume, a companion to A guide for program development also by NPISC, incorporates recent developments in establishing a uniform policy to guide diversion program procedures and practice as reported in the literature, case law, and various reform measures. Key points in the diversion intervention sequence are identified, potential legal problems outlined, and possible procedural safeguards to ameliorate the defects are suggested. Also included are current developments in law, policy, and standardization efforts relating to program administration.

This is the most thorough exposition of legal (and, to a lesser extent, operational) issues found in adult pretrial diversion literature. Unfortunately, the case law is American and thus of limited applicability to the Canadian situation. However, the document does point out areas that should be of concern to Canadian policy makers as well as their US counterparts; e.g., the use of the guilty plea, the decision to terminate, eligibility criteria and the potential "unfairness" of excluding certain classes of persons. A section on restitution is also included.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Guidelines and Standards Issues		Deferred Prosecution		Operational Legal Theoretical

REFERENCE: National Pretrial Intervention Service Center. Pretrial intervention services: A guide for program development. Washington, D.C.: American Bar Association, March 1977. 105 p.

This guide provides the local planner interested in initiating pretrial intervention (PTI) programs with advice on the "strategic planning" necessary for a successful program. The manual offers general guidelines, rather than specific "how to" statements because a pre-packaged program model could prevent local personnel from developing handbooks appropriate to their own community's situation.

The first section outlines PTI efforts from an historical perspective. During the policy development stage, the factors to be considered are: philosophical issues (including the expansion of social controls), the target population to be selected, and the issue of differential treatment for divertees. Policy areas to be addressed simultaneously include the exercise of discretion and its control, program administration, sanctions, and accountability.

The second section develops the planning sequence, the administration and management of the program, staff selection, interagency coordination, and budgeting program costs.

The final section touches on some of the critical issues to be considered during the developmental stage: legal concerns, political realities, and institutionalization problems. Program areas and the corresponding legal issues include:

- . eligibility criteria; the (US) constitutional principles of due process and equal protection;
- . the decision to divert; the separation of powers;
- . admission of guilt; the waiver of the right to plead not guilty, the privilege against self-incrimination, the right to trial by jury, and to confrontation by witnesses;
- . legal assistance; the right to counsel;
- . hearing prior to reinstatement for prosecution; due process guarantees.

A primary political reality is that PTI programs work with defendants who may need little rehabilitative services simply to get them out of the system. In the beginning, the project is likely to receive non-serious cases because the program must prove itself to justice officials. Another concern of a political nature may be the respective roles of judges and prosecutors. In addition, established civil service systems can wreak havoc with the hiring of non-traditional staff.

The integration of the demonstration project into a permanent court service program is virtually inevitable, according to the authors. They suggest that consideration should be given at the developmental stage to the possible problems that may arise during the transition from a pilot program to institutionalized status.

The appendices contain valuable resource documents for planners. Resource materials from Project Crossroads are provided in Appendix A; eligibility criteria, duties of the screener, research design and success criteria. Manhattan Court Employment Project's materials on program strategies (employment and counselling activities) are contained in Appendix B. Appendix C has reporting forms developed by Abt Associates: screening information, intake information, case progress records, and termination records.

SEE ALSO:

National Pretrial Intervention Service Center (February 1977) for a companion volume on the legal issues in policy development.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey Guidelines and Standards Issues	Accelerated Rehabilitation Disposition, Philadelphia Court Resource Project, Boston Manhattan Court Employment Project Citizens Probation Authority, Columbus	Deferred Prosecution		Operational

REFERENCE: National Pretrial Intervention Service Center. Source book in pretrial criminal justice intervention techniques and action programs. Washington, D.C.: American Bar Association, May 1974. 188 p.

This "source book" is a compilation of previously published material on pretrial diversion* and is intended to serve as a technical assistance handbook to "criminal justice planners and policymakers, legislators, administrators of pretrial intervention programs, and special interest groups working in the area of crime and delinquency". The compilers consider the contents to be a representative sample of strategies and approaches.

The contents of the source book are as follows:

- I The Directory of Pretrial Intervention Planning and Action Programs (1974)
- II A brief prospectus published by the U.S. Department of Labor on their Pretrial on their Pretrial Intervention Programs
- III Four program descriptions: Accelerated Rehabilitative Disposition, the Boston Court Resource Project, the Manhattan Court Employment Project, and the Citizens Probation Authority
- IV Sample court rules and legislation for PTI programs
- V Excerpts from the National Advisory Commission on Criminal Justice Standards and Goals (Courts and Corrections) and from the ABA standards on the prosecution and defense functions
- VI Evaluation research aids on evaluation design and cost-benefit analysis

* Much of the material presented here is annotated individually in this bibliography.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey Issues		Deferred Prosecution Dispute Settlement Drug Diversion Screening		Operational Legal Theoretical

REFERENCE: Nimmer, Raymond T. Diversion: The search for alternative forms of prosecution. Chicago: American Bar Foundation, 1974. 119 p.

This monograph deals with the development of the "new diversion" as well as its roots in the traditional informal practices which the CJS has always used to keep some defendants out of the system or, at least, not incarcerated.

Diversion is defined as the disposition of criminal complaints without a conviction, the noncriminal dispositions being conditioned on the performance of specified obligations by the defendant or his participation in counselling or treatment.

Traditional diversion (i.e., screening) programs are surveyed under the following headings: traditional diversion practices, supervision (Boys Court), and mediation and settlement (worthless checks, consumer fraud complaints, intrafamily disputes). Newer forms of diversion include: counselling, court employment programs (Operation de Novo), counselling in preconviction probation programs (Operation Midway), settlement of disputes (police crisis units and arbitration centres such as the Philadelphia Community Dispute Settlement Center), and treatment programs (statutory referrals of drug offenders and the Washington diversion program which refers mentally disturbed offenders to community mental health facilities). Nimmer concludes that most programs are dominated by counselling ideals.

Some of the implications of the new diversion are discussed in the final chapter: discretion of CJS officials, statutory diversion, the interests of the defendant and victim, the influence of program staff's perceptions on diversion decisions, and the need for empirical assessment of diversion programming.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Survey Issues				Operational

REFERENCE: Parnas, Raymond I. "Prosecutorial and judicial handling of family violence." Criminal Law Bulletin, 9 November 1973, 733-769.

This article reviews available information on the handling of intrafamily disputes and is based on information collected in 1970 through a literature survey and field visits. The importance of the area and the relatively meagre efforts devised to handle such disputes are emphasized. Three types of approaches to the problem are described — prosecutor-based projects, community-based programs, and those developed in the courts.

The Philadelphia Community Dispute Settlement Center is one example of a community model which has been implemented in several areas in the U.S. from the late 1960's on. Storefront offices use arbitrators, some of whom are non-professionals, who have been trained in mediation techniques. Legal rules of evidence are not followed, and the arbitration award is binding and enforceable in court.

The author suggests that the handling of domestic disputes by the criminal courts is an example of the failure of the criminal process. Family courts are increasingly taking over intrafamily assaults. Some examples of approaches in the court setting are provided.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues		Addict Diversion		Operational Legal

REFERENCE: Perlman, Harvey S. Legal issues in addict diversion: A layman's guide. Washington, D. C.: Drug Abuse Council and ABA, September 1974. 55 p.

The purpose of this pamphlet is to examine some legal implications of drug addict diversion programs; it is intended for use by program staff, researchers and non-lawyer professionals.

It is pointed out that the legal concerns around diversion are in a state of constant change, in part because the courts have not had the opportunity to solve the unique legal issues raised. Issues in addict diversion are much the same as those presented in other PTI programs, but they are sharper — there are higher stakes for the defendant, more serious penalties are involved, there is usually longer participation in addict diversion programs than PTI generally, and the records generated in drug abuse therapy are particularly sensitive in nature.

Using the stages of addict diversion, specific issues arising in each are discussed in non-technical terms:

- the use of interviews and urinalysis in order to establish addiction;
- the selection and admission of addicts to diversion programs: eligibility requirements, drug treatment as a condition of diversion, the right to a speedy trial and to counsel, and the waiver of other rights;
- the administration of diversion programs: the role of the prosecutor and the court, the right to treatment, confidentiality of communication between divertees and program staff, expungement of records, and liability for neglect and misconduct;

- . the termination of participants: procedures, legally permissible grounds, and successful and unsuccessful terminations.

It is emphasized that the analysis of legal issues is inconclusive because of the state of flux as the courts apply the general principles of the US constitution.

SEE ALSO:

Perlman and Jaszi (1975) for a more detailed, legalistic analysis of the same issues.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues		Addict Diversion		Operational Legal

REFERENCE: Perlman, Harvey S. and Jaszi, P. A. Legal issues in addict diversion: A technical analysis. Washington, D. C.: Drug Abuse Council and ABA, 1975. 129 p.

This monograph provides a technical legal analysis of the issues in addict diversion and is aimed primarily at lawyers. The same topics are covered as in Legal issues in addict diversion: A layman's guide only at a more sophisticated level of analysis.

The issues and alternatives are laid out, and where possible, conclusions are suggested. The analysis tried to "set out the various legal perspectives from which (diversion) techniques can be evaluated and to offer the major arguments suggesting caution."

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues Program Survey	Manhattan Court Employment Project Project Crossroads New Haven PTI Project	Deferred Prosecution		Operational Legal

REFERENCE: "Pretrial diversion from the criminal process." Yale Law Journal, 83, March 1974, 827-854.

This article uses the definition of diversion developed by the National Pretrial Intervention Service Center; prosecution is suspended for 3 months to 1 year while the divertee is placed in a community rehabilitation program. The techniques used may include counselling, training, and job placement. If the conditions of the diversion program are satisfied, then the prosecution may be nolle prossed or the case dismissed; if not, the accused is returned to the system for normal processing.

The goals of diversion (again as developed by the NPISC) are: to reduce court workloads and conserve court resources for more serious cases; to reduce recidivism by providing services more effectively and more cheaply than incarceration; and, to benefit society by the training and job placement of previously unemployed persons.

An overview of diversion programming is provided. Diverted populations are described in terms of the eligibility criteria used. It is common to find criteria around residency, age, charges, prior arrests, unemployment, and a guilty plea (or "moral responsibility"). The prosecutability of divertees is, in most cases, determined informally. There is a risk, then, that those who should be screened out are placed in a diversion program. There has been a failure to define the boundaries at both "ends" of the eligibility continuum. Many diversion cases would have been disposed of by negotiation and plea, because of the non-serious nature of the charges.

In programs not affiliated with the prosecutor's office, intake is initiated by staff inspection of daily arrest lists and personal interviews with those who appear to meet eligibility standards. There are two types of screening; the first involves only one stage (e.g., in New Haven) in which the program staff member recommends diversion immediately after the interview in detention. If granted by the prosecutor, a continuance is requested from the court and the accused is released to the care of the program. The author notes that the decision is often a hasty one, and that the seriousness of the alleged offence is usually the determining factor. In the two stage process, the screener obtains a 1-2 week continuance to enable program staff to conduct further interviews before making the admission decision. In this procedure, there is less haste and allows time for defense counsel to be involved. In Project Crossroads, it is the prosecutor (not program staff) who makes the investigation into the accused's background; also, after the interim continuance, there is an informal conference among the prosecutor, defense and accused. In Manhattan, after investigation the screener approaches the prosecutor to negotiate for diversion and there is no role for defense counsel.

The author notes that prosecutors may play a role in the intake decision even when the program is community-based. In New Haven, for example, the screeners deliberately select cases which they expect the prosecutor to approve. In Manhattan, the screeners were more aggressive and occasionally appealed the DA's decision to his superior or to the arraignment judge.

The judiciary have proved reluctant to interfere with prosecutorial discretion in diversion; some programs are authorized by state enabling rules (e.g., New Jersey and Pennsylvania) but in most the judge is only involved after the decision to divert has been made by the prosecutor.

The role of the defense counsel is particularly important at intake and at re-arraignment or when there is a recommendation for unfavourable termination. Observations of the author indicate that, despite program descriptions, participants often do not have the opportunity to discuss their decisions with counsel. Legal guilt should be a factor in the diversion decision; if the defense counsel believes that the accused could not be found guilty, then he should not recommend pretrial diversion. There should be a hearing before a judge if disagreement arises among prosecutor, program staff and defense counsel regarding the admission of a borderline case.

The major services provided in the programs examined were counselling and job placement. The author concludes that the objectives of counselling are often nebulous; in Manhattan, each counsellor has his own approach with no guiding theory except the aim to change basic social attitudes. In New Haven and Project Crossroads, counsellors concentrate on improving social functioning; supervision and control (of the type provided probationers) is mixed ad hoc with some social services, vocational counselling and personal advice. In job placement, there is also a lack of clear measurement standards. Furthermore, staff tend to concentrate on channeling the accused to state or community employment agencies and do little job development themselves.

Regarding the termination decision, the author found that there was no standard for defining satisfactory performance. In New Haven, the main reason given for unfavourable termination was a "lack of cooperative attitude". In the second round programs, 60% of the terminations were for "uncooperative attitude" or "abscondance".

An analysis of the court records of unfavourably terminated cases in New Haven showed that none went to trial; one-third had cases nolle prossed, and the rest received minor fines or suspended sentences. In Project Crossroads, during its first two years, one-half of the unfavourably terminated divertees had charges dismissed by the courts. These findings suggest that many persons are being diverted that would otherwise have faced only minor involvement with the criminal law (had they been processed normally).

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues Program Description				Operational Legal

REFERENCE: Price, Hugh B. "A proposal for handling of petty misdemeanor offenses."
Connecticut Bar Journal, 42, 3, 1968, 55-74.

The problem of processing petty violations suggests that new procedures for the handling of minor law breaking should be devised. This article describes a 2 stage process by which these petty crimes could be disposed of out of court and offenders would not receive a criminal record. Stage 1 occurs at the local police station and, if necessary, the second takes place in the downtown office of the prosecutor or family relations investigator.

The police would bring an accused person to the police station where the offence would be discussed. There would be no criminal record but the procedure would be considered an arrest for the purpose of attachment of an accused's constitutional rights. The community affairs officer would have the following options: outright release, release with warning, or referral to the prosecutor or family relations officer.

On referral, there would be a hearing conducted by a circuit court prosecutor and family relations officer who would probe problems which precipitated the violation, explore the possibility of referral, and explain the consequences of future criminal action. Statements made at the hearing could not be used in any criminal proceeding. Dispositions would be outright release, release with warning, release with referral, and order for arrest (in cases where the person has twice failed to respond to a summons).

Price explores some of the problems of the approach (e.g., fear by police of false arrest suits, the manpower needs of the new system, and the possibility of abuse by police and potential offenders). He concludes that a properly administered program could reduce court and police workloads, benefit offenders by saving them time, money and arrest records, and improve relations between police and ghetto residents.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Issues				Legal

REFERENCE: Proulx, Jeanne. "A study of the legality of the Conciliation Project submitted by 'Le Centre de services sociaux de Montreal metropolitain'." Montreal, Quebec: n.d. Mimeo. 47 p.

This article, prepared for Le Centre de services sociaux de Montreal metropolitain, defends the legality of the terms of a proposed Conciliation Project and the possibility of incorporating it into the framework of the present legal system.

The Centre proposed to intervene in a selected number of interpersonal disputes that led to the initiation of criminal proceedings by having a mediator-conciliator attempt to deal with the problem that brought the case to the attention of the system. The project is briefly described in terms of entry criteria and its method of intervention. The legal problems arising out of the proposal are thoroughly discussed; case and statute law is included. Some suggestions as to possible improvements in the proposal are made; these would help to clarify some details of the project.

SEE ALSO:

Denis (1977) for a contrary view on the legality of the project.

DOCUMENT CATEGORY	PROGRAM NAME	PROGRAM TYPE	PROGRAM STRATEGY	ISSUES
Program Element			Restitution	

REFERENCE: Saper, Marshall B. "Restitution as a component of diversion."
The Police Chief, June 1977, 44-46.

This article recommends that traditional counselling or psychotherapy as found in most diversion programs is not sufficient for the "psychopathic" offender. Restitution should be instituted because it presents a clearcut demand and represents training in cause and effect. The author suggests that restitution is an essential ingredient in reshaping the perceptions and behaviour of many criminals.

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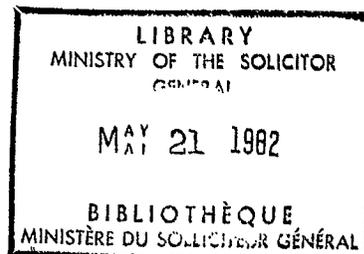
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*These documents may be found in the Briefing Book prepared for the National Conference on Diversion, Quebec City, October 1977. The sole exception is the Supreme Court decision in the Zelensky case.



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