

NATIONAL EVALUATION PROGRAM

Series A
Number 6

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Juvenile Diversion

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National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice

Phase 1 Report

NATIONAL EVALUATION PROGRAM PHASE I SUMMARY REPORT

JUVENILE DIVERSION

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September 1976

**U. S. DEPARTMENT OF JUSTICE
Law Enforcement Assistance Administration
National Institute of Law Enforcement and Criminal Justice**

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ABSTRACT

Diversion has, during the last few years, become a regular catchword in the language of criminal and juvenile justice. It has been characterized by a lack of rigorous definition and careful measurement of its impact. This assessment of diversion within the juvenile justice process is not limited to a study of diversion programs, but addresses also the process of diversion. A distinction is made between "traditional diversion" which sought ways of preventing certain juveniles from entering the juvenile justice system and "new diversion" which is represented by an array of programs for youth which at best reduce penetration into the system. It is suggested that many of these diversion programs may well have the unanticipated consequence of increasing rather than reducing the net of control exercised by the juvenile justice system.

Site visits were conducted in a number of settings and it was found that diversion programs and processes could be differentiated according to the degree of explicit or implicit legal control exercised over the youths. Much of the discussion and analysis contained within the report is definitional. It is argued that this is necessary at this state if a more substantial foundation for the development of diversion programs and processes is to be laid. These definitional issues have important implications for decisions concerning both policy and research.

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FOREWORD

More and more, juvenile justice planners and policy-makers are investing their hopes for reducing delinquency and helping young offenders in diversion programs. The tremendous increase in the number of these programs in recent years stems from a desire to reduce the social stigma thought to be attached to juveniles who penetrate into the juvenile justice system.

Because of the growing popularity of diversion, it is especially important that decision-makers have a clear understanding of the issues involved and of the possible effects of the choices they make.

For example, what will be the difference of effect on the juvenile justice system if juveniles are diverted to a program within the juvenile justice structure or to one outside it? According to the report, a program within the juvenile justice system has a greater chance of adding to the juvenile justice system's costs, levels of personnel--and to the number of juveniles within its control.

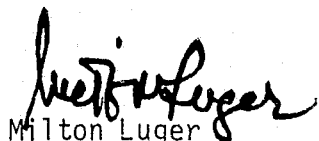
This result stems from a conflict identified in the study between theoretical and operational definitions of what constitutes diversion. In theory, and as traditionally defined, diversion is the process of removing a juvenile from the system altogether, with or without referral to another social agency. In practice, diversion has come to mean minimizing the penetration of a juvenile into the system with referral to a program within the structure or to a program closely related to it.

This switch in emphasis leaves open the question of how juveniles in diversion programs perceive their experience. Will there still be negative labeling if they perceive the diversion programs to be an integral part of the juvenile justice system structure? There is little research to answer this question or, for that matter, whether diversion to programs completely out of the system also is stigmatizing.

In addition to identifying these and other issues, the report makes an important contribution to our understanding of diversion by viewing it as a process rather than by simply reviewing individual programs.

This research already is having practical applications in the programs of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), newly created within LEAA. The results of this study were important elements in developing the program guideline in a major OJJDP funding initiative for juvenile diversion.

This study is important for another reason. It is a working example of the cooperation that has grown up between the National Institute of Law Enforcement and Criminal Justice (NILECJ) and the new OJJDP. Staffs of NILECJ and OJJDP worked closely together in developing the juvenile-related NEP studies and OJJDP staff monitored the actual projects.



Milton Luger
Assistant Administrator
Office of Juvenile Justice
and Delinquency Prevention

PREFACE

This is Volume 3 of a three volume report which assesses Juvenile Diversion. The study was conducted by the Juvenile Justice Project, Department of Criminal Justice Studies at the University of Minnesota during 1975. It was commissioned by the National Institute of Law Enforcement and Criminal Justice as part of its National Evaluation Program.

Volume 1 Juvenile Diversion: Final Report consists of the following topic areas:

- historical review
- review of literature and identification of key issues
- description of juvenile diversion processes
- assessment of juvenile diversion practices
- research design issues
- evaluation design that addresses both programs and process issues

Volume 2 Juvenile Diversion: Site Visit Reports contains the complete reports of the thirteen site visits undertaken in this topic area during the summer of 1975.

Volume 3 Juvenile Diversion: Report Summary is a summary of the final report for distribution to juvenile justice planners and others with responsibilities in this field.

PROJECT STAFF

The Juvenile Justice Project, at the University of Minnesota, was responsible for two topic areas: Diversion and Community-based Alternatives to Incarceration. The project was directed by Andrew Rutherford, visiting associate professor in the Department of Criminal Justice Studies. The three coordinators were Robert McDermott, Diversion; Osman Bengur, Alternatives to Incarceration; and Earl Fish, field research. Other project staff were:

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I. INTRODUCTION: PURPOSES, APPROACH AND LIMITATIONS

This study of juvenile diversion is one of a number of Phase I Assessments of the National Evaluation Program within LEAA which focus upon a specific topic within juvenile justice. The basic purpose of the study is to clarify some of the many conceptual and definitional problems and to describe a number of diversion processes and programs from the field research.

The study was completed in the brief span of eight months. Clearly such a project cannot provide the in-depth analysis of long-term endeavors such as the University of Michigan's National Assessment of Juvenile Corrections. Data gathered and impressions gained during the field work and other phases of the project should provide, however, a basis for re-examining key contemporary issues which have to be taken into account by both policy-makers and researchers. The major theme or issue explored by this research effort is the ramifications of true diversion (diversion from the juvenile justice system) as opposed to diversion as minimization of penetration (diversion into the juvenile justice system).

At this stage it is possible that description complicates rather than simplifies, and it certainly introduces a heavy note of caution for those with a predisposition towards catchwords and panaceas.

II. REVIEW OF THE LITERATURE

A. Key Diversion Issues

A review of the diversion literature indicates a great deal of confusion concerning the universe of diversion. Not all of the following issues were addressed by this research project due to considerations of time and/or difficulty in obtaining reliable data. The following survey of key diversion issues is intended to aid both the recognition and organization of perspectives through which diversion problems are viewed and upon which policy and research decisions are made.

1. Conceptual Framework

The development of some sort of coherent conceptual framework is imperative; such frameworks may serve as visual aids. The problem for the researcher or policy-maker is to devise an aid which all users can employ, or to clearly differentiate the selected conceptual apparatus from competing frameworks. In the area of diversion, development of such a framework is hampered by the ambiguous goals that juvenile diversion is supposed to meet.

2. Goals

Closely related to the lack of a conceptual framework is the failure of advocates of diversion to clearly delineate the goals or objectives of diversion. A number of goals are mentioned in the literature:

- Reduction of stigma
- Reduction of court cases
- Reduction of case loads
- The creation of "better" or "faster" services
- The freeing of the juvenile court to handle "real" delinquents (more difficult cases)
- The desire for more "efficient" administration

- The reduction in juvenile crime rates
- The need for the development of an advocacy role relative to youths
- To "help" youths/parents resolve problems.

Emphasis upon any one, or series, of these goals will have a profound effect upon conceptualizations and definitions of diversion, and of course, changes in diversion practice.

3. Definitional Issues

a. Boundaries

Elementary to resolving definitional confusion is the need for agreement as to when and where diversion occurs. Stated in another way, how does diversion differ from prevention, alternatives to detention or alternatives to incarceration? One possible frame of reference is that:

Diversion occurs after a youth's initial official contact with an agent of the law and prior to formal adjudication.

b. Process

Establishment of diversion boundaries aids in deciding when or where diversion occurs but leaves unresolved the issue of what occurs when diversion takes place. There is a crucial need to differentiate between different types or forms of diversion. Again the literature offers a variety of such forms and definitions.

- True diversion - the termination of official processing and/or referral to a program outside of the juvenile justice system.
- Minimization of penetration - continued informal intervention or processing and/or referral to programs inside of the juvenile justice system.
- Screening - removal from the system generally without referral.

- Diversion to - suspension of processing upon the client's agreement to "do something."
- Diversion from - attempts to avoid or terminate a youth's contact with the system.
- Traditional Diversion - discretionary judgments by juvenile justice personnel to not process, process informally or to refer to nonspecialized community programs.
- New Diversion - the emphasis since 1967 on developing programs especially for diverted juveniles.

The above forms and definitions need to be closely examined in order to disclose overlap, contradictions and confusion of goals.

4. Theoretical Issues

If diversion is tied to a theoretical perspective it is probably that of the labeling theorists. This perspective has proved extremely difficult to use for research purposes. Attempts, however, must be made to substantiate the claim that system contact is in fact stigmatizing and that diversion results in less stigma. Also, empirical research must examine the claim that labeling causes secondary deviance and that diversion will reduce the incidence of such deviance.*

Other possible theoretical positions that may connect with the diversion concept are deterrence theory and the whole spectrum of treatment theories. These, too, deserve close attention.

A particular problem is the interpretation of theory by the practitioners who implement the diversion process. The transformation of theory into practice and the resulting corruptions of, and additions to such theory are crucial issues.

5. Process versus Program

The implementation of discretionary diversion options may be viewed as the diversion process and contrasted to the reception and treatment of juveniles in diversion programs. The effect of emphasizing one or the

* See Charles Welford, "Labelling Theory and Criminology: An Assessment," Social Problems, 22, No. 3 (1975), pp. 332-345.

other of these considerations is crucial in evaluating the effects of a variety of diversion forms or definitions.

6. Organizational Milieux

Diversion programs and/or processes occur within specific organizational milieux. The strengths and weaknesses of such milieux in furthering a particular diversion goal (or of fulfilling a particular definition) must be examined. A primary issue centers upon the regulations, rules, guidelines and informal relationships that guide juvenile justice personnel in their intra- and inter-agency interaction.

7. Unanticipated Consequences

Programs/processes should be examined for possible unanticipated consequences of diversion such as:

- Widening the net (increasing number of juveniles contacted by the system).
- Increasing the size of the system (budget and staff).
- Alterations in traditional processes (e.g., screening abandoned in favor of diversion into the system).
- More intensive handling of non-diverted youths.
- Creation of new legal entities.
- The increased influences of legal authorities within private programs.
- The ignoring of clients' due process rights.

8. Target Population

The youth population experiencing diversion should be examined in order to assure that diversion does not merely widen the net or increase system-youth contact. The possibility of institutionalized racism in diversion processes/programs must be closely scrutinized. Differences in sex and

offense characteristics of divertees should also be examined.

9. Legal Authority

The role of legal authority relative to diversion processes/programs should be examined for possible contradiction of definitions and/or goals in diversion efforts. The degree of legal authority or control over a youth appears to be the major difference between true diversion and minimization of penetration. The development of a diversion continuum based upon the degree of legal authority relative to diversion processes/programs would offer one possible conceptual framework with which to organize the complex world of diversion.

B. An Outline of the Research Literature

Introduction: Considerations for Diversion Research

The greater portion of diversion research has been concerned with adults. Before an attempt is made to outline some of the major research efforts in juvenile diversion some general observations are offered about the state of diversion research in general.

- ° The research has been handicapped by an absence of precise operational definitions. There has certainly been little in the way of agreement as to what the term "diversion" means.
- ° Insufficient attention has been given to the provision of good descriptive material as to what takes place when diversion occurs.
- ° There has been virtually no attention as to how the diversion process is perceived by the individual who is diverted. It is by no means clear, for example, that s/he perceives the experience as being something apart from the traditional process.
- ° Diversion research has tended to focus upon programs rather than the process of diversion. This is hardly surprising given the programmatic orientation of most policy-makers. It has, however, had

the consequence of further obscuring the original conception of diversion as a process rather than as a series of new programs .

- There has been little sound monitoring or evaluation of the diversion process. In a recent survey of some adult pre-trial intervention programs it was found that the research was often oriented toward political and funding realities.¹
- There has been no attempt to date or place the phenomenon of diversion within its broader socio-political context, and to explore whether it implies a lessening rather than merely a shifting of social control mechanisms.

Juvenile diversion research projects may focus upon one or more of the following categories: client outcome; systems impact; and description of process/programs.

1. Client Outcome Studies

Client outcome studies have been primarily concerned with evaluations of program "success" as reflected by reduced recidivism rates. Key studies of this type are:

- Project Crossroads.² Leon Leiberg's study for the Manpower Administration of the National Committee for Children and Youth, U.S. Dept. of Labor, 1971. The research reported that diversion with referral was associated with lower rates of re-arrest than traditional modes of processing. Diversion accompanied by the provision of services also was viewed as more effective in terms of re-arrest rates than merely screening a youth out of the system.
- Sacramento 601-602 Diversion Project.³ Using re-arrest as a measure of recidivism, in a 7-month follow-up the researchers found that 36 percent of project youth were subsequently re-arrested on 601 status offenses contrasted with 46 percent of the control group. Eighteen percent of project youth were re-arrested on charges of criminal conduct compared to 31 percent of the control group.

- Pre-Trial Intervention Diversion Project.⁴ Arnold Binder found that improving parent-child communication skills and teaching youth coping skills resulted in recidivism rates of 15 percent for the treated youths and 29 percent for the control group. Recidivism rates were based upon the results of a 6-month follow-up. Rates were operationalized as police arrests.
- Suzanne Lincoln, "Juvenile Diversion Referral and Recidivism," in Police Diversion of Juvenile Offenders, eds. Klein and Carter, 1974.⁵ Suzanne Lincoln studied a pilot diversion project which referred juveniles to community agencies for social services. The referred offenders were matched with non-treated juveniles of similar characteristics. With regard to the average seriousness of subsequent offenses the referred and typical groups did not significantly differ. The two groups did differ on the average number of subsequent offenses. Juveniles in the referred groups showed a higher number of offenses. Lincoln concluded that referral tends to aggravate rather than to deter recidivism.
- Criminal Recidivism and the New York City Project.⁶ Robert Fishman has recently completed an evaluation of rehabilitation and diversion services in New York City (adult and juvenile). The study primarily attempted to measure the result of recidivism as an outcome of such services. Police arrest rates were used as a measure of recidivism among 2,860 male clients. Fishman found that differences between projects did not affect recidivism rates. After one year of project contact he found that clients 18 or younger had higher recidivism rates and clients 21-39 had lower rates. He concluded that rehabilitation by New York City projects was a failure.
- An Impact Study of Two Diversion Programs.⁷ Delbert Elliot and Fletcher Blanchard have investigated the impact of two diversion programs on participating youths' attitudes, perceptions and behavior. They described the objectives of both programs as being to increase perceived access to desirable social roles, to reduce the stigma associated with traditional

processing within the juvenile justice system, to reduce feeling of alienation, and to reduce involvement in delinquent behavior. A casework approach was followed with intensive counseling for both the youngsters and their families. Other services were provided when this was deemed necessary. Comparison groups were obtained from youth placed on probation. Interviews were conducted with the four groups over a 12-month period and the researchers caution that a serious attrition problem should be noted when interpreting the results. Few differences were found between the diversion and probation samples, and only two of these were statistically significant. Self esteem measures were lower for the diversion samples in both cities, and one diversion sample showed a greater perceived negative labeling. No differences were found in relation to impact on delinquency.

2. Systems Impact Studies

Systems impact studies attempt to measure structural and procedural changes in the juvenile justice system resulting from policies of diversion.

- ° National Evaluation of Youth Service Systems.⁸ In 1974, Delbert Elliot examined 7 youth service systems for the Office of Youth Development (HEW). It was assumed that a change in diversion could be measured across time as a percentage reduction in maintenance probabilities within the juvenile justice system. For each youth service system a set of baseline maintenance probabilities was established for two points in the juvenile justice system (police and probation intake). Although the research hoped to measure systems or institutional change it was found that "most projects are making their entry into their communities via a direct service/diversion role and to date are not viewed primarily as agents pushing for institutional change."
- ° Alternate Routes Project.⁹ Carter and Gilbert's evaluation of this project for the California Youth Authority indicated that in its counseling role the project was able to provide treatment

more quickly than the juvenile justice system. The cost of processing was viewed as "considerably less expensive to the taxpayer than in the traditional juvenile justice system." The number of petitions filed was 6 percent for referred youths while 47 percent of regularly processed youths were petitioned.

- The Sacramento 601-602 Diversion Project. ¹⁰ Utilizing short-term family crises therapy the Sacramento project claims to have reduced petition filing from 21.5 percent (regular) to 2.2 percent (Project).
- Los Angeles Police Diversion. Malcolm Klein, ¹¹ attempted to account for variations among police department diversion rates. Klein and Sundeen ¹² were unable to account for great variation in terms of city size, population characteristics, demographic indices, police department size or structure, ratios of staff to clients or arrestee characteristics. Sundeen attempted to account for the variations as resulting from degree of professionalism - with negative results. Klein concludes that diversion has minimal impact upon police operating procedures and/or department structure. He predicts diversion will have a short life, not outlasting current federal funding efforts.

3. Descriptions of Process/Programs

- Diversion from the Juvenile Justice System. Cressey and McDermott's ¹³ pilot study for the National Assessment of Juvenile Corrections has been the only attempt to explicitly address the problem of decision-making in diversion. Their general interests were exploratory and descriptive. Concentrating upon probation diversion they concluded that the intake officer occupied the pivotal role in the diversion process. They described that role as dependent upon the subjective interpretation by the intake officer as to concepts of "justice", theories of corrections, and the "seriousness" of juvenile offenses and attitudes. The intake officer's knowledge of, and evaluation

of, referral resources and his relationship with other workers inside and outside of the juvenile justice system were also seen as crucial for the quantity and quality of diversion. The informal relationship between diversion programs and intake units affected rates of diversion.

III. A DIVERSION TYPOLOGY

In order to bring some sense of order to the universe of diversion a conceptual framework was developed around a diversion typology stressing the organizational dynamics of diversion processes/programs. The degree of social control or legal authority vis-a-vis the youth may be tentatively measured relative to a program's relationship to the formal juvenile justice system. Three major process/program types are suggested.

Type I: Legal

The organizational milieu that may be characterized as legal surrounds the diversion process and/or program with an aura of legal authority. The process (whether informal or formal):

- is administered by a functionary of a legitimate social control agency as part of his/her bureaucratic responsibility.
- formal legal sanctions can be imposed.
- coercion - implicit or explicit - maintains a strong presence.
- programmatic developments are administered and staffed by social control agencies.
- programs are physically located on or within the official premises.

In less abstract terms the organizational context of the legal type of diversion is that of the official juvenile justice system - particularly the police or probation departments. Individual agents of these departments are granted legal authority upon assuming the job assignment. They must confront the dispositional dilemma to divert or to further process the client in question. The crucial point is that such agents, because of their official capacity, always retain such discretionary power and it is most likely that their clients are aware of this situation.

Type II: Paralegal

Although a diversion process or program may exist outside of the official structure of the juvenile justice system, it may be viewed as paralegal in nature if it includes the following elements by being:

- funded by the system
- administratively controlled by the system
- staffed by system personnel (on loan, sabbatical, etc.)
- physically based within system offices
- has access to all juvenile records or allows the juvenile justice system access to its records
- receives its clients by means of explicit coercion through the juvenile justice system
- maintains an informal or formal system of reporting on client progress versus the official system

Organizational processes and programs often exist or are developed as alternatives to standard organizational forms. Upon closer examination, however, it is common to perceive a great deal of similarity, overlap, or co-optation of the alternative by the formal or competing official form. Official processing and programs of the juvenile justice system, once under attack, spawned alternative forms of organization. Some of these alternatives operate entirely under the auspices of legal authority and are subsumed under Typology I. Other alternatives were established by private individuals or organizations supposedly "outside" of the existing system. Reliance upon the official system, however, for client referrals, trained staff, data, physical space, and money tends to mold the alternative to the model of its predecessor. Most importantly perhaps, the new forms grows increasingly similar to the old through the varieties of "cooperation." Compromises on policy and procedure may be made as temporary tactics to mitigate suspicion and fear on the part of traditional system personnel but such compromises often become rigorously observed organizational guidelines, thereby changing the nature of the alternative.

Type III: Nonlegal

In order for a program or process to operate truly apart from and "outside" of the existing juvenile justice system, proponents must be conscious and cautious of their relationship to legal authority. It is not enough merely to claim nonlegal status. Day-to-day practice must exhibit freedom from reliance upon such authority and/or control by agents or agencies exercising legal authority. Defensive reaction to requests and demands of social control agencies must be bolstered by a proactive attempt to purge the "nonlegal" program/process of all trappings, actual and psychological, that favor that perspective.

Nonlegal programs/processes are predominantly client oriented with voluntary participation of the client a hallmark of the interaction. As client referrals will draw upon official social control agencies the "voluntariness" of client participation must be closely guarded from the taint of subtle or implicit coercion. The juvenile client must be assured of the right of non-participation without the threat of negative responses to his/her choice. In order to guarantee such freedom of choice, the non-legal agency may find itself serving the role of youth advocate. Again the needs of the client are all important and must assume precedence over administrative "needs" such as accountability, record-keeping, progress reports and response to political pressures. The nonlegal agents/agency must be prepared to give an emphatic "no" response to requests/demands and pressures from existing social control agencies.

In summary, any program operating outside of the official control of a legal social control agency (Police, Probation, County Welfare) may maintain nonlegal status if it adheres to the following criteria:

- it is client oriented
- client participation is voluntary
- implicit coercion is watched for and resisted
- no sanction occurs against clients for non-participation or termination of participation
- an advocacy role is acceptable
- the client perceives the program as nonlegal

- it has control over staff appointments
- It is able to maintain program goals independently without pressure from funding sources.

IV. SITE VISIT FIELD RESEARCH

A. Field Research Methodology

A major task of the project was to select site visit locations for the field research. To this end, information was collected concerning programs through: 1) telephone interviews and correspondence with state planning agencies, juvenile justice personnel and programs; 2) program descriptions provided by LEAA's Grant Management Information System (GMIS) and by the National Council on Crime and Delinquency; and 3) a search of the available literature. From a universe of 400 programs, a series of eliminations reduced the list to 13 representative site locations.

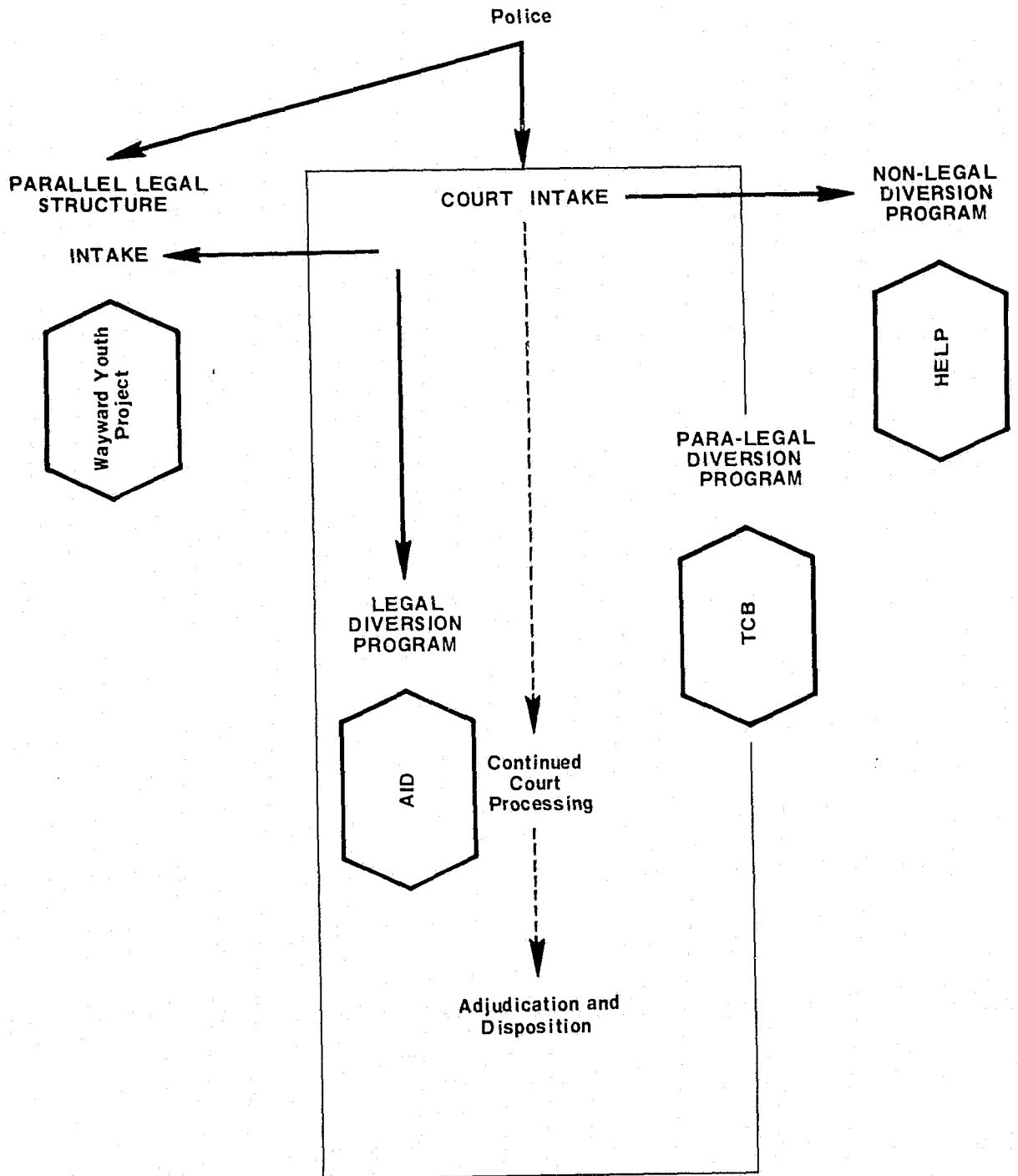
The field research approach had three central features: 1) emphasis on client flow in a "system" rather than viewing the program in isolation; 2) participant observation model; and 3) the delineation of separate perspectives of each interview respondent. The information gathered during the site visits was qualitative in nature and focused upon the perspectives of 1) program clientele; 2) program staff; 3) "significant others" (e.g., parents of clients, community members, and juvenile justice personnel including judges, probation officers and administrators).

B. Programs: A Process Perspective

The processes and programs examined during the 13 site visits generally reflected the suggested divisions of the typological framework. The following four program summaries with the accompanying diagrams are indicative of this relationship.

The first diagram locates the four types within the overall juvenile justice process. AID (Site Visit Report 1) represents the Legal Type and receives a majority of its clients from the Court Services Intake Unit. The program, which was originally part of the Intake Unit, is staffed by probation officers and is funded through the county. The Wayward Youth Project (Site Visit Report 3) represents the sub-type of the Legal Type referred to as the Alternative Legal Structure. This particular program, which is operated by the County Juvenile Services Agency (welfare), receives its clients from the police and from the Court Services Intake Unit. It has a 24-hour intake unit, a secure shelter care facility and a staff of 40

DIAGRAM 1: FOUR TYPES OF ORGANIZATIONAL STRUCTURES



professional counselors. The counseling services offered by the program are undertaken voluntarily by youth and parents. TCB (Site Visit Report 5), representing the Paralegal Type, is a black-originated program serving a black community. It is staffed by detached probation officers, and has formal ties with its major referral sources: the city and county police, and the probation department. HELP (Site Visit Report 4), represents the Nonlegal Type and although a third of its clients are referred from police/probation/courts or welfare, it has remained independent of the juvenile justice system.

1. AID Program (Site Visit Report 1)

AID is an example of the Legal Type of diversion. The program is administered and staffed by the Ajax County Juvenile Court. The majority of clients are referred from the intake unit. Although an attempt is made to maintain a low legal profile, staff are in fact employees of the court. Funds are received through the county court and LEAA. The client population is generally comprised of status offenders.

2. Wayward Youth Project (Site Visit Report 3)

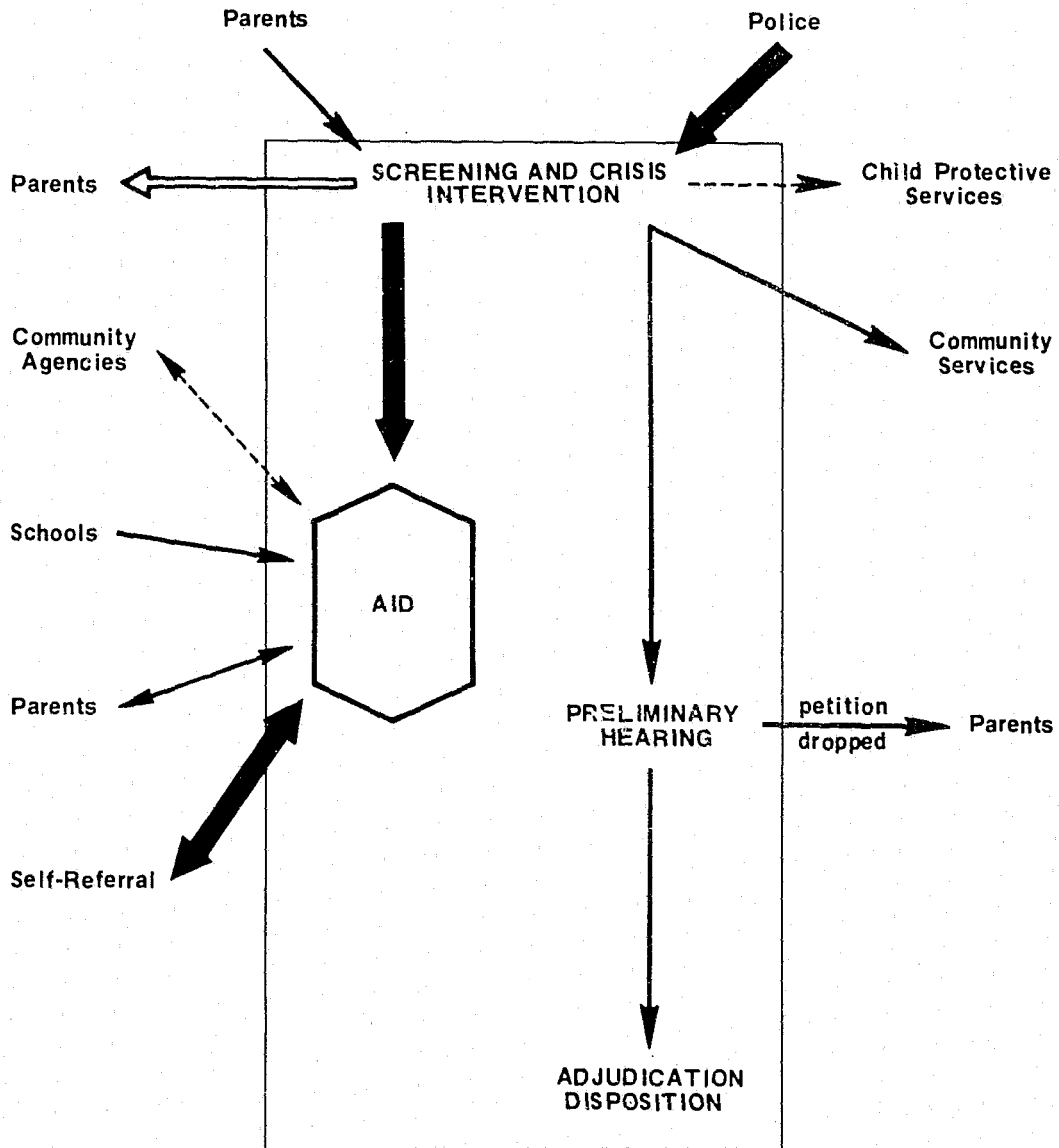
The Wayward Youth Project represents a variation of the Legal Type of diversion. The project is administered, funded and staffed by the Jefferson County Children Services Department, an alternative legal structure. All status offenders (wayward youth) are referred directly to the program for intake. Again staff attempt to maintain a low legal profile and again they have all of the duties and obligations of the social control agency which employs them. The majority of the referrals come from the police.

Though the project does not impose coercive measures on their clients, their funding source, the JCSD, seems to be maneuvering to obtain support and funding for a secure detention facility for the unruly waywards that may be referred to the project. This department already has the power to re-define status offenders as dependency cases in order to bring court action. Thus it appears that at least the JCSD will be attempting to function as an alternative legal agency though the project itself does not want to.

3. TCB Program (Site Visit Report 5)

The TCB Program originated within and is operated by the black community of Kumasi and is supposedly an independent diversion project providing an alternative to the traditional juvenile justice system. It may, however,

DIAGRAM 2: AID PROGRAM WITHIN AJAX COUNTY JUVENILE JUSTICE SYSTEM




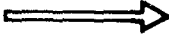

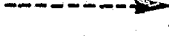
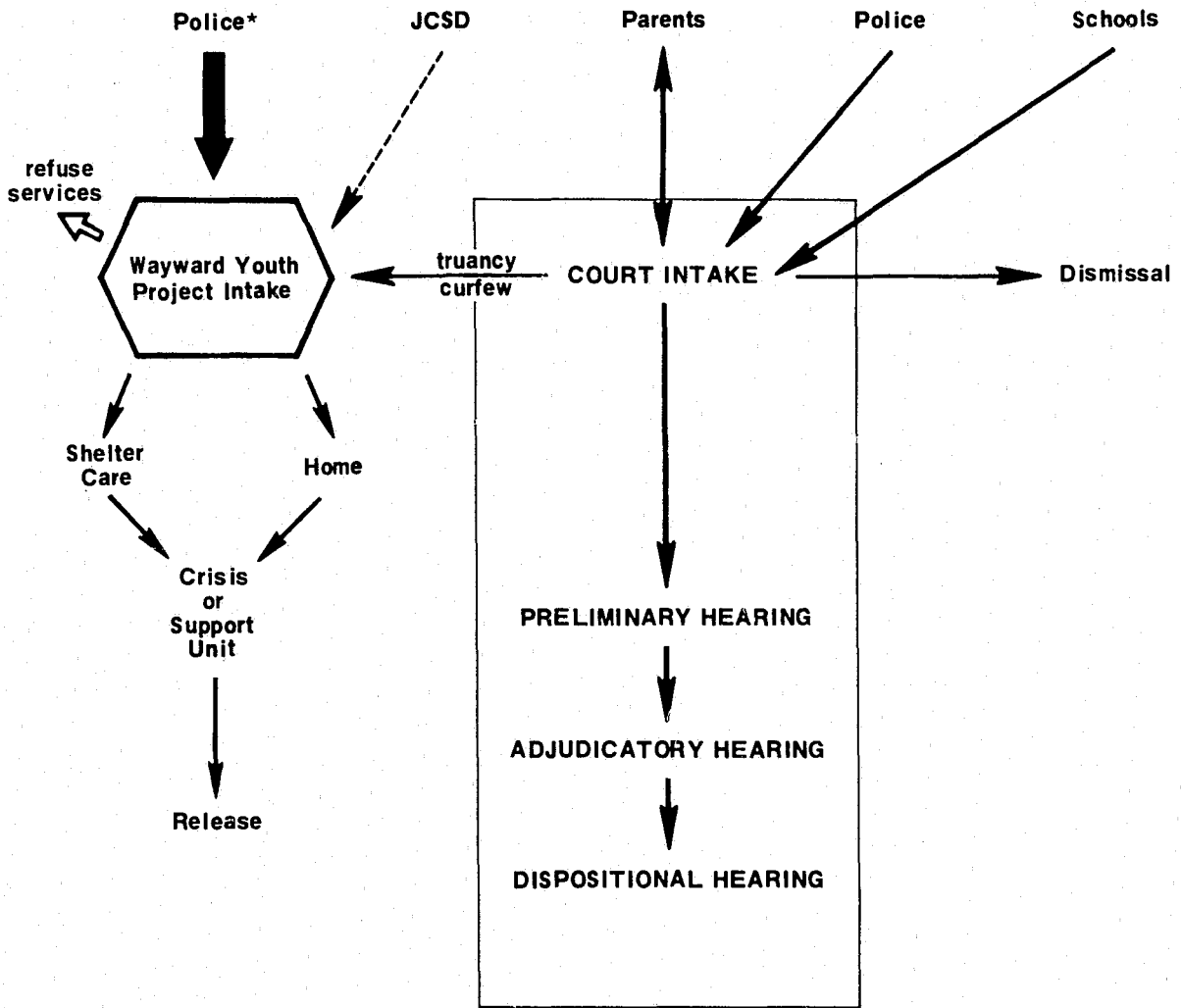
-  most frequently used path to AID
-  most frequently used path through court system
-  moderately used path through court system
-  infrequently used path through court system

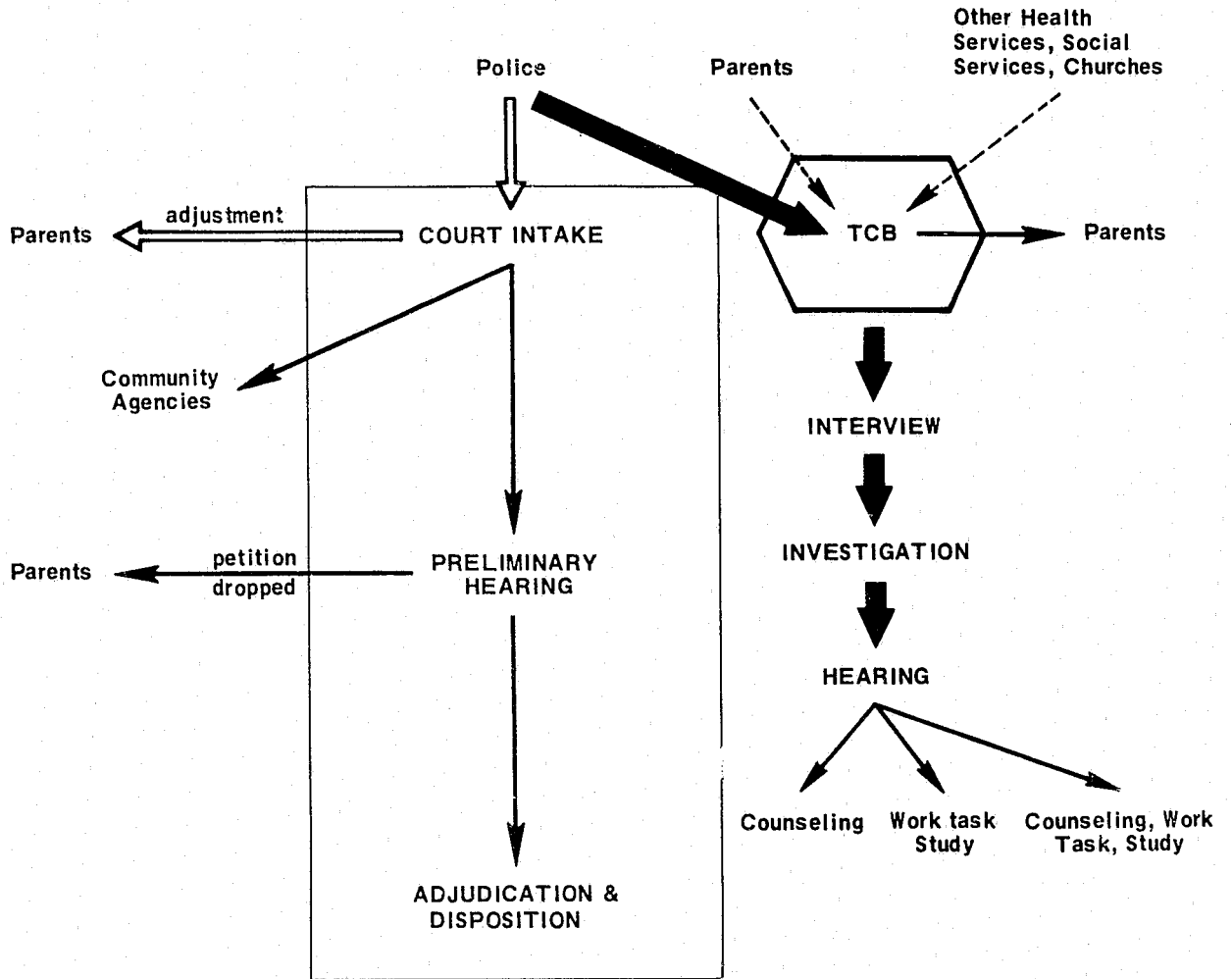
DIAGRAM 3: WAYWARD YOUTH PROJECT WITHIN JEFFERSON COUNTY JUVENILE JUSTICE SYSTEM



- thick arrow** → most used path to program
- light arrow** → frequently used path
- medium arrow** → moderately used path
- dashed arrow** → infrequently used path to program

* The police must refer all juveniles who are charged with status offenses (except truancy and curfew violations) to the Wayward Youth Project.

DIAGRAM 4: THE TCB PROJECT WITHIN WHITE COUNTY JUVENILE JUSTICE SYSTEM



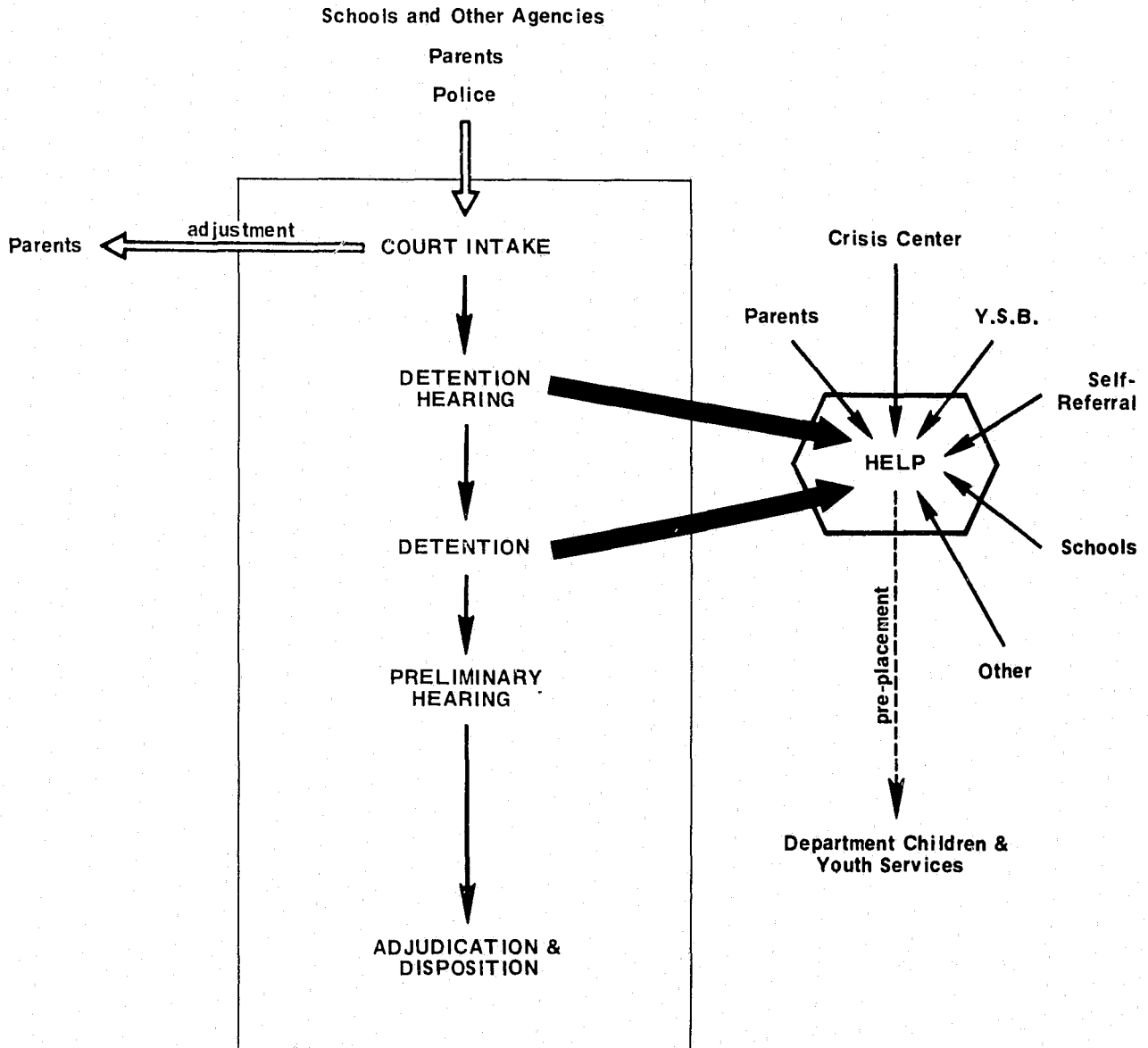
- ▶** most frequently used path into program
- ▶** most frequently used path through court system
- ▶** moderately used path through court system
- - - - -▶** infrequently used path into program

be viewed as a Paralegal Type diversion effort as it is staffed by detached probation officers from the county probation department. It maintains a working relationship with the probation and police departments informally sharing information and records concerning its juvenile clients. The program is seen by its legal referral sources as "official"; they perceive it as maintaining greater control over its clients than the probation department does with similar types of clients. Funds are controlled by the county criminal justice planning agency and are presently in jeopardy due to the program's failure to meet the required number of referrals. There seems to be some question as to the voluntariness of the referred client. The community panel or arbitration committee which is a primary component of the program does not attempt to portray itself as anything other than a community-controlled sanctioning unit. This panel can return a juvenile to the juvenile justice system for continued processing.

4. HELP Project (Site Visit Report 4)

Project HELP is characteristic of programs that attempt to remain independent of the juvenile justice system. It may be viewed as a Nonlegal Type of diversion. The project is administered by the King Church and was the creation of Father Joe, a charismatic individual who strongly emphasized the non-bureaucratic nature of the project and insisted on its independence from legal authorities. As the project does not require funding (there is volunteer participation by families), it is free from pressures to alter its program toward a more traditional format. When the state welfare department attempted to impose a licensing requirement it was successfully resisted by the program. The project does not offer direct services in the form of "treatment" and does not maintain records on its clients. The program may be characterized as a community endeavor aimed at assisting families during crisis situations.

DIAGRAM 5: HELP PROGRAM WITHIN THE CENTRAL CITY JUVENILE JUSTICE SYSTEM



- most juveniles enter housing at HELP
- moderately used source of contact with HELP or through system
- most frequently used path
- infrequently used path from HELP

V. AN ASSESSMENT OF CURRENT DIVERSION PRACTICE

Introduction:

The definition of diversion offered by the President's Commission in 1967 was utilized as a bench mark or theoretically explicit statement concerning the objective of diversion - "the turning aside of a youth from further processing by the juvenile justice system." This definition may be construed as "true diversion." A typological framework based upon the degree or character of legal authority intrinsic to diversion processes/programs seemed to correspond to the above definition. Thus processes/programs emphasizing legal authority could be viewed as attempts to "minimize penetration" by reducing the intensity or "official" nature of processing even though systems contact is maintained. If, however, processes/programs terminate system processing and/or refer youths to programs outside of the system, "true diversion" may be the result. With the above definitions and conceptual framework serving as an heuristic device juvenile diversion practice was examined.

A. Critique of the Typological Framework

Type I: Legal

When the bench mark definition of true diversion is used, Legal Type diversion efforts cannot be viewed as true diversion. These efforts represent a straightforward attempt to minimize penetration into the system particularly by avoiding the formal adjudication process. The programs visited that met the Legal Type description all demonstrated continued intervention into clients' lives by social control agents. In effect, such programs operate on the assumption or admission of guilt and proceed to "service" clients without concern for due process limitations. Client participation is always accompanied by coercion which is usually explicit.

The continued support of Legal Type diversion results from a direct decision to continue legal intervention into youths' lives, although the emphasis is upon informal processing in lieu of traditional formal processing. Contact with the juvenile justice system is not avoided, the youth is not turned away, and further processing, albeit "informal", will occur. With transfer of juveniles from one agency of legal authority to another, for example, justice to welfare, this does not necessarily change the relationship between client and degree of social control or legal authority.

Type II: Paralegal

Diversion outside of the juvenile justice system primarily takes the form of Paralegal Type programs. Control of staff, funds, referrals and even physical space by the juvenile justice system was typical of the supposedly independent diversion programs observed by this research team. Juvenile justice system personnel also control the referrals to a program and consequently such programs cooperate to a great extent with regular social control agents. Such "accountability" to the regular juvenile justice system becomes the primary vehicle by which the new form becomes more and more similar to the old.

Type III: Nonlegal

For programs to remain independent they must retain control of funds, staff and client information. The fact that juvenile justice personnel control referrals may affect Nonlegal programs in much the same way as it affects paralegal programs. As a consequence, Nonlegal programs have a tendency through cooperative co-optation to become increasingly Paralegal in nature.

B. The Research Problem

1. The Definition of Diversion

The most crucial misunderstanding or disagreement concerning the definition revolves around a communications breakdown between major diversion theorists and many diversion practitioners. "Good" theory may become "bad" practice and juvenile justice reform seems extraordinarily susceptible to such occurrences. Labeling theory is the primary source of the diversion concept. The President's Commission Task Force Report of 1967 provides an explicit statement of the labeling theorists' interpretation of diversion. From theory to practice a crucial change occurs in the definition of diversion.

Practitioners tend to interpret diversion as "minimization of penetration" rather than as "end to further processing by the juvenile justice system." Intensity and degree of processing becomes the "harm" rather than the processing itself. In practice diversion has come to mean a "turning aside" from formal processing (i.e., adjudication). It is doubtful whether diversion as minimization of penetration has much effect upon the subjective reality of a youth experiencing informal processes. This study indicates

that most youths perceive the process as formal enough for them .

The reformulation of the diversion concept from theory to practice is probably the result of a number of factors. Criticism of the juvenile justice system and its personnel implicit in diversion theory may create a significant amount of cognitive dissonance for the professional. Such dissonance may be resolved by placing the onus of "harm" upon other sectors/staff within the system. Each level of personnel (police, probation/court may "divert" from the next level of processing. Simple desire for job security may also influence the interpretation of diversion for successful diversion outside of the system would seem to indicate an eventual reduction of system staff. Diversion in the form of minimization of penetration, on the other hand, may serve to increase the size of juvenile justice components.

The research problem becomes one of choosing between the theoretical and operational definitions of diversion. Rigorous utilization of the theorists' definition would rule out research into most processes/programs that have adapted the title of diversion. The operational definition, however, amounts to viewing all processes/programs short of adjudication as diversion. The present research effort attempted a compromise. The theoretical definition was used as a bench mark against which processes/programs could be measured. The operational definitions of the "real" world of the practitioner were used as guides during field research. Hence a process/program may be deemed "successful" in comparison to its own operational definition but "unsuccessful" when compared against the theoretical "ideal" definition.

2. Screening versus Diversion

Diversion is sometimes viewed as the middle range between minimal official action and application of the full force of the law-adjudication. Viewed in this manner diversion is an alternative to screening. It seems, however, to make for greater conceptual clarity to view all discretionary acts directed at forestalling adjudication as diversion processes. If such processes terminate official intervention and/or refer a youth to a program outside of the juvenile justice system, "true diversion" has occurred. If the processes result in further intervention and/or referral to a justice system program - minimization of penetration is the objective.

The emphasis of "traditional diversion" was on processes (discretion) whereas the emphasis in the "New diversion" is on process plus programs (discretion and "services"). Thus the proliferation of service programs may reduce "traditional diversion" and increase contact between youths and the juvenile justice system. As a consequence the net of the juvenile justice system will have been widened rather than narrowed.

VI. DIVERSION INSIDE THE JUVENILE JUSTICE SYSTEM

In order to adequately understand the role of diversion programs, a thorough analysis of the diversion process is necessary. Each major organizational sector of the juvenile justice system will be examined.

A. The Police

Police discretion has been estimated to account for as much as 90 percent of all diversion. Police have always engaged in "traditional diversion" because of the high level of discretion inherent in the police function. The approval of diversion as a national policy and the availability of funds for "new diversion" has not gone unnoticed by police who are beginning to actively develop such programs.

1. The Patrol Officer

It is the officer in the streets who typically first exercises the discretion to divert or to "further process" a juvenile. S/he may ignore an incident, do "something" short of formal processing or may institute such formal processing. Police diversion occurs when "something" is done short of formal processing. A typical dispositional option is cite, warn and release ("a kick in the pants"). Many police departments now have special juvenile units and the patrol officer may pass on the dispositional decision to these officers. Resistance by the youth to the above diversion may well result in official action: request for a juvenile petition, detention or a citation to the probation department.

2. Juvenile Specialist Units

In effect these specialists infringe upon the role of the probation intake officer. Police may view their abilities to "service" a juvenile as equal to the services of probation, avoiding the need for "official" action by a bureaucratic organization. Thus, such specialists may view their task as diverting from probation (minimization of penetration).

The specialists may counsel, warn, release, place on informal "probation", or refer to a private program. Even when the youth appears to be diverted out of the system, informal communications between police and program

create an aura of paralegal action.

3. School Resource Officer

The school resource officer is a police officer assigned to a particular school with such roles as counselor, friend, lecturer, guard, "probation" officer. The SRO may aid in preventing youth-system contact or may divert a youth from more intensive contact but in many cases s/he is the contact with the system. First, last, and always the SRO is a police officer - an official of the juvenile justice system.

4. Police Programs

Police programs may be simple attempts to "educate" a youth concerning the law and the consequences inherent in its violation. In other cases the police may provide intensive counseling or "services." In the past such youths would likely have been referred to probation or private programs or dismissed but the "new diversion" has made funds available for police controlled and operated program efforts.

Whether such expansion into the programmatic realm reduces the amount of juvenile-systems contact or merely further widens the juvenile justice net is a point greatly in need of more research.

B. Probation

Most juveniles come into contact with probation by means of police referral. Police diversion has either failed or been deemed inappropriate. Recent criticism of the juvenile justice system has often been synonymous with criticism of juvenile probation. Emphasis upon diversion efforts should be viewed within the framework of the dispositional options available to probation officials.

1. Probation Intake

The intake officer occupies a crucial role relative to juvenile justice system processing. His dispositional alternatives are:

- (a) CWR - similar to the police "kick in the pants" only a more "official" action.
- (b) Informal Probation - in effect probation imposed without adjudication. Guilt is either admitted

or assumed. Coercion is implicit.

- (c) Referral (usually accompanied by a CWR) - to a program outside of the system.
- (d) Petition filed - the decision to escalate processing by recommending adjudication.

The consequences for diversion inherent in the discretionary choices of the intake officer should be clear:

- | | | |
|------------------------|---|-----------------------------|
| (1) Dismissal | = | no guilt |
| (2) CWR | = | true diversion |
| (3) Informal probation | = | minimization of penetration |
| (4) CWR and Referral | = | true diversion |
| (5) Petition filed | = | further processing |

2. Probation Investigation

If intake decides to file a petition the case moves on the investigation officer. The purpose is to write a probation recommendation for the juvenile court. The investigation might disclose new facts, a change in client attitude or the availability of program services. The officer may thus choose to divert the youth. The investigating process is the last phase of juvenile justice system processing wherein diversion can occur without recourse to some form of adjudication.

3. Probation Programs

Pressure upon probation officials to divert youths from further system processing has paradoxically led to the development of system controlled "diversion" programs. In effect probation may now divert a juvenile to probation. This is clearly minimization of penetration. Such programs fall into two recognizable but overlapping categories:

- (a) Extension of the intake function.

- (1) Crisis Intervention - short-term (1-3 sessions)

- (2) Intake and Long-Term Counseling/Treatment -
Examples of this format tend to model or be
variations of the Sacramento 601-602 Program.

Juveniles charged with specific offenses (usually minor) are routed to a specialized program which has intake authority plus the capability of long-term counseling or services. Included under this category are positions such as "Arbitrators" and the programs that support them.

(b) Distinct Treatment Programs

Programs may be developed and staffed by regular or volunteer probation employees. These programs offer specific services, usually counseling. As they are official branches of legal agencies, staffed by legal authorities, they receive the confidence of police and probation intake officers for referral purposes.

4. Probation Personnel

The expansion of probation services into the programmatic realm leads to the need for more specialized personnel. Many individuals without strong attachments to legal authority are hired as probation officers but with duties that stress non-authority roles (counseling); official job titles (e.g., probation officer) are often viewed as mere technicalities. The new employee becomes what may be termed as an "ersatz" probation officer. Such personnel are however supervised by regular probation officials and must interact with others who are likely to take the role of legal authority quite seriously. Goal conflict is virtually inevitable.

VII. DIVERSION OUTSIDE OF THE JUVENILE JUSTICE SYSTEM

Diversion programs "outside" of the juvenile justice system fall into three broad categories: Paralegal programs, Alternative Legal Structures, Independent Nonlegal programs.

A. Paralegal Programs

Programs under this heading range across a continuum relative to greater or lesser degree of formal/informal control by the juvenile justice system. Such programs may be an offshoot or "arm" of the juvenile justice system depending upon the parent system for administrative control, staff, funds, clients, and physical space. Programs may, however, be paralegal even if they control all of the above. The crucial dynamic is the degree of control (formal or informal) that is acceptable relative to program clientele (the juveniles). Attempts to maintain amiable relations with social control agencies often results in cooperative co-optation. The legal agents/agencies may force such cooperation by means of their ability to control referrals to the program.

B. Alternative Legal Structures

Legislative and/or administrative rulings may facilitate the transfer of specific offense categories, for example status offenses, to an alternative legal structure such as departments of welfare or childrens' services. These agencies may develop all of the trappings of legal authority customary in the juvenile justice system. Thus secure detention facilities, petition filing, informal probation and the like may be found within the alternative legal structure. In effect a parallel juvenile justice system immune from due process restrictions may be the result.

C. Independent Nonlegal Programs

A program attempting to maintain nonlegal status and independence from juvenile justice system control must consider three primary factors:

- (1) Justice system control of referrals.
- (2) Legal status of clients as "juvenile offenders."
- (3) The degree of freedom vis-a-vis the funding agency/ source.

If such programs alienate referral sources (Police/probation) they may find themselves without clients. If they attempt to be too cooperative they may become "paralegal" in nature. If programs are funded by juvenile justice system agencies their policies may be controlled by those agencies under threat of loss of funds if they do not comply to demands. The very fact that clients maintain legal status as "offenders" may make it difficult if not impossible for such programs to remain nonlegal in nature.

VIII. FUNDING CONSIDERATIONS

It is unlikely that consensus will be reached in the near future concerning the diversion issues discussed in this report. It is quite certain, however, that diversion processes/programs will continue to receive funds. The ramifications of allocating such funds to particular forms or types of diversion should be considered. The organizational typology discussed in this report may be used to clarify the range of funding considerations.

Type I: Legal

Legal type diversion processes/programs are administered by specific social control agencies. As government agencies they are dependent upon public funds. Most diversion efforts are inaugurated at the city or county level. If major programmatic elements are to be developed, state and/or federal funds may be necessary. State and federal agencies (SPA's, LEAA) may make it known that diversion funds are available and by issuing broad guidelines or recommended models * they may generate specific forms of diversion. In other cases local agencies develop their own concept of diversion and attempt to "sell" it to a funding agency. In both cases it is crucial for the funding source to have a clear understanding of its own diversion goals and definitions.

This report has discussed two major definitions of diversion - true diversion and minimization of penetration. Legal type processes/programs may engage in true diversion by merely initiating discretionary judgments to terminate processing and/or referring a youth to a program outside of the juvenile justice system. The process of implementing discretion may be accomplished by changes in administrative guidelines and/or training or retraining existing staff (patrol officers, probation intake, etc.). Such reorganization or reorientation does not entail the expenditure of large amounts of special funding dollars. True diversion - at the legal level - is in effect a policy decision. This study did not encounter a single agency that was requesting funds for this form of diversion.

Diversion as minimization of penetration is typically implemented within legal agencies by the development of special programs and/or units. Such programs must be staffed by agency personnel and/or by specialists hired specifically for the diversion effort (counselors, psychologists).

* For example, the Sacramento 601-602 program, which was granted exemplary status by LEAA.

Direct services may entail significant increases in staff, equipment and possibly physical space; this means a need for increased funding.

Whenever a funding agency chooses to support a programmatic component of an existing social control agency, it supports diversion as minimization of penetration rather than true diversion. This has been the general case since 1967, discussed previously as the New Diversion movement. It may be hypothesized that continued funding of such programs will significantly alter traditional diversion processes (e.g., screening) and result in the expansion of the juvenile justice system and likely a widening of the juvenile justice net.

Type II: Paralegal

If funding agencies make an explicit choice to support true diversion by funding programs outside of the juvenile justice system they should realize the potential danger of such programs being or becoming paralegal in nature. The method of dispensing or channeling funds may be crucial in encouraging or discouraging paralegal developments.

State and federal funds are generally administered by a criminal justice planning agency. If such an agency decides to support outside-the-system programs but allows actual funds to be dispensed by, for example, a probation department, it has in effect granted policy-making power to the very system which is the object of the diversion effort. A similar problem occurs if the program is required to have a specific impact upon the system in order to qualify for continued funding. The El Pueblo Programa in Rimrock, according to its grant, must receive 50 clients a year from juvenile probation. Similarly, the TCB program in Kumasi is required to divert a specific number of youths from the Kumasi branch of the county probation department. In such case, when the referral decision is made within the system and not within the program, staff must maintain cordial relations in order to assure the adequate level of referral.

Many diversion grant proposals sound quite similar. Potential grantees are aware of funding guidelines and write their proposals to match. Promises and practices, however, may differ. It may even be necessary for a program to "create" delinquency by renegotiating the conferral of labels upon its client population. One program visited existed as a "Prevention" program under HEW funding. When those funds were not renewed the program acquired support from a federal program designed to reduce the incidence of felonies. The program changed

funding sources but not ideology. In order to meet its new grant requirements, program staff began redefining status offense cases "for the records" as "felony-like" cases.

In Kumasi intense pressure from the funding agency for TCB to meet referral requirements has led the regular probation intake personnel (who sympathize with the program) to "take a more in-depth look at cases generally closed out at the intake level for possible referral (to TCB)." Such attempts to meet funding requirements may have a negative effect upon clients. The El Pueblo Programa is escalating the seriousness of client offenses (in the records), and in Kumasi regular probation is referring cases which it would normally have terminated. The result of such activity is certainly greater intervention into the lives of clients and an expansion of the juvenile justice system, albeit in paralegal form.

The juvenile justice system may expand in another paralegal manner. There may be a formal or informal agreement between the funding agency and the program or the program and the local juvenile justice system to staff the program with regular probation/police personnel who are "on loan" or on sabbatical while employed by the program. If the funding agency approves or is unaware of such arrangements the result is a predominant "legal" tone to a program supposedly outside of the juvenile justice system. It is unrealistic to believe that such personnel do not maintain very close working relations with regular system staff.

Funding agencies tend to stress the "numbers" aspect of a program's function. Numbers of juveniles diverted equal program "success." Such emphasis creates problems for paralegal programs. The need for referrals to keep up a program's numbers makes such programs particularly susceptible to pressures from referral sources - juvenile justice system personnel.

Type III: Nonlegal

If a program meets all the criteria of the nonlegal type relative to interaction with the juvenile justice system it may still find itself pressured toward becoming paralegal if its financial solvency depends upon funding by or through criminal justice agencies. A direct correlation is likely between a program's status as independent or nonlegal and its ability to be independent of criminal justice system funding. All of the programs studied by this research team that were typed as legal or paralegal were dependent upon criminal justice system funding. The one program that is

closest to the nonlegal type has no real funding source beyond the church that sponsors it.

Many community service agencies have the potential to act as diversion or referral agencies for the juvenile justice system (e.g. YWCA, Big Brothers, church organizations). Such agencies are not of course specialized diversion projects. Police and probation personnel, however, refer juveniles to such agencies. These programs generally service non-delinquent youths and are funded by nonjustice oriented public or private agencies. Since these programs are not known as agencies for "bad" youths it reduces the likelihood of stigmatization and their independent funding arrangements reduce the danger of pressure for cooperation by justice system agencies.

A strong case might be made for a reduced role, in regard to diversion programs, by criminal justice system funding sources such as LEAA. Wherever a program becomes known primarily as a justice system "service" it is quite possible that it will assume any negative image that is attached to that system. On the other hand if the justice system merely purchases services and/or simply refers youths to private, relatively non-stigmatized programs, such negative associations may be more adequately resisted. Some major side effects are that community participation and responsibility are thereby encouraged and the juvenile is treated as normal rather than abnormal.

Summary

Present funding trends for diversion are in the direction of support for specialized programs of the legal or paralegal type. The result is tacit approval of diversion as minimization of penetration. Traditional diversion or discretionary judgments to cease processing and/or refer outside the system are either ignored or positively discouraged. Nonlegal programs, however, call merely for just such traditional diversion at no great cost increase to the justice system or the public. A major new funding direction might well be the re-education or re-orientation of juvenile justice system personnel to the possibilities and benefits of using traditional diversion with or without referral to existing community service agents. The cost of training system personnel for greater or more efficient use of diversion options would appear minimal compared to the present emphasis upon large scale funding of diversion programs.

IX. CONCLUSIONS AND ISSUES

A. The Definitional Problem

The major issue in juvenile diversion is the ambiguity that surrounds the concept. This confusion has been discussed throughout this paper as a conflict between theoretical and operationalized definitions of the term. Policy-makers should have a clear understanding of the possible ramifications of choosing between these two interpretations. In general terms, a choice of true diversion means extending support for the traditional diversion process within the juvenile justice system but withdrawing support from all diversion programs operated or controlled by that system. If, however, policy-makers decide in favor of minimization of penetration they will implicitly encourage the current proliferation of programs developing within the system and/or the creation of programs controlled by juvenile justice or other legal authorities.

Elliot, in his National Evaluation of Youth Service Systems for the Office of Youth Development stresses the fact that:

the receiving agency should lie outside the formal jurisdiction of the Juvenile Justice System. Diversion represents a referral to a community-based program or agency which is independent of the justice system. By this definition, an informal probation program operated by a County Probation Department does not constitute a diversion program.¹⁴

Leaving such complicated issues as recidivism and stigmatization aside, the one dimension of operating costs shows that an emphasis upon minimization of penetration further expands the juvenile justice system by increasing personnel needs. The study indicates a call for more funds, staff and physical space whenever minimization of penetration is implemented as a new program component of the police or probation departments.

If minimization of penetration increases the size of the juvenile justice system and its array of services there is a strong possibility

of an expansion of legal authority. The result is that more juveniles come into contact with formal agencies of authority. The conceptual confusion between prevention and diversion, the desire to offer services, and the general distrust that legal authorities have for nonprofessional helping agencies all lead to the development of more programs for more juveniles within the existing systems of legal authority. Once again the research findings, although impressionistic, do indicate greater numbers and types of juveniles contacted by authorities after the implementation of minimization of penetration type diversion programs. This certainly indicates the need for more systematic research in this area.*

B. Labeling Theory/Stigmatization

The advocates of diversion in the President's Crime Commission Report (1967) generally based their arguments upon labeling theory. Contact and processing of juveniles by the juvenile justice system was viewed as potentially stigmatizing and to be avoided whenever possible. Little systematic research has been done to demonstrate the actual process of stigmatization. + Practitioners have interpreted labeling theory to mean the avoidance of official labels (i.e. imposed with adjudication). It is not at all clear, however, that informal processes and unofficial labels are less stigmatizing for the juveniles in question. This question requires systematic and probably long-term research emphasizing the subjective experience of the juvenile. The gist of the labeling theory approach is that the conferrence of labels is stigmatizing and potentially harmful to the individual. We have mentioned that informal processes must be examined as also potentially stigmatizing. It is quite possible that even "true diversion" might open the doors for increased stigmatization. This might occur if a juvenile is merely transferred from one form of legal authority to another (juvenile justice to welfare) or from a legal authority to an agency publicly identified as dealing with deviants.

Thus, diversion from the juvenile justice system to welfare, especially if the latter agency develops in effect an alternative legal structure, may be viewed by clients and the community as equally stigmatizing.

* Delbert Elliot is presently engaged in a major research effort, Diversion - A Study of Alternative Processing Tactics for NIMH which should provide more data on this topic. To be completed in 1976.

+ M. Klein has just recently commenced a sophisticated, quantitative analysis of the effects of various levels of labeling (in Los Angeles) for NIMH, but research findings will not be available for quite some time.

Coercion, implicit or explicit, to accept services from a private agent or agency (psychiatrist, drug abuse clinic) may similarly be viewed in a negative manner. Labeling theory certainly may be viewed as directed at the effect of all labels, formal or informal, public or private. If diversion research acknowledges a basis in labeling it must examine the effect of all potentially stigmatizing interaction initiated by contact with, and diversion by, the juvenile justice system. It may well be that when certain juvenile actions/attitudes are proscribed by law it is inevitable that some sort of label will result from responses by agents of social control to violations of such laws.

Concern over stigmatization raises the issue of whether diversion should be merely a "turning aside" or a referral to something else. In the first instance diversion occurs without "services"; in the second "services" are viewed as a necessary adjunct of diversion. Elliot, for example, maintains that:

diversion presupposes a receiving agency which offers some formal or informal youth development service or delinquency prevention program... screening provides no referral, no service or treatment and no follow-up. Diversion implies all three.^{15*}

C. Measures of "Success"

Existing research, beset with methodological problems, has not demonstrated that doing something (treatment, services) is necessarily better than not doing anything. The political need to show a decrease in the recidivist rate as a result of changes in policy has a tendency to place pressure on programs to demonstrate "success" statistics. Such self-evaluations are highly questionable. There is a crucial need to develop a research design that adequately compares doing "something" with doing "nothing" and both of these procedures, of course, should be contrasted against the "success" of formal processing (i.e., adjudication and incarceration).+

It is not clear that rates of recidivism are viable yardsticks against which to measure the phenomena of diversion. Recidivism may be criticized as perhaps indicating more about agents and agencies of social control than it does about the deviant under that control. There is little or no general agreement relative to the "acceptable" level of

* For an opposite view see Schur, Radical Non-Intervention. Englewood Cliffs, N.J.: Prentice Hall, Inc. 1973.

+ See Appendix B of Volume I of this report, Juvenile Diversion: Final Report. Also see D. Elliot, Diversion: A Study of Alternatives Processing Tactics 1975 NIMH proposal.

recidivism either for an individual deviant or for the programs and processes that deal with deviants.

Both true diversion and minimization of penetration attempt to deal with juvenile offenders in ways basically different from formal processing. The ideology of either form of diversion rests implicitly or explicitly upon the belief that the formal system or society, has somehow failed the juvenile. To view diversion processes and programs as failures because they are unable to "adequately" eliminate the continued failures of both society and the juvenile seems patently unrealistic. New measures of "success" must be developed dealing, for instance, with degrees of humanism, empathy, and justice, measures that view constructions of social reality from the perspective of the juveniles as well as from that of those who desire to control his/her actions and attitudes. Contemporary social theory, particularly that of labeling or reaction theory, has offered a serious critique of biological and psychological causation theories. If research measures seriously take this critique into account they cannot solely rely upon individualistic measures of personal failure such as recidivism. The National Strategy for Youth Development set forth by OYD/HEW:

differed profoundly from most treatment-oriented approaches to delinquency prevention. It was different in the sense that it focussed on social institutions rather than on persons. Person treatment programs typically concentrate on individual pathologies which often have the long-term effect of aggravating deviance by reinforcing, rather than challenging, institutional practices which generate delinquency.

The "National Strategy" however apparently has remained primarily a statement of goals and has rarely been operationalized by either practitioners or researchers.

D. The Diversion Process

Although this research effort has attempted to analyze the processes of diversion it is evident that an ethnographic study of discretion in the juvenile justice system should have high priority in subsequent research. Processes, or the implementation of discretionary diversion options, have been generally ignored by researchers, policy-makers and practitioners who have unduly concentrated their attention upon the organization and effects of programs.* An understanding of the

* A major exception is Aaron Cicourel's work: The Social Organization of Juvenile Justice (New York: John Wiley & Sons, Inc. 1968).

attitudes, training, political pressures, rules, regulations, guidelines and informal relationships that guide juvenile justice personnel in their intra-and inter-agency interaction becomes a paramount issue for continued research.

Marvin Wolfgang's research seems to support our impression that true diversion may become an institutionalized form of racism by siphoning off a higher proportion of white as compared with black youth.¹⁷ Additional systematic research is needed to verify or refute this impression.

A similar hypothesis may be developed with regard to minimization of penetration. Diversion programs outside the system may be proportionately under-utilized for minority youth as compared with white youth who are seen as needing something more than mere referral out but are undeserving of the trauma of adjudication.

A contradiction arises when one discusses the potential effects of diversion in regard to racism. It seems likely that diversion also serves to draw youths into the system (widens the net). To suggest that nonwhites are "deprived" of such additional contact due to racism strikes one at first as somewhat ironic. The above hypothesis, however, differentiates as to the level at which racially biased discretionary judgements can occur. Net-widening appears to occur mainly at the level of decisions concerning the needs of status offenders; hence more youths are drawn into the system for help. It is quite possible that nonwhites resolve their own status offense problems to a greater degree and non-white youths come into contact with the system for generally more serious categories of offenses. It is at this level that institutionalized racism may operate to deprive such youths of a chance at diversion. Sophisticated research is crucial to resolve these hypotheses.

The present research was too exploratory in nature to adequately survey questions concerning the demographic characteristics of diversion target populations. There appears to be a very strong tendency for practitioners to view diversion as a dispositional option for "good kids" or youths that are willing to "cooperate."

Policy-makers must be conscious of the possibility of diversion becoming a new institutionalized form of discrimination. Research should attempt to compare and contrast various diversion target populations and the dispositional options thus employed. Close scrutiny of types of offenses, types of offenders, and the types of dispositions that

characterize diversion processes/programs should shed light upon the existence or nonexistence of discrimination. Marvin Wolfgang and colleagues found, for example, that:

As we pursued analysis of the available data, we became increasingly aware of the differential dispositions based upon race... however we spilt and spliced the material at hand, nonwhites regularly received more severe dispositions... However expressed, nonwhites were less frequently given a remedial (nonjudicial) disposition. 18

The decision of policy-makers to support one or the other or the various forms of diversion will result in the channeling of funds to agencies or programs. Such support also has an effect upon the diversion phenomenon. The mere existence of program components may serve to alter or abolish traditional diversion processes such as screening. It is in this manner that diversion may increase the number of juveniles (and the types of juveniles) contacted by the system and, perhaps, increase the financial cost incurred by that system. Diversion may well be best accomplished, and be most consistent with theory, merely by supporting processes (i.e., discretionary options) through more staff training and aid in developing better administrative guidelines, then the very need for large scale funding of programs may be eliminated. Such funding considerations will, of course, depend entirely upon the definitional and policy choices that are made.

NOTES

¹ Arnold Binder, "Pre-Trial Intervention and Diversion" (Irvine, Calif.: University of California, 1974).

² Leon Leiber, Project Crossroads: A Final Report to the Manpower Administration (Washington, D.C.: National Committee for Children and Youth, U.S. Department of Labor, 1971).

³ Warren Thornton, Edward Barrett and Lloyd Musolf, "The Sacramento County Probation Department 601 Diversion Project" (Sacramento: Sacramento County Probation Department, 1972).

⁴ Binder, loc. cit.

⁵ Suzanne Lincoln, "Juvenile Diversion, Referral and Recidivism," eds. Robert Carter and Malcolm Klein, Police Diversion of Juvenile Offenders (Englewood Cliffs, N. J.: Prentice Hall Pub. Co., 1975).

⁶ Robert Fishman, "An Evaluation of the Effect on Criminal Recidivism of New York City Projects Providing Rehabilitation and Diversion Services" (New York: New York Criminal Justice Coordinating Council, 1975).

⁷ Delbert S. Elliott and Fletcher Blanchard, "An Impact Study of Two Diversion Projects," Paper presented at the American Psychological Association Convention, Chicago, 1975.

⁸ Delbert S. Elliott, "National Evaluation of Youth Service Systems" (Boulder, Colo.: The Office of Youth Development, Behavioral Research and Evaluation Corporation, 1974).

⁹ Robert Carter and John Gilbert, "Alternate Routes: An Evaluation" (Sacramento: Department of California Youth Authority, 1973).

¹⁰ Thornton, et al., loc. cit.

¹¹ Malcolm Klein, "Police Processing of Juvenile Offenders: Toward the Development of System Rates" (Los Angeles: L.A. County Criminal Justice Planning Board, 1970).

¹² Richard Sundeen, "A Study of Factors Related to Police Diversion of Juveniles: Departmental Policies and Structures, Community Attachments, and Professionalization of Police," Unpublished Ph.D. Dissertation (Los Angeles, California: University of Southern California, 1971).

13 Donald Cressey and Robert McDermott, Diversion From the Juvenile Justice System (Ann Arbor, Mich.: National Assessment of Juvenile Corrections, 1973).

14 Elliott, op. cit., p. 38.

15 Ibid.

16 Ibid., p. 4.

17 Marvin Wolfgang, Robert Figlio, and Thorsten Sellin, Delinquency in a Birth Cohort (Chicago: University of Chicago Press, 1972).

18 Ibid., p. 220.

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