

This research was supported by grants #0319007375 and #0321007374 awarded to the Evaluation Unit by the Governor's Commission on Crime Prevention and Control. Points of view and opinions stated in this report are those of the author and do not necessarily represent the official position or policies of the Governor's Crime Commission.

PRE-TRIAL DIVERSION/INTERVENTION

AN EVALUATION REPORT

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PRE-TRIAL DIVERSION/INTERVENTION: AN EVALUATION REPORT

THE SUBJECT:

This report is an evaluation of six pre-trial diversion projects funded by the Governor's Commission on Crime Prevention and Control (Crime Commission). The funding of pre-trial diversion projects began in 1972 and was completed in 1976. Although the Crime Commission funded several other diversion-type projects, these are the only six which focus on service to an adult clientele. The six projects are:

- 1) Diversion and Rehabilitation (D&R), Beltrami County;
- 2) Operation DeNovo (DeNovo), Hennepin County;
- 3) Lyon County Prosecution/Diversion Project (Lyon), Lyon County;
- 4) Off-Con, Otter Tail County;
- 5) Region Diversion (Region), McLeod, Meeker, Renville, Redwood Counties;
- 6) Project Remand, Ramsey County.

Before proceeding with the evaluation, we must be quite clear in our understanding of the projects. These projects all attempt to divert people from the traditional court processes before trial, and they intervene in a defendant's life by providing treatment. The treatment strategies of the projects differ, but each serves client needs with the intent of reducing reinvolvement with the criminal justice system. Thus, these projects are appropriately labelled as intervention programs.

In Figure 1, the distinctions, based on the factors of control and service delivery, between pure diversion, formal diversion and intervention are presented. Pure pre-trial diversion and formal pre-trial diversion have no service delivery. Pre-trial intervention, however, offers significant service delivery. Intervention and formal diversion maintain criminal justice

system control, but pure diversion does not.

FIGURE 1

Criminal Justice Control

None

Some

*Service
Reliance*

None

Pure Pre-Trial
Diversion

Formal
Pre-Trial
Diversion

Some

-

Pre-Trial
Intervention

OBJECTIVES:

The purpose of this report is to provide (1) the Crime Commission, (2) project planners and (3) project administrators with decision-making information concerning pre-trial diversion/intervention projects. The report includes (1) a description of the pre-trial diversion/intervention processes in these six projects, (2) an analysis of the costs of the projects and (3) an assessment of the success of the projects in reaching their stated goals.

The motivation for this evaluation is the desire to resolve questions surrounding the concept of pre-trial diversion/intervention and the performance of pre-trial diversion/intervention projects. Such projects were begun in Minnesota, as well as in other locations, with minimal understanding of the cost or effects of pre-trial diversion/intervention other than it seemed to offer an alternative to traditional court processing. Since original funding, however, questions have arisen regarding the cost, effect and legal status of pre-trial diversion/intervention. Funding agencies require knowledge of the nature of projects, what projects have accomplished and how

much projects cost. This report is, in part, an attempt by the Governor's Crime Commission to provide the information necessary to answer these questions.

Although this report does not involve a methodology specifically designed to analyze program strategy, the findings contained herein do illuminate the problem areas of pre-trial diversion/intervention which must be addressed by pre-trial diversion/intervention practitioners and should prove useful to project administrators and staff in the performance of their tasks and in the planning of future projects.

RESEARCH QUESTIONS:

The majority of the analysis was directed at the professed goals of the projects. It was appropriate to approach the questions of what was accomplished primarily from the viewpoint of what was attempted. Some additional issues, which had an impact upon what was accomplished, were also addressed in the report.

The general goals of the projects are:

1. To improve the efficiency and effectiveness of the system
 - a. by conserving official criminal justice resources through a reduction in prosecutor, court and probation caseloads and by lowering system costs of dealing with offenders, and
 - b. by providing an alternative which has the rehabilitative potential to increase employment and to thereby reduce recidivism.
2. To enable the offender to avoid the stigma of conviction so that chances of becoming a productive member of society are increased.

Based on these goals, research questions were developed which could be categorized into two groups. The first group of research questions dealt

with the effects of the projects upon clients, while the second group dealt with the effects of the projects upon the system. Questions regarding clients were:

1. Do the projects, through treatment, reduce the needs of clients?
2. Are the social and economic problem solving abilities of clients increased during project treatment?
3. Are unemployment and underemployment of clients reduced during project treatment?
4. Is reinvolvement with the criminal justice system reduced for those who complete project treatment?
5. Do clients of the projects avoid the stigma of guilt by having criminal charges dropped or dismissed?

Research questions dealing with system goals were:

1. How many clients did the projects remove from traditional court processing?
2. Do the projects lower criminal court caseloads?
3. What is the cost for each client served?
4. What is the cost to successfully divert an individual from traditional court processing?

Additional issues were felt to have an impact on what was accomplished by the projects and were therefore analyzed. These were felt to be the process of diversion, the effort of the projects, and the legal status of the projects. The basic research questions dealing with process were:

1. How are clients referred to projects?
2. Who makes the decision to divert an individual?
3. Are the needs of clients identified by the projects?

Questions dealing with effort were:

1. What were the counselor caseloads?
2. Are the needs of clients served?
3. Who provides services for the clients?

There were two major legal questions:

1. Is the selection of clients equitable?
2. Is participation in diversion/intervention projects voluntary?

DATA AND MEASURES:

Data were collected on all clients from each of the six projects for the period of Commission funding, with the exception of DeNovo from which data were not gathered during its first year of Commission funding (1972-3). The data were collected at participant intake, at termination and at four time intervals after termination. The follow-up intervals were at six, twelve, twenty-four and thirty-six months after termination. Because of the recent inception of the projects, data sufficient for analysis have not been collected for the last two follow-up periods. These data are composed of variables that can be divided into three categories: (1) demographic, (2) socio-economic and (3) criminal history and/or activity.

The staffs of the projects collected data using data forms provided by the Crime Commission. Additional data were collected by the staff of the Crime Commission's Evaluation Unit from the Bureau of Criminal Apprehension (BCA) and project financial reports. Data from the BCA were collected for convictions while project financial reports were used in the development of cost data. Also, grants applications and personal and telephone interviews were used to develop information on project goals, organization, processes

and target populations.

The statistics used in this report are relatively uncomplicated frequency distributions and averages. Several measures of cost are offered to assess project success in reaching system goals. These are (1) expenditures divided by number of clients and (2) expenditures divided by favorably terminated clients. Some cross tabulations incorporating the chi square statistic are employed to assess project effectiveness. The measure for reinvolvement was the percentage of the group analyzed that had been convicted of a misdemeanor or felony during each of three periods: during treatment, the first six months after treatment and the second six months after treatment.

FINDINGS:

A. Process

1. Referrals:

- a) In comparison to the composite figures of nine Department of Labor pilot projects, the six Minnesota projects, considered together, utilize the courts much less extensively as a referral source, a finding which indicates that diversion in Minnesota, relative to projects elsewhere, is to a greater extent handled outside the purview of the court.
- b) Each project relies upon one source for a large share of its referrals. DeNovo and Region are least dependent on one source.
 - 85% of Lyon's participants were referred by the prosecutor;
 - 82% of Off-Con's participants were referred by defense attorney;
 - 81% of Remand's participants were referred by project staff;
 - 58% of Region's participants were referred by the prosecutor, 12% of Region's participants were referred by the defense attorney and 12% of Region's participants were referred by the police or sheriff;

-- 56% of DeNovo's participants were referred by defense attorney and 20% of DeNovo's participants were referred by project staff.

2. Decisions to Divert:

- a) DeNovo is the only project that exhibits a high level of involvement in diversion approvals by the three officials, judge (93% of DeNovo's diversions were approved by a judge), prosecutor (87%) and defense counsel (84%). The judge's approval is limited to merely providing the mechanism, a continuance, for diversion.
- b) Most decisions for Remand diversions were made jointly by the judge (96%) and the prosecutor (96%).
- c) Region and Off-Con diversions were approved jointly by the prosecutor and defense counsel: Region prosecutor 88%, defense counsel 88%; Off-Con prosecutor 100%, defense counsel 93%.
- d) Lyon had only one significant official approving diversions. While the prosecutor approved 86% of diversion decisions, a judge approved only 1% and defense counsel 0.5%.
- e) D&R is an exception because a large number of its cases come from other correctional programs and not from the diversion process.

3. The typical diversion participant in each project is a white male between the ages of 18 and 21.

4. Needs of clients:

- a) With the exception of Lyon, the average number of needs per client identified at intake is similar across projects:
 - D&R, 2.9;
 - DeNovo, 2.8;
 - Region, 2.6;
 - Remand, 2.2;
 - Off-Con, 1.8;
 - Lyon, 0.7.
- b) With the exception of Lyon, of the total number of identified needs (maximum of five per participant), employment was the need type most often identified in each project. In D&R, 75% of identified needs were employment related; in DeNovo, 58%; in Off-Con, 49%; in Region, 50%; in Remand, 66%; in Lyon, only 15%. Medical treatment represented a significant need type for Lyon (28% of needs), Region (20%), and Off-Con (17%). Restitution was significant for Lyon (34%). Education needs were significant for Remand (12%).

B. Effectiveness

1. All the clients, except two cases (out of 361) from the DeNovo project, who were favorably terminated from the six Minnesota projects had the criminal charges for which they diverted dismissed or dropped.
2. The projects demonstrated that they could decrease the number of needs of favorably terminated clients. There was an across-projects average of 55% needs reduction for favorably terminated clients between intake and termination.
 - a) DeNovo and Remand were most successful with 71% and 76% needs reduction, respectively.
 - b) Lyon and Off-Con were least successful with 33% and 36% needs reduction, respectively.
3. DeNovo, Off-Con and Remand expressed the goal of improving the social and economic problem-solving ability of their clients.
 - a) Only Remand demonstrated an increase in academic and vocational school attendance. For those clients favorably terminated, there was an increase in school attendance of from 11.5% at intake to 61.5% at termination.
 - b) The occupational skill level of favorably terminated clients from the D&R, DeNovo and Remand projects increased between intake and termination. Since there was a significant relationship between favorable termination and occupational skill level, it is believed that these three projects have a positive effect on a client's occupational skill level.
4. D&R, DeNovo and Remand had the goal of reducing unemployment and underemployment. In analyzing those clients who expressed employment as a personal goal, it was found that there was an increase in employment among those favorably terminated from these three projects. Furthermore, there was a significant relationship between favorable termination and employment when those clients who were unfavorably terminated were used as the comparison group.
5. The analysis of reinvolvement with the criminal justice system involved only the DeNovo and Remand projects. With convictions as the measure of reinvolvement, there was no noticeable effect of successful project participation on reinvolvement with the criminal justice system for specific time periods after the diversion period.

C. Efficiency

1. When a size factor was included in the analysis, it was found that funding was similar for four Minnesota projects (approximately \$1,600 per professional staff a month), the exceptions being D&R and Off-Con (approximately \$3,600 per professional staff a month).

- a) The extra expense of D&R was for testing for diagnostic purposes.
- b) The extra expense of Off-Con was for allocating money to county offices.

Neither D&R nor Off-Con is still operating.

2. All of the projects, except DeNovo, suffered a delay in becoming operational beyond the expected start-up date. Off-Con and Remand had the longest delays. After funding, Off-Con hired a consultant to plan operation of the project. Remand had major implementation problems as the director was hired in November, 1973 and all the counselors were hired by March, 1974; yet, the first diversion did not occur until May, 1974.
3. The cost per client of the six Minnesota projects varied greatly in a range of \$126 to \$1798. Lyon and Off-Con were the two extremes with Lyon being the least expensive and Off-Con being the most expensive. The other four projects exhibited a narrow range between \$445 to \$987. The average of the cost per client of the six Minnesota projects (\$732) was less than the average for a group of national projects (\$854) but the national projects were located in areas with higher factor costs.
4. The DeNovo, Remand and Region projects had the goal of reducing the cost to the criminal justice system of dealing with offenders. The figure chosen to compare with traditional costs is the cost per favorably terminated client. The cost per favorable termination of the three projects was:
 - a) DeNovo, \$762;
 - b) Remand, \$612;
 - c) Region, \$1316.

Because of the lack of information on traditional court costs, no determination could be made as to whether these projects reduced system costs. However, DeNovo and Remand do not have the goal of reducing court caseloads, and this would appear to conflict with the goal of reducing system costs.

5. There was no indication that the four Minnesota projects which expressed the goal of reducing court caseloads (Lyon, Region, Off-Con and D&R) actually reduced court caseload.

D. Effort

1. Project caseloads increased in the second funding period for all projects, an indication that caseloads do not reach maximum levels during the first year of a project's operation.
2. Counselor caseloads:
 - a) The projects were not able in the two-year period examined to

reach desirable counselor caseloads, where desirable is defined to be the range of 30 to 50 cases per counselor.

- b) DeNovo, Off-Con, Region and Remand had lower caseloads than those of all but one of the national projects used for comparison.

3. Needs Served:

- a) Four projects, the exceptions being DeNovo and Remand, had a large number of clients with no needs identified. Off-Con had no identified needs for 47% of its participants. Lyon had no identified needs for 42% of its participants; Lyon had no identified needs or restitution as the primary need for 63% of its participants.
- b) None of the projects served all needs that were identified at intake. Specifically, an average across projects of only 57% of intake needs were served. DeNovo served only 33% of intake needs and Off-Con served only 41%. Lyon served 79% of intake needs (but identified only 0.7 needs per client at intake).

4. Service Provision:

- a) A large proportion of services provided were by project staff. An across project average of 65% of services provided were by project staff, a statistic which may indicate significant duplication of already existing community services.

Duplication of existing community service provision may be a more serious problem for Remand and DeNovo in that the metropolitan area offers a larger number of community service options. Moreover, DeNovo staff provided 73% of services for its participants and Remand provided 69%.

- b) A large proportion, 48%, of all participants in all projects were never referred to community agencies for service provision. Within a given project this figure varied little, from 43% in Remand to 53% in DeNovo.

5. Maintaining a person in a diversion project for longer than one year is a violation of Commission policy, yet three projects had a significant percentage of clients still active in the programs after one year: D&R, 12%; Lyon, 15%; and Off-Con, 18%.

6. Favorable termination rates vary considerably across projects:

- D&R, 41%;
- DeNovo, 62%;
- Lyon, 91%;
- Off-Con, 78%;
- Region, 75%;
- Remand, 81%.

E. Legal Issues

1. The referral systems of several of the projects were inequitable because they did not identify all eligible individuals.
2. Under certain conditions there is a danger that participation may not be voluntary because the defendant may lack information.
 - a) There has been no requirement made by the Crime Commission or the projects that formal charges be filed by the prosecutor before an individual can be diverted.
 - 1) In general, Remand and DeNovo projects do not accept a participant until after charges are filed.
 - 2) It is less clear when and if charges are filed against participants of the other four projects.
 - b) There is no requirement that the court have a finding of probable cause before an individual can be diverted.
 - c) The client in many cases is not represented by defense counsel.
 - d) It is probable that some people who would not have been convicted have been diverted, since 44% of the unfavorably terminated clients in DeNovo and 27% in Remand were not found guilty of the charges for which they were diverted.

IMPLICATIONS:

This evaluation effort has implications for several separate groups, but the implications for just two groups will be emphasized. The two groups are (1) people administering pre-trial intervention projects and (2) people involved with criminal justice evaluation. Although some implications may overlap, the two will be discussed separately.

(1) The evaluation has produced findings which can prove useful to those working on pre-trial intervention projects as implementers and administrators. First, there is the necessity of insuring truly voluntary participation in the intervention project on the part of the client. Other than protecting the rights of clients, a main reason would be to avoid the unnecessary addition of people to the criminal justice system. It can be assumed that few people

will volunteer to participate in a pre-trial intervention project if they realize they are not going to be prosecuted in the first place. The danger of involuntary participation and concomitantly the addition of people to the criminal justice system occurs when clients do not have complete information and the prosecutor incorporates pre-trial intervention as an alternative into his case-screening process.

Another implication from the study is that projects should carefully specify who their clientele is going to be and develop a particular program for that clientele. Projects which follow such a pattern have greater success at reaching intermediate objectives than general projects with general counselling programs. An inventory of types of crimes and the situation of individuals who commit these crimes should be done before implementing a new project or when making alterations in an existing project. This will aid in identifying what people can be best served by pre-trial intervention and whether there is a large enough number of them to warrant a pre-trial intervention project (or perhaps whether diversion would suffice). The project can then be directed to serve the needs of those clients who would benefit most and whose diversion most helps alleviate congestion in the criminal justice system.

Projects should stress referral to social service agencies, rather than becoming counselling centers in their own right. Even in their areas of primary expertise, such as employment, they should refer clients to existing agencies and develop their program around what is already available in the community. This would tend to lower the costs of the projects, while teaching clients where help is available in the community and putting clients in touch

with agencies which can provide assistance over the long term.

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It is also important that projects have specific criteria for selecting a client. Data should be collected on why each person that was considered was accepted or rejected; i.e., if rejected, what criteria they did not meet. Such a practice would tend to make pre-trial intervention less arbitrary and the effects of the projects on the system would be more open to analysis.

(2) The experiences derived from this evaluation effort have produced implications for people working in criminal justice evaluation. First, due to the mobility of evaluators, it is important that several chief authors work on an evaluation at the same time. This evaluation passed through several hands before it reached its final resting place, and I think it is fair to say that it lost something at each transition.

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A related point is that the original evaluation design should be updated as often as changes are made in it. This will add to the understanding of the evaluation process and make transitions between evaluators easier. Often, as in the case of this evaluation, there is an original design and a final report which does not reflect that design. One is not sure of what happened between the two and for what reasons changes occurred. In this situation not only may confusion result but doubt about the reasons why changes took place may arise. This skepticism may seriously damage the usefulness of an evaluation.

Another implication from this study is that "incentive analysis" may be very helpful in formative, process and summative evaluation. Incentive analysis allows one to predict how a rational actor will respond in a

specified situation given his position and goals. This would be particularly helpful in formative evaluation when a project is just developing. Problems that could crop up later may be avoided by a better understanding of how actors will view and use a project.

Finally, a major problem with doing evaluation in the court sub-system is a lack of data. In particular, cost data on the courts is almost non-existent. This evaluation effort, as well as others, has been hampered by the data problem in courts; in fact, much research has been prevented due to this problem. Therefore, research funding agencies should put money into developing cost and other types of data in the courts sub-system. Perhaps this could be incorporated in the development of courts information systems.



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