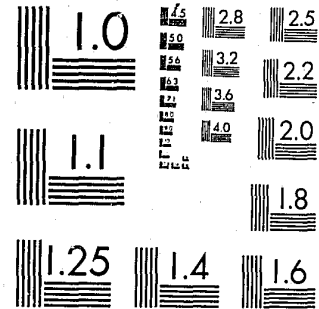


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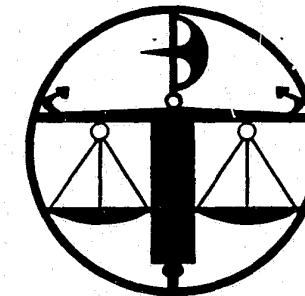
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The Lancaster County
Pretrial Diversion Program:

1978 Felony Diversions

An Assessment of Recidivism,
System Impact, and
Cost - Effectiveness



Ron Lahners
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Lincoln, Nebraska
April, 1981

78358

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Finally, I express my heartfelt gratitude and appreciation for the consistent high quality performance of Elaine Severe, my Administrative Aide, not only throughout this study, but continually since the Program began six years ago. Not only did she type the entire report, but admirably assumed responsibility for any other aspect of the study that needed to be done whenever she was asked to do so.

Comments on this study are invited and should be directed to me at: Lancaster County Pre-Trial Diversion Program, 2202 South 11th Street, Lincoln, Nebraska, 68502. Copies of this report may be purchased for \$7.50 each. Make checks payable to Lancaster County.

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X
 THE LANCASTER COUNTY PRE-TRIAL DIVERSION
 PROGRAM: AN ASSESSMENT OF RECIDIVISM,
 SYSTEM IMPACT, AND COST EFFECTIVENESS
 FOR 1978 FELONY DIVERSIONS

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Lincoln, Nebraska
 April, 1981

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 ACQUISITION

I. INTRODUCTION

Program Description and Background

Purpose

The purpose of the Lancaster County Pre-Trial Diversion Program (LCPTD) is to provide a method whereby eligible, non-dangerous individuals who have been charged with certain non-violent offenses may voluntarily earn the dismissal of these charges with a positive contribution to the community. To do this, a participant and the LCPTD staff work together to decide upon appropriate goals for the person to pursue to demonstrate a personal commitment and responsibility in exchange for the charges being dismissed by the County Attorney. Agreements include any number of the following areas as appropriate:

Felony

- * no new offenses
- * restitution to victims
- * employment
- * education or training
- * consumer education course if checks offense
- * volunteer community service
- * drug, alcohol or mental health treatment
- * \$100 program fee

Misdemeanor

- * no new offenses
- * restitution to victims
- * drug/alcohol course if drug offense
- * consumer education course if checks offense
- * volunteer community service
- * \$25 program fee

History

In 1974, the Judiciary Committee of the Nebraska Legislature authorized a study to determine the feasibility of a pre-trial diversion program for Lancaster County. The research was conducted by the present director of the Pre-Trial Diversion Program and a Deputy County Attorney.

As a result of the study, the Lancaster County Attorney, Ron D. Lahners subsequently established a steering committee of local criminal justice and governmental representatives to plan for the implementation of a diversion program for adult felony offenders. Technical assistance was provided by Arnold J. Hopkins, at that time the Director of the National Pre-Trial Intervention Service Center of the American Bar Association Commission on Correctional Facilities and Services. The Lincoln City Council and Lancaster County Commissioners, through an interlocal cooperation agreement, each agreed to provide one-half of the required local matching funds for a three-year federal demonstration grant from the Nebraska Commission on Law Enforcement and Criminal Justice. The initial grant was awarded in May, 1975. The Program became operational in September, 1975, and in September, 1977, its scope was expanded to include misdemeanor diversions. The third year grant expired in October, 1977. Since then, the City Council and County Commissioners have provided funding on an equal share basis.

Administration

LCPTD is administered by the Director, who is jointly responsible to the County Attorney and County Commissioners. It is a separate county department and the Director is classified as a department head in the

personnel system. All permanent employees are included in the personnel system also. A 16 member Steering Committee, comprised of eight local government and criminal justice representatives and eight citizen representatives appointed by the County Commissioners and City Council, act as a policy advisory body to the Director and County Attorney.

Felony Diversions

Two full-time permanent counselors and two one-half time doctoral students from the University of Nebraska, Department of Educational Psychology, are responsible for all direct services and supervision of the people in LCPTD for felony offenses. The doctoral students are on contract to LCPTD. Each full-time counselor maintains an average caseload of 35-45 individuals and each part-time counselor 15-25 people. The counselors provide direct counseling services and act as brokers for community resources to help participants obtain needed services. The counselors also design and conduct various classes as needed. These include, for example, the drug and alcohol course, the consumer education course, women's groups, etc. (applicable as of 1978).

Misdemeanor Diversions

One full-time counselor is responsible for the individuals in LCPTD for misdemeanor offenses. The average caseload ranges from 75-100. This counselor is responsible for the development and maintenance of all community agencies where placements are made for volunteer work which is required for all misdemeanor offenders. This position also monitors all of the felony participants' volunteer work, although these cases are assigned to other staff members. She assures all placements are going as agreed and that evaluations are completed by the agencies. This

person also recruits new agencies for placements. Some of the most frequently used local organizations include: CONTACT, Inc., Children's Zoo, Open Harvest Food Cooperative, Bryan Hospital, Lincoln General Hospital, Cedar's Home for Children, and the Recycling Center.

Screening & Intake

One full-time screener is responsible for the daily coordination with the County Attorney and County Court to identify individuals eligible for LCPTD, make initial contact with them to explain the program, and schedule intake interviews if they are interested in LCPTD. The screener's office is located at the County-City Building. The screener conducts all intake interviews for both felony and misdemeanor participants. A constitutional rights questionnaire, social history and criminal history is obtained and background investigation is done as needed. Each person is assigned to a counselor and the initial interview between the person and counselor is arranged by the screener. The screener maintains liaison and communication between the Program, County Attorney, and County Court for all matters related to participants. One permanent part-time screener also assists in the screening process when the full-time screener is not available.

Program Objectives

The primary goals of the LCPTD program for the period of this report were:

- To divert from the criminal justice system 250 felony offenders and 125-150 misdemeanor offenders (Misdemeanor component began 9/77).
- To achieve a 70-75% favorable completion rate for felony diversions defined as no convictions on new offenses and substantial compliance with conditions set forth in the program involvement agreement.

- To increase and improve participants' personal and social competence in those areas believed to influence criminal behavior. These include: educational levels, employment, public assistance, drug and alcohol usage, self esteem, survival skills, inter-personal relationships, restitution and volunteer community service work.
- To achieve a lower recidivism rate for participants than that of comparable offenders who did not have the opportunity of LCPTD.
- To provide this alternative at less cost than by traditional criminal justice system processing.

The first three objectives were addressed in a previous study: The Lancaster County Pre-Trial Diversion Program Evaluation Findings For 1977 Felony Diversions, Eric McMasters, October, 1979.

The 1979 study reported these findings:

- The Program diverted substantially fewer felony offenders from the system than anticipated.
- The number of misdemeanor diversions (on an annual basis) was about what was projected.
- The favorable completion rates and recidivism rates were within the range of anticipated performance levels.
- Based on the dispositions of those cases not accepted into LCPTD and the unfavorable terminations, the majority were not convicted on felony charges.
- In those areas where adequate measurements have been developed, participants made substantial progress in social and personal competence. The LCPTD program has made tremendous strides in its capability to measure changes in the human services goal areas mentioned above. This is not to say they are complete or totally adequate. They are not by any means. However, the techniques developed by LCPTD have been refined to the point where progress in these areas was measurable to some degree.

On the other hand, since this kind of information was not available for comparable offenders who did not participate in LCPTD, no definite conclusions can be made whether these gains would have been made in the absence of LCPTD.

Purpose Of This Investigation

The purpose of the present investigation is to examine the Program objectives that relate to recidivism and cost-effectiveness. Is there any difference between defendants who avoid the consequences of a criminal conviction and similar offenders who are handled by the traditional system in terms of new offenses? Does one group commit more new crimes than the other? Are the rearrest rates for both groups so low that neither the traditional system or LCPTD has any substantive effect? Is there any cost savings as a result of handling a group of offenders by alternatives to the established system, or does it actually increase overall criminal justice system costs because of the relatively few numbers of persons diverted? This report is an attempt to answer these questions.

Chapter 2 provides a selected overview of the evaluation literature in the field. Chapter 3 explains in detail the rationale for the research design selected for this study; a description of how the comparison group was created for use in the recidivism analysis is the subject of Chapter 4, and the findings of this aspect of the study is found in Chapter 5. Chapter 6 examines the impact of the Program upon the local justice system. Chapter 7 includes a cost-effectiveness analysis and Chapter 8 is a summary of the conclusions drawn from the findings of this study and resultant recommendations for the Program's future operations.

It is recommended that the reader of this report review Appendices A, B, C and D for background information to better understand the data collection procedures utilized for this report and to be more familiar with the

operation of the local criminal justice system. Appendices A and B review the court systems and jurisdictions, and describe how a felony complaint proceeds through the system to final disposition. Appendix D is the codebook used by the Program to enter data on the computerized MIS.

Limitations Of The Study And Recommendations For Future Research

While the overall quality of this research effort is believed to be excellent, limitations do exist of which the reader needs to be cognizant. Several of the more important issues are addressed in the Chapter on research design - use of the comparison group and the measurement of recidivism.

The reader should be aware that this evaluation assessed the LCPTD in light of the conditions under which both it and the traditional system functioned in 1978. Several policy and/or procedural Program changes have been made since then that have altered its overall impact upon the system, most of which are favorable to the Program. Some of these include:

- * The implementation of a program service fee of \$100 for felony diversions and \$25 for misdemeanor diversions. (1/79). This has resulted in \$10,000-15,000 annually to offset program costs.
- * The Program's annual budgets for 1979 and 1980 were reduced 8% compared to 1978 funding as a cost reduction measure. The LCPTD budget is the only criminal justice system departmental budget that has not increased since 1978. Thus, each year since 1978, the overall cost of handling criminal cases in this jurisdiction is rising while the cost of diverting cases to the Program continues to decline.
- * A criteria change whereby referrals are not accepted once a case has been bound over to District Court. This was done to eliminate delays and to reduce the administrative processing of cases prior to their being referred to LCPTD.

- * A policy adopted by County Court not to grant multiple continuances while an applicant is being screened for LCPTD. As a result, the intake process has been streamlined and cases are being dismissed with only one or two required appearances in County Court for each person referred to the Program.
- * Too, effective in 1979, the costs to the County for the housing of prisoners in the City-County jail increased from \$10.58 to \$15.00. To the extent that LCPTD participants would be sentenced to jail, the Program impact on jail costs is increased substantially.
- * An appeal process was implemented in 1980 whereby defendants denied LCPTD may be afforded an administrative review of the decision. There were eight such hearings in 1980. This procedure has resulted in some additional Program costs because the County Attorney has to allocate time to prepare and consider each hearing.

Further, this study does not examine the misdemeanor component, nor is there any process evaluation to determine which, if any, aspects of LCPTD are more effective than others or with what types of clients it is most effective.

Too, the recidivism study warrants additional investigation and refinement. While the two groups are similar in demographic characteristics that correlate with program success and/or rearrests, the study groups are not as representative as they might be as to the types of offenses being diverted in the last two or three years. Specifically, the study groups are overrepresented by felony marijuana and property offenses. Experience has shown that drug offense diversions typically are relatively low risks while property offenses are above average risks (higher probability of rearrest). A future study is warranted with matched groups having more representative proportions based on charged offense. The cost-effectiveness study needs to be updated periodically taking into consideration the changes and modifications such as described above.

II. REVIEW OF THE LITERATURE

The early evaluation literature on pre-trial diversion (intervention) is summarized in two important 1974 studies funded by the National Science Foundation: Pre-Trial Intervention Strategies: An Evaluation of Policy Related Research and Policymaker Perceptions and Pre-Trial Services: An Evaluation of Policy Related Research.

Rovner-Pieczenik

The first, authored by Roberta Rovner-Pieczenik under the auspices of the American Bar Association, summarized findings on pretrial diversion. The Rovner-Pieczenik study assessed the validity of research findings purporting to show that diversion affected outcomes. The evaluations examined employment, recidivism, system change and cost-benefit. Some conclusions from this study were:

- Several programs had an effect on client employment status during program participation. However, research problems meant that the employment impact during the post-program period could not be determined.
- Several programs had an impact on recidivism rates. However, research difficulties meant that this could not be generalized to all programs, nor could it be generalized to the post-program period.
- Data was not available in order to substantiate meaningful cost-benefit claims.
- Client characteristics prior to program entry had an effect on clients in both program and post-program periods: "The following characteristics were associated with success in several programs; employment at time of program entrance; good employment history; infrequent or no prior arrest; older age; more educated; married; female. The felony/misdemeanor distinctions did not discriminate between

the successful and unsuccessful participants. The property/personal offense distinction was more relevant to post-program behavior; property offenders were more likely to have post-program success."

- Evaluations did not indicate the success or failure of various internal program practices.
- The reasons for the dismal research findings included inappropriate research designs, evaluation research being given a low priority, and research not being policy oriented.¹

Mullen

The second, authored by Joan Mullen of Abt Associates, presented an overview of pretrial diversion research and also examined the literature as to internal and external validity and policy utility.

Mullen's findings were more negative than Rovner-Pieczenik's:

- Low recidivism for program participants was probably more due to program selection process, rather than to the impact of any practices within the program.
- There was confusion over the goals of recidivism as either a human alternative or a way of reducing recidivism.
- It was difficult to justify diversion on cost-effectiveness criteria. This was especially true since most diversion programs had a relatively small number of clients and were relatively costly to operate.
- Diversion was not necessarily a true alternative, since many of the clients would not be sentenced to jail or prison.
- If the program had an effect on recidivism, it was probably of "limited duration and generally small magnitude".
- None of the studies used a control group, and only one of the studies had a satisfactory comparison group. This later study by Zimring compared defendants completing the Manhattan Court Employment project before screening with a group of defendants arraigned on weekends during the same month. "In none of Zimring's comparisons did members of the weekday group show a significant lower rate of recidivism. Because treatment had been applied to only a small

part of the weekday group its effect was, of course, proportionately diluted, severely limiting the precision of measurement. Nevertheless, this method offers the only internally valid substitute for random assignment presented in the literature reviewed."²

Both Rovner-Pieczenik and Mullen described the uses of inappropriate research methods. The lack of control groups and nonequivalent comparison groups were found throughout the literature. The comparison of clients who completed programs with those clients terminated unsuccessfully from the program provided misleading results. The research suggested that the greatest documented impact on the client was during the program period and with clients of positive personal characteristics.

Early in 1976, the National Association of Pre-Trial Services Agencies sponsored a grant to establish the National Pre-Trial Services Resource Center. The stated purpose of the Center is to establish a staffed organization with a national scope, capable of responding to the needs of individual pretrial services agencies, and to develop and coordinate information dissemination, training and technical assistance in the pretrial service field.

Kirby

In January, 1978, Michael Kirby, Research Associate for the Center, updated the research literature. In his report, Recent Research Findings In Pre-Trial Diversion, Kirby found that, with few exceptions, the same problems of adequate research design existed since 1974. He examined several studies that used flawed methodology and two that utilized appropriate designs which were clearly of higher quality than any others:

The Monroe County, New York evaluation (quasi-experimental design), and The Vera Institute of Justice study of the Court Employment Project (experimental design). These evaluations attempt to determine if clients of a diversion program, when compared to a control/comparison group, have more favorable outcomes such as employment and recidivism.

Since the Monroe County and Court Employment Project evaluations are the two most important studies using acceptable research designs, Kirby's description of these studies is set forth below:

Monroe County Evaluation

Overview

Monroe County, an upstate New York county, with a population of more than 700,000 includes the city of Rochester. Most referrals to the diversion program are from public defenders and private attorneys. In order to be eligible for the diversion program, a defendant must be charged with either a misdemeanor or a non-violent felony and have either a very light prior record or no criminal record. The defendant must be both in need of services and motivated to use these services. The program also requires the knowledge and consent of the defendant's attorney. The evaluation indicates that great effort is made to exclude cases which would normally be dismissed. The study uses a matched comparison group of clients who might have been eligible for the program, the year before program inception. Data is examined for recidivism, welfare, and cost benefit analysis. Recidivism is computed for both new arrests and convictions one year after the original arrest. Program clients have lower conviction and arrest rates and are less apt to be convicted on the original charge (charges are not automatically dropped through the program). The program is shown to be cost effective. The study also has a qualitative (called a process evaluation) examination of relevant policy considerations. These include:

- the low risk defendant;
- the problem of obtaining dismissals;
- in-house counseling versus referral agencies;
- perception of program by various criminal justice officials;
- perception of eligibility of program by major referral service;

- minority members as program participants; and
- management information system.

Internal Validity

The study has two sets of program/comparison groups:

- | | |
|--------------------------|-----------------------------|
| • Clients with services: | * Clients without services: |
| Comparison group (N=137) | Comparison group (N=32) |
| Program group (N=137) | Program group (N=35) |

A sample of program participants was chosen from alternate months, beginning with the first month of the program (January, 1975 to March, 1976). This allows the evaluation to take into account any programmatic changes. All program participants, not just successful participants, are used. The comparison group is chosen from 1974, the year before the program began. Participants are matched by age, sex, race/ethnicity, court of arraignment, charge, and previous adult record. In addition to the demographic characteristics of the program and comparison group samples (for which there was no statistically significant difference), the study includes an analysis of behavioral problems. Behavioral disorders for participants in the two groups are examined through the county's psychiatric register. Percentages of participants in each group receiving mental health assistance are identical for the program and comparison groups. Further, the patterns of specific diagnoses for program and comparison groups are also similar.

Every effort is made in the evaluation to determine the equivalence of the two samples. However, there were two important differences that could not be controlled. First, the comparison group is developed from the year prior to program inception. Because there were major changes in the local economy from that earlier year, data on public assistance outcomes is of limited utility. Secondly, clients in the diversion program were referred by attorneys, screened by the program and the district attorney. Since the comparison group was not screened in the same way, there can be some doubts about the equivalence of the two groups.³

Vera Study of Court Employment Project

The Vera Institute of Justice, which founded the first release agency is currently conducting an evaluation of the Court Employment Program in New York City. Court Employment is one of the oldest diversion agencies in existence. It now restricts its eligibility criteria to felonies involving property. Among the elements of this study are the following:

- Rearrest, recidivism, employment and income, cost benefit, and psychological factors associated with program participants and a control group;
- Characteristics of successful program participants;
- A sufficiently large sample and appropriate follow-up period in which to study recidivism; and
- An experimental design with a program (experimental) and a control group.

Defendants are assigned to program and control groups only after the Court Employment Project has screened the defendants for eligibility and the district attorney has consented to defendant participation in the program. Decisions as to defendants being assigned to program and control groups are made solely by the Vera researcher after his screening. Initially, there appears to be no statistically significant difference between the control group and the experimental group. There will be approximately 410 defendants in the program (experimental) group and 256 defendants in the control group. According to observers, the few cases in which the court overrides the research assignment or the attrition of the participants from the sample have not affected the research design by any important degree.

The use of an overflow group is central to understanding the experimental design. The overflow group, a real innovation in criminal justice research, can be employed where there are ethical or legal questions about the research design. The overflow in the Court Employment Project study is based on the following concepts:

- The research program produces more screened defendants than the Court Employment Project can handle with its limited budget. (A larger number of defendants were eligible for the programs than could be accepted).
- The Vera research group made an assignment of defendants to either program or control group in the manner which approximates a first-come, first-served basis.
- Steps in the selection procedure include randomly assigning a time period, estimating the number of cases during that time period, filling a Court Employment quota from the percentage of expected cases previously assigned to overflow groups, and calculating the estimated number of cases to be screened.⁴

Shelby County Program

Subsequent to the Kirby report, another high quality diversion study has been reported that utilized a carefully matched comparison group:

The Shelby County Pre-Trial Diversion Program, An Evaluation, conducted by Richard K. Thomas & Associates, Memphis, Tennessee, in April, 1980. Kirby, now associated with Southwestern University at Memphis, also consulted on this project.

The Shelby County Pre-Trial Services Agency is similar to the Lancaster County PTD Program. The program was established in cooperation with the Shelby County Attorney General's Office and the Shelby County Criminal Court. It provides nine to twelve months of counseling to eligible defendants. The services provided include social counseling, employment assistance, and social agency contacts. If the defendant successfully completes the program his charge is dismissed and the arrest record expunged. If the defendant's diversion status is revoked for failure to meet the terms of diversion, his case is sent back to Criminal Court where processing is reinstated.

The report asserts that the Shelby County Program has significant influence on its participants:

Only 14.9 percent of the diverted defendants ended up being convicted of the current offense; the charges against the remainder were ultimately dismissed. On the other hand, 99.4 percent of the comparison group was ultimately convicted of the current charge. This conviction differential resulted in the diversion group generating 5,468 jail days and 414 probation months as a result of the current charge. This compares to 13,447 jail days and 2,886 probation months for comparison group members.

Recidivism analysis indicates that the diversion program has a significant impact on rates of rearrest and conviction for diverted defendants. During the three-year followup period diverted defendants were significantly less likely to be rearrested than were members of the comparison group. Not only was the incidence of rearrest lower for the diversion group, but multiple arrests were less common. Of those rearrested in the two groups, comparison group recidivists were more likely to be rearrested for a felony offense than were diversion

group members. Also, the conviction rate for the diversion group was considerably lower. During the followup period diversion group members were sentenced to 15 percent less probation time than comparison group members and to 34 percent less jail time due to subsequent rearrests and convictions.

Cost-effectiveness analysis indicated that, after adjustment for revocations, the diversion cost the local government approximately \$67,000 more than traditional processing would have. This results in no cost-savings for the first year. However, during the three-year followup period, the lower rate of recidivism for the diversion group resulted in decreased processing costs and cost savings of approximately \$44,500. The high initial cost of diverting defendants reflects first-year startup expenses and low initial case loads, cost factors that disappear in subsequent years, so when long-term costs are considered the program is cost-effective.⁵

Given the large sample size and the careful selection process for the comparison group, the recidivism data are significant.

As to cost effectiveness, the researchers purport to utilize a "marginal" cost approach instead of the more common but less useful "average" cost method. However, the methodology as it is described in the report appears to be an average cost one for the most part. This study did make allowances for the probable expected dispositions of diversion type cases. That is, not all will receive felony convictions and prison sentences. Many cases are reduced to misdemeanors in exchange for guilty pleas, and many receive probation and/or fines as part of their sentences.

The comparison group (N=171) was matched by age, race, sex, prior record and current charge with some variations, most notably race. There were 9% more whites than blacks in the diversion group than in the comparison group. The diversion group had 70.5% with no prior juvenile record compared to 84.8% in the comparison group. This might be explained by

the same reason fewer prior arrests under 18 were observed for the 1974 Comparison Group in the LCPTD study. That is, in many cases, juvenile record is not readily available from criminal records. Past juvenile offenses are often volunteered by candidates in face-to-face interviews, which is not possible with a comparison group design.

III. RESEARCH DESIGN RATIONALE

This section explains the basis for the research methodology adopted for this evaluation. Whenever possible, decisions were based on program experience and supported by empirical data. In some circumstances, adequate information was not available. In those situations, reasonable estimates were made.

The primary reference for the research design used for this study was Kirby's previously cited Suggested Research Practices In Pre-Trial Diversion.

Comparison Group Versus Control Group

The single most critical research issue was how to establish a group of defendants handled by the traditional system with which to compare individuals who participated in the LCPTD Program to determine if there were any differences in recidivism rates. There are only two acceptable methodologies: the experimental design and the quasi-experimental design. In the experimental design, eligible defendants are randomly selected and assigned to either a treatment (LCPTD) or control (traditional system) group. Randomization insures that prior characteristics of the two groups are the same, and that any differences in recidivism or other evaluation variables being measured are related to the Program impact on participants. Kirby cites the important considerations involved in the choice of the experimental design:

Arguments Against Experimental Design:

- Political and ethical problems limit the use of random assignment.
- Many programs are not familiar with the technique.
- The period of time required to obtain results can be exceptionally long.
- Defendants should not be arbitrarily deprived of participation in the program.
- It may be costly to implement an experiment.

Arguments for Experimental Design:

- A controlled experiment is the most certain way to demonstrate the impact of a program.
- To fund programs that do not have any impact is, in itself, unethical.
- Under some circumstances random assignment can be done with less cost and disruption than other design types.
- Even though experimental designs are seldom employed, there are studies which demonstrate the value of the approach.⁶

The only other acceptable methodology is the quasi-experimental design which does not involve randomization.

Rather than a control group, a comparison group, similar to agency clients, is selected from archival records. Rather than random selection, a statistical comparison of the two groups is used to demonstrate equivalence. The comparison group may include:

- A group of defendants chosen from a time period before the program started who would have been eligible for diversion had the program been in existence.
- A group of defendants eligible for diversion who were rejected by the judge and/or opted for a trial rather than diversion.

- A group of defendants who would have been eligible for diversion but were not screened by the program because it was not operating at a particular time of the day or week.
- A group of defendants who would have been eligible for diversion but were not referred by their attorney or other sources because of lack of knowledge about program eligibility.⁷

Kirby cautions against the use of what he terms a "no design"

approach:

The no design, involving reporting statistics on agency clients, is not suggested as a model for evaluative research. Such a design may be useful for annual reports, but it does not provide a reliable indicator of the impact of the program on client outcomes. As an example, if a hypothetical agency reports a recidivism rate of ten percent, there is no way to determine if this represents good performance. The hypothetical program may compare its "numbers" to those in other jurisdictions; however, such an approach is totally unacceptable because of differences in practices in various jurisdictions and differences in determining and measuring variables such as recidivism. The hypothetical agency may claim success because ten percent is a low number.⁸

Research Principles For Diversion Evaluations

According to Kirby, certain principles should be observed when doing evaluation research. These principles are stated below. How each one is treated in this study is written in script type.

- The experimental design provides the most reliable information of program impact on clients. Thus, any large study funded at the national level should be conducted on the basis of this design. The resources utilized in a national study are extensive; therefore, the information generated by a national study should answer the important questions of the discipline with a great degree of certainty.
- Because implementation of the experimental design proves difficult in many local jurisdictions, the quasi-experimental design provides an attractive alternative for local programs.
- *For this study, the comparison group approach was selected for several reasons: 1) There was not a large enough pool of eligible defendants to construct a random control group without adversely*

affecting the Program's impact on the traditional justice system. Since it began in 1975, LCPTD consistently has been underutilized by 25-30 percent. The number of felony diversions has declined slightly every year, from 199 in 1976 to 149 in 1979. While this situation has been counteracted by reduced annual budgets and expanded criteria to permit misdemeanor diversions, this issue remains as the single most important barrier to cost-effectiveness. 2) The County Attorney and the LCPTD Steering Committee was opposed to any process that appeared to arbitrarily deny eligible defendants the opportunity to participate in the Program. To them, and to the Director, random selection for participation in LCPTD might be construed as denying candidates equal protection under the law. While defendants have no "constitutional right" to enroll in a diversion program, random selection of participants gives the appearance of unfair or unequal treatment by the criminal justice system. Since the Program has always been able to accept everyone that wanted to participate, this selection process cannot be justified by the "overflow" principle. That is, the pool of eligible candidates exceeds program capacity and, therefore, since not everyone can be accepted, it is an acceptable research practice to make the selection decisions on a random basis.

- In quasi-experimental designs, comparison groups must be similar to the group agency clients. Every effort must be made by the researcher to determine if they are comparable in terms of current charge, prior record, employment, age, sex, etc. Not only must the researcher determine this equivalence, but these results must be systematically and clearly indicated in research reports. Matching techniques can also be used to improve the equivalence of the agency clients and the comparison group.

The process used to ensure equivalence to the PTD participants is described in detail in a separate section of this report.

- The selection of a comparison group should always be in a conservative direction. That is, it should contain defendants equal in risk or of less risk than the agency clients. Resulting statistics which show a statistical impact on agency clients can then be accepted with a great deal of confidence.

This was taken into account and consistently followed. The final decision for each defendant whether to include or not was made by the Program's Director in accordance with the eligibility criteria. The Director approves each individual being recommended into the LCPTD. As he has done this for all diversion cases since the Program began in 1975, the problems of subjective interpretations of suitability for the program were minimized. Also, the most extensive prior criminal records for PTD participants for 1977 and 1978 were recorded and used for comparison when a questionable case from 1974 was being considered for inclusion in the comparison group.

- Care must be taken in selecting a sufficiently large sample. Small sample sizes will affect findings. However, it is more important to draw a small sample which includes a properly chosen comparison or control group, than to draw a voluminous sample which does not have a valid comparison or control group.

The final study included 250 defendants charged with an eligible offense in 1974 and 250 LCPTD participants matched on age, sex, race, current charge and prior record.

- Data for program participants should include both the defendants completing the program and those being terminated. For example, one of the criteria of program success is rearrest rate while in the program. Since the clients who are program "failures" have been eliminated, a program has artificially improved its statistics.

This procedure was followed. In no instance was the final status of the PTD participant known when the person was matched with a 1974 case. All unfavorable terminations were equally as likely to be selected as a favorable completion except that there were substantially fewer unfavorable terminations available as the cumulative program success rate was about 70%. Likewise, neither was the rearrest status for either the comparison or LCPTD group known when the cases were being matched. The cases were paired by a research assistant who was not familiar with the defendants who had been in the Program.

- A proper follow-up period should be used in measuring outcome variable such as recidivism rate. From one to three years after program termination would seem to be an adequate follow-up period. To only measure program success during program participation says nothing about what happens to defendants once released from program supervision.

The time periods for which recidivism data were measured ranged from 18 to 36 months from the date of arrest for the diversion/ comparison offense or the date of initial arraignment in County Court if the person had not been arrested (usually ISF or NAC complaints). There were very few cases where 24 months had not passed since the original arrest. Recidivism data for the comparison group was obtained for 36 months. Recidivism data are reported for exactly equivalent time periods for each matched pair so there is no difference in the time "at risk" for either group. The three year rearrest data represents 183 of the 1974 group and 183 LCPTD counterparts. Nine months is the average term of program involvement, so each person was out of the program at least nine months with most more than one year.

- The researcher should be sensitive to changes in the character of the population. This includes such things as maturation of the client, changes in the program, external changes (economic or employment), etc.

It cannot be stated with certainty that no intervening variables exist that might have affected one group more than the other.

There were no changes in the statutes or in the procedural system during this time. There are two County Court judges and five District Court judges. In both courts, the judges rotate and serve one year on the criminal bench while the other judges handle various civil matters within their jurisdiction. During 1974, two judges handled most of the cases in District Court.

This, plus the possible changing sentencing patterns brought about by altered value systems of the courts and prosecutors, are more of a concern when an attempt is made to estimate LCPTD impact on the system than it is in the explanation of recidivism differences.

- Research on diversion should be systematically pursued in the context of a standard framework. The factors usually examined in evaluations includes recidivism (and rearrest), wages and employment, cost analysis, system impact and (in some cases) psychological variables.

This issue is addressed below.

- For example, recidivism is often used without any indication of the definition employed, the length of time used to measure the concept, the use of arrest or conviction data, etc.

For this report, both rearrest and conviction data were measured.

- Programs should not make extravagant claims about their impact on clients and the criminal justice system. Rather, all claims should be realistic and testable using empirical data.

There has been a conscious deliberate attempt to adhere to this principle in this study.

- Outcome measures, such as employment and recidivism, should be examined for different classes of clients (e.g., less/more serious charges, male/female, etc.). Such classification for which the program has the greatest impact.

This issue was addressed in Lancaster County Pre-Trial Diversion, Evaluation Findings for 1977 Felony Diversions. All of the data collected in this study is available for further analysis if needed as it is stored on computer in a Statistical Package For the Social Sciences (SPSS) format. However, these research questions are beyond the scope of this investigation.

- In choosing a vendor to do evaluation research, there are no clear guidelines for identifying the most effective evaluator. However, a program should take into account the evaluator's knowledge of the criminal justice system, his/her understanding of the evaluation process, his/her ability to produce easily understandable reports, previous experience, etc.

This study was directed by the Director of LCPTD with technical assistance from Peter Beeson, formerly the LCPTD Program Evaluator, and Don Pryor, Research Associate, Pre-Trial Services Resource Center.

- One of the problems with research and evaluation is lack of utilization by the target audience. Reports with statistical and technical jargon are difficult for decision makers to assimilate and understand. In preparing reports evaluators should be encouraged to prepare them in a logical and consistent manner which can be easily read by both decision makers and researchers. Researchers should consider producing a popular version of the larger technical report which can be easily assimilated. At the very least, a clearly-written executive summary should be attached to a technical report.
- There is no such thing as a national recidivism rate. Jurisdictions define and measure recidivism in different ways; to draw a comparison between jurisdictions when there are these vast differences is erroneous. Recidivism rates may be related to the demographic characteristics of a city, general practices relating to arrest and prosecution, etc. These internal factors make it impossible at this time to develop a national figure. The only valid comparison of recidivism rates is within the jurisdiction using comparison groups or control groups.⁹

This is one of the primary objective of this research effort as this particular question has been raised with regard to the Program several times in the past.

Research Variables Selected For Investigation In This Study

Kirby suggests that evaluation data need to be analyzed on these variables:

- Recidivism: The use of recidivism is important in evaluating pretrial diversion agencies. First, it is a major rationale of diversion programs that if penetration into the criminal justice system is reduced for first offenders, then the recidivism rate of the first offenders should be exceptionally low. Secondly, decision makers often find recidivism to be the most important research question for evaluations. Recidivism should be defined as three separate elements: in-program recidivism, (often called rearrest rate), short-term post-program recidivism, and long-term recidivism.
- Employment: The early pretrial diversion programs were built around the manpower model. These programs involved extensive vocational counseling, skill training, and job placement services. Research show that defendants have improved more with positive prior characteristics coming into the program. In terms of studying employment, problems are posed by a definition of employment, wage levels to be measured, skills included in the examination and the control of environmental variables such as changes in the economy.
- System Impact: Many argue that system impact of diversion may be more important than the client impact. System impact includes such things as increasing alternatives for case processing, alleviating congested court calendars, decreasing the use of correctional institutions, and reducing the cost of processing through the traditional criminal justice system. However, little research has been done in providing either quantitative or qualitative analysis on this topic.
- Psychological Variables: Diversion programs suggest that because of the type of assistance given, there are psychological changes in the defendant. Psychological testing, according to this view, indicates that participant feeling, behavior and emotional state of well being improved because of experiences with the program. These conclusions are somewhat doubtful because of the lack of a control group and limited information. Without further evidence,

it could be argued that the program's impact upon the psychological disposition of the defendant is a short term impact at best. Programs should also be relatively careful in using psychological testing, which is a clinical tool, to define the impact of the program on the defendant.

- Cost Analysis: Cost-effectiveness provides a method which documents the financial impact of a diversion program on the local jurisdiction. Cost effectiveness uses: Marginal cost (e.g., the change in cost if a diversion program were not operating) rather than average cost (e.g., dividing the total cost of operating an institution such as the court by the total number of defendants to obtain per client savings); and internal costs (e.g., only those affecting the jurisdiction) rather than external costs (e.g., all costs which affect the larger society). Cost analysis research has been weak because it uses external and average costs, produces overly complex reports, and attempts cross-jurisdictional comparisons where they are not possible.¹⁰

This study attempts to assess recidivism, system impact, and undertakes a cost-effectiveness analysis of the LCPTD. While employment, education, drug/alcohol usage, and mental health issues are stated target objectives for the LCPTD, the lack of data from comparable non-participants precludes any meaningful analysis. Further the difficulties encountered in past efforts to operationally define employment and other relevant variables such as drug use, psychological variables, avoidance of the stigma of a felony conviction, and the criminalization effects of the traditional justice system have been substantial. The Lancaster County Pre-Trial Diversion Program, Evaluation Findings for 1977 Diversions contains the results from previous research efforts to measure and evaluate LCPTD in these areas.

Information on employment, education, marital status, drug and alcohol use was not available from the existing archival records. Accurate information on sex, race, age, prior criminal record, and the nature of the offense was available. During the first two years of LCPTD, a concentrated research effort was made to

identify variables to help explain success in Pre-Trial Diversion. The purpose of this was to develop a model to predict who were good candidates for PTD, and also to determine if relatively high risk defendants might benefit from intensive intervention. These efforts were largely unsuccessful.

For the cost analysis, a marginal or incremental cost approach was utilized whenever possible. When incremental figures were available from a reliable source, these were used for the calculations. If costs would not be reasonably separated on some basis, average cost data were used; however, when this was necessary, departmental budgets were broken down and allocated to identified areas of responsibilities. For example, the County Attorney figures are basically average costs; however, the figures were derived by identifying and removing from the calculations direct costs of civil matters, juvenile, traffic, and game law violations. (Traffic cases are prosecuted in Municipal Court and game law violations are handled by waiver). Supervisory costs were also excluded. The remaining budget was then divided by the number of general criminal cases to determine the average figures to be used in this study. Also, the research was conducted under the assumption that if it could be demonstrated that diverting a defendant from the system made it possible for resources to be reallocated to other duties, these were appropriately considered to be cost savings although there was no actual reduction in expenditures.

The most common variables addressed in previous research are contained in Table 1 at the end of this section. These data are for the 1977 Felony Diversions. As can be seen from the table, age, sex, prior arrest record and offense charged most often were correlated with both program success and rearrest.¹¹

These results are not surprising, as demographic variables are most often cited as the most important predictors in diversion research literature. For example, closer examination of some variables can often be better explained by age. These include head of household, offense charged, (the average and median age of property offenders is younger than for all other categories of offenses), educational level, employment status, and marital status.

Rationale for Offense Charged Categories

There are numerous specific felony crimes in the Nebraska Statutes with which defendants may be charged. However, program experience has determined that certain offenses appear to be indicative of higher risks of rearrest than others. Again, these differences might be better explained by age or sex than offense; however, the differences are significant enough to warrant being controlled for in this study. Another reason to do so is that not all categories of eligible offenses are viewed alike by the County Attorney and the Courts. Certain crimes are more vigorously prosecuted than others and are more likely to incur jail sentences. Individuals convicted on insufficient fund check offenses have a high probability of receiving a fine as their sentence. To accurately estimate the impact on the justice system of diverting specific offenses, the likely consequences of each category is assessed individually.

The offense categories created were: marijuana, other drug, property, fraud, ISF (Insufficient Fund Check) and NAC (No Account Check), person, and other crimes. The subclassification of controlled substances offenses was primarily to improve the measurement of system impact. Felony sale or delivery of marijuana cases - many of which involved small quantities of marijuana and minimal amounts of money - were often reduced to misdemeanors and fined. Other drug offenses which involved cocaine, barbiturates, hallucinogens, and amphetamines, were more vigorously prosecuted and tended to proceed through County and District Court as felonies.

Rationale For Age Group Categories

Age is the highest correlated variable with both program success and the likelihood of subsequent arrests. As can be seen from Table 1, a linear relationship exists between age and these variables. Previous Program studies have shown that the highest risk groups are those under 19, and that after age 21, the risk of rearrest decreases significantly. As the Table shows, the favorable completion rate for all participants 22 years of age or older was quite high, 90% or more; the one year rearrest rate was 20%. As both of these rates are well within the Program's stated standards, it was felt there was no need to narrow the ranges (in terms of years within each category) in the older groups even though two people might be matched and yet have an actual age difference of ten or more years. On the other hand, the 18 and under group consists of only 17 and 18 year olds. There were no 16 year olds in the study, although the Program has accepted a few 16 year olds in the past. The 19-21 age group is a substantially lower risk one than the 18 year old group; therefore, a range of three years within the category is believed to be acceptable.

The age group categories include a wider age range as they progress.
 The 30 and over classification varies from 30 to 67 in the 1974 Group
 and from 30 to 48 in the PTD Study Group.

1977 FELONY DIVERSIONS:
**REARREST AND FAVORABLE COMPLETION
 RATES FOR SELECTED VARIABLES**

TABLE 1

Variable	N	Rearrest Rate One Year* After Diversion Offense			Favorable Completion Rate
		None	One	Two	
		%	%	%	%
Age Categorized					
Under 18	19	37	26	37	42
18	21	57	29	14	67
19-21	61	69	25	07	71
22-25	36	81	17	03	89
26-29	16	88	13	—	100
30	18	89	06	06	89
Sex					
Male	120	65	23	13	75
Female	51	82	16	02	77
Race					
White	161	71	20	09	76
Black	4	75	25	—	75
Other	6	50	33	17	50
Head of Household					
Self	95	75	20	05	79
Spouse	10	100	—	—	100
Mother	14	57	07	36	43
Father	43	61	30	09	77
Other	9	56	22	22	56
Marital Status					
Never Married	109	62	25	14	70
Married	30	93	07	—	93
Divorced/Separated	23	74	22	04	74
Other	9	89	11	—	89
Diversion Offense					
Property	60	60	23	17	68
Drug	69	71	23	06	84
Fraud	32	81	13	06	69
Person	5	100	—	—	100
Other	5	80	20	—	60
Prior Arrests Under 18					
None	115	73	20	07	79
One	37	73	22	05	81
Two	9	56	22	22	44
Three or More	10	40	20	40	40
Employment Status					
Employed full time	80	79	15	06	81
Employed part time	9	33	44	22	67
Unemployed	46	70	20	11	67
Student	31	55	32	13	71
Homemaker	5	100	—	—	100
Educational Level					
Less than High School	67	55	27	18	57
High School	57	74	19	07	81
Other Training	10	80	20	—	100
Some College	33	88	12	—	94
College Graduate	4	100	—	—	100
Program Classification Level					
A-Atypical	9	100	—	—	100
B-Situational	84	75	17	08	89
C-Correlational	67	63	27	11	63
D-Causal	11	55	27	18	27

*Totals may not equal 100 percent due to rounding

IV. SELECTION OF THE COMPARISON GROUP

Docket Book Screening

The initial step in the selection of the Comparison Group was to review the County Attorney Docket Book for 1974. The Docket Book is an alphabetical listing of all felony and misdemeanor complaints filed in Lancaster County Court. The defendant's name, docket book and page number, date of the complaint, charge filed, attorney assigned to that case, and the disposition of the complaint are all recorded in the Docket Book. For felony complaints, the final disposition reflects only that the case was bound over to District Court for further proceedings. If a felony is amended to a misdemeanor in County Court, the final sentence is recorded in the Docket Book. In 1974, the Lancaster County Attorney filed 977 felony complaints in County Court. This total does not represent the actual number of defendants because some individuals were charged with more than one felony during the year.

The Docket Book was reviewed and all offenses that were prima facie ineligible were eliminated. See Appendix C for the eligibility criteria. Some of the ineligible offenses included: Murder, Manslaughter, Rape, Assault, Habitual Criminal, Third Offense Driving While Intoxicated, and Possession of a Firearm by a Felon. At this stage, felony sexual assault complaints were included as these cases may or may not be eligible for LCPTD depending on the circumstances of the offense.

Criminal Record Histories

After this initial screening, 705 individuals were identified as potentially eligible based on the original charge filed. A master list was developed and as each person was eliminated, the reason for that

elimination was noted. The criminal record on each person was obtained from the Lincoln Police Department (LPD), Lincoln Municipal Court and the Lancaster County Attorney. Lancaster County Court records were reviewed if additional information was needed to complete the records of some people.

This procedure eliminated a substantial number of defendants for reasons of a prior felony conviction, three adult misdemeanor convictions, or no ties to the Lancaster County area. (Some misdemeanor offenses such as Drunk and DWI do not count against the person to determine eligibility). Juvenile offenses were recorded. If it was readily apparent from the number of juvenile arrests the person would be ineligible because of an established pattern of criminal conduct, the individual was eliminated. Borderline cases remained as potential candidates until more information became available.

Review of County Attorney Case Files

After this phase, about one-half of the 705 original individuals remained eligible. Available case files from the County Attorney's records on each individual were reviewed by the Director of LCPTD for eligibility information. Some individuals had as many as five separate files and, if necessary, each case was read. For those persons with several case files, the date of occurrence for each offense was noted from the police reports stored in each file. This was necessary to determine whether a particular offense was committed before or subsequent to the diversion/comparison offense or if it was collateral to that offense.¹²

In many cases, useful information was obtained from police reports, Federal Bureau of Investigation records, correspondence from defense attorneys and other individuals or agencies, and from handwritten comments noted in the files by the Deputy County Attorneys.

Demographic information was obtained if available on sex, race, date of birth, home address, local address, school, employment, and license plate and/or drivers license number. Very little information was available on some individuals even after this extensive review. Municipal Court records were then rechecked for those people who had not been eliminated to determine if they had been cited for traffic offenses before 1974 or during the subsequent three years. If so, it was assumed that the person resided in the Lancaster County area or had some ties here. Lincoln Police Department contact cards were also reviewed for information of value.

If it was determined that a person had some ties to the Lancaster County area but was known to be from another part of the state or from another state and was apparently eligible, criminal record checks were made at the police department and county sheriff's office in that community. This most often involved University of Nebraska-Lincoln students.

As a result of this additional investigation, 426 of the 705 individuals were excluded from the study, leaving 279 representative cases available to be matched with LCPTD participants. While any one person might have been ineligible under more than one criterion, only one reason was assigned to each excluded individual in the following order: prior felony conviction, more than two misdemeanor convictions, pattern of criminal conduct, no ties to area, nature of the offense, mental, other reasons, juvenile.

The reasons for final elimination follow below in order of frequency:

No Ties to Area	120	28%
Prior Felony Conviction*	106	25
Other Reasons	90	21
Pattern of Criminal Conduct	43	10
Misdemeanor Convictions	30	07
Nature of the Offense	20	05
Mental	10	02
Juvenile	07	02
	426	100.0%

*or felony charges pending

The Other Reasons classification is represented primarily by: lack of adequate information to make a decision; the person was accepted into LCPTD on the 1974 offense; the case was dismissed immediately after filing of charges because of reasons such as insufficient evidence; illegal searches; exceptional circumstances surrounding the offense; and other infrequent reasons.

Comparison Group/Diversion Group Matching Procedure

Individual sheets were completed on the remaining 279 people on five demographic characteristics: sex, race, age (within certain categories), offense charged (within selected categories), and prior record. Age and offense were grouped in the following manner:

<u>Age</u>	<u>Offense</u>
18 and under	Felony marijuana
19 - 21	Other controlled substances
22 - 25	Property crimes
26 - 29	Fraud
30 and older	ISF/NAC
	Person
	Other offenses

Similar sheets with the same information were completed for all 1975 through 1978 felony diversions. All favorable completions and unfavorable terminations were included. Ten cases from January 1979 were included in this group. In all, this amounted to 615 individuals available to be matched with the 279 cases from 1974.

The objective was to match a person from the 1974 Group with a counterpart from the LCPTD Group on all five demographic characteristics. The termination status of the LCPTD participants was not known, nor was the recidivism for any individual during this process as it was done by a research assistant not familiar with LCPTD participants. A few minor variations were permitted on the age and offense charged variables. Since the cases were being matched within an age range, if two individuals were only one or two years apart in terms of age, but were in a different age category, that pair was included in the study group. For example, someone 19 was matched with an 18 year old if both were similar on all other characteristics. While there were too few cases (14) in the non-white race category to warrant separate reporting, blacks were matched only with other blacks. Other non-whites were not matched exactly; thus, an American Indian could be matched with a Mexican American or an Asian. Also, whenever possible, any property offense where no intent to steal was indicated - destruction of property, for instance - was matched with a similar case from the other group. The controlled substances offenses were sub-classified as either felony marijuana or other drugs. In some cases there were multiple counts involving both marijuana and other drugs. Marijuana offenses were matched against other drug if all other characteristics were similar. No exceptions were allowed as to known prior arrests. Individuals with no previous arrests were paired with no exceptions.

If individuals from either group had prior arrests for extremely minor incidents, these were omitted from their prior record classification. Offenses excluded were hitchhiking, loose dogs, enter closed beach, game laws, status offenses such as runaway and altered ID. Minor in possession, trespassing, DWI, and disturb the peace offenses were included in prior record on the assumption that trespassing or disturb the peace offenses might well involve circumstances where there was specific criminal intent.

For those with prior records, no attempt was made to match precisely the number or type of previous offenses. If someone from the 1974 group had only one prior arrest and there were several choices available from the LCPTD group, someone with only one or two prior arrests was matched if possible. There was a conscious effort to avoid matching someone with only one prior arrest with another person who had three or more previous arrests.

Fortunately, the total number of prior arrests and the types of offenses were remarkably similar for both groups as can be seen in Table 2. The 1974 Group had 223 known prior arrests while the LCPTD study group had 217. (Multiple priors of four or more classified as three). See page 46. The only appreciable difference was that the LCPTD group had more arrests under age 18. This may be attributed to the fact that the County Attorney's Office did not begin maintaining juvenile offense records until 1974. Also, these offenses are more apt to be discovered when the information is volunteered by people while being interviewed as part of the intake process for the Program. Since

the 1974 Group was not subjected to the interview process, fewer offenses are likely going to be discovered.

As mentioned previously, some pairs of individuals were included in the study although they were not matched exactly on all variables. These are illustrated in Appendix E. The specific variable on which the two periods differed is designated by asterisks. The 1974 cases are noted by identification numbers that begin with a 9.

To summarize, 977 felony complaints were filed by the County Attorney in Lancaster County Court in 1974, the year before PTD. After eliminating those defendants charged with ineligible offense, 705 individuals remained as potentially suitable candidates for LCPTD had it been available at that time. About one-half of this group was eliminated after a review of police and court records.

Subsequently, after close scrutiny of all available information from the County Attorney case files, the number of cases remaining that would have been suitable for referral to LCPTD was reduced to 279. A few defendants were dropped from consideration simply because there was no information whatsoever about them. Twenty-nine people were unable to be matched. Black males with prior arrest records and white males with no prior arrests and charged with marijuana offenses were most likely not to be paired.

Of the 29 cases from 1974 that could not be matched, only two were female. Neither of the females, both white, had any prior record or any rearrests. Of the males, 16 were white (59%), 9 were black (33%) and 2 were Mexican-American (07%). The average age of the white males

was 21.3 years and 20.1 for the non-whites. (Excluding one white male who was 42, the average age for the white males was 19.9). None of the white males had any prior arrest record and most (75%) were charged with a felony marijuana offense. The rearrest rate for the white males was 25% and the subsequent conviction rate 19%.

The non-white males that could not be matched differed substantially from the whites except for age. All but one of the eleven individuals in this category had a prior arrest record, most with two or more. Three-fourths were charged with drug offenses while the remainder with property or fraud crimes.

In all, 250 people from the 1974 Group were matched against 250 LCPTD participants. The number of LCPTD participants selected from each year was as follows:

Year	N	%
1975	21	08
1976	60	24
1977	101	40
1978	62	25
1979	6	02
	250	99%

Of the LCPTD males selected, 78% were favorable completions while 77% of the LCPTD females were favorables. The remainder were unfavorable terminations.

A complete breakdown of the demographic characteristics for the 1974 group and LCPTD study group is contained in Table 2. Where available, comparative data for each years' felony diversions from 1975 through 1978 are also included in the table.

COMPARATIVE CHARACTERISTICS FOR 1974 COMPARISON GROUP, TABLE 2
PTD STUDY GROUP, AND ALL FELONY DIVERSIONS FOR YEARS 1975 - 1978

VARIABLE	STUDY GROUPS		ALL FELONY DIVERSIONS			
	1974	PTD	1975	1976	1977	1978
Total Number of Persons	250	250	89	199	177	140
<u>Sex</u>						
Male	72%	72%	73%	69%	70%	69%
Female	28	28	27	31	30	31
<u>Race</u>						
White	94%	94%	96%	94%	94%	91%
Non-White	06	06	04	06	05	09
<u>Age Categorized</u>						
16 - 18	29%	27%	27%	28%	24%	16%
19 - 21	37	36	33	33	35	36
22 - 25	24	26	26	21	21	27
26 - 29	03	03	07	10	09	06
30 +	07	08	08	10	10	15
Mean Age (Years)	21.8	21.6	22.2	22.4	22.4	23.5
Median Age (Years)	19.9	20.0			20.8	
<u>Offense</u>						
Marijuana	28%	26%	19%	14%	16%	09%
Other Drug	27	29	22	19	25	23
Property	23	23	38	41	35	29
Fraud	12	13	11	06	14	19
ISF/NAC	05	05	00	12	05	11
Person & Other	04	04	09	09	06	09
<u>Prior Arrests</u>						
None	50%	50%	29%	32%	42%	46%
One	26	27	28	33	29	35
Two	11	12	12	16	15	14
Three or More	14	11	30	20	13	05
<u>Prior Arrests Under 18</u>						
None	76%	70%	NOT AVAILABLE			
One	16	19				
Two	05	06				
Three	03	04				
<u>Classification of Prior Arrest Record</u>						
Minor Violations	10%	05%	NOT AVAILABLE			
Poss. of Marijuana	10	11				
Other Drugs	03	04				
Alcohol Offenses	30	24				
Property/Fraud	39	47				
Person/Other	07	08				

All data rounded to nearest percent

V. RECIDIVISM FINDINGS

Recidivism was examined from several perspectives in this study: total new arrests and convictions during the 24 months and 36 months after the comparison/diversion offense arrest; felony and misdemeanor convictions; the relative seriousness of new offenses; and an analysis of differences between individuals who had prior arrest records from either the 1974 or LCPTD Group and those with no prior record.

A word of caution is warranted in the interpretation of the recidivism rates. It is highly probable that the actual number of new crimes is greater than reported here for the obvious reason that the majority of all crimes go unsolved. The other qualification pertains to the highly mobile nature of the subjects used in the study.

The only sources of information to measure new offenses are official police and/or court records in Lancaster County, the law enforcement agencies in the communities where an individual was known to reside during the relevant time period, and the Nebraska State Patrol. The places of residence for some people in the study were not known with certainty. A substantial number may have relocated to different cities and/or states. This was especially so for the 1974 Group. Also, it may be assumed there were individuals who got arrested and/or convicted in jurisdictions that went undiscovered in this study. Here, too, this is more likely to have occurred with the 1974 Group, because participants in LCPTD frequently volunteer this information to their counselors that otherwise may not have been discovered. Many of the 1974 Group received probation sentences and

new offenses would likely be known to probation officers. Unfortunately, probationers are often transferred to other districts. The available records relative to probation did not contain sufficient information to determine if and when probations were transferred to districts outside of Lancaster County. One other limitation is that, in some cases, official police and/or court records are incomplete or inaccurate.

Some of the females may have experienced name changes because of divorce or remarriage. If rearrested, police and court records would reflect the new name in the criminal records. This, too, is more of a concern with the 1974 Group, as less information of this nature was available than for the LCPTD participants.

The important thing is that the difficulties and limitations encountered in the measurement of comparative recidivism are as likely to occur in either group. It is assumed that both groups were equally mobile and that roughly equivalent numbers were apt to relocate to unknown new areas. The same assumption is made for undiscovered arrests, name changes, errors in the arrest and court records, deaths, and the like.

Two Year Recidivism

The comparative rearrest and conviction rates are shown in Table 3:

TABLE 3

	ARRESTS/CONVICTIONS TWO YEARS FROM DIVERSION/COMPARISON GROUP OFFENSE			
	1974 (N=250)		PTD (N=250)	
	Arrests/Convictions		Arrests/Convictions*	
None	55.2%	64.8%	61.2%	69.4%
One	22.0	20.0	24.8	21.4
Two	13.2	9.6	8.4	5.6
Three or More	9.6	5.6	5.6	3.6

*Two pending cases excluded

The rearrest rate for the 1974 Group after two years was 44.8% compared to 38.8% for the LCPTD Group. The difference between the two groups as to multiple arrests (two or more) was even greater, 8.8%. The total number of arrests for the 1974 Group was 193, and for the LCPTD Group, 147.

Table 4 reflects the felony conviction rates for the two groups:

TABLE 4

	FELONY CONVICTIONS TWO YEARS FROM DIVERSION/COMPARISON GROUP OFFENSE	
	1974	PTD
None	90.8%	94.8%
One	8.4	5.2
Two	0.8	---

Twelve LCPTD participants received one felony conviction on a new offense. Of the 1974 Group, 21 individuals were convicted on one new felony, and two persons received two felony convictions.

Nature of New Offenses

The differences in rearrest rates by itself provides little insight into what kinds of new crimes are being committed. As shown in Table 5, people who were involved in LCPTD present no greater risk to the community than do offenders handled by the traditional system in either the actual number of new crimes or in the kinds of new offenses.

TABLE 5

CLASSIFICATION OF TWO YEAR REARRESTS BY NATURE OF OFFENSE*		
	1974	PTD
Minor violations	18%	22%
Possession of marijuana	12	10
Other drug offenses	07	04
Driving While Intoxicated	14	23
Property/Fraud	38	36
Person	10	02
Other	01	03
	100%	100%

*See Appendix D for offenses including within each category.

It is noteworthy that there are very few new offenses which involve crimes against the person. Those that did occur were relatively minor. Both groups had similar rearrest rates within the offense categories. Property and drug crimes were quite close, as were minor violations. The LCPTD Group did experience a 9% higher rearrest rate for Driving While Intoxicated. In fact, DWI accounted for nearly one-fourth of all LCPTD rearrests. The 1974 Group had an 8% higher rate for crimes against the person, 23 offenses compared to eight over two years.

Tests for Statistical Significance

Listed below are the means (averages) and variances for all recidivism variables and prior record variables for the two groups:

Variable	1974			PTD		
	mean	variance	n	mean	variance	n
Total Prior Arrests	.892	1.157	250	.850	1.050	250
Prior Arrests Under 18	.360	.529	250	.448	.642	250
Two Year Rearrests	.772	1.020	250	.584	.750	250
Two Year Convictions	.560	.778	250	.435	.579	250
Three Year Rearrests	.945	1.239	183	.754	1.044	183
Three Year Convictions	.689	.996	183	.574	.806	183

Using difference of means tests for statistical significance, at the .05 confidence level, the LCPTD Group had statistically significant lower two year rearrest and conviction rates than did the 1974 Group. The three year rearrest rate difference was statistically significant also; however, the conviction rate was not.

This test was also applied to the total prior arrest records and prior arrests under 18. While the two groups were matched as closely as possible, it is conceivable that one of the two groups might have had a substantially higher number of individuals with multiple priors, or more juvenile arrests, both of which correlate closely with higher risks of rearrest. At the .05 confidence level, there is no statistically significant difference between the two groups as to prior arrest record. There was a significant difference in the prior arrests under 18 with the 1974 Group having less previous arrests under 18. A partial explanation for this difference was reported in Chapter IV, on page 38.

By using the coding format adopted for this study, the possibility existed that substantial differences in the average number of prior arrests might result if there were a number of subjects from either group who had more than three prior arrests. The means used for comparison might be considerably higher if there were many individuals with four, five, six or more priors. In this study, anything over three was included in the three or more category. See Appendix D, pp. 124-125.

This potential for bias is also relevant for the recidivism analyses. To ensure this was not a factor, both prior record and rearrest means were recalculated using the actual numbers to determine the respective means. As to prior record, the total number of known previous arrests was 242 for the 1974 Group and 229 for the Diversion Group. Using the three or more

prior arrests format to include all cases over this number, the 1974's had 223 total prior arrests and the LCPTD's 217.

The 1974 mean prior arrests using all priors is .968 compared to .916 for the PTD Group. These differences were not statistically significant; thus, the classification scheme did not affect the results.

The recidivism data were also analyzed using the actual number of new arrests. In all the recidivism measures used in this report, the actual number of two and three year rearrests and convictions are slightly higher for the 1974 Group; therefore, the difference of means tests would not have been adversely affected by lumping the multiple arrests into the three or more category.

One other caution on the interpretation of these data needs to be mentioned. The difference of means tests applied here are intended to be used with standard randomly chosen samples, while the two groups utilized in this study were not chosen by random selection procedures but are matched samples.

Recidivism for Individuals With Prior Records

Tables 6, 7, and 8 compare the two year rearrest, conviction, and felony conviction rates between the two groups for those individuals who were known to have at least one prior arrest:

TABLE 6

ARRESTS TWO YEARS AFTER DIVERSION/COMPARISON GROUP
OFFENSE FOR PERSONS WITH A PRIOR ARREST RECORD

Arrests	1974 (N=126)	PTD (N=126)
None	41.3%	47.6%
One	27.8	27.8
Two	15.9	15.9
Three or More	15.1	8.7

TABLE 7

CONVICTIONS TWO YEARS AFTER DIVERSION/COMPARISON GROUP
OFFENSE FOR PERSONS WITH A PRIOR ARREST RECORD

Convictions	1974 (N=126)	PTD (N=124)*
None	53.2%	54.8%
One	27.0	28.2
Two	11.1	10.5
Three or More	8.7	6.5

*Two pending cases excluded

TABLE 8

FELONY CONVICTIONS TWO YEARS AFTER DIVERSION/COMPARISON
GROUP OFFENSE FOR PERSONS WITH A PRIOR ARREST RECORD

Felony Convictions	1974 (N=126)	PTD (N=125)*
None	88.9%	92.0%
One	10.3	8.0
Two or More	.8	---

*One pending case excluded

Upon examination, there is very little difference between the two groups, except that the Diversion Group had fewer people who were rearrested three or more times during the two year time period. The overall conviction rates are quite close as are the felony conviction rates.

Comparative Recidivism of Individuals With No Record
To Those With a Prior Record

As might be expected, there are obvious differences in the number of new offenses between individuals from either group with no prior arrest record in comparison with those persons who had at least one previous arrest:

TABLE 9

COMPARATIVE RECIDIVISM FOR INDIVIDUALS WITH NO PRIOR RECORD TO THOSE WITH PRIORS				
Two Year Arrests	1974		PTD	
	No Record	Prior Record	No Record	Prior Record
None	69.4%	41.3%	75.5%	47.6%
One	16.1	27.8	21.8	27.8
Two	10.5	15.9	0.8	15.9
Three or More	4.5	15.1	2.4	8.7
	(N=124)	(N=126)	(N=124)	(N=126)

Program participants with no known prior arrests had a 27.4% lower two year recidivism (rearrest) rate than participants with at least one previous arrest. The 1974 Group with no priors experienced a 28.1% lower rearrest rate than their cohorts with at least one prior arrest.

New Offenses After Three Years

The three year data are not complete as there are 67 LCPTD cases where the three years "at risk" time period has not lapsed. The entire group will not be completed until the end of 1981, at which time the results will be updated; however, 183 subjects from each group had been at risk three years, a sufficiently large sample to be representative.

The three year data are shown in Tables 10 and 11:

TABLE 10

ARRESTS/CONVICTIONS THREE YEARS FROM DIVERSION/COMPARISON GROUP OFFENSE				
	1974 (N=183)		PTD (N=183)	
	Arrests/Convictions		Arrests/Convictions	
None	48.6%	59.6%	56.8%	63.4%
One	24.0	22.4	21.3	23.0
Two	11.5	7.7	11.5	6.6
Three or More	15.8	10.4	10.4	7.1

TABLE 11

FELONY CONVICTIONS THREE YEARS FROM DIVERSION/COMPARISON GROUP OFFENSE		
	1974 (N=183)	PTD (N=183)
None	86.9%	93.8%
One	10.9	6.6
Two or More	2.2	---

As of three years, the LCPTD group experienced an 8.1% lower rearrest rate, 43.2% compared to 51.3% for the 1974 Group. Twenty-two percent of the LCPTD group were arrested more than once, compared to 27.3% for the 1974 Group. The conviction rate for new felonies was 6.2% for the Diversion Group, and nearly 13% for the 1974 Group. Of the 1974 Group, 60% avoided any conviction record, only 3.4% more than the LCPTD Group after three years.

VI. ASSESSMENT OF PROGRAM IMPACT
UPON TRADITIONAL JUSTICE SYSTEM

One of the expressed goals of the Lancaster County Pre-Trial Diversion Program is to make available to the traditional criminal justice system a viable alternative for selected defendants in order for the system to: 1) be more responsive to the needs of defendants, and 2) reallocate limited resources to cases that more appropriately warrant the full attention of the justice system. This section examines the second part of this goal and attempts to estimate the impact of LCPTD upon the traditional system (The first part of this goal was addressed in Lancaster County Pre-Trial Diversion Program, Evaluation Findings for 1977 Felony Diversions).

There are three important aspects by which LCPTD may be measured to assess overall impact. These are: 1) the defendant, 2) the criminal justice system and the governmental bodies responsible for funding, and 3) the community-at-large.

A generally accepted premise is that the individual certainly stands to reap the most benefits from being diverted from the system. There are many reasons why this is so, such as avoidance of stigma due to conviction, and loss of income due to court appearances, attorney fees, and criminal sanctions. Less certain is the impact of LCPTD on the traditional system and the community-at-large. This section attempts to assess the influence of the Program on the local criminal justice system.

Hopefully, the concerns of community safety are answered to some degree with the recidivism research findings reported earlier in this study.

Potential for Program Impact
Upon Traditional System

The scope of this investigation includes an assessment of LCPTD's impact on these components of the traditional system:

Police - to the extent that officers are not required to be present to testify at preliminary hearings, motions to suppress, or trials, and if participants commit fewer offenses than if they had been handled by the traditional criminal justice system.

County Attorney - to the extent that prosecution efforts are obviated by diverting cases. Also, the amount of additional work created by diversion screening must be considered.

Public Defender - to the extent that defendants eligible for the Program are represented by the Public Defender.

County Court - to the extent that any arraignments, docket calls, motions, and preliminary hearings are avoided by diverting a case in lieu of usual disposition. This includes any administrative processing by the Clerk of the County Court.

District Court - to the degree that diversion type cases are, in fact, bound over to District Court for final disposition. The relevant costs include arraignment, defense motions, trials, pre-sentence investigations, and sentencing. The costs of administrative processing by the Clerk of District Court that are avoided are relevant considerations.

Adult Probation - to the extent that defendants are sentenced to probation by either County Court or District Court judges. (The District 6 Probation office supervises both misdemeanor and felony probationers).

Prison - if, in fact, any of the defendants who are diverted would be sentenced to prison on the diversion offense.

Parole - to the degree that someone who was sentenced to prison would also be released on parole rather than granted an unconditional discharge.

The primary objective of the impact study is to establish a basis for a cost-effectiveness analysis, the results of which are contained in the following chapter. Calendar year 1978 was selected as the time frame for several reasons. One, it minimized the problems of high initial startup costs for equipment, remodeling, and staff training. Two, it made allowances for staff reorganizations implemented during the first two years as cost reduction measures. Three, 1978 was the first year misdemeanor diversions were accepted by the Program. This change resulted in further economies, as a substantial number of additional cases were diverted from the system with no increase in Program costs. The approach selected was to use the experience of the 279 cases from 1974 that were identified as eligible for diversion and used as the Comparison Group in the recidivism study to estimate the outcomes of the 1978 diversions if they had not participated in LCPTD. (The 29 cases that were not matched with a diversion case were included as these are no different from the 250 matched cases in any way that would have influenced the final dispositions).

It is recognized that the potential for Program impact upon the traditional system is greatest for the County Attorney, and, to a lesser degree, the Public Defender. This is because these departments are involved with all criminal complaints from the initial stages of prosecution through final disposition - which may, of course, occur at any point during the process.

Due to the complexity and attendant difficulty of estimating the administrative or procedural actions of the County Attorney and Public Defender, no assessment of the specific actions averted when a case is

diverted is being attempted in this section. Rather, a carefully constructed approximate average cost per felony complaint is used to estimate the impact of the Program by roughly determining how many diversion cases were handled by the County Attorney and Public Defender in 1978, with adjustments for the actual work required before they were dismissed to LCPTD (including the additional work created by the unfavorable terminations). How this was done is reported in the following chapter. So the reader may have some idea of the administrative processing foregone by diverting a felony from the system, a brief overview of what the County Attorney's office does and some rough estimates for the various procedures is presented here. (The general procedure is described in Appendix B on page 114).

The first step in the process is similar for all criminal matters, regardless of whether any particular case is being considered for traditional prosecution or diversion. The Deputy County Attorney assigned to the case must carefully review the facts to determine whether to file a felony complaint, file a misdemeanor complaint, decline to prosecute outright, or refer the matter to the City Attorney if the offense falls within the jurisdiction of that office. If prosecution is warranted, the Deputy draws the complaint and files it in County Court. He or she then is present at initial arraignment, docket calls, and all other proceedings on that case while it is in the system.

If the case is to be screened for diversion, less prosecutorial time is required to resolve the case than if it is to be prosecuted. In most instances, a decision to refer a case to LCPTD is made after one conference with the Screener, and, in some cases, one or two meetings between the Deputy County Attorney and defense counsel.

Based on County Attorney staff estimates, and from random observations in County Court and District Court, a preliminary hearing requires about one hour of preparation and one hour to locate and/or interview witnesses. The County Court Judge, Deputy County Attorney, defense counsel, bailiff, court reporter, and necessary witnesses are present for preliminary hearings. Arraignments and docket calls involve less than five minutes each unless unusual circumstances exist in a cases. Non-jury trials in County Court (misdemeanors and felonies amended to misdemeanors) for diversion-type cases range from one to two hours with two to three hours of preparation time by the Deputy. Sentencings in County Court take only about five minutes and about 15 minutes in District Court. The defendant, defense attorney, and the prosecutor are present whenever a sentence is handed down by the Court.

Non-jury trials in District Court are estimated to involve about four to six hours of court time, and at least an equal amount of time for case preparation. Jury trials in District Court require about three days and five or six hours of preparation. The 12 jury members are paid \$20 each for every day of trial (in 1978).

Pleas in District Court, including negotiated pleas, take about 30 minutes of court time, while motions for discovery, suppress evidence (which are routinely made in felony drug cases) necessitate about two hours to get ready for and four hours to hear. The judge's ruling, after hearing arguments and reviewing written briefs, takes about 15 minutes.

Defense motions in District Court for a plea in abatement takes only a few minutes, and may only be requested in those cases where a preliminary hearing was in fact held in County Court.

There are two considerations for an assessment of system impact: 1) the actual experience of the felony cases processed during 1978, and 2) the estimated dispositions of these cases if the Program had not been in operation. This analysis was approached two ways: 1) The administrative actions and procedures that actually occurred in County Court and District Court; and 2) The final disposition of the cases as to nature of the offense, the sex of the defendant, and the resultant sentences within the several offense categories. The procedural processing will be examined first and then the sentencing practices for the 1978 diversion cases.

Actual System Procedural Processing
Of 1978 Diversions

To determine the actual court activity for the 1978 diversions, each case file maintained by the County Attorney was reviewed for all pertinent court actions. This information is recorded on the front of each file by the Deputy County Attorney who handled the case. For the seven cases that were referred to LCPTD from District Court, the docket book maintained by the Clerk of the District Court was examined, also. This source was also reviewed for those unfavorable terminations who ultimately ended up in District Court for final disposition.

County Court Administrative Processing

In every case but one, all of the 140 felony diversions had been arrested and arraigned in County Court. The number of subsequent docket calls, continuances, waivers of preliminary hearings, dismissals to Pre-Trial and other relatively routine County Court actions - most of which do not require the defendant's presence - ranged from one to eight. The mean number of court actions of this nature was 2.51. There were only

five preliminary hearings heard by the Court, one bond review, and one hearing on a request to transfer a defendant to Juvenile Court.

Unfortunately, some additional case processing is encountered when a program participant fails to complete the Program. When this happens, the County Attorney draws another complaint and creates a new file. The complaint is again filed in County Court and the process begins anew, although some unfavorable terminations are not refiled for various reasons. Occasionally, the original evidence has been destroyed or lost, or witnesses are no longer available or willing to testify. Often, if a new offense is the reason for unfavorable termination, the most recent case is prosecuted by the County Attorney rather than the diversion offense. Three unfavorable terminations were not refiled against, two because of plea bargain agreements on new offenses. Five other cases were dismissed after refileing for the reasons previously mentioned.

To determine the overall net impact, the additional processing created by the unfavorable terminations was included in the analysis: 27 new complaints were filed; 25 initial arraignments; 60 docket calls and other brief motions; two preliminary hearings; and five bench warrants were issued by the County Court due to the defendant's failure to appear for proceedings, three of which are pending.

Overall, the average number of complaints filed and arraignments for the 1978 felony diversions was 1.17; the average number of docket calls and other brief County Court motions was 2.94 per defendant. There were seven preliminary hearings, one bond review, and one request for a transfer to Juvenile Court.

District Court Administrative Processing

As mentioned before, seven cases were referred from District Court. For these cases, in addition to the initial arraignments and related processing, 16 relatively minor motions (including seven motions for dismissal to LCPTD) were heard by the Court and one more involved a hearing on a motion to suppress evidence.

Of the 30 unfavorable terminations, 15 were adjudicated in District Court on the original diversion offense charge. Fourteen received felony convictions and one a misdemeanor conviction. Four others were convicted on new felony charges as part of plea bargain agreements whereby the original diversion offense was dismissed.

To summarize the processing by District Court, 23 separate complaints were filed and subsequent arraignments for plea and setting of bond (including one person twice). This group averaged two minor motions each - for example, motions to dismiss the complaint to permit the defendant to participate in LCPTD. There was one hearing on a plea of immunity; there were no motions for discovery, pleas in abatement, or motions to suppress; nor were there any trials. Five bench warrants were issued by the Court for the defendant's failure to appear at some stage of the proceedings; however, all defendants eventually appeared for final disposition.

Final Dispositions of all 1978 Diversions

To summarize, the final outcome for all 1978 felony diversions was as follows:

	<u>N</u>	<u>%</u>
Favorable Completions/No Conviction	110	78.6%
Unfavorable Terminations:		
Felony conviction on original charge	14	10.0
Dismissal as plea bargain/felony conviction on new charge	4	2.9
Misdemeanor conviction on original charge	4	2.9
Dismissed or not refiled/no conviction	5	3.6
Refiled/Pending	<u>3</u>	<u>2.1</u>
	140	100.1%

Sentences for Unfavorable Terminations

Only one unfavorable termination was sentenced to prison and two to jail. The one prison sentence was for a new offense and not for the diversion offense. In all, this person was charged with three felony complaints, which undoubtedly had some bearing on the sentence.

The following is a summary of the sentences for the 18 individuals who received felony convictions in District Court either on the original charge or on a new offense:

	<u>N*</u>	<u>%</u>	<u>Average Months</u>	<u>Average Days</u>	<u>Average Amount</u>
Prison	1	06	12 - 24		
Jail	2	11		7	
Fine	4	22			\$337
Probation	15	83	20		

* Totals do not add due to multiple sentences.

The sentences ranged from: jail, 5-10 days; fines, \$100-\$700; probation, 12 to 36 months. All four cases that were amended to misdemeanors (three in County Court and one in District Court) were fined from \$100 to \$200. The average fine was \$150.

Estimates Of Procedural System Processing
Avoided By 1978 Diversions

Data were available from previous LCPTD studies to provide some guidelines for use to estimate the probable number and type of court actions that eligible defendants are likely to experience when processed by the traditional system. The data are for 1974 and include most of the 280 individuals in the Comparison Group; however, they are not identical. The information was drawn from a sample of 249 individuals charged with diversion eligible offenses; however, it also includes some cases where the defendant was not eligible for the Program. Since this aspect of the study is to assess procedural aspects of case processing, the fact that some members of this sample might not have been eligible does not affect the validity of the data. (The 280 Comparison Group sample created for this study was used for the sentencing estimates).

Based on this sample, the typical case had 3.6 appearances in County Court, including arraignment, with 2.8% having bench warrants issued for failure to appear. Preliminary hearings were waived by 50.6% and bound over to District Court, 6.8% were afforded a preliminary hearing and the case dismissed by the Court; 10.4% of the cases were dismissed without a preliminary hearing; 30.9% plead guilty to reduced charges; and 0.8% were found guilty at trial on reduced charges.

For those who were bound over to District Court, the average number of appearances was 3.8; failure to appear warrants were issued for 4.8%. The results of these appearances were that 79.0% plead guilty, 14.0% were found not guilty, 0.4% were found not guilty, and 6.3% were dismissed. Non-jury trials were held in 7.2% of the sample while an equal percentage had jury trials.

Of those found guilty in County Court, 34.2% had presentence investigations. Of those found guilty in District Court, 91.0% had a pre-sentence investigation. This process averaged 200.2 days from arrest to final disposition. For the period of time awaiting disposition, 95.8% made bond. Of this sample, 4.4% did not have an attorney, 30.5% had a Public Defender, and 65.1% employed a private attorney.

Estimated System Resources Averted - County Court

As previously stated, the 1978 diversions averaged 1.17 complaints/initial appearances each, and 2.94 docket calls, continuances, dismissal to LCPTD, and other relatively brief actions, most of which the defendant was not present for in Court. In total, the average number of these court appearances was 4.11 per defendant. By comparison, the sample group averaged 3.6 appearances. While it cannot be determined whether the appearances were recorded precisely in the same manner as the diversion group, it is a close enough approximation to conclude that there was very little difference between the two groups at this stage of court proceedings.

Only 7.2% of the sample requested a preliminary hearing. It is not known how many bond reviews or motions to transfer to Juvenile Court were held, probably not many. If these rates are applied to the 140 diversions, about 10 to 15 people would not have waived a preliminary

hearing. Seven people in the diversion group were afforded preliminary hearings. Again, the rate of preliminary hearings actually held was comparable for both groups, with the diversion group having about 5 or 10 fewer.

About three percent of the sample had bench warrants issued for them by County Court for failure to appear at some stage of the proceedings. This compares to 3.5% for the 1978 felony diversions, all of whom were participants who did not complete the Program. Three of these warrants are still outstanding.

Estimated System Resources Averted - District Court

Of the 1978 diversions, at some point, either before initial referral to LCPTD or after unfavorable termination, 23 participants were arraigned in District Court. (One person was arraigned in District Court both before and after participation so the actual number was 22. As this is an extremely unusual situation, it is being disregarded in this study). The 22 defendants averaged three appearances in District Court including plea, sentencing, and dismissal of charges for those who previously had been referred to LCPTD. This compares to 3.8 for those in the earlier study.

Using the projections from page 76, approximately 49 of the people diverted in 1978 would have been adjudicated in District Court. Fifteen unfavorable terminations did reach District Court. Initial arraignments, pleas, and other motions were avoided for 27 defendants (34 less the 7 who were referred from District Court).

From the 249 defendant sample data, an estimated 14-15% of the 1978 LCPTD participants might have requested a trial, or approximately 7 individuals. None of the LCPTD unfavorable terminations requested a jury trial. All pleaded guilty to either the original complaint or new felony charges. One person plead guilty to a reduced charge.

Estimated System Resources Averted - Public Defender

Since the Lancaster County Public Defender is funded by local government, the degree to which diversion provides a viable option to allow that office to reallocate its resources to more involved and serious cases is an important consideration of the Program's overall impact.

Data were available on which diversion cases were represented by the Public Defender. At the time of initial referral, 85 of all defendants (61%) were represented by private counsel, 50 by the Public Defender (36%), while five individuals (3%) did not have an attorney. This ratio is similar to previous studies conducted by the Program on diversion cases represented by the Public Defender. As previously stated, not all participants complete LCPTD. Those that do not have to be represented again as they proceed through the traditional justice system. Unfortunately, although not entirely unexpected, a substantially higher percentage of defendants represented by the Public Defender at the time of initial referral do not finish the Program and are subsequently reassigned to that office by the court. This is due to the lower socio-economic level of defendants eligible for Public Defender services. Too, a few defendants represented by private counsel at the

time of diversion eventually request the Public Defender once they have been terminated.

Fifty-three percent of the 30 unfavorable terminations were assigned a Public Defender once the original diversion offense cases were reopened or complaints filed on new charges committed in-program. It is necessary to reduce the impact upon the Public Defender by the unfavorable terminations; thus, the number of cases where the referral to LCPTD did not result in a reduction in workload was 34 or 24.3%.

Estimates Of Sentences Avoided By 1978 Diversions

The preceding section provides a good picture of what activities or procedural processing was averted by removing 140 felony cases from the justice system. The second phase necessary to complete the impact study is to estimate the probable dispositions (sentences) of the 1978 diversions had they proceeded to some conclusion within the system. To do this, the actual experience of the 1974 cases is applied to the 1978 diversion cases with allowances for offense charged and sex.

The tables that follow report the final outcomes for the 1974 Comparison Group cases, broken down by offense and sex. Table 12 reflects the dispositions as to felony conviction, misdemeanor conviction, or dismissal of the complaint by offense category and sex. Tables 13 through 33 include estimates for the actual sentences within each offense category and by sex.

TABLE 12

DISPOSITION SUMMARY OF ALL OFFENSES
BY CATEGORY AND SEX FOR 1974 COMPARISON GROUP

Offense Category	Felony Conviction	Misdemeanor Conviction	Complaint Dismissed
<u>Marijuana</u>			
Male	28%	63%	09%
Female	08%	75%	17%
<u>Other Drug</u>			
Male	48%	33%	19%
Female	45%	32%	23%
<u>Property</u>			
Male	33%	56%	12%
Female	13%	69%	19%
<u>Fraud</u>			
Male	36%	36%	27%
Female	27%	60%	13%
<u>ISF/NAC</u>			
Male	13%	75%	13%
Female	50%	50%	--
<u>Person/Other</u>			
Male	50%	50%	--
Female	--	--	--

DISPOSITION OF ALL COMPLAINTS*
1974 COMPARISON GROUP

TABLE 13

	Overall	Male	Female
Total number of cases	280	209	71
Convicted on a felony	33%	36%	28%
Convicted on a misdemeanor	53%	53%	55%
Complaint dismissed	14%	11%	17%

*These tables are computed on 280 cases as there was one case included in the Comparison Group that subsequently was eliminated due to exceptional circumstances surrounding the offense.

SENTENCES FOR 1974 GROUP
WHO RECEIVED A FELONY CONVICTION

TABLE 14

	Overall	Male	Female
Total Number of Cases	93	73	20
<u>Probation</u>	74%	73%	80%
average months	16.6	16.2	18.0
<u>Jail</u>	18%	19%	15%
average days	64	72	30
<u>Fines</u>	28%	34%	05%
average amount	\$273	\$280	\$100
<u>Prison</u>	06%	05%	10%
average months served*	11.0	12.8	9.0

*actual time served estimated at 3/4 of sentence

SENTENCES FOR 1974 GROUP
WHO RECEIVED A MISDEMEANOR CONVICTION

TABLE 15

	Overall	Male	Female
Total Number of Cases	149	110	39
<u>Probation</u>	54%	55%	54%
average months	8.7	9.0	8.0
<u>Jail</u>	13%	16%	05%
average days	26.0	28.3	5.5
<u>Fines</u>	45%	45%	46%
average amount	\$121	\$126	\$106

DISPOSITION OF MARIJUANA
COMPLAINTS FOR 1974 COMPARISON GROUP

TABLE 16

	Overall	Male	Female
Total number of cases	90	78	12
Convicted on a felony	26%	28%	08%
Convicted on a misdemeanor	64%	63%	75%
Complaint dismissed	10%	09%	17%

SENTENCES FOR 1974 GROUP WHO
RECEIVED A FELONY MARIJUANA CONVICTION

TABLE 17

	Overall	Male	Female
Total number of cases	23	22	01
<u>Probation</u>	65%	64%	100%
average months	16.0	16.3	12.0
<u>Jail</u>	09%	09%	--
average days	90.0	90.0	--
<u>Fines</u>	52%	55%	--
average amount	\$250	\$250	--
<u>Prison</u>	--	--	--
average months served	--	--	--

SENTENCES FOR 1974 GROUP WHO
RECEIVED A MISDEMEANOR MARIJUANA CONVICTION

TABLE 18

	Overall	Male	Female
Total number of cases	58	49	09
<u>Probation</u>	69%	67%	78%
average months	7.3	7.4	6.9
<u>Jail</u>	10%	12%	--
average days	10.8	10.8	--
<u>Fines</u>	33%	35%	22%
average amount	\$179	\$182	\$150

DISPOSITION OF OTHER DRUG
COMPLAINTS FOR 1974 COMPARISON GROUP

TABLE 19

	Overall	Male	Female
Total number of cases	70	48	22
Convicted on a felony	47%	48%	45%
Convicted on a misdemeanor	33%	33%	32%
Complaint dismissed	20%	19%	23%

SENTENCES FOR 1974 GROUP WHO
RECEIVED A FELONY OTHER DRUG CONVICTION

TABLE 20

	Overall	Male	Female
Total number of cases	33	23	10
<u>Probation</u> average months	85% 16.3	83% 16.4	90% 16.0
<u>Jail</u> average days	15% 54	17% 60	10% 30
<u>Fines</u> average amount	30% \$243	39% \$259	10% \$100
<u>Prison</u> average months served	-- --	-- --	-- --

SENTENCES FOR 1974 GROUP WHO
RECEIVED A MISDEMEANOR OTHER DRUG CONVICTION

TABLE 21

	Overall	Male	Female
Total number of cases	23	16	7
<u>Probation</u> average months	78% 7.8	69% 8.5	100% 6.7
<u>Jail</u> average days	04% 21	06% 21	-- --
<u>Fines</u> average amount	26% \$145	38% \$145	-- --

DISPOSITION OF PROPERTY COMPLAINTS
FOR 1974 COMPARISON GROUP

TABLE 22

	Overall	Male	Female
Total number of cases	68	52	16
Convicted on a felony	28%	33%	13%
Convicted on a misdemeanor	59%	56%	69%
Complaint dismissed	13%	12%	19%

SENTENCES FOR 1974 GROUP WHO
RECEIVED A FELONY PROPERTY CONVICTION

TABLE 23

	Overall	Male	Female
Total number of cases	19	17	2
<u>Probation</u> average months	68% 19.4	65% 18.6	100% 24.0
<u>Jail</u> average days	26% 84	29% 84	-- --
<u>Fines</u> average amount	05% \$180	06% \$180	-- --
<u>Prison</u> average months served*	05% 18 mo.	06% 18 mo.	-- --

*actual time served estimated at 3/4 of sentence

SENTENCES FOR 1974 GROUP WHO
RECEIVED A MISDEMEANOR PROPERTY CONVICTION

TABLE 24

	Overall	Male	Female
Total number of cases	40	29	11
<u>Probation</u> average months	48% 13.5	48% 14.0	45% 12.0
<u>Jail</u> average days	28% 40.3	32% 48.0	18% 5.5
<u>Fines</u> average amount	58% \$111	60% \$104	54% \$130

DISPOSITION OF FRAUD (NON-CHECK) COMPLAINTS
FOR 1974 COMPARISON GROUP

TABLE 25

	Overall	Male	Female
Total number of cases	26	11	15
Convicted on a felony	31%	36%	27%
Convicted on a misdemeanor	50%	36%	60%
Complaint dismissed	19%	27%	13%

SENTENCES FOR 1974 GROUP WHO RECEIVED A FELONY FRAUD CONVICTION

TABLE 26

	Overall	Male	Female
Total number of cases	8	4	4
Probation	75%	50%	100%
average months	22.0	24.0	21.0
Jail	--	--	--
average days	--	--	--
Fines	--	--	--
average amount	--	--	--
Prison	38%	50%	35%
average months served*	11.0	10.5	12.0

*actual time served estimated at 3/4 of sentence

SENTENCES FOR 1974 GROUP WHO RECEIVED A MISDEMEANOR FRAUD CONVICTION

TABLE 27

	Overall	Male	Female
Total number of cases	13	4	9
Probation	23%	25%	22%
average months	7.0	3.0	9.0
Jail	15%	50%	--
average days	14.5	14.5	--
Fines	69%	50%	78%
average amount	\$98	\$68	\$106

DISPOSITION OF FELONY CHECK (ISF/NAC) COMPLAINTS FOR 1974 COMPARISON GROUP

TABLE 28

	Overall	Male	Female
Total number of cases	14	8	6
Convicted on a felony	29%	13%	50%
Convicted on a misdemeanor	64%	75%	50%
Complaint dismissed*	07%	13%	--

*the one dismissal in this category was due to a plea bargain agreement on a new offense.

SENTENCES FOR 1974 GROUP WHO RECEIVED A FELONY CHECK (ISF/NAC) CONVICTION

TABLE 29

	Overall	Male	Female
Total number of cases	4	1	3
Probation	25%	--	33%
average months	18 mo.	--	18 mo.
Jail	75%	100%	67%
average days	50	90	30
Fines	--	--	--
average amount	--	--	--
Prison	--	--	--
average months served	--	--	--

SENTENCES FOR 1974 GROUP WHO RECEIVED A MISDEMEANOR CHECK (ISF/NAC) CONVICTION

TABLE 30

	Overall	Male	Female
Total number of cases	9	6	3
Probation	22%	33%	--
average months	12	12	--
Jail	11%	17%	--
average days	10	10	--
Fines	78%	67%	100%
average amount	\$29	\$29	\$30

DISPOSITION OF PERSON/OTHER COMPLAINTS FOR 1974 COMPARISON GROUP

TABLE 31

	Overall	Male	Female
Total number of cases	12	12	0
Convicted on a felony	50%	50%	--
Convicted on a misdemeanor	50%	50%	--
Complaint dismissed	--	--	--

SENTENCES FOR 1974 GROUP WHO
RECEIVED A FELONY PERSON/OTHER CONVICTION

TABLE 32

	Overall	Male	Female
Total number of cases	6	6	0
Probation average months	100% 20	100% 20	--
Jail average days	--	--	--
Fines average amount	33% \$500	33% \$500	--
Prison average months served	--	--	--

SENTENCES FOR 1974 GROUP WHO
RECEIVED A MISDEMEANOR PERSON/OTHER CONVICTION

TABLE 33

	Overall	Male	Female
Total number of cases	6	6	0
Probation average months	17% 6	17% 6	--
Jail average days	--	--	--
Fines average amount	83% \$83	83% \$83	--

The next task is to apply the actual disposition rates and average sentences of the 1974 Comparison Group as derived from Tables 12 through 33 to the 140 felony diversions in 1978. These calculations follow below.

1978 Felony Marijuana Diversions

1974 Rate:	%	N
Felony Conviction	26	3
Misdemeanor Conviction	64	8
Complaint Dismissed	10	1
Totals	100	12

Based on these figures, three 1978 diversions might have been convicted of a felony; two would have been sentenced to probation terms of 15 months, and one would have been sentenced to jail for 90 days. An estimated \$500 in fines would have been assessed.

As to misdemeanor convictions, six would have received average probation sentences of seven months; one, 10 days in jail; and two fined \$179 each.

1978 Other Drug Diversions

1974 Rate:	%	N
Felony Conviction	47	15
Misdemeanor Conviction	33	11
Complaint Dismissed	20	6
Totals	100	32

It is estimated that 13 individuals would have received probation for an average of 16 months each; five defendants would have received a \$243 fine; about two would have been jailed for an average of 54 days. Based on these data, it is highly improbable that anyone convicted of a felony drug offense would go to prison.

About nine of those convicted on reduced charges would have received probation for an average of eight months. Probably one person would have been sentenced to 21 days in jail. Three would have been fined about \$145 each.

1978 Property Diversions

1974 Rate:	%	N
Felony Conviction	28	12
Misdemeanor Conviction	59	24
Complaint Dismissed	<u>13</u>	<u>5</u>
Totals	100	41

Using the 1974 rates, approximately eight individuals would have been sentenced to average probation terms of 19 months; three to jail terms of 84 days; and one person fined \$180. One male might be expected to receive a prison sentence of 18 months.

For those whose charges were reduced to misdemeanors, 12 people would have been sentenced to an average probation of 13.5 months; seven a jail term of 40 days; and 14 fined \$111.

1978 Fraud Diversions

1974 Rate:	%	N
Felony Conviction	31	8
Misdemeanor Conviction	50	13
Complaint Dismissed	<u>19</u>	<u>5</u>
Totals	100	26*

*Coincidentally, there were 26 fraud offenses in the 1974 Comparison Group.

Six participants would be granted probation for 22 months; three would have gone to prison for 11 months. None would be fined or jailed.

Three of the 13 convicted on reduced charges would be on probation for 7 months; two could go to jail for 14.5 days; and nine would be fined an average of \$98.

1978 Felony Check Diversions

1974 Rate:	%	N
Felony Conviction	29	5
Misdemeanor Conviction	64	10
Complaint Dismissed	<u>07</u>	<u>1</u>
Totals	100	16

One person would be sentenced to probation for 18 months; four would be remanded to jail for 50 days. There were no fines or prison sentences for this offense category.

Two of the 1978 diversions who had the diversion charge amended to a misdemeanor would be placed on probation for 12 months each; one individual would serve 10 days in jail and eight would be fined an estimated \$29 apiece.

1978 Person/Other Diversions

1974 Rate:	%	N
Felony Conviction	50	6
Misdemeanor Conviction	50	7*
Complaint Dismissed	--	0
Totals	100	13

*Conservative estimate used and counted as a misdemeanor conviction.

Six of the people diverted for this category of offense would have been convicted of a felony and sentenced to 20 month probation terms; two would have been fined \$500.

For those who ended up with misdemeanor convictions, one would be on probation for six months. The other six would be fined \$83 each.

The overall estimated dispositions and probable sentences for the 1978 felony diversions if they had been processed by the traditional justice system is summarized in Tables 34 and 35.

SUMMARY OF ESTIMATED DISPOSITIONS FOR 1978 FELONY DIVERSIONS BASED ON 1974 COMPARISON GROUP ACTUAL SENTENCES WITH ALLOWANCES FOR OFFENSE CHARGED AND SEX

TABLE 34

	Felony Conviction	Misdemeanor Conviction	Complaint Dismissed
Felony Marijuana	3	8	1
Other Controlled Substances	15	11	6
Property	12	24	5
Fraud	8	13	5
ISF/NAC	5	10	1
Person/Other	6	7	0
Totals	49	73	18

Overall, it might be expected that about 35% would be convicted on felony charges, 52% would be reduced to misdemeanors and 13% dismissed if the 1974 data are valid estimates. These rates also approximate the actual dispositions for LCPTD unfavorable terminations in 1977 and 1978.

SUMMARY OF ESTIMATED SENTENCES FOR 1978 FELONY DIVERSIONS BASED ON 1974 COMPARISON GROUP ACTUAL SENTENCES WITH ALLOWANCES FOR OFFENSE CHARGED AND SEX*

TABLE 35

	Felony Marijuana	Other Drug	Property	Fraud	ISF/NAC	Person/Other
<u>PROBATION</u>						
Felony	2/15 mo.	13/16 mo.	8/19 mo.	6/22 mo.	1/18 mo.	6/20 mo.
Misd.	6/7 mo.	9/18 mo.	12/13½ mo.	13/7 mo.	2/12 mo.	1/6 mo.
<u>JAIL</u>						
Felony	1/90 da.	2/54 da.	3/84 da.	---	4/50 da.	---
Misd.	1/10 da.	1/21 da.	7/40 da.	2/14½ da.	1/10 da.	---
<u>FINE</u>						
Felony	2/\$250	5/\$243	1/\$180	---	---	2/\$500
Misd.	2/\$179	3/\$145	14/\$111	9/\$98	8/\$29	6/\$83
<u>PRISON**</u>						
Felony	---	---	1/18 mo.	3/11 mo.	---	---

*Totals exceed 140 because of multiple sentences.

**Anyone convicted on a misdemeanor cannot be sentenced to prison.

In all, 79 of the 140 diversions (56%) would have been placed on probation for a total of 1,059 months, an average of 13.4 months. The total number of individuals who would have avoided being placed on probation needs to be reduced by the 15 unfavorable terminations who actually were subsequently sentenced to probation terms. This total was 300 months; thus, the net months of probation avoided was 759. These figures have been adjusted for misdemeanor and felony convictions, type of offense and sex of the defendant. The same is true for the remaining calculations. Also

included in these totals are three persons who plead guilty to new charges as a plea bargain arrangement to have the diversion offense dismissed. This approach reflects a more conservative estimate of the Program's impact upon the probation system. Twenty-two participants (16%) might have gone to jail for a total of 1,000 days as part of their sentence. Two unfavorable terminations eventually were jailed a total of 15 days; thus, the reduced impact is estimated at 20 persons for 885 days averted, an average of 44.3 days each. Eight of the unfavorable terminations ultimately were fined \$2,100. Subtracting this from the overall total, 44 defendants avoided \$4,754 in fines.

As might be expected, the impact of LCPTD upon the prison system was minimal. Four people (3%) might have been sentenced to prison for approximately 51 months, one of which was for a new offense and not the diversion offense. Using a conservative approach, it is assumed that had this person not committed two new felonies while on the Program, he would not have been sentenced to prison. Adjusting for this case, about three of the 1978 felony diversions avoided prison for a total of 39 months of actual time served.

VII. COST EFFECTIVENESS ANALYSIS

Program Costs for 1978

Total Program expenditures in 1978 were \$162,665. Included in this figure, however, are some costs not related to the felony diversion component, as well as other costs that will not be necessary in future budgets to maintain the Program on an on-going basis. Evaluation costs were written into the original federal grants on the assumption that these costs would be phased out once the demonstration phase of the project was completed. One of the purposes of this study is to provide cost-effectiveness information to local policy makers for use in funding decisions. Also, this study is to examine the comparative costs of diversion to the traditional system. To do this, it is necessary to make the budgetary and cost data as comparable as possible. For example, none of the traditional criminal justice agencies include rental expense in their budgets as all departments are located in the County-City Building. Their occupancy costs are allocated to a separate Building and Grounds account rather than to the individual departments. In September, 1978, LCPTD relocated from a privately owned office building into a County-owned facility. The four months of rental expense incurred after relocation of the office have been excluded from the cost analysis. The costs associated with the misdemeanor diversions are also excluded as this analysis is limited to the felony diversions. Misdemeanor costs consist of the incremental costs of one counselor's salary and benefits, payroll taxes, and \$50 per month for operating expenses.

To arrive at a net figure for the cost analysis, these adjustments have been made to the total expenditures:

\$162,665	Total program expenditures
- 14,091	Direct evaluation costs
- 15,599	Misdemeanor diversions
- 2,203	County owned facility rental (4 months)
- 155	Prior period expenditures
<u>\$130,617</u>	Allocated to felony diversions

Using this net figure, the Program cost data for 1978, including County Attorney incremental costs is as follows:

Felony Diversions

Average cost per diversion: $\$130,617 \div 140 + 11.50 = \934.50

Average cost per completion: $\$130,617 \div 124 + 11.50 = \1064.50

Misdemeanor Diversions

Average cost per diversion: $\$15,599 \div 133 + 11.50 = \128.50

Cost per completion (10 months): $\$15,599 \div 84 + 11.50 = \197.50

All Cases

Average cost per diversion: $\$146,216 \div 274 + 11.50 = \545.50

Cost per completion: $\$146,216 \div 208 + 11.50 = \714.50

As mentioned before, some additional costs are incurred by the County Attorney to handle diversion cases. These include, to some degree, the Deputy County Attorney assigned to prosecute that case, the Deputy responsible for LCPTD liaison, and some clerical costs.

According to the Chief Deputy County Attorney, there is little difference in the initial phases of case processing whether the case is going to be prosecuted in the usual fashion or diverted. If anything, there is less time spent on a case if it is to be referred to LCPTD. Unfavorable terminations are an exception. The cost analysis utilized in this study assumes that there are no cost savings for diversion cases

that subsequently result in unfavorable termination; thus, averted costs are computed only for the favorable completions.

On the other hand, any additional time spent on diversion cases by the liaison Deputy and any incremental clerical expense are relevant costs for this analysis. For about 75% of the cases, the extent of the liaison Deputy's involvement consists of a review of the police report, a personal conference with the LCPTD Screener, and, in a few cases, a meeting with the defendant's attorney. The hourly salary of the liaison Deputy was \$15.83 in 1978. Assuming 20% for benefits, the total hourly rate was \$19.00. Considering the time expended on all diversion cases, both favorable completions and unfavorable terminations, an estimate of one-half hour for each case easily incorporates the extra time and cost to the County Attorney's Office associated with each case.

The incremental clerical costs allocated to diversion were minimal. For example, in 1978, one Legal Stenographer I had assigned responsibility for the clerical and administrative aspects of diversion cases. That year the hourly salary for this position was \$4.28. The person in this position estimated spending, on the average, about one work day per month on diversion cases. Again, assuming 20% for benefits, the direct labor cost for this activity is estimated at \$1.80 per case (\$5.14 hourly salary and benefits x 8 hours x 12 months + 274 diversions). For simplicity, the clerical cost per case is rounded to \$2.00 to include the direct costs for supplies.

Therefore, about \$11.50 per diversion, both felony and misdemeanor, has been added to the Program cost data reported above to represent the County Attorney's incremental diversion costs. (To update these

figures in 1980, the additional costs related to administrative appeals of defendants denied participation needs to be considered).

Prosecution Costs Averted

Lancaster County Attorney

The basis of the cost analysis for the County Attorney's Office is the fiscal 78-79 approved budget. The total budget was allocated to three principal areas based on estimated time spent in each area by all of the 14 staff attorneys (including the County Attorney) multiplied by each attorney's salary rate as of September, 1978.

Total expenditures allocated to general criminal matters handled by the County Attorney's Office in County Court and District Court were \$181,255. This represents 7.75 full-time equivalent (FTE) positions, including 20% for the County Attorney. No indirect or supervision costs are included in the calculations. One FTE attorney had assigned responsibility for the game law violations, which usually are paid by waiver and require no court appearances. This Deputy was also responsible for all traffic complaints filed in Municipal Court. The approximate annual costs of the one Deputy assigned to Municipal Court and game law violations was \$16,869. Total attorney salaries for the Civil, Juvenile, Mental Health, and Child Support Divisions was \$105,760, or about 5.25 FTE attorneys.

Using attorneys' salaries as a guideline for all other support personnel and for operating expenses, the total budget was allocated as follows: General Criminal, \$181,255 (60%); Municipal Court Complaints, \$16,869 (06%); and Civil, Juvenile, and Mental Health, \$105,760 (34%). By this method, the total 78-79 County Attorney budget can be allocated as follows:

	General Criminal	Municipal Court/ Game Law	Civil/ Juvenile	TOTAL
Attorneys' Salaries	\$181,255	\$ 16,869	\$105,760	\$303,884
Other Personnel	130,716	13,072	74,073	217,861
Benefits, Operating Expense	98,645	8,359	60,190	167,194
Budgeted Total	410,616	38,300	240,023	688,939
Estimated Actual/Budget	.95	.95	.95	.95
Estimated Actual Totals	\$390,085	\$ 36,385	\$228,022	\$654,492

In 1978, 607 felony complaints and 2,937 misdemeanor complaints (less 240 game law violations which were included in the Municipal Court/traffic calculations as one attorney handles both the Municipal Court and game law offenses) were filed in County Court. Since game law cases are quite simple and routine, with most handled by waiver, they were not considered as being of equal weight as the usual misdemeanor case and, thus, were excluded from the calculations. With these figures, the estimated cost per criminal case is calculated as: $\$390,085 \div 3304 = \116.56 .

To further classify the cost per case, it was estimated that the representative felony case involved twice as much time and resources as the typical misdemeanor. This is based partly on the 1974 Comparison Group actual court activity data. The typical felony case averaged 3.6 appearances in County Court and 3.8 appearances in District Court. The cost per felony and misdemeanor is determined as follows:

$(2697) (x) + (607) (2x) = 390,085 + 3911 = \99.74 weighted cost.

Cost per felony: $2 \times \$99.74 = \199.48
Cost per misdemeanor: $1 \times \$99.74 = \99.74

607 x \$199.48 =	\$121,084	Total for felony cases
2697 x \$99.74 =	268,999	Total for misdemeanor cases
	<u>\$390,083</u>	

CONTINUED

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Admittedly, this is a rough estimate; however, it is better than not making any distinction between felony and misdemeanor cases. For those felony complaints that eventually do wind up in District Court for final adjudication, this estimate is conservative. The felony figure is somewhat overstated in comparison to misdemeanor cases if the case is disposed of while in County Court, although a felony case at this stage still involves more time and expense than a misdemeanor.

Based on an average cost estimate of approximately \$200 per felony complaint (1978) filed by the County Attorney, a reasonable assessment of the prosecution costs avoided by that office can be constructed. Of course, not all of the costs associated with each case is avoided. All cases involve some initial screening and investigation by the Deputy County Attorney assigned to handle LCPTD matters, some additional administrative and clerical time necessitated by Pre-Trial Diversion cases, and some extra effort required when a participant is unfavorably terminated and prosecution reinstated. Officials of the County Attorney's Office and the Pre-Trial Diversion Program estimate that the additional costs are not substantially higher than usual. No adjustment was made for the cases that would have been dismissed since the cost calculations do not make any distinction for those cases that ultimately result in dismissal of charges. The liaison Deputy and clerical costs are included in the Program cost section. To adjust for the unfavorable terminations, no prosecution costs are considered as being avoided for these cases. Any savings are calculated only for the favorable completions.

As mentioned before, it cost about \$200 to prosecute a routine felony complaint in 1978. The average hourly salary for deputies assigned to general criminal prosecutions (which include diversion-type cases) in 1978 was \$11.03. Assuming that a Deputy spends about an hour on a diversion case prior to its being dismissed to the Program, the savings effected is reduced by this amount. Also, some clerical and administrative costs have been incurred to this point. An estimated \$15.00 total prosecution costs per case is assumed to include these additional costs.

Thus, the estimated savings per case diverted is \$185. As there were 124 favorable completions diverted in 1978, the total estimated savings to the County Attorney is approximately \$22,940.

Lancaster County Public Defender

The expenditures of the Public Defender's Office allocated to general criminal matters in County Court and District Court for fiscal 78-79 totalled \$141,945. This represented 5.8 FTE attorneys, including 100% of the Public Defender's time. One Deputy Public Defender was assigned to Municipal Court at an annual salary of \$24,367. Another Deputy was assigned to juvenile matters while one Deputy assigned to general criminal defense estimated that he devoted about 20% of his time to mental health matters. The annual salary cost allocated to these responsibilities was \$18,926.

Using attorneys' salaries as a guideline for allocation of all other personnel and for operating expenses, the overall budget was appropriated as follows: General Criminal, \$141,945 (77%); Municipal Court, \$24,367 (13%); and Juvenile/Mental Health, \$18,926 (10%).

Using the attorneys' salaries, the Public Defender's budget for 78-79 is allocated as follows:

	General Criminal	Municipal Court	Civil/Juvenile	TOTAL
Attorneys' Salaries	\$141,945	\$ 23,367	\$ 18,926	\$185,238
Other Personnel	38,199	6,449	4,961	49,609
Benefits, Operating Expense	<u>43,079</u>	<u>7,273</u>	<u>5,595</u>	<u>55,947</u>
Budget Total	223,223	38,089	29,482	290,794
Estimated Actual/Budget	<u>.95</u>	<u>.95</u>	<u>.95</u>	<u>.95</u>
Estimated Actual Totals	\$212,062	\$ 36,185	\$ 28,007	\$276,254

In 1978, the Public Defender was assigned 740 felony and post-conviction appeal cases and 430 misdemeanors. The 752 misdemeanor traffic cases, 130 mental health, and 365 juvenile are not included here. Consequently, the estimated cost per case for General Criminal matters is:
\$212,062 ÷ 1170 = \$181.25.

To further classify the general criminal cases, the same method used for weighting the felony and misdemeanor cases within the County Attorney's Office was utilized for the Public Defender. That is, a typical felony case is assumed to involve twice as much expense as a routine misdemeanor. The weighted estimated cost per case is calculated as:

$$430 (x) = 740 (2x) = \$121,062 \div 1910 = \$111.027 \text{ weighted cost.}$$

$$\text{Cost per felony case: } 2 \times 111.027 = \$222.054$$

$$\text{Cost per misdemeanor case: } 1 \times 111.027 = \$111.027$$

430 x 111.027 = \$ 47,742	Total for misdemeanor cases
740 x 222.054 = 164,320	Total for felony cases
<u>\$ 212,062</u>	Total General Criminal Budget

The method of cost estimation for this component of the system parallels that of the County Attorney with one exception. All cases are prosecuted by the County Attorney while only those individuals eligible for the services of the Public Defender can be included in this part of the cost analysis.

Using the net figures from page 64, some degree of representation for about 34 cases was obviated as a result of LCPTD, with allowances for the unfavorable terminations. Of course, not all processing was eliminated as the Public Defender usually has an active role in LCPTD cases before they are diverted. Attorneys in that office regularly consult with defendants about the Program and encourage them to participate. Too, they consult with the County Attorney's Office about clients they feel merit consideration.

Using the calculated cost per case of \$222, the net savings is about \$7,545, provided no costs are incurred on diversion cases. Realistically, this figure needs to be reduced by about 20% to allow for the work done on these cases by the Public Defender's Office prior to diversion. This results in a net figure of \$6,052.

County Court/Clerk of County Court

This part of the cost analysis is the least sound methodologically. There are several difficulties in separating and identifying the relevant costs and establishing a basis for cost allocations to individual cases. As noted in the impact section, typical diversion-type cases averaged 3.6 appearances in County Court and 3.8 in District Court from initial arraignment through imposition of sentence. In 1978, LCPTD adopted a

policy whereby a criminal complaint was to be drawn and filed in County Court, and an initial arraignment afforded an individual before referral for screening. This was done to minimize the number of cases that subsequently were never filed upon when terminated unfavorably and returned to the County Attorney's Office for prosecution. An undesirable consequence of that decision was an increase in the number of cases filed in County Court and subsequently dismissed to Pre-Trial Diversion. Also, a considerable number of cases require more than two appearances in Court, for reasons such as initial arraignment, docket call, additional continuances, etc.

In effect, the only costs averted for the County Court and/or the Clerk of the County Court are those for hearings and motions which occur between docket call and bind over to District Court. The primary impact is a reduction in the number of preliminary hearings. In many cases, preliminary hearings are waived; however, they are fairly common in felony drug cases. As reported earlier, about 10 to 15 preliminary hearings were avoided as a result of the 1978 felony diversions.

The estimated budget for Lancaster County Court for fiscal 78-79 was \$206,314, which consisted of \$65,880 for Judges salaries and benefits; \$116,215 Lancaster County share for operating expenses; and \$25,494 for the Clerk of County Court Budget, including the Judges' salary supplement from Lancaster County.

There are two County Court Judges, one assigned to civil matters and the other to criminal. Using the Judges' assignment as a basis, the budget allocated to criminal matters is \$103,157.

These costs were further classified on the percentage of felony to misdemeanor complaints filed in County Court in 1978 and, to maintain consistency with previous calculations, arbitrarily assigned on the premise that felony cases involve twice as much time and resource allocation as do misdemeanors. A sizeable number of minor misdemeanor offenses, such as game law violations, may be paid by waiver which represents minimal cost to County Court.

In all, 2883 complaints were filed in County Court in 1978, of which 607 (21%) were felonies. Assuming that a felony requires about twice the cost of a misdemeanor, the average cost per misdemeanor case is \$29.56 and \$59.12 for each felony.

As noted before, not all County Court costs for LCPTD cases were averted. The percent applied in this report is 50%. It is a reasonable assumption that one-half of the work necessary in County Court to resolve a felony complaint is avoided by diverting a case at time of docket call. The estimated costs averted for County Court based on 124 favorable completions at \$59.11 per case with one-half of the case processing costs avoided is \$3,665 (124 x \$59.11 x .50).

District Court/Clerk of District Court

Efforts to assess costs per case for Court-related functions proved to be the most difficult and least valid for this cost analysis.

In 1977, the District Court handled 3,553 cases, of which 823 (23%) were criminal matters. For 1978, the Court adjudicated 873 criminal complaints out of 3,734 total cases. Again, the percentage of criminal cases was 23%. This rate was applied to the estimated 1978-1979

District Court budget to ascertain an average cost per case. The estimated 78-79 budget for District Court is \$577,410, computed as follows:

\$193,500	Judges salaries/benefits
102,431	Court Reporters salaries/benefits
281,479	County share of operating expense
<u>\$577,410</u>	
- 14,074	Unspent budget (5% of \$281,479)
<u>\$563,336</u>	

The Judges salary supplement is included in the Lancaster County total. Using the 78-79 budget and the criminal to civil ratio, the average cost per criminal case for District Court is estimated as: \$563,336 x .23 ÷ 873 criminal cases = \$148.42.

Included in these 873 cases are appeals from Municipal Court and County Court, and returns for search warrants. It is assumed that the appeal cases are administratively equivalent to the usual felony case. It is doubtful that the search warrants are equal. The 873 figure was obtained by locating the first case filed in 1978 and the last case filed that year in the docket books and totalling the cases.

To determine the costs averted by the cases diverted, it is estimated that 35% of the felony cases eligible for LCPTD will actually be bound over to District Court. This means that about 44 cases might have been adjudicated in District Court. Using the \$148 average cost per case, about \$6,512 (\$148 x 44) in costs were avoided.

The Clerk of District Court estimated that the average cost per case for 1978 was \$60.52 calculated by dividing the department's budget by the total cases handled. With some adjustment for the expected added complexity of civil cases such as child support that require more

administrative processing, the estimated cost for criminal cases was about \$50.00 per case, according to the Clerk of District Court. Thus, an additional \$2,200 can be added to the District Court costs averted.

Sentencing Costs Averted

To determine what sentencing costs were either directly reduced or existing resources reallocated to other responsibilities within the respective criminal justice agencies, the estimated disposition rates for the 1974 Group from Chapter 6 were applied to the 140 felony cases diverted in 1978. These rates were then assigned dollar values based on the expected sentences and the estimated costs for the possible outcomes (dismissal, fine, probation, jail, or prison).

Adult Probation

The difficulty here is what method to utilize to assess the cost of the days averted. The Lancaster County Adult Probation Office and the State Probation Administrator declined to make available information necessary to permit the best possible cost estimates. Nonetheless, several reasonable methods were available for this purpose. In 1975, the estimated incremental cost per probationer per day statewide was \$.94, according to information provided by a State Probation Administration official. By using this figure, plus a 5% compound annual inflation rate, the total days averted can be multiplied by the daily incremental cost.

Based on the data from Tables 34 and 35, a total of 1,059 months of probation might have been assessed if the 1978 Diversions had been convicted and sentenced in either County or District Court. This total

needs to be reduced by the 300 months probation actually served by the unfavorable terminations. The probation costs averted are estimated as 759 months x 30 days per month x \$1.08 = \$24,591. Several other possible approaches were considered; however, this one was adopted as it is an incremental method and is the most conservative.¹³

City-County Jail

This component proved to be the simplest in terms of affixing costs averted by LCPTD and probably the most accurate. Lancaster County is assessed per diem costs of \$10.58 per defendant sentenced to the City-County Jail as the jail is administered by the City of Lincoln and not the County. Each day of jail sentences avoided saves Lancaster County \$10.58.¹⁴ These funds are presently included in the County Sheriff's Department's budget and are paid directly to the City of Lincoln.

The \$10.58 figure is derived by dividing the total operating budget of the Corrections Division by the total mandays. A number of additional costs, such as mental and physical health care provided by the Community Mental Health Center and the Lancaster County Health Department are not included, nor are federal grant funds. Based on the estimates of the Corrections Administrator, the base figure of \$10.58 should be increased at least 50% to allow for these costs.

From Table 35, an estimated 885 net jail days were averted based on 20 individuals for average sentences of 15 days at \$15.87 per diem per prisoner = \$14,045 avoided costs to Lancaster County.¹⁵

Prison (NCW/NPCC)

It is in this area that most often erroneous assumptions are made as to the impact of diversion programs. The tendency is to overestimate the number of individuals who might be sentenced to prison if not diverted, especially those generally eligible for most programs. A second error is made in using average cost figures that range from \$10,000 and higher for the annual cost to imprison one individual in a penitentiary or reformatory, when incremental costs are more appropriate. An estimated incremental cost per year of \$1,600 for each individual sentenced to prison was used in this study. This figure was provided by Dan Griepentrog with the State Department of Corrections. Based on three people projected to be sentenced to prison terms at an incremental cost of \$1,600 per year, about \$5,200 in prison costs were avoided. This is calculated at 39 months x \$133.33 per month. The one individual who was sentenced to prison on a new felony offense and not the original diversion offense is not included in these calculations.

Fines

Fines lost represent an increase in system costs as they are assumed by public dollars; thus, to the extent Pre-Trial participants avoided being assessed fines upon conviction, this is considered an additional cost to the system. From Table 35, it is estimated that approximately 44 individuals avoided paying \$4,754 in fines.

Estimated Recidivism Benefits

The mean number of rearrests within two years for the 1974 Comparison Group was .772 and .584 for the LCPTD Group. By applying these averages to the 140 felony diversions for 1978, a rough estimate of new arrests

averted by participation in LCPTD can be made. The total number of rearrests if handled by the traditional system is 108 (140 x .772) and 82 if diverted (140 x .584). Using this same method for convictions, the LCPTD Group could have received 17 fewer convictions on new offenses. There are, of course, limitations in using this approach. An important one is whether the 1978 felony diversions are representative of the 250 LCPTD sample group which was constructed from several years of Program operation. (See page 40). This issue is recognized; however, the assumption is that the differences are not so material as to invalidate these data.

It is difficult to estimate the costs averted by the 26 fewer arrests and 17 convictions due to the numerous potential dispositions. Further, whether the new offenses were prosecuted in Municipal Court or County Court affects the estimates.

The Lincoln Police Department estimated the average cost per arrest during fiscal year 1979-1980 to be \$25.24. Applying this figure to the 26 fewer arrests, only \$656 of law enforcement costs were avoided or reallocated.

To derive the cumulative costs avoided, projections are necessary for pre-trial confinement, court jurisdiction, and, if handled by the County Attorney, whether the new offenses are felonies or misdemeanors. Too, the probable sentences have to be estimated. It is obvious that the costs of new offenses might vary considerably depending on the nature of the crimes. For example, suppose an individual committed an offense of petit larceny. The arresting officer issues a citation for the person to appear in Municipal Court at a future date. Upon a review

of the facts, the City Attorney decides not to file a complaint, and no further action is taken. Compare this to an offense where the individual is arrested, taken into custody, booked in the City-County Jail, the County Attorney files a felony complaint, the person is represented by the Public Defender, the case proceeds through County Court and District Court, and is sentenced to prison for two or three years. In the first example, the costs averted are certainly less than \$100, while in the second situation, the costs averted might amount to several thousands of dollars. It is reasonable to expect that some cases similar to both examples would occur. In the two recidivism study groups, 9.2% of the 1974 Group were convicted on felony charges, and 5.2% for the PID Group. For the purpose of this study, it is recognized that some cost benefit due to reduced recidivism does exist. Conservatively, this figure is estimated to be at least \$5,000. In view of the relatively small number of new offenses prevented by the recidivism benefits due to participation in the Program, no additional analysis of the costs averted is attempted in this study.

As a practical matter, taking into account that: 1) the recidivism differences represent two years averted costs (the three years rearrest data are yet more favorable to the Program), and 2) the relatively low number of cases diverted compared to the total felony cases handled annually by the local justice system, the cost-benefits as a result of the lower rearrest rates are not an overriding consideration in and of itself.

The important point is that - assuming the data are valid - there is no increased risk to the community and/or the justice system by diverting certain defendants and handling them by other than the traditional system.

System Costs Averted by 1978 Felony Diversions

Set forth below is a summary of the estimated criminal justice system costs averted in 1978 (prosecution and sentences) as a result of the Lancaster County Pre-Trial Diversion Program:

Lancaster County Attorney

124 Favorable Completions x \$185 \$ 22,940

Lancaster County Public Defender

34 Favorable Completions x \$178 6,052

Lancaster County Court/Clerk

124 Favorable Completions x \$59.11 x .5 3,665

Lancaster County District Court/Clerk

44 Favorable Completions x \$148 8,712

District 6 Adult Probation

759 months x 30 days per month x \$1.08 24,591

City-County Corrections Division

885 days x \$15.87 per day 14,045

Nebraska Department of Corrections

39 months x \$133.33 per month 5,200

Fines Lost

44 Favorable Completions x \$108 (4,754)

Net System Costs Avoided 80,451

Recidivism Benefits 5,000
\$ 85,451

Thus, the cost-benefit ratio for the Program in 1978 based solely on justice system costs was about \$.67 for each \$1.00 appropriated by local government.

Non-system benefits

While the main purpose of this study is to examine the impact of the LCPTD upon the traditional criminal justice system, it is also important to consider the benefits of diversion that do not directly relate to the justice system.

An earlier study, LCPTD Program: Evaluation Findings For 1977 Felony Diversions, was an attempt to assess non-system benefits. The findings indicated that participants generally improved their education, employment, and interpersonal relationships both while in the Program and the year after participation.

For example, at time of entry into the Program, 34% of the 1977 participants were unemployed, while at the end of their terms only 11% were unemployed. One-third of the people who were in an employment status both at intake and at termination increased their earning power at least 10%. For the 41 people on whom data were available for follow-up interviews, approximately 290 weeks of unemployment were experienced before being in the Program compared to 99 weeks during the 12 month period after participation.

As to education, 16 people achieved a GED, one graduated from high school, eight obtained a vocational diploma or certificate, and 48 made some advancement in their education as measured by completion of a semester, courses completed, or GED tests passed.

Sixty-seven participants were referred to educational services within the community; 21 to drug, alcohol or mental health treatment; 12 for social services; and 37 placed in non-profit organizations to donate community service work. Thirty-two people completed drug and

alcohol classes conducted by the Program; 14 consumer education courses; while nine took part in a career planning workshop.

There were other benefits, also. In 1978, felony participants contributed 1907 hours of voluntary community service work to local non-profit agencies and organizations. Misdemeanor participants contributed 3303 hours. If these hours are valued at \$3.00 per hour, - about the minimum wage - the total contribution to the community is \$15,630. (The volunteer work contributed in 1980 exceeded 6,200 hours). Restitution repaid to victims in 1978 amounted to \$33,241 (\$52,175 in 1980). Drug buy money (expenditures by law enforcement personnel to make drug purchases to establish cases) reimbursed by participants totalled \$654. Court costs of \$2,942 were paid.

Another issue relevant to the cost-benefit analysis is that of stigmatization and overcriminalization. Numerous studies suggest that when someone has been convicted of a crime and is perceived as a "criminal" by others, this process, in and of itself, may be a causal factor in that person being involved in additional crimes. While this issue is far from resolved, Program experience has shown that the consequences of a felony conviction can be devastating to one's future. Many careers and professions are unavailable to someone with a criminal record.

In light of what has been reported in this Chapter, is the Lancaster County Pre-Trial Diversion Program cost-effective? The answer depends on the standard by which the Program's results and benefits are measured. If only the criminal justice system costs are the basis for a decision, the answer is negative. Local government did not directly benefit in an amount equal to the funds allocated to the Program in 1978.

On the other hand, if the standard by which the Program is gauged includes the non-system benefits which accrue to the individual defendant and the community at large, there is little doubt that local government receives an acceptable rate of return on its investment. Policy-makers who are disposed to favor programs of the nature of LCPTD do consider and highly value the non-system benefits. On the other hand, those officials who have doubts as to the value of this type of alternative to the traditional system are less likely to include the non-system benefits in the decision-making process.

VIII. SUMMARY AND CONCLUSIONS

Summary

The purposes of this study were: 1) to examine whether LCPTD was effective in reducing the number of new crimes compared to similar offenders who were handled by the traditional methods, 2) assess the Program's impact upon the local justice system, and 3) determine the cost-effectiveness of the Program.

Recidivism

A Comparison Group of 250 individuals was created who had been charged with felony crimes in Lancaster County during 1974, the year before the Program began operations. These defendants were matched with 250 LCPTD participants on several characteristics: age (within certain categories); sex; race; offense charged; and prior arrest record.

After 24 months at risk for each group, the LCPTD Group experienced a 38.8% rearrest rate compared to 44.8% for the 1974 Group. The difference between the two groups as to multiple arrests was even greater, 8.8%. The total number of arrests during this time period for the 1974 Group was 193, and for the LCPTD Group, 147. The felony conviction rate was 9.2% for the 1974 Group and 5.2% for the LCPTD Group. The nature of the new offenses for both groups is indicated below:

	<u>1974</u>	<u>PTD</u>
Minor Violations	18%	22%
Possession of Marijuana	12%	10%
Other Drug Offenses	07%	04%
Driving While Intoxicated	14%	23%
Property/Fraud	38%	36%
Person/Other	11%	05%

Both groups had similar rearrest rates within offense categories. Property and drug crimes were quite close, as were minor violations. The LCPTD Group had a 9% higher rearrest rate for DWI. This offense represented nearly one-fourth of all LCPTD rearrests during this time. The 1974 Group experienced an 8% higher rearrest rate for crimes against the person, 23 offenses to eight.

The three year rearrest data are not complete as 67 LCPTD Group cases matched to the 1974 Group will not have been "at risk" for 36 months until the end of 1981. There were 183 subjects from each group who had been at risk for the required time, a sufficiently large sample for comparison purposes. After three years, the LCPTD Group had an 8.1% lower rearrest rate, 43.2% compared to 51.3% for the 1974 Group. The multiple arrest rate for the LCPTD Group was 21.9% and 27.3% for the 1974 Group. The felony conviction rates were 6.2% and 13%, respectively.

System Impact

The final disposition for all 1978 felony diversions was as follows:

	<u>N</u>	<u>%</u>
Favorable Completions/No Conviction	110	78.6%
Unfavorable Terminations:		
Felony conviction on original charge	14	10.0
Dismissal as plea bargain/felony conviction on new charge	4	2.9
Misdemeanor conviction on original charge	4	2.9
Dismissed or not refiled/no conviction	5	3.6
Refiled/Pending	<u>3</u>	<u>2.1</u>
	140	100.1%

Below is a summary of the sentences for the 18 individuals who received felony convictions in District Court either on the original charge or on a new offense:

	<u>N*</u>	<u>%</u>	<u>Average Months</u>	<u>Average Days</u>	<u>Average Amount</u>
Prison	1	06	12 - 24		
Jail	2	11		7	
Fine	4	22			\$337
Probation	15	83	20		

*Totals do not add due to multiple sentences.

The sentences ranged from: jail, 5-10 days; fines, \$100-\$700; probation, 12 to 36 months; and prison, 12-24 months. All four cases that were amended to misdemeanors (three in County Court and one in District Court) were fined from \$100 to \$200. The average fine was \$150. An unfavorable termination was sentenced to prison and two to jail. The one prison sentence was for a new offense and not for the diversion offense. In all, this person was charged with three felony complaints, which undoubtedly affected the severity of the sentence.

By using the actual sentences of the 1974 Group, an estimate of the likely outcomes of the 1978 felony diversions had they been handled by the traditional justice system was constructed:

	Felony Conviction	Misdemeanor Conviction	Complaint Dismissed
Felony Marijuana	3	8	1
Other Controlled Substances	15	11	6
Property	12	24	5
Fraud	8	13	5
ISF/NAC	5	10	1
Person/Other	6	7	0
Totals	49	73	18

These data suggest that about 35% would be convicted on felony charges, 52% would be reduced to misdemeanors and 13% dismissed if the 1974 cases are accurate representations of the 1978 diversions. These rates also approximate the actual dispositions for LCPTD unfavorable terminations in 1977 and 1978.

In all, 79 of the 140 diversions (56%) would have been placed on probation for a total of 1,059 months, an average of 13.4 months. With allowance for the actual probation terms served by unfavorable terminations, the net months of probation avoided was estimated at 759. These figures have been adjusted for misdemeanor and felony convictions, type of offense, and sex of the defendant. Also included in these totals are three persons who plead guilty to new charges as part of plea bargain arrangements to have the diversion offenses dismissed. Twenty-two participants (16%) might have been sentenced to jail for a total of 1,000 days. Two unfavorable terminations eventually were jailed a total of 15 days; thus, the net impact is estimated at 20 persons for 885 days averted, an average of 44.3 days each. Eight of the unfavorable terminations ultimately were fined \$2,100. Subtracting this from the overall total, 44 defendants avoided \$4,754 in fines.

As might be expected, the impact of LCPTD upon the prison system was minimal. Four people (3%) might have been sentenced to prison for approximately 51 months. With allowances for the one unfavorable termination who did end up in prison, about three 1978 felony diversions would have avoided prison for a total of 39 months.

Program Costs for 1978

The Program cost data for 1978, including the incremental costs per diversion case for the County Attorney's Office, is calculated as:

Felony Diversions

Average cost per diversion: $\$130,617 \div 140 + 11.50 = \934.50

Average cost per completion: $\$130,617 \div 124 + 11.50 = \$1,064.50$

Misdemeanor Diversions

Average cost per diversion: $\$15,599 \div 133 + 11.50 = \128.50

Cost per completion (10 months): $\$15,599 \div 84 + 11.50 = \197.50

All Cases

Average cost per diversion: $\$146,216 \div 274 + 11.50 = \545.50

Cost per completion: $\$146,216 \div 208 + 11.50 = \714.50

System Costs Averted by 1978 Felony Diversions

Set forth below is a summary of the estimated criminal justice costs averted in 1978 as a result of the Lancaster County Pre-Trial Diversion Program:

<u>Lancaster County Attorney</u>		
124 Favorable Completions x \$185		\$22,940
<u>Lancaster County Public Defender</u>		
34 Favorable Completions x \$178		6,052
<u>Lancaster County Court/Clerk</u>		
124 Favorable Completions x \$59.11 x .5		3,665
<u>Lancaster County District Court/Clerk</u>		
44 Favorable Completions x \$148		8,712
<u>District 6 Adult Probation</u>		
759 months x 30 days per month x \$1.08		24,591
<u>City-County Corrections Division</u>		
885 days x \$15.87 per day		14,045
<u>Nebraska Department of Corrections</u>		
39 months x \$133.33 per month		5,200
<u>Fines Lost</u>		
44 Favorable Completions x \$108		(4,754)
Net System Costs Avoided		80,451
Recidivism Benefits		5,000
		<u>\$ 85,451</u>

Thus, the Program returned about \$.67 for each \$1.00 appropriated from public funds in 1978.

Non-system benefits

While the purpose of this study is to examine the impact of the LCPTD upon the traditional criminal justice system, it is also important to consider the benefits of diversion that are not directly related to the justice system.

An earlier study, LCPTD Program: Evaluation Findings For 1977 Felony Diversions was an attempt to assess non-system benefits. The findings indicated that participants generally improved their education, employment, and inter-personal relationships while in the Program and after participation.

For example, at time of entrance into LCPTD, 34% of the 1977 participants were unemployed, while at the end of their terms only 11% were in that status. One-third of the people who were in an employment status both at intake and termination increased their earning power at least 10%. For the 41 people on whom data were available from follow-up interviews, approximately 290 weeks of unemployment were experienced by this group before being in the Program compared to 99 weeks during the 12 month period after participation.

As to education, 16 people achieved a GED, one graduated from high school, eight obtained a vocational diploma or certificate, and 48 made some advancement in their education as measured by completion of a semester, courses finished, or GED tests passed.

Sixty-seven participants were referred to educational services within the community; 21 to drug, alcohol or mental health treatment; 12 for social services; and 37 were placed in non-profit organizations to

donate community service work. Thirty-two people completed drug and alcohol classes conducted by the Program; 14 a consumer education course; and nine took part in a career planning workshop.

In 1978, felony participants contributed 1907 hours of voluntary community service work to local non-profit agencies and organizations while misdemeanor participants contributed 3303 hours. If these hours are valued at \$3.00 per hour - about the minimum wage - the total contribution to the community was \$15,630. (The volunteer work contributed in 1980 exceeded 6,200 hours). Restitution repaid to victims in 1978 amounted to \$33,241 (\$52,175 in 1980). Drug buy money - funds expended by law enforcement personnel to make drug purchases to establish cases - reimbursed totalled \$654. Participants also paid \$2,942 in Court Costs.

Conclusions

An observation that becomes apparent when a project of this nature is undertaken is the inherent difficulty encountered in the accomplishment of the desired research objectives. It was a real challenge to establish an adequate research design to evaluate the Pre-Trial Diversion Program itself; however, it paled in comparison to the formidable task of how to obtain and interpret the information needed from the other components of the local justice system.

The traditional system, long-established and well-accepted, for the most part does not need to evaluate its operations. Thus, this research not only tried to answer questions such as: "How much does it cost to divert one person to LCPTD?" but also "How much does it cost to prosecute this person if LCPTD is not available?". It is not known precisely

what it costs to prosecute an individual defendant; nor is it known whether these costs have increased or decreased over time. In view of the substantial cost required to operate the justice system in Lancaster County, these questions will have to be addressed at some point in the future. Local government - nor government at any level, for that matter - cannot continue to support the ever-increasing criminal justice system costs in the manner of the past. In the years ahead, it is highly probable that the single most important criterion for decisions about the justice system will be an economic one - it might evolve to be the sole consideration. Thus, it is only a matter of time before the justice system must undertake the kind of self-scrutiny as did the Pre-Trial Diversion Program in this study. Only then will the local policy-makers have the information needed to adequately assess and compare the Program to the traditional system. Until then, these policy-makers will have to rely on the limited findings reported here.

Once again the reader is cautioned to bear in mind that most of the cost analyses contained in this study are estimations and need to be regarded as such. The preciseness manifested in the various projected costs incurred or averted is primarily mathematical. To state that it costs the County Attorney's Office \$200 to prosecute a typical diversion felony complaint is simply not accurate. On the other hand, it is a reasonably accurate figure with sufficient value to make comparisons to the costs of the diversion of a typical felony complaint from the system to LCPTD. The same caveat is applicable to the data on recidivism. The specific rearrest and/or conviction rates cited in the study mean

little by themselves. Only when they are used for comparative purposes under carefully controlled conditions do these figures become significant.

Too, this study represents the Program as it functioned in 1978 and part of 1979. There have been a number of substantive changes in the Program since then, most of which have had a favorable impact on costs as compared to the traditional system. Most of these were referred to in the report. It is not possible to estimate the impact of these changes without a followup study similar to this one. There is a good possibility that the Program might attain a favorable cost-benefit ratio in 1981 based on the preliminary data available. All criminal justice budgets within Lancaster County have continued to increase every year except for LCPTD, which has been reduced for four consecutive years. The cost to prosecute a case by traditional methods can reasonably assumed to be increasing each year, while the cost of diverting a case is steadily being reduced.

This study was undertaken to determine: 1) if there are any differences in rearrest rates between individuals who participate in LCPTD compared to similar defendants handled by the traditional system; 2) the impact of the Program upon the traditional system; and 3) if local government receives an acceptable rate of return on its investment.

Chapter V addressed the recidivism question. With some reservations due to the inherent limitations of a quasi-experimental research design, the evidence suggests that the LCPTD does have a positive effect on participants' future crime. While the differences are statistically significant, the results are tempered by the relatively few cases diverted given the total number of felony prosecutions within the jurisdiction.

The same is true for the Program's impact upon the system. Clearly, some degree of traditional criminal procedures are obviated by diverting a case from the system even taking into account that some cases will be dismissed or reduced to misdemeanors in lieu of diversion. In conclusion, the findings reported in this study demonstrate that the Program does have the potential to achieve a favorable cost-benefit ratio using the conservative definition described in Chapter III provided efforts continue to more fully utilize it as an alternative to the system.

FOOTNOTES

1. Rovner-Pieczenik, Roberta, Pre-Trial Intervention Strategies: An Evaluation of Policy Related Research and Policymaker Perceptions. Washington, D.C.: American Bar Association, 1974.
2. Mullen, Joan, Pre-Trial Services: An Evaluation of Policy Related Research. Cambridge, Massachusetts: Abt Associates, 1974.
3. Kirby, Michael, "Recent Research Findings In Pre-Trial Diversion". Washington, D.C.: Pretrial Services Resource Center, 1978, p. 17.
4. Ibid., p. 19.
5. Thomas, Richard K. and Associates, The Shelby County Pre-Trial Diversion Program - An Evaluation. Memphis, Tennessee, 1980, pp. vii-ix.
6. Kirby, Michael, "Suggested Research Practices In Pre-Trial Diversion". Washington, D.C.: Pretrial Services Resource Center, 1977, p. 3.
7. Ibid.
8. Ibid.
9. Ibid, .pp. 4-5.
10. Ibid., pp. 5-6.
11. While program success and rearrests are obviously related because conviction on a new offense results in automatic unfavorable termination, they are not the same. Nearly one-half of all unfavorable terminations do not involve new offenses but are because of failure to follow through on other program requirements.
12. It is not possible to pinpoint the timing of offenses from County Attorney or County Court records because there often is considerable delay between the date an offense is actually committed and the date a criminal complaint is filed. This is especially prevalent in complaints filed for no account or insufficient fund checks, both felony and misdemeanor. As an example, in one case an initial record check indicated that an individual in the 1974 Group had been filed upon for an insufficient fund check offense nearly three years after the 1974 felony offense. After a review of the information contained in the County Attorney's file, it was determined that the Deputy County Attorney handling this case had filed the new complaint on several checks written at the time of the 1974 offense but not included on the complaint at that time. This was because the defendant repeatedly failed to make restitution as required as a condition of probation. The 1977 complaint thus was not actually recidivism but was collateral to the 1974 diversion/ comparison group offense.

- 13. Another figure quoted by the State Probation Office is that the annual cost per probationer was about \$400 in 1975. It is not known whether this figure is accurate for 1978. If the number of probation cases declined and the budgets increased, it is understated. It is overstated if the number of probationers has increased and the probation budget has remained constant. Using this approach yields a figure of \$22,770 ÷ 365 days per year = 62.38 years probation x \$400 per year = \$24,952. Adjusting for inflation, this figure is \$26,948.

The limitation of both methods is that they represent statewide estimates and may vary significantly from the cost incurred for the cases handled by the District Six Office (Lancaster County).

Another alternative more specific to the Lancaster County situation was to estimate the cost per release from probation for the District Six Office in 1978 which was the approach used for the 1978 LCPTD cost analysis. By this method, the estimated cost per release from probation for 1978 was about \$437. Adding the processing costs of District Court, Clerk of District Court, County Court, defense and prosecution costs, this total can be compared to the cost per favorable completion for a LCPTD case in 1978. Based on the District Six Adult Probation estimated budget for 1978-1979, an estimate of the diversion costs averted can be derived:

\$126,078	Probation officers salaries and benefits
24,884	Clerical salaries and benefits
21,434	Operating expenses
<u>\$172,396</u>	TOTAL BUDGET
.95	Estimated actual expenditures 78-79
<u>\$163,776</u>	TOTAL

\$163,776 ÷ 375 = \$436.74 per release

- 14. This rate has since been increased to \$15.00.
- 15. An alternative method was to apply national estimates available from the National Institute of Law Enforcement and Criminal Justice for certain relevant jail costs. These were \$35.80 per inmate for administrative processing in and out of jail, \$2.00 per day for consumable supplies and \$2.14 per prisoner per day as long range costs for eventual jail replacement. Given the subjectivity of applying these figures to the Lancaster County-City Jail, the per diem charges to the County for lodging offenders was adopted.

APPENDIX A

OVERVIEW OF LANCASTER COUNTY COURT SYSTEM

Four separate courts of original jurisdiction over criminal matters exist within Lancaster County: Lancaster County District Court, Lancaster County Court, Separate Juvenile Court of Lancaster County, and Lincoln Municipal Court.

Municipal Court has jurisdiction over violations of city ordinances. These include traffic and other misdemeanors such as assaults, petit larceny, trespass, minor in possession, disturb the peace, and alcohol in park. Municipal Court has its own probation department. The Lincoln City Attorney prosecutes most cases before Municipal Court, however, the County Attorney prosecutes traffic violations issued by the County Sheriff and Nebraska State Patrol if the offense occurred outside the Lincoln city limits.

The Separate Juvenile Court has jurisdiction over all youth under 16 charged with criminal offenses and for most offenders under 18. It is possible for a 16 year old youth arrested for petit larceny to be charged in Municipal Court by the City Attorney or referred to Juvenile Court. The Juvenile Court operates a separate probation department responsible to the Juvenile Court Judge. Prosecution of cases in Juvenile Court is the responsibility of the Lancaster County Attorney. Neither Juvenile Court or Municipal Court refer cases to LCPTD. (As of January, 1981, the City Attorney's Office began referring petit larceny cases to the Program).

Lancaster County Court has original jurisdiction (concurrent with the District Court) over criminal matters where the penalty does not exceed one year confinement in the county jail or a fine over one thousand dollars or both (misdemeanor).

In this district, most felony complaints are filed in County Court although the County Attorney may occasionally file directly in District Court. The County Court Judge presides over initial appearances, appointment of counsel, setting of bail, preliminary hearings, and some other motions regarding felony complaints. No pleas are entered in County Court on felony matters. If a felony complaint is amended to a misdemeanor before it is bound over to District Court, the matter remains in County Court for final disposition.

Once a felony case has been bound over, it remains in District Court for final disposition even though it may be amended to a misdemeanor at this stage of the proceedings. As a practical matter, rarely is a felony complaint amended to a misdemeanor once it has reached District Court. In addition to original jurisdiction over all felony complaints, the District Court hears all appeals from County and Municipal Court. The Adult Probation Department is administered by the District Court; specifically, the Judge assigned to the criminal bench. The Probation Department serves both the County Court and the District Court, although most presentence investigations are for District Court. The Lancaster County Attorney prosecutes all criminal matters in both County Court and District Court.

APPENDIX B

CRIMINAL PROCEDURE FOR FELONY COMPLAINTS

County Court

Arrest/Complaint

There are two ways for a felony matter to enter the justice system: 1) A law enforcement officer makes an arrest and lodges the defendant in jail on felony charges. Subsequently, the facts of the case are reviewed by the County Attorney who either: a) files a felony complaint in County Court, b) files a misdemeanor complaint in Court, c) declines to prosecute and files no charge, or d) refers the case to the City Attorney for prosecution consideration; 2) A complaint is filed in Court by the County Attorney prior to an arrest being made and a warrant is issued by the Court. The police or sheriff subsequently makes the arrest and books the person into the City-County jail. The most common cases where this is the procedure are those involving sale or delivery of controlled substances and felony checks.

Initial Appearance

In felony cases, the defendant is not released from custody until an initial appearance in County Court. At the initial appearance, the elements of the complaint are read to the defendant and bond is set by the judge. These include the nature of the offense and possible penalties. No plea is entered at this time. The judge may appoint the Public Defender to represent the defendant if he or she is eligible. The judge then sets the matter for Docket Call, usually several weeks following the filing of a complaint. Strictly speaking, the first appearance by the defendant is not an arraignment as no plea is entered. If the case is bound over to District Court, the defendant is required to enter a plea at arraignment.

Docket Call

Docket Calls are administrative hearings to provide an opportunity for the attorneys to inform the Court about how pending cases are going to proceed. Preliminary hearings are scheduled for felonies and high grade misdemeanors at this time. Cases being considered for Pre-Trial Diversion are dismissed at this stage of the proceedings if they are going to be accepted into the Program. If not, these cases proceed in the usual manner. The judge may continue cases to future Docket Calls. This might occur if someone is being screened for LCPTD but no final decision has been made. It also is done in insufficient fund check cases so the judge can monitor restitution payments, if necessary. The defendant is not required to be present at Docket Call, however, counsel does appear. If defense counsel is not in Court, a new Docket Call is scheduled.

Bond Reviews

Bond reviews are hearings initiated by defense counsel to request the Court to reconsider the bond set at initial appearance. Bond review hearings are applicable for both felony and misdemeanor complaints. Twenty-four hours notice to the County Attorney's Office is required prior to a hearing.

Preliminary Hearings

A preliminary hearing is a statutory procedure afforded to every defendant charged with a felony to determine the sufficiency of the evidence against the defendant unless it is voluntarily waived. The purpose of a preliminary hearing is for the State to show that probable cause exists that a crime was committed by the defendant. Witnesses are called to testify and are cross-examined. A record of the proceedings is made by a Court Reporter. The rules of evidence are not as strict for preliminary hearings as for trials, nor is the burden of proof on the prosecutor as great. Subsequent to a hearing, the judge rules on the adequacy of the case and the matter is either dismissed due to lack of evidence or bound over to District Court.

Other Hearings

Defense motions to suppress evidence or motions for discovery (these ask the Court to direct prosecutor to make evidence available to the defense) are heard in County Court only for misdemeanors. On a felony, these motions are filed and heard in District Court.

The Court also hears and rules on defense motions to transfer cases involving defendants 16-18 years of age to the Separate Juvenile Court. It is incumbent upon the County Attorney to show why the defendant should be prosecuted as an adult.

District Court

Once a defendant is bound over from County Court, an Information is drawn by the County Attorney and filed. Endorsed on the Information is a list of State witnesses. The same County Attorney file is used in County and District Court. The defendant is then arraigned in District Court. The defendant, judge, bailiff, court reporter, County Attorney and defense counsel are present. A plea is entered at this time. Typically, a plea of not guilty is entered by the defendant. If a preliminary hearing was held in County Court, a Plea in Abatement may be entered whereby defense counsel asks the District Court to review the proceedings of the preliminary hearing and rule on the adequacy of the lower court's ruling.

When a not guilty plea is entered, the judge sets the matter for trial at the next scheduled jury panel. He also will schedule any defense motions, such as those to suppress evidence or for discovery. Jury terms are scheduled for January and September and each term consists of several panels, each of which serves for a two week period.

The Court rules on all hearings and presides over trials. The defendant may waive jury trial, in which case it will be held before the judge. In actual practice, the majority of defendants plead guilty and no trial is held. The original felony complaint may be amended to a different felony charge or to a misdemeanor by the County Attorney; however, once a felony has been filed in District Court it remains there for final disposition even if amended to a misdemeanor.

Prior to sentencing, a pre-sentence investigation is ordered in all felony matters and for some misdemeanors if the judge believes it is necessary. Upon completion of the report, the judge may sentence the defendant to either jail, fine, probation, or to prison or any combination.

APPENDIX C

LANCASTER COUNTY PRE-TRIAL DIVERSION PROGRAM
ELIGIBILITY GUIDELINES

FELONY DIVERSIONS

AGE/SEX

Males and females are eligible.

Basic age consideration is whether the person is to be charged as an adult in Lancaster County or District Court.

Generally the minimum eligibility age is 17½ years or older.

CRIMINAL RECORD

A prior felony conviction makes person ineligible unless 10 years has passed since date of conviction.

Individuals with three or more misdemeanor convictions, excluding traffic, alcohol and minor violations (such as littering, loose dog, game laws) are ineligible.

Prior convictions for possession of marijuana that are presently defined as an infraction (possession of one ounce or less) are not included as part of the person's conviction record. A person may be considered who has three or more prior misdemeanor convictions, if five years have passed since the last conviction.

Misdemeanor convictions for the purpose of this section includes violations of state statutes and city or village ordinances.

Juvenile Court dispositions not included to determine prior conviction eligibility; however, Municipal Court convictions are counted.

If person received a pardon for a prior felony conviction, he may be considered if otherwise eligible. Expungement of a prior conviction does not make person eligible if originally ineligible due to a prior record.

Multiple offenses do not eliminate the individual if the crimes were committed over a short period of time and not indicative of continuing criminal behavior.

ELIGIBLE OFFENSES

Generally eligible offenses:

Casual or incidental sale or delivery of controlled substances	Non-violent sex offenses
Possession controlled substance	Motor Vehicle Homicide
Property and theft offenses	ISF or No Account Checks
Fraud	OMUFP
	Embezzlement

Some offenses are considered on a case-by-case basis to determine eligibility.

SERIOUSNESS OF OFFENSE

In addition to the foregoing criteria, each case will be examined in light of the seriousness of the particular offense. The County Attorney reserves the right to reject any offense for Pre-Trial Diversion which is too serious. Factors to be considered in this determination include:

- 1) Number of repetitions of offense
- 2) Length of time over which offenses occurred
- 3) Number of victims
- 4) Potential or actual harm to victims (even if unintentional)
- 5) Likelihood that further offenses will occur as a result of the charged offense
- 6) Monetary amount of offense
- 7) Violations of public trust or professional duty
- 8) Whether there is business or consumer fraud involved.

INELIGIBLE OFFENSES

Burglaries to obtain controlled substances

Offenses where violence or threat of violence involved

Repeated drug sales or deliveries of controlled substances

Possession of large quantities of controlled substances to indicate involvement in sale or delivery

- | | |
|----------------------------|------------------------------|
| Murder | Robbery |
| Non-negligent manslaughter | Sex offenses involving force |
| First Degree Assault | Third Offense DWI |
| Second Degree Assault | First Degree Arson |

ESTABLISHED PATTERN OF CRIMINAL/ANTI-SOCIAL BEHAVIOR

For the most part, this relates to prior juvenile record as, in the case of most older candidates, repeated involvement in criminal activity will eliminate the individual on the basis of prior interventions.

To determine issue of pattern, each case has to be considered individually. Some guidelines include: 1) number of arrests and/or referrals to Juvenile Court for criminal matters, 2) period of time over which prior offenses committed, 3) repeated offenses of the same nature, 4) prior commitment to juvenile correctional institutions for criminal offense, and 5) amount of time that has passed between past juvenile criminal activity and diversion offense.

Insufficient funds checks and embezzlement offenses are not considered as a pattern of criminal conduct in the interpretation of these criteria.

As to anti-social behavior not necessarily criminal in nature, the guideline is the person's ability to grasp reality and function fairly independently in the community. In most cases, obvious chronic, demonstrated disoriented behavior or severe mental retardation should not be considered. As the philosophy of the program stands now, the same general standard for adherence to program conditions and requirements is applicable to all participants. Experience has shown that people with severe, long-term psychological problems and/or mental retardation rarely sufficiently understand the nature of the program to complete it successfully.

Favorable Diversion Factors

Factors considered favorable for diversion include: 1) the willingness of the victim to have no conviction sought; 2) any likelihood that the candidate suffers from treatable psychological or emotional difficulties that relate to the crime but are not so severe as to affect the ability to handle the minimum program requirements; 3) the likelihood that the crime is significantly related to any other condition or situation such as unemployment or family problems that would be subject to change by participation in the program; and 4) the probability that the person could be amenable to program requirements and conditions.

Unfavorable Diversion Factors

Factors considered unfavorable for diversion consideration are: 1) a history of the use of physical force or violence toward others; 2) involvement with organized crime; and 3) a history of anti-social conduct indicating that such behavior has become an ingrained part of the defendant's lifestyle and would be particularly resistant to change.

The County Attorney makes the final decision to accept or reject any candidate due to a history of violence, and criminal or anti-social behavior.

DEMONSTRATED TIES

This guideline is interpreted liberally in favor of being eligible for consideration. It is intended mainly to eliminate transients and those individuals who live considerable distance from Lancaster County.

The basic consideration is whether the person is willing and able to meet the minimum reporting requirements and whether satisfactory arrangements can be made for the person to fulfill contractual agreements in his or her area of residence.

It should not be construed that a minimum length of residency in the Lancaster County area is necessary. It may be that a person will not be accepted after screening, however, it should not preclude an initial consideration if the person wants to apply for the program.

RESPONSIBILITY FOR OFFENSE

The minimum degree of responsibility for the person is acknowledgement that the evidence available would likely result in conviction if the case were prosecuted in Court. Eligibility is not tied to defendant's initial or subsequent pleas in Court. A person has the right to plead not guilty if terminated unfavorably from the Program. The presumption is in favor of initial referral if the person is eligible and interested in participation. During the intake process, this issue is pursued at length by the counselors. If it is felt the responsibility issue will be a factor in the person's performance, it influences the final decision as to acceptance.

RESTITUTION

Inability to make full restitution for losses incurred by victims does not eliminate an individual from further consideration. In some cases symbolic or partial restitution is accepted or the issue is handled by civil redress.

OTHER CRITERIA

Participation is voluntary on the part of the individual. No one is required to participate. A participant may voluntarily withdraw from the program at any time at which time the matter will be returned to the County Attorney for prosecution consideration.

All candidates are required to complete a Constitutional Rights Questionnaire which outlines basic legal protections and implications of participation in Pre-Trial Diversion to ensure their understanding of such action.

Any outstanding warrants from any jurisdiction must be resolved prior to official acceptance into Pre-Trial Diversion.

An individual who has charges pending that, upon conviction would make them ineligible for the program, will not be considered for Pre-Trial Diversion until such charges have been resolved.

The person must agree to all conditions set forth in the Program Agreement.

Individuals who are on probation from any court for other than alcohol offenses are not eligible.

Requests for transfers of felony diversions to other jurisdictions will be considered only after one-half of the term of the program agreement has been completed under the supervision of the Lancaster County Pre-Trial Diversion Program.

MISDEMEANOR DIVERSIONS

Basically, the same guidelines apply to both felony and misdemeanor offenses except for prior record. To be eligible for referral if being charged with a misdemeanor, the candidate can have no prior adult convictions (County, Municipal or District Court) except for traffic, alcohol, or very minor infractions or ordinance violations such as littering, loose dog, game laws.

Eligible Misdemeanor Offenses:

- Controlled Substances
- Property and theft
- Contributing to Delinquency of Minor
- Criminal Mischief
- Insufficient & No Account Checks
- Fraud

Ineligible Offenses:

- DWI
- Game Law violations
- Gambling
- Obstruct Peace Officer
- Resist Arrest

Offenses Considered On a Case-By-Case Basis:

- Disturbing the Peace
- Obstruct and Pervert Justice
- Motor Vehicle Homicide
- Third Degree Assault
- Public Indecency
- All other non-violent misdemeanors

INFRACTIONS

Infractions will be considered for screening only upon specific request from a defendant or counsel. The same criteria as are applied to misdemeanors will be applicable to infractions.

APPENDIX D
LANCASTER COUNTY
PRE-TRIAL DIVERSION PROGRAM

CODEBOOK FOR
RECIDIVISM COMPARISONS

Missing Data Codes

<u>Single Digit Variables</u>	<u>Double Digit Variables</u>	
(8)	(88)	Data not available
(9)	(99)	Does not apply

Eric A. Mc Masters
Director

VAR 001	<u>Identification Number</u>	1-4
	All 1974 cases begin with 9. For example, 9001, 9002, etc.	
VAR 002	<u>Diversion / Comparison Group</u>	5,6
	(01) 1974 Group (02) 1975 PTD (0001-0110) (03) 1976 PTD (0111-0349) (04) 1977 PTD (0350-0621) (05) 1978 PTD (0623-0966) (06) 1979 PTD (0967-1308)	
VAR 003	<u>Age At Arrest/Arraignment</u>	7,8
VAR 004	<u>Age Categorized</u>	9
	(1) 16-18 (2) 19-21 (3) 22-25 (4) 26-29 (5) 30+	
VAR 005	<u>Sex</u>	10
	(0) Male (1) Female	
VAR 006	<u>Race</u>	11
	(0) White (1) Non-white	
VAR 007	<u>Diversion/Comparison Group Offense</u>	12
	(0) Controlled substances - marijuana (1) Controlled substances - other drugs (2) Property (3) Fraud (all except ISF/NAC) (4) ISF/NAC (5) Person/other	
	Conspiracy and Accessory After the Fact are to be recorded in the appropriate category above based on the nature of the offense that was the basis for the charge.	
	Fraud: OMUFP/Embezzlement/Forgery Person: Sexual Assault, Incest, Indecent Exposure Other: Carry Concealed Weapon, Obstruction of Justice	

VAR 008	<u>Total Prior Arrests</u>	13
	(0) None (1) One (2) Two (3) Three or more	
	Exclude in prior record: Enter Closed Beach; Littering; Alcohol in Park; Loose Dog; Altered ID; Game Laws; Status Offenses (runaway, etc.); Traffic except DWI which is to be included.	
VAR 009	<u>Total Prior Convictions</u>	14
	(0) None (1) One (2) Two (3) Three or more	
	Referrals to juvenile court are to be considered equivalent to conviction	
VAR 010	<u>Prior Arrests Under 18</u>	15
	(0) None (1) One (2) Two (3) Three	
VAR 011	<u>Prior Convictions Under 18</u>	16
	(0) None (1) One (2) Two (3) Three	
VAR 012	<u>Prior Arrests 18 and Over</u>	17
	(0) None (1) One (2) Two (3) Three or more	
	For individuals under 18, code 9	
VAR 013	<u>Prior Convictions 18 and Over</u>	18
	(0) None (1) One (2) Two (3) Three or more	
	For individuals under 18, code 9	

VAR 014 Classification of Prior Arrest Record 19

- (0) Minor violations
- (1) Possession of Marijuana
- (2) Other controlled substances Most serious
- (3) DWI/MIP/Drunk
- (4) Property/Fraud
- (5) Person
- (6) Other

If none - code 9

VAR 015 Classification of Prior Arrest Record 20

- (0) Minor violations
- (1) Possession of Marijuana
- (2) Other controlled substances 2nd most serious
- (3) DWI/MIP/Drunk
- (4) Property/Fraud
- (5) Person
- (6) Other

If none - code 9

VAR 016 Classification of Prior Arrest Record 21

- (0) Minor violations
- (1) Possession of Marijuana
- (2) Other controlled substances Least serious
- (3) DWI/MIP/Drunk
- (4) Property/Fraud
- (5) Person
- (6) Other

If none - code 9

Record up to three offenses for each person. If only one prior, code other variables as does not apply (9). Rank each offense by seriousness in the following order: Person, Property/Fraud, Controlled Substances other than Marijuana, Other Offenses, Possession of Marijuana, Alcohol Offenses, Minor Violations.

RECIDIVISM

Traffic offenses except for DWI are not included. Failure to appear and revocation of probation complaints are not counted. In cases where multiple charges are incurred for one arrest, consider as one incident by the following guidelines: 1) code the charge with conviction; 2) if more than one, record the more serious one (felony over misdemeanor) or the offense with the most severe sentence: 1) jail or prison; 2) probation; 3) fine; 4) if fines only - largest fine. Collateral offenses are not recidivism nor are offenses that occurred before the diversion offense but were prosecuted after that offense. If an individual has more than three convictions during the time being considered, record only three using the same guidelines previously mentioned.

For arrests where the disposition is pending code conviction data as 8.

If it can be determined that a person was held and released from custody shortly after arrest with no charges filed, disregard this offense. Also any obviously unfounded or mistaken identity arrests (Clear these with Director). The date of any new offense, not the arrest date will determine what time period to classify the new offense.

VAR 017 Arrests Two Years After Diversion Offense Arrest or Initial Arraignment If Not Arrested 22

- (0) None
- (1) One
- (2) Two
- (3) Three or more

VAR 018 Total Convictions Two Years After Diversion Offense Arrest (or initial arraignment) 23

- (0) None
- (1) One
- (2) Two
- (3) Three or more

VAR 019 Felony Convictions Two Years After Diversion Offense Arrest (or initial arraignment) 24

- (0) None
- (1) One
- (2) Two or more

VAR 020 Total Arrests Three Years After Diversion Offense Arrest (or initial arraignment) 25

- (0) None
- (1) One
- (2) Two
- (3) Three or more

VAR 021 Total Convictions Three Years After Diversion Offense Arrest (or initial arraignment) 26

- (0) None
- (1) One
- (2) Two
- (3) Three or more

VAR 022 Total Felony Convictions Three Years After Diversion Offense Arrest (or initial arraignment) 27

- (0) None
- (1) One
- (2) Two
- (3) Three or more

TYPE OF RECIDIVISM

This classification scheme is to reflect the offenses based on arrest and/or initial charges filed. The charges filed data should be used if any charges were filed. If not arrest data will suffice. If there are more than three offenses with convictions, select the most serious offenses using the same method as for recording recidivism data in general.

EXAMPLES OF EACH CATEGORY:

MINOR VIOLATIONS: Littering, Loose Dog, Trespass (Other than amended property offense), Intoxication, Disturb Peace (non-amended property offenses), Game Laws, Possession of Marijuana Infractions, Loaded Shotgun in Vehicle

POSSESSION OF MARIJUANA: All marijuana offenses whether possession or delivery except for infractions

OTHER CONTROLLED SUBSTANCES: All possession or delivery controlled substances other than marijuana

DWI: All violations involving .10 alcohol at arrest. Include although may be amended to lesser traffic offense

PROPERTY/FRAUD: Any offense where property loss or damage is involved regardless of whether felony or misdemeanor. Includes Shoplifting (Petit Larceny), all theft offenses, Arson, Destruction of Property, Concealing Stolen Property, False Reports for Insurance, Insufficient Fund and No Account Checks, Forgery, OMUFP, Fraud, Joyriding

CRIMES AGAINST PERSON: Assault, Rape, Murder, Manslaughter, Motor Vehicle Homicide, Resist Arrest, Threats, Molest, Obscene Telephone Calls

OTHER: Carrying Concealed Weapon, Gambling, Obstruct Justice, False Report to Police Officer, Contribute to Delinquency of a Minor

VAR 023 Classification of Offense for most serious rearrest during the THREE YEAR period after arrest for Diversion Offense 28

- (0) Minor violations
- (1) Possession of Marijuana
- (2) Other Controlled Substances
- (3) D.W.I. (If no arrests, code 9)
- (4) Property/Fraud
- (5) Person
- (6) Other

If more than three new offenses, code those with convictions over those without conviction.

VAR 024 Classification of Offense for SECOND most serious rearrest during the THREE YEAR period after arrest for the Diversion Offense 29

- (0) Minor violations
- (1) Possession of Marijuana
- (2) Other Controlled Substances
- (3) D.W.I. (If none or only one, code as 9)
- (4) Property/Fraud
- (5) Person
- (6) Other

VAR 025 Classification of Offense for THIRD most serious rearrest during the THREE YEAR period after arrest for the Diversion Offense 30

- (0) Minor violations
- (1) Possession of Marijuana
- (2) Other Controlled Substances
- (3) D.W.I. (If no arrests or only one or two arrests, code 9)
- (4) Property/Fraud
- (5) Person
- (6) Other

APPENDIX E

EXCEPTIONS MATCHED

ID#	Race/Sex	Age	Priors	Offense
9003	White male	26	0	*Marijuana
0858	White male	29	0	Other drug
9004	Black male	*21	1	Marijuana
0142	Black male	22	3	Marijuana
9005	White male	*26	0	Marijuana
0364	White male	34	0	Marijuana
9018	Mexican male	19	3	*Property
0966	Mexican male	21	1	Fraud
9066	White male	*18	0	ISF
0523	White male	20	0	ISF
9094	Black male	*21	1	ISF
0311	Black male	24	1	ISF
9196	White male	*19	3+	Property
0439	White male	18	3+	Property
9206	Mexican male	*19	3+	Property
0367	Mexican male	18	2	Property
9033	White male	*21	0	Marijuana
0490	White male	23	0	Marijuana
9051	White male	20	2	Property/nontheft
0511	White male	*22	3	Property/nontheft
9099	White male	18	0	*Other drug
0221	White male	18	0	Marijuana
9048	White female	*18	0	Other drug
0746	White female	20	0	Other drug
9118	White male	*19	0	Other drug
0403	White male	22	0	Other drug
9019	Mexican male	*19	3	Property
0406	Mexican male	17	3+	Property
9246	White male	22	0	*Property
0613	White male	22	0	Property/nontheft
9155	White female	*18	0	ISF
0352	White female	19	0	ISF
9183	White male	*25	1	Fraud
0451	White male	28	1	Fraud
0922	White male	*28	0	ISF
0959	White male	38	0	ISF
9223	White male	22	0	*Marijuana
0911	White male	25	0	Marijuana/other drug
9235	White male	18	0	*Property/theft
0609	White male	18	0	Property/nontheft
9234	White male	22	3	*Marijuana
0949	White male	22	1	Marijuana/other drug
9232	White male	*24	0	Marijuana
0978	White male	26	0	Marijuana
9060	White male	*22	0	Other drug
0200	White male	20	0	Other drug
9146	White male	18	0	*Marijuana
0022	White male	18	0	Marijuana/other drug

Note: * denotes the exception

EXCEPTIONS MATCHED

ID	Race/Sex	Age	Priors	Offense
9025	White male	*18	1	*Marijuana
0749	White male	20	1	Marijuana/other drug
9231	Mexican male	*19	3	Marijuana
0283	Indian male	23	3	Marijuana
9160	Black female	*18	0	Fraud
0013	Black female	20	0	Fraud
9197	White female	*27	3	Fraud
0166	White female	25	3	Fraud
9089	White female	*18	1	Marijuana
0206	White female	20	1	Marijuana
9225	White male	*21	0	Marijuana
0967	White male	24	0	Marijuana
9056	Black male	25	0	*Marijuana/other drug
0470	Black male	25	0	Marijuana
9169	White female	*20	0	Marijuana
0263	White female	22	0	Marijuana
9233	White male	23	1	*Marijuana/other drug
0253	White male	22	3	Marijuana
9064	White male	22	0	*Property/nontheft
0132	White male	22	0	Property
9200	White male	*25	1	Marijuana
0126	White male	27	1	Marijuana
9055	White female	18	0	*Marijuana
0909	White female	18	0	Marijuana/other drug
9058	White female	*23	0	Other drug
0995	White female	20	0	Other drug
9074	White male	23	1	*Marijuana
0508	White male	23	1	Marijuana/other drug
9099	White male	18	0	*Other drug
0221	White male	18	0	Marijuana
9128	White male	*21	1	CCW
0672	White male	24	3	CCW ¹
9131	White male	20	1	*Marijuana
0502	White male	19	1	Marijuana/other drug
9150	White male	*18	1	Marijuana
0028	White male	20	2	Marijuana
9151	White male	*17	0	Fraud
0596	White male	19	0	Fraud
9244	White male	*21	3	Marijuana
0301	White male	22	3	Marijuana
9190	White male	*24	0	Property
0604	White male	21	0	Property
9171	White female	*19	0	Property
0069	White female	22	0	Property
9173	White female	20	0	*Property/nontheft
0035	White female	19	0	Property

1 Carry concealed weapon

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