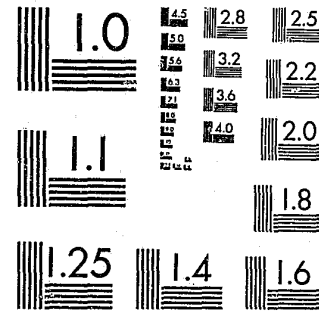


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Police Referral to Drug Treatment: Risks and Benefits

U.S. Department of Justice
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The material herein does not necessarily reflect the opinions, official policy, or position of the National Institute on Drug Abuse of the Alcohol, Drug Abuse, and Mental Health Administration, Public Health Service, U.S. Department of Health and Human Services.

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Foreword

The role of police in contemporary American society remains a subject of heated and intense debate. Generally, the traditional school of thought confines police to their original, fundamental purpose: the detection of crime and the apprehension of criminals. However, in more recent years as other American social and governmental institutions such as education and the family undergo rapid change, there is increasing support for a much broader view of the police role, one that places more emphasis on socially oriented activities such as the prevention of crime by intervention in family and domestic quarrels, gambling, etc. That view seems especially suited for uniformed police dealing with delinquent and youthful offenders.

Both schools have strong advocates and present convincing evidence to support their position.

While controversy swirls around that issue, drug abuse becomes more prevalent, causing an inordinate drain on police resources, overcrowded court dockets, and prosecutors swamped with cases, all struggling with new approaches to stem the tide. There is much discussion about these problems and not enough attention to solutions.

In a new spirit of cooperation--seeking alternatives satisfactory to both the drug treatment community and the criminal justice system--the National Institute on Drug Abuse commissioned this feasibility study to explore new working relationships with police.

As the report indicates, there is growing evidence that large numbers of drug abusers are frequently questioned, arrested, or detained by police, and then, for a variety of reasons, are subsequently released and not prosecuted. The personal crisis created by this experience affords an excellent opportunity for therapeutic intervention.

This study examines 8 programs--with 10 distinct police-referral components--in 6 sites, all of which enjoy broad police and community support. The reader's reaction regarding this concept would be welcome.

Carl Hampton
Criminal Justice Coordinator
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Preface

The Drug Abuse Office and Treatment Act of 1972 established the National Institute on Drug Abuse (NIDA) and set forth its broad-ranging mandate. Section 410(a) of the act specifically directs that the Institute make grants and enter into contracts with others in the public and private sectors in order to "establish, conduct, and evaluate drug abuse prevention, treatment, and rehabilitation programs within State and local criminal justice systems." In order to meet its mandate in this area, NIDA has encouraged "linkages" between the criminal justice system and the drug abuse treatment community. Building such cooperative relationships between the two systems has proceeded on two premises. First, the criminal justice system has been viewed as an excellent casefinding mechanism to identify drug abusers involved in dysfunctional and illegal activities to support their habits. Second, rather than duplicate treatment resources, the rehabilitation of drug-abusing criminal defendants should in most instances proceed by referring them out of the criminal justice system, at a variety of possible points in the processing of their cases, to preexisting service providers in the broader community.

In order to foster such linkages consistent with its mandate, NIDA has sponsored a series of reports and monographs that describe workable strategies to effectuate referral to drug treatment at various points of intervention in the criminal justice process. This publication addresses an area of the criminal justice/drug abuse treatment interface that has received comparatively little attention to date in the literature--the "pre-charge" phase. This stage in the adult criminal justice and juvenile justice systems, dominated by the police, is that critical period in the processing of a drug-abusing offender that extends from the initial encounter with a police officer to the point at which the prosecutor decides to file formal charges against the accused with the court.

Before going further, a brief explanation is in order concerning the title of this work. Because pre-charge diversion, by definition, occurs prior to the point at which formal charges are filed with the court, most drug abuser identification and referral activity at this stage of the criminal justice process is by those actors who have the earliest contact with an offender. This is seldom the prosecutor. It is uniformed patrolmen and other law enforcement personnel (youth officers and detectives, for example) who are primarily involved here. This does not mean, however, that all pre-charge diversion is totally a matter of police discretion or that police, acting alone, administer most referral programs. To the contrary, most pre-charge diversion programs for drug abusers encountered during the course of the study that led to this publication displayed relatively sophisticated intake and referral mechanisms that required the procedural interaction of many parties--social workers, pre-trial service interviewers, drug treatment personnel, and others--in addition to police. In all instances, however, police played a significant role and generally were the parties who initiated the drug abuser identification process, in some instances through the exercise of broad discretion, in others pursuant to predetermined guidelines.

There are four primary reasons for directing particular attention to pre-charge referral of drug abusers to treatment. First, intervention techniques at the pre-charge stage have received little studied attention despite the fact that police and other criminal justice personnel have been active at the local level in developing effective linkages with drug treatment personnel. Program development in this area has proceeded independently, with little visibility beyond the immediate community. Second, a growing body of evidence suggests that a large number of drug abusers are dropping out of the criminal justice system at the pre-charge stage without being identified and without being afforded the opportunity for treatment. Third, there exists a real potential for abuse of defendants' rights and for "widening the net" of social control by the justice system from the implementation of pre-charge diversion programs that have not been carefully and sensitively designed, after a thorough review of the issues and probable tradeoffs. And last, there exists much ambivalence in the law enforcement community about whether drug abuser identification and referral activities are appropriate police functions. Surfacing these attitudes and attempting to suggest constructive avenues for law enforcement/drug treatment interface, so as

to work together to eliminate the twin problems of drug abuse and crime, is another major goal for NIDA and one this monograph seeks to advance.

A Project Advisory Panel of experts assembled from the criminal justice and drug abuse treatment communities reviewed and deliberated on the project plan and participated in the identification of key issues and in the final review of this monograph. The following were members of the advisory panel:

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U.S. Conference of Mayors
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Many State and local criminal justice and drug treatment policymakers and practitioners in the six sites visited also assisted the project team. Without their willingness to provide detailed information about the pre-charge programs operating in their respective jurisdictions, this monograph would not have been possible.

1. Introduction: Purposes and Approach

Since 1962, developing effective cooperation between the drug abuse treatment community and the criminal justice system has been an important goal of Federal and State drug abuse strategies. The United States Supreme Court in that year, in the landmark case of Robinson v. California, established as a matter of law that drug addiction itself is an illness and not a crime, and that a person therefore cannot be punished for the mere status of being drug dependent.¹ Yet Robinson laid the groundwork for a national drug abuse strategy over the intervening years not so much through this general statement of principle as through what it did and did not say about the criminal justice system's permissible response to the problem of the drug-abusing criminal defendant.

Neither Robinson nor any Federal or State Supreme Court ruling since that time has accepted the view that a criminal offender lacks the capacity to form the criminal intent (*mens rea*) to commit a crime because he or she, at the time of committing the illegal act, is under the influence of drugs.² Hence, while the status of being drug dependent is not itself a crime, the sale of or knowing possession of illegal drugs by the drug-dependent person, or the commission of drug-related crimes such as larceny to finance drug habits, continue to be punishable as crimes. The Federal Government, subsequent to Robinson, with many of the States following suit, reorganized its drug laws in 1970 into a uniform Controlled Substances Act, with both the range and duration of possible penalties for possession of illicit drugs increased.³

Further, through holding that the States could not only require an addict to submit to treatment through a noncriminal avenue, but could impose subsequent criminal penalties for failure to comply with a legal requirement to undergo drug abuse treatment, Robinson gave rise to much activity on the part of the drug treatment community and the criminal justice system to devise procedures for channeling drug-dependent criminal defendants into treatment. This monograph will look

closely at a variety of programs and procedures that do just this at one particular phase of the criminal justice process--the period from initial contact with a police officer after the commission of a crime up to the point at which the prosecutor formally files criminal charges against the accused with the court. This is the "pre-charge" phase. What follows in this chapter will explain--

- The background to the situation that led the National Institute on Drug Abuse (NIDA) to commission a study on drug abuse treatment/criminal justice system linkages at the pre-charge phase of criminal processing;
- The intended purposes this monograph on pre-charge referral practices will serve; and
- The approach taken to gather information about and describe representative examples of pre-charge referral strategies for drug-abusing criminal defendants.

BACKGROUND FOR THIS STUDY

In order to clearly present the timeliness and utility of a monograph describing the pre-charge referral to treatment of drug abusers in various locales, the phenomenon of early diversion must be put in the context of evolving Federal and State drug abuse strategies. These programs are not only outgrowths of, but in many ways are reactions to, earlier linkage strategies that, over time, have proved less effective, more costly, and more cumbersome than was originally anticipated.

For a decade, a policy of building linkages between the criminal justice system and the drug abuse treatment community has been a more or less explicit feature of the overall Federal effort to combat illicit drug taking and distribution at the "street" level. Major milestones in the development of the overall Federal strategy (for example, the creation of the national Treatment Alternatives to

Street Crime [TASC] program in 1972, the issuance of the two-volume report of the National Commission on Marihuana and Drug Abuse in 1973, the Report of the Federal Strategy Council on Drug Abuse in 1975, and the promulgation of the Federal White Paper on Drug Abuse in 1976) have all rested on three pillars with regard to drugs and crime. These are as follows:

- There exists a corollary link between psychoactive drug abuse and criminal activity on the part of many drug abusers;
- Participation by drug abusers in programs of education and treatment, especially when coupled with the threat of sanction by the criminal justice system for failure to cooperate with treatment, is effective in reducing drug abuse and thereby in reducing criminal recidivism; and
- The criminal justice system is a very effective casefinding mechanism for identifying drug abusers and channeling them to treatment.

Federal Response to the Drug-Abusing Criminal Defendant

This section will review the evolution of the Federal Government's programmatic response to the problem of drug-related street crime. Beginning with the traditional discretion of the local police and prosecutor to divert selected defendants away from the ordinary course of prosecution at the earliest stages, this section will go on to note the development over time of sophisticated statutory and non-statutory referral procedures that work to intervene at a variety of later points in the processing of a criminal case. The rationale for this evolution of varying program responses to divert drug abusers is laid out, concluding with an analysis of the reasons for the recent resurgence of early, i.e., pre-charge, referral options that involve police as key actors and that are the main focus of this monograph.

Traditional police and prosecutor discretion

Options have always existed in the law for alternative processing of those adults and juveniles whose crimes, though prosecutable, are related to or prompted by substance abuse. The police officer who warns persons in lieu of arrest and then releases them, or who transports drug or alcohol abusers to treatment rather than booking them, practices what may be termed "traditional" diversion. This is a function of the traditional discretion

of the police officer to apprehend or not.⁴ Likewise, the prosecutor who holds in abeyance an otherwise prosecutable case on condition that the defendant do or refrain from doing certain acts for a stated period practices "traditional" diversion. Again, this is a function of the traditional discretion of the prosecutor in Anglo-American law whether to charge and/or prosecute.⁵ These fundamental forms of diversion--diversion "processes" as opposed to diversion "programs"--have been operative under Anglo-American law for centuries.⁶ Both "police diversion" and prosecutor-controlled pre-charge diversion of these elemental types fall within the parameters of this inquiry. Particular operational examples of each as applied to drug abusers were not only uncovered during the study that led to this report but also were included among the 10 program components visited at 6 sites and described in detail in chapter 3.

Beginning in the 1960s, diversion "programs" appeared on the horizon. For criminal defendants generally, these were prompted by the publication of the Report of the President's Commission on Law Enforcement and Administration of Justice.⁷ For drug abusers in particular, specialized programs were prompted by the Supreme Court's decision in Robinson v. California. Such diversion to programs of services and supervision has been characterized by some writers as the "new" diversion, to distinguish it from the time-honored traditional diversion, described above, to which it is akin functionally but from which it can be distinguished in various important ways. What follows briefly describes the development of the so-called "new diversion"--diversion "programs" for drug abusers and others.

Civil commitment statutes

The first major national effort to form a linkage between the drug abuse treatment and criminal justice systems to process drug-abusing criminal defendants differently was the passage by the Federal Government and several States of civil commitment statutes.⁸ These worked to channel specific classes of drug dependents, almost invariably heroin addicts, out of the criminal justice system just before or just after trial to so-called "civil" confinement for inpatient treatment. Such "civil commitment" was generally for extended periods, in excess of 2 years. These statutory programs for the civil commitment of drug abusers sprang up in the late 1960s and early 1970s following Robinson.⁹ Most of these statutes--the Federal Narcotic Addicts Rehabilitation Act (NARA), the New York civil commitment statute, and the

California civil addict statute, to cite the primary examples--provided both for involuntary civil commitment as a condition of post-trial sentencing and for a voluntary civil commitment route, to be activated at the request of or with the concurrence of the defendant, at the pre-trial stage.¹⁰ These civil commitment statutes were by their very nature "diversionary" (in the broad sense of the term). However, in addition, their voluntary pre-trial commitment components constituted the earliest examples of strictly pre-trial diversion programs for drug abusers, within the technical definition of "pre-trial diversion" generally accepted today.¹¹

Typically, such commitment statutes, whether activated at the pre-trial or post-conviction stage, were characterized by--

- Complex court hearings and medical examinations to determine the presence of drug addiction and an amenability to rehabilitation;
- Comparatively long periods of inpatient treatment in institutionalized settings, possibly followed by parole-like periods of outpatient aftercare; and
- Restrictive eligibility criteria, limiting the option to first or second offenders on non-violent charges (and usually excluding felones, because the length of the commitment period--in excess of a year--exceeded the maximum possible term of incarceration on a misdemeanor conviction).¹²

These procedures proved to be at least as costly as full criminal prosecution, trial, and imprisonment. Further, numerous followup studies were unable to demonstrate many "cures" resulting from this approach, but revealed instead high relapse and recidivism rates. A broad consensus of expert opinion is that the civil commitment statutes have proven to be of very limited utility.¹³ (A recent NIDA monograph taking a second evaluative look at California's Civil Addict Program, however, as a result of a followup study found that there were significant differences in treatment outcome due to urine testing and close supervision. Parole supervision, when coupled with urine testing, resulted in much lower rates of daily narcotic use, drug dealing, criminal activity, and higher employment than did supervision without testing, and no supervision.)¹⁴

Conditional discharge statutory diversion

Beginning in 1970 with the passage of the conditional discharge section (§404(b)) of the

Federal Controlled Substances Act, national attention and experimentation began once more to turn to linkages between the criminal justice system--again, as in the instance of civil commitment, the courts--and community-based drug abuse treatment programs, this time primarily outpatient.¹⁵ That Federal statutory provision, which was later transferred almost verbatim into the laws of 18 States, provided for post-guilty plea diversion of first offenders on drug possession charges (misdemeanors and felonies) to programs of treatment and supervision in the community.¹⁶ Successful completion of a fixed term in treatment--again, usually in excess of a year--resulted in conditional discharge, i.e., removal of the previously entered guilty plea from the record, and, upon petition of the defendant, an expungement of the record of conviction.¹⁷

Like the civil commitment statutes before them, these conditional discharge statutes typically relied on the State departments of mental health or on the probation offices to make treatment referrals and to provide monitoring and supervision on behalf of the criminal justice system.¹⁸ Also like the civil commitment statutes, because diversion occurred late in the processing of the criminal case, the court (usually the trial judge) was the primary diversion initiator. The probation department or mental health division, however, played the role of a "broker" or coordinator of local treatment services by placing referrals in particular programs. In this respect, the conditional discharge statutes mandated a form of interface between the criminal justice and treatment systems characterized by a true "linkage"--a coordinating unit responsible for treatment placement, followup, and client monitoring.¹⁹

While these statutes were in part enacted to avoid many of the perceived disadvantages of the civil commitment approach, they typically embodied serious limitations of their own, which caused them to have only limited impact. These limitations, which lessened their otherwise potential attractiveness to criminal justice officials, included the fact that such options were by statute available only to narrow classes of drug abusers, typically first or second offenders on drug possession charges only. The statutes required comparatively long periods of participation in programs of treatment and supervision (often up to 2 years), thus making their utility for and popularity with drug abusers other than heroin addicts very limited. Further, like the civil commitment statutes, conditional discharge statutes "diverted" drug abusers comparatively late in the processing of the criminal case--only after trial and conviction or entry of a plea of guilty.²⁰

Processing costs, at least on the criminal justice end, thus remained high for this alternative and the criminal defendant thus diverted had already penetrated well into the criminal justice system, which is viewed by most expert observers as itself criminogenic.²¹ While these statutes remain in effect, the infrequency of their use is indicative of their limited utility.²²

Nonstatutory pre-trial diversion programs

Efforts to develop more flexible linkages between the drug abuse treatment and criminal justice communities that would intervene earlier in the processing of a criminal case led to the establishment of a plethora of programs at the State and local levels that identified, diagnosed, referred to treatment, and monitored performance in treatment of drug abusers at the pre-trial stage, before substantial processing costs and significant penetration into the criminal justice system occurs. As noted earlier, such pre-trial programs for drug abusers grew out of the broader national experimentation with the concept of community-based pre-trial diversion, recommended by the Report of the President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society. Particular drug diversion programs were an offshoot of the general trend after 1968 of "new diversion" to community-based service programs, not generally authorized by statutory mandate but rather by inherent prosecutorial discretion or, in some instances, court rule.²³ As characterized by a dozen pilot programs implemented during the period from 1968 to 1972 by the U.S. Department of Labor (DOL), this so-called "classic" model of pre-trial diversion displayed the following features:

- A central role for the prosecutor in determining diversion eligibility;
- A referral to one particular diversion "program" component, which offered in-house counseling and other services and which relied only secondarily on making outside referrals;
- Broad eligibility criteria, but generally excluding felony or violent misdemeanor offenders;
- Occurrence of the decision to divert, exercised by the prosecutor, at the time of or immediately after arraignment (e.g., therefore post-filing diversion); and

- A guarantee of dismissal of charges upon successful completion of a term of counseling, typically 60 or 90 days.²⁴

As this prosecutor-based model became popularized and widely replicated, specialized pre-trial diversion programs for drug abusers following this design sprang up. Even more common, however, was the growing involvement of drug abusers as clients in such "officially" nondrug programs. These were typically defendants arrested for nondrug offenses who were incidentally drug abusers and for whom, once diverted, specialized drug counseling and other services naturally evolved. While many such programs continued officially to bar drug abusers, usually for political reasons or out of fear of adverse impact on success rates, growing numbers of drug-abusing defendants, especially marijuana and polydrug abusers, were so diverted.²⁵

The success, even with drug abusers, of the nonstatutory prosecutor-based diversion model that intervened post-filing led after 1972 to the passage of legislation and court rules permanently authorizing pre-trial diversion for drug abusers.²⁶ Penal Code section 1000 in California, whereby thousands of drug abusers are diverted annually at the post-charge phase, pursuant to a statutorily mandated set of eligibility determinations made by prosecutor and court, is the outstanding example.²⁷ Such programs remained procedurally faithful in most respects to the nonstatutory, classic DOL-sponsored model of pre-trial diversion. For example, most adhered to fixed and published eligibility criteria, a major role for the prosecutor, and a guaranteed dismissal of charges upon successful completion. However, they differed in that required terms of treatment tended to be longer--a year instead of 90 days, usually--and the programs were not freestanding but were located in the courts, probation, or mental health departments of local government.²⁸

Final evolution of the post-filing drug diversion phenomenon occurred with the setting up of specialized linkage units to screen criminal cases for drug abuse indicators and to interview, diagnose, and recommend to the prosecutor and/or court particular treatment placement, pursuant to a "brokering" for services approach. An early example of this model was the Court Referral Project of the New York City Addiction Services Agency. CRP, which provided no direct services itself, accepted drug abusers for treatment placement from several post-filing points in the processing of a criminal case, monitored treatment progress on behalf of the court, reported violations, and otherwise served as a bridge between two previously hostile and noncommunicating systems--the public sector criminal

justice system and the private sector drug abuse treatment community.²⁹ CRP and programs like it, with the impetus provided by the report of the National Commission on Marijuana and Drug Abuse, gave rise in 1973 to the national program, Treatment Alternatives to Street Crime (TASC). (TASC is a federally funded series of more than 50 local criminal justice/drug abuse treatment linkage mechanisms that identify defendants and refer them to treatment at multiple post-filing points in the processing of the criminal case.)³⁰

These programs, which displayed a wide variation in participant eligibility criteria and operating procedures, can best be characterized as coordinating units authorized by court rule, interagency agreement, or inherent prosecutorial discretion, interfacing on the one hand with the traditional agencies of the criminal justice system--the prosecutor, the courts, probation--and on the other, with private sector community-based treatment programs.³¹ Most also brokered for services in addition to (or instead of) providing services directly themselves. Most also offered, as did other pre-trial diversion programs, the incentive of dismissal of charges upon successful completion. (TASC programs over time, however, deemphasized this feature, making it only one of many case disposition options.)³²

Quite apart from the presence of these features, which provided comparative flexibility, such pre-trial intervention typically occurred only after the filing of formal charges by the prosecutor or after initial court appearance.³³ This led in time to a recurring controversy, nationwide, between prosecutor and court as to which of them had primary responsibility for and control over the post-filing/pre-trial diversion process.³⁴ An additional development was the encumbrance of such programs, as they evolved and responded to legal challenges, with procedural steps and safeguards necessary to guarantee due process and other legal rights for participants, against whom jeopardy had already attached due to the filing of charges.³⁵ These developments combined to create what some commentators have termed the "over-judicialization" of the pre-trial diversion process, making it in effect indistinguishable from the adversary system to which it was meant to be an alternative, while lessening flexibility and increasing processing costs.³⁶

Much descriptive and evaluative literature has been generated about the effectiveness of pre-trial diversion generally and about pre-trial diversion of drug abusers, as well as about TASC. The concept has demonstrated its general effectiveness in the opin-

ion of most reviewers, though not for all populations nor as a result of each of many pilot program efforts, some of which proved much more effective than others.³⁷

A return to pre-charge referral strategies

Notwithstanding the demonstrated utility of post-filing, pre-trial diversion, this approach has by its very definition failed to address the treatment needs of a substantial segment of criminally accused drug dependents, those whose cases are dropped, for various reasons, before initial court appearance. In some jurisdictions this amounts to up to 20 percent of the arrestee population.³⁸ Partly in response to the perceived drawbacks of post-filing diversion, partly in response to its overjudicialization and consequent complexity, strategies for identifying drug-abusing criminal defendants at the point of arrest and channeling them to treatment while the stimulus of police confrontation is still fresh in their minds--i.e., in lieu of or immediately after arrest--have been proliferating.

As noted above, "traditional" diversion by police (street diversion) and by prosecutors pre-charge has been an ongoing phenomenon of Anglo-American justice. Until recently in the adult system, such traditional diversion was by a process and not to a program. It had low visibility, with no fixed eligibility criteria, but case-by-case diversion decision-making by the arresting officer or the charging deputy prosecutor, and it tended to exclude drug abusers and others who displayed so-called "chronic" problems or syndromes.³⁹ Beginning with the Report of the President's Commission on Law Enforcement and Administration of Justice in 1967, pre-charge diversion programs sponsored by police departments and prosecutors' offices began to proliferate--usually on an experimental "pilot" basis.⁴⁰ Almost invariably, such programs intervened earlier than the classic model pre-trial diversion programs in order to achieve two overriding goals:

- To effect the quickest possible removal from the criminal justice system--itself viewed as criminogenic--of particular classes of defendants over whom the reach of the criminal law was considered overbroad; and
- To remove large numbers of otherwise routine, minor cases from the backlogged and overburdened criminal courts prior to the filing of formal charges, so that no court paperwork or processing time would occur.

As noted in the 1975 report of the National Advisory Commission on Criminal Justice Standards and Goals (NAC), such pre-charge programs were usually administered directly by police.⁴¹ All were geared to identify, divert, and serve at the earliest possible stage specialized groups such as youthful offenders, publicly intoxicated persons and drunken drivers, the mentally ill, and family violence and white collar fraud cases.⁴²

In some instances, diversion occurred in lieu of arrest; in others, after arrest but before booking; in yet others, after booking at the precinct.⁴³ It was only after the advent of widespread illicit psychoactive drug use in the 1970s that such programs began to open up to and to be designed to serve drug abusers on minor charges. Again, as was the case with the de facto entry of incidental drug abusers into post-filing pre-trial diversion programs on nondrug charges, many drug abusers diverted pre-charge were neither officially identified as drug abusers nor handled differently until diversion had already occurred.⁴⁴

Just as the post-charge "adversarial" phase of the criminal process was dominated by the prosecutor, so was the earlier pre-charge, "investigative" phase dominated by the police. As a result, most pre-charge diversion was police diversion. However, significant examples of prosecutor controlled pre-charge diversion occurred, as well. The Citizen's Probation Authority (CPA) in Flint, Michigan, which early on diverted both drug users and others pre-filing and later gave rise to a separate prosecutor-dominated pre-charge drug diversion program, had been in operation since 1965.⁴⁵

In the juvenile justice system, not only had police discretion always been broader and more accepted, but programs of police diversion had been established earlier and more visibly.⁴⁶ Youth service bureaus in the private sector and various specialized counseling units had existed as adjuncts of juvenile justice agencies themselves since the early 1960s or before, with specific mandates to divert at the pre-intake stage (i.e., prior to booking) or later at the pre-petitioning stage (i.e., prior to formal filing of charges).⁴⁷ Large numbers of minor juvenile offenders for whom all adversarial processing was considered inappropriate (both because to do so labeled the juvenile as a criminal and because minimization of penetration into the criminogenic juvenile justice system was considered an important goal) were thus diverted pre-charge.⁴⁸ As the amount of juvenile crime has grown and as the proportion of all street crime committed by juveniles has increased,

overburdened juvenile courts and probation-administered intake centers have increased the scope of pre-charge diversion for juveniles, both by increasing the range of eligible offenses and the proportion of the juvenile arrestee population that is diverted.

Unlike the situation with regard to statutory civil commitment and statutory and nonstatutory post-filing diversion, most such pre-charge programs have maintained a low visibility, and there is little descriptive information, let alone program evaluations. Not only is comparatively little known about the nature and extent of such pre-filing, i.e., pre-charge, diversion nationally, but its appropriateness and effectiveness compared to later diversion options has yet to receive close scrutiny. One hoped-for result of this monograph, then, is to stimulate consideration of and discussion about such early diversion options and their potential for replicability. How this aim is integrated within the overall purposes of this monograph will be described below.

Purposes

Within the context of the development of the Federal strategy to build more and better drug abuse treatment/criminal justice linkages, NIDA's primary purpose in commissioning this effort has been to generate a state-of-the-art assessment of early diversion programs for drug users that intervene prior to the filing of formal charges by a prosecutor, especially those having a major role for police. The Institute has established as a goal to increase and upgrade direct linkages between local law enforcement agencies and local drug abuse treatment programs, so that drug-abusing defendants may be identified and referred for needed services at the earliest possible point in the criminal justice process. In order to determine the feasibility and practical utility of such police referral strategies, the number and nature of instances where such a practice is currently ongoing in local communities must be better known and understood. Moreover, where local planners and policymakers have instituted such pre-charge programs, yet involved actors other than the police in major roles, the reasons for such alternative configurations also are important to national level planners.

As suggested earlier, almost all of the wealth of literature on diversionary referral strategies (specifically for drug users and generally for criminal defendants) generated over the past decade has focused on the post-filing, prosecutor-controlled model of pre-trial diversion popularized by the early Department of

Labor pilot programs. Little exists in writing to draw upon for a survey of existing police-initiated or police-dependent diversion models. Likewise, though much has been written by way of procedural description and evaluation about the LEAA-sponsored Treatment Alternatives to Street Crime (TASC) program and about many of the 50 or more TASC programs operational across the country, this model has seldom been adapted to accept referrals directly from police or prior to the point at which drug-abusing defendants face initial court appearance.⁴⁹ A fresh inquiry, State by State, was therefore viewed as a necessity in order to get a clear view of the frequency with which such early diversion of drug users by police occurs and the procedural variations under which it operates. Further, it was NIDA's intention, once States and localities had been contacted, to identify a significant number of such efforts, and to select several representative examples for in-depth description in a publication to be widely disseminated. It was hoped that such a publication would encourage criminal justice policymakers and practitioners to consider the appropriateness and desirability of such an approach, with an eye toward possible replication in their jurisdictions.

Role and purposes of NIDA's criminal justice initiative

Building effective communications, fostering information exchange, and providing technical assistance to various actors involved in the drug abuse treatment/criminal justice interface are the overriding purposes of NIDA's criminal justice initiative. The role and mission of the initiative has been characterized by Institute officials as follows:

- To insure treatment and rehabilitation services for the drug-abusing criminal offender, which necessitates accurate identification, diagnosis, referral to treatment, and followup;
- To increase awareness of the need for improved services to the drug-abusing criminal offender in both the criminal justice system and the drug abuse treatment system;
- To mobilize Federal and State efforts; and
- To provide a catalyst for new program development that combines the best services of the participating agencies.

The Institute derives its authority to address justice-system-related aspects of drug abuse from section 410 of its enabling legislation.

NIDA has concentrated its efforts in this area on the fact that the criminal justice system--the first and last point of contact for the drug-abusing criminal defendant--is itself an excellent "casefinding" mechanism through which the unmet treatment needs of a significant subpopulation of drug abusers can be satisfied. Along with the Law Enforcement Assistance Administration (LEAA), NIDA over the years has given direct and indirect support to various diversion and referral strategies, for example, through pilot-program funding. Joint planning and funding of TASC by NIDA and LEAA is perhaps the outstanding example of this support.

Over time, the activities of NIDA in this area have fallen into three phases, or stages, as follows:⁵⁰

- **Phase 1 (1973-1974):** characterized by efforts to pass enabling and clarifying legislation (e.g., amendments to the Safe Streets Act requiring LEAA to issue guidelines for drug treatment for defendants, and SAODAP confidentiality regulations);
- **Phase 2 (1975):** characterized by joint policy formulation with LEAA for program planning and development of initiatives directed at the drug-abusing criminal defendant, to benefit both the criminal justice system and the drug treatment system, e.g., letters of agreement for joint planning by LEAA State planning agencies (SPAs) and NIDA Single State Agencies for drug abuse prevention (SSAs); and
- **Phase 3 (1976 to present):** characterized by information exchange, e.g., national and regional seminars and forums to discuss issues arising for both the criminal justice and drug treatment systems in the processing of the drug-abusing criminal defendant.

This monograph, together with other recent publications by NIDA addressing aspects of the drug abuse treatment/criminal justice interface, represents an additional aspect of this phase 3 effort.

NIDA's interest in pre-charge diversion strategies

In recent years, support activities of NIDA, paralleling areas of State and local emphasis, have focused on those stages in the processing of drug-abusing criminal defendants that occur after the prosecutor makes a determination whether to proceed against the accused, i.e., once the underlying criminal case has formally been entered into the adversarial

system of justice. For reasons explained below, NIDA is now directing more attention to that earlier stage in the criminal justice process--the investigative stage, dominated by the police--in order at that stage to build linkages, promote information exchange, and provide training for law enforcement components.

After more than a decade of experimentation with strategies to divert the drug-abusing criminal defendant out of the ordinary course of processing, a variety of program models have received attention in the literature and have been institutionalized locally after successful operation as pilot efforts. TASC, now operational in more than 50 cities and counties across the country, is the outstanding example.⁵¹ Other programs, created by statute or court rule and operational in various sites, have also received considerable attention.⁵²

Rationale for this study

The predominant models for drug diversion intervene to identify drug abusers and refer them for treatment comparatively late in the processing of a criminal case--only at the point where the prosecutor is faced with the decision about whether to seek a formal conviction and the defendant is facing the initial court appearance. There exist compelling reasons of due process, and others, for drug diversion intervention no earlier than this stage in a criminal case.⁵³ There also exists, however, a growing concern by NIDA officials and others that many drug abusers in need of treatment fall out of the criminal justice system before the prosecutor decides to make a formal charge. In these instances, the criminal justice system misses an opportunity to identify and refer for service a defendant who, because of ongoing drug abuse, is comparatively more likely to recidivate. Likewise, the defendant in question may miss the opportunity to take advantage of treatment services offered to others whose cases progress further into the system.

Several recent studies, when read together, make a circumstantial case for the fact that a very significant number of drug abusers are "slipping through the cracks" after arrest, i.e., their cases are dropping out of the criminal justice system before a treatment referral option is presented to them. The recent Final Report of the Joint Committee on New York Drug Law Evaluation noted that only 39 percent of felony drug arrests in the State during the period 1972-1973 had resulted in indictments.⁵⁴ What was more, after passage of the new "get tough" statute in 1973, com-

plete with mandatory sentencing and a ban on plea bargaining, only 25 percent of felony drug arrests penetrated as far into the system as to result in indictment.⁵⁵

The 1978 LEAA Survey of Inmates of Local Jails across the country notes that while 68 percent of inmates had used illegal drugs at some time prior to arrest, with 41 percent of all users characterizing their usage as "often," only 4 percent were enrolled in drug treatment at the time of their entry to jail, and 52 percent had never been enrolled in treatment.⁵⁶ In contrast, 44 percent of the total population surveyed admitted to illegal drug use in the month prior to being jailed on the current offense.⁵⁷

In addition to the foregoing data from the 1978 jail survey, key findings from the LEAA's 1976 publication, Local Jails and Drug Treatment, illustrate the extent to which drug abusers go undetected, and thus untreated, in short-term--usually pre-trial--confinement. The 1976 jail study, relying on data collected during an in-depth sample survey in 1972 of 84 jails of varying sizes nationwide, noted that almost half the jails surveyed held most of their inmates for less than 30 days. (For "short stay" jails, a mean of 56 percent of inmates were held for less than 3 days and 30 percent for 3 to 30 days. For "medium stay" jails, 8 percent were held for less than 3 days and 42 percent for 3 to 30 days.)⁵⁸ Further, one-third of all jails surveyed had no drug abuse screening or identification procedures, and only minimal screening procedures were in place at another one-quarter of the jails sampled. What was more, when they did exist, drug abuse screening procedures were often selectively applied and sometimes bypassed or ignored altogether.⁵⁹

Last, a 1976 joint study by the D.C. Pretrial Services Agency and the Statistical Analysis Center of the D.C. Office of Criminal Justice Plans and Analysis (the D.C. SPA), titled The Pretrial Offender in the District of Columbia, advanced several significant findings with regard to the case processing of serious offenders in a major metropolitan area. The study found that of the 20,000 felony and serious misdemeanor arrests made in the District of Columbia in 1975, 24 percent of the defendants arrested admitted current or recent drug abuse (exclusive of marijuana or alcohol).⁶⁰ Moreover, while 37 percent of all adult defendants arrested in 1975 in D.C. were arrested two or more times in that year, 20 percent of all arrests were nolle prosequed (i.e., the cases were dropped) by the prosecutor at or before initial court appearance--pre-filing.⁶¹ Four charge categories accounted for almost two-thirds of the cases lodged

against admitted drug abusers in the 1975 study--possession or sale of drugs (21 percent), larceny (15 percent), robbery (12 percent), and burglary (10 percent).⁶² Finally, the study noted that 34 percent of all adults charged with drug possession offenses had prior adult convictions, and 18 percent had two or more such prior convictions.⁶³ The D.C. study, one of the few computerized followup studies to date that focuses on the pre-trial phase, paints a picture of high levels of repeat offenses by pre-trial releasees, a significant percentage of whom are drug abusers, at the same time that a sizable percentage of arrests are dropped at the pre-charge stage by local prosecutors.

For these reasons, NIDA is interested in generating discussion at the State and local levels about the increased use of drug diversion strategies that come into play prior to the point at which the prosecutor must decide whether to file formal charges. Creation of such early diversion options would, from this perspective, plug a hole in the otherwise comprehensive federally funded drug abuser identification and referral process, typically offered by TASC and other models, that divert at multiple post-charge points in the process.

In this regard, in recent Congressional testimony about the policy and planning priorities of the National Institute on Drug Abuse, the Administrator of the U.S. Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) went on record as follows:

NIDA is currently developing a comprehensive training program for all components of the criminal justice system--police, courts, jail, probation, and parole personnel. Programs where police refer persons to drug abuse treatment will be studied. Since a large number of drug abusing criminal offenders come into frequent contact with police and are not charged but simply released without benefit of drug treatment this study of programs may prove invaluable. If these diversion efforts seem feasible and applicable, NIDA plans to follow up with appropriate resource material and training for both police and drug treatment agencies.⁶⁴

This volume, therefore, is viewed by NIDA as a necessary first step in the process of encouraging more and better law enforcement/drug abuse treatment linkages. Followup steps, should a resulting dialog about pre-charge diversion strategies in fact emerge, can be expected to take the form of model

program development and replication, as well as education and training for local law enforcement personnel, criminal justice planners, and others concerning the utility of pre-charge diversion efforts.

Scope and Focus

This study commissioned by NIDA was mandated to inquire into the entire period from initial contact with a suspect by the police up to, but not including, the point at which the prosecutor filed formal charges against the accused. The Supreme Court, in the case of Kirby v. Illinois, defined the latter event (or initial court appearance, whichever should first occur) as a "critical stage" in the prosecution of any criminal case at which point the "investigative" phase, controlled by the police, concluded and the "adversarial" phase, controlled by the prosecutor, commenced.⁶⁵ Court precedents, therefore, provided a very clear and easily defined outer boundary for the state-of-the-art review of early diversion by police and other actors to be undertaken. Boundaries for the inquiry were further clarified as follows:

- That the juvenile justice system as well as the adult criminal justice system would be an appropriate area of inquiry;
- That police referral mechanisms and other pre-charge diversion programs that served drug abusers in addition to others would be just as eligible for description as those programs geared exclusively to drug abusers; and
- That the population served, both in terms of socioeconomic makeup and drug abuse patterns displayed, was a secondary consideration after attention to operating procedures and other programmatic features.

Methodology

All State-level criminal justice and drug treatment planning offices (the State Planning Agencies [SPAs] for receipt of LEAA funds and the Single State Agencies [SSAs] for ADAMHA funding) were contacted by letter and followup telephone call in order to identify any such referral mechanisms operating in their respective States. In many instances, at the suggestion of State officials, further contacts were made with city and county criminal justice and drug abuse planning entities as well. In addition, a variety of public and private sector organizations were contacted directly and asked to identify pre-charge

diversion programs known to them anywhere in the country. These groups included--

- The Office of Narcotic and Drug Abuse Programs in the Corrections Division at LEAA, which coordinates all federally funded TASC programs;
- The National Association of State Alcohol and Drug Abuse Directors (NASADAD);
- The LEAA-sponsored Pretrial Services Resource Center (PSRC) and the National Association of Pretrial Services Agencies (NAPSA);
- The American Bar Association's Pretrial Intervention Service Center's library of publications; and
- Various police and prosecutor professional associations.

Moreover, a full review of all existing literature on pre-trial diversion generally and drug diversion in particular occurred. Programs thus identified were cataloged for further contact.

The result of the literature search and State and local planning agency telephone inquiries resulted in an extensive list of diversion programs that were apparently pre-charge and that served drug abusers either exclusively or as a significant subgroup.

Followup contact with each individual program thus identified ensued, again by telephone and letter. Some failed to respond to the inquiry for the details of operating procedures, and others, once contacted, proved to fall outside the boundaries of the study. Still others, though they fit the definition, served so few cases as to not have a significant impact on the criminal justice process or on the drug abuse problem in their areas. In the end, 17 candidate sites were identified for possible indepth followup. Out of this group, 10 program components in 6 sites were visited and are described in detail in 6 Summary Site Visit Reports. The details of the various methodological steps in the site selection and field visit process are described in detail below.

Literature review

The review of the current literature on pre-charge diversion extended to works on diversion generally, especially the large number of publications on prosecutor- and court-based post-filing diversion, because pre-charge diversion (pre-filing) is often addressed inci-

dentally as part of the broader topic. Several key compendia were referenced in this regard, including--

- A computerized literature search on pre-charge diversion compiled by the National Criminal Justice Reference Service of LEAA (assembled specifically for this study);
- Juvenile Diversion: A Selected Bibliography, Second Edition (1977); Police Discretion: A Selected Bibliography (1978); and Pre-Trial Diversion: A Selected Bibliography (1978)--publications of the National Institute of Law Enforcement and Criminal Justice, the research arm of LEAA;
- Directory of Criminal Justice Pretrial Intervention Programs (American Bar Association, third edition, 1976);
- Publications on pre-trial diversion legal issues, program design, and research and evaluation of the American Bar Association Pretrial Intervention Service Center, the National Association of Pretrial Services Agencies, the Pretrial Services Resource Center, and the National Council on Crime and Delinquency;
- LEAA-sponsored justice system standards addressing various aspects of diversion, including--
 - Performance Standards and Goals for Pre-trial Diversion (National Association of Pretrial Services Agencies 1978);
 - Standards on the Urban Police Function, Courts, and Corrections of the National Advisory Commission on Criminal Justice Standards and Goals (1975); and
 - Standards for the Administration of Juvenile Justice, volume on "Diversion," of the National Institute of Juvenile Justice and Delinquency Prevention's Standards Development Project (1978);
- Various publications by LEAA, NIDA, and SAODAP on the Treatment Alternatives to Street Crime (TASC) program, produced during the period 1972-1979; and
- Previous publications by NIDA on various aspects of the drug abuse treatment/criminal justice interface, including--
 - A series of monographs for judges, prosecutors, and defense attorneys on Criminal Justice Alternatives for Disposition of Drug Abusing Offender Cases (1978);

A series of three related reports on building linkages between the criminal justice and treatment systems (1977);

A series of Best Strategy reports (in press); and

A monograph on State Parole Policies and Procedures Regarding Drug Abuse Treatment (1977).

These and other sources queried yielded a large number of leads to pre-charge diversion programs from drug abusers. As was expected, this list proved to overlap substantially with program leads developed via mail and telephone queries from State and regional criminal justice and drug abuse planning personnel.

Nationwide telephone contacts

As indicated above, all SPAs and SSAs were contacted initially by letter and advised to expect telephone inquiries on the subject of this study during specified periods. Letter contact in all instances was followed up by telephone contact for a series of indepth but generally open-ended questions about pre-charge and other drug diversion strategies operating in their respective States. A loosely structured question guide was utilized in this regard to insure rough comparability of questions posed to various interviewees. In many instances followup telephone inquiries to regional and county level criminal justice and drug abuse planning personnel were also made, as suggested by State-level personnel. Responses were recorded on standardized forms and pertinent data were later extracted to be matched on a matrix with comparable data received from other States.

A total of 153 local-level leads were developed for diversion strategies reportedly operating at the pre-charge stage and serving drug abusers, often in conjunction with other defendants. Followup letter and telephone inquiries to these 153 programs constituted the second phase of the program identification effort. Because of cost and other logistical constraints, all 153 programs were contacted by mail and asked to respond in writing and/or by telephone in order to provide details about program operations. Followup telephone calls were placed to 80 of this group, selected on the basis of geographical distribution. Out of this number, 21 were no longer in operation or were unreachable, reducing the relevant universe to 59 programs. Of this number, telephone contact and direct information were obtained from 53.

Of the 53 programs, 36 were eliminated from further consideration because they were in fact not characterized by pre-charge diversion, and/or because they had little or no real impact, and/or the program description was inadequate. The remaining 17 candidate programs were proposed for site visit selections.

Sites selected

Of the 17 prime candidate pre-charge referral strategies, those in 6 locales were selected for site visits and detailed description, based on a mix of the following considerations:

- Procedural variation in program design;
- Juvenile as well as adult programs represented in the final group;
- Geographic distribution;
- Emphasis on programs operating in proximity to major drug entry/distribution points/routes;
- A cross-section of drug abuse patterns displayed by local populations being served;
- A significant role for police in diversion intake; and
- A high level of interest in our study and cooperation demonstrated by program administrators and local officials in advance of final site selection.

Program components at two sites were operationally administered directly by police departments. Those at other sites featured significant police involvement but were operated by large social service agencies of State governments, by prosecutors, and/or by the courts. Two sites visited exemplified primarily direct service delivery, while the others typified various sorts of brokering for independent treatment services coordinated by a centralized screening and referral unit.

Out of a total of 10 components observed at these 6 sites, 4 served juveniles and the remaining 6 worked with adults. One site visited was located in the West, two in the Midwest, and the remaining three in the East. Three of the sites visited--Marin County, California, north of San Francisco Bay; Genesee County, Michigan, a suburb of Detroit; and Baltimore County, Maryland, on the Chesapeake Bay--are themselves major drug trafficking entry points on main drug distribution routes. Pre-charge referral strategies observed at the sites visited were as follows:

- Delaware's Criminal Justice Service Center (three components). This multipurpose diagnosis and referral unit links the criminal justice system and substance abuse treatment programs. Referrals can be made by police, prosecutors, and other actors at the pre-charge level, as well as at all later points in the processing of a criminal case. Two avenues of pre-charge "diversion" referral are currently in use--pre-arrest diversion of drug users by the Wilmington city police and pre-charge diversion of the intoxicated driver by the State's Common Pleas Court. Diversionary referrals at the pre-indictment (pre-charge) stage by State prosecutors also occur.

- Vanderburgh County (Evansville), Indiana, Drug and Alcohol Deferral Service. Persons arrested for drug or alcohol charges are referred at the pre-filing stage by the bail bond commissioner, clerk's office, or prosecutor directly to this program, which performs evaluations and purchases treatment. The program is supported by clients' fees. Successful completion results in dismissal of charges.

- Genesee County (Flint), Michigan, Drug Diversion Authority. Police and prosecutor confer after an arrest has been made on a drug charge but before the case is filed. The defendant may then be diverted to this program, which performs diagnostic evaluations, makes treatment referrals, and monitors treatment progress. Successful completion leads to dismissal of charges.

- Pre-charge drug diversion in Marin County, California:

The Marin County Treatment Alternatives to Street Crime program

The Novato Youth Service Bureau

The San Anselmo Departmental Probation Program

The Marin County Treatment Alternatives to Street Crime (TASC) program performs diagnosis and treatment referral and placement functions for a variety of agencies in the criminal justice system. Pre-arrest police referrals on felony and misdemeanor charges are made to TASC.

In addition, two of the county's municipalities, Novato and San Anselmo, have regularized pre-charge diversion programs for youths, many of whom display serious substance abuse problems. All three diversion programs lead to the dropping of charges upon successful compliance.

- Philadelphia Social Action Workshop. In lieu of making an arrest, plainclothes police detectives, at their discretion, refer drug-abusing juveniles to this counseling and work-study program. Successful compliance with program requirements will obviate both the fact of an arrest and any arrest record.

- Baltimore County, Maryland, Community Arbitration Program. Police, through the issuance of a citation, divert pre-charge many drug-abusing and other juvenile defendants into this program. Features include a hearing on the offense, counseling, and volunteer work service. Successful completion results in dropping of pending charges.

All programs visited displayed significant police involvement. The majority were examples of approaches in which the police role and function was the predominant one in the diversion process.

Most programs visited served predominantly polydrug abusers, though most of the four juvenile programs worked mainly with marijuana users, and one of the adult programs, the Genesee County Drug Diversion Authority, served large numbers of opiate users.

FOOTNOTES

1. 370 U.S. 660, 667 (1962).
2. The leading case in this area has been Watson v. United States, 141 U.S. App. D.C. 335, 439 F.2d 442 (1970). For an overview discussion of the issues in this area, see Comment, "Emerging recognition of pharmacological duress as a defense to possession of narcotics," Georgetown Law Journal, 1971, 59 (761).
3. See Public Law 91-513, the Federal Controlled Substance Act of 1970. More than 40 States have to date enacted the Uniform Controlled Substance Act, drafted by the National Conference of Commissioners on Uniform State Laws. The model legislation parallels the regula-

tory provisions of the Federal Statute. (It also provides for treatment in lieu of conviction, as does §404(b) of the Federal act. See notes 16-23, *infra*, and accompanying text.)

4. See Klein, M., "Issues and realities in police diversion programs," Crime and Delinquency, 1976, 22 (421); National Advisory Commission on Criminal Justice Standards and Goals, Report on the Courts, 1973, 27, pp. 33-34 (hereinafter cited as NAC Courts Report). Carter, R., and Klein, M., "Police diversion of juvenile offenders," in Juvenile Diversion Referral and Recidivism, Lincoln, S., (ed.), (Englewood Cliffs, N.J.: Prentice-Hall, 1975); Brakel, S., "Diversion from the criminal justice process: Informal discretion, motivation and formalization," Denver Law Journal, 1972, 48 (211); La Fave, W., "The police and non-enforcement of the law," Wisconsin Law Journal, 1962, (104); Goldstein, L., "Police discretion not to invoke the criminal process," Yale Law Journal, 1960, 69 (543).
 5. See National District Attorney's Association, Monograph on Philosophical Procedural and Legal Issues Inherent in Prosecutor Diversion Programs (1974) (hereinafter cited as NDAA Monograph); NAC Courts Report, *supra* note 4, p. 27; National Institute of Mental Health, Diversion From the Justice System (1971); Vorenberg, J., "Early diversion from the justice system: Practice in search of a theory," in Prisoners in America, Ohlin, L., (ed.) (Englewood Cliffs, N.J.: Prentice-Hall, 1973). See generally Cox, S., "Prosecutorial discretion: An overview," American Criminal Law Review, 1976, 13 (383).
 6. For a discussion of how traditional diversion evolved into the "new" diversion of structured, service-oriented programs, see Performance Standards and Goals for Pretrial Diversion (Washington: National Association of Pretrial Services Agencies, 1978), pp. 1-27 (hereinafter NAPSA Diversion Standards). See also Aaronson, D.; Hoff, B.; Jaszi, P.; Kittrie, N.; and Saari, D., The New Justice: Alternatives to Conventional Adjudication (Washington: American University Law School, 1977), pp. 1-31 (hereinafter New Justice).
 7. See The Challenge of Crime in a Free Society, report of the President's Commission on Law Enforcement and Administration of Justice (Washington, D.C., 1967), p. 134.
 8. See, for example, Narcotic Addict Rehabilitation Act of 1966, 28 U.S.C. §2901-06 (title I, voluntary, in lieu of prosecution); 18 U.S.C. §§4251-55 (title II, involuntary, post-conviction) (1970); Cal. Welf. & Inst'n's Code §53151 (West. Supp., 1971) (involuntary, post-conviction); Conn. Gen. Laws Ann., ch. 123 §§48, 49 (involuntary, as condition of probation or of confinement, respectively); and N.Y. Mental Hygiene Law §210 (voluntary, in lieu of prosecution) and §208.4 (involuntary, post-conviction) (McKinney, 1971).
- For an exhaustive catalog of all State drug diversion statutes, regardless of point of intervention, see Weissman, J., "Survey of State drug offender diversion authorities," Pretrial Services Annual Journal, 1979 (hereinafter Weissman).
9. For a discussion of the origins of the above Federal and State prototype civil commitment statutes, see Bellasai, J., and Segal, P., "Addict diversion: An alternative approach for the criminal justice system," Georgetown Law Journal, 1971, 60, pp. 670-680 (hereinafter cited as Bellasai and Segal).
 10. See note 8, *supra*. See also Bellasai and Segal, *supra* note 9, pp. 676-710.
 11. For a discussion of the role of civil commitment statutes in the general evolution of pre-trial diversion strategies, see Bellasai, J., "Pretrial diversion: The first decade in retrospect," Pretrial Services Annual Journal, 1978 (hereinafter Bellasai).
 12. See Bellasai and Segal, *supra* note 9, pp. 684-687.
 13. *Ibid*, pp. 671 and notes 19-21. See also Hearings on Treatment and Rehabilitation of Narcotic Addicts Before Subcomm. No. 4 of the House Committee on the Judiciary, 92nd Congress, 1st session, pt. 1, p. 408 (1971) (testimony of Robert L. DuPont, then Administrator, D.C. Narcotics Treatment Administration); Civil Addict Program Effectiveness as Measured by Successful Discharges and Administrative Information, Report 2, California Rehabilitation Center, 1970; Criminal Commitment of Narcotics Addicts Under State Law, Mayor's Narcotic Control Council and New York City Criminal Justice Coordinating Council, 1971.

14. See National Institute on Drug Abuse, An Evaluation of the California Civil Addict Program by McGlothlin, W.; Anglin, M.; and Wilson, B. (Rockville, Md.: the Institute, 1977), pp. 1-3, 9-13.
15. See Bellasai, supra note 11, pp. 17-20.
16. For a detailed procedural analysis of the conditional discharge statutes of 18 States, including a commentary on how they parallel the Federal provision and how they differ, see Weissman, supra note 8, pp. 32-52.
17. For a description of the procedural steps in this prototypical Federal provision, see Bellasai and Segal, supra note 9, pp. 26-27.
18. Weissman, supra note 8, pp. 37-52; Bellasai and Segal, supra note 9, pp. 26-27.
19. For a general discussion of types of linkages, see "Developing strategies for linking the criminal justice and drug treatment systems," Drug Abuse Treatment and the Criminal Justice System: Three Reports (Rockville, Md.: NIDA, 1977).
20. See Bellasai and Segal, supra note 9, pp. 687-701.
21. For a general discussion of the value of early diversion options in minimizing the criminogenic effects of traditional criminal justice and juvenile justice proceedings, see NAC Courts Report, supra note 4, pp. 28, 35.
22. The Federal conditional discharge provision, it must be noted, however, was never envisioned as an operational diversion option for Federal courts, since most minor drug offenders are tried in State and local courts.

Rather, Congress included 1404(b) in the Federal Controlled Substance Act to serve as an example to the States of what was viewed as a preferred mode of processing minor and first time drug law violators. See 116 Congressional Record H9163-64 (daily ed., Sept. 24, 1970) (remarks of Congressman Robinson and Springer).
23. Bellasai, supra note 11, p. 1921. For discussion of the New Jersey Supreme Court Rule authorizing diversion of drug and nondrug cases, which is the outstanding example among the States, see generally NAPSA Diversion Standards, supra note 6; and Source Book in Pretrial Criminal Justice Intervention Techniques and Action Programs (Washington: American Bar Association Pretrial Intervention Service Center, 1974).
24. See Legal Issues and Characteristics of Pretrial Intervention Programs (Washington: American Bar Association Pretrial Intervention Service Center, 1974).
25. Bellasai, supra note 11, p. 19.
26. Ibid., pp. 19-21.
27. For a general discussion of P.C. §1000 diversion, see Legal Opinions on Pretrial Diversion Alternatives, Information Bulletin No. 1, August 1975 (ABA PTI Service Center) p. 2. Many P.C. §1000 cases are diverted to and supervised by various of the California TASC programs. Marin County TASC, which is one of the programs visited during the course of this study, derived the bulk of its client intake from post-charge/pre-trial P.C. §1000 diversion cases.
28. See Directory of Pretrial Intervention Planning and Action Programs, 3rd ed. (Washington: ABA PTI Service Center, 1976) (hereinafter cited as the ABA PTI Directory).
29. For an operational description of the New York City Addiction Services Agency's Court Referral Program, see Drug Abuse and the Criminal Justice System: A Survey of New Approaches in Treatment and Rehabilitation (Washington: Drug Enforcement Administration, 1975) pp. 72-81.
30. Much descriptive and evaluative material has been published on TASC by the former Special Action Office for Drug Abuse Prevention (SAODAP), located from 1972-74 in the Executive

- Office of the President; by its successor, the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA); by the Law Enforcement Assistance Administration (LEAA), which together with SAODAP and later, NIDA, funded TASC; and by States and localities which have operated TASC programs. Several key pieces of the TASC literature include LEAA, TASC: An Approach for Dealing With the Substances Abusing Offender (Washington: LEAA, 1978) and LEAA, National Evaluation Program, Phase I Report: Treatment Alternatives to Street Crime (TASC), by Toborg, M.; Levin, D.; Milkman, R.; and Center, L. (Washington: LEAA, 1976).
31. See Toborg, M.; Levin, P.; Milkman, R.; and Center, L., Treatment Alternatives to Street Crime (TASC): An Evaluative Framework and State of the Art Review, Summary (Washington: Lazar Institute, 1975) pp. 3-26 (hereinafter TASC State of the Art Review).
32. Ibid., pp. 8-10, 15, 19. See also Preliminary Comparative Evaluation of Five TASC Projects (Bethesda, Md.: System Sciences, Inc., 1974).
33. See generally ABA PTI Directory, supra note 28.
34. For an overview discussion of the court versus prosecutor controversy in the post-charge/pre-trial diversion area, see NAPSA Diversion Standards, supra note 6, pp. 59-70; and Bellasai, supra note 11., pp. 21-25.
35. For a review of the so-called "over-judicialization" of post-filing/pre-trial diversion, see generally Bellasai, supra note 11.
36. Ibid., p. 27.
37. See NAPSA Diversion Standards, supra note 6, pp. 16-25 (caveats to overreliance on diversion as panacea); and Kirby, M., Findings, 2: Recent Research Findings in Pretrial Diversion (Washington: Pretrial Services Resource Center, 1978) pp. 16-18.
38. See, for example, The Pretrial Offender in the District of Columbia: A Report on the Characteristics and Processing of 1975 Defendants (Washington: D.C. Bail Agency and Office of Criminal Justice Plans and Analysis, 1977) p. xvi (hereinafter cited as the D.C. Pretrial Offender Report).
39. NAPSA Diversion Standards, supra note 6, pp. 1-4; Bellasai and Segal, supra note 9, pp. 672-676; Bellasai, supra note 11, pp. 15-16, and note 4.
40. See NAC Courts Report, supra note 4, pp. 24-29, 32-38.
41. Ibid., pp. 24-25, 33-35.
42. Ibid., pp. 28-38.
43. Ibid.
44. Bellasai, supra note 11, p. 19.
45. The CPA, which later gave rise to a separate but procedurally similar drug diversion program, the Drug Diversion Authority (DDA), is discussed in chapter 3 of this monograph, along with DDA.
46. See note 4, supra. See also NAC Police Report and NAC Courts Report, supra note 4; and Nejelski, P., "Diversion: The promise and the danger," Crime and Delinquency, 1976, 22 (44), p. 393.
47. See National Institute of Mental Health, Instead of Court: Diversion in Juvenile Justice, Crime and Delinquency Issues: A Monograph Series, by Lemert, E. (Rockville, Md.: the Institute, 1974).
48. Ibid., pp. 11-18, 54-70. See also LEAA, National Evaluation Phase I Summary Report: Juvenile Diversion, by Rutherford, A., and McDermott, R. (Washington: LEAA, 1976).

49. TASC State of the Art Review, supra note 31, pp. 15-19.
50. This has been a consistent theme in NIDA's Criminal Justice Branch publications since the creation of the Institute. See, for example, Drug Abuse Treatment and the Criminal Justice System: Three Reports (1977); State Parole Policies and Procedures Regarding Drug Abuse Treatment (1977); and Criminal Justice Alternatives for Disposition of Drug Abusing Offender Cases (1978).
51. For a procedural description of the basic TASC model now available for nationwide replication, together with a discussion of "local option" features, see generally TASC: An Approach for Dealing With the Substance Abusing Offender (Washington: LEAA, 1978).
52. See generally Bellassai and Segal, supra note 9, and Bellassai, supra note 11.
53. For the due process and other legal arguments against diverting defendants prior to the filing of formal charges by the prosecutor, see NAPSA Diversion Standards, supra note 6, at Standard 1.1 and pp. 27-41; ABA Pretrial Intervention Service Center, Pretrial Intervention Legal Issues: A Guide to Policy Development (Washington, D.C., 1977) p. 12; and Jaszi, P., and Pearlman, H., Legal Issues in Addict Diversion: A Technical Analysis (Drug Abuse Council, Inc., and ABA Corrections Commission, 1975), pp. 84-85.
54. LEAA, The Nation's Toughest Drug Law: Evaluating the New York Experience, Final Report of the Joint Committee on New York Drug Law Evaluation (Washington: LEAA, 1978), p. 14.
55. Ibid.
56. LEAA, Drug Abuse History and Criminality of Inmates of Local Jails: Results of the 1978 LEAA Survey, by Barton, W. (Washington: LEAA, 1978), tables 1 and 29.
57. Ibid., table 16.
58. Newman, C.; Price, B.; et al., Local Jails and Drug Treatment (Washington: LEAA, 1976), pp. 55, 71.
59. Ibid., p. 83.
60. D.C. Pretrial Offender Report, supra note 38, pp. 53-55.
61. Ibid., pp. xv, xvi.
62. Ibid., p. 53.
63. Ibid., p. 78.
64. Statement of Gerald L. Klerman, M.D., Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), before the Subcommittee on Health and Environment of the House Committee on Interstate and Foreign Commerce, U.S. House of Representatives, March 29, 1979.
65. 406 U.S. 602, 689 (1972).

2. Toward a State-of-the-Art Review: Program Typologies and Salient Issues

PROGRAM TYPOLOGIES

During the initial phase of this study, considerable information was gathered concerning the operation and administration of particular pre-charge diversion efforts. These diversion strategies, though varying greatly in procedural detail, locus of administrative control, eligibility criteria, and populations served, clustered into several general types. Details of this emerging typology of pre-charge diversion strategies follow.

An Emerging Typology of Pre-Charge Diversion for Drug Abusers

The literature review and nationwide telephone contact with State-level SSAs and SPAs, followed by telephone contact with particular pre-charge diversion programs, has allowed the construction of typologies in this area. Programs will be looked at from five vantage points:

- Point of referral;
- Primary actor(s) controlling the operations;
- Locus of administrative control (i.e., agency sponsorship, if any);
- Programmatic configuration of the service provider(s) to whom cases are referred; and
- Nature of the services provided to divertees.

Point of referral

Thirty-five truly pre-charge diversion programs for adults and juveniles were analyzed and compared procedurally. The following types, in terms of the point at which referral or diversion occurred, were discovered:

- Pre-arrest diversion by police, either at the scene of an apprehension or from the stationhouse;

- Post-arrest/pre-booking (or pre-intake) diversion from the stationhouse or via citation release procedures at the scene of the apprehension;
- Diversion at or after booking (intake), in lieu of pre-trial detention; and
- Post-booking/pre-filing diversion, after the pre-trial release decision has been made and once initial steps in case review by the prosecutor have commenced.

Primary actor(s)

Of the operational examples of pre-charge diversion encountered, variety and clustering were also discerned on the basis of which actor(s) in the criminal justice process controlled the decision to divert or refer cases or which actor(s), if that decision was a shared one, dominated the process. The following types emerged:

- Diversion at the discretion of police, either on the street or from the stationhouse;
- Diversion by a prosecutor or juvenile intake officer from the stationhouse, pre- or post-booking, after a recommendation from the arresting officer;
- Diversion by a specialized, independent social service affiliated worker (an arbitrator, youth counselor, etc.), after arrest but before booking, with the advice of (but not dependent upon) the recommendation of the arresting officer;
- Diversion by the prosecutor with input from (but not dependent upon) police, after booking (or juvenile intake) and after pre-trial detention or release, at the point where review of the case for purposes of the filing of charges occurs; and
- Diversion by court-affiliated administrative personnel (e.g., court clerks), pre-filing, of certain fixed categories of traffic-related cases, where arrest and release upon police citation has already occurred.

Locus of administrative control

A variety of different agency affiliations for diversion program components were discovered. In many ways these paralleled the types of administrative control encountered among post-charge diversion programs, which types have been set out in other publications. Full institutionalization--where the diversion program is a regular subunit of a larger, preexisting frontline operating agency, as opposed to a pilot program--was encountered with surprising frequency in programs with an administrative nexus with State, county, or local governments.

The following types of administrative control over, or affiliation of, pre-charge diversion programs were encountered:

- Free-standing diversion programs, whether incorporated entities in the private sector or not, that were administratively independent of all other operating agencies of government, though some received government funds (i.e., county or State appropriations or grant funds), and that interfaced, on the one hand, with various criminal justice agencies as sources of referrals and, on the other, with various public and/or private sector treatment programs for delivery of some, or all, divertee services;
- Programs operating as regular administrative subunits of larger, preexisting State or county criminal justice agencies, most commonly police departments, prosecutor offices, courts, or corrections departments;
- Programs operating as regular administrative subunits of larger, preexisting State or county drug treatment agencies, notably community mental health departments, and Single State Agencies (SSAs) for drug abuse; and
- Programs administratively affiliated with large criminal justice or drug treatment bureaucracies but operating semiautonomously, as pilot programs on grant status.

Programmatic configuration of the service provider(s)

Police referral and other pre-charge diversion programs identified also clustered into distinguishable types based on the programmatic configuration of the service providers to which referrals for treatment services were made. Five primary patterns for service delivery to pre-charge divertees were encountered. These were as follows:

- Diversion to a single, freestanding drug treatment program, located outside the criminal justice system, and featuring one or more modalities;
- Diversion to a variety of different treatment programs and other service providers outside the criminal justice system and not administratively linked with each other;
- Diversion to a variety of services within a single, large helping service bureaucracy, e.g., community mental health department (usually occurring when the diversion program itself was a unit of such a large agency);
- Diversion to an interface "broker" (such as a TASC program) that offers little or no direct service delivery itself but that matches the treatment needs of individual divertees to the capabilities of available private sector treatment programs, and that then makes re-referrals and monitors such; and
- Service delivery to the divertee directly by the diverting or referring criminal justice or juvenile justice agency itself (e.g., by a youth service bureau administered by a local police department).

Nature of services provided

A variety of different service delivery capabilities were discovered on the part of the pre-charge diversion strategies identified. These ranged from very limited single modality, short-term services of a very limited sort (e.g., drug awareness classes) to a very broad, sophisticated mix of multimodality treatment services, together with auxiliary support services such as day care, job placement, etc. By and large, the nature and extent of services provided to divertees, like the required term of diversion enrollment, were a function of both the gravity of the sorts of charges diverted and the relative seriousness of the drug abuse problems typically displayed by divertees. A clustering was observed in this area, as follows:

- Diversion to fixed, short-term courses or classes on drug education and prevention, with little or no variation in delivery geared to divertee needs;
- Diversion to short-term counseling, primarily of the drug abuse prevention sort, though tailored in its delivery to the needs of individual divertees;

- Diversion to single modality outpatient treatment services (e.g., drug-free reality therapy), tailored to differing client needs, often coupled with auxiliary services; and
- Diversion to a service provider offering the full range of multimodality drug treatment, prevention, and education services, either outpatient or outpatient/inpatient, with a treatment plan geared to individual client needs.

In the following chapter, detailed operational descriptions for the programs observed in six sites visited will be presented. How programs visited exemplified the various typologies described above will be addressed.

SALIENT ISSUES

This section will review what are perceived to be, on the basis of the literature review and discussions with key actors in the six sites visited, key controversial issues in the field. It is beyond the scope of this monograph to give exhaustive treatment to any of these, let alone to pose final answers to the questions they raise. However, the reemergence of these issues in discussions with officials and other actors at all sites visited indicates that they will be central concerns well into the future for existing pre-charge referral programs, as well as for new programs.

First to be reviewed will be a series of issues arising from placing the point of diversion at the pre-charge stage. Questions of police versus prosecutor control of the pre-charge diversion process are taken up, together with the related issue of how, if at all, effective criminal justice "holds" and credible sanction can be applied to pre-charge divertees, as distinguished from post-charge divertees. Role conflict questions affecting police and others will also be noted. A cluster of related issues revolving around questions of voluntariness, due process, and equal protection will also be addressed.

Another set of issues revolves around diversion strategy design--whether a "program" component should be added to the basic diversion "process"; the issue of the desirability of inclusion of the diversion unit in a larger entity, or its configuration as a linkage mechanism, rather than as a freestanding service provider; questions revolving around training of diversion decisionmakers; and questions regarding the confidentiality of drug abuse treatment information gathered pre-charge.

Point of Diversion

There exist a cluster of issues, some primarily operational or administrative in nature, and others, which are more abstract, legal issues, that center on the question of the comparative appropriateness of diversion this early in the processing of a criminal case. The following are primary concerns in this area.

Police versus prosecutor control of pre-charge diversion

Many prosecutors argue that the decision of whether or not to formally charge and/or prosecute a defendant is vested in them and not in the police. Such prosecutors further maintain that the police are not in possession of all the facts necessary to make an intelligent referral decision, are not neutral and detached actors, and cannot guarantee consistent standards for review and determination of diversion from case to case. Prosecutors will point to an apparent absence of a credible "hold" or applicable sanction to be imposed by police or unsuccessful diversion participants. Do these arguments render ill advised the growing process of police diversion? Specifically--

- How can the objectivity of police diversion decisionmaking be maintained from case to case, given the ad hoc nature of police discretion about whether to arrest and to book?
- Does police diversion widen the net of the criminal justice system by arresting and then diverting defendants who otherwise would not be arrested or, if arrested, screened out early?
- What effective checks or reviews can be applied to police diversion to insure that these programs do not become a dumping ground, by design or chance, for otherwise unprosecutable cases or for cases where public policy considerations would cause a prosecutor to decline to file charges?

Effective sanctions at the pre-charge stage

In the instance of criminal charges already filed, a written waiver of the right to speedy trial is usually sufficient, at least for short-term intervention, to preserve the case against the accused for renewed prosecution should diversion fail. However, as one moves back from the point of formal filing of charges by the prosecutor to the point of initial

apprehension by police, the available, enforceable sanctions lessen to the point of nonexistence. What effective response does the police officer have who diverts in lieu of arrest should the divertee not comply? Problems of case preparation, not to mention prosecutorial review for sufficiency of the evidence and availability of witnesses for later prosecution increase when diversion occurs at the early stages. If all available evaluative findings suggest strong "holds" or threatened sanctions increase the likelihood of compliance with and response to treatment, how can early diversion of drug abusers prove effective in the majority of cases?

Insuring knowing and voluntary entry into pre-charge diversion

As noted in chapter 1, the Supreme Court in the case of *Kirby v. Illinois* defined a basic test, or series of tests, for determining what stages in the processing of a criminal case were "critical stages" in which access to counsel was required by law. Subsequent cases have not directly taken up the question of whether the point of diversion decisionmaking, whether pre- or post-charge, is such a critical stage. However, commentators have agreed almost unanimously that because post-charge diversion occurs after the filing of formal charges by the prosecutor, and at or after initial court appearance, right to counsel applies. Further, jeopardy has attached with the filing of formal charges, and diversion thereafter, whether by prosecutor or court, assumes the status of a quasi-judicial disposition. Fundamental due process and administrative law precedents have been ruled by various State supreme courts to mandate the right to published eligibility criteria and administrative hearings before diversion decisionmakers to challenge rejection from diversion or unfavorable termination, once diverted.

Whether (and if so, to what extent) these requirements extend forward to the pre-charge phase of criminal case processing is not clear. A number of subsidiary issues arise from this question, however, as follows:

- Can a defendant who is offered an opportunity for pre-charge diversion make a truly knowing and voluntary choice when opting for diversion? Many commentators, most recently the National Association of Pretrial Services Agencies in its *Performance Standards and Goals for Pretrial Diversion*, argue that without the filing of formal charges, the defendant cannot know for certain what offense(s) will finally be charged and prosecuted and, thus, cannot intelligently weigh the likelihood of conviction,

the possible consequences (e.g., sentence) if convicted, or the attractiveness of other options (guilty plea, trial, etc.) over diversion.

- Is access to counsel for adults mandated when faced with the decision of whether to choose diversion? Though not determined as a matter of law to be a "critical stage," many commentators argue that the pre-charge decisionmaking point requires access by adults to counsel under the tests laid out in *Kirby* and subsequent cases. They argue that if the prosecutor has solidified the case to the point of offering diversion, albeit pre-filing, to a defendant, then the *Kirby* test of "commencement" of the adversarial phase of the case has occurred. This in turn requires access to counsel according to this line of reasoning. Without counsel, a knowing and voluntary choice of diversion over other options is impossible or at least presumptively absent. There exists no case law on this point, however.

What about the pre-booking situation, however, in which the case has yet to be formally brought to the prosecutor and the prosecutor plays no role? It cannot here be said that the "investigative phase" of the case has concluded or a case against the suspect been solidified. Some commentators argue, though, that because the defendants are being confronted here with complex legal issues (whether to opt for diversion) and because of the threat of official "over-reaching," access to counsel, even this early, is required to insure voluntariness. The National Advisory Commission on Criminal Justice Standards and Goals (NAC) in 1975 recommended access to counsel whenever diversion would involve an "extended restraint on liberty," even pre-charge. Whether short-term treatment in diversion, when presented as an option at the pre-booking stage to an already released defendant who has benefited from citation release, would constitute an "extended restraint on liberty" is problematic.

- Can a defendant who is under the influence of drugs or alcohol, or both, at the time of arrest/booking knowingly and voluntarily opt for diversion? The question of diminished capacity in this context has not been resolved. By way of analogy, Federal and State appeals court rulings have declined to void culpability for drug possession or drug-related property crime cases where the defendant was drug dependent at the time of the offense. However, a guilty plea entered on the

record by a defendant who suffered de facto from diminished capacity at the time would be open to legal challenge.

- Regardless of the situation for adults at the pre-charge stage, do juveniles have a right to counsel at pre-charge diversion proceedings? The Supreme Court's landmark decision, *In Re Gault*, which established the juvenile defendant's right to counsel and to basic due process, was limited to the adjudication phase of juvenile proceedings. Did that mean that pre-charge diversion proceedings for juveniles did not need to provide for counsel? That issue, too, remains unresolved.

Due process considerations

A series of Federal cases have established the panoply of due process rights of an accused that must be safeguarded at the point of arrest and later, once jeopardy has attached with the filing of charges. These include the right to remain silent rather than incriminate oneself, the right to have one's guilt established beyond a reasonable doubt, the right to a speedy trial and to trial by jury, and the right to exercise certain pre-trial motions to exclude evidence illegally obtained and to otherwise test the sufficiency of the Government's case. While these rights clearly attach at the post-filing stage, when waivers would be necessary if diversion were to occur, would such waivers also be required pre-charge for diversion? If so, what about waivers at the pre-booking or even pre-arrest stages? These questions remain unanswered but are troublesome. They include:

- Must eligibility criteria be uniform, and if uniform, published, to allow for the chance to challenge arbitrary exclusions? To what extent does a criminal justice agency, in setting up a process or program for the distribution of certain benefits, e.g., dropping of charges and expungement of arrest record, have to administer such a system fairly and openly? Does such fairness necessitate published and uniform eligibility criteria?
- What, if any, right to an administrative hearing on diversion exclusion would exist at the pre-charge stage? Courts have been divided on the issue of whether the right to a hearing is required by law at the post-charge stage, though this is now the majority view. Does the same rationale for due process fairness extend earlier in the process, before the charges?

Role conflict questions for police and other actors

Many police departments and individual officers regard crime prevention or social service referral functions as tasks for special officers, not for officers on patrol. Role conflict is often perceived between strict enforcement of the law (and apprehension of all lawbreakers) and discretionary nonenforcement through diversion. Drug abuse identification, in particular, is viewed as a highly technical skill that arresting officers cannot and should not be expected to possess. Subsidiary issues here include the extent to which line police officers should make discretionary diversion and drug treatment referral decisions and the steps, beyond issuance of departmental orders authorizing diversion in selected cases, that can be taken practically to lessen line police resistance to exercising such functions.

Diversion Program Design Considerations

As noted above, diversion itself is a "process" that may or may not have a service delivery or monitoring component—a staff and a "program" attached to it or interfacing with it. What are the advantages and disadvantages of the various approaches to diversion? Some major considerations voiced follow.

Without exception, local actors interviewed agreed that the relative seriousness of offenses diverted and of drug abuse problems encountered will in part be determinative. However, despite the initial attractiveness and apparent legitimacy of diversion without a service component (New York State for example, has an Adjournment in Contemplation of Dismissal, a post-filing drug diversion statute that diverts hundreds of defendants annually), drug diversion without adjunct service delivery or referral is of questionable utility. Given a basic premise of all criminal justice system referrals for drug abuse—namely, that drug-abusing criminal defendants should be required to participate in treatment to effect rehabilitation—diversion without assurance or requirement of services would be, in the view of those interviewed, counterproductive. (Groups such as the American Bar Association and the National Association of Pretrial Services Agencies, moreover, have maintained that diversion without services should not occur and may violate a legally enforceable expectation of, if not right to, treatment on the part of the defendant.)

As noted earlier, in the view of those interviewed, the volume of cases diverted, the type of drug abuse syndromes displayed, and

the treatment responses desired will often suggest the choice. Cost, flexibility, and case volume considerations aside, in the opinion of some actors, mainly defense attorneys, failure to provide a variety of treatment modalities could well impact on program credibility and open the way for equal access to treatment challenges from diversion applicants rejected because they did not wish to enroll in a particular treatment program, or rejected by a sole treatment program that finds a candidate's situation unacceptable for participation.

Training of Various Diversion Decisionmakers

Some "frontline" criminal justice actors--police on patrol and deputy prosecutors, for example--would argue that their direct work experience equips them to identify, diagnose, and refer drug abusers coming through the system. Others would argue that they are not equipped to perform these functions professionally and should not be called upon, due to role conflict, to perform them. Surfacing these often unarticulated biases can itself be a function of drug abuse awareness training. Gearing training to educate both groups to realize the value and utility of acquiring drug abuse identification skills is challenging. The context of the training--police academy courses versus on-the-job seminars or briefings at role call, for example--could greatly affect receptivity and consequently alter biases.

Confidentiality of Treatment Information

It is not within the scope of this monograph to treat in detail the myriad problems of confidentiality of treatment information that arise from any criminal justice/drug treatment interface. Those problems have been dealt with

at length in other NIDA publications. Suffice it to say that the current Federal regulations that implement the mandate of the Drug Abuse Office and Treatment Act have not had widespread impact on frontline criminal justice and drug treatment personnel concerning day-to-day situations in which the criminal justice system's need to know particular information on a referred defendant comes into conflict with the treatment program's legitimate need to maintain the confidentiality of communications and data acquired in the course of the counselor-client relationship. Particularly acute problems can arise in the context of diversion generally (whether pre- or post-charge) and for the pre-charge divertee in particular. These include the following:

- Given the "informal" nature of some pre-charge referrals, especially pre-arrest street diversion, written releases of treatment progress information often may not be obtained prior to the defendant's release to report to treatment. Securing such a release later could prove not only difficult but also might present legal problems in terms of voluntariness.
- Requesting a release of otherwise confidential treatment information at the time of being diverted pre-charge could, in the absence of access to counsel, be construed as coerced or not freely and intelligently given information. The possibility of diminished capacity on the part of street diversion candidates at the time of their arrest goes to the same issue.
- There exists the problem of redisclosure by a diverting police officer to fellow investigators of confidential treatment information obtained during or in advance of early diversion. Whether practical and effective safeguards can be developed to prevent redisclosure in police diversions is problematic.

3. Description and Analysis of Pre-Charge Program Operations in Six Sites

What follows details the operations of pre-charge referral strategies in six sites. A total of 8 different programs with 10 components were observed, as shown in the table. An overview of the contrasting models and their conceptual basis precedes descriptions of the example programs. Outstanding program features are highlighted and a summary of potential impacts and benefits to be derived from each model are presented. Finally, the programs visited are described in detail.

AN OVERVIEW OF CONTRASTING MODELS

The 10 distinct operational program components observed at the 6 sites visited during the preparation of this report run the gamut of pre-charge referral types insofar as their criminal justice configuration is concerned. By way of introduction, two represent intervention at the pre-arrest stage by the apprehending officer (one handling adults; the

other, juveniles); three at the post-arrest, pre-intake (pre-booking) stage for juveniles, with police juvenile officers playing major, if not predominant, roles; another at the post-arrest, pre- and post-booking stages for adults, with the arresting officer here again being the central actor; two more at the post-arrest, pre-filing stage (with booking obviated by citation release), with court-employed administrative personnel playing the major role in the diversion process once the arrest has been made. Lastly, two instances of pre-filing diversion are included. One of these represents a simple process for referring drug abusing adult felony defendants to treatment at the pre-indictment stage that relies upon joint drug abuse identification by the arresting officer and by a deputy prosecutor, with the latter playing the primary role in the treatment referral process. The other is a more formalized program for misdemeanor defendants, with the prosecutor playing an almost exclusive role in diversion decisionmaking.

Pre-charge referral programs

<u>Site</u>	<u>Program</u>
Delaware	1. Criminal Justice Service Center: a. Police referral b. State prosecutor referral c. Court of Common Pleas referral
Vanderburgh County, Indiana	2. Drug and Alcohol Deferral Service
Genesee County, Michigan	3. Drug Diversion Authority
Marin County, California	4. Marin County Treatment Alternatives to Street Crime 5. Novato Youth Service Bureau
Philadelphia, Pennsylvania	6. San Anselmo Departmental Probation Program 7. Social Action Workshop
Baltimore County, Maryland	8. Community Arbitration Program

Conceptual Basis for the Various Models

With few exceptions, the pre-charge drug abuser referral strategies to be described in detail below were designed to achieve the same purpose with respect to rehabilitation and the administration of justice. Programmatic configurations vary greatly, it is true, depending on local needs, locus of administrative control, and nature and extent of local drug abuse. Moreover, the criminal justice procedural aspects of these diversion practices likewise vary, depending upon point of diversion and identity of the diversion decision-maker. However, certain premises on which these practices operate remain constant, albeit assigned different priorities from program to program. These conceptual bases relied upon to legitimize the practice of pre-charge diversion are as follows:

- The reach of the criminal law in many areas is overbroad, drawing defendants into the adversary process who are not truly involved in criminal lifestyles but who are caught up in situational encounters with the law, often prompted by drug use. Making options available at the earliest point to divert such defendants out of the adversary system avoids stigma, trauma, case processing costs, and case backlogs.
- While the primary responsibility of police and prosecutors is law enforcement, crime prevention is an important facet of their work, too, especially given the high rate of recidivism among juvenile and adult drug abusers. Processes and programs that allow for the early diversion of selected drug abusers who have a potential for rehabilitation are useful tools for police and prosecutors. Full criminal processing or even obtaining a plea of guilty is often an inappropriate response, or overresponse, to the drug-related or drug possession offense.
- Linkages between the criminal justice and drug abuse treatment systems that allow for early identification, diagnosis, and referral and that provide treatment progress information back to the source of the referral benefit both systems and increase mutual understanding and information exchange.
- The adult criminal justice and juvenile justice systems are themselves criminogenic. Diversion of selected, nonserious defendants out of the system at the earliest possible point performs a crime prevention function.

- The trauma of arrest serves as a useful catalyst to rehabilitative action. The criminal justice system also serves as an excellent casefindings tool for drug abusers, and the hold, or threatened sanction, that the criminal justice system can bring to bear on defendants who agree to seek treatment in lieu of arrest or prosecution facilitates rehabilitation.
- The "over-judicialization" of post-filing diversion options has deprived the concept of much of its original flexibility and discretion. Moving the point of diversion prior to filing of charges restores many of these advantages.
- A coordinating unit for identifying drug-abusing criminal defendants and referring them to preexisting, outside treatment programs, pursuant to a "brokering" for services, is more cost effective and provides for a wider range of treatment options than does the provision of simply in-house counseling and treatment by the diversion program.
- While in a certain percentage of diverted cases defendants will fail to complete satisfactorily the diversion program, and while an additional percentage will recidivate and relapse after successful completion, there exists a comparative advantage to risking diversion in lieu of arrest or in lieu of prosecution, given the revolving door effect of the justice system and the failure of other options, including short- or long-term incarceration, to break the cycle of drug-related crime.

Generic Models From a Program Operations Perspective

As indicated above, 10 program components that refer defendants to drug treatment were observed in detail in 6 sites. Though the identities of the diverting agencies differ, as does the nature of the referral procedures used, these programs may be grouped for operations purposes as follows:

- Two sites visited featured large coordinating units, which provide no services directly. They accept adult referrals from a variety of program components at multiple pre-charge, pre-trial, and post-conviction points, from a variety of criminal justice agencies. These units serve as linkages between all components of the criminal justice system, on the one hand, and a wide variety of private sector drug treatment programs, on the other. Pre-charge diversion to treatment was

coordinated through these units in a variety of procedural ways and on behalf of a number of different criminal justice agencies. Examples of this approach are the Delaware Bureau of Substance Abuse's Criminal Justice Service Center (CJSC) and the Marin County, California, Treatment Alternatives to Street Crime (TASC) program.

- Programs in two other sites serving adult defendants likewise broker for services to outside treatment programs, but also provide in-house counseling by their own staff. Both also accept referrals from a single, or predominant, source--in one instance, a county prosecutor; in the other, a county court clerk's office--and are committed programmatically to obtaining the dropping of pending charges for all participants who successfully complete treatment. Examples described are the Genesee County, Michigan, Drug Diversion Authority (DDA) and the Vanderburgh County, Indiana, Drug and Alcohol Deferral Service (DADS).
- Three more programs, each of which services juvenile divertees, provide both in-house counseling and, to varying degrees, referrals for outside treatment services. Each interrupts the normal processing of a juvenile case at a point prior to juvenile intake (the equivalent of booking in the adult system), obtains its cases via a program of police citation arrest, and itself programmatically represents a progressive innovation within the traditional juvenile justice system agencies--one within a State department of juvenile services, the other two within local police departments. All maintain holds on juvenile divertees for relatively fixed periods of time and effectuate the dropping of charges for participants who successfully complete the program. Examples here are the Baltimore County, Maryland, Community Arbitration Program and two programs of "602 Youth Diversion" under a California statute--the Novato Youth Service Bureau and the San Anselmo Departmental Probation Program, which were visited, along with the TASC program described above, in Marin County.
- The remaining diversion "process," as distinct from "program," represents an instance of completely discretionary pre-arrest diversion by local juvenile officers to a particular community-based drug treatment program in which those officers have confidence and with which they have worked cooperatively over time. Retention in the program without rearrest results in no record of arrest being filed. Compon-

ents involved for the one such operational example are the Narcotics Unit of the Morals Division, City of Philadelphia Police Department, and the Social Action Workshop, a local community-based drug-free treatment/counseling program for juveniles, most of whom do not come to the program as referrals from the criminal justice system.

OUTSTANDING FEATURES

Primary actors, common programmatic themes and design features, unique design features, and a summary of program outcomes will be addressed in this section. These features are illustrated in exhibit 1.

Primary Actors

For all of the 10 program components observed in the 6 sites visited, police played a key role in drug abuser identification and referral. For the two truly pre-arrest examples visited--in Wilmington and Philadelphia--the apprehending officer was also the primary actor, making the decision to divert directly; this was not reviewed or modified by other parties. This situation was paralleled with regard to pre- or post-booking police diversion to Marin County TASC. The arresting officer here completely controlled the process of diversion decisionmaking.

For the two California "602" youth diversion programs visited, a plainclothes detective reviewed the arresting officer's report and made the key decision to divert or to book. Again, this level of police discretion to divert is not reviewed, or reviewable, by other parties.

For the juvenile Community Arbitration Program in Maryland and the two intoxicated motorist programs for adults (DADS in Indiana and the similar program of the Delaware Common Pleas Court), the arresting officer, by means of a citation process, controls intake, but his or her discretion is limited both in that departmental guidelines dictate citable offenses and that the decision to divert or not occurs later and is exercised by other parties. In this respect, the key actor in the Community Arbitration Program is the lawyer/arbitrator, who makes the diversion decision. For the two intoxicated driver programs, administrative personnel of the court play only a ministerial role. For the DADS program, the project director plays the key role in interviewing and deciding whether to accept the arrestee for diversion. The

Delaware Common Pleas Court program in contrast features a self-effectuating decision to divert on the part of the defendant, whose charge and status as a first offender drug- or alcohol-abusing driver automatically allows diversion unless steps are taken to the contrary.

Only two examples (DDA in Flint, Michigan, and the diversionary treatment referral to CJSC by the Delaware Attorney General's Felony Screening Unit) display key roles for the prosecutor in the drug abuser identification and treatment referral process. With regard to DDA, which is truly a diversion "program," discretion to divert rests with the prosecutor, though input from the arresting officer is invariably sought and received. Likewise in Delaware, though the treatment referral to CJSC does not--and cannot by current prosecutorial policy--result in the dropping of charges or suspension of prosecution, the decision to encourage the defendant to report for treatment at the pre-indictment stage is the prosecutor's to make--again, after input from the arresting officer.

In none of these instances does a judicial officer--judge or juvenile hearing magistrate--play a role. Moreover, the traditional adult and juvenile correctional agencies (e.g., probation) have no programmatic involvement with the diversion processes, either procedurally or through service delivery to divertees.

Common Themes

Despite the wide variation in program design, populations served, and locus of diversion authority and control, all the early diversion strategies visited (with the partial exception of the treatment referral by the Delaware prosecutors) subscribe to and operate upon the following common premises:

- Early diversion allows police to play a major role in alternative processing of selected defendants.
- Early diversion allows for drug abuser identification and referral while the shock of arrest can still act as a catalyst for rehabilitative change.
- The reach of the criminal law is overbroad and many drug-abusing defendants charged with nonserious and/or first-time situational offenses can benefit more from treatment than from pre-trial detention and prosecution.
- The dropping of charges against a defendant who successfully participates in drug

abuse treatment for a stated period is a legitimate incentive and reward.

- Early diversion is cost effective in that it avoids prosecutor trial preparation time, prosecutor and court paperwork, and prosecutor and court case backlogs.
- Early diversion of drug abusers allows for maximum flexibility in tailoring dispositions short of full adversary processing, and avoids the over-judicialization of post-filing diversion options.

Common Design Features

Again, despite wide variation in programmatic operations and procedures, certain common design features can be distinguished. (With regard to police diversion to TASC and to the Delaware CJSC, it must be noted that several of these features are displayed by the linkage mechanism working in conjunction with the police, rather than by the diversion-initiating actors themselves.) Common design features include--

- Initiation of case referral and preliminary drug abuser identification by police;
- input from the arresting officer to a trained interviewer, who makes further inquiry into and determinations about the nature and extent of drug abuse;
- A review (in all but three instances) of the apprehending officer's case by an additional, neutral party (police youth officer, prosecutor, diversion program administrator) before a decision to divert occurs;
- A decision to divert prior to the generation of prosecutor or court paperwork on the case (except for the Delaware Felony Screening Unit);
- A referral for treatment or education services to preexisting private-sector treatment resources outside the criminal justice system, in all instances through a "brokering" linkage agent--TASC, CJSC, DDA, DADS, etc.--that provides no direct services, except for in-house counseling;
- Regular reporting back to the criminal justice referring agency by the linkage entity that monitors client performance, in all the adult programs observed;
- Execution of limited releases of confidential treatment information and waivers of certain legal rights by divertees; and

- The dropping of pending charges (in all instances but one) upon successful completion of diversion, and the complete or partial expungement or sealing of records in the case.

Unique Design Features

Four unique design features stand out from the early diversion strategies observed. Each could, if deemed desirable, be added--possibly with some modifications--to existing pre-charge programs and could be incorporated into new programs at the design stage. These are as follows:

- The use of lawyer/arbitrators, on a part-time basis, to make diversion decisions, as in the Baltimore County Community Arbitration Program.
- The use of a Substance Evaluation Team (SET) of interdisciplinary medical, criminal justice, and treatment delivery personnel, as in the Delaware CJSC, to review the cases of all criminal justice referrals and make treatment placement decisions.
- The assessment of fees for service, as by the DADS and Delaware Common Pleas Court programs, from the divertees who participate.
- The community work service required of selected participants, as by the Community Arbitration Program and the Philadelphia Social Action Workshop.

Program Outcomes

Each of the programs visited made an impact on local law enforcement in terms of cases diverted and serviced, though some were much more significant in this respect than others. By way of summary from available information, client outcomes for the programs visited follow. (It must be kept in mind, of course, that the periods reported on are not always comparable.)

- Police, prosecutor and Common Pleas Court pre-charge referrals to the Delaware Criminal Justice Service Center (CJSC). During the 9 months from June 1978 to March 1979, CJSC "officially" accepted 396 criminal justice referrals from all points in the criminal justice system, of which 27 percent were referred pre-trial. Separate police and prosecutor referral statistics are not kept, as many of these cases are referred "unofficially" (i.e., in lieu of arrest) or appear as attorney referrals. Best available data

indicated approximately 20 police or prosecutor referrals per month.

- The Vanderburgh County Drug and Alcohol Deferral Service (DADS). During the 24-month period from January 1977-December 1978, 972 defendants were diverted to DADS. For the calendar year 1978, 72 percent of participants successfully completed the program, and only 7 percent failed and were returned for renewed prosecution.
- The Genesee County Drug Diversion Authority (DDA). During its first 6 years of operation (1972 to 1978), DDA accepted 1,129 of 1,601 defendants referred by the prosecutor (70.5 percent). Of this number, 757 enrolled (67 percent) and 544 (48.2 percent) successfully completed the program. For calendar year 1978, 116 defendants were accepted for diversion out of 144 referred by the prosecutor (80.6 percent), and 32 (27.6 percent) had successfully completed the program as of the end of the year.
- Police referrals to the Marin County Treatment Alternatives to Street Crime (TASC) program. During 1977 and 1978, TASC received 305 referrals from all points in the criminal justice system, 184 of whom (61 percent) were placed in treatment. Of this group, most were post-filing/pre-trial diversion referrals under Penal Code §1000 (146 cases). Police referrals, not officially recorded as such, constituted about 50 defendants, with details unavailable.
- "602" police diversion in Marin County to the Novato Youth Service Bureau and the San Anselmo Departmental Probation Program. During 1979, the YSB accepted 406 referrals, of whom 362 (89 percent) were from police. Reportedly 90 percent of all referrals successfully completed the program. In contrast, the San Anselmo Police Department refers roughly 900 youths per year to its Departmental Probation Program. Again, precise statistics were not available on the number of those who successfully completed, though this was reportedly in excess of 80 percent.
- Police pre-arrest referrals to the Philadelphia Social Action Workshop. The Social Action Workshop is a small treatment program that serves fewer than 40 juveniles at any given time. Reportedly, more than 50 percent of its participants are police pre-arrest referrals. Though precise statistics were not available, police referrals over the past 12 months have amounted to approximately 50 youths.

- The Baltimore County Community Arbitration Program. During its first 2 years of operation (December 1976-December 1978) 3,408 cases were referred by police for arbitration and 1,815 (53 percent) were enrolled. Of this number, approximately 90 percent successfully completed the program.

ADVANTAGES AND IMPACTS

The following discussion is a summary of the perceived advantages and resulting impacts from the practice of pre-charge diversion observed in six sites. These are divided for discussion between advantages to and impacts on the criminal justice system, the drug abuse treatment community, and the referred defendant.

The major advantages to and impacts from such programs, in the view of criminal justice officials interviewed, were as follows:

- Substantial numbers of drug abuser cases were not referred to the prosecutor, juvenile intake, or court for full adversarial processing, though the number and percentage diverted varied.
- Police officers were able to divert, rather than send to juvenile intake or to court, cases that they felt deserved a social service response rather than routine adversarial processing.
- Local problems of crime and drugs as displayed by diverted defendants could be and were handled "informally," locally, via utilization of such diversion routes.
- Early indications of drug abuse as detected by police were followed up on and responded to by the actors and service delivery components involved in these early diversion efforts.

Additional advantages, in the view of drug abuse treatment practitioners, accrued from such pre-charge programs that impacted on the drug treatment community. These included the following:

- The ability to turn the trauma of arrest into an opportunity for more immediate therapeutic intervention than that afforded by other, later referral strategies.
- The opportunity to expand the already demonstrated utility of the criminal justice system as a casefinding avenue to a new and largely untapped area--the pre-charge phase.

- The ability to link the drug abuse treatment community cooperatively with an important segment of the criminal justice community not previously involved in making treatment referrals--the police.

Advantages to and impacts on drug-abusing participants in such programs of early diversion were likewise generally consistent among the programs visited. These included the following:

- The opportunity to avoid the stigma and later economic consequences of conviction records, and (in two examples) of arrest records, through the dropping of charges.
- The opportunity to be offered and to opt for treatment and other assistance for drug abuse that might not be offered if the case were screened out or prosecuted fully.
- The chance to avoid the criminogenic and often alienating process of full criminal prosecution, pre-trial detention pending bail, and court hearings.
- The incentive to participate in and comply with treatment because of the threat of renewed prosecution (though for pre-arrest diversion, little real criminal justice system hold remains present except for the moral authority of the neighborhood officer on patrol).

PROGRAM DESCRIPTIONS

The following section will describe in detail the operations of representative examples of pre-charge diversion of drug abusers observed via field visits to six sites. Because differing and separate diversion strategies in several of these sites rely on the same central coordinating and linkage entity, the presentation of strategies will proceed not by diversion typology, but rather, by jurisdiction visited.

Criminal Justice Service Center, Delaware

The Bureau of Substance Abuse (BSA), located administratively within the Delaware Division of Mental Health, is the Single State Agency (SSA) for both drug and alcohol abuse planning and prevention in Delaware. (BSA has been a unified drug and alcohol SSA since 1967.)

In addition to its planning function, the Bureau funds inpatient and outpatient treatment programs throughout the State, which

provide treatment and rehabilitative services, under contract to BSA, to drug and alcohol abusers diagnosed and referred for treatment through a centralized BSA intake process.

Notwithstanding the failure of the Wilmington TASC experiment in 1973-1975 and the deterioration of communications between law enforcement and treatment that resulted, BSA launched efforts to build an interface between the two systems. As a first concrete step, BSA in 1976 launched its Probation and Parole Project, a successful effort to establish a referral mechanism for channeling probationers and parolees to treatment that built upon and was integrated into existing criminal justice practices, and that was thus acceptable to State corrections officials. As a result of this effort, NIDA extended to BSA its 1978 PACESETTER Award "for developing and implementing an innovative system to coordinate drug abuse treatment services with the State criminal justice system." The success of the Probation and Parole Project underscored the importance of establishing such linkages with all agencies of the criminal justice system.

In June of 1978, the need for a coordinating unit in the BSA for criminal justice activities resulted in the creation of the Criminal Justice Service Center (CJSC). It has been the policy of BSA and its CJSC, for both philosophical and practical political reasons, to establish linkages with only those criminal justice agencies that are interested in and supportive of the concept of referring substance-abusing defendants to treatment. This was, in the view of BSA officials, a very basic lesson learned from the abortive TASC experiment. Because many Delaware politicians and criminal justice officials viewed TASC as a foreign element forcibly injected into the local system by the Federal Government, without due deference to local procedural preferences and without sufficient attention to local needs, the concept of criminal justice referral to treatment was not supported--even resisted--and consequently failed. In order to perform essentially the same function as TASC but to instead enjoy community support and cooperation in the process, CJSC has studiously avoided the "hard sell" approach. CJSC does not attempt to press uninterested State, county, or city criminal justice agencies to establish treatment linkages, though CJSC staff search out opportunities to inform and educate agency officials about the perceived advantages to be derived from such a process.

CJSC does not attempt to dictate the point in the processing of a criminal case at which a justice agency should initiate treatment refer-

als, the procedural mechanisms that should be utilized to accomplish individual referrals, nor which if any resulting benefits--e.g., dismissal of charges, expungement of records, mitigation of sentence--should accrue to the defendant on the underlying criminal case. Rather, CJSC regards these decisions as wholly up to the criminal justice referring agency.

Specifically with regard to diversionary referrals, CJSC takes no position on which points in the processing of a criminal case diversion to treatment should occur or under what ground rules or eligibility criteria criminal justice agencies should divert or, once diversion has been allowed, determine successful completion. Consequently, if, as is currently the case, the Wilmington Police Department opts for "informal" pre-arrest diversion to CJSC on a case-by-case basis, with absolute discretion vested in the apprehending officer, CJSC staff will accept referrals, diagnose, refer, and serve arrested and arraigned defendants referred from other criminal justice channels.

Drug abuse patterns

Drug abuse patterns in Delaware mirror the broader national polydrug abuse picture. Alcohol abuse, however, is significantly higher than the national average, with Delaware ranking sixth highest among the States in alcohol mortality. The mixing of alcohol and other substances--stimulants, depressants, etc.--by drug abusers whose cases are referred to Bureau of Substance Abuse facilities and services is characterized by these officials as the most common and most disturbing polydrug abuse problem encountered.

BSA officials, prosecutors, and court planners all agree that the problem of substance abuse is significant. The chief of the Office of the Attorney General's Felony Screening Unit estimates that 40 percent of all felony cases filed with the Court of Common Pleas are drug related or involved defendants who are under the influence of drugs--either alone or in combination with alcohol--at the time of their arrest. Officials interviewed also agree, however, that drug abuse patterns among defendants have changed dramatically in recent years. Heroin as the predominant drug of abuse has been replaced by an ever-shifting array of polydrug abuse patterns, though the familiar population of recidivism-prone opiate addicts has not disappeared. Rather, they have altered their abuse patterns out of necessity, a result of supply and demand, without abandoning heroin as the drug of choice or the opiate street addict lifestyle and habits.

Notwithstanding, the hardcore heroin addicts who once comprised the bulk of drug-abusing criminal defendants coming through the Delaware criminal justice system have been augmented in recent years by an increasing number of polydrug abusers of various types not previously encountered in significant numbers by the courts--e.g., homemakers, military personnel and their dependents, juveniles from affluent families, and elderly persons--most of whom abuse prescription drugs, often in combination with alcohol.

At the same time, the average age of drug abusers detected among the general population of adult criminal defendants has been climbing. The bulk of these persons now cluster in the 27- to 35-year-old age group, whereas a decade ago, most drug-abusing criminal defendants were in the 18- to 23-year-old group.

In summary, drug abuse in Delaware, though it presents a changing picture, is still a significant social phenomenon. The number of drug abusers coming through the criminal justice system and the volume of violent and acquisitive crime that officials indicate are drug related continue to pose challenges for the law enforcement and treatment communities in the State.

Interface with criminal justice system actors

In order to clarify the operations of the CJSC generally and, more specifically, the process of pre-charge diversion for substance abusers in Delaware, it is important to understand and identify the primary criminal justice agencies that interact during the pre-trial stage.

Police jurisdiction is a complex of overlapping and, at times, confusing responsibilities. The Delaware State Police not only perform a highway patrol function statewide but also have regular local law enforcement responsibilities in much of rural "downstate" Delaware. Populous New Castle County has its own County Police Department, as does the City of Wilmington. State Police apprehension and general law enforcement jurisdiction, in theory, extends into incorporated areas, including Wilmington, though standard operating practices and procedures attempt to obviate such dual enforcement duties and leave local law enforcement to the Wilmington Police Department.

The State Attorney General's Office, in contrast, performs the criminal prosecution function for the entire State. Assistant State's attorneys in the Law Enforcement Division function as assistant district attorneys or

assistant city attorneys would in other places. The only exception is with regard to the City of Wilmington, where the Office of the City Solicitor prosecutes traffic and misdemeanor complaints before the Wilmington Municipal Court.

Except in Wilmington, magistrates' courts (justice of the peace courts) throughout the State have original jurisdiction in traffic and minor misdemeanor complaints. Arrestees are advised of such charges and may elect either to stand trial or enter a plea of guilty there or to have jurisdiction transferred to the Delaware Court of Common Pleas. (If the latter course is pursued, the Court of Common Pleas will not proceed simply on the magistrate's warrant but requires an information to be filed with this Court by the State Attorney General's Office.)

The Delaware Court of Common Pleas thus has jurisdiction over traffic and criminal misdemeanor cases, and over civil complaints under \$5,000 statewide, except in the City of Wilmington, where these functions are vested in the Municipal Court, which has parallel jurisdiction. The Delaware Court of Common Pleas and the Wilmington Municipal Court likewise are responsible for preliminary hearings in all felony cases, though trial jurisdiction for such cases, as well as for civil complaints over \$5,000, is vested in Delaware Superior Court.

In addition, each of the three counties has its own family court, which hears delinquency cases against juveniles under age 18 and family violence, child abuse, and child support complaints. Appeals from judgments of the family, municipal, and Common Pleas courts lead to new trials in Superior Court. Appeals from Superior Court go directly to the Delaware Supreme Court. Exhibit 2 represents criminal caseflow in the State and illustrates the overlapping and interfacing jurisdiction of Delaware's various courts and other criminal justice agencies. Points of diversion, both pre-charge and otherwise, are also illustrated.

Goals and objectives of the CJSC

The CJSC was set up to insure successful coordination between agencies of the criminal justice system and community treatment agencies so that defendants referred to treatment for drug or alcohol abuse problems could be referred for high quality services, and so that the criminal justice system would be properly apprised of their progress in treatment. Prior to creation of the CJSC, coordination between the BSA and individual

treatment programs, on the one hand, and the numerous criminal justice agencies, on the other, was poor. Referrals for treatment were made according to the individual predilection or whim of referring criminal justice officials. Followup by the criminal justice system was sporadic and difficult, partially due to lack of a coordinating mechanism and partially to lack of in-house time and manpower. Confidence by criminal justice authorities in treatment agencies was low, partially due to prior bad experiences and an inability to distinguish between desirable and undesirable programs to which to make referrals, and partially to the general dissatisfaction with TASC. Finally, regular avenues of communication were nonexistent.

The CJSC was established by the Bureau of Substance Abuse as a specific response to these problems. Stated in the simplest terms, its mandate was as follows:

- To establish linkages between all interested Delaware criminal justice agencies and existing drug and alcohol treatment resources.
- To improve communications between the criminal justice and substance abuse treatment communities in the State, both by performing a liaison and coordinating function for individual referrals and by providing information, training, and technical assistance on a broader scale.
- To screen, diagnose, and evaluate substance abusers referred to CJSC by the various criminal justice agencies and to report back appropriate assessments.
- To place in appropriate treatment programs criminal defendants thus evaluated, on behalf of the referring agency.
- To monitor and report back on treatment progress to the referral sources.

The primary function of the CJSC is to perform initial intake interviews on all clients referred by cooperating criminal justice agencies--police, prosecutors, pre-trial services, courts, probation, and parole. Such diagnostic interviews are intended to gather detailed information about a defendant's past life, including sociological, medical, and legal data. The CJSC counselor is especially interested in information about the client's past and present drug and alcohol abuse patterns. The information from the interview is given to the Substance Evaluation Team (SET) and a recommendation regarding treatment is made by the counselor. The SET then reviews the information on the client and makes a final treatment recommendation, which is for-

warded to the referring criminal justice agency and to the selected treatment provider.

It is the responsibility of the referral source (i.e., the criminal justice agency initiating the referral) to inform the client of the recommendation and to see that the client follows through with reporting to treatment. If, once the defendant has begun treatment, the criminal justice agency encounters difficulty in obtaining timely or thorough information on client progress or attendance, the CJSC is contacted and intervenes to resolve the communications problem with the local treatment program. CJSC coordinates the forwarding of periodic attendance and performance reports from the treatment program back to the referring criminal justice agency and works with both organizations to establish the necessary and appropriate release of information guidelines and forms. In this regard, CJSC's task is to preserve the privacy of the treatment process from unnecessary intrusion while at the same time providing the referral source with basic information sufficient to verify compliance, all within the constraints of Federal confidentiality regulations.

Avenues of pre-charge referral to the CJSC

Three varieties of pre-charge diversion (one of which does not result in dropping of charges and is, therefore, not strictly "diversion" but nevertheless is certainly diversionary) do exist for drug and alcohol abusers at present. These are as follows:

- Pre-arrest diversion of selected defendants, including drug and alcohol abusers, by the Wilmington Police Department. In the view of the Chief of Police of Wilmington, drug and/or alcohol abuse is present in perhaps over one-half of all arrests or potential arrests his officers confront. While in charge of the Personnel Training Division of the Department several years ago, he discussed his concern about the rising level of drug and alcohol related crime with BSA's Criminal Justice Specialist, who is a former Wilmington police officer.

Years later, after he became Chief, and once the Criminal Justice Specialist had joined the CJSC, he issued standing orders concerning the handling of drug- and alcohol-related cases. Department policy now encourages uniformed officers, in their discretion and without fixed guidelines, to refer to treatment in lieu of arrest in appropriate cases. The Chief indicates that he has personally done so in instances

where drug abusers known to him have been suspected of crime and the evidence has been strong enough otherwise to have made an arrest. According to the Chief, whether and to what extent the apprehending officer chooses to follow up on persons referred to the CJSC in lieu of arrest is up to him or her, though Department policy encourages such followup. Despite the absence in most instances of a "sword of Damocles" to hold over the heads of pre-arrest divertees (since most potential arrest situations, being street crimes, do not lend themselves to reaprehension and arrest at a later date for the initial occurrence), both the Chief of Police and the CJSC Coordinator indicate that a significant number of such referrals to treatment are made, and that a sizable number of such persons report to and benefit from treatment.

To the extent they express their interest, Wilmington police officers are kept informed of treatment progress by CJSC on cases they refer. In a city of 85,000 persons with a department at the authorized strength of 270 sworn officers, there exist, according to the Chief, constant opportunities for pre-arrest police diversion. However, given the relative smallness of the city and its division into closely-knit neighborhoods where "the cop on the beat" knows the persons who come into conflict with the law, pre-arrest police diversion, relying on the officer's discretion and moral authority, is a useful and workable law enforcement tool.

At the same time, Wilmington community attitudes generally view the responsibility of police officers to be law enforcement and apprehension rather than social service. Moreover, many of the older uniformed officers have proven resistant to innovations such as CJSC referral in lieu of arrest. For these reasons, according to the Chief, a highly visible, formalized pre-arrest diversion program for Wilmington police officers would not yet have sufficient support. However, the Chief believes that the positive response to the concept by most of the younger officers--those who have had drug and alcohol education courses at the academy in recent years and especially those who served in Vietnam and were exposed to widespread drug abuse by their peers--will over time increase the frequency of pre-arrest drug diversion. Community attitudes, he adds, have changed markedly in recent years and there are indications of even more progress at present. For these reasons, though it will remain an informal function

of officer discretion, the Chief views pre-arrest diversion of drug- and alcohol-related cases to the CJSC as a growing phenomenon.

- Drug abuser identification and treatment referral by the Attorney General's Felony Screening Units. As indicated above, all felony cases in Delaware are prosecuted by the Law Enforcement Division of the Office of the Attorney General. An innovation in this process in recent years is the prosecutor's Felony Screening Unit, instituted to review cases at the pre-indictment (which is also the pre-charge) stage for sufficiency of evidence and to strengthen communications with police to insure better and stronger felony cases for presentation to the grand jury. This team of five experienced deputy prosecutors, each of whom has had more than a year of trial experience, is organized under a chief. Prior to the institution of the unit, about 25 percent of all felony indictments were later nolle prosequed; in contrast, since the unit was created to perform a review and tightening function, this felony "drop rate" has significantly decreased. Now, even though 20 percent of all felony arrests are reduced to misdemeanors, either prior to or after plea bargaining, felonies that proceed to the grand jury almost always result in indictment, and those indictments now lead to plea bargaining as felonies or to trial, without the earlier slippage due to poor case preparation that led to so many "nolles" in the past.

The Office of the Attorney General is opposed as a matter of policy to pre-trial diversion, in the strict sense (i.e., dropping of otherwise prosecutable charges upon successful completion of a rehabilitation program) for defendants charged with felonies. The Felony Screening Unit does identify and refer drug-abusing defendants charged with felonies to the CJSC, however, and through CJSC to treatment. According to the chief of the Felony Screening Unit, at least 40 percent of all felony arrests that come to his staff for pre-indictment (i.e., pre-charge) review are drug sale or possession cases or are drug related in that the crime was committed to finance a drug habit or the defendant was under the influence of drugs at the time of the arrest. The unit therefore views it as a serious responsibility to identify drug abusers charged with felonies and to take all possible steps to encourage such defendants to enter treatment while the prosecution of their cases goes forward.

Procedurally, this occurs in two ways. First, at the initial conference between the arresting officer and the deputy prosecutor assigned to the unit, the latter looks for drug abuse indicators in the case and inquires whether the officer considers these indicators to be present, and why.

Second, when interviewing the accused, in the presence of defense counsel the deputy prosecutor will inquire about drug use if the facts and circumstances of the case, and/or the arresting officer's input, raise the likelihood of drug abuse as a factor. Thereafter, if the defendant admits drug use, or if it is still suspected, the prosecutor will encourage the defendant and his or her attorney to contact the CJSC for an evaluation and treatment referral.

A recent innovation designed to make this process more effective has been the assignment to the unit of a paralegal worker, whose time and salary is shared by the attorney general's office and BSA. The staff screens all arrests within 2 days of their occurrence and alerts both the prosecutor and the CJSC of likely candidates for drug and/or alcohol abuse evaluation. Thus, by the time of the initial interviews by the unit prosecutor with the arresting officer and with the defendant and his or her attorney (within 2 weeks of arrest and prior to initial court appearance), drug or alcohol abuse indicators in a case have already been flagged for followup attention.

Though the Felony Screening Unit does not have the authority to offer formalized diversion to the felony accused, nor will it as a matter of policy decline to prosecute or "break down" to misdemeanors otherwise prosecutable felony cases, it can and does use what leverage it possesses to identify drug abusers early on and to encourage them to seek treatment at the pre-indictment stage. Reportedly, despite the absence in this process of a "sword of Damocles" to hold over the defendant's head--as would be the case if dropping of charges, charge reduction, or expungement were available as inducements--many defendants when confronted about suspected drug abuse at the Felony Screening Unit initial interview do "take the hint" and report to CJSC for evaluation and treatment referral. If they decline, early flagging of drug abuse for monitoring and followup later in the process still has occurred.

- Pre-charge diversion of drug and alcohol abusers on traffic offenses pursuant to the

Driving Under the Influence Program of the Court of Common Pleas. The third and by far the most structured of the three pre-charge diversionary processes for substance abusers in Delaware is the Driving Under the Influence Program operated by the Delaware Court of Common Pleas for first offenders on moving traffic violations. Defendants so apprehended who are found by police to be under the influence of drugs or alcohol (or both, as is becoming increasingly common) are so cited by the arresting officer. They are informed that they have the option of going on to arraignment and trial--and if convicted, facing a \$200 to \$1,000 fine, 60 to 180 days in jail, and/or suspension of license--or electing the diversion program. Defendants who elect diversion report to the Office of the Clerk of the Court on or before the stipulated arraignment date to complete an Application for Continuance, authorized under 21 Delaware Code section 4177B. Thereupon the clerk immediately continues the arraignment over for 4 weeks and refers the defendant to the CJSC for an initial evaluation. CJSC then refers the defendant to the Delaware Safety Council's School, or to another such program, for a minimum 16-hour course on problem drinking/drug abuse and safe driving. At the end of 4 weeks, the defendant must bring proof of enrollment to the clerk's office on or before the continued arraignment date. A further continuance of between 3 and 6 months, depending on the severity of the problem and program stipulations, is thereupon granted. At the end of the fixed period of instruction and/or treatment, and after CJSC reports satisfactory completion, the clerk's office automatically enters a dismissal of charges on the record.

Successful completion of the Driving Under the Influence Program, for which the service deliverer assesses a fee of \$75 to \$200, results in a dropping of charges and retention of one's driver's license. No arraignment or further proceedings take place. Failure to satisfactorily complete results in a notification to return to court for arraignment and trial. Only at this point does the prosecutor prepare and file the case and does initial court appearance occur.

According to the Administrator of the Court of Common Pleas, a "very substantial" number of traffic cases are drug and alcohol related, and the newly established Driving Under the Influence Program, authorized by statute, can result in hundreds of pre-charge diversion cases per

year statewide. This, in her opinion, is consistent with and an extension of the court's philosophy that all options short of trial and sentencing should be made available in appropriate cases to counteract the often overbroad reach of the criminal law into areas of social dysfunction.

Intake--The CJSC initial interview

Referrals to the Criminal Justice Service Center are made via a phone call from the referring agency, followed by written materials, if appropriate. Incoming and outgoing phone calls are entered in a log so that the time of referrals can be verified. An appointment is made at the time of the referral call for the interview with a counselor at CJSC.

Upon arrival, the client signs in and completes consent forms, allowing information obtained during the interview to be forwarded to the referral source and the Substance Evaluation Team (SET).

The client is then interviewed by a counselor experienced in working with substance abusers. The interview lasts about 2 hours. During this interview, the counselor is responsible for obtaining the information asked for on the SET form. This includes current sociological data, family history, medical history, current legal status, and a history of past charges. The form also includes behavioral evaluation rating scales that are to be completed by the counselor after the interview. If the client's predominant problem is one of alcohol, the Mortimer-Filkins test is also administered.

After the interviews, the counselor completes the SET form, scans the behavior evaluation rating scales, and enters a recommendation for treatment. The counselor also scores the Mortimer-Filkins test, if this was administered, and enters the score (which gives an indication of the severity of the alcoholic problem) on the SET form.

Near the end of each day, counselors meet to discuss the clients they have seen and to consult with each other about their recommendations for treatment. This discussion may result in altered recommendations for some clients.

Information for each client interviewed is entered in a ledger. The completed forms for each referral are then forwarded to the Substance Evaluation Team for review.

Diagnosis and evaluation--The Substance Evaluation Team meeting

The Substance Evaluation Team, which meets weekly at the Delaware State Hospital, is mandated to provide a comprehensive individual evaluation for every substance abuser referred to outside treatment resources by any unit of the Bureau of Substance Abuse, in order to determine the best treatment alternative suited to and available for that individual. The team is composed of--

- A psychologist (who is the chairperson),
- A physician,
- A criminal justice specialist,
- A mental health officer,
- A program development specialist, and
- A treatment coordinator.

In instances in which intake and referral are from the criminal justice system, the SET reviews the information obtained by the CJSC counselor during the interview with the defendant and may agree with the counselor's recommendation, or may recommend a different treatment plan. Through this review process, the SET is able to provide a level of expertise and a knowledge of treatment resources available statewide that might not be available at individual clinics.

The SET receives referrals from BSA clinics other than the CJSC. All referrals from the criminal justice system for evaluation or treatment of substance abusers first go through the CJSC for the initial interview and treatment recommendation. Occasionally, CJSC counselors referring cases may appear before the Substance Evaluation Team, or clients themselves may appear, but generally, SET's decisions are based on information from forms prepared by CJSC counselors or by other referring agencies.

The recommendation of the SET supersedes that of the CJSC counselor. Once the recommendation is agreed on by the team, it is dictated to the secretary, who sends it to the referring agency. The SET recommendation indicates the community treatment program to which the client should be referred and the reasons for the recommendation.

Review and termination

For most types of criminal justice referrals, e.g., divertees from the Driving Under the

Influence Program or probationers and parolees referred to treatment as conditions of their sentences, the required term in treatment and the criteria by which success or failure in treatment is measured are fixed by the referral source. This is not, however, the case--cannot really be the case--for pre-arrest diversion referrals by police, as they occur in Wilmington. In the latter instance, not only does retention in treatment depend upon the drug abuser's willingness to stay involved, without the criminal justice hold or potential sanction present for all post-filing referral mechanisms, but criteria for successful completion and duration of stay are not fixed. Depending upon the level of followup interest displayed by the arresting officer and his or her willingness to interact with CJSC staff and the client as to treatment progress and social adjustment, pre-arrest police diversion may or may not be an effective linkage.

It is CJSC policy to elicit regular treatment progress reports on all referred defendants from the treatment clinics. Further, CJSC submits regular monthly progress reports to the referring criminal justice agency on each defendant referred. Contents of such reports are to a degree standardized, e.g., attendance information. However, other items reported and the depth of detail vary with regard to the severity of the drug problem present, the nature of the criminal justice referral made (e.g., driving under the influence first offender diversion versus a medical parole for a long-time heroin addict convicted on a felony charge), and the terms and conditions of the release of confidential information form entered into with the client in question.

Twin goals of this always difficult aspect of treatment monitoring that are pursued by CJSC are--

- To gather from the treatment program and report to the referring criminal justice agency that minimum of information on treatment progress (or lack of it) that the referral source stipulates it needs in order to make an informed decision about whether the conditions of the treatment referral have been satisfied, and
- To protect the confidentiality of drug abuse patient information, within the provisions of applicable Federal law, beyond those items that the referral source needs to know and that the defendant has agreed to release as a precondition of the referral.

Given the informal nature of two of the three avenues of pre-charge treatment referral discussed above--pre-arrest diversion by the

Wilmington Police Department and pre-indictment (pre-charge) treatment referral by the Attorney General's Felony Screening Unit--no formalized, regular reporting back of treatment progress occurs. Defendants normally are not asked to and do not sign written releases of information, nor do referring police officers and deputy prosecutors regularly monitor retention in treatment or treatment progress. In both instances, a treatment referral is encouraged, but no mechanism exists to insure the client's follow-through via available sanctions. In both instances the underlying philosophy is that treatment participation cannot be forced or guaranteed, and that any degree of compliance by the defendant is a comparative benefit that, when weighed against other options, is worth the risk of noncompliance.

Again, under both of these practices, individual police officers and deputy prosecutors may, and occasionally do, require defendants to grant regular releases of information, though their leverage to do so is comparatively limited.

However, when an officer or prosecutor has an unusually high interest in a referred defendant--due perhaps to personal acquaintanceship or the sensitive or important nature of the underlying case--regular informal contact with the defendant and/or the defendant's attorney is made. Tenuous as it may be compared to the regularized reporting requirements attached to more formalized post-charge avenues of referral, where the defendant and his or her activities are known to the neighborhood "cop on the beat" or the felony case pending is a serious enough matter that the defendant complies with a prosecutor's suggestion to seek treatment without any guaranteed benefit to accrue on the underlying case, many clients do report to and comply with treatment, according to officials interviewed.

The situation in the Driving Under the Influence Program is entirely different. There, treatment requirements are fixed, uniform, and published. Satisfactory compliance, evidenced by written reports, is a precondition of eventual dismissal of charges. Formal releases of information are employed, and standardized criteria for success or failure in the program, e.g., number of appointments kept or missed and whether or not rearrested, are reported uniformly for all clients and result in standardized responses.

Staffing and budget

Staff of the Criminal Justice Service Center are employees of the Bureau of Substance

Abuse and, therefore, are State employees. Staffing at present at CJSC consists of a full-time director, a counseling supervisor, three counselors, a part-time secretary, and a part-time case screener shared with the prosecutor's office.

In fiscal year 1980, BSA has received State appropriations in the amount of \$1,723,400, of which \$1,059,800 is for personnel. In addition, BSA has received Federal grants in the amount of \$1,423,100, of which \$832,100 is for personnel expenditures.

State appropriations in the amount of \$94,400 have been allocated for the CJSC budget. Of this amount, \$70,200 is earmarked for personnel and the remaining \$24,200 is divided among all other costs.

Drug and Alcohol Deferral Service,
Vanderburgh County, Indiana

The Drug and Alcohol Deferral Services (DADS) of Vanderburgh County is a pre-charge diversion program for persons over 16 years of age who have been arrested for alcohol- or drug-related misdemeanors. The program's overall goal is to intervene in the early stages of alcohol and drug abuse dependency problems displayed by misdemeanor defendants. Those accepted by the program are usually county residents with stable backgrounds who do not have extensive records.

All persons arrested for alcohol- or drug-related misdemeanors in the county are screened as possible program participants by a bail bond commissioner, who instructs those who are eligible and who are released to report to DADS the following day instead of reporting to court. Those defendants not seen by a bail bond commissioner are screened and referred by a DADS staff member who is in court each morning (excluding Sundays) to review the daily court dockets.

Persons referred to the DADS program undergo an intake interview and an evaluation before final acceptance. If accepted, individuals participate in the setting of treatment goals, which are stated in a written contract, and agree to pay a fee that is based on the income and the complaint for which he or she was arrested. Fees are used to support DADS and to purchase treatment from other agencies.

Referrals for treatment are made to over-18 counseling and educational service options for which DADS has contracted with various community agencies. Individual treatment

commitments are generally for 6 weeks. If the treatment program is successfully completed and the client is not rearrested for a drug or alcohol charge during the 6 months after the arrest that led to the DADS referral, the complaint or basis for arrest is never filed. If the DADS participant does not complete the program successfully, the prosecutor is notified of this, and may then file the charge with the court. Police hold evidence in cases referred to DADS for the 6-month probationary period, in case the complaint might be filed.

The program is used also in exceptional cases for diversion of individuals charged with felony drug complaints. These defendants undergo a more intensive evaluation process and are under urine surveillance and supervision from DADS for a period of 1 year. These cases, however, are referred post-filing, on a selected case-by-case basis.

In January 1977, subsequent to and in order to come into compliance with the Indiana Supreme Court's decision in Marshall v. Brune (which ruled that pre-trial diversion could not be undertaken in Indiana in the absence of statute or administration by a judicial officer), the Deferred Prosecution Program was placed under the auspices of the Superior Court Misdemeanor and Traffic Division and was renamed the Drug and Alcohol Deferral Service (DADS). However, diversion still occurred prior to formal filing of charges. To prevent political or otherwise arbitrary decisions about which cases should be diverted, a written agreement was drawn up between the judge presiding in the Misdemeanor and Traffic Division of the Superior Court, the Vanderburgh County Prosecutor, and the Director of DADS, spelling out eligibility criteria for diversion to DADS. According to that agreement, it is the decision of each eligible defendant to decide whether to enroll in DADS or to go on to trial in the normal course.

To protect the integrity of the DADS evaluation process for intake into the program from outside political pressure, it was agreed that neither the prosecutor nor the judge would have access to DADS' confidential intake files. However, for accountability purposes, the judge and prosecutor were to be routinely notified about the status of referred clients regarding acceptance or rejection, performance in the program, and termination.

DADS also works closely with the police, since it is essentially the arresting officer's decision to cite a motorist or other defendant that is the source of referrals for the program. Staff have frequently attended police roll call,

explaining the purpose of the program and pointing out its success in assisting substance-abusing individuals. In addition, the program has worked closely with police to buy equipment to aid in the arrest of motor vehicle law violators, many of whom are substance abusers.

Substance abuse patterns

An epidemiological survey by the Division of Addiction Services projected use of illegal drugs in 1980, based on 6-month usage data gathered statewide. Data gathered for the Evansville area suggest that in 1980, for the population 18 years old and older (approximately 200,000 persons), about 7 percent will be users of marijuana, nearly 2 percent will be users of amphetamines, 0.3 percent will be users of PCP, 0.7 percent will be users of inhalants, 1 percent will be users of psychedelic drugs, 1 percent users of cocaine, and 0.5 percent users of heroin. It was also estimated that about 19 percent of the Evansville population 18 years old and older would misuse prescription drugs in 1980. With regard to alcohol, it was estimated that in 1980, 69,572 drivers in the Evansville area will have had two or more drinks less than an hour before driving, and that 10,078 (5 percent of the county's projected population) will be charged with driving while intoxicated.

Many of those interviewed during the site visit had the impression that polydrug use is increasing in Vanderburgh County and that many substance abusers have been experimenting for years at polydrug use, with patterns involving alcohol and various drugs in combination. Treatment personnel also noted an increasing number of elderly persons who are arrested for behavior resulting from mixing prescription drugs and alcohol, a problem they were not warned about by their physicians. In contrast, heroin use appears to be decreasing in the Evansville area; 3 years ago a methadone maintenance program in Evansville closed for lack of clients.

A union spokesman observed there are mounting problems in local factories with acts of vandalism and sabotage committed by workers high on alcohol and/or drugs. This is becoming an especially critical problem during the night shifts to which many of the younger workers with less seniority are assigned.

Interface with criminal justice system actors

In order to understand further the DADS program and the process of pre-charge diver-

sion for drug and alcohol abusers in Vanderburgh County, it is important to understand and identify the primary criminal justice agencies in the county and to understand the extent of their respective jurisdiction and any overlap of their functions.

The police power in Vanderburgh County is vested in several separate law enforcement agencies. For the handling of most criminal matters, the two key agencies are the Evansville (city) Police Department and the Vanderburgh County Police. The county police have jurisdiction to issue citations and make arrests throughout the county, including within the city limits of Evansville. In addition, because of the nature of the charges that result in referral to DADS--drug- and alcohol-related offenses as well as possession of drugs--another Indiana law enforcement agency plays an important role vis a vis pre-charge diversion--the Indiana State Police. The State police have authority to issue citations and make arrests for violations of State law throughout the State, including throughout Vanderburgh County and the city of Evansville.

In fact, the State police are limited in terms of budget and the number of troopers on the force. As a consequence, they necessarily limit their activities to patrolling interstate highways and the main State arteries. Most referrals to DADS by the Indiana State Police are driving while intoxicated (DWI) complaints and simple possession of marijuana offenses, both of which generally stem from apprehension of motorists on State highways for speeding and other moving traffic violations.

Similarly, most DADS referrals by the Vanderburgh County Police are DWI citations issued to motorists on secondary county roads, as well as marijuana possession charges and illegal possession of alcohol by minors charges that stem from traffic infractions. The Evansville Police Department has primary law enforcement responsibility within the city limits. Not only do they initiate the majority of referrals to DADS, but they arrest for a greater number of offenses and thus are responsible for a wider variety of charges being diverted. Nevertheless, many DADS referrals from the Evansville Police Department are public intoxication citations.

All criminal prosecutions for State or local law violations in the county are the responsibility of the Vanderburgh County Prosecutor's Office. There is no separate attorney or prosecutor for the city of Evansville.

The Vanderburgh Superior Court is a unified trial court of general jurisdiction for the

county. It consists of seven separate divisions, each presided over by a single judge and each functioning autonomously. The Traffic and Misdemeanor Division, which has jurisdiction over all criminal infractions and offenses not felonies under State law, also administers the DADS program. During 1977, 18,000 cases were processed through this division. In 1978, partly due to a police slow-down in arrests, only 12,000 cases were processed. Exhibit 3 illustrates the process by which cases enter and proceed through the DADS program of pre-charge diversion.

According to the Presiding Judge of the Misdemeanor and Traffic Division, before the DADS program was operating, about 20 trials a month were heard for driving while intoxicated complaints. Defendants would feel compelled to go to trial because of the penalties they stood to suffer if found guilty (loss of license, increased insurance rates, court fines, and supervision). Moreover, because of the highly refined rules for arrest and prosecution of these complaints, almost all defendants so charged were in fact found guilty. With the DADS program in effect, the Superior Court now hears about one trial a month for this charge. The balance of such cases are referred, pre-filing, to DADS.

Goals and objectives of DADS

The primary purpose of DADS is to intervene at the time immediately after arrest in the problems created by the abuse of drugs and alcohol. Other program objectives include--

- Identifying the size, motive, and extent of the abuse of drugs and alcohol in the community;
- Reaching those individuals arrested on drug or alcohol charges and making available reasonable and effective alternatives to the criminal justice process;
- Developing and maintaining a network of services designed to meet the individual needs of the client;
- Supporting local law enforcement agencies in their efforts to maintain the community's health, social, and economic stability; and
- Making the citizens of Vanderburgh County more aware of the problems of alcohol and drug abuse through use of the news media, public appearances, brochures, and training programs.

The process of pre-charge diversion to DADS

The process by which an individual becomes involved in the DADS program begins at the time of arrest, when either a city, county, or State police officer arrests a person for a misdemeanor drug or alcohol offense. The defendant is then booked at a central booking unit. Following that, there are three avenues the defendant might travel:

- Bail bond. A means by which people who qualify can be released on their own recognizance without having to post a cash bond. Such release is usually restricted to persons living in the immediate area who do not have a serious criminal record.
- Cash bond. Required for those persons with a more serious record, or for those who do not live in the immediate area.
- Court. If a defendant is required to pay a cash bond but is financially unable to do so, or if the arrest is made in the early morning and the defendant is too "high" on alcohol or drugs to be released, he or she is generally detained and brought to court. The defendant will also be held and brought to court if release was not approved by a bail bond commissioner.

There are mechanisms for referrals to DADS at each of the above avenues:

- Bail bond. The individual who is being released on his or her own recognizance by a bail bond commissioner and whose record and current charge are appropriate for referral to DADS is told by the bail bond commissioner to report to the DADS office the following morning. Defendants are further warned that if they fail to report to DADS, they must report to court within 2 days; otherwise, an arrest warrant will be issued.
- Cash bond. If the defendant must post a cash bond and is eligible for referral to DADS, the Clerk's Office makes the referral to DADS at the time bond is posted.
- Court. A member of the DADS staff is in the arraignment court each morning, 6 days a week. He or she reviews the cases to come before the court and talks with those individuals who might be eligible for DADS, giving them written information about the program. If any defendant is interested in referral to DADS, the prosecutor is informed of this, and when the case is called, the judge is informed that the individual is being referred to DADS,

providing the prosecutor approves the referral. The defendant is then released and goes directly to the DADS office. Arraignment is reset for 3 weeks later, at which time the court is informed by the DADS worker whether or not the defendant is enrolled in the program. DADS enrollment thus obviates the formal filing of charges with the court by the prosecutor at the initial appearance.

Persons arrested for the following complaints may be referred to DADS:

- Operating a motor vehicle while intoxicated.
- Violation of the Controlled Substance Act.
- Public intoxication.
- Violation of liquor law.
- Visiting or keeping a common nuisance.

Individuals arrested who are not considered eligible for DADS include--

- Those arrested for offenses against a police officer or for crimes against persons;
- Individuals who have previously been through the program;
- Persons who have four or more previous alcohol arrests or one previous drug arrest within the last 3 years (with some exceptions); and
- Individuals who were operating a motor vehicle and who were responsible for a fatality or serious personal injury.

Intake

Clients referred report to the DADS office for an intake interview. The office is located in a building of professional offices near the court complex and contains a pleasant waiting area and private offices for individual counselors.

For purposes of standardization and continuity, intake interviews are generally conducted by the director. During the interview, the director explains the program and fee and determines if the defendant wants to participate in DADS. Generally, attorneys are not present for these interviews, but the person referred is free to have an attorney present or to consult an attorney after the interview but before making a final decision about program participation. If the individual referred maintains innocence, it is recommended that

he or she take the case back to court, though no formal or written admission of guilt is sought for acceptance into DADS.

During the intake interview the director talks with the defendant about the arrest and the individual's perception of the event. The particulars of the arrest and prior criminal history are explored, as is social information about the defendant, to gain some idea of the context in which the complaint has taken place.

The interviewer carefully explains the defendant's constitutional right to a speedy trial, and has the defendant sign a "waiver of speedy trial or appearance in court" form, developed by an attorney for the DADS program. The interviewer also emphasizes that the defendant can request, at any point during the DADS program, to be referred back to the court for regular court processing, without prejudice to the underlying case.

The director may feel, because of the circumstances of the complaint or the defendant's past criminal history, that the person would not be a suitable candidate for the program and will then tell the person to be in court the next day. If the defendant is suitable and wishes to participate in the program, an evaluation is scheduled.

Ordinarily, when a complaint involves serious bodily injury to a complainant (defined as the complainant being admitted to the hospital), a defendant is not eligible for diversion unless the victim signs a waiver. Also, when there is excessive property damage with no ability on the defendant's part to make restitution, the defendant may be diverted only if the victim signs a waiver.

The arrest record or details about the complaint may not always be available at the time of the intake interview, so further screening of these factors is done during the subsequent evaluation interview.

Assessment of fees

The size of the fee charged an individual participant is dependent on the nature of the offense and on income level. It is at parity with what it would cost the individual to go through the court process. Currently, individuals arrested on misdemeanor offenses relating to controlled substances are charged \$50; individuals arrested on felony offenses relating to controlled substances are charged \$200.

DADS staff feel that the requirement to pay a fee assists a program participant to face

the reality of a substance abuse problem, and the actual payment, like restitution, is an indication that the divertee is beginning to take responsibility for the problem.

Fees are paid directly to DADS staff, all of whom are bonded. The divertee is given a receipt for each payment. Collected fees are put into a special bank account until the end of the month, when they are forwarded to the county.

Evaluation and Interpretation

During the evaluation interview, the counselor attempts to assess the referred individual's pattern of substance abuse, dangerousness to the community, and motivation for treatment. Persons who are overtly psychotic, or who have been convicted of multiple felonies, or whose complaints involve serious personal injury to the victim or extensive property damage are automatically screened out during the intake or evaluation interviews, but more subtle case-by-case decisions are required when persons referred appear "on paper" to be eligible for DADS but there exist indications that such persons would not cooperate or benefit from diversion and should be referred back to court.

During the interview the evaluator carefully notices the degree to which the defendant uses defense mechanisms such as denial or projection to avoid facing up to having a substance abuse problem. The evaluator is looking for some acceptance of responsibility by the client for the arrest, and some motivation in the client to seek help.

The counselor, who has a copy of the client's arrest account and past record, uses confrontation techniques with clients who are attempting to deny problems that are evident. However, often with pre-chronic or chronic substance-abusing individuals, it is difficult to work through the client's resistance to admitting a problem. If it is impossible to gain much information from the client, the counselor may ask the client to sign release of information forms so he or she can contact other persons for information.

Many of those referred to DADS for drug complaints are charged with possession of marijuana. The evaluation will attempt to ascertain in these cases if the complaint stems from experimental or recreational usage, or from a psychological dependency on marijuana.

The evaluators are finding that many of the clients they are seeing, regardless of the complaint for which they are arrested, and

regardless of whether the immediately apparent drug of abuse is alcohol, are polydrug users. The focus of the evaluation interview, therefore, is not so much on the complaint for which the person was arrested, as on the person's pattern of substance abuse.

If the individual is not considered suitable for the program, the evaluator will discuss the reasons for this and will refer the person back to court. If the evaluator thinks the client is acceptable, he or she will discuss what type of treatment is being recommended and what the goals of treatment will be. At this time, a "contractual agreement" form and a "consent to no prosecution" form are signed, and the client is referred for treatment.

For the few clients diverted who were arrested for a felony drug complaint, a more intensive supervision and counseling program is worked out. The client remains under DADS supervision for a year.

Treatment options

Although DADS staff see some clients for counseling, the program primarily purchases treatment services from providers in the community and monitors the quality of these services. Contracts with agencies are based on a fixed cost per individual, with the amount depending on the level of treatment.

The three levels of treatment contracted for and the type of client referred to each area follow:

- Education. For persons using drugs and/or alcohol for experimentation or recreation.
- Group interaction services. For clients starting to use drugs and/or alcohol as a means to cope with stress.
- One-to-one counseling. For persons whose substance abuse has a serious impact on their functioning.

Contracts with agencies are for services that last about 6 weeks per individual client. Any one agency may offer various service options.

Review and termination

When a client completes the treatment program, he or she is asked to complete an evaluation form with rating scales for the DADS program and for this treatment agency. The client also talks with a counselor at DADS at this time.

The results of these evaluations are compiled regularly, providing DADS staff with data for their monitoring of agencies with which they have service contracts.

Successful termination for an individual client arrested for an alcohol or drug misdemeanor complaint comes 6 months after the date of the intake interview; for those arrested for a felony, it comes a year afterward. If the client has successfully completed treatment, paid the fee, and not been rearrested, the "consent to no prosecution" form is signed by the prosecutor and a copy mailed to the client. The case file is then moved from the active to the inactive file.

If a client does not pay the fee or cooperate with treatment, he or she is usually given a warning and counseled before the case is sent back to the prosecutor.

Staffing and budget

Staff for DADS currently consists of seven persons. These are a director, deputy director, research assistant, two evaluators, and two clerical/administrative staff.

The budget ceiling on the DADS program set by the county is currently \$130,000. This is roughly the amount that it is anticipated will be collected in fees by the program, so DADS is essentially self-sufficient financially. In 1978, 40 percent of the budget went toward administrative costs; 40 percent, to 800 evaluations and 1,500 units of direct service; and 20 percent, to purchase of 600 units of direct service.

Drug Diversion Authority, Genesee County, Michigan

Developed in January 1972, under the direction of the Genesee County Prosecutor, the Drug Diversion Authority (DDA) is a law enforcement/community-based treatment interface for processing selected adult drug-abusing defendants. The program is designed as an alternative to prosecution for persons charged with certain offenses and those who use, abuse, or are addicted to illicit drugs. Rather than being branded as "criminals" and having arrest and conviction records, which would have a negative impact on future employment, DDA participants are referred to counseling, therapy, or residential treatment. An effort is also made by the staff of the DDA, in conjunction with various area community services, to help the DDA divertee to obtain employment, education, and/or other constructive activities that will assist him or

her to remain arrest free. Participants may be required to undergo treatment as a condition of diversion for up to 1 year. Those first offenders who successfully complete the DDA program never have their complaints filed and are entitled to the return of all records of their arrest. Participants who have prior records also benefit when they successfully complete the DDA program by the dismissal of charges against them; however, arrest records are not expunged for these participants.

DDA has always been a part of a larger organization. It grew out of a diversion program for nonviolent felony offenses--the Citizens' Probation Authority (CPA), the first formal program of pre-trial diversion in the United States, which was begun in Genesee County in 1967. Until 1971, CPA accepted and served drug-abusing pre-trial divertees as well as those not displaying a drug problem. When the Law Enforcement Referral Program was established in Genesee County in 1971 to assess drug-abusing defendants for the criminal court's pre-sentence investigations, it was decided by the county prosecutor and the director of CPA that persons charged with drug and drug-related offenses should be diverted to the new program rather than to CPA, since the staff of the former was specially trained to work with drug abusers. In January 1972, the Drug Diversion Authority became a reality as a separate diversion program located administratively within the Law Enforcement Referral Program. DDA has essentially retained the same programmatic configuration.

Drug abuse patterns

Located near Detroit and Saginaw--cities through which large amounts of drugs enter the United States--Flint is also a city with a significant drug abuse demand reduction problem. Formal epidemiological surveys of the nature and extent of substance abuse have not been performed, but it is estimated by law enforcement officials that there are about 3,400 heroin addicts, not to mention other drug abusers, in the city. Personnel involved in service delivery programs agree they are presently seeing many sophisticated polydrug abusers who have been involved with street drugs for years, previously with heroin as the drug of choice. They also are finding a significant level of particular types of substance abuse among the very young and the elderly in all socioeconomic groups. They have noted a rise in abuse of prescription drugs, partly attributable to the poor quality of heroin available to street "junkies" in the area but also to insurance coverage for such prescriptions.

Interface with criminal justice actors

The adult criminal system in Genesee County handles defendants aged 17 and older. If the charge is a felony, the case is bound over at a preliminary hearing to the Circuit Court, which handles all felonies within Genesee County.

Arresting officers may be city police (Flint or other cities), county police, or State police. After apprehending and booking a defendant, the police officer writes up an account of the arrest, runs a record check, and, in cases that might be eligible for DDA diversion, confers with the assistant prosecutor assigned to handle diversion screening. The prosecutor decides, based on uniform eligibility criteria, whether a given case is to be referred to the Drug Diversion Authority (DDA) or to the Citizens' Probation Authority (CPA), or not diverted at all. If the case is to be diverted, the prosecutor fills out a referral form, and the police officer arranges for release of the defendant from the city or county jail. If the prosecutor decides the case is not eligible for diversion, a warrant is issued, and the defendant enters the usual criminal justice process after arrest--in Genesee County this will be either citation release, release on bond, or continued incarceration until disposition.

Goals and objectives of DDA

The deferred prosecution approach involves the acceptance of the premise that persons charged with serious offenses are often not patterned criminals and that early intervention to inhibit development of a criminal lifestyle may be more productive for such persons than a punishment-oriented response. One of the goals of the twin DDA and CPA programs, therefore, is to assist the "lawbreaker" who is not a "criminal" with whatever situational problems led to arrest so that he or she will not be further involved in arrest-provoking activities.

Another goal of programs of the CPA/DDA type is to assist the first offender who is arrested to participate in treatment and then to have his or her arrest record expunged. Particularly when the arrest is for a felony, this can be an important service to a client, and have farreaching consequences.

To summarize, the goals of DDA include the following:

- To divert the accused from the traditional criminal justice system to counseling, education, training, employment, and other positive life activities.

- To provide a resource for the entire legal system.
- To break a beginning cycle of crime and a pattern of failure by participants.
- To effectively use community services and resources, the inaccessibility of which may have contributed to the criminal acts committed.
- To allow first offenders to avoid the stigma of arrest and conviction records.

Assessment and treatment referral process

The prospective DDA participant is seen by DDA staff for a confidential interview. During the interview, the DDA program is explained in detail, and the individual's right to elect whether to enroll or to require the prosecution to test the sufficiency of its case by filing charges with the court is carefully explained. The defendant is given a form to read about constitutional rights (or the counselor may read it aloud), and the individual then completes a constitutional rights questionnaire.

During the interview, the counselor takes a careful history of drug usage, but also attempts to assess the defendant's attitude toward cooperation with DDA and adjustment in all areas of the individual's life and notes this information on an agency form. The severity of the previous arrest and/or conviction record and the nature of the complaint are also examined.

The DDA intake counselor then decides if the candidate is suitable for DDA, and, if so, whether there is a need for educational counseling, outpatient therapy, or inpatient treatment, and which community treatment program would be appropriate. The recommended treatment plan is then discussed with the defendant. If he or she agrees to participate in lieu of prosecution, a standard form for the prosecutor's record is signed, stating agreement to seek treatment with the recommended agency. The defendant then also signs a release of information form, allowing DDA to send selected performance and attendance information to the County Prosecutor's Office and other designated agencies.

The counselor calls the community treatment agency to which the new divertee will be referred and sets up an appointment. Thus, the DDA participant knows before leaving the DDA office the date, time, and place of the first appointment with the treatment program.

The DDA intake counselor sends copies of the evaluation forms to the treatment agency. If the client does not keep the scheduled appointment, the treatment agency notifies DDA of this fact. If the client does keep the appointment, the proposed treatment plan and the name of the divertee's treatment counselor are returned to DDA.

After the interviews, a clinical psychologist reviews the DDA intake counselors' writeups to insure that clients with serious emotional and adjustment problems that might warrant a psychiatric or psychological assessment receive appropriate referrals. DDA notifies the county prosecutor of all enrollments following the acceptance by both the prospective divertee and the program. Individuals who are not considered suitable, or who elect upon further reflection to pursue their case in court, are referred back to the county prosecutor's office for renewed criminal justice processing. This diversion practice is illustrated in exhibit 4.

Followup and termination

After a DDA client has begun treatment with the community treatment agency to which referred, the individual is required to report to a DDA counselor monthly for an assessment of progress. The DDA counselor also receives monthly reports from the servicing treatment agency.

If the client is having difficulties with educational or vocational problems, he or she may be referred to the vocational and rehabilitation specialist at the County DDA Intake, Assessment and Referral Center.

The DDA staff receives copies of police arrest sheets, and if a client is arrested, this is grounds for termination from the DDA program and return for prosecution. A DDA program participant who is convicted of a felony is automatically terminated from the program and the case returned to the prosecutor.

The DDA program coordinator estimates that about 90 percent of clients are in treatment for a period of 9 to 10 months. If a client successfully completes the treatment prescribed by DDA, a "termination request notice" is sent to the county prosecutor's office. If the request is granted, and the client is a first offender, a "request for expungement of fingerprints" is sent to the police department responsible for the arrest, requesting the return of local, State, and FBI arrest records. (The prosecutor has legal authority to expunge records for first offenders.) When the police receive these

records, they are forwarded to DDA, and DDA then gives them to the client.

If a DDA participant already has a conviction record, an entry is made on the arrest records that the complaint for which the person was referred to DDA was dismissed. Arrest records are not, however, expunged.

Treatment Alternatives to Street Crime, Marin County, California

Marin County was one of the first communities in the Nation to accept the federally designed and funded criminal justice/drug treatment initiative called Treatment Alternatives to Street Crime (TASC). A 3-year pilot TASC program was implemented in 1973 with Law Enforcement Assistance Administration (LEAA) funds. The overall purpose of the program was to build improved linkages between the criminal justice and treatment communities so as to better identify, refer, and monitor drug-abusing defendants coming through the county's criminal courts. The overall emphasis of the national TASC program of those early years was the identification and rehabilitation of heroin addicts. But because the drug abuse problem in Marin County even then was not solely a heroin problem, a poly-drug abuse orientation for Marin County TASC was present from its inception. As a corollary, Marin County TASC developed linkages early on with a wide variety of community-based treatment programs of all modalities and did not overemphasize reliance on methadone treatment. These factors, coupled with Marin County's tolerance for innovation and experimentation and the array of local treatment resources already available to draw upon (something not always present in communities attempting to implement TASC), tended to make the county's TASC program unique among early TASC efforts.

In 1975, after completion of an independent evaluation by an outside party, the Marin County Board of Supervisors voted unanimously to institutionalize TASC in the county Department of Health and Human Services. In 1977, the county Health and Human Services director lodged TASC in the Drug Unit of Community Mental Health Services, with the TASC program director reporting directly to the county Drug Administrator.

TASC was successful in not only gaining the support and cooperation of criminal justice officials at the program's inception but also in expanding such interaction and communication over the years. Strong commitments for interagency cooperation that the initial program director established with department

heads in corrections and in the treatment community were broadened by his successors after 1976. Similar linkages were built, through personal contacts and proven rehabilitative results in individual case referrals, with all judges of the Municipal Court, the newly elected sheriff and newly elected district attorney, as well as with individual police chiefs, defense attorneys, and line probation and parole officers.

TASC operations in the context of Marin County's drug abuse problem

By all accounts Marin County has a serious drug abuse problem. The geographic position of the county facilitates illicit drug distribution and availability. Its proximity to the port of San Francisco, and thus to Pacific ship traffic, as well as its own irregular shoreline of remote bays and inlets, results in a number of major illicit drug import and distribution routes running through the county.

Additional factors that have contributed to a high degree of drug abuse in Marin County are the extreme affluence of its population and the disproportionate number of juveniles and young adults among its residents. Recreational drug use in such age groups carries little or no social stigma, and, according to officials interviewed, is the rule rather than the exception. Even among older, more conservative county residents, substance abuse is common. Alcohol--alone or in combination with marijuana, speed, or cocaine--is by far the most common drug abuse problem in the county and occurs heavily in all age and socioeconomic categories.

Second in frequency only to alcohol as a drug of abuse in Marin County is cocaine. Officials interviewed indicated that snorting of cocaine by adults and juveniles alike is commonplace, often in conjunction with alcohol consumption. Despite the affluence of the community, acquisitive crimes such as home and auto burglaries are often directly traceable to efforts to steal the drug itself or to steal property with which to purchase it. The use of methamphetamines and phencyclidine (PCP), once of epidemic proportions in the county, has reportedly fallen off drastically due to public education campaigns, including public service announcements about the hazards of speed and PCP.

Heroin use, while never the primary drug abuse problem, remains a serious concern in Marin County. By means of the "Baden formula," the county coroner in 1977 estimated that there were 6,000 heroin addicts in the county. Though here, as elsewhere, poly-

drug abuse patterns in recent years have superseded previous heroin abuse patterns (due largely to nonavailability of the latter), police officials indicate that heroin abuse is again on the rise in Marin County. It is believed that this is partially due to a turning away from the use of speed and PCP. However, it has been suggested that organized criminal elements from Mexico have recently moved into the county and in the process have increased the availability of and demand for Mexican "brown" heroin.

Despite its exceptional affluence and a permissive community attitude toward psychoactive drug use, the connection between drug abuse and crime in Marin County is a real one. During 1977 40 percent of the approximately 8,000 adult arrestees booked into the Marin County Jail were charged with direct drug possession or public intoxication offenses, and another 16.5 percent were charged with drug-related property crimes.

Interface with primary criminal justice actors

There exist 14 separate law enforcement agencies in the county, 12 of which are independent police departments of various incorporated towns. Typically, each consists of 20 to 30 sworn, uniformed officers, as well as a juvenile officer and administrative personnel, and are responsible for enforcing State, county, and local laws within their respective jurisdictions of 12,000 to 30,000 persons.

In addition, State and national parks in the county come under the law enforcement responsibility of the California State Police and the U.S. Park Service, respectively. Shared jurisdiction with the county sheriff's office occurs in these cases.

Finally, the Marin County sheriff's office has broad policing responsibilities. The office is responsible for administering the county jail, for patrolling county highways, and for general law enforcement in all unincorporated areas. The office has a strength of 150 employees, of which approximately 65 are patrol officers, 2 are juvenile officers, 1 heads a crime prevention unit, and the rest are administrative personnel.

Occasionally, the various local police departments and the Marin County Sheriff's Office have not worked well together. Relations between the various local police departments, which are loosely organized through the Marin Police Chiefs' Association, and the sheriff's office have reportedly improved.

All prosecutions for adult and juvenile misdemeanor and felony violations of State and county laws are the responsibility of the Marin County District Attorney's Office. With the recent election of a new district attorney who had previously been an assistant prosecutor in the office, a shift to more progressive policies, including more widespread use of diversion, has been observed.

Felony trials are the responsibility of the Superior Court for Marin County, which consists of six judges. Misdemeanor trials, as well as all arraignments and preliminary hearings, are the responsibility of the Marin County Municipal Court. The latter consists of four judges plus a juvenile hearing magistrate.

Goals and objectives of the Marin County TASC

The general goals and objectives of Marin County TASC are as follows:

- To provide screening, diagnostic assessment, advocacy, intervention counseling, referral, and followup services for substance abusers, with special emphasis on those involved with the criminal justice system.
- To interface and coordinate the efforts of Marin County criminal justice agencies with those of the community's drug treatment programs and thus provide an integrated, unified system for the rehabilitation of offenders.
- As an outgrowth of this intervention and coordination, to have an impact on the system to assist individual offenders to make changes, thereby reducing recidivism, and by an ongoing process of advocacy and education to steer the criminal justice process away from heavy reliance on incarceration and the punitive approaches that have demonstrated their ineffectiveness in changing human behavior.

In order to realize these goals, TASC has implemented three separate service components:

- The Sentence Alternative Program, for post-conviction probation and parole clients.
- The Penal Code section 1000 Pre-Trial Diversion Program, for post-arraignment diversion referrals from court and prosecutor.

- The Information and Consultation Service, which, aside from performing a community education function concerning aspects of drug abuse, provides case consultation and accepts "informal" referrals for services from area police departments, sheriff's deputies, private attorneys, etc.

Pre-arrest and pre-charge police referrals would fall within the Information and Consultation Service function, though referrals to TASC for services through this channel are not processed differently from those who enter through the other two avenues. The flexibility of a linkage mechanism such as TASC lies in its ability and willingness to accept referrals at any and all points in the criminal justice process and to diagnose, refer, and monitor them equally effectively, regardless of the source of intake. This is illustrated by the recent interest in early diversion demonstrated by various county police departments and the sheriff's office, to which TASC has responded by accepting "informal" pre-charge referrals, as described above.

Special goals and purposes of pre-charge police referral, as articulated by police officials interviewed, are as follows:

- To counter the overbroad reach of the criminal law in situational encounters between police and otherwise law-abiding persons who come into conflict with the law as a result of being under the influence of drugs.
- To further departmental crime prevention goals by early identification and referrals to treatment of drug abusers, who are comparatively more likely to recidivate than other offenders in the absence of treatment.
- To use the opportunity of an arrest to "jolt" substance abusers into confronting their problem and to bring a degree of pressure to bear on them to seek treatment.

Arrest and referral

Police and sheriff's office referrals to TASC are not part of the "core" TASC program, i.e., sentencing alternative or P.C. section 1000 court diversion cases. Moreover, they are not formal referrals in that there is no paperwork sent to TASC initiating the referral nor is there an enforceable criminal justice hold on the client, nor a required term of treatment. Referrals are made by uniformed and plainclothes officers, in lieu of arrest (least common), in lieu of booking (utilizing

the mechanism of Penal Code section 849(b) "hold"--which permits drug addicts to be held for up to 36 hours for medical purposes), and/or post-booking but pre-filing. In each instance the procedure is generally the same: The apprehending officer or the chief calls TASC and asks a staff member to come to the jail to do a diagnosis and referral interview or releases the defendant on the condition he or she reports to TASC and so informs TASC by telephone. Exhibit 5 illustrates this process.

A pre-placed interview that does result in a diagnostic assessment precedes a referral in each instance of police pre-charge, as it does for other kinds of referrals. Such a pre-placement assessment can occur either at the jail, if the defendant is still in custody, or at the central TASC office, if already released. Thereafter, referral for treatment to the selected private sector treatment program occurs.

Review and termination

Given the nature of pre-charge police referrals to TASC, neither can fixed term in treatment be required nor can a real criminal justice hold on the diverted defendant be sustained. Indeed, for this reason, as well as because he feels that the practice of police diversion invades the domain of prosecutorial discretion, the county district attorney does not advocate the practice in adult criminal cases. Sheriff's deputies interviewed cited the effectiveness of the practice as a crime prevention technique in which the arrested drug abuser is known personally to the officer. Given the small size of most Marin County communities and police departments, as well as the moral authority of the police, the deterrent effect of the practice is reported to be effective when coupled with regular followup.

In this regard, regular followup with TASC and, in turn, the defendant, by the apprehending officer is facilitated by requiring releases of treatment progress information to the arresting officer and by TASC's willingness to act as go-between for the police officer and the treatment program with regard to "informal" assessments of progress.

"602" Youth Diversion in Marin County, California: Novato and San Anselmo

Under the statutory authority of California Welfare and Institutions Code sections 601 and 602, local police departments have broad discretion to divert rather than to refer to

Juvenile Hall (e.g., book) on a wide range of status offenses (601 diversion) as well as juvenile misdemeanors and felonies (602 diversion). Given the volume of serious juvenile property crime in the county, as well as drug possession and sale, 602 pre-charge diversion is a significant dispositional option and one that is widely used, though differently applied in different communities. Both the Novato Youth Service Bureau (YSB) and the Departmental Probation Program of the San Anselmo Police Department are examples of 602 diversion in operation, in both instances diverting significant numbers of drug- and alcohol-abusing juveniles annually. Exhibit 6 illustrates this process for Novato, which closely parallels that for San Anselmo as well.

In terms of origin and development, the Novato program was established in 1973, partly in response to the rise in the proportion of serious crime caused by juveniles and partly to act as a social-service-oriented "buffer" between the typically hardline Novato uniformed patrol officers and juvenile arrestees. The program views itself as totally separate functionally from the law enforcement responsibilities of the uniformed force though the youth counselor (i.e., program director) is a sworn officer. Strict confidentiality of information received from clients is maintained, and the YSB is separately housed and managed. In contrast, the San Anselmo Police Department's response to the section 602 mandate was to implement a diversion process rather than program. Housed in police department offices, Departmental Probation is administered by a youth officer whose law enforcement and counseling roles are equally visible. The youth officer admits to using the threat of renewed prosecution not only to insure compliance with the conditions of diversion but to obtain information about other juvenile crime in the community.

"602" youth diversion in the context of Marin County's drug abuse problem

As noted earlier in the description of the Marin County TASC program, drug abuse among adults and juveniles in the county is widespread and growing. Further, law enforcement officials estimate that more than half the crime in the county is drug related. Significantly, most of this crime--one youth officer interviewed suggested 70 percent--is committed by juveniles.

Indeed street crime in Marin County is largely juvenile crime. Aside from possession of illegal substances, which in some communities constitutes the largest single category of non-status offense juvenile crime, burglaries,

shoplifting, and vandalism make up the bulk of juvenile 602 offenses, i.e., the equivalent of misdemeanors and felonies for adults. It has been estimated that 53 percent of all burglaries are committed by juveniles, that 70 percent of all juvenile burglaries are drug related, and that 50 percent of all juvenile 602 offenses are drug related.

Primary criminal justice actors

As noted in the earlier discussion of police referrals to the Marin County TASC program, there exist 14 separate local police departments in the county, 1 for each incorporated area, plus the county sheriff's office, which has law enforcement responsibility for all unincorporated areas. Each derives juvenile pre-charge diversion authority from statutory sections 601 (status offenses) and 602 (misdemeanor and felony offenses) of the Welfare and Institutions Code, as noted earlier.

Within this broad mandate to divert selected offenders prior to juvenile intake (booking), each police department in the State has broad discretion with regard to implementation procedures, and service delivery for diverted youths. The two police departments selected, Novato and San Anselmo, were chosen in part because both have given serious attention to the development of pre-charge juvenile diversion programs. In addition, however, these two departments have approached implementation of their section 602 mandates very differently. They were thus also selected for site visits and description so as to illustrate contrasting approaches.

Goals and objectives of "602" police diversion

As laid out in its 1975-1978 report and as articulated by the Youth Service Bureau's director, the goals of the Novato YSB are as follows:

- To establish a local, noninvestigative youth-serving unit designed to accept police and community referrals for diversion away from the juvenile justice system.
- To establish a counseling program for youths and families to address
 - delinquent and/or antisocial behavior on the part of a youth, and
 - underlying issues and conflict within a family that may be prompting the youth's behavior.

- To establish a program aimed at delinquency prevention and youth development, singularly and in cooperation with other public and private agencies.
- To promote public relations among the police, youths, and community and to serve as an informational source for youth-related issues.

In order to achieve these goals, the Novato YSB, now in its sixth year of operation, screens almost all juvenile cases for diversion, accepting roughly 80 percent. Specific FY 1978-1979 project objectives include--

- Maintenance of an initial Probation Department referral rate (i.e., diversion rejection rate) at less than 20 percent of total juvenile arrests;
- Maintenance of an 83 percent perception of "helpfulness" among surveyed juveniles and parents;
- Maintenance of client recidivism at 6 percent or less; and
- Maintenance of referrals from other than police sources at 10 percent of total divertee population.

In contrast, the articulated goals and purposes of the Departmental Probation Program of the San Anselmo Police Department are oriented more toward law enforcement and case management:

- To screen and divert from the Juvenile Hall (i.e., booking) all but the most incorrigible repeat offenders.
- To utilize the mechanism of Departmental Probation to "hold a hammer" over the head of a diverted juvenile and thereby to facilitate adherence to a program of counseling and monitoring by the youth officer.

- To provide counseling and social service referrals, as needed, to juvenile divertees.

Initiation of the diversion process

In Novato, a town of 40,000 persons with 52 uniformed officers, 3 procedural situations can result from the apprehension of a juvenile. These are as follows:

- The juvenile can be taken into custody and transported to Juvenile Hall for booking. Thereafter the case may be referred to probation, which decides whether to

seek petitioning by the prosecutor or to informally adjust.

- The juvenile, though technically arrested, can be simply reprimanded and released to parental custody. The case is then closed.
- The juvenile can be issued a citation to appear at the Youth Service Bureau (YSB) in the company of his or her parents.

Many first encounters result in the second course of action. As a rule, only chronic recidivists are cited to Juvenile Hall; many first encounters result in a reprimand and release. The bulk of juvenile arrests, however, go to YSB via citation. (Exhibit 6 illustrates this process.)

In San Anselmo, a town of 14,500 persons with 17 sworn officers, all juvenile arrests are referred automatically to the juvenile officer, except for first encounters, which, as in Novato, generally result in reprimand and release. The juvenile officer makes all decisions to refer to Juvenile Hall, generally on the same criteria as used in Novato. The referral to the juvenile officer can be custodial or citation release. During the 1979-1980 school year, the San Anselmo youth officer plans to provide a book of citations to the principal of the local high school, who will utilize them as would an apprehending police officer.

Service delivery and counseling

Both the YSB and the Department Probation Program rely primarily on counseling and supervision by the youth officers. Referrals out for services from YSB tend to be to education and prevention services located in and around Novato. Alcohol education and treatment programs are also utilized.

As is the case with the Novato program, referrals for services by the Departmental Probation Program tend to be to specialized juvenile prevention and education programs. However, because the incidence and prevalence of non-marijuana drug abuse in San Anselmo is higher than in Novato, referrals for drug treatment are also commonly made.

Review and termination

Termination from the Novato YSB does not occur after a fixed term but, rather, is a treatment or social service decision geared to the needs and progress of the individual client. In contrast, departmental probation in

San Anselmo is generally for a fixed term of months--typically 6--and features mandatory monthly check ins.

For both programs, satisfactory compliance for the stated term of participation results in dropping of charges and no record of the arrest being made outside the police department. Failure to satisfactorily complete diversion or a rearrest can result in termination and a return of the case to juvenile intake for formal juvenile justice processing.

With regard to periodic reviews of progress, length of time in diversion, and general crime prevention orientation, the YSB's philosophy parallels that of police officers utilizing TASC. However, the YSB always has the option--albeit seldom exercised for philosophical and logistical reasons--to revoke diversion and refer the case to juvenile probation for renewed prosecution. The extent to which that has had an impact on diversion performance by clients over the years is not known, though the high retention and successful completion rates for the program strongly suggest this factor has a bearing. The case review and termination process for the San Anselmo program is more akin to that found in post-arrest adult diversion: Regular reporting requirements for a fixed term result in dropping of charges or renewed prosecution.

Staffing and budget

The Novato YSB maintains a staffing pattern consisting of a plainclothes youth officer, who functions as the counseling director; a professional (licensed) counselor, with a master's degree in guidance and counseling; three student interns who are working toward their master's degrees in the same field; and a full-time secretary. Like TASC, the YSB was impacted by Proposition 13 and currently depends on "AB 90" State monies, plus CETA funds, to justice agencies to offset Proposition 13's effects.

In contrast to the two models described above, the San Anselmo program consists of a single full-time youth officer, who is a sworn officer salaried out of department funds and who is required to rely on general department physical facilities and clerical staff. No adverse effect from Proposition 13 or other budget cuts was reported imminent. Staffing and budget are the minimum necessary to perform the function, although the addition of a social worker/intern to assist the youth officer is in the planning stage.

Social Action Workshop, Philadelphia

The Social Action Workshop was begun in 1973. In 1974, the Managing Director's Office of the Philadelphia Department of Public Welfare began funding, and the program has continued to operate under its auspices. The Workshop thus is a secondary prevention program funded by the City of Philadelphia. Its predominant objective is to help the juvenile who is beginning to take psychoactive drugs "recreationally" to find constructive alternative activities that prevent increasing reliance on drugs. Many of the youths involved in the program have been referred by police as an alternative to arrest. Others have been referred by schools, the juvenile court, or through friends.

The Social Action Workshop was originally designed to offer prevention services only to adolescents and young adults with drug and alcohol problems. However, the Workshop's Teens in Action Program has recently widened its clientele to include adolescents without significant adjustment problems. This change means that youths referred by the police mingle not only with "problem" youths with similar problems referred from other sources, but also with youths who are community and school leaders and, thus, excellent role models. The two components--Teens in Action, which is the helping service unit for drug-involved youths discussed here, and an alcohol prevention program for young adults--work cooperatively in individual cases to advance overall program goals.

The Social Action Workshop's treatment program is based on a drug-free, nontherapeutic "social action" approach that advocates changing a person's surrounding situation in order to change the individual. Through involvement in seminars and work study programs and field trips to other cities, the Social Action Workshop's Teens in Action participants are exposed to experiences designed to widen their horizons, challenge them, and increase their competency in dealing with adolescent development tasks. The program is not designed to deal with hardcore drug addicts. Therefore, participants referred by the police are usually having difficulties with prescription drugs or marijuana and have been picked up on first-time possession or sale complaints.

Juvenile drug abuse in Philadelphia

Social Action Workshop treatment personnel report that young people throughout the Philadelphia metropolitan area are using marijuana, PCP, pills, and alcohol. They and police have noted increasing usage in the

schools and at local teenage hangouts such as fast food restaurants in urban and suburban neighborhoods. Parents, especially the more affluent ones, often are unaware of their children's involvement with drugs, or if they are aware of a drug problem, are uncertain about how to deal with it. Their child's pending arrest and a confrontation with detectives of the Philadelphia Police Department's Narcotics Unit are typically traumatic for parents.

Police pre-arrest diversion to the Social Action Workshop

About half the clients in the Social Action Workshop are referred by police. Although this system of referral is informal, it results in a steady flow of clients to the program.

A juvenile's entrance into the Philadelphia juvenile justice system for a drug complaint begins with a police officer finding the youth in possession of an illegal drug. The officer then brings the juvenile to the Narcotics Division of police headquarters for an interview, with his or her parents, by a juvenile narcotics officer; no arrest in the official sense has yet occurred. There are presently three teams of two officers each assigned to Juvenile Narcotics. None of them wears a uniform. When a youth is brought in on a drug complaint, the narcotics officer on duty notifies the parents to report to the police station, investigates the youth's prior arrest record, and processes the evidence by sending the drugs to the laboratory for analysis.

When the parents arrive, the parents and the juvenile are apprised of their rights, and they sign a form acknowledging this. The officer then helps the family work through the reality of the juvenile's involvement with drugs. Police try to focus on the fact that the family has a problem, rather than placing all blame on the juvenile.

If after the interview the officer decides to arrest the youth, the paperwork is processed and the child is sent to the Youth Services Center (booking center), where a decision is made whether or not the child will be held in detention. The next day a preliminary hearing is held, attended by a probation officer, a police representative, the juvenile, his or her parents, and a stenographer. The police report is read, and the case may be adjusted or sent to the Family Court Division. If the case is sent to Family Court, an adjudicative hearing is held 5 to 6 weeks later. If the juvenile is placed on probation, he or she will be assigned to a probation officer whose caseload consists of 300 to 400 cases.

If, on the other hand, the youth appears to be a good candidate for referral to the Social Action Workshop, rather than for processing through the court system, the police officer gives the parent information about the program and sends the juvenile home with a warning. If such a referral is made, the police officer makes out a formal police contact record, but there is no record made of an arrest. He or she then notifies the Social Action Workshop of the referral and maintains contact with the program about the progress of the juvenile. Exhibit 7 illustrates this pre-arrest police diversion process.

In Philadelphia the court system is so overburdened with cases that minor drug complaints receive little attention. The strategy of police referral of drug users to the Social Action Workshop often means that the drug-abusing individual receives more and quicker treatment attention than if processed through the court system. The court system thus is relieved of processing first-time offenders who do not have serious drug problems but who do have supportive community ties.

The strategy of police officer referral appears to make efficient use of personnel experienced in detecting drug addiction. During interviews, an experienced juvenile narcotics officer can gain an impression about the severity of a youth's problem with drugs and about the stability of the youth's family, and can utilize this information to make an educated judgment about the advisability of channeling a youth into the criminal justice system or into the drug abuse treatment system. The officer can also use the interview to counsel the parents of youths with drug problems, helping these parents work through their reactions to the situation, educating them about the realities of drug abuse, and recommending possible courses of action. The police officer who decides to refer a case to the Social Action Workshop can also talk with the family about the reasons for the referral and what they might expect from the program.

Social Action Workshop intake process

The diverting narcotics unit detective calls the Social Action Workshop to inform staff about each referral made to it. As noted above, however, the parents of the juvenile are required by police to call to make an appointment to talk with a counselor about their child's participation in the program. When parents call for an appointment, the counselor talks with them by phone and arranges an intake interview. The initial interview may or may not include the juvenile. After this intake interview, at which time

limited releases of information for police are presented to and signed by the parents as well as by the juvenile, participation in the program commences.

Service delivery process

Participation in the Social Action Workshop is based on the premise that if a juvenile has a drug problem, there is generally an environmental problem present. If the context of social interaction can be changed, the individual's antisocial or dysfunctional behavior, including drug usage, will also change. Treatment activities are designed to be non-stigmatizing and to provide positive experiences that help youths develop skills that will assist in achieving social adulthood.

Activities planned by the Social Action Workshop staff include 4-day seminars in Washington, D.C., or New York City, summer minicourses, and volunteer work activity. These programs are meant to be stimulating and attractive to a general youth population and to attract a variety of types of participants. In fact, why or how a juvenile became involved in the program--whether referred by the juvenile justice system or as a voluntary walk-in--is not focused on during these Teens in Action activities.

The 4-day seminars each feature a topic of concern to contemporary society. Topics in the past have included energy, human rights, world population, world hunger, world peace, etc. About 20 youths are enrolled for each trip, each paying a low fee for food and lodging. Emphasis is placed on the students' assuming responsibility for arranging their own transportation, selecting their own food, etc.

During the first day in New York City or Washington, seminar participants tour the city. They are then assigned to teams, and each team is given a schedule of interviews previously arranged by Social Action Workshop staff with experts on the seminar topics. For example, in Washington, teams often interview Senators and Representatives, and in New York they talk with diplomats at the United Nations. The team conducts interviews as a group and then reports back to the larger group in the evenings about what they have learned. Each team's performance is scored on team cooperation and on the team's ability to utilize each team member. The winning team later discusses its experiences in the seminar on a local Philadelphia radio show, or is interviewed for a newspaper article, or receives some similar prize.

Minicourses are offered during the summer. These meet two or three times a week and follow the format of the seminars in terms of teams and interviewing. However, all field experiences here take place in Philadelphia. For example, a course on energy might include field trips to a nuclear plant, oil refineries, or the like.

Since seminar participants are not charged tuition, they are expected to do 10 hours of volunteer work, either at the Social Action Workshop or with other programs, after participation in a seminar.

The seminars and work/study program are seen as providing teens with a number of opportunities to experience and experiment with new ways of interacting that are conducive to achieving social adulthood. These include--

- Opportunities to be responsible and act in a mature fashion away from their parents;
- Being exposed to new kinds of careers they can pursue and gaining experiences that become part of their resume for application for college;
- Providing the opportunities to make friends with students from many different backgrounds, enabling some teens to make the transition from their previous associations with adolescents with little ambition to associations with teens who are handling their lives responsibly; and
- Providing teens the opportunity to make worthwhile contributions to their community.

Review and termination

During these activities, Social Action Workshop counselors observe the individual participant's functioning and may consult with the parents about the youth's coping skills. Counselors often give parents helpful information about their children, and may work with parents to assist them in changing situations in the home so that youths will continue to develop skills necessary to mature into social adulthood. For pre-arrest divertees, the referring Narcotics Unit detective is kept generally informed of the progress and participation level of the juvenile referred.

If a juvenile's problems become increasingly serious, counselors may help the parents contact the court about filing an incorrigibility complaint. While the complaint is pending, the staff often continue to work with the family, and may suggest that parents keep a log

of the youth's activities to help motivate the youngster to improve and also to provide a record of the youth's actions for the court.

If participation in the program as agreed to is not kept up, police have the option to file the arrest and refer the juvenile to the Youth Services Center (juvenile intake, or booking) for formal juvenile justice proceedings. In fact this seldom happens, except in instances of serious re-arrest, due to the press of other juvenile cases.

Staffing and budget

Present staffing of the Social Action Workshop includes a part-time director, two full-time counselors, a full-time administrative assistant, and a part-time secretary.

The workshop is funded by the Managing Director's Office of the Department of Public Welfare for the city of Philadelphia. Out of the program's 1978-1979 budget of \$84,000, about \$46,000 is used for the Teens in Action program.

Community Arbitration Program, Baltimore County, Maryland

Community Arbitration is an early diversionary case-processing technique whereby individuals charged with offenses and the victims or complainants in the case come before a hearing officer--the arbitrator--who is empowered by a delegation of authority to hear the facts, air the grievances, and propose, not impose, a resolution. Should the parties involved accept the proposed resolution, which typically involves restitution and/or community work service by the defendant to a degree mutually acceptable, the arbitrator is empowered to so rule in the case, thereby making a formal disposition of the matter.

In addition to the above general description of the community arbitration model, several additional features peculiar to the Baltimore County Program are integral features of the process observed. In this regard, the process is initiated by the arresting officer, who issues a citation to appear at a stated date and time for an arbitration hearing before an arbitrator who is a member of the local bar. The arbitrator in Baltimore County derives power from a delegation of statutory authority vested in Juvenile Intake. Program staff monitor and supervise restitution and work service requirements but also counsel enrollees and make referrals to outside helping services, including drug and alcohol treatment programs, as needed.

The Baltimore County Program, begun as a pilot in late 1976, has expanded from one storefront office serving three major towns in the northwest of the county, to serving the entire western half of the county from three different offices. During the period from inception of the program through February 1979, a total of 3,625 cases have been referred to arbitration, of which 1,932 were enrolled. All misdemeanor cases initiated by police in the western half of the county are now referred automatically to the Community Arbitration Program.

Baltimore County juvenile drug abuse problem

Baltimore County is a large, populous political subdivision of the State that surrounds (but does not include) Baltimore City. Geographically adjacent to (and partially lying within) the Washington, D.C./Baltimore City corridor and Annapolis and other port towns on the Chesapeake Bay, Baltimore County is at the nexus of major east coast drug distribution routes.

Illegal drug abuse in Baltimore County among adults and juveniles is widespread and growing. The predominantly blue-collar, ethnically diverse areas of the county that are to the south, northeast, and northwest of Baltimore City evidence serious heroin, amphetamine, and PCP problems as well as widespread use, especially among juveniles, of inhalants and codeine (cough syrup). The more affluent, white-collar areas in the north and southwest of the county, in contrast, display significant illicit usage of cocaine, methaqualone (Quaalude), and diazepam (Valium). Marijuana use everywhere in the county appears to be widespread and growing.

Juvenile drug abuse, especially in conjunction with alcohol abuse, has become a significant social problem in Baltimore County. A recent newspaper survey in a large county high school indicated, via self-reporting techniques, that 70 percent of the 230 students interviewed had tried marijuana and 94 percent had tried alcohol. Of this group, 12.7 percent indicated they used marijuana daily, and 8.3 percent state they consumed alcohol on a daily basis. Survey data for juvenile drug abuse in Baltimore County are incomplete, at best, and self-reporting methodologies may encourage underreporting or overreporting by interviewees. Such findings over time, however, have been an impetus to a hardline policy on expulsion and arrest of juvenile drug and alcohol users, put into place by the county Board of Education earlier in 1977 and currently in force.

In October 1977, the county school superintendent instituted a new and stringent policy that mandated suspension and arrest for all juveniles found in possession of alcohol or illegal drugs on school grounds or at school functions. The policy requires school personnel to call county police on all such occasions. While police department policy dating from January 1978 requires that juveniles charged with possession of alcohol, marijuana, or other substances of which possession is a misdemeanor not be taken into custody, nevertheless the policy requires that an apprehension be made and a citation (similar to a traffic ticket) be issued. In the western portion of the county, where Community Arbitration functions, the result of this process is that all marijuana, amphetamine, and alcohol possession cases originating on school premises are automatically referred by police to the Community Arbitration Program. Concurrent with the initiation of such juvenile justice proceedings, expulsion hearings before a designated pupil personnel officer are also scheduled in each instance. For the 1977-1978 school year, this resulted in 69 expulsions; for the 1978-1979 school year (through the month of February 1979), 49 such expulsions occurred.

Apart from the fact that possession of marijuana and other controlled substances is a criminal offense in Maryland, as is the purchase of alcohol by a minor, the Baltimore County school policy has had a direct and significant effect on increasing the scope of law enforcement activity (and consequent arrests of juveniles) for possession offenses. In the absence of Community Arbitration (and, to a lesser extent, the diversion program called Juvenile Offenders in Need of Supervision in eastern Baltimore County), all such cases would necessarily be referred to the already overcrowded Central Juvenile Intake in Towson, the county seat.

Interface with primary criminal justice actors

The State of Maryland since 1970 has benefited from a unified, statewide Juvenile Services Administration (JSA), whose administrator is a legislative appointee with broad policymaking powers. JSA administers both Juvenile Intake and other court-related services plus a variety of social service outreach programs and residential facilities. The Division of Court and Community Services, under which Juvenile Intake and other juvenile justice system functions fall, is divided for administrative purposes into regional and county offices. The Baltimore County office of JSA's Division of Court and Community Services is in most

respects typical. It administers Juvenile Intake from a central office in Towson, which interfaces on the one hand with the Maryland District Court for Baltimore County (the trial court of original jurisdiction for juvenile as well as other matters) and, on the other, with a variety of community-based, private and public sector helping services organizations to which appropriate referrals are made.

For delinquency cases (misdemeanors and felonies, not status offenses) in Baltimore County, the traditional process has been for cases not "informally adjusted" by Juvenile Intake to be referred to the State's Attorney's Office for possible prosecution. Should the State's Attorney's Office in fact decide to prosecute, it then formally files charges with the Juvenile Division of the Court (petitioning). Cases that go to trial are heard and disposed of in most instances by one of three masters (hearing officers) with the statutory power of magistrates or by the juvenile judge.

The Community Arbitration Program, though administratively under the control of JSA's Division of Court and Community Services, functions autonomously in terms of its intake and referral of participants. In this respect, interface with various county law enforcement agencies is central to its operation. Police citation is the sole source of referral to the Community Arbitration Program. During the first 2 years of operation, 3,408 cases were referred via citation. Citations may be issued by Baltimore County Police, Maryland State Police, and campus police of local colleges.

Only in the event that participants fail to comply satisfactorily with program requirements or are rearrested while in the program would an interface with the routine processing paths of the juvenile justice system occur. In such instances, a return of the case to Central Juvenile Intake for full adversarial processing occurs. Exhibit 8 illustrates the diversionary process of Community Arbitration.

Goals and objectives of the Community Arbitration Program

As stated in its formal grant applications, the primary goals and objectives of the Baltimore County Community Arbitration Program are as follows:

- To increase the speed of handling misdemeanor cases from 4 to 6 weeks after the offense to 7 working days.
- To prescribe for those youths who have been placed on informal supervision any one or a combination of the following possible assignments:

voluntary work service, counseling, restitution.

- To involve the community in direct action relative to the juvenile crime problem through volunteerism.
- To increase complainant participation in the handling of Juvenile Services Administration "informal" case dispositions.
- To provide an alternative means for the police department to handle juvenile offenders.
- To decrease the recidivism rate of those juveniles participating in the program.

Prime operating goals of arbitration were also the most effective selling points of the program to the citizens of Baltimore County. These included--

- The fact that arbitration hearings could be scheduled and conducted in a fraction of the time it would take to schedule proceedings at the overburdened Central Juvenile Intake;
- That the arresting officer and the complainant or victim, as well as the juvenile and his or her parents would be invited to attend the hearing and to have input;
- That satisfactory resolution (arbitration) would require the consent of all parties;
- That the arbitration process instilled more of a sense of accountability and responsibility in the juvenile than did the informal adjustment process at Central Juvenile Intake; and
- That the disposition decision would be made locally, not away from the scene of the incident, at JSA in Towson.

Police citation process

Each Maryland State Trooper carries a book of citations and issues one whenever a juvenile is apprehended for a misdemeanor. Generally the police issue the citation at the scene of the arrest or at the child's home, unless a parent cannot be reached, in which case the child would be taken to the police station and the citation issued there when the parent(s) arrive. The officers notes on the face of the citation the offense(s) charged and the complainant's name and address, and then obtains by radio a time and date for the hearing from a central Community Arbitration

docket kept at each stationhouse. Hearings are generally scheduled within 5 to 6 working days of the apprehension and are scheduled for every half hour. The juvenile and a parent or guardian must sign the citation at the time of apprehension and they keep a copy until the hearing. A copy is also given to the complainant or victim, especially in cases where restitution for personal or property damage or loss can be an anticipated requirement of arbitration. The complainant is strongly urged by the police to attend and participate in the arbitration hearing. (About 40 percent of complainants do participate.)

If the charge is possession of drugs or drug paraphernalia, the substance or implement(s) is sent to the lab for analysis. If the arresting officer suspects drug usage, he or she is encouraged to call the Community Arbitration Program to alert the arbitrator to a possible drug problem.

The police report, along with a copy of the citation, is picked up by Community Arbitration personnel and photocopied for the hearing. The complete dockets, listing scheduled hearings, also are brought to the appropriate local office of Community Arbitration.

Police are not required to attend arbitration hearings (except in instances where assault on a police officer is charged), although they may do so if they wish and are so encouraged. More often, rather than attending the hearing, police call the program to inform Community Arbitration staff about key factors in the case, notably drug and alcohol abuse indicators.

Arbitration hearing and the decision to divert

Exhibit 8 illustrates all possible dispositions that may result from the hearing. The arbitration hearings are held at a center that is located in a setting convenient to reach by public transportation. Special arrangements in the hearing room are purposefully geared so as to have a psychological effect on the juvenile. The arbitrator sits behind an imposing desk flanked by an American flag. The juvenile sits alone at a separate table facing the arbitrator. A few feet behind the respondent are rows of chairs where parents sit, as well as victims or complainants and the respondent's lawyer, if present.

The hearing is conducted by one of two part-time arbitrators, who are practicing lawyers. The arbitrator has a copy of the citation, a copy of the police report, and a record of the youth's previous contacts, if any, with Juvenile Services.

The arbitrator generally opens the hearing by explaining the community arbitration process to the youth, emphasizing that it is voluntary and that the parents or the juvenile respondent may request, before or after the hearing, that the complaint be forwarded to Juvenile Intake instead of being heard by the arbitrator. The arbitrator also explains that if any of the parties--the police, the victim/complainant or the juvenile and his or her family--are dissatisfied with the results of the arbitration hearing, the case can be appealed to the director of Juvenile Services within 15 days.

If the juvenile decides to have the case heard--and most do--the arbitrator then moves on to a discussion of the facts and circumstances of the case, reads the complaint to the juvenile, and asks for comment. According to Arbitration program staff, most juveniles admit their involvement in the offense. The arbitrator also will ask the victim/complainant and the parents to comment. The arbitrator listens to all involved parties and carefully interprets the law in understandable language. The arbitrator also focuses on how the juvenile's offense has affected the victim/complainant, the community, and the juvenile and the juvenile's family. Emphasis is placed on making the juvenile aware of how the delinquent act has damaged his or her own integrity and the fabric of the community.

The arbitrator then asks the complainant/victim to leave the room and inquires into the social adjustment of the juvenile. Questions are about school performance, behavior at home, possible drug problem, etc. When the offense is drug related, particular emphasis is placed on exploring the youth's drug involvement. According to Arbitration program staff, many parents take advantage of this opportunity to talk about their concerns for their children. In fact, some parents have told the arbitrator even when the offense has nothing to do with drug usage that they are concerned about their child abusing drugs.

At the close of the hearing, the arbitrator makes a decision based on the applicable law and the facts presented. Many factors affect this decision: sufficiency of evidence, admission or denial of the offense, seriousness of charge, equity toward the complainant/victim, prior arrests, and previous involvement of the juvenile with the Community Arbitration Program. Also having a bearing on the decision are family attitudes, school record, amenability to counseling and availability of community resources. With this information, one of the following alternatives is chosen:

- The juvenile is placed on informal supervision under the Community Arbitration Program for a 90-day period;
- The case is closed with a strong warning; or
- The case is denied for insufficient evidence; or
- The case is forwarded to Juvenile Intake for more formal action.

If the arbitrator decides upon "informal" supervision (i.e., enrollment), this could take several forms. Typically these include--

- Voluntary community work service, with the number of hours depending on the nature of the offense and prior records;
- Restitution for personal or property damage (the amount being determined and agreed upon by all parties);
- Referral for one of a variety of forms of counseling (drug, family, individual, tutoring or auto safety, depending upon need) to an appropriate agency; and/or
- Other assignments, such as visiting the Baltimore County Jail or writing essays, letters of apology, book reports, etc.

Once the arbitrator has made a decision, the complainant/victim returns to the hearing room to hear it. If the decision is for supervision from the Community Arbitration Program, the plan for supervision is written up according to a standard contract format, which is then signed by the youth and the parents. The hearing is thereupon terminated.

Immediately after the hearing, the youth is introduced to the work site supervisor (an Arbitration Program staff member), who interviews the juvenile and the family briefly. Whatever form the supervision will take, the youth must maintain telephone contact with the work site supervisor on a weekly or biweekly basis as indicated. A case file is prepared on each juvenile by the work site supervisor to whom the case is assigned.

The supervision and service delivery process

The responsibility for monitoring juveniles placed on informal supervision belongs to the Community Arbitration Program's work site supervisors, who have vocational and educational training in counseling delinquents. They initially interview both the youth and

the family, make referrals to other agencies in accordance with needs, monitor work sites, and supervise payment of restitution to the complainant/victim. Each carries a caseload of 110 to 125 at any given time. Service plans will include one or more of the following:

- Work service. The idea behind the volunteer work assignments is communicated to the youth as follows: "You have broken the law and lawbreaking weakens the fabric of society. Therefore, you are being asked to volunteer some of your time to strengthen society." If assigned to do voluntary community work service, a youth is asked to pick a place to work and to make arrangements to do so. If the youth has no preference about where to work, the work site supervisor then matches the youth with an appropriate work site which has been located by the Arbitration Program staff. Once the youth begins the volunteer work, he or she must periodically send in a time card signed by the supervisor. If any problems develop at the community work site, the Arbitration Program's work site supervisor is called.
- Community involvement. Development of work sites depends heavily on community involvement, which the Community Arbitration Program has stressed from its inception. Staff from the program talk about the arbitration process to community groups, public agencies, and civic groups. Newspapers have also run stories about the program. As public awareness of the program increases, the number of organizations willing to have youths placed has grown. The number of sites went from 65 during the first year of operation to more than 125 the second year. Many of the juveniles under supervision work for churches, recreation centers, schools, libraries, nursing homes, and civic organizations. (The program carries insurance to cover injury to juveniles while on the work sites.)
- Restitution. The amount of restitution is agreed upon by all parties. Generally it covers the amount of damage or loss not covered by insurance, and the complainant must submit written verification of the expenses resulting from the delinquent act. Generally, also, the parents are responsible for payment, which is made through the Community Arbitration Program in order that a record can be kept of the payment. Even when restitution is made, the child is usually also assigned to work service, since the program feels that the youth should make an affirmative

contribution to the community--that just a monetary recompense from the parents is not sufficient. If the youth has a part-time job, he or she may be directly responsible for at least part of the restitution, and in such case probably would not be assigned to work service.

- **Counseling.** The arbitrator and program staff determine whether and what sort of counseling is appropriate for the child and family. The victim/complainant is not involved in this phase of arbitration, and strict confidentiality is maintained. During the first 2 years of operation, 200 enrollees (12 percent) were referred by staff to other community agencies for counseling. Where the charge is one of drug possession, or where the parents or the juvenile feel that substance abuse is a problem, the youth is referred invariably to outside counseling programs that have experience with this sort of problem. The parents sign a release of information form so that the Arbitration Program can verify that the juvenile follows through on the referral and continues to participate in counseling or treatment.

Review and termination

All cases enrolled in the Community Arbitration Program are reviewed after 30 days and again after 60 days by the work site supervisors and program coordinator. Over 90 percent of enrollees comply with required supervision. If the juvenile is not cooperating, the parents are contacted and urged to become more involved, and a followup hearing before the arbitrator may be scheduled. If the youth still does not comply, the case may be closed unsuccessfully and forwarded to Juvenile Intake for more formal action. If the case is thereafter ever prosecuted, information about participation in the Arbitration Program is withheld until the time of disposition.

Successful compliance over the standard period of enrollment (90 days) results in the case being closed, pending charges dropped, and the youthful participant being discharged. No juvenile record on the case beyond the police citation remains on file.

Staffing and budget

The Community Arbitration Program functions under a decentralized administration, out of three locations. Administrative and support

staff are lodged together in one central location. Arbitrators divide their time between this and two other locations. Project staff are as follows:

- a full-time project director,
- a full-time project coordinator,
- two part-time arbitrators,
- a part-time project evaluator,
- two full-time work site supervisors,
- a full-time research assistant, and
- three full-time clerk typists.

Since the inception of the LEAA grant funding the project, the position of Project Director, which is part time, has been filled by the Baltimore County Supervisor of the Juvenile Services Administration. This is not a grant-funded position but part of grantee match. The project coordinator, a full-time grant-funded person, is responsible for all day-to-day operations, which includes supervising the two work site supervisors and developing job sites; promoting inter-agency, police, and community relations; and coordinating program planning, evaluation, and staff development activities.

Presently, the position of arbitrator is held by two local attorneys who each work half time. Formerly the job was held by a full-time attorney, but it was found from experience to be more effective to recruit attorneys on a part-time basis, to minimize the effect of burnout. The arbitrators are responsible for hearing and resolving all misdemeanors for which citations are issued. They preside at the arbitration hearings and participate with program staff, the juvenile, the family, and the victim in determining what the requirements for arbitration enrollment and satisfactory completion will be. They also do public relations work for the program, speaking before various church and civic organizations.

The work site supervisors are responsible for some one-to-one and group counseling, monitoring the activities of all youths placed in alternative work service situations by the arbitrator, and supervising the payment of restitution. They also conduct job site visits, prepare termination and followup reports, and make referrals of those placed on voluntary work service to other agencies, as appropriate.

4. Findings and Recommendations

This chapter presents summary findings about the practice of pre-charge referral to drug abuse treatment that resulted from visits to 8 programs, with a total of 10 referral components, at 6 sites. Based on these site visit findings and on assessments by other commentators gathered during the state-of-the-art review, recommendations concerning the present and future use of pre-charge diversion are also presented. None of these recommendations results from an evaluative assessment of the appropriateness or effectiveness of the individual programs visited or observed. For a variety of reasons, these programs have proven useful in their respective local contexts and reportedly are meeting local needs and their stated objectives. However, as increased dialogue about the concept and about replication of these and other particular program models is a possible outgrowth of this report, it is necessary and appropriate that conclusions about continued and expanded use of such pre-charge referral strategies be included.

Both the findings and the recommendations are divided into separate categories for Federal and State policymakers and for State and local practitioners. Both the policymaker and practitioner findings and recommendations are further divided into those generally applicable to both criminal justice and drug abuse treatment audiences and others directed to criminal justice and drug abuse treatment personnel, separately.

CRIMINAL JUSTICE AND DRUG ABUSE TREATMENT POLICYMAKERS AT BOTH FEDERAL AND STATE LEVELS

Findings

- For most of the referral strategies reviewed, intervention at one or more points in the pre-charge phase (as opposed to later stages) was not so much the result of a discernible philosophical or planning bias as it was an operational response to the vagaries and constraints of the local context in which the diversion program

evolved. Points of intervention most often were viewed as merely incidental to the overall goal of identifying and referring drug abusers out of the regular criminal justice system and were selected--or dictated--opportunistically, not deliberately. A variety of reportedly real advantages were found to accrue from intervention and referral pre-charge, but these usually became plain only after the fact of program implementation. Generally they had not been preplanned and in some instances had not even been anticipated.

- Programs visited were reportedly meeting their stated goals and objectives. Though these varied somewhat, common goals predominated. Goals tended to reflect perceived gaps in preexisting local services and/or to address perceived alienation of the community from more traditional criminal justice processes, rather than to reflect a deliberate attempt to capture the particular advantages of pre-charge (as opposed to later) intervention and referral.
- The potential for overreach (widening the net) existed for all such programs; this danger was recognized to varying degrees by key actors. Little pre-implementation attention to these potential abuses was evident in retrospect, however.
- Little hard research or evaluation has been performed to assess the effectiveness of pre-charge programs. More studies geared specifically to intervention efforts at these early stages should be undertaken.
- Though it was assumed by all pre-charge programs visited (as by programs intervening at later points) that intervention and referral to treatment has an impact on criminal recidivism and drug abuse, this key hypothesis has yet to be firmly established by followup studies. This should be a focus for subsequent diversion research and evaluation efforts that look at both pre- and post-charge referral strategies.
- With only two exceptions, the programs visited have not received sustained

attention from outside their locales. Though most had program evaluations of varying sophistication either completed or in process, these had not been widely disseminated.

- Little information exists in print about early drug diversion. What does exist is neither readily available nor widely distributed among practitioners.
- Most programs visited had been well publicized locally and enjoyed broad community support. Careful public relations and community education efforts were credited with both initial acceptance and sustained support from local officials and the general public.
- Pre-charge diversion was widely viewed as a form of community dispute resolution operating at the grassroots level and was, therefore, popular with community leaders, elected officials, and other policymakers interviewed.
- The support--or at least the neutrality--of other public sector criminal justice and helping services agencies, even those that do not process drug abusers until after conviction, was elicited and obtained by most of the pre-charge programs observed. In all instances this fact reportedly facilitated general acceptance of the new program and smoothed out particular implementation problems.

Recommendations

- Selected criminal justice and drug abuse treatment experts should convene to discuss thoroughly the phenomenon of referral to drug abuse treatment at the pre-charge stage. The further articulation of salient issues, the possible development of recommended program models, and the establishment of a central technical assistance capability for State and local practitioners should be key topics for discussion and followup.
- What literature does exist on early diversion and police referral to drug treatment should be pulled together, cataloged, and made available for wider distribution.
- Pre-charge diversion programs seem to be proliferating rapidly. Efforts to identify all such programs, cataloging their operational features, program goals, and other details, should be undertaken at the national level, as has already been done for post-charge diversion options. The

resulting information should be published and widely disseminated.

- Experimentation should continue with police referral strategies and other pre-charge diversion mechanisms that intervene to refer selected drug abusers to treatment as early as practicable after initial law enforcement contact. Optimal models should be developed for possible replication. Risks and benefits attached to the implementation of such models should be carefully and fully explored and set out first, however. Moreover, the aims and goals of such early diversion strategies need to be carefully thought out and articulated so as to complement approaches by post-charge diversion and the justice system generally. Failure to carefully develop realistic goals by consensus will invariably lead to misunderstanding, interagency friction, and rejection of the concept by key actors in the criminal justice and drug abuse treatment communities, as well as by the public generally.

Criminal Justice Policymakers

Findings

- Most programs visited had a significant impact on their criminal justice systems because of the volume of cases diverted. This factor was consistently viewed as a reason for widespread acceptance and continued popularity of the program efforts.
- Despite usually sizable numbers of cases diverted, all programs observed were highly selective. The presence of restrictive, uniform eligibility criteria, often coupled with a subjective case-by-case screening, eliminated from early diversion consideration many drug abusers already identified. These persons--typically defendants with prior criminal records and with other than minor misdemeanor charges pending, and/or who evidenced chronic drug abuse syndromes or opiate abuse patterns--were only divertible at later stages in the criminal justice process, if at all.
- Administrative level police officials were instrumental in initiating most pre-charge referral strategies observed. Their continued support was invariably viewed as vital by program staff and other advocates.
- The police played a major, if not predominant, operational role in each program visited. Police involvement in drug abuser casefinding was key in all instances.

- Each pre-charge diversion strategy observed in some way attempted to overcome the depersonalized, assembly-line approach that generally characterizes regular adult criminal justice and juvenile justice processing. The settings for diversion hearings and intake interviews--often featuring confrontation with the arresting officer and/or the victim and participation by special authority figures (e.g., arbitrators)--and the inclusion of performance requirements such as service contracts, restitution, and community work service are examples of special features designed to give rise not only to a sense of responsibility in the defendant for the antisocial acts committed but to the ability to effect his or her own rehabilitation.
- The earlier in the processing of the case that pre-charge diversion occurred, the less the real effectiveness of criminal justice holds on defendants with minimal effectiveness at the pre-arrest stage. A partially effective counterweight to the absence of credible sanctions was reportedly the perceived closeness of the apprehending police officer to the community and its residents. Size of the community would therefore seem to have an impact on the effectiveness and credibility of at least some pre-charge diversion practices, especially pre-arrest referral.
- Many defense attorneys, some prosecutors, and those judges who were interviewed expressed the view that adult diversion was not an appropriate police function. Concerns and fears about abuse of discretion, lack of due process, lack of voluntariness, etc., were voiced with regard to some or all types of pre-charge diversion. These concerns were not generally shared, or at least not voiced, by other actors.
- Though most pre-charge programs were designed to intervene early for maximum flexibility, most also made provision for at least optional access to counsel prior to the defendant's entry into diversion. This feature, sometimes present from the program's inception and sometimes added after a period of operating experience, reflected an attempt to balance concern for voluntariness with the goal of providing an alternative unencumbered by the formal trappings of the adversarial system of justice.

Recommendations

- Criminal justice planners and funding agencies should give careful consideration to

the design of broad program initiatives that would have as their goal the diversion of selected drug abusers at the pre-charge stage. The potential for case backlog reduction and comparative cost savings for overburdened prosecutors and courts, which could result from significant levels of pre-charge diversion, makes this an attractive case processing alternative. In addition, this alternative has the potential for early identification and referral to treatment of other drug-abusing defendants who, in the absence of such pre-charge programs, would drop out of the justice system at an early point without treatment. When arrayed with other diversion options that intervene at later stages, programs of pre-charge referral for selected drug abusers can contribute to providing the criminal justice system with a flexible continuum of graduated alternatives to prosecution and incarceration.

- General implementing authorization, through statute, court rule, or otherwise, should be seriously considered at the State level to permit the pre-charge diversion of drug abusers by police and/or other actors. Local level authorization by interagency memorandum of understanding or departmental order may be sufficient de facto authorization to operate such programs. However, to avoid legal challenges and resistance from other criminal justice actors, a broad enabling mandate at the State level would be advisable.

Drug Treatment Policymakers

Findings

- Police referrals and other pre-charge divertees amounted to a significant percentage of clients served by the drug treatment, education, and prevention programs involved in the local interface at sites visited. Establishing drug abuser identification and referral procedures at various points in the pre-charge process can thus generate a larger number of criminal justice referrals to drug treatment than reliance on more traditional post-charge/pre-trial and post-conviction referral avenues alone.
- Defendants identified and referred to treatment pre-charge generally appeared to be those who would not have been identified and referred at later stages, in the absence of a pre-charge program.
- General eligibility criteria employed and specific cases diverted were tied more to

prevailing community mores than to potential for rehabilitation.

- Required terms in treatment, performance criteria for successful completion of diversion, and grounds for unfavorable termination from treatment and return to prosecution were generally uniform and fixed, not case specific or therapeutically oriented. This in part seemed due to the relatively minor nature of eligible offenses diverted pre-charge and to the limited types of drug abuse patterns that could be displayed by those eligible to be referred pre-charge.

Recommendations

- Attention should be given to ways to allocate drug abuse treatment slots already available for criminal justice referrals to cases diverted at the pre-charge stage.
- Existing drug abuse training programs should be appropriately modified or expanded to address the needs of actors in the pre-charge diversion process, especially police.
- New training programs should be developed as needed and made available to actors at the State and local level.
- The impact of existing Federal confidentiality laws and regulations on pre-charge identification and referral of drug abusers should be analyzed specifically. A mechanism for providing guidance and direction to planners, as well as practitioners who are considering implementing such programs or who currently operate such programs, should be established.

CRIMINAL JUSTICE AND DRUG ABUSE PRACTITIONERS AT THE LOCAL LEVEL

Findings

In addition to the foregoing findings, which were of direct relevance to Federal and State level policymakers, other findings surfaced from the site visit phase that are of more direct concern to local level criminal justice and drug abuse treatment practitioners.

- All programs visited had developed in advance of implementation a clearly stated set of program goals. These were widely publicized to staff, clients, criminal justice and drug abuse treatment officials with whom the programs interfaced, and, usu-

ally, to the general public. Operational experience over time caused program goals to be expanded and modified. However, initial goals remained generally valid and continued to serve as benchmarks against which all concerned measured success of the program. Programs appeared to be managed and administered in a manner consistent with this goal-oriented approach.

- All programs visited officially recognized the need to protect defendants' rights in the diversion process, though the extent and sophistication of due process safeguards encountered varied widely between programs. Point of diversion and program design had an impact on the number and nature of such safeguards. However, the sensitivity of primary actors to the problems of overreach and due process, as well as the prevailing community attitudes on these subjects, appeared to be at least as determinative.
- All programs visited demonstrated an appreciation for the importance and utility of an outside evaluation. All programs observed had such evaluations either completed or in progress. Copies of at least summary findings from these evaluations were available for review by interested outside parties.
- A variety of operational features not intrinsic to the concept of pre-charge diversion or essential for program survival or basic effectiveness, such as community work service and restitution components, victim input into the decision whether to divert, and a policy of charging divertees a service fee, were sometimes specially added.

Recommendations

This section sets forth a series of recommendations for local level administrators of criminal justice agencies and drug treatment programs. General recommendations applicable to both communities precede separate recommendations directed to each of these respective audiences.

- For those communities interested in or intending to implement programs of police referral to drug abuse treatment, or other mechanisms for pre-charge diversion of drug-abusing defendants, dialog and planning should commence based on models presented in this monograph.
- Those populations and classes of drug-abusing defendants who are diverted pre-charge should be those--

-- Who can benefit from short-term treatment or educational intervention;

-- Who are able to understand their rights and available options;

-- Who can be removed from full adversarial processing without endangering community safety or violating community mores and standards of justice; and

-- Whose removal from the regular criminal justice process at the pre-charge stage could significantly reduce case backlogs, case processing time and costs, and have a positive impact on the twin problems of criminal recidivism and drug abuse in the community.

- Carefully targeted program goal and operating procedures should be developed in advance of program implementation, regardless of which actor(s) control the diversion process, point of diversion, or populations served.
- Overreach by pre-charge drug diversion programs, both generally and in specific cases, should be carefully avoided. Only populations and classes of defendants for whom drug use constitutes abuse and for whom pre-charge diversion would represent less (rather than more) penetration into the adult criminal or juvenile justice system should be so processed. Required periods of treatment, both in terms of duration and compliance requirements, should not be excessive, given the nature and extent of drug abuse present and the relative seriousness of the underlying criminal charges. Individual defendants should be diverted at this stage, as at later, post-filing stages, only when and if prosecutable cases could otherwise be lodged against them.
- Every attempt should be made to regularize diversion eligibility criteria, even in programs where police or prosecutor discretion to divert on a case-by-case basis is to be preserved. The criminal justice system, Government officials, defendants, and the general public have a right to know what groups or classes of drug-abusing criminal defendants will be accorded an opportunity for early diversion and the rationales therefor, even though diversion of only selected defendants within these groups or classes will occur. The weighing and balancing of various factors such as present offense charges, prior criminal record, amenability to treatment, type(s) of drugs abused, age, and residency can be expected to vary from one

locale to another. However, in order to give the entire community an opportunity to understand the significance and importance of each of these, publication of eligibility criteria should occur.

- All key actors in the pre-charge diversion process should be carefully educated and trained concerning drug abuse. Those who apprehend, who screen, who diagnose, who divert and refer, and who monitor treatment progress must be as knowledgeable about drug abuse indicators, available treatment modalities, and drug dependency syndromes as those who themselves provide treatment services directly.
- Avoiding the stigma that can attach from drug abuse treatment is especially vital in the case of juveniles. The comparative visibility of juvenile drug abuser diversion strategies and the extent to which drug treatment information is kept confidential will have a direct impact on juvenile defendants. Program procedures, especially intake and reporting procedures, should be designed to minimize stigma and labeling.

Criminal Justice Practitioners

Findings

- All programs visited took the opportunity to piggyback their drug abuser identification and referral onto preexisting casefinding and case screening mechanisms in place in their local criminal justice systems. Pre-charge referral procedures were grafted onto jail interviews, multipurpose pre-trial release interviews, and other such practices for cost efficiency and to avoid duplicating functions between agencies and actors. Likewise, tying pre-charge referral procedures into preexisting police citation programs occurred in several sites for the same reasons.
- Target populations deemed desirable and appropriate candidates for pre-charge diversion were generally decided upon in advance of program implementation. Eligibility criteria and program operating procedures were then carefully tailored to achieve identification and intake of defendants who fit the predetermined candidate profiles.
- Requirements for successful completion of the programs visited were purposefully geared, it seemed, in terms of rigorosity, to insure that the majority of divertees would be able, with reasonable effort, to complete the program successfully.

- Police and other actors expressed a desire and a need for drug abuse awareness training to equip them to handle the pre-charge drug abuser identification and referral functions assigned to them.
- Many police officers interviewed expressed concern about role conflict, real or perceived, between their law enforcement duties and social worker/crime prevention tasks that would fall to them in the course of identifying and referring drug abusers pre-charge.

Recommendations

- Identification and referral of drug-abusing criminal defendants by police and others at the pre-charge stage provides a means for converting the crisis of arrest into an occasion for therapeutic intervention. Police referral and other pre-charge diversion practices for drug abusers should be given serious consideration when implementing an array of alternatives to prosecution and incarceration that are graduated responses to the perceived seriousness of offenses charged.
- In order to identify drug abusers at the earliest possible stages so that they do not fall out of the criminal justice system without diagnosis and referral, a major role for police should be included in all pre-charge diversion strategies. Police input as to the presence of drug abuse indicators at the time of arrest and the advisability of release to treatment rather than retention in custody is vital. Procedures for gathering and preserving this input, regardless of which system actor(s) make the final decision to divert, should be features of any pre-charge diversion strategy.
- Role conflict issues for police and other actors should be surfaced and addressed before diversion of drug abusers or others is attempted at the police level.
- Departmental guidelines on the appropriateness and extent of diversion in lieu of arrest, for drug abusers and others, should be formulated and issued. To insure fairness to defendants and acceptance by police, the decision about whether and when to divert should not be left totally to the discretion of individual police officers, though retention of discretion in individual cases, within general guidelines, may well be advisable and legitimate.

- A detached and objective party other than the apprehending officer--a desk sergeant, youth officer, intake worker, drug abuse treatment worker, or deputy prosecutor--should review and assess an initial decision to divert in which any significant restraint on liberty--i.e., the signing of waivers of legal rights or extended requirements for participation in treatment--is involved. This is recommended in order to insure fairness and consistency in the pre-charge diversion process from one case to the next.

- The decision about whether and to what extent to rest diversion decisionmaking in the hands of the uniformed patrol officer versus other, specialized, police personnel can be expected to have an impact on the pre-charge diversion process, and should be made with care. Reaction to uniformed police by many offenders, and citizens generally, can be negative and prove a barrier to information gathering and information exchange about drug abuse and other factors. This may not be faced by plainclothes detectives, youth officers, and other nonuniformed actors. On the other hand, the trauma of arrest by a uniformed officer can often serve as a catalyst to defendants to confront the behavior that led to their arrest, including drug abuse. Depending on local circumstances, both uniformed officers and various plainclothes actors will have either a more or a less effective role to play in the diversion process.

- Drug abuse awareness training should be a regular feature of police academy training, as well as of later continuing education on the job for the uniformed officer. The process of identifying drug abuse indicators at the time of arrest, whether or not a subsequent decision to divert is made, requires specialized knowledge and training. Likewise, an appreciation of the difficulties and challenges of drug abuse treatment and prevention on the part of the uniformed officer will be a necessary concomitant to any successful program of police diversion of drug abusers.

- Concerted efforts must be made by all actors to identify and minimize due process problems and other potential dangers to defendants' rights stemming from diversion prior to the filing of formal charges. Though pre-charge diversion decisionmaking has not yet been established as a "critical stage," access to legal counsel should be accorded to all potential diversion candidates to insure that diversion is

voluntarily and intelligently chosen by the defendant. Procedures should be included to acquaint the potential diveree with the nature and seriousness of the charges pending before the decision to opt for diversion is made.

- The danger of unintended overreach by the justice system is especially high for pre-charge diversion of juvenile drug abusers. Carefully targeted program goals and eligibility criteria should be developed in advance, regardless of which actor(s) controls the juvenile diversion process. Though a stated goal of these, like all other juvenile diversion efforts, will invariably be to minimize penetration of nonserious juvenile offenders into the traditional juvenile justice system, untoward effects of pre-charge juvenile drug diversion could easily be to widen the net of social control over youths who, but for the diversion program, would not enter the system at all. Failure to limit such diversion to non-status offenders or to youths who display dysfunctional substance abuse (as distinguished from only casual use) patterns could extend the scope of the juvenile justice system rather than lessen it.

- When planning or operating programs of police referral or other types of pre-charge diversion for drug abusers, careful attention to and compliance with the requirements of Federal confidentiality laws and regulations should be a high priority. Arriving at practicable solutions to the problems of confidentiality of patient information guidelines in the context of criminal justice/drug abuse treatment interface at the pre-charge stage must necessarily be achieved on a community-by-community basis.

Drug Abuse Treatment Practitioners

Findings

- Confidence by key criminal justice officials in the quality and cooperativeness of various local drug abuse treatment programs available to accept pre-charge referrals was a major factor in their willingness to experiment with and later to institutionalize programs of pre-charge diversion.
- No program visited made efforts to get outside treatment programs that served divertees to set aside a fixed or guaranteed number of treatment "slots" for pre-charge referrals. However, in all the communities visited, an adequate number of treatment slots to meet all referral needs

were routinely available, as were a wide variety of programs and modalities to choose between.

- The "brokered" approach to service delivery, i.e., placing diverted drug abusers in a variety of freestanding local treatment programs, matched according to their individual needs, predominated over the reliance on one or just a few modalities, as well as over a reliance on in-house counseling.
- The variety of services and modalities that tended to be offered to pre-charge divertees reflected those available in the local community. Treatment modality bias, with few exceptions, did not appear to be present either in the criminal justice actors administering the pre-charge referral processes or in program procedures.
- Willingness on the part of local treatment programs to provide quick and accurate attendance and progress data back to the diverting authority in the criminal justice system was a key factor in selection of treatment programs as linkage partners in pre-charge referral strategies.
- Confidentiality of drug abuse client information was a major, ongoing source of daily operational problems for both the criminal justice and drug abuse treatment components at all sites visited, despite generally good interagency relations and a desire on the part of all parties to provide needed information without unduly compromising divertees' rights to privacy.

Recommendations

- The criminal justice system remains a significant casefinding avenue, and the pre-charge phase is a relatively untapped source of referrals. Given the fact that many drug abusers in need of treatment fall through the cracks at this phase without receiving treatment, and given the unique opportunity for intervention that is presented by the crisis of arrest, treatment programs should give priority consideration to establishing regular avenues for receiving pre-charge referrals from police and other actors.
- The range of available treatment and education services for diverted drug abusers should be as broad as possible to provide services tailored to individual needs.
- Every effort should be made to avoid duplicating preexisting community treatment

resources. Instead, these outside services should be tapped to serve diversion referrals, as needed, via a central coordinating or linkage mechanism.

- Providing pertinent treatment progress information back to criminal justice actors

who divert defendants to treatment is essential. Information exchange within the boundaries of Federal confidentiality guidelines must be worked out by negotiation to meet competing local needs.

5. Considerations for Replicability

This chapter will address the general conditions that seem to foster replicability of drug abuse referral strategies operational at the pre-filing (or pre-charge) stage of the adult criminal and juvenile justice systems. However, it must first be stressed that just as the 10 pre-charge program components observed in the 6 sites visited are not monolithic, successful replication of the various models they exemplify will depend on varying combinations of factors.

In this regard, truly pre-arrest "street" diversion by uniformed officers is a highly discretionary ad hoc process, usually purposefully operating at low visibility in the law enforcement arena. In contrast, pre-booking police diversion for juveniles generally functions around "programs" of services and supervision and is administered by nonuniformed department personnel with specialized social service training. Police juvenile diversion, moreover, is often highly visible--three of the four programs for juveniles visited during the preparation of this report were--and function pursuant to statutory authorization, with eligibility criteria largely predetermined. Still again, prosecutor controlled pre-filing programs such as the Genesee County DDA tend to display a yet higher degree of visibility and procedural formality, though operating on the basis of traditional prosecutorial discretion and often functioning in a political context. Specialized programs for alcohol- and drug-abusing motorists, as exemplified by the Vanderburgh County DADS Program and the similar operation of the Delaware Court of Common Pleas, typify even larger, more tightly structured and highly publicized efforts, whereby the treatment component interfaces as much, or more, with court system personnel as with police.

Satisfying the needs and predispositions of uniformed line police officers, specialized police service personnel, prosecutors, judges, and other actors, not to mention complying with differing community standards and mores from one jurisdiction to the next, will necessarily lead to variance in program design and will drastically affect the priorities for successful replication. With this caveat an effort will now be made to set out factors that, in

the opinion of officials interviewed during the site visit phase, are generally conducive to pre-charge diversion efforts, regardless of local variables.

GENERAL PLANNING CONSIDERATIONS

A range of key factors repeatedly appear to have been critical for implementation of the programs visited. These can therefore be regarded as generally important for replicability everywhere. These factors, as deduced from site visits and as articulated by officials interviewed, were as follows:

- The legal basis for pre-charge diversion must be firm. A statute, court rule, and/or police department operating procedure or standing order, with only one or two exceptions, preceded implementation of the concept. A program like DDA, operating on the basis of absolute prosecutorial discretion, is open to possible legal challenge, as happened to the DADS program. General authorizations, like section 602 of the California Welfare and Institutions Code or the Vanderburgh County Superior Court's rule authorizing early diversion, can be a sufficient general mandate on which to erect a highly sophisticated program.
- Community standards and mores must be kept in mind when determining eligibility criteria. Factors such as prior record, present offenses charged, drug abuse patterns displayed, and age groups of participants will be critical variables regardless of procedural design. These will vary but must be conducive to community acceptance. Local attitudes about justice must be consistent with the program goals and purposes of any new effort designed.
- The support, or at least the neutrality, of all agencies within the criminal justice system must first be obtained before any new diversion effort is commenced. Even those agencies such as corrections with which the pre-charge program is not likely to interface directly, will be in a position to

help or hinder implementation. All agencies are "turf conscious." In addition to considerations of territoriality, interagency competition for diminishing criminal justice dollars will doubtless be an obstacle to overcome. Locating a new pre-charge program under the administrative aegis of a powerful, established institution of the justice system or social service system, e.g., the police department itself, the prosecutor's office, the department of mental health, is one answer. Yet tradeoffs are invariably involved in such a decision. Another approach, not mutually exclusive, is to add a pre-charge referral channel to an already existing linkage unit such as TASC or CJSC that serves all criminal justice agencies equally by accepting referrals at all points in the process.

- Piggybacking on preexisting, multipurpose casefinding and screening mechanisms is an aid to establishing any new pre-charge drug abuser identification and referral program. Interface by the two Marin County 602 youth diversion programs, the Baltimore County Community Arbitration Program, Vanderburgh County DADS, and the Delaware Court of Common Pleas drivers' program with otherwise separate police citation programs are examples of such an approach. Making drug abuser identification and referral a part of an already established prosecutorial pre-indictment case screening process, as is the case with the Delaware State Attorney General's Office, is another. Feeding into an already functioning pre-trial interview process at a precinct, jail, or central lockup, where screeners employed by a pre-trial service agency, probation office, or drug treatment unit already interview detainees (as Marin County TASC and the Delaware CJSC typify) is another approach. Thus, costs are kept at a minimum and drug abuser identification and diagnosis for pre-charge diversion purposes can be achieved at the same time as information is gathered for other criminal justice purposes.

- Reliance on a variety of preexisting community-based treatment resources to which pre-charge divertees can be selectively referred is more desirable than reliance on only one such resource or on in-house counseling alone. Treatment placements thus can be tailored to individual divertee needs. Quality control monitoring of service programs can proceed freely in light of having a variety of available referral options. Costs of service delivery can be kept down by not duplicating existing resources.

- Program intake should reach a large volume of criminal cases. A major advantage to the criminal justice system of any such program--whether pre-booking administered by police, or pre-filing administered by the prosecutor or other actor--is its ability to cut substantially into case backlogs, processing time, and processing costs for the more traditional justice system components. Utilizing a "brokered service" approach, short-term intervention per case, and relying on linkages with large coordinating entities like TASC that accept and place large numbers of referrals from multiple points of intervention, are some ways, among others, to divert large numbers of cases pre-charge without creating a large and costly case processing staff.

In addition to the above considerations, which were reportedly central to program development in virtually all programs visited, additional factors that were instrumental in a smaller, but significant, number of instances should also be noted. These include the following:

- The relative smallness of a jurisdiction--city, county, or State--seems conducive to grassroots early diversion, especially by police.
- The involvement of restitution, affirmative community work service, and victim input components in pre-charge (as well as later) diversion programs seems to increase community acceptance and support.
- The assessment of nominal fees for services from divertees promotes support by the criminal justice sponsoring agency and the larger community, reportedly fosters participant self-realization, and guards against sudden budget shortages.
- The involvement of citizen advisory boards and carefully measured public education campaigns fosters early continued support from a cross-section of people. Adding "opinion makers" such as local political leaders, criminal justice agency chiefs, and citizen association officials in an advisory function can facilitate understanding the program's intended goals and purposes, thereby aiding implementation.

IMPORTANT STAGES IN REPLICATION

Expanding upon the above factors, which were reportedly instrumental in implementation of the example strategies visited in the field, the following considerations should be kept in mind as new program starts are planned:

Initial Planning Considerations

- Conduct a local needs assessment. Surveys, albeit nonstatistical, of local drug abuse patterns, arrest rates and patterns, prosecutor and court case backlogs and available community treatment resources should invariably precede any effort to design or seek support for a diversion program. The program should be tailored to meet these needs, not presuppose them.

- Define program goals and objectives in advance. Determination of these factors will usually dictate, or at least suggest, eligibility criteria, candidate populations, staffing patterns, etc. Without carefully defined goals and objectives, a new program cannot successfully be sold to criminal justice and drug treatment planners and agency administrators, let alone to the public or to potential funding sources at the county, State, and Federal levels.

- Identify and involve key actors. Political support from key decisionmakers within the criminal justice and drug treatment systems and in the broader community will be critical for any new program start. In addition, securing the support of the agency or agencies that will be making and receiving referrals is a necessary precondition to demonstrating credibility and viability of a new process. Furthermore, involving such persons in the process of defining program goals and objectives, as well as later in the program design phase, is critical to avoid the pitfalls of later resistance caused by territoriality.

- Develop an implementation strategy. Anticipate and take control of the steps that must be gone through locally to generate understanding of and appropriations for a new pre-charge program. Media campaigns, citizen advisory boards, and political support are only a few of the factors that should be employed in this regard. The mix of factors will vary from jurisdiction to jurisdiction, depending on the makeup of the community, the balance of power within the criminal justice system and the treatment systems, planned program design and anticipated client population, etc.

- Generate community support. This step is the logical culmination of the preceding ones. If what has gone before has laid the proper groundwork, this step will proceed accordingly. It must be kept in mind, however, that this will have to be an ongoing step. Maintaining community support must be a high priority goal throughout the life of the program, not just at initial implementation.

The Program Design Phase

- Determine point(s) of diversion. Depending on whether diversion is to be pre-arrest, post-arrest/pre-booking, post-booking/pre-filing, or a combination of these, intake and assessment procedures will necessarily vary. Different actors, different eligibility criteria, different populations to be served, the degree of procedural formality and "visibility" the program will display, to name only a few factors, will be dictated by this decision. Community and justice system support, as well as defense bar and prosecutor reaction, can also be expected to vary depending on the point at which diversion occurs.

- Determine the locus of diversion. Selection of the agency to have administrative control over the diversion program or process will be a decision dictated largely by the balance of power in local politics and finances. In some instances a free-standing program will be decided upon. Usually, though, various tradeoffs and compromises with other goals and priorities for the parent or sponsoring agency will be inevitable and should be identified early.

- Build linkages with criminal justice agencies. Direct presentations and discussions with interfacing agencies that occur at the program planning stage lead naturally to the building of regular linkages for operations purposes. Finding and communicating ways in which the new program can assist already established agencies will invariably facilitate building linkages. Drafting letters of understanding of inter-agency operating rules should be achieved in advance of program implementation and regardless of whether statute, court rule, etc., preceded the program design phase. (Spelling out routine interface procedure for line staff to follow is seldom a function of these broader enabling provisions.)

- Building linkages with community treatment resources. Reliance on the maximum number of preexisting, quality treatment programs of all modalities is in the interest of any new criminal justice referral strategy for drug abusers, regardless of the point of intervention or referral. Just as criminal justice system actors must be educated about the goals and capabilities of treatment programs, so too must the treatment community be educated about the purposes of criminal justice referral mechanisms. Contracts to provide treatment services should be drafted and entered into with all cooperating treatment providers. These should detail mutual expectations;

referral, reporting, and monitoring requirements; confidentiality of communications; records considerations; etc. Despite the unfortunate but often encountered resistance on the part of many private sector treatment programs to accepting criminal justice referrals, the realities of present-day Federal and State drug abuse funding and casefinding for such programs will dictate to them the utility of building such linkages. How effectively the goals of the justice system are communicated to the treatment community and vice versa will determine how quickly and smoothly such linkages can be built.

- Determine the population(s) to be diverted. As noted earlier, the age range, drug-taking behavior, permissible scope of pending criminal charges, prior criminal record, etc., of target populations to be served will dictate eligibility criteria, duration of participation, and most operating procedures. These factors will also control how much and what sorts of efforts must be undertaken to generate community support and whether community standards of fairness and justice will be mirrored by the diversion process. Projected caseload volume cannot safely be anticipated, either, without a carefully and early determined "fix" on the target population(s) to be diverted.

Program Implementation

- Train and educate pre-charge diversion decisionmakers. Individual police officers, deputy prosecutors, youth workers, and others who will be making drug abuser identification, diversion, and treatment referral decisions must be sensitized about the nature of drug-taking behavior, the effects of various modalities and therapeutic approaches, and about the capabilities of local treatment programs. Such training can and should be formalized (e.g., drug awareness courses in police academies) and offered separately from and in advance of program implementation. However, on-the-job training--perhaps with other labels attached to it--can prove at least as effective (e.g., brief presentations over time at police role calls or at prosecutor staff meetings concerning new developments in drug treatment or even particular example cases). Federal and State drug abuse training monies should be tapped for these purposes at the earliest possible point, preferably in advance of program implementation.
- Determine available funding sources and secure funding. While this may appear to

be an obvious step, it by no means follows that selection of one particular funding source over another will be an easy or obvious decision. Federal funding, for example, while perhaps the most attractive because it is often readily available through SSA or SPA, is of relatively short duration and by no means guarantees State or local followup funding. Moreover, much freedom and discretion in program design may have to be sacrificed in order to secure Federal monies. State funds depending upon the likelihood of taxpayer revolts, such as California's "Proposition 13" referendum, in a given State may also be precarious. Immediate funding through a State or local level operating agency budget, rather than as a pilot effort funded through grant monies, may in the end prove the safe course. In any event, assessing fees for service from participants should be considered in order to offset possible fiscal uncertainties from sources.

Program Evaluation

- Plan to conduct an outside evaluation. Most Federal and much State funding for new criminal justice and drug abuse treatment programs requires an outside evaluation. Sound program management and astute political strategizing equally dictate that an independent evaluation be planned for and conducted to insure program credibility.
- Select an evaluator early. Support from criminal justice and drug treatment planners and agency administrators can be generated if a competent and respected outside evaluator is selected early. Having the outside evaluator in on the early stages of program implementation can facilitate program development, evaluation design, and actual data collection.
- Promote program continuation with a positive evaluation. Positive evaluation findings can go far toward generating political and community support for continuation of an ongoing referral program, as well as the expansion to new and more challenging client populations. A positive evaluation is also an invaluable aid to securing continuation funding.
- Utilize a program evaluation to modify and improve program operations. Evaluation findings can be of critical utility for program planning and management purposes. Refinement and improvement of program procedures services should be an ongoing process.

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Exhibits

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PRE-CHARGE DIVERSION PROGRAMS	PRIMARY ACTORS										LOCUS OF DIVERSION PROGRAM				POINT OF DIVERSION					
	Refers for Diversion	Assesses Treatment Needs	Assesses Diversion Eligibility	Makes Decision To Divert	Refers for Services	Provides Services	Monitors Progress	Receives Progress Reports	Determines Success	Drops Charges	Free-Standing Private Sector	Free-Standing Public Sector	Unit of Larger C.J. Agency	Unit of Larger Helping Service Agency	Pilot Program	Pre-Arrest	Post-Arrest/Pre-Booking (Intake)	Post-Booking and Post-Detention	Post-Booking in Lieu of Detention	
Street Diversion to Delaware CJSC	UP	TT	UP	UP	LU	DT	LU	UP	UP	UP										
Pre-Indictment Referral to Delaware CJSC		TT			DA	DT	LU	LU	DA											
Pre-Filing Citation Referral to Delaware CJSC	UP	TT	CC	CC	LU	DT	LU	CC	CC	CC										
Pre-Filing Citation Referral to Vanderburgh Cty., IN DADS	DA	BB	CC	LU	LU	LU	LU	DA	BB	CC	DA	DA								
Pre-Filing Diversion to Genesee Cty., MI DDA	DA	LU	DA	DA	LU	DT	LU	DA	DA	DA										
Pre-Booking Referral to Marin Cty., CA TASC Program	UP	LU	UP	UP	LU	DT	LU	UP	LU	UP	UP									
602 Citation Diversion to Novato, CA YSB	UP	YO	YO	YO	YO	DT	YO	YO	YO	YO										
602 Citation Diversion to San Anselmo, CA Departmental Prob.	UP	YO	YO	YO	YO	DT	YO	YO	YO	YO										
Pre-Arrest Diversion to Philadelphia, PA Social Action Workshop	PC	DT	PC	PC	PC	DT	PC	PC	PC	PC										
Citation Referral to Baltimore Cty., MD Community Arbitration Program	UP	AR	AR	AR	DP	DT	DP	DP	DP	AR										

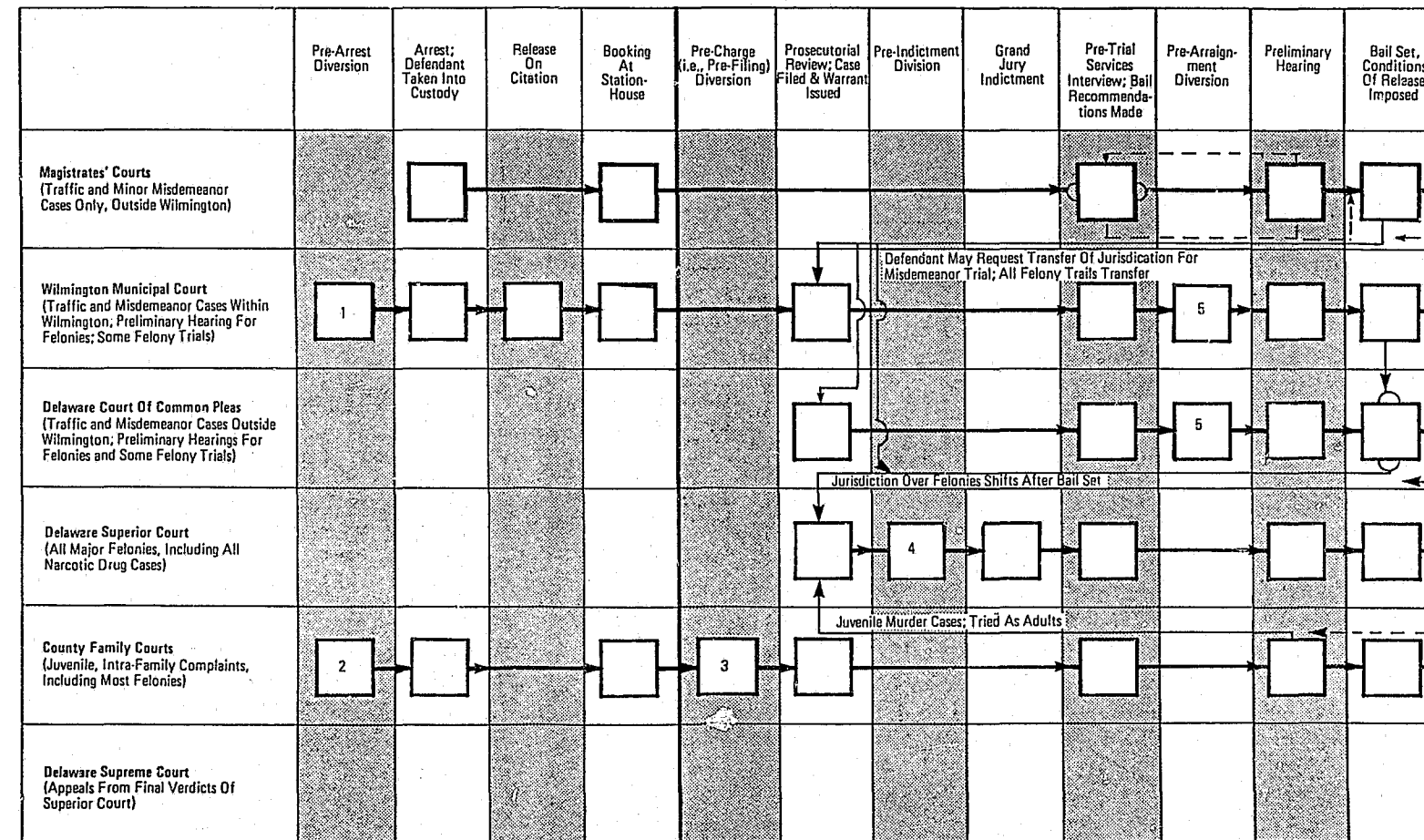
Legend for Primary Actor Designations
 UP--Uniformed Police Officer
 YO--Youth Officer
 PC--Plainclothes Officer
 BB--Bail Bond Commissioner
 DA--District Attorney
 AR--Arbitrator
 CC--Court Clerk

EXHIBIT 1.—Comparative programmatic features

ELIGIBILITY CRITERIA	POPULATION SERVICED	SERVICE DELIVERY MECHANISMS	TYPE(S) OF SERVICES OFFERED																									
			Fixed; Automatic Eligibility	Fixed But Case-By-Case Selective	Ad Hoc, Case-By-Case	Misdemeanors	Felonies	Traffic Offenses	Status Offenders	Adults	Juveniles	Marihuana Abusers	Opiate Abusers	Polydrug Abusers	In-House, By Diversion Staff	Referred Directly to Single Outside Program	Referred Directly to Several Outside Programs	Referred to Single Helping Service Agency	Services Brokered Thru Linkage Unit	Outpatient	Inpatient	Single Modality	Multi-Modality	Treatment/Therapy	Education/Prevention	Ancillary Services		

TT--Treatment Team
 LU--Linkage Unit Staff
 DT--Drug Treatment Program
 DP--Diversion Program Staff

of pre-charge diversion programs visited



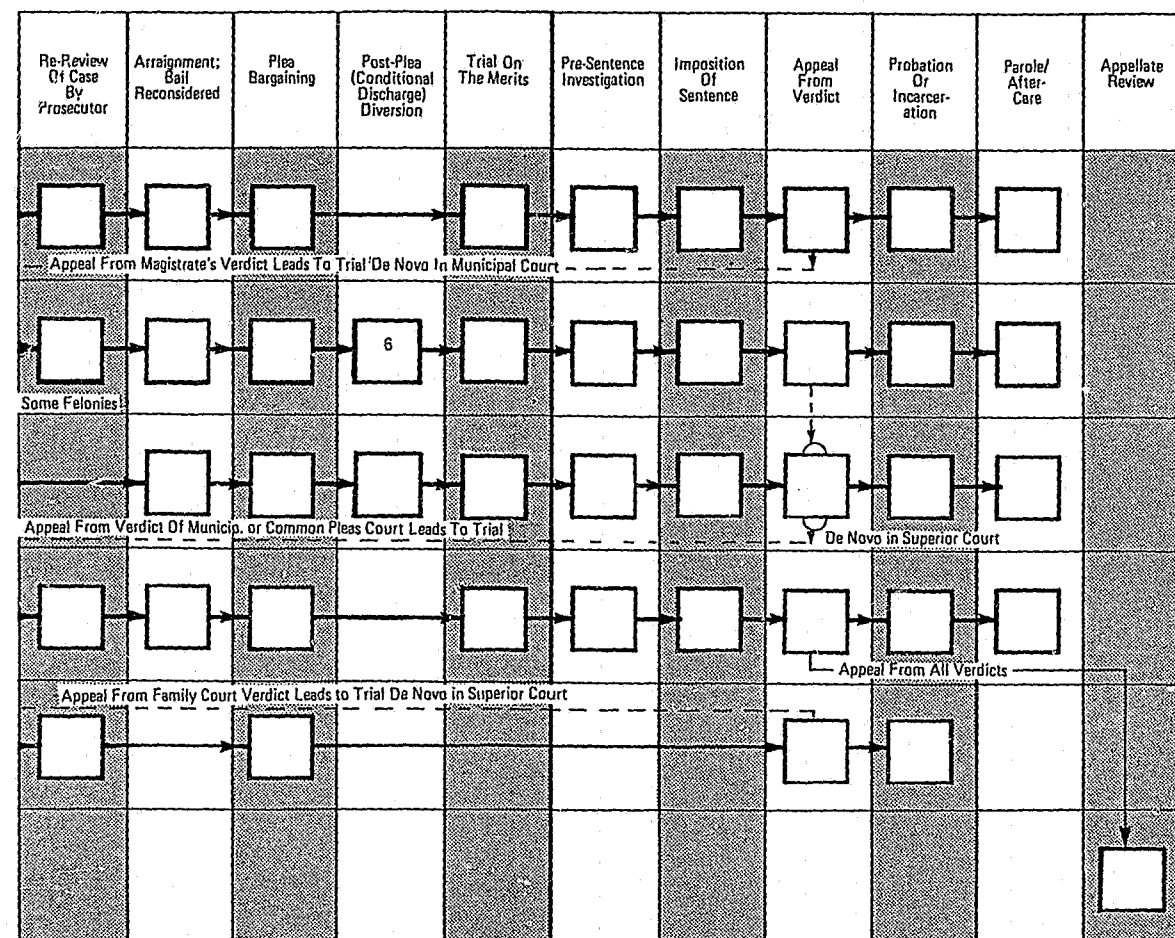
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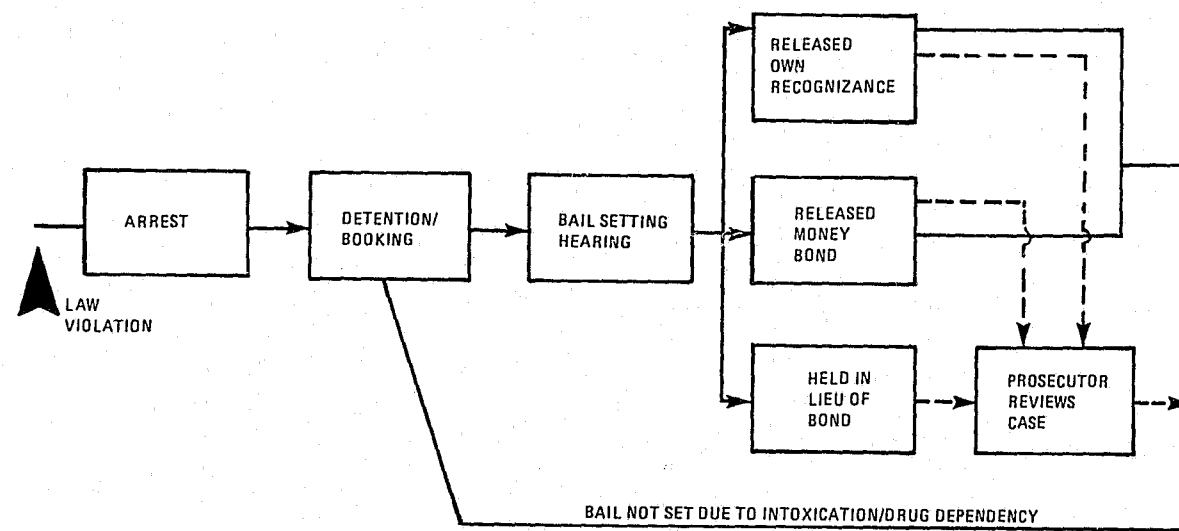
- 1. Discretionary diversion of drug and alcohol abusers and other by uniformed Wilmington police officers. Referrals to Criminal Justice Service Center via this route.
- 2. Pre-arrest community abatement program; referrals to the Criminal Justice Service Center possible via this route.

- 3. Pre-charge (i.e., pre-filing) diversion of drug and alcohol abusers in traffic cases by Clerk of Court to Criminal Justice Service Center, under authority of 21 Delaware Code § 4177B.
- 4. Not strictly diversion; treatment referrals of drug and alcohol abusers to the Criminal Justice Service Center by deputy prosecutors in Attorney General's Felony Screening Unit, as a matter of prosecutorial discretion.

- 5. Pre-trial diversion of defendants on non-drug related misdemeanors by deputy prosecutors, case-by-case, as a matter of prosecutorial discretion - "Attorney General's Probation".
- 6. Post-guilty plea diversion of drug abusers on controlled substance possession misdemeanors, with conditional discharge and expungement upon authority of 16 Delaware Code § 4764, Criminal Justice Service Center referrals.

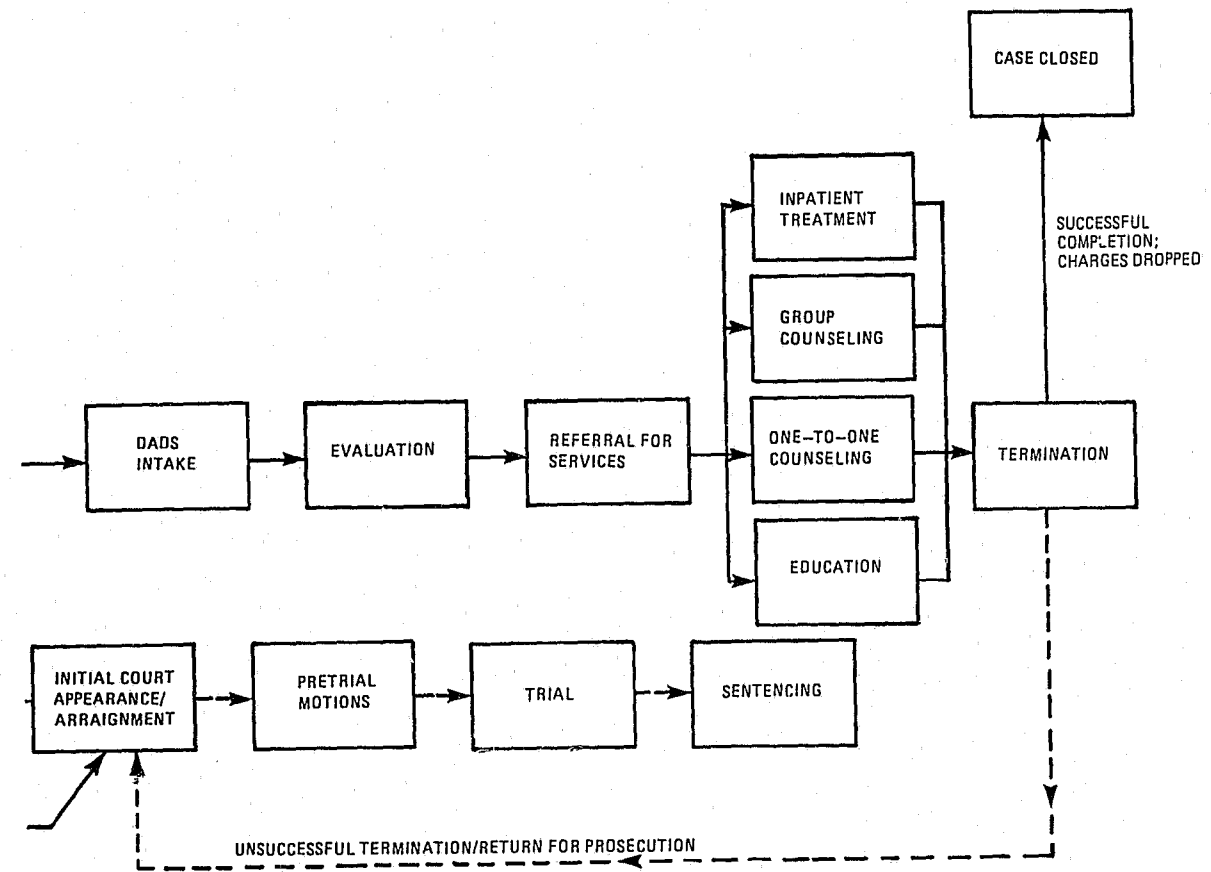
EXHIBIT 2. — Criminal caseflow, Delaware criminal justice system, and points of diversion to the Criminal Justice Service Center (CJSC)





LEGEND
 → PRIMARY PATH, FULL ADVERSIAL CRIMINAL CRIMINAL PROCESSING
 - - - - - ALTERNATE DISPOSITIONAL OPTIONS

EXHIBIT 3.- Pre-charge diversion process, Drug and Alcohol



Deferral Services (DADS), Vanderburgh County, Indiana

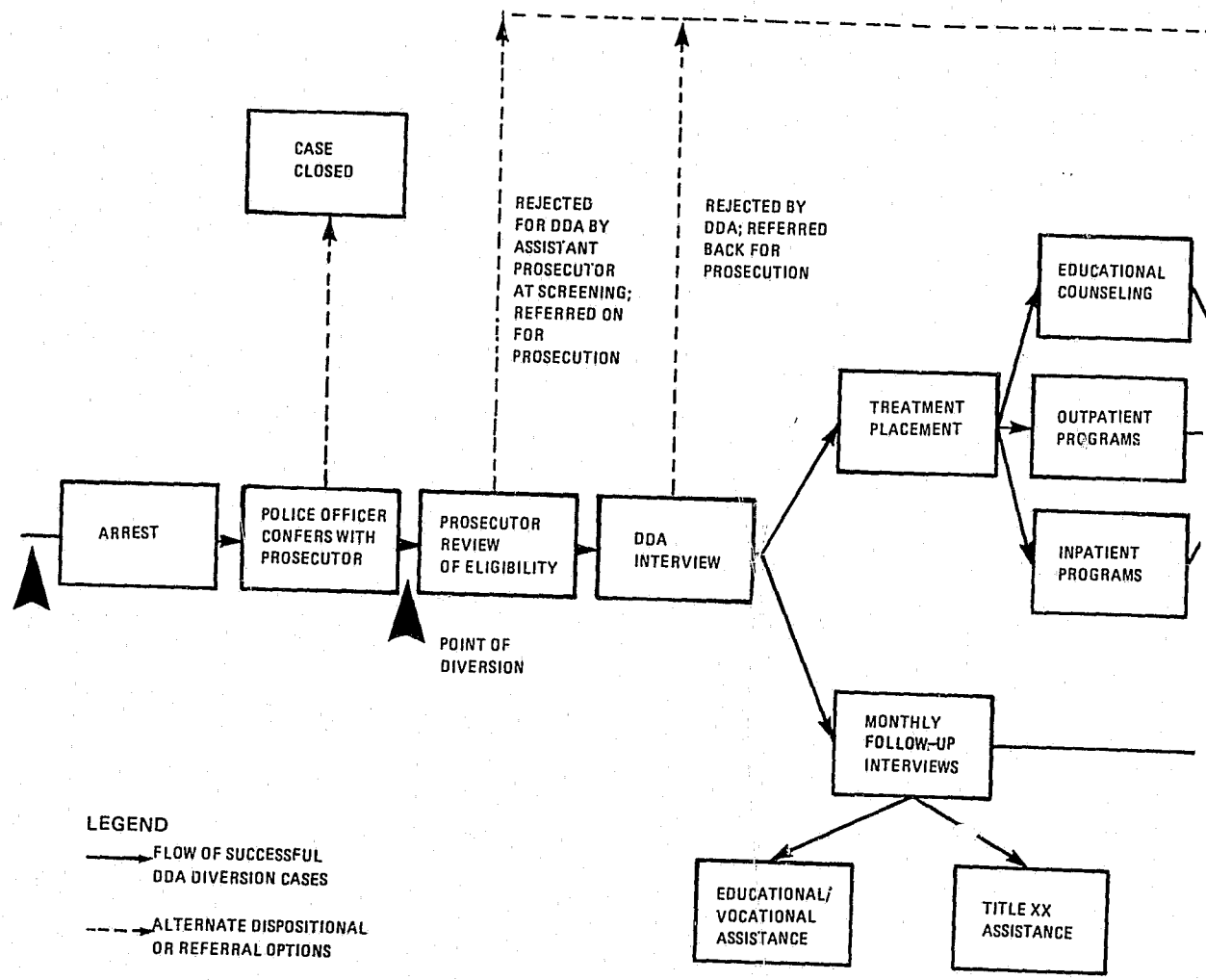
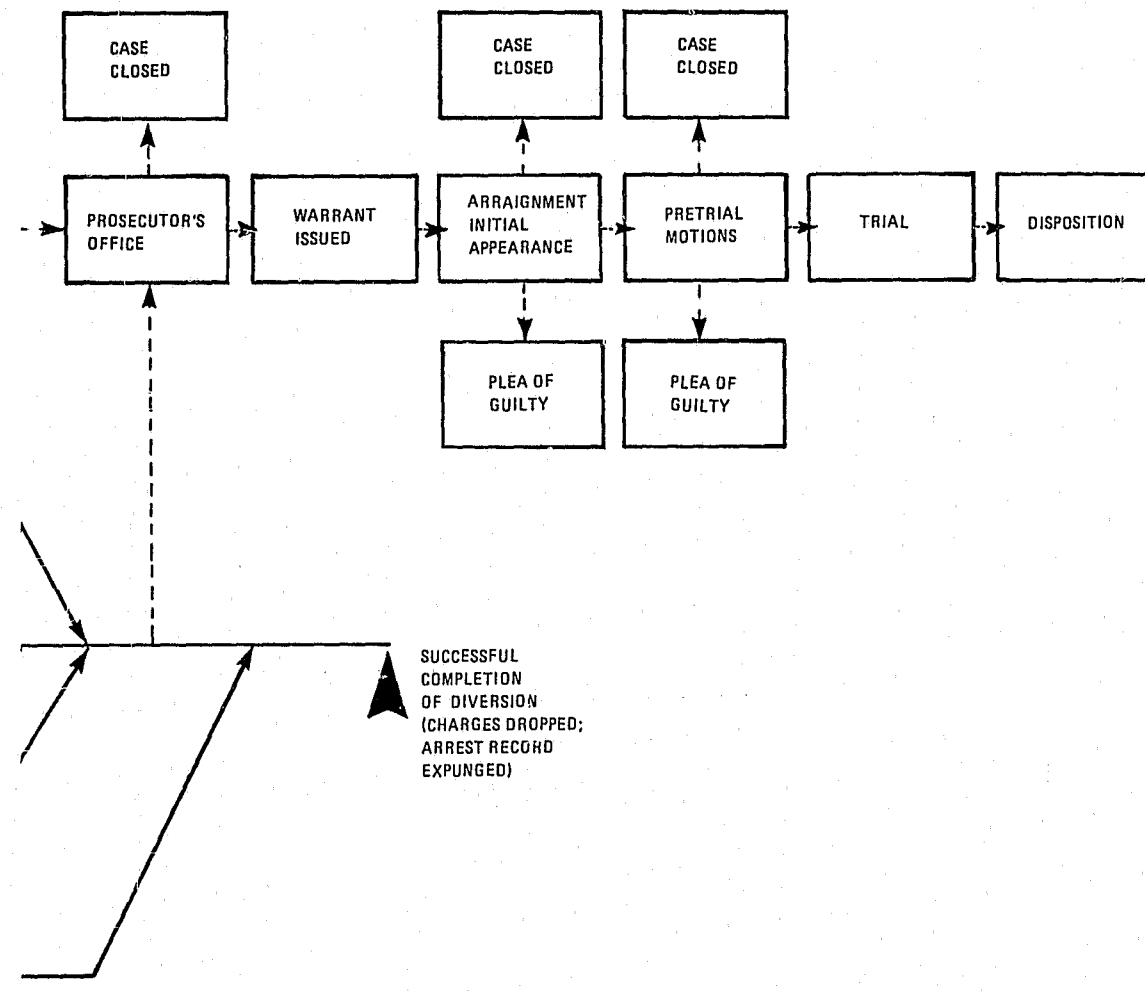


EXHIBIT 4. — Pre-charge diversion process, Drug



Diversion Authority (DDA), Genesee County, Michigan

CRIMINAL JUSTICE SYSTEM

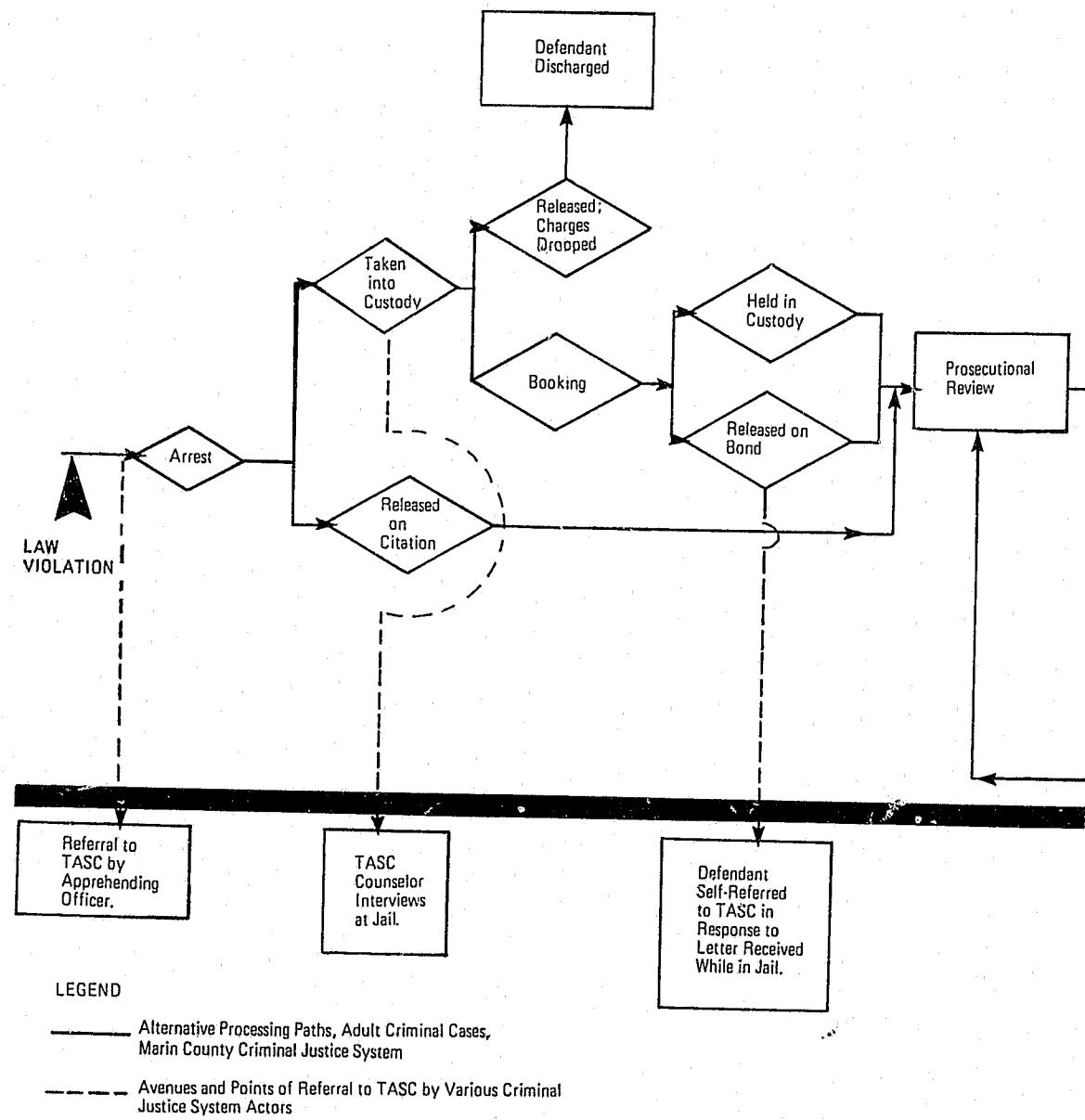
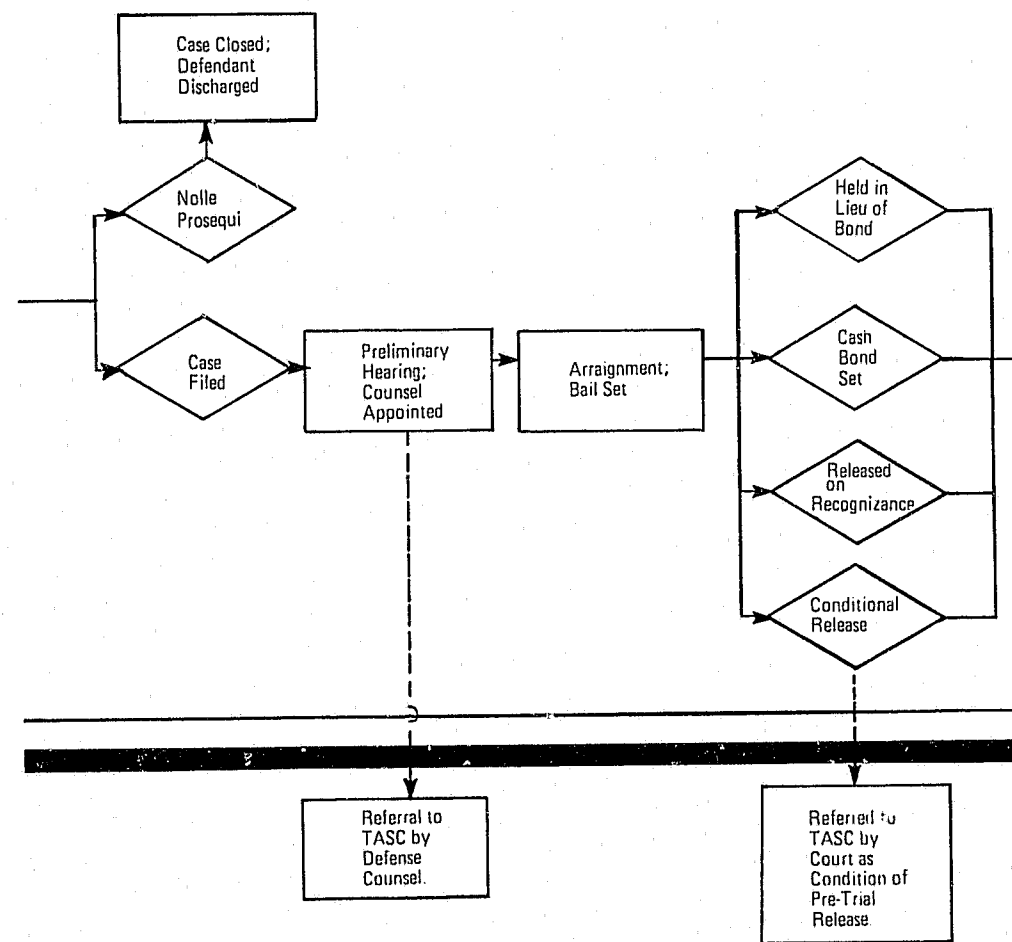


EXHIBIT 5.—Adult criminal caseflow, Marin County, California,



and points of diversion to Marin County TASC

(Continued on next page)

CONTINUED

1 OF 2

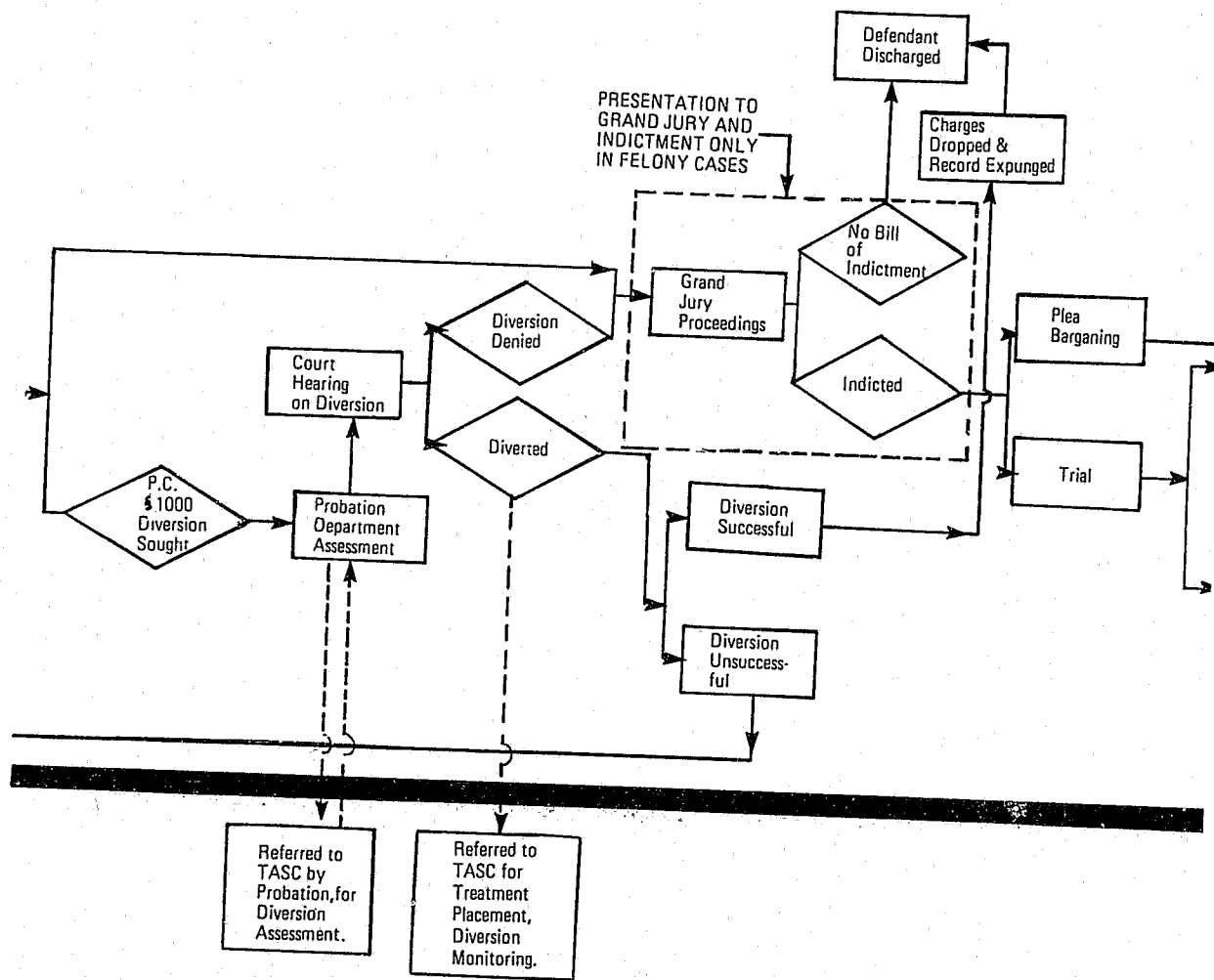
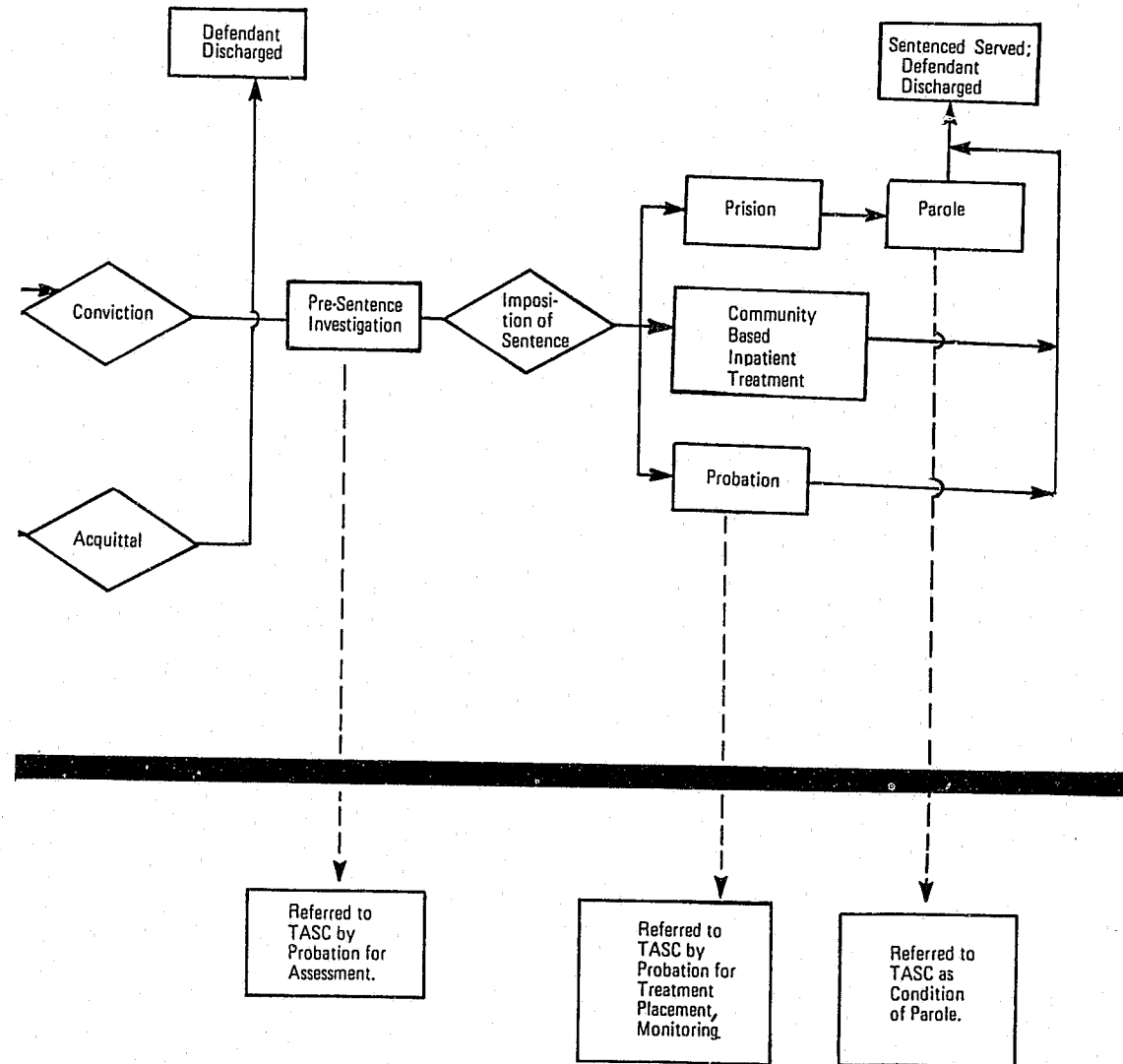


EXHIBIT 5.—Continued



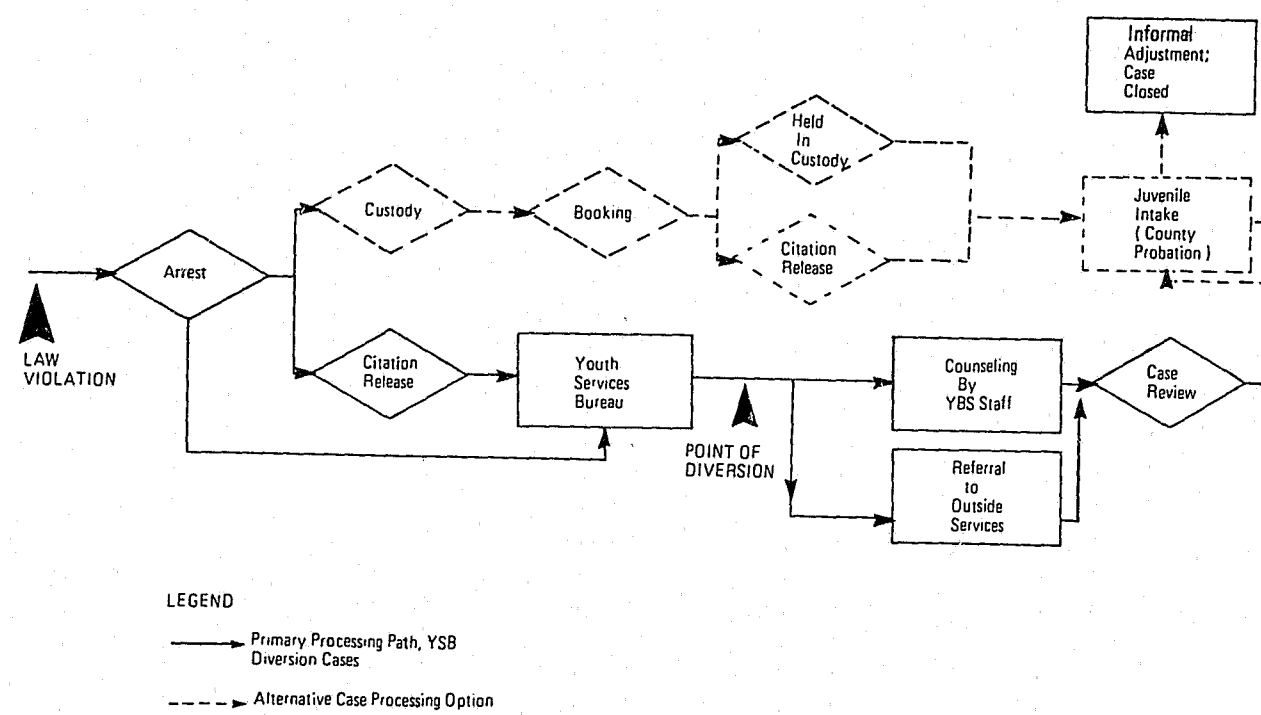
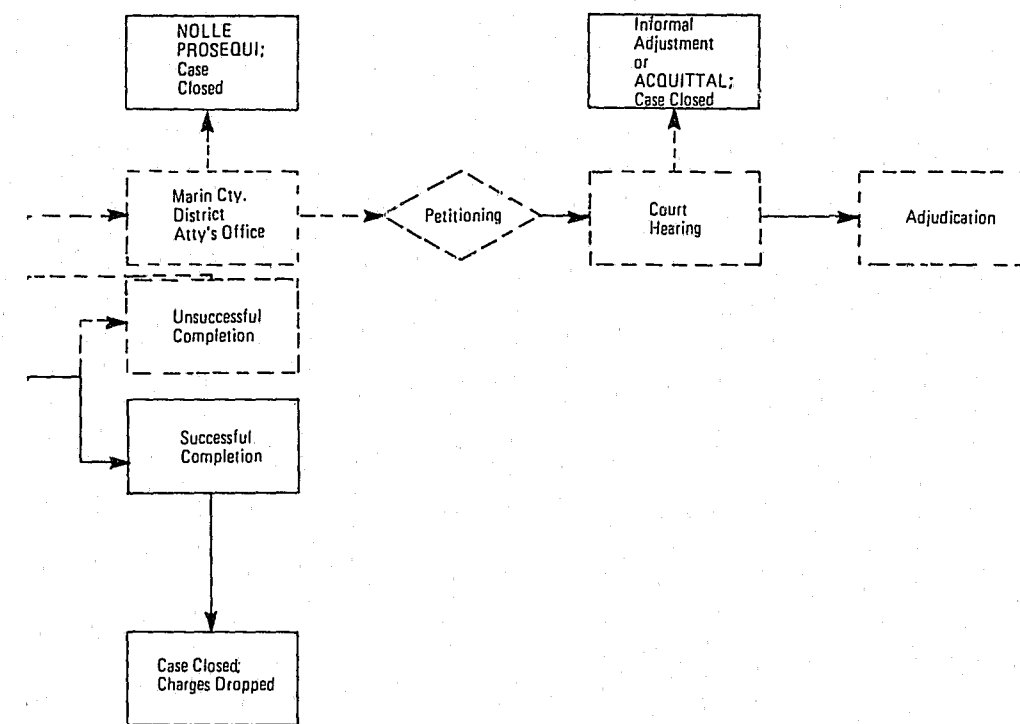


EXHIBIT 6.—Pre-charge juvenile diversion, Marin County, California,



to the Novato Youth Service Bureau (YSB)

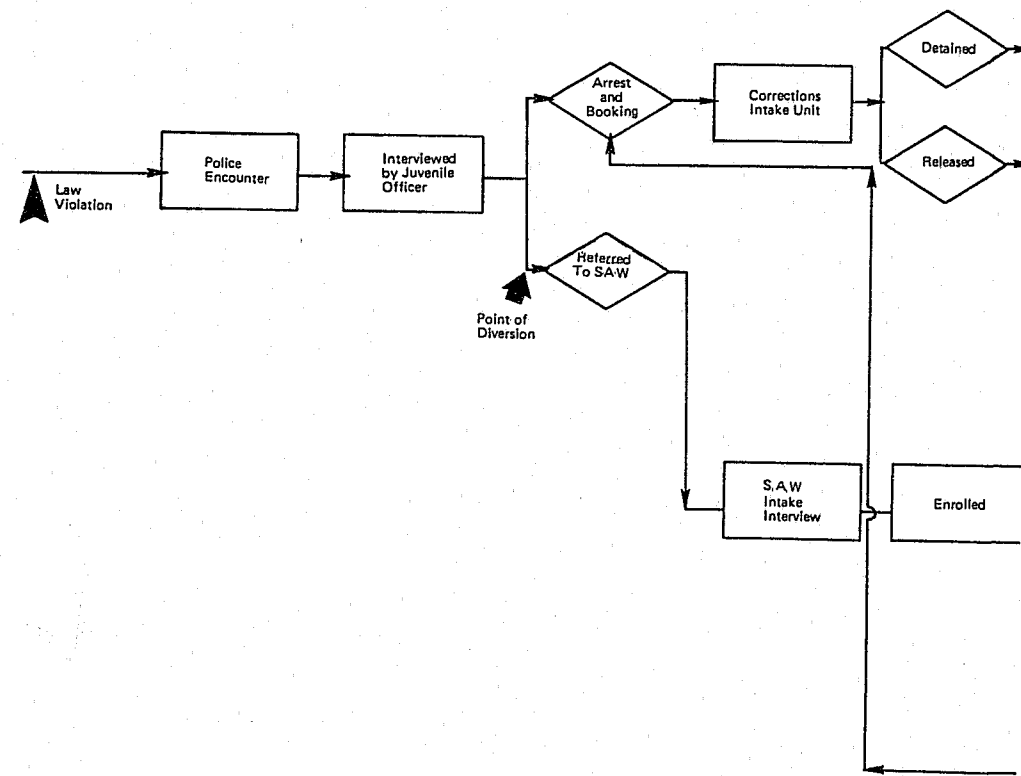
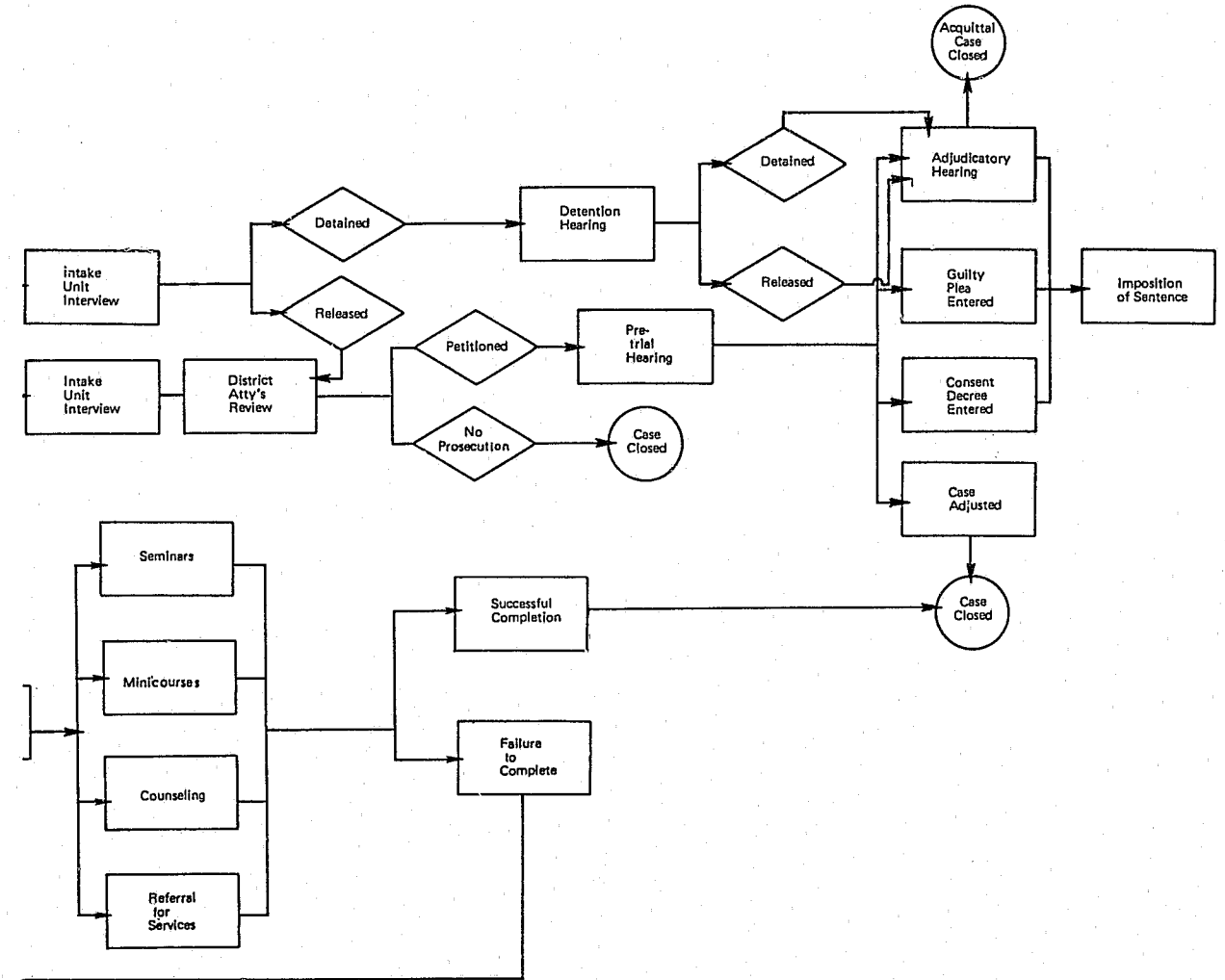


EXHIBIT 7.—Pre-charge juvenile diversion,



Philadelphia, Pennsylvania, to the Social Action Workshop

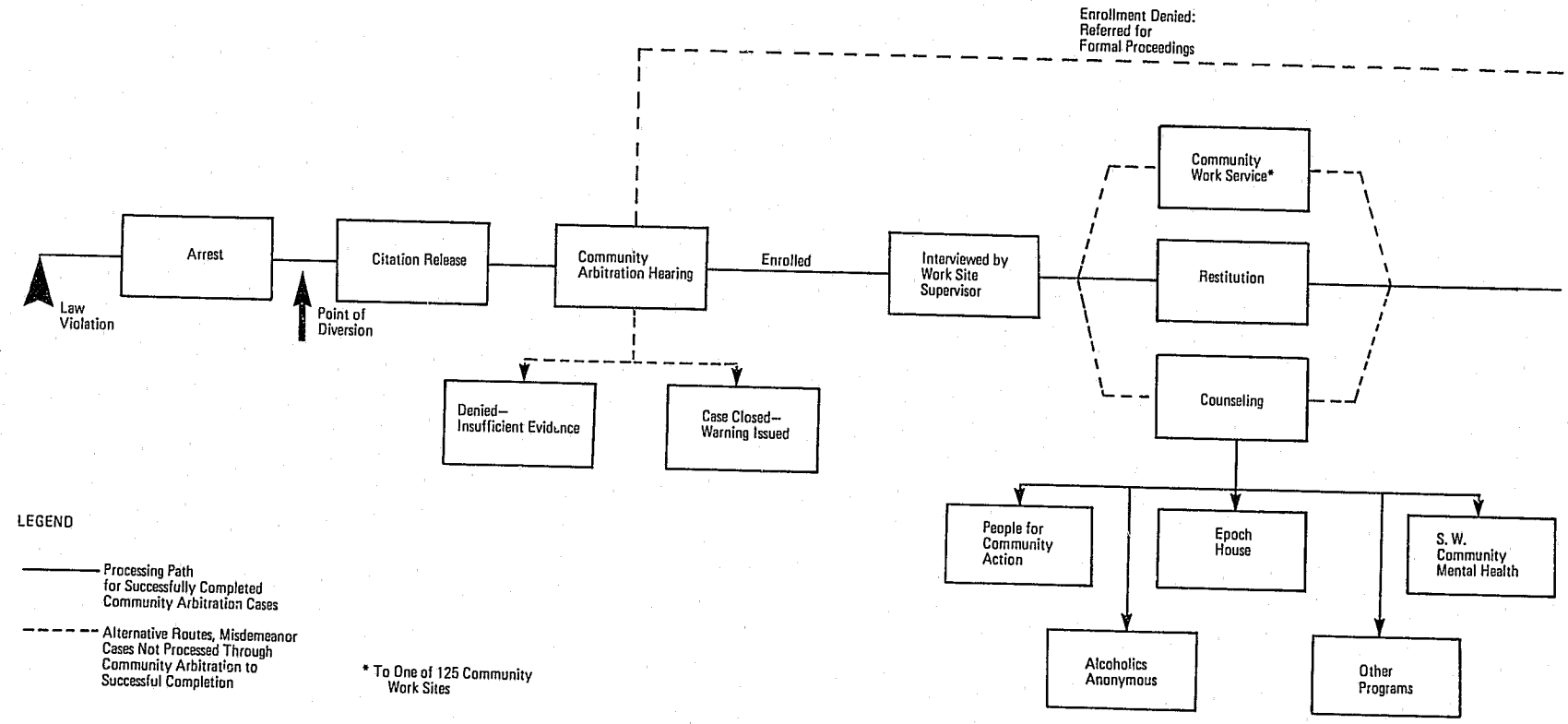
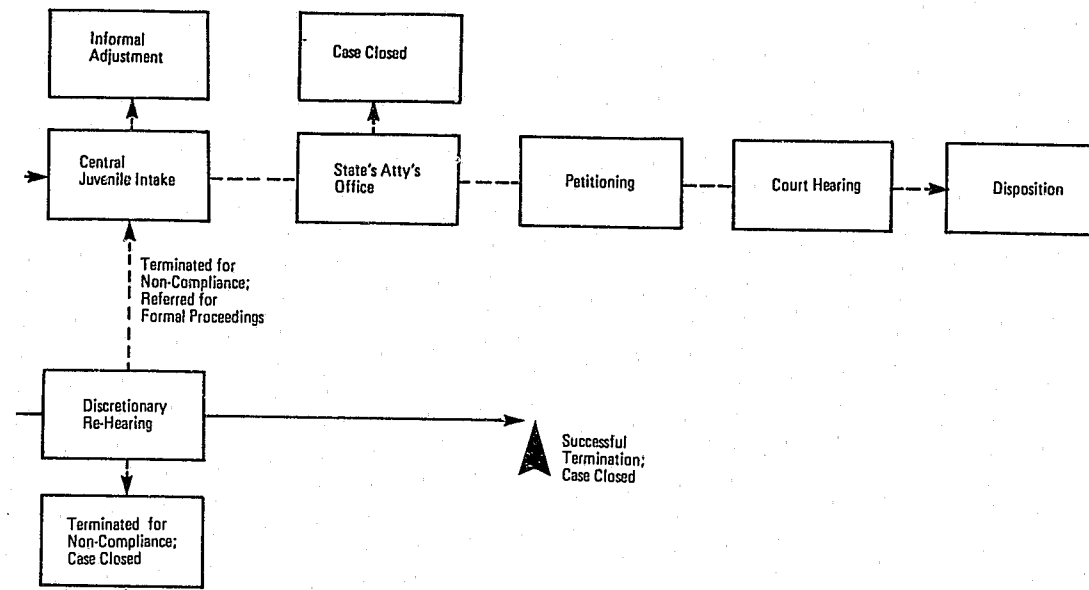


EXHIBIT 8.—Pre-charge juvenile diversion, Baltimore County, Maryland, to the Community Arbitration Program



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