Recidivism of 17-21 Year-Old Misdemeanants Participating in a Prosecution Diversion Program

Gerald D. Snodgrass
Western Michigan University

Follow this and additional works at: https://scholarworks.wmich.edu/dissertations
Part of the Criminology Commons, and the Educational Administration and Supervision Commons

Recommended Citation
https://scholarworks.wmich.edu/dissertations/2241

This Dissertation-Open Access is brought to you for free and open access by the Graduate College at ScholarWorks at WMU. It has been accepted for inclusion in Dissertations by an authorized administrator of ScholarWorks at WMU. For more information, please contact maira.bundza@wmich.edu.
RECIDIVISM OF 17-21 YEAR-OLD MISDEMEANANTS PARTICIPATING IN A PROSECUTION DIVERSION PROGRAM

by

Gerald D. Snodgrass

A Dissertation Submitted to the Faculty of The Graduate College in partial fulfillment of the requirements for the Degree of Doctor of Education Department of Educational Leadership

Western Michigan University
Kalamazoo, Michigan
August 1987
RECIDIVISM OF 17-21 YEAR-OLD MISDEMEANANTS PARTICIPATING IN A PROSECUTION DIVERSION PROGRAM

Gerald D. Snodgrass, Ed.D.

Western Michigan University, 1987

Criminal activity involving the youthful offender is a serious problem in law enforcement. The monetary considerations of processing a criminal case in the established criminal justice system are not declining. Youthful crime, like all forms of criminal activity, is a considerable drain on the resources of this country. The personal costs to the 17-21 year-old offender may include curtailment of employment opportunities, limited educational prospects, and the establishment of adverse life patterns, leading to further criminal involvement. The youthful offender who resorts to crime again and is arrested because of such criminal activity adds additional costs to the criminal justice system and further limits life opportunities. Despite the seriousness and costs of youthful recidivism, few studies of this problem have been completed.

In this study, a counseling based criminal diversion program was established to assist first offender misdemeanants. Data from this study were compared to data from other prosecution jurisdictions, without a diversion
program. All data were collected from a single district
court jurisdiction within a county with a population of
451,000.

Based on the data of this study, four major conclu-
sions were made:

1. Individualized counseling treatment does reduce
the instance of recidivism for youthful offenders to a
statistically significant relationship (p > .01).

2. Intervention into the criminal justice prosecu-
tion process is a viable alternative to prosecution.

3. Prosecuting authorities are not using diversion
to any significant degree as a tool to curtail recidivism.

4. Significant reductions in criminal prosecution
costs can be demonstrated with the use of a diversion
program.

A major recommendation of this study is that prosecu-
tion authorities should develop diversion from prosecution
programs in their respective jurisdictions to curtail
recidivism of youthful offenders and to reduce costs to
the criminal justice system. Prosecutors should make
every effort to ensure that a fair and appropriate diver-
sion program is implemented that would have a positive
effect on the youthful offender and provide young people
every opportunity to correct problems in their life pat-
terns which could contribute to recidivism.
INFORMATION TO USERS

The most advanced technology has been used to photograph and reproduce this manuscript from the microfilm master. UMI films the original text directly from the copy submitted. Thus, some dissertation copies are in typewriter face, while others may be from a computer printer.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyrighted material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps. Each oversize page is available as one exposure on a standard 35 mm slide or as a 17" × 23" black and white photographic print for an additional charge.

Photographs included in the original manuscript have been reproduced xerographically in this copy. 35 mm slides or 6" × 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.
Recidivism of 17–21 year-old misdemeanants participating in a prosecution diversion program

Snodgrass, Gerald Dwight, Ed.D.
Western Michigan University, 1987

Copyright ©1987 by Snodgrass, Gerald Dwight. All rights reserved.
PLEASE NOTE:

In all cases this material has been filmed in the best possible way from the available copy. Problems encountered with this document have been identified here with a check mark ✓.

1. Glossy photographs or pages __ __
2. Colored illustrations, paper or print __ __
3. Photographs with dark background __ __
4. Illustrations are poor copy __ __
5. Pages with black marks, not original copy ✓
6. Print shows through as there is text on both sides of page __ __
7. Indistinct, broken or small print on several pages ✓
8. Print exceeds margin requirements __ __
9. Tightly bound copy with print lost in spine __ __
10. Computer printout pages with indistinct print __ __
11. Page(s) _______ lacking when material received, and not available from school or author.
12. Page(s) _______ seem to be missing in numbering only as text follows.
13. Two pages numbered ______. Text follows.
14. Curling and wrinkled pages __ __
15. Dissertation contains pages with print at a slant, filmed as received ______
16. Other ____________________________________________________________________________

University
Microfilms
International
ACKNOWLEDGEMENTS

This study could not have been completed without the hard work and support of a wide variety of individuals. Those people provided resources, performed specialized tasks, supervised my work, and gave me the inspiration to continue.

Patrick McDougall gave his time, attention and heart to the study by serving as counselor and only employee of the Program of Diversion. He served the diversion clients and provided each of them with motivation to complete. His assistance and the assistance of City Attorney, Richard Hamilton, were invaluable to the completion of this study. The Mayor and City Council, who had enough faith in the concept to underwrite the start-up costs associated with this project, are commended and are now responsible for an ongoing diversion program which is functioning to the advantage of the city and the individual client. Because I was fortunate enough to be associated with these people I was able to complete the study and disseminate the results to the academic community and others in city and township government who are interested in diversion as an alternate to prosecution of first offender misdemeanants.

The project required the founding of a program based

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
upon fairness to people and the participation of those
people in the program. All who started and completed the
diversion program got a second chance and to those people
who did not recidivate I offer my sincere thanks for being
a part of this experiment. To those people who did not
complete the program requirements and were returned for
prosecution or those who later recidivated I acknowledge
your participation and wonder if your failure was based
upon a program flaw or a variable over which we had no
control.

I was very fortunate to have a highly talented and
knowledgeable doctoral committee, they always gave me
solid advice. Joe Wilson and Charles Warfield made this
study a better effort by their presence on my committee.
Edgar Kelley, my doctoral committee chair, allowed me to
follow my feelings or use my head, whenever either seemed
appropriate. He acted with concern about the project and
me and was a true mentor.

Behind all this legal and scholarly activity, my
family stood in unwavering support. My children, Kelly
and Jay, gave me the best of reasons to be done and to get
on with the rest of our lives. Finally, my wife, Judy,
gave me her love and understanding and encouraged my
completion.

Gerald D. Snodgrass

iii
# TABLE OF CONTENTS

**ACKNOWLEDGEMENTS** ..............................................  ii  
**LIST OF TABLES** ................................................... vii

## CHAPTER

I. INTRODUCTION ............................................. 1  
   General Statement of the Problem .................. 1  
   Research Objectives ................................. 2  
   Hypothesis............................................. 3  
   Operational Definitions ............................ 3  
   Research Design...................................... 5  
      Subjects........................................... 5  
      Sampling Plan .................................. 6  
      Control Group .................................. 7  
      Comparison ...................................... 8

II. REVIEW OF THE LITERATURE ................................. 10  
   Introduction.......................................... 10  
   Criminal Justice Process and Procedure ...... 12  
   Legal Resource and Law Related Documents  
      Including Case Law and the Statutes ......... 13  
   United States Government and Related  
      Publications of Concern to Criminal  
      Diversion........................................ 17  
   Sociological Data and Text ....................... 19  
   Dissertation Abstracts ............................. 23  
   Social Science Text and Data ..................... 28

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Documents Relating to Criminal Diversion</td>
<td>29</td>
</tr>
<tr>
<td>Counseling Process Text and Related Data</td>
<td>30</td>
</tr>
<tr>
<td>Summary of the State of Diversion</td>
<td>32</td>
</tr>
<tr>
<td><strong>III. METHODOLOGY</strong></td>
<td>33</td>
</tr>
<tr>
<td>Description of Subjects</td>
<td>33</td>
</tr>
<tr>
<td>Research Design and Procedures</td>
<td>34</td>
</tr>
<tr>
<td>Limitations</td>
<td>41</td>
</tr>
<tr>
<td>Measures Employed</td>
<td>43</td>
</tr>
<tr>
<td>Initial Interview and Documentation</td>
<td>45</td>
</tr>
<tr>
<td>Classification and Re-Referral</td>
<td>48</td>
</tr>
<tr>
<td>Counseling as Treatment</td>
<td>54</td>
</tr>
<tr>
<td>Summary</td>
<td>56</td>
</tr>
<tr>
<td><strong>IV. RESULTS</strong></td>
<td>57</td>
</tr>
<tr>
<td>Introduction</td>
<td>57</td>
</tr>
<tr>
<td>Data Collection</td>
<td>61</td>
</tr>
<tr>
<td>Experimental Group Selection</td>
<td>62</td>
</tr>
<tr>
<td>Control Group Selection</td>
<td>63</td>
</tr>
<tr>
<td>Experimental Group and Control Group Record Check</td>
<td>64</td>
</tr>
<tr>
<td>Recidivism Rate</td>
<td>66</td>
</tr>
<tr>
<td><strong>V. DISCUSSION AND SUMMARY</strong></td>
<td>69</td>
</tr>
<tr>
<td>Summary of Research Problem</td>
<td>70</td>
</tr>
<tr>
<td>Limitations of the Study</td>
<td>71</td>
</tr>
<tr>
<td>Findings and Interpretations</td>
<td>72</td>
</tr>
</tbody>
</table>

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
# Table of Contents—continued

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suggested Applications</td>
<td>74</td>
</tr>
<tr>
<td>Implications of Findings</td>
<td>76</td>
</tr>
<tr>
<td>Recommendations for Future Study</td>
<td>81</td>
</tr>
<tr>
<td>Closing Comments</td>
<td>87</td>
</tr>
</tbody>
</table>

## APPENDICES

<table>
<thead>
<tr>
<th>APPENDICES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Advisement of Rights Form</td>
<td>90</td>
</tr>
<tr>
<td>B. Prosecution Referral Form</td>
<td>92</td>
</tr>
<tr>
<td>C. Client Information Sheet</td>
<td>94</td>
</tr>
<tr>
<td>D. Legal Rights and Responsibilities Form</td>
<td>96</td>
</tr>
<tr>
<td>E. Diversion Advice Form</td>
<td>100</td>
</tr>
<tr>
<td>F. Diversion Program Probation Road Book Face Sheet</td>
<td>102</td>
</tr>
<tr>
<td>G. Notice of Termination Form</td>
<td>104</td>
</tr>
<tr>
<td>H. Five Year Report</td>
<td>106</td>
</tr>
<tr>
<td>I. Typical Counseling Sessions</td>
<td>109</td>
</tr>
<tr>
<td>J. Counselor Profile</td>
<td>129</td>
</tr>
<tr>
<td>K. Financial Considerations</td>
<td>132</td>
</tr>
</tbody>
</table>

## BIBLIOGRAPHY

| BIBLIOGRAPHY                                                              | 137  |

---

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
LIST OF TABLES

1. Recidivism Frequency............................. 67
CHAPTER I

INTRODUCTION

General Statement of the Problem

When a person is arrested and prosecuted in the normal course of criminal procedure, such offender acquires a police record and the onus which attaches. If the individual is 17-21 years of age, the stigma becomes a burden for the future. Certain employment opportunities are curtailed, educational prospects are limited, and life patterns may be adversely affected by a youthful conviction.

The person's life pattern, which is the concern in this study, involves potential future involvement with criminal activity. What would happen to the youthful offender with a second chance? Will that person return more or less often to the criminal justice system than an offender who was prosecuted for the first criminal offense? Can a system be established to divert youth from the criminal justice process, which will be fair to all involved, and positively affect recidivism?

Establishing a fair system to divert young adults who are 17-21 years old requires intervention of several criminal agencies and disciplines within the social sciences,
law and psychology. A structure must comply with legal requirements and insure that the individual is afforded every chance to progress through the process of diversion. This study has direct impact on the people who are subjects because there is a potential for incarceration should the person be rejected from the program. This study involves criminal law and criminal sanctions, constitutional requirements, and legal process problems. When establishing the criterion for program acceptance and guidelines for referral to the group, consideration of individual rights and due process was of the utmost importance. Establishment of this program involves the creation of a unique process within the criminal justice system.

Research Objectives

The purpose of this study is (a) to review the literature regarding criminal diversion, determine if similar studies were conducted, and review the conclusions; (b) to establish the diversion program; (c) to determine the effects of the diversion on recidivism; and (d) to determine whether there are certain types of 17-21 year-olds for which the diversion program is more (or less) effective.
Hypothesis

There will be a significant difference in the recidivism rate of first offender, misdemeanant, 17-21 year-olds diverted from prosecution, and comparable individuals who are prosecuted.

Operational Definitions

For purposes of this study, the following terms are defined:

Admission of responsibility: Acceptance of the defendant of the wrong by involvement in the charged crime, not a plea of guilty for any criminal purpose.

Client: Any 17-21 year-old individual charged with a first offense misdemeanor and referred to the diversion program and accepted.

Counselor: Probation agent who services the defendant client during the diversion period.

Counseling: Individual one-to-one contact between counselor and client.

Defendant: Any individual charged with a first offense, non-violent misdemeanor who is 17-21 years old, who meets the herein defined diversion referral criteria.

Diversion: Probation period of 3 to 12 months prior to prosecution, which will include: a complete understanding of the criminal act and the legal process as well as admission of responsibility for the criminal activity
by the offender, counseling sessions, no additional criminal involvement during abeyance period, payment of restitution and program fees, and possible completion of other programs of treatment with associated agencies at the direction of counselor.

**Due process:** Refers to fundamental rights, which the American system of jurisprudence has always recognized for the enforcement and protection of private rights and the individual.

**Misdemeanor:** A crime which is punishable by no more than one year in jail or a fine of no more than $1,000.00 or both.

**Misdemeanant:** A person arrested and charged with a misdemeanor.

**Probation agent:** Counselor who services the defendant client during the diversion period.

**Program completion:** Any referred and accepted individual who receives a favorable discharge from the program and subsequently has the criminal charge dismissed by the prosecutor.

**Prosecuting attorney:** City Attorney.

**Recidivist:** One who resorts to crime again and is arrested because of such criminal activity.

**Record check:** Formal systematic review of police and court files to determine status of defendant relating to involvement in the criminal justice process.
Treatment: Counseling of the defendant using the methods, procedures and techniques of the empathetic method of counseling.

The experimental group of people consists of individuals who are arrested, diverted to a period of counseling, and not prosecuted if they complete the counseling intervention. The control group consists of a group of people who are basically the same as the experimental group, except that they were convicted of the first offense misdemeanor crime and not diverted. The life pattern the youthful offender develops, both control group and experimental, based upon a check of their future involvement with criminal activity, is the concern in this study.

Research Design

Subjects

The focus of inquiry is 17-21 year-olds who are arrested as misdemeanants. The target population for data consists of people who are arrested within the borders of a city with a population of 30,000 people. The city has a land area of 24 square miles and is located in the geographic center of a county with a population of 451,000. A major portion of the people are dependent upon the production of automobiles as a basis for generation of their income.
### Sampling Plan

**Static-Group Comparison**

<table>
<thead>
<tr>
<th>(crime)</th>
<th>x (diversion)</th>
<th>O (dismiss)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1/6 county)</td>
<td>(post-test - record check)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(crime)</th>
<th>O (conviction)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(5/6 county)</td>
<td>(post-test - record check)</td>
</tr>
</tbody>
</table>

The purpose of the study is to determine the effectiveness of a misdemeanant diversion program. Random assignment of defendants to a diversion program is not possible, as due process requires all defendants of similar behavior and qualifications to be given the equal opportunity to attend the program. Therefore, all participants are volunteers or quasi-volunteers who have the option of either volunteering or being prosecuted.

Only one division of a six-judge district has the diversion program available to those who commit a crime in that particular geographic area of the county which encompasses roughly one-sixth of the district population and land area. The control group will be drawn from the balance of the county judicial divisions because if they were drawn randomly from the same area in which the diversion program is available, they, the control group, would be quasi-volunteers. By declining to accept diversion, which is offered to all qualified, charged misdemeanant defendants, each elected to be prosecuted; the pool of
control convicted defendants, in the same division, will be only those who chose to be prosecuted.

Control Group

This study involves young adults, 17-21 years of age, who are arrested for an offense and charged as a misdemeanor. Anyone in the county, or residing within a reasonable distance of the county, may qualify for referral to the program, which is geographically based upon where the defendant was arrested. The balance of defendants, those not arrested in the jurisdiction of the program, are prosecuted. They have no option. Therefore, the control group may contain residents of the diversion territory who are not referred because they were arrested outside of the prosecution area of the program, and who meet the following criteria (which is identical to those individuals who are diverted, except for being once convicted):

1. 17-21 years-old.
2. Lack of any prior misdemeanor or felony record prior to current charge.
3. Arrested for a misdemeanor which involves no violence.

The only distinction between the experimental group and the control group, in relation to selection, is the area of arrest. Therefore, the data should be comparable.
for the two treatment groups, and no selection bias should exist, although some checks on background demographics of subjects will be used to support this assumption.

**Comparison**

The study is static-group comparison design:

1. Defendants are not randomly assigned to the experimental and control groups (sampling plan), but should be comparable in all variables due to the way in which they have come to be placed into either group.

2. Defendants assigned to the diversion group receive treatment (diversion program) and those defendants who are not assigned are not treated (prosecuted).

3. A post-test criminal record check is conducted for each individual in each group after six months or upon program completion. A comparison can be conducted at any future selected date with no additional data collection required.

The single hypothesis tested in this study is that there will be a significant difference in the recidivism rate of first offender, youthful misdemeanants diverted from prosecution, and comparable individuals who are prosecuted. The control group consists of individuals who are prosecuted and the experimental group consists of people who are diverted from prosecution. A determination will be made, by checking each persons criminal record
three years later, whether that person was again involved with the criminal justice system by again being arrested. The hypothesis will be tested by comparison of the total arrest records of the control group and the experimental group.
CHAPTER II

REVIEW OF THE LITERATURE

Introduction

The purpose of this study is (a) to review the literature concerning criminal diversion, determine if similar studies were conducted, and review the conclusions; (b) to establish the diversion program; (c) to determine the effects of the diversion on recidivism; and (d) to determine whether there are certain types of 17-21 year-olds for which the diversion program is more (or less) effective. In this chapter is a review of literature in eight areas.

The process of literature review included:
1. Criminal justice process and procedure.
2. Legal resource and law related documents including case law and the statutes.
3. United States Government and related publications of concern to criminal diversion.
4. Sociological data and text.
5. Dissertations from the above fields.
6. Social science text and data.
7. International documents relating to criminal diversion.
8. Counseling process text and related data.

One consideration uncovered by the review is the informal nature of diversion of criminal defendants. Diversion generally occurs at three points, as identified in the National Advisory Commission on Criminal Justice Standards and Goals (1973a):

There are three main points at which diversion may occur: prior to police contact, prior to official police processing and prior to official court processing. Analysis of each of these potential points of diversion yields three basic models in terms of responsibility for diversion; community based diversion programs, police based diversion programs and court based diversion programs. While each of these models usually involves more than one agency or group, programs will be grouped according to who initiates and is primarily responsible for their operation. (p. 77)

Almost all diversionary programs now in effect in the 1980s center around felony defendants and represent an alternative to incarceration in prison. The absence of material relating to 17-21 year-old misdemeanant defendants indicates that little if any work has been done in this area on a formal basis, or that if it has taken place, reports on such research are insignificant. Most literature reviewed considers felony programs with severe criminal sanctions in lieu of defendant acceptance of diversion. The balance of the literature involves several felony-based programs including: prison and work release, release by stages, and release on a graduated basis.
A review of the Michigan Compiled Laws Annotated (1987) disclosed no statute which specifically granted or denied a city or county the authority to formulate or operate a program of diversion. Several Michigan Supreme Court decisions were found which left the prosecution or non-prosecution to the discretion of the prosecutor or city attorney in whose jurisdiction the crime occurred. The People v. Lombardo (1942) decision left the task or nontask of diversion up to the local prosecutor.

The United States Supreme Court opinion in Miranda v. Arizona (1966), established standards for subsequent introduction of proofs relating to criminal defendants who chose to talk about their case with any agent or officer and were subsequently prosecuted. This gave rise to a need to build into any program of non-prosecution, such as diversion, an advisement of rights section. The general formalization of a program required that a complete review of Volumes 1-428 of the Michigan Reports (1878-1987) be made to determine if other areas of due process needed to be included in formulating the experimental research program.

The Michigan Criminal Law and Procedure (1987), was reviewed to determine procedural due process requirements and for further insight into specific case law of Michigan relating to formation of the experimental design to comply
with due process. The bibliography section of this paper cites several cases, which are ruling case law, that dictate procedure in design to insure the rights of each individual.

The review of the literature revealed a lack of both basic and applied research in the area of misdemeanor diversion and no program involving 17-21 year-old defendants. The focus of this study will be in an area where little previous research has been done.

**Legal Resource and Law Related Documents**  
Including Case Law and the Statutes

The review included an examination of (a) legislation; (b) case law; (c) court rules; (d) constitutional law (Michigan and federal); (e) law review topics: diversion, delayed prosecution, and criminal law; (f) review of federal probation programs, community corrections and Federal Court delayed sentence; and (g) a general survey of legal research in the topics of diversion, delayed prosecution, community corrections, delayed sentence, probation, first offender programs, and adult diversion.

The due process clause of the Fourteenth Amendment to the Constitution of the United States (1787, 1987), does not force upon the states a uniform code of criminal procedure, and while it commands the states to assure fair judgement procedurally, details for securing fairness are left to the states (*People v. Simon*, 1949). The *Simon
decision indicates that the Constitution of the State of Michigan left the methods of prosecution of criminal offenders free to legislative control. The Supreme Court of Michigan then determined that a statute which confers upon judges or jurors unlimited discretion to determine who shall be punished for certain conduct is unconstitutional (People v. Adams, 1971). A county prosecuting attorney has the right to use his discretion in determining under which applicable statute of Michigan a prosecution shall be instituted or if prosecution shall be had at all (People v. Lombardo, 1942). After reviewing the Fourteenth Amendment, and the People v. Simon (1949) and People v. Adams (1971) decisions, it is evident that any diversion program must consider not only the public right, but consideration for the defendant. Administration of a criminal diversion program requires a basic desire to be fair-minded to all concerned citizens. The term within our law, which has come to require fairmindedness, is expressed as "due process of law" (Constitution of the United States, Amendment XIV, Constitution of the State of Michigan, 1963, Article I, § 17) which expressly provide that no person shall be deprived of his life, liberty, or property without due process of law. Neither Constitution attempts to define the term, and it is necessary to look to court decisions to ascertain what does or does not constitute due process for individuals who are to be
diverted. The interest of the individual and the public must be considered when drafting a diversion program.

A further review and reading of People v. Simon reveals that maximum cooperation must exist between the prosecuting attorney and the diversion program administration if the program is to have any chance to succeed. The statutes of Michigan vest sole discretion of prosecution or non-prosecution within the prosecuting authority. The law to be enforced may be a State of Michigan statute, in which case the discretion would be with the county prosecuting attorney, or, the law could be a criminal ordinance that the local governmental unit enacted, in which case, the appointed local attorney who prosecutes that entity's matters in courts of law would be in sole discretion of prosecution (Oakland County Prosecutor v. 46th District Judge, 1977).

Any program which seeks to divert those who have violated a law, out of the normal course of the criminal justice system, must first convince the prosecuting attorney that their ends are beneficial to the misdemeanant and the prosecution function. If the prosecution is not satisfied under the Oakland County Prosecutor v. 46th District Judge (1977) decision, then no defendant will ever be referred to any diversion program.

The process of combining and interpreting the appropriate laws or statutes, as they relate to this paper,
will take place in the appropriate chapter. A search and review was made of *Michigan Reports* (1878-1987), Volumes 1-428; the *Michigan Compiled Laws Annotated* (1987), Volumes 1-42A; the *Michigan Digest* (1987), Volumes 1-16; the *Michigan Appeals Reports* (1965-1987), Volumes 1-140; and *Michigan Criminal Law and Procedure* (1987), Volumes 1-4. The bulk of these works have no direct application to misdemeanant diversion by legislative mandate. Their application is related to substantive due process and constitutional requirements as they relate to individual aspects of formulation of the program of diversion for misdemeanants. The unique character of this paper which combines education, counseling, and law, requires a working knowledge of the legal aspects of appropriate and non-appropriate statutes. They are not included in this review to give the reader an understanding of previous relevant contributions to the problem, but, a review of the applicable laws or statutes is included to inform the reader that subsequent replication of this study may well require its modification or change should new or revised legal standards be adopted by the passage of new legislation.

Future interpretation of the law, both current and prospective, by the courts of this state may require basic due process modifications. Current interpretations are subject to judicial review and prospective legislation is

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
subject to the same potential fate. What constitutes the current body of the law, both substantive and procedurally, is subject to change. Any replication of this paper might include a current review of Michigan statutes and court interpretations which may modify or change the basic legal assumptions upon which the research procedure is based. Specific reference is made to a law or statute and case law in the appropriate chapter of this paper.

United States Government and Related Publications of Concern to Criminal Diversion

A review of the literature from 1956 to 1987 inclusive employing the DIALOG and ERIC systems disclosed several periodical publications which are relevant to criminal diversion. None of the 17,849 articles specifically dealt with an adult misdemeanant diversion program and recidivism of misdemeanants who had completed such a program of diversion. There were 266 articles which dealt with pre-trial diversion and 741 articles which dealt with recidivism, none of which involved young adult misdemeanants.

The bulk of periodical literature is concerned with felony crime and juvenile offenders. Included in the bibliography are 16 article citations which relate to diversion and recidivism from the above mentioned perspective.

In their publication, National Prosecution Standards,
the National District Attorneys Association (1977) defined a set of basic considerations to be used in the decision to divert any criminal defendant. This set of basic considerations is found in the introduction of this paper and was used along with other legal considerations to formulate the due process test without which the diversion concept would not meet constitutional standards of fairness. The National District Attorneys Association's standards cover basic requirements and insure that every misdemeanant is given equal consideration using variance from these standards as a basis for rejection from a diversion program. The key provision of these standards is that everyone is a candidate and accepted or rejected using these standards as a subjective test of qualifications. These provisions did provide one of the very basic foundations upon which due process is insured through equal treatment of all subjects included in this study.

constitutionality of certain provisions of a legislated diversion program. Also, an article by Helmer (1982), "Judicial Control of Prosecutorial Discretion in Pre-Trial Diversion Programs," reviews the effects of judicial intervention into the function of the prosecutor as such intervention involves diversion.

A 1982 article, in the *Justice System Journal*, relates to pre-trial diversion of youthful adults. This commentary by Crohn (1982) is titled, "Pre-Trial Diversion of Youthful Adults: A Decade of Reform." This article, though not directly involved with misdemeanor diversion, provides insight into the general diversion area and a bibliography.

**Sociological Data and Text**

In an article by Hanson (1985) in the *Journal of Voluntary Action Research*, titled, "Volunteerism Among First Offenders: Community Services as Adult Development," volunteer community service by offenders is often required at various stages in criminal justice processing. Although most criminal justice practitioners, and the community in general, view the community service restitution as punishment; it is argued that volunteer community service in pre-trial diversion can be a means of personal growth and development. Community service is approached from a volunteer development perspective based on adult
education and volunteer program management principles. Many adult offenders undergoing transitional change are not aware that learning through the volunteer community service experience, with appropriate supervision and guidance, can assist in adaptation and adjustment to change situations in their lives.

Within the same context, in the *Howard Journal of Penology and Crime Prevention*, titled "Use of Restitution as a Penal Measure in the United States," Galaway (1983) has determined that requiring offenders to restore victim losses by money payment, or occasionally through service, has been increasingly practiced in the United States. This practice, referred to as restitution, has been implemented both through special penal projects and by incorporating restitution requirements into pre-trial diversion or probation requirements. Renewed interest in restitution has occurred because of dissatisfaction with prevailing treatment approaches for offenders, a need for intermediate punishments that are more severe than probation, but not as severe as imprisonment, the need for increasing public support of criminal justice programs, and a renewed interest in crime victims. Restitution provides a useful mechanism for integrating crime victims into the criminal justice system, but may require reorientation of probation work toward conflict resolution and peace-making between victims and offenders.
Perhaps the most active state in criminal justice reform is Kentucky. From a sociological perspective, Kentucky has instituted mandated systems which affects the total state system of criminal justice. Swart (1979), in an article entitled, "The Impact of Correctional Reform on Community Programs: The Case of Kentucky," discussed the impact of total correctional reform within that state which began December 1, 1975. The article appeared in Offender Rehabilitation. Swart examined and discussed the establishment of a formal pre-trial diversion program. Although the formal program was directed at felony crime, it provided considerable insight into community support or lack of such as a diversion concept. In addition, Swart indicated that institutional programs receive a higher priority than non-institutional activities, but that community services are seen to be gradually improving, including diversion.

In defense of diversion, an article titled, "Pre-Trial Diversion: A Response to the Critics," Gottheil (1979), in Crime and Delinquency, responded to those who would be critical to the diversion concept. Bullington (1978), "A Critique of Diversionary Juvenile Justice," Crime and Delinquency, questioned the efficacy of diversionary programs. To counter the charge that the system is keeping more people in than out of criminal justice, a voluntary system of diversion is proposed.
The question of restitution was covered in an article by Galaway (1977) titled, "The Use of Restitution," and appeared in Crime and Delinquency. The assumption of the article is that when restitution is employed for possible redress to the victim, less severe sanction for the offender, rehabilitation of the offender, reduction of demands on the criminal justice system, and the reduction of vengeance is possible. Restitution is being used as a sanction for crime in several exploratory projects, and community correction centers. A number of unresolved issues have developed from these preliminary efforts to integrate restitution into correctional programs; a useful classification scheme reflecting the different types of restitution must be developed, and program purposes must be clarified. Several critical questions are posed; attention to these issues is necessary for the orderly development of the concept of restitution and appraisal of its place in the criminal justice system.

Each of these articles provides some insight into diversion, although none of them is concerned with the specific 17-21 year-old age group of misdemeanants which is the subject of this paper. And, none of the articles has any data concerning recidivism of those who complete a period of diversion.
Dissertation Abstracts

A court mandated treatment program was reported in a 1935 dissertation by Callahan. The paper, Preparing Court Mandated Clients for Psychotherapy: Effects on Expectations, Attendance and In-Session Behavior, detailed a system of intervention into the life patterns of people who were to be assigned to a therapy criminal program in lieu of being confined to jail. This project involved a number of factors which have been associated with diminished outcomes in psychotherapy, most notably socio-economic status (SES) and client expectations regarding psychotherapy. Court-mandated clients are often of low SES and seem, in clinical description, to lack an adequate understanding of the therapy process. Thus, they are at considerable risk for failure in psychotherapy.

One method of pre-therapy intervention which has proved beneficial in the treatment of other populations is the role-induction interview which teaches clients about psychotherapy. This study evaluated the effects of such an intervention on court-mandated clients' expectations, attendance, and in-session behaviors.

Twenty adolescents (16-25) referred to pre-trial diversion were provided with a role-induction interview and compared to a group of 27 unprepared subjects. The interview group showed marginal increases in the accuracy of their expectations, and in their attendance.
In-session behavior was not affected by the interview.

In addition, several exploratory issues were examined. In these, subjects' sex and race were found to be significantly related to their expectations, with women and whites having generally more accurate expectations. Higher levels of SES and education were associated with better attendance, as was one of three expectations factors. In-session behavior was most strongly related to sex and race. Attendance and in-session behavior was found to be unrelated. These results are useful in facilitating treatment outcomes with court-mandated clients.

A dissertation by Howdeshell (1983) at Oklahoma State University titled, *A Case Study of the Impact of a Volunteer Program for Misdemeanants on the Offenders and the Court*, sought to identify the impact of the introduction of a program using community volunteers to provide probation counseling and supervision for misdemeanor offenders in Payne County, Oklahoma. The focus was on how the program affected recidivism, the sentencing procedures used by the court, and involvement of accused persons in the criminal justice system. Data was drawn from the misdemeanor docket of the Payne County District Court for a period of one year before, and one year after the program was introduced. Interviews were conducted with defense and prosecuting attorneys, judges, and former probationers of procedures for admission to the program,
use of the program in marginal cases, aspects of plea bargaining, and satisfaction with the program. Cases were divided into three categories: (1) preprogram cases, (2) those referred to the program during the first year, and, (3) those not referred during that year. Comparisons were made of recidivism, sentencing dispositions, pleas and plea changes, and summary dismissals.

Misdemeanant program referrals showed less recidivism than did preprogram and not-referred offenders. Recidivism varied by sentence type, prior conviction record, and sex; and referrals varied by sentence type, prior conviction record, and sex, but referrals showed less recidivism in each comparison. After the program was introduced, the court made greater use of deferred sentencing and less use of fine and jail sentences. Pre-trial diversion and deferred sentencing did not increase the number of people processed through the justice system. The percentage of summary dismissals and guilty pleas was about the same before and after the program.

Interview data revealed widespread approval of the program. Criticism was expressed regarding the cost of attorneys' fees related to admission, program fees, and excessive use of counseling and treatment approaches which required a great amount of time from probationers.

A 1980 dissertation by Austin, entitled, Instead of Justice: Diversion, is a case study of a pre-trail
diversion program, the San Pablo Adult Diversion project (SPAD). The dissertation is a study of (a) how local law enforcement agencies responded to and redefined diversion according to their organizational interests, and (b) the results of their actions. The central premise is that organizational factors influence the reform process resulting in the diversion program departing from its original purpose, and has counterproductive consequences.

The reported method of diversion was considered as a concept of social change that local criminal justice agencies did not originally formulate nor fully accept. Diversion was conceptualized as a program founded by academic "outsiders," promoted by the Federal government, and purchased by local agencies who sought to redefine diversion's objectives and content according to their interests. Consequently, the reform was appended to and controlled by the existing criminal justice structure.

The San Pablo Adult Diversion Project uses two levels of data collection and analysis: process and impact. Impact analysis consisted of an experimental design with eligible defendants randomly placed into experimental and control populations. Both groups were followed for a 36-month period to test SPAD's effect on recidivism, costs, and social control.

Process analysis is used to interpret the impact findings and represent the main contribution of the study.
The model is dynamic, dialectic, naturalistic, and inductive. Five distinct states of reform emerged during the SPAD experiments: (1) resistance, (2) accommodation, (3) transformation, (4) dissolution, and (5) rebirth. Each of these phases resulted in major change in the content and direction of the reform program. Sociological concepts of ideology, values, power, structure, and costs are applied to the ethnographic data to understand how these cycles of reform emerge and disappear.

Impact results show that SPAD had no impact in reducing recidivism. In terms of costs, SPAD proved to be a much more expensive alternative. Also, relative to the issue of social control, SPAD failed to curb the level of criminal justice intervention.

These findings are explained by the process analysis. Local officials interpreted diversion as a means for increasing control over misdemeanor defendants. Consequently, they selected defendants for the program unlikely to be severely sanctioned by the courts. Such a population was found to engage infrequently and episodically in criminal acts regardless of the court's intervention. Locating diversion at the pre-trial stage and within the lower courts diminishes the potential for reducing crime, costs, and social control. More importantly, pre-trial diversion places the value of intervention control before determination of guilt or innocence. Diversion
compromises the basic values of a due process model of justice. Instead of correcting the deficiencies of the justice system itself, diversion extends an "irrational system." Instead of justice, there is diversion.

Similar findings of diversion and other criminal justice reform distortion, regardless of the adopted reform strategy, are presented. This is not to conclude that purposeful social change is impossible or undesirable. However, the success or failure of reform is tied to a hierarchy of social values. Criminal justice policy and reform thereof is a product of reordering values. Understanding the primacy of values to reform is only a starting point for analysis. Observing how values emerge, whose values prevail among competing groups and organizations, and their effect upon public policy are the more complicated and challenging tasks that confront us.

Social Science Text and Data

The literature on diversion from a social science perspective is by no means limited. A review of articles between July, 1976 to December, 1986 showed 91 listings. A selection of 11 entries represents the diverse span of institutions who are concerned with some phase of the diversion process (Feld, 1979; Gottheil, 1979; Helmer, 1982; Loh, 1974; Macke, 1975; McPike, 1978; Muscheno, 1982; Natalie, 1974; Smith, 1975; Zablotsky, 1979;
Two articles of particular note appeared in *The International Journal of Offender Therapy and Comparative Criminology*. The first is, "New Directions in Probation in the United States of America," which was written by Sands (1976). The article, published in England, is the sole reference which could be located that displayed any international interest in the diversion system in the United States.

The newest developments in probation practices in the United States are briefly pinpointed. Particularly important is a new emphasis on procedural matters: (a) a stress on civil liberties and the importance of due process, and (b) an implementation of the rights of the offender to privacy and confidentiality. Also important is the attempt to deinstitutionalize probation through the increased use of pre-trial diversion and of community based programs. A greater reliance is being placed on private agencies and volunteers in deinstitutionalization programs.

The second international article reviewed diversion and the penal system in the country of Nigeria. The 1984 United Kingdom publication is titled, "The Chimera of Incarceration: Penal Institutionalization and Its
Alternatives in a Progressive Nigeria." The author, Igbinova, states that Nigerian correctional thinking is dominated by an ideology of incarceration, even though institutionalization of offenders in that country has failed and become counterproductive. Advocated are reforms of the penal system that would include community-based corrections, pre-trial diversion, increased use of open prisons, therapy, bail, probation, parole, compensation, discharge, binding over, suspended sentencing, furloughs, ombudsmen, and personal recognizance, plus various forms of work and study release programs. The small-scale, treatment-oriented approach, with emphasis on employment and adjustment programs, is a reform necessary in a prison system dominated by degrading, dehumanizing and criminogenic conditions. To achieve the needed depth of change, decarceration must become the primary focus of Nigerian penal policy, with confinement used as a last resort.

Counseling Process Text and Related Data

This diversion plan requires replacement of prosecution with counseling. Rogers (1957) in his article, "The Necessary and Sufficient Conditions of Therapeutic Personality Change" in the Journal of Consulting Psychology, established six conditions that he considered necessary and sufficient to bring about personality change in an

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
individual. These are:

1. Two persons are in psychological contact.

2. The first, whom we shall term the client, is in a state of incongruence, being vulnerable or anxious.

3. The second person, whom we shall term the therapist, is congruent or integrated in the relationship.

4. The therapist experiences unconditional positive regard for the client.

5. The therapist experiences an empathic understanding of the client's internal frame of reference and endeavors to communicate this experience to the client.

6. The communication to the client of the therapist's empathic understanding and unconditional positive regard is to a minimal degree achieved.

Roger's conditions emphasize the importance of sensitively and accurately understanding the counselee. The six conditions cited place in bold relief the fact that the counselor must emphatically know the counselee's being and respond in a manner to communicate his understanding. The six conditions stress the importance of nonpossessive warmth and acceptance in the counseling relationship. The six conditions have been adopted as the method by which individuals will be counseled for purposes of preparation of this study.
Summary of the State of Diversion

Diversion in the United States, based upon a review of the literature, is a limited use system with people who are involved with criminal activity. The cited literature is not representative of any concerted effort by any national, state or local organization to encourage the use of diversion as an alternative to prosecution. There is no trend toward adoption of diversion as a new or modified system within the total system of criminal justice in this country.

With the exception of the Howdeshell (1983) study in Oklahoma, there are no reported misdemeanant diversion programs operating and nothing to suggest that any new programs are forthcoming. The process of misdemeanant diversion, if done at all, is accomplished in some jurisdictions in an informal, non-reported fashion. The extent to which this method of selective non-prosecution exists is not ascertainable by literature review. The process of diversion in general, and misdemeanant diversion specifically, is a system not yet proven or accepted as a prosecution alternative in the United States.
CHAPTER III

METHODOLOGY

Description of Subjects

The single hypothesis tested in this study is that there will be a significant difference in the recidivism rate of first offender, youthful misdemeanants diverted from prosecution, and comparable individuals who are prosecuted. The control group consists of individuals who are prosecuted and the experimental group consists of people who are diverted from prosecution. A determination will be made, by checking each person's criminal record three years later, whether that person was again involved with the criminal justice system by again being arrested. The hypothesis will be tested by comparison of the total arrest records of the control group and the experimental group.

The people involved as subjects of this study are 17-21 year-old individuals who have been charged as a criminal misdemeanant offender. The following criteria constitutes the basic standard to qualify for the Diversion Program:

1. Legal adult - 17-21 years old (arrested in the jurisdiction of the program).
2. Resident of the county (or reasonable distance from the county).

3. Person charged with a crime not involving violence, unless otherwise enumerated by the city attorney.

4. Misdemeanor charge must be the first offense, unless otherwise enumerated by the city attorney.

5. Charged individual must be willing to accept the terms and conditions of the program.

6. Misdemeanant should express a desire to change any negative or anti-social behavior or attitudes.

Research Design and Procedures

During the design phase of this study, considerable attention was afforded to legal considerations. The uniqueness of intervention into the normal course of criminal procedure required that extreme care be taken to insure the legal rights of the individuals who participated. Concern for individual rights was addressed from a procedural, substantive, and constitutional perspective.

In addition, the prosecution authority was consulted and concurred in accepting a critical role in the operation of this study. No specific statutory justification exists for establishing diversion within current Michigan criminal law and procedure, so it was necessary to research and formulate the role of the prosecution from existing Michigan case law. Although including a
justification for a process in the research design and procedure section is a deviation from the usual procedure, the uniqueness of this study and importance of the function, which the prosecution accepts in the total program, was sufficient enough to warrant a variance and include such data here for descriptive and informational purposes.

The criminal justice system in Michigan leaves the discretion of prosecuting or not prosecuting a defendant with either the county prosecuting attorney for state law violations, or the local city, township, or village attorney for local ordinance violations. In Michigan, the People v. Lombardo (1942) decision, states:

A county prosecuting attorney has the right to use his discretion in determining under which applicable statute of Michigan a prosecution shall be instituted or if a prosecution shall be had at all. (p. 451)

The law is clear concerning the prosecution of local ordinance violations being within the discretion of the local unit of government (city, village or township) which created the criminal ordinance, in which case the appointed, local attorney who prosecutes that entity's matters in courts of law, would be in sole discretion of prosecution, Beecher v. Anderson (1880).

The Constitution of the United States (1787, 1987), in Article I, requires that each state be fairminded with each defendant and expressed this fairmindedness as due process of law. The due process clause, as applied to
each state, does not force upon the states a uniform code of criminal procedure, and while it commands the states to assure fair judgement procedurally, details for securing fairness are left to the states, *people v. Simon* (1949). The *Simon* decision, when considered in conjunction with *People v. Lombardo* (1942) and *Beecher v. Anderson* (1880), allows non-prosecution of criminal acts by selective good prosecutorial discretion as long as each defendant is afforded due process of law.

The *National Prosecution Standards* (National District Attorneys Association, 1977), states that there has been a recent trend by prosecutors not to prosecute a defendant if such non-prosecution would serve the ends of justice. Therefore, the need for a pre-conviction diversion program, as a pre-conviction probation, must start with the prosecutors accepting the basic preliminary concept of diversion as a potential benefit to the total criminal justice system and the potential defendant and society. To accomplish this program, the prosecutor must agree to diversion implementation on a formal or informal basis.

The *National District Attorneys Association* (1977), established a set of basic considerations to be used in the decision to divert:

1. The nature of the offense.
2. Any special characteristics or difficulties of the offender.
3. Whether the defendant is a first-time offender.
4. Whether there is a probability that the defendant will cooperate with and benefit from alternative treatment.
5. Whether the available program is appropriate to the needs of the offender.
6. The impact of diversion upon the community.
7. Recommendations of the involved law enforcement agency.
8. Considerations for the feelings of the victim.
10. Any mitigating circumstances.

In addition, the National Advisory Commission on Criminal Justice Standards and Goals (1973a), states that diversion is appropriate where there is a substantial likelihood that a conviction could be obtained, and that the social benefit of channeling an offender into an available non-criminal diversion program outweighs any harm done to society by abandoning further prosecution proceedings, assuming that the defendant completes the diversion requirements. The National Advisory Commission on Criminal Justice Standards and Goals (1973a), has established the following criteria for diversion:

Favorable criteria:
1. Youthful age of accused.
2. Willingness of victim to defer prosecution.
3. Likelihood offender is mentally ill or psychologically abnormal (condition is crime-related and diversion program offers necessary services).

4. Likelihood crime was related to conditions such as employment or family problems (subject to change by participation in diversion program).

Unfavorable criteria:
1. History of physical violence toward others.
2. Involvement with organized crime.
3. History of anti-social conduct as part of accused's lifestyle.
4. Any special need to pursue criminal prosecution as a crime deterrent: discouraging others from committing similar offenses.

The Standards (National District Attorneys Association, 1977) also mandate (Standard 11.6) that: Any system of diversionary treatment should guarantee the basic rights of the community and the prosecution. These guarantees should include:

1. The rights of the prosecutor at any point to insist upon reinitiation of criminal proceedings when, in his discretionary judgement, such action would be desirable.

2. An agreement outlining all requirements to which the offender has agreed to conform.

3. Waiver of any speedy trial requirements.
4. Appropriate mechanisms to safeguard the case of the prosecution, including admissions of guilt, stipulations of fact, and dispositions of witnesses, to be included with the diversion agreement.

In conjunction with the city attorney, and using the Prosecution Standards (National District Attorneys Association, 1977) and Michigan case law, a series of documents were formulated for defendant referral to diversion (see Appendices A-H). Admission to diversion concentrates on accused persons who are charged with misdemeanors, who have no previous adult criminal history, who are unemployed, or whose jobs are in jeopardy as a result of their arrest and pending trial, and whose criminal conviction would mean job loss or closure of employment opportunities and would increase the likelihood of future crimes. Diversion is particularly desirable for youthful offenders who are too old for juvenile court jurisdiction, but too young to warrant the full impact of a criminal trial, conviction and sentence, for minor drug and narcotic cases; for bad check cases; for shoplifting and other petty crimes; and for assaults in which no serious injury is inflicted; particularly intrafamily assaults.

The Prosecution Standards (National District Attorneys Association, 1977) mandate that a degree of concern must be afforded both to the public and to the defendant. The Standards require that any diversion program must
consider not only the public rights, but must include consideration for the defendant. Administration of a criminal diversion program requires a basic desire to be fairminded to all concerned citizens. The term within our law, which requires fairmindedness is expressed as due process of law (Constitution of the United States, Amendment XIV, Michigan Constitution, 1963, Article I, § 17) which expressly provides that no person shall be deprived of life, liberty, or property without due process of law. Because neither federal or state constitution defines the term due process, it is necessary to look to court decisions to ascertain what does or does not constitute due process for individuals who are to be diverted. The interest of the individual and the public was considered when drafting the diversion program.

The full cooperation and assistance of the prosecuting authority was obtained, as the law requires, and compliance with due process mandates were met by a systematic method of diversion of all first offenders. All individuals, regardless of age, who meet the program standards have an equal chance at being a diversion client. The only qualified individuals who are prosecuted are those who elect not to accept diversion as a method of resolution of their criminal case; and by declining diversion elect to be prosecuted. The requirements of due process are met by offering all qualified individuals
diversion and the interests of the public are considered as each defendant meets the National Prosecution Standards (National District Attorneys Association, 1977).

Limitations

One of the primary goals of the National Advisory Commission on Criminal Justice Standards and Goals (1973a) was to establish in prosecutorial jurisdictions diversion programs for adult felons and misdemeanants who voluntarily chose to participate as part of a probation or parole sentence or in lieu of prosecution. Diversion is not an entirely new concept in the criminal justice system. In the past, the major problem associated with diversion was the informality of the decision making process in the exercise of discretion.

The position favored by the Michigan Advisory Commission on Criminal Justice (1977) was to legislate the discretion away from the prosecuting attorney by establishing a mandatory non-prosecution classification of crimes, if the defendant chooses to avail himself of the diversion program. In any event, no such legislation was enacted in Michigan, nor is it currently pending in the legislature. Even if this suggested plan were sound, it presents no better assurance that a program of diversion using it, would be of any better service to the ends of the criminal justice than one which would include the
discretionary function of the prosecuting attorney jurisdiction. Therefore, the prosecutor accepted the basic preliminary concept of the program, and agreed to implement the program, at least on a trial basis.

This study concentrated on 17-21 year-olds to determine recidivism for diverted and nondiverted individuals, and not on the causes for such first or continued criminal activity. The program design considered prosecution constraints and constitutional mandates as well as a procedural process which ensures the defendant a workable chance to benefit. However, the study of changes which occur in the individual or the reason they occur is not the purpose of this research. Such information, although important, is worthy of its own research.

To randomly assign misdemeanants to diversion or non-diversion treatment is not possible, so a possible selection bias needs to be addressed. First, all subjects in this experimental study have been drawn from the same population as those charged as criminal misdemeanants. Second, no subject is a volunteer where the diversion treatment is available, but each eligible defendant is assigned. Third, the level of attrition for each group will be explainable and is expected only for the experimental group who will be returned for prosecution should they fail in the program. Last, all subjects are representative of the population in all known respects, they
differ only in relation to program availability in the geographic area of their arrest.

This study followed both the experimental and control groups for a period of six months to one year with a record check (criminal) as the post-test. However, the study can be a test of long term recidivism by using the post-test in subsequent years without additional data being required. The setting of this study is a city of 30,000 population within a county having a population of 451,000 people.

**Measures Employed**

The intervention into the criminal justice system and the impact upon the legal rights of the defendants involved with this study, demanded that significant consideration be given to individual rights. In large measure, these legal considerations dictated the methods which were employed with group selection. Due process demanded that all individuals who met the criteria of the program be given equal consideration to avail themselves of the benefits which diversion presented.

Therefore, the geographic area of a city, under the prosecution control of a city attorney, was selected because all defendants could be afforded the same treatment from the same prosecutor. Upon selection of a city as the territory to be designated for use, concurrence was
requested and received from the city attorney for diversion program cooperation. The city attorney agreed to divert all individuals who met program criteria on an equal basis.

To insure that each potential person to be involved was informed of the specific requirements and to further insure that the prosecution, court and diversion personnel were operating under exacting conditions, a set of documents was drawn which detailed every right and responsibility of each affected party. The process was designed to insure that subsequent prosecution was available to the city attorney should any referred person not complete the program of diversion as terms and conditions demanded. This guarantee was a fairness request of the city attorney. Those diverted should not be placed in any better position if they did not complete the total diversion program as they had agreed to complete or be prosecuted.

This demand of the prosecution is met by starting the diversion process after the arraignment in the normal course of Michigan criminal procedure. The individual is arrested, arraigned and scheduled for a pre-trial conference with the prosecutor. It is at this point that the prosecutor offers diversion as an alternative to prosecution to the defendant if the criteria is met. If the defendant elects prosecution, they proceed in the established criminal system. If the defendant accepts
diversion, an appointment is scheduled with the diversion program director and the process of diversion begins.

**Initial Interview and Documentation**

Each person sent to the diversion program is interviewed individually prior to acceptance. The criteria of the program is explained to the potential client in detail, after the counselor obtains an affirmative indication that the person referred elects to participate. The exact documents used are contained in the appendix of this paper. The counselor explains the program by reading the following:

Your case has been referred to the city of Diversion Program by the City Attorney's office, and further prosecution has been temporarily deferred pending an evaluation of your eligibility to participate in the diversion program.

You have been accused of violating the law. The purpose of my talking with you at this time is to determine whether or not you clearly understand your constitutional rights, and decide to have prosecution temporarily deferred and be considered for the City Diversion Program.

The potential client is then required to indicate his understanding of the program and its terms and conditions by reviewing with the counselor, a document which requires him to write and affirm his acceptance of the terms and understanding of the program (in part):

The discretionary powers of the prosecuting attorney in combination with a well organized referral process which insures procedural formality could and would provide equality before the
law of all accused persons, regardless of race, creed, color, or sex.

It is on the basis of these premises that the following policies and procedures are implemented:

Referral Criteria:
1. Legal adult.
2. Resident of county.
3. All cases with the exception of crimes of violence, unless otherwise enumerated by the prosecuting attorney.
4. Referrals should be limited to first-time offenders unless otherwise enumerated by the prosecuting attorney.
5. Persons participating in the program must be willing to accept responsibility for their actions, and further, should be displaying a desire to change any negative or anti-social behavior/attitude.
6. Persons entering into said program will receive full instruction regarding eligibility and terms of said program without exception. Copies of terms and agreements will be provided.

Terms:
1. Admission of responsibility in the present offense.
2. Length of involvement in program shall be one year, with possible termination at six months for exceptional behavior.
3. A fee of $175.00 to be assessed in monthly payments.

4. Subsequent legal involvement can and will result in a return for prosecution on the original charge as will any violation of terms.

5. Persons entering into the program will report monthly unless otherwise specified.

It is at this point in the process that a determination is made concerning the acceptability of the program to the defendant and the defendant to the program. Unless the defendant agrees to the terms and conditions, he does not become a client of the program. And, unless the counselor is satisfied that the defendant has no prior criminal record and otherwise meets the Diversion Program requirements, the counselor will not accept the defendant as a client of the program.

Upon acceptance, several documents are completed in compliance with the due process requirements of the Constitutions of the United States and Michigan. These documents were drawn in accordance with various requirements as mandated by statute and legal determinations, and are included in the appendix of this paper. Each document is reviewed with the client at the first interview and signed where appropriate. The documents, in order of completion, are:

1. Terms and Conditions.
2. Legal Rights and Responsibilities.
3. Miranda Warnings.
5. Notice of Program Termination.

The Client Information Form is completed during the first interview as are all other documents. Such data, thus discovered, may give rise to the counselor directing the client to a community based treatment program for further assistance if the client reveals a specific problem such as alcohol or drug abuse. However, unless the referral need is obvious upon the initial contact, no immediate referral is made.

Classification and Re-Referral

The program requirements do not assume that all clients' participation is identical to another's involvement with the diversion process. Clients diverted from prosecution may have differing levels of needs for which there are differing levels of community services. The client diverted for theft may have a problem with the use of drugs or the incident which resulted in the client's arrest may have no relation to any substance abuse. No assumption is made by any requirement of this program that any first offenders have a treatable problem or even a problem for that matter.

However, a method and procedure was established to
facilitate a determination of treatment should such treat-
ment be determined by the counselor to be required.
During the first interview of the client, or at any future
point of client and counselor contact, the counselor may
classify the client for treatment purposes. Monthly
individual client and counselor contact is the key to
classification for treatment purposes.

Any replication of this paper does not require the
use of classification limited to categories which were
selected for this study or any client classification. New
research could eliminate all classification or add new
requirements should the situation demand. Classification
does not affect program completion in and of itself, but
directly relates to the degree which the client is in need
of additional service for a specific problem. The degree
to which the client obtains such assistance once classi-
fied and directed to a program could affect his completion
of the diversion program. Should a client, determined by
the counselor to be in need of alcohol treatment by an-
other agency, not attend at the new agency, then the
client could be rejected from the diversion program in
accordance with the terms and conditions contained in the
referral criteria.

With this in mind, a method was developed by which
individuals can be classified, based upon a near-uniform
system, which will aid and assist the diversion officer to
serve the needs of each client with the differential thereby defined. All clients are classified into one of two basic groups which are referred to as Classification Group 1 or 2.

Classification is an assessment of interrelationships among: (a) the correspondence between a clients' life situation and the instant offense, (b) the relative probability of a client committing a new offense, (c) the client's needs as perceived by himself and the counselor, and (d) the client's motivation for meeting the needs in a positive manner. Client classification, which for convenience is categorized as 1 or 2, corresponds to a level of program services to which there is a corresponding performance expectation. To each level of performance expectation, sanctions of a "positive" or "negative" value in the client's perception exist, which may be applied in assessing the client's performance.

**Group 1**

1. Atypical life offense relationship.
2. Very low risk of new offense.
3. Low level of unmet needs.
4. Very adequate motivation for positive need fulfillment.

When the instant offense appears significantly atypical from the client's lifestyles, and indications are that the client probably will not violate the law again, and
the client's needs are currently being met in a responsible, productive manner (recognizing his problems are substantially limited to those associated with this law violation), Group 1 assignment is made.

For this client, the service offered is the criminal justice diversion process: (a) deferment of prosecution and program referral, (b) "dismissal of charges" recommendations to the city attorney, (c) no criminal record for this offense, and (d) a deferred payment structure to meet program financial requirements if needed. For these services, the client is expected to accept deferment of prosecution and referral to the program and to accept responsibility for: (a) the present offense, (b) providing social history information, (c) keeping appointments and referrals, (d) meeting program financial requirements, and (f) attempting to make restitution when appropriate.

In summary, participation for the client in Group 1 requires no continuing program participation, when any change in attitudes and behaviors of the accused that might have been desired has been accomplished by the criminal justice process of apprehension and arrest, referral and acceptance of responsibility (three to six months).

**Group 2**

2. Low risk of new offense.
3. Some unmet needs.
4. Adequate motivation for positive need fulfillment.

When the instant offense appears to be a situational and temporary disruption of the client's lifestyle, and indications are that the client will not violate the law again, and the client's needs are currently being met in a relatively responsible, productive manner (recognizing that his problems are of a temporary social and interpersonal nature), a Group 2 classification is made.

For this client, the service offered, in addition to those services provided clients in Group 1, is minimal intervention in the client's lifestyle by providing opportunity for minimal program reporting, and referral to area agencies for specific problems. In addition to those expectations made of clients in the Group 1 classification, the Group 2 client is expected to accept responsibility for developing a minimal participation plan with the counselor, according to the client's individual needs. For this client, participation is minimal and time limited (3 to 12 months). The maximum sanction for the Group 2 client is re-evaluation of classification, except that, even though the client is actively and satisfactorily involved in a participation plan, commission of a new offense would probably precipitate a return of the case to...
the prosecuting attorney. In summary, for the client in
the Group 2, program participation is available where the
instant offense is not believed to be significantly re-
lated to any condition or behavior which is indicative of
further law violations.

Upon classification, the counselor is then in a
position to assist the client with any problem that could
detract from the completion of the program and certain
prosecution. For uniform and counselor coordination and
control purposes, a limited number of agencies were se-
lected for client referral. The selected programs repre-
sent a cross section of services which are available in
most communities. The selected programs are self-explan-
atory by their titles and used exclusively for the follow-
up ease of the counselor (more than one may be selected):

1. Alcohol Highway Safety Project.
3. Insight, Inc. (drugs or alcohol abuse treatment).
5. Voluntary Action Center (public service if client
is not able to pay the fee involved with diversion).
6. Intake, Assessment and Referral Center (drug
abuse determination).

Intervention of any kind into the life of a client in
either group 1 or 2 is limited by design. This program
deals with youthful misdemeanants who are generally
confused about the criminal justice system and the concept of diversion. The defendant will receive intervention by counseling and further intervention if the additional assistance is evidenced by the one-to-one encounters with the counselor.

Counseling as Treatment

The first offender misdemeanant, 17-21 years of age, may have the need for intensive treatment by an agency to which a counselor can or may make a referral should the need be determined. This study operates upon the assumption that the individual who would qualify for acceptance to first offender status, in large measure, will benefit from counseling and is not in need of intensive control. Basically, the assumption is that the 17-21 year-old has done a criminal act for which a period of pre-sentence probation (diversion) will suffice in lieu of prosecution. Also, the person will be in a better position to complete a useful life pattern without the onus of a youthful criminal conviction.

In addition, the assumption is that the typical first offender will accept diversion over prosecution, if given the opportunity. There is no assumption that the client will complete the task of diversion without some form of control by a counselor, or that the client will complete the diversion without the fear that a prosecution is
eminent should the client not complete the program. Based upon these positions, counseling was selected as the method of treatment intervention of the client.

The counseling process which was selected involves a technique developed by Rogers (1957) and referred to as empathetic counseling. The empathetic method of counseling assumes that:

1. Two persons are in psychological contact.

2. The first, whom we shall term the client, is in a state of incongruence, being vulnerable or anxious.

3. The second person, whom we shall term the therapist (counselor), is congruent or integrated in the relationship.

4. The therapist (counselor) experiences unconditional positive regard for the client.

5. The therapist (counselor) experiences an empathic understanding of the client's internal frame of reference and endeavors to communicate this experience to the client.

6. The communication to the client of the therapist's (counselor) empathic understanding and unconditional positive regard is to a minimal degree achieved.

The counselor employed in this study is trained in the empathetic method of counseling and a graduate psychologist. A set of typical counseling sessions is included in the appendix of this paper. Individual counseling
sessions are not lengthy nor structured. A typical visit by a client may be spent in conversation based upon the congruent or integrated relationship of client and counselor. The treatment is the client centered relationship or the client centered attention as a structure for treatment. The one-to-one empathic attention and the assumptions upon which this treatment is based, concerning first offenders, form the total treatment for most clients.

Summary

This process was employed over the duration of the study for each client. The length of such counseling was as short as 3 months for some clients and as long as 12 months for others. The length of time, if replication is attempted, that a person is counseled, could vary depending upon the nature of the criminal offense and the individual. Time in and of itself is not the primary factor in Rogers' method of counseling, nor was it of prime importance in this study. The minimum time was three months, based upon the client agreement, but some clients required more or less sessions to achieve the acceptance which Rogers requires of his process. A client completes diversion when the minimum agreed upon standards and terms are met during the period of 3 to 12 months.
CHAPTER IV

RESULTS

Introduction

The purpose of this study was (a) to review the literature regarding the criminal diversion, determine if similar studies were conducted, and review the conclusions; (b) to establish the diversion program; (c) to determine the effects of the diversion on recidivism; and (d) to determine whether there are certain types of 17-21 year-olds for which the diversion program is more (or less) effective.

This chapter is used to report the outcome of the experiment of diversion. The experimental group of people consisted of individuals who were arrested, diverted to a period of counseling, and not prosecuted if they completed the counseling intervention. The control group consisted of a group of people who were basically the same as the experimental group, except that they were convicted of the first offense misdemeanor crime and not diverted. The experiment was designed to answer the following problem: How will completing a period of prosecution diversion effect the recidivism rate of youthful first offender misdemeanants?
The experiment was conducted in one division of a six-judge district court and the experimental group consisted of people who committed a crime in that geographic area. The control group was drawn from the balance of the county judicial divisions of the same district court. No selection bias was found. First, all subjects of the experiment, control and experimental groups, were drawn from the same population as those charged as criminal misdemeanants. Second, no subject was a volunteer where the diversion treatment was available, each eligible defendant was assigned. Third, the level of attrition for each group is explainable and only resulted from the experimental group who were returned for prosecution for failure to complete the program of diversion. Last, all subjects are representative of the population in all known respects, they differ only in relation to program availability in the geographic area of their arrest.

The procedures of the experiment were organized into a program of diversion including counseling which each experimental participant completed. Every person who participated in the diversion experiment had met the following criteria:

1. Legal adult - 17-21 years old (arrested in the jurisdiction of the program).

2. Resident of the county (or reasonable distance from the county).
3. Person charged with a crime not involving violence, unless otherwise enumerated by the city attorney.

4. Misdemeanor charged was a first offense, unless otherwise enumerated by the city attorney.

5. Misdemeanant had agreed to the terms and conditions of the program.

6. Misdemeanant did express a desire to change negative or anti-social behavior or attitudes.

During the course of the experiment each participant was required to participate with a counselor employing empathetic methods. The counseling process which was used by the diversion counselor was the technique developed by Rogers (1957) and referred to as empathetic counseling. This method of counseling required six assumptions.

1. Two persons are in psychological contact.

2. The first person, the client, is in a state of incongruence, being vulnerable or anxious.

3. The second person, the counselor, is congruent or integrated in the relationship.

4. The counselor experiences unconditional positive regard for the client.

5. The counselor experiences an empathic understanding of the client's internal frame of reference and endeavors to communicate this experience to the client.

6. The communication to the client of the
counselor's empathic understanding and unconditional positive regard is to a minimal degree achieved.

The counselor employed in this experiment was trained in this method of counseling and is a university graduate with a degree in psychology. Individual sessions were not lengthy or structured. The requirements for completing the process of diversion were divided into four tasks: (1) attend and complete the counseling as an active partner in the empathic process; (2) demonstrate the lack of any additional involvement in criminal activity; (3) settle any restitution and financial obligations associated with the misdemeanor; and (4) complete any program of treatment, with an associated agency, as the counselor may direct. A person who was arrested for a misdemeanor offense in the geographic area of the program did not become a client of the diversion program until referred by the city attorney. No person was accepted to the program, to become part of the experiment, unless the program acceptance criteria had been met. The defendant then became a client and was required to complete the four tasks in conjunction with the diversion counselor over the course of the individual diversion period. The length of time spent as a diversion client varied from one individual to another. However, each client completed the appropriate assigned tasks as required by the terms of acceptance and completion of the program. The experiment
ended when a client completed the tasks as assigned.

Individuals who became clients and did not complete the assigned tasks were terminated as participants in the experiment and returned to the criminal justice system for prosecution. The clients who were returned as defendants are not the subjects of concern in this study. The comparisons in this chapter are about individuals who complete a period of prosecution diversion versus those comparable individuals who do not complete prosecution diversion, and are prosecuted because such a program was not available. Several explanations are offered in Chapter V of this study to explain why clients did not complete the experiment when advised that certain prosecution will result if the tasks are not done successfully. The data which follows in this chapter does not consider a participant who was terminated for noncompliance and program rejection.

Data Collection

One of the objectives of this study was to establish the diversion program. This objective was met and provided the individuals who form the experimental group of the study. The control group consists of individuals who were arrested and prosecuted; the control group is people who are basically the same as the experimental group, except that no diversion program was available to them and
they were prosecuted. Both the experimental group and control group data collection dates are for the same period. Individuals who were arrested between January 1, 1982 through December 31, 1983 form the population of both the control group and the experimental group.

**Experimental Group Selection**

The population of the experimental group consisted of those individuals from one division of a six division district court who had completed the tasks of diversion and were terminated successfully from the program. This population consisted of 347 people who were successfully terminated to December 31, 1983, and a sample size of 50 people was determined to be appropriate for this study. The technique of systematic sampling was used to obtain the required individuals. The method to obtain the systematic sample was: $347 - 50 = 6.9$. The number 5 was selected at random because it was lower than the number arrived at by the division. Starting with the 5th file, every 6th file was selected from the population to form the experimental group. If the 6th file did not represent a person who was born between December 31, 1962 and January 1, 1965 the next file was checked for the same information and selected only if the date of birth was correct. If the date did correspond the file was removed to be part of the experimental group and from this point five files
were passed over and the 6th file was reviewed for the information involving the date of birth. This process generated 50 clients from the diversion program who were between 17-21 years of age.

Control Group Selection

Selection of the control group required hand sorting of 12,000 misdemeanant files from the other five divisions of the District Court. The first sort was to 2, 3, 4, 5 and 6 piles which represent the other divisions of the judicial district. The second sort was for selection of a specific file from a division pile of files and included opening the 13th file to determine the date of arrest. If the 13th file represented a conviction date between January 1, 1982 through December 31, 1983 it was then reviewed to determine the date of birth of the defendant. The date of birth must have been between December 31, 1962 and January 1, 1965 to cause the file to be selected (17-21 year-old). If the conviction date and birth date did not both correspond the file was replaced and the next was selected. If the next file did not correspond to both dates it too was replaced and the next was selected. If this file did correspond it was removed to be part of the control group. After a file was selected 12 more files were passed over to select the 13th for the same date reviews.
The same method was used to select 10 files from each of the five piles for a total of 50 individual names. This group of individuals became the control group of the experiment. The choice of selecting the 13th file was a random determination to follow and be consistent with the systematic process used to select the experimental group. And, although some divisions had more or less files in their respective sorted piles each division contributed only 10 of the total 50 files to the control group. This was done to insure that all areas of the county were represented in the systematic sampling. No pile sorted by division files in the total number of files exceeded any other division pile by more than 20%. No file was selected for the control group that reflected a charge which would not qualify for diversion. The criteria for diversion excludes drunk driving and assault from consideration and files which reflected those misdemeanors were not selected. The next file, using the selection system of the 13th file, was reviewed if the diversion criteria could not be met by the nature of the crime represented in the file.

Experimental Group and Control Group Record Check

The post test record checks were made June 1, 1986 for both the experimental group and the control group. To determine if an individual has a criminal record required
a systematic process. First, the individual was identified by full name and date of birth. Second, access was made to two separate record collection centers and various other governmental agencies to determine if a criminal record existed for the person. And lastly, the individual defendant's name and date of birth was checked against the court criminal docket entries including closed files, active files and pending charges to cover all possibilities of a criminal charge being located.

The primary storage locations for criminal arrest and conviction information in Michigan is the Law Enforcement Information Network (L.E.I.N.) and the National Criminal Information Center (N.C.I.C.). Both systems were checked for criminal information for each defendant from both the experimental group and the control group. The arrest and conviction information was listed for each individual and retained while proceeding to the other sources. The other sources which provided criminal history information were:

1. The city identification bureau which contains arrest and conviction information for some people.

2. The district court criminal docket entries (files on computer) which contain criminal arrest and conviction information which occur within the jurisdiction of the district court.

3. Various police department files, including the police department within the jurisdiction of the diversion
program and the county sheriff records bureau.

The information collected was combined with the N.C.I.C. and L.E.I.N. data by individual defendant and conviction date. The process used was designed so that a complete as possible criminal record was obtained. Several records were found to be in more than one location and were checked, one against the other, by date to insure that no duplications of the same conviction was credited against any individual in either the control group or the experimental group.

Recidivism Rate

The data when consolidated and assembled showed that there were six people from the experimental group who recidivated a total of six times. The control group individuals recidivated a total of 36 times which was inclusive of 18 people with each having one or more instances of recidivism.

The low recidivism frequency and rate of the sample of people who completed the prosecution diversion program treatment, could be independent of the counseling treatment. This possibility was checked by generating and testing a null hypothesis, which was: Recidivism is independent of diversion program treatment and no difference exists between observed frequencies and expected frequencies.
The process of chi square was selected as the statistical method for testing this null hypothesis. The chi-square test for independence of classification is based on a cross-tabulation of observed frequencies of two variables. This cross-tabulation is also referred to as a contingency table. The table was constructed by creating two columns for observed frequencies data, using the sample of the experimental group and the control group which represents those people who recidivated and those people who did not recidivate. Table 1 shows observed frequencies and expected frequencies employing the Doane (1985) statistical program.

Table 1

<table>
<thead>
<tr>
<th>Recidivism Frequency</th>
<th>Did Not Recidivate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recidivated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Observed Frequencies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diverted</td>
<td>6</td>
<td>44</td>
</tr>
<tr>
<td>Not diverted</td>
<td>18</td>
<td>32</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>76</td>
</tr>
<tr>
<td>Expected Frequencies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diverted</td>
<td>12</td>
<td>38</td>
</tr>
<tr>
<td>Not diverted</td>
<td>12</td>
<td>38</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>76</td>
</tr>
</tbody>
</table>
The chi-square statistic is 6.634 or \((\text{row-1)} \cdot (\text{column-1})\), with the degree of freedom being 1 and the significant level being .01 on the Fisher (1915, 1979) statistical tables. Therefore it is concluded that the null hypothesis is rejected. And, that the diversion treatment does produce a significant difference in the recidivism rate of first offender, misdemeanant 17-21 year-olds, diverted from prosecution, and comparable individuals who are prosecuted. Based upon the sample data the conclusion is that the probability is less than 1% that the observed sample variance would have occurred by chance if in fact the null hypothesis is true. And, a further conclusion is that the individualized diversion treatment has reduced the instance of recidivism for the population of the prosecution diversion program to a statistically significant relationship.
CHAPTER V

DISCUSSION AND SUMMARY

The purpose of this study was (a) to review the literature regarding the criminal diversion, determine if similar studies were conducted, and review the conclusions; (b) to establish the diversion program; (c) to determine the effects of the diversion on recidivism; and (d) to determine whether there are certain types of 17-21 year-olds for which the diversion program is more (or less) effective. In this chapter the major findings and conclusions of this study are presented and discussed. The limitations of the study and implications of the findings are also reviewed.

The problems which the youthful offender faces in society after a first misdemeanor conviction led to this study. When a person is arrested and prosecuted in the normal course of criminal procedure the offender acquires a police record and the onus which attaches. If the person is 17-21 years of age, the stigma becomes a burden for the future. Certain employment opportunities are curtailed, educational prospects are limited, and life patterns may be adversely affected by a youthful conviction. The purpose of the experiment was to determine the effects of diversion on recidivism of youthful offenders.
Summary of Research Problem

The experiment was designed to compare the recidivism between the two groups of 17-21 year-old misdemeanants. The experimental group of people consisted of individuals who were arrested, diverted to a period of counseling, and not prosecuted if they completed the counseling intervention and other program requirements. The control group consisted of a group of people who were basically the same as the experimental group, except that they were convicted of the first offense misdemeanor crime. What life pattern the youthful offender develops, both control and experimental, based upon a check of their future involvement with criminal activity was the question which was to be answered by the experiment. To accomplish this goal a diversion program was established and an experimental group and control group were selected.

The two groups were selected based upon a systematic sampling technique and contained 50 people each, who were identical in all respects. All selected individuals were arrested between January 1, 1982 through December 31, 1983 for a misdemeanor. A comparison was made of the recidivism rate of the control group versus the experimental group on June 1, 1986 by a criminal record check systematic process.
Limitations of the Study

The unique nature of this project, involving intervention into the criminal process, required attention to constitutional mandates. The due process clause of the constitution requires that everyone receive the same treatment and opportunity for a first offense misdemeanor program regardless of their age. All people charged with a misdemeanor, as a first offender adult must have equal access to any diversion treatment in lieu of prosecution. The subject of the study was the youthful offender but, to acquire the group of 17-21 year-old individuals needed to form the experimental group, all first offenders were accepted as diversion clients with no limitations involving age. Legal requirements, to a degree, dictated the processes and procedures for selection of the experimental group.

The ideal situation for the experiment would have been a program of diversion which involved only 17-21 year-old misdemeanants and not all misdemeanants regardless of age. And, the ideal experiment would be more flexible in defendant acceptance criteria. However, no such ideal conditions were possible based upon the constitutional constraints and the diversion program functioned within the mandated limitations. Several hundred people over the age of 21 years benefited from the diversion program although they were not part of the
experiment.

Notwithstanding the mandated constraints, demographic information on the 17-21 year-old experimental participants confirm that they are the same in all respects as the control group. The design limitations in relation to the ideal situation do not detract from the generalizability of the conclusions. Adhering to the constitutional mandates of criminal law and procedure enhances the participant's due process rights and did nothing to diminish the conclusions when applied to other populations in general.

Findings and Interpretations

The hypothesis that completing a period of diversion from prosecution, with accompaniment of counseling for 17-21 year-old first offender misdemeanants causes a significant reduction in the recidivism rate versus comparable individuals who were prosecuted, was retained. The experimental participants did not return to the criminal justice system in as frequent number as did the people in the control group.

The experiment demonstrated that a period of diversion did help the individual participant delineate between criminal behavior and acceptable functioning in the community. The diversion program did help dissuade participants from returning to criminal activity. The counseling
did provide insight about acceptable noncriminal community expectations and subsequent criminal sanctions. The experiment design required the client to participate with the counselor in a review of several documents during the initial interview. Each person sent to diversion was interviewed individually. The documents were used to explain the criteria of the program to potential clients and completing the process required the person to sign a document which stated that the program was explained to the person's complete understanding. This process of attention to the individual and their complete understanding of the criminal charge was a design step intended to convey the seriousness of criminal activity to each person.

The findings reflect the individual client treatment. And, the treatment was designed to be informative to the individual while insuring that every participant had a complete understanding of what was expected as a client of prosecution diversion. The documentation of the program was designed to inform and convey, to the potential client, that the counselor was there to assist with program completion but would expect cooperation or that the client would be rejected and returned to the court for prosecution. In addition, the documents were designed to allow the client to question the counselor about the program of diversion and expected individual performance.
The significant findings of the experiment, which show less experimental group recidivism, may be explained in relation to the attention to the individual participant. The counselor, who was trained in the empathic process of counseling, was dealing with one person at a time. The counselor was, by design, attempting to resolve the clients state of incongruence by being empathic and expressing unconditional positive regard for that individual. The treatment was to one person at a time with the findings showing these one person encounters, combined as the experiment findings.

Suggested Applications

The process of prosecution misdemeanant diversion which was designed for and the subject of the experiment in this study is suitable for adoption by the prosecuting authority who represents a township, city or village government, which has enacted ordinances and the prosecuting attorney of a county who prosecutes state law violations. The findings and conclusions of this study show that young people who complete a period of prosecution diversion do not recidivate as frequently as those youthful misdemeanants who are prosecuted. The process of intervention by diversion helps that person to not return to the criminal justice system. Those political entities, city, township, village or county who institute a program
of prosecution diversion can reasonably expect: (a) that the costs associated with criminal misdemeanor case handling, including prosecution, will decline; (b) that less misdemeanants will return to the criminal justice system; and (c) that the effectiveness of the criminal prosecution process will increase, by removing the first offender volume, allowing more concentration of prosecution efforts on second and subsequent offenders.

The starting costs associated with establishing a program of diversion are minimal and an active program is financially self sustaining from oversight fees which are paid by the client. The only major expense involved with operating a program of diversion is the salary which is paid to the counselor. Associated expenses of housing the counselor, phone and supplies can be absorbed by the prosecuting authority until the oversight fees generate sufficient funds to cover those costs.

This program of diversion concentrated on accused young people who were charged with misdemeanors, who had no previous adult criminal history, who were unemployed or whose jobs were in jeopardy as a result of their arrest and pending trial, and whose criminal conviction would mean job loss or closure of employment opportunities and would increase the likelihood of future crimes. The findings and conclusions of the experiment show that diversion is particularly desirable for youthful offenders.
who are too young to warrant the full impact of a criminal trial, conviction and sentence. The onus which attaches, because of the conviction, may well limit the youthful offender in life progression and actually contribute to future criminal activity. Completing the prosecution diversion will provide the young person with the opportunity of modifying the behavior which contributed to the criminal charge and may be the needed second chance which results in a return to acceptable noncriminal behavior as a productive member of the community.

Implications of Findings

The findings and conclusions of the study confirm the hypothesis that young people who completed a period of prosecution diversion do not recidivate as frequently as those youthful misdemeanants who were prosecuted. The intervention of diversion with a first offender misdemeanor may help that person not to return again to the criminal justice system. The implications of the findings and conclusions of the experiment are several and varied and relate to various established community functions and systems as well as the individual who is arrested as a misdemeanor.

The experiment was conducted to determine how prosecution diversion would effect recidivism of the individual; that purpose was accomplished. In addition to the
17-21 year-old person effected by retention of the hypothesis, this study has implication to six other groups of people who comprise or support the criminal justice system. These groups are:

1. City officials who are interested in cost reduction in their prosecution function.

2. Defense attorneys who are seeking an alternative to prosecution for their youthful clients.

3. Judges who are interested in reducing costs associated with in court activities.

4. County officials who are charged with the duty of funding the various agencies responsible for misdemeanants (sheriff, probation, etc.) interested in reducing their time and the costs associated with first offenders.

5. Theoreticians interested in studying the relationship between individuals who are prosecuted and those who are not prosecuted.

6. Taxpayers who support the system of criminal justice and who are the victims of recidivism.

In addition, the findings and conclusions of this study may be of interest to counseling professionals, business people in the diversion area, and police personnel. The businesses are often the victims of larceny and property damage and the police are the group who become involved again with the youthful offender who recidivates.

Legislators, prosecutors, city and county officials
of Michigan and other states may calculate their area rate of recidivism and make a determination about how effective their current system is operating. Those public officials who have reviewed the existing conditions in their jurisdictions may find well functioning, effective operations that do not generate high rates of recidivism. Each may find that the criminal justice budget is being spent to the best advantage of prosecution and support functions and the elimination of recidivism and is functioning well in their respective jurisdictions and, each official may determine that recidivism is not a problem and the youthful offender should be prosecuted, and that based upon their review prosecution is the best method to deal with any criminal youthful offenders and older offenders with no exception for any reason.

The public official who does not find a problem with recidivism may not discover the youthful offender encountering any difficulty in dealing with the onus of a criminal record. There may not have been found any major problems in dealing with the youthful offender in the traditional way, and the normal criminal justice system of prosecution may not be found to be causing problems to the youth which preclude continued functioning after a criminal conviction.

Other public officials in Michigan and other states who are responsible for expending the funds, prosecution,
incarceration and the public well being may determine that 
recidivism is creating a problem and is a problem within their jurisdictions. And, those officials may determine that the youthful convicted offender is being denied the 
opportunities of employment and social advancement which may contribute to further criminal involvement. These same officials may find that the public funds, which they control and spend, are not achieving results in proportion to the expenditures and that a new process may generate more acceptable findings.

The costs associated with prosecution are substantial. The tax based costs associated with prosecution diversion are nonexistent. The cost of prosecution to the first offender is a loss of future opportunity and the increased probability of returning to the criminal justice system, thereby generating more costs of prosecution. The cycle of arrest and conviction may be tempered to a significant degree by the use of prosecution diversion.

The implications to the official who does determine that a disproportionate amount of tax revenues are being expended to achieve minimal recidivism results are numerous and varied. First, diversion is not a social experiment but a legitimate exercise of prosecution discretion and available to any prosecuting authority interested in a lower rate of recidivism, the well being of youthful first offenders, and reducing costs associated with prosecution.
Second, methods of dealing with criminal prosecution and the criminal are not diminished by providing a new process to deal with first offenders. The new method could result in the enhancement of the prosecution function by clearing the first offender from criminal dockets thereby allowing more vigorous prosecution of second and subsequent offenders. Lastly, the public is interested in seeing the public official returned to office when that official has done something demonstrative. The official, who is charged with the responsibility of reducing the crime rate, reducing the expenditures involved with the criminal justice system, and with prosecuting the career criminal could accomplish each of these expectations and responsibilities by reducing the volume of first offender misdemeanants and lessening their return for subsequent prosecution.

Prosecution diversion programs in other areas may not produce recidivism reduction to the extent that this experiment demonstrated in the location studied. There is no guarantee that diversion will function in other jurisdictions such as Grand Rapids, Michigan or Palm Beach, Florida, with as much success as shown by the findings from this experiment in the jurisdiction of this study. Less modest findings may be found in other experiments or the concept may not function with any degree of success. However, the concept is sound from a legal and process
perspective and costs nothing of the tax base. Should the system of prosecution diversion fail the public and the public official has lost an expendable discretionary process. Should the prosecution diversion program function, with even a minimal degree of success, the public benefits in the success and the public official is credited with the success.

Legislation to mandate the diversion process is not required. Any individual charged with the prosecution function in any size community can divert youthful first offenders, or any age first offenders, to a period of prosecution diversion in the normal course of conducting the duties and responsibilities of the prosecution office. The exactment of legislation to mandate first offender prosecution would insure equal protection within state boundaries but would not guarantee program success. Prosecution diversion is a concept which can function if legislated but can function equally as well when instituted and controlled by individual prosecutors. Any prosecution jurisdiction with a reasonable volume of first offender misdemeanants can maintain a prosecution diversion program using no public funds.

Recommendations for Future Study

When research is conducted about crime and the criminal, researchers must be concerned with
constitutional mandates, criminal law and procedure, sociological considerations and psychological constraint which may limit inquiry into any number of those areas. In research involving criminals or those accused of a crime, the researcher must always be concerned with constitutional mandates. The defendant who is the subject of research is also the constitutional beneficiary of the rights afforded to every person accused of a crime.

An aspect of this study which was not reviewed involves a person who starts diversion and then does an act which results in that person being suspended from further consideration or dropping out of the diversion program prior to completing the criteria. This individual is then prosecuted. The experiment in this study did not consider the individual who did not complete the diversion program. A possible study to determine the reason for such defendant behavior could aid counselor personnel in their responsibilities if future research is undertaken in the diversion area using similar methods.

This proposed drop out study would review the various reasons the defendant may offer for leaving the diversion program with full knowledge that such action would result in certain prosecution. The researcher could inquire into the reasons that a defendant might offer for doing an act, prohibited by the program criteria, which required expulsion from the prosecution diversion program. Direct
contact with the rejected defendant might include specific inquiry into the perception of diversion to aid the drafting of additional or modified criteria to the ends of retaining all qualified individuals on the diversion program until they complete the required tasks. This suggested study would not require establishing a new program of diversion.

The second study which is recommended involves the method of counseling used with diversion clients. The empathetic counseling method was employed to conduct this experiment. Other methods of counseling are available for use with individuals who are diverted from prosecution and may, when used, produce more significant results. And the questions, Is counseling the treatment that caused the individual not to recidivate? or, Is any type of intervention by attention to the defendant just as plausible a reason to explain the significant difference in the rate of recidivism? or, Does the defendant show a lower rate of recidivism because of the treatment, or based upon what he learns about the crime he is accused of committing and the criminal justice system in general? could be answered by researching the counseling method employed with prosecution diversion clients. This suggested research could be conducted within an existing diversion program.

The last suggested area of possible future study involves replication of this experiment using citizens of
the community as counselors. The citizen could be of considerable value as a counselor to a first offender misdemeanant. People from the community of the diversion program could be trained in some method of counseling or each could be allowed to use the process which best suits their own individual style. This proposed and recommended future study would provide the researcher with data and findings to allow for conclusions to be made about community-based diversion and citizen concern involving young people and lowering the crime rate of the youthful offender in a specific area or community.

The proposed community diversion program would allow the researcher to inquire into the effectiveness of one method of counseling in relation to another method of counseling. And, the researcher would be provided with enough data to determine if counseling is responsible for low recidivism or to determine if the intervention by a concerned citizen would produce equally low recidivism for youthful offenders.

Researchers who undertake research using one of the recommended topics or attempt similar programs of diversion or replicate this study are advised that diversion is a difficult concept to "sell" to various established individuals in the criminal justice system. Criminal diversion is a difficult concept for the public to accept as the crime rate increases. And, being in a position to
do actual research by conducting an experiment may prove an obstacle which cannot be overcome without considerable effort. In that crime and the criminal are the mainstay of any diversion program, a researcher must acquire the defendants and a place to institute and conduct the research.

The prosecuting authority must concur with the researcher that the proposed prosecution diversion concept is sound and workable or no prosecution diversion will be permitted to function. Political constraints, based upon community perceptions about crime, may cause the prosecuting authority not to permit a researcher to operate in the confines of the area of that prosecutor's jurisdiction.

Similar restraints may be placed upon the researcher by the judge of the district who is charged with the constitutional responsibility of criminal case disposition, speedy trial, due process, and a high volume caseload which may not permit any outside intervention. The individual who would conduct a future study is advised that a program of criminal prosecution diversion requires a considerable amount of cooperation between the judge and the prosecutor to insure the constitutional rights of the accused and the rights of the public are adhered to by all involved.

The police function in most communities consists of a
stable force of individuals who are concerned with enforcement of the laws of their jurisdiction and not research. Police officers tend to want prosecution of the criminal cases in which they are involved. A future program of criminal diversion should be designed to function in a way which does not cause extra effort to the police officer. This nonintervention design step may convince this established, stable police force to at least tolerate the diversion concept until data is accumulated to demonstrate findings.

Should the researcher be in a position to assemble the required support from the prosecutor, judge, and police then the proposed prosecution diversion program has a foundation from which it can function to generate data. This researcher estimates that the period of time required to acquire significant data to draw conclusions about recidivism is three to five years; the act of recidivism is reasonably shown over that period of time. The future diversion researcher is cautioned that operating a program of prosecution diversion is not a casual function that can be attended to without a considerable expenditure of time and effort on the part of the researcher. Therefore, should the researcher contemplate an experiment that requires founding a new program that researcher should be prepared to devote a sufficient and significant amount of time and effort or find an ongoing diversion program and
explore a segment of the existing study. The time and effort required to found a new program may be better spent exploring a specific area of an existing program more completely.

Closing Comments

The purpose of this study, among others, was to advance the body of knowledge about prosecution diversion and recidivism of the youthful offender versus people who were prosecuted. This purpose was to be achieved by (a) reviewing the literature regarding criminal diversion, determine if similar studies were conducted, and reviewing the conclusions of those studies; (b) by establishing a prosecution diversion counseling program; (c) by determining the effects of counseling diversion on recidivism; and (d) by determining whether there are certain types of 17-21 year-olds for which the diversion counseling is more (or less) effective. This researcher is of the opinion that the purpose and objectives of this study have been reached, although it was a long and sometimes difficult path.

The study was planned and the experiment was conducted so that, at every stage of the development, it could always make the most of its potential and provide optimum opportunity for the misdemeanant to achieve program criteria, complete the requirements and be
successfully discharged from the experiment and have the criminal charge dismissed by the prosecutor. The youthful offender who aided this experiment by completing the program is commended and that act of completing diversion as a contribution to this research was invaluable to reaching the conclusions and finding of this study.

Even if nothing else has been accomplished by this study, there are several hundred youthful offenders, and a similar number of first offender older adults who have started and finished an experiment designed to find a new and perhaps improved method of dealing with first offender misdemeanant crime. And, each participant has gained a second chance to become productive and lead the life that a criminal record could have precluded. Each person who completed the process of diversion demonstrated that there are other possible solutions to problems that are workable alternatives to first offender prosecution.
APPENDICES
Appendix A

Advisement of Rights Form
THE FOLLOWING INFORMATION IS BEING PRESENTED TO YOU SO THAT YOU UNDERSTAND WHAT YOUR RIGHTS ARE WHEN BEING CHARGED WITH A CRIME. PARTICIPATION IN THE CITY DIVERSION PROGRAM WILL REQUIRE THAT YOU WAIVE AND/OR GIVE UP CERTAIN RIGHTS. HOWEVER, IT IS IMPORTANT THAT YOU KNOW THAT THE INFORMATION THE CITY DIVERSION PROGRAM HAS IN YOUR FILE IS CONFIDENTIAL AND AS SUCH CANNOT BE USED AGAINST YOU IN A COURT OF LAW. THIS INFORMATION IS FOR YOUR BENEFIT.

******************************************************************

1. You have the right to remain silent.

2. Anything you say and will be used against you in a court of law.

3. You have the right to talk with a lawyer and have him present with you before or during any questioning.

4. If you want a lawyer but cannot afford one, one will be appointed to represent you at public expense.

5. If you waive your right to remain silent and later wish to stop answering questions, the questions will stop.

6. If you waive your right to have a lawyer present and later change your mind, the questioning will stop until you have talked with a lawyer.

WAIVER

1. Do you understand each of these rights that I have explained to you?

2. Are you willing to give up these rights and answer my questions at this time?

CLIENT'S SIGNATURE ___________________ DATE ________________

COUNSELOR AS WITNESS ___________________ DATE ________________

DIRECTOR OF DIVERSION
Appendix B

Prosecution Referral Form
"DIVERSION PROGRAM"

 Prosecution Referral Form

1. You have been instructed to attend the City Diversion Program. Your first interview has been set for:

   DATE:___________________

   TIME:___________________

2. Fill out the attached personal inventory form and bring it with you to your appointment.

3. There is a fee, payable to the City Diversion Program at the time of your appointment, or after your initial interview, arrangements can be made for payments.

4. If you fail to appear for the above appointment or to contact this office, your file will be sent back to it's original source for further action by the city attorney.
Appendix C

Client Information Sheet
"DIVERSION PROGRAM"

CLIENT INFORMATION SHEET

NAME: ________________________________  SOCIAL SECURITY: ____________

ADDRESS: ____________________________________________ ZIP: __________

TELEPHONE NUMBER: ___________ DATE OF BIRTH: ____________ month date year

I LIVE WITH: ( ) SPOUSE ( ) PARENTS ( ) CHILDREN
( ) FRIEND ( ) SELF ( ) OTHER __________________

MARITAL STATUS: ( ) SINGLE ( ) MARRIED ( ) SEPARATED
( ) DIVORCED ( ) WIDOWED ( ) ENGAGED

PLACE OF BIRTH: ____________________________________________

EDUCATION LEVEL: ____________________________________________

I HAVE ( ) A VALID, ( ) SUSPENDED, ( ) NEVER APPLIED FOR
DRIVER'S LICENSE. NUMBER ______________________________

I AM ( ) EMPLOYED, ( ) UNEMPLOYED, ( ) LAID OFF, ( ) FIRED

EMPLOYER ___________________ ADDRESS ___________________________________

I WORK BETWEEN THE HOURS OF: _________________________________________

I MAY HAVE A PROBLEM WITH: ( ) ALCOHOL ( ) DRUGS
( ) FAMILY ( ) EMPLOYMENT
( ) FINANCIAL ( ) HEALTH ( ) OTHER

MILITARY SERVICE: __________ DATES: ________________

yes or no

OTHER INFORMATION: ____________________________________________

_________________________________________________________________

_________________________________________________________________

ALL INFORMATION IS PRIVATE AND CONFIDENTIAL
Appendix D

Legal Rights and Responsibilities Form
"DIVERSION PROGRAM"

LEGAL RIGHTS AND RESPONSIBILITIES

Your case has been referred to the City Diversion Program by the City Attorney's Office and further prosecution has been temporarily deferred pending an evaluation of your eligibility to participate in the diversion program.

The City Diversion Program is a voluntary program which has been established for the benefit of those charged with a first offense as an adult. If you do not desire to participate in this program please inform us and we will schedule your pre-trial exam. If you desire to participate and meet the eligibility requirements of the program please read and complete the following:

You have been accused of violating the law. The purpose of my talking with you at this time is to determine whether or not you clearly understand your constitutional rights. And for you to decide whether or not you desire to have prosecution temporarily deferred and be considered for the City Diversion Program.

1. Do you understand the purpose of my talking with you at this time? _____________ (yes or no).
2. Do you understand that any decision you make must be made freely and voluntarily? _____________ (yes or no).
3. Do you understand that you have been accused of violating the law by: _____________ (yes or no).
4. Do you understand that you are presumed to be innocent of this violation of the law until you either plead "guilty" or are found "guilty" in a court of law? _____________ (yes or no).
5. Do you understand that you have the right to answer in court any accusations made against you? _____________ (yes or no).
6. Do you also understand that if you were to go to trial for this offense, you would have the following Constitutional Rights?
   a. Your right to be tried by a jury or court for this offense to determine your guilt or innocence.
   b. Your right to confront and cross-examine your accusers on the witness stand during trial.
   c. Your right to have witnesses produced to testify in your behalf, and your right to testify in your own behalf or not testify at all and to remain silent, and your right not to have your refusal to testify used against you _____________ (yes or no).
7. Do you understand you are now temporarily giving up these rights by participating in this program for a period of up to one (1) year from this date? _____________ (yes or no).
8. Do you consent to a confidential investigation of your personal and family background by the City Diversion Program,
understanding that any information given by you personally will not be divulged for use against you as evidence in any possible future criminal prosecution for this offense? (yes or no).

9. Do you further understand that information relevant to your participation in the City Diversion Program will be retained by this agency? (yes or no).

10. Do you understand that you have the right to have an attorney represent you and to advise you at every step in any future criminal proceedings? (yes or no).

11. Do you knowingly, freely, voluntarily, and understandingly now desire to waive and give up your Constitutional rights to be speedily charged, prosecuted, and/or tried for this offense during the possible period of your participation in the City Diversion Program for a period of up to one (1) year from this date? (yes or no).

12. Do you fully understand all of the questions that you have been asked? (yes or no).

13. Do you now wish to request of the City Attorney and the City Diversion Program that prosecution of you for this offense be indefinitely deferred for a period of time up to one year from this date for the purpose of your being considered for possible participation in the City Diversion Program? (yes or no).

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

PLEASE READ THE FOLLOWING AND SIGN, ON APPROPRIATE LINES.

I, have been advised of and understand my legal rights and the nature of the criminal offense for which I am charged. I understand that by participating in the City Diversion Program I am morally obligating myself to live a law-abiding life. I understand that if my application is accepted by the City Diversion Program I am entitled to the following rights and benefits.

1. I have the right to withdraw from the City Diversion Program at any time and, therefore, if I am prosecuted for this offense, have my innocence or guilt determined in a court of law. **NOTE: MONIES PAID INTO THE PROGRAM ARE NOT REFUNDABLE AND ARE USED TO SUPPORT THE PROGRAM.

2. Prosecution for this offense may, at the discretion of the City Attorney, be held in abeyance for a period up to one year to enable me to demonstrate by my successful participation in the City Diversion Program that prosecution is not required in the public interest.

3. Upon my successful completion of participation, as determined by the City Attorney's Office, no future prosecution for this present offense will occur.

4. If future prosecution does not occur, I will have the right to the return of any police arrest and booking records for this present offense, upon petition and if authorized by law.
***RESPONSIBILITIES***

1. I accept and acknowledge responsibility for my behavior in the present offense.

2. I accept responsibility for not violating the law, knowing that I may be prosecuted for committing any new offense, as well as for the present offense.

3. I accept responsibility for keeping appointments with the City Diversion Program or any other agency to which I may be referred.

4. I accept financial responsibility for any purchase of services necessary to the administration of the City Diversion Program or any other agency to which I may be referred.

5. I accept responsibility for any restitution directly resulting from this offense, as determined by the City Diversion Program and/or the City Attorney.

6. I accept responsibility for discussing my participating in the City Diversion Program with the adult family relatives with whom I reside.

7. I accept responsibility for providing any personal and social background information necessary for the City Attorney's evaluation and approval of my participation, including my written consent to the release of confidential information.

I HEREBY ACCEPT THE FOREGOING BENEFITS AND RESPONSIBILITIES OF VOLUNTARY PARTICIPATION IN THE CITY DIVERSION PROGRAM FOR A PERIOD OF UP TO ONE YEAR FROM THIS DATE.

APPLICANT ___________________________ DATE ________________

INTERVIEWER ___________________________ DATE ________________
Appendix E

Diversion Advice Form
DIVERSION PROGRAM
DIVERSION ADVICE FORM

The president's Commission on Law Enforcement and the Administration of Justice has recommended the pre-judicial disposition of many offenders outside the courts, provided, however, that such dispositions be under the guidance and control of articulated policies and legal restraints.

The discretionary powers of the prosecuting attorney in combination with a well organized referral process which insures procedural formality could and would provide equality before the law for all accused persons, regardless of race, creed, color or sex.

It is on the basis of these premises that the following policies and procedures be implemented.

I. REFERRAL CRITERIA

A. Legal adult
B. Resident of county or vicinity
C. All cases with the exception of crimes of violence, unless otherwise enumerated by the prosecuting attorney.
D. Referrals should be limited to first-time offenders, unless otherwise enumerated by the prosecuting attorney.
E. Persons participating in the program must be willing to accept responsibility for their actions and, further, should be displaying a desire to change any negative or anti-social behavior/attitude.
F. Persons entering into said program will receive full instruction regarding eligibility and terms of said program without exception. Copies of terms and agreements will be provided.

II. TERMS

A. Admission of responsibility in the present offense.
B. Length of involvement in program shall be one year with possible termination at six months for exceptional behavior.
C. A fee of $175 dollars to be assessed in monthly payments. Payments made to the program are not refundable.
D. Subsequent legal involvement can and will result in a return for prosecution on the original charge as will any violation of terms.
E. Persons entering into the program will report monthly unless otherwise specified.
Appendix F

Diversion Program Probation Road Book Face Sheet
**DIVERSION PROGRAM**

**PROBATION ROAD BOOK FACE SHEET**

<table>
<thead>
<tr>
<th>NO.</th>
<th>NAME AND ALIAS</th>
<th>CODE DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COURT</th>
<th>COUNTY</th>
<th>JUDGE</th>
<th>CONV. SENT DATE</th>
<th>CORR. DATE</th>
<th>TERMS MIN/MAX</th>
<th>OFFENSE AND CL '48 NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PROB. AGENT</th>
<th>ATTORNEY</th>
<th>APP'D. OFFENDER'S ADDRESS</th>
<th>CO-DEFENDANT'S</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SEX</th>
<th>RACE/BIRTHDATE</th>
<th>BIRTHPLACE</th>
<th>C DOC/SEC NO</th>
<th>FBI NO</th>
<th>REA/NO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NEAREST RELATIVE AND ADDRESS</th>
<th>HEIGHT</th>
<th>WEIGHT</th>
<th>HAIR</th>
<th>COMPLEXION</th>
<th>BUILD</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RELIGION</th>
<th>EDUCATION</th>
<th>MARITAL</th>
<th>MILITARY</th>
<th>RECORD</th>
<th>SERVICE NO</th>
<th>PRISON NO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OCCUPATION</th>
<th>AG</th>
<th>INTELL</th>
<th>MARKS OR SCARS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PSYCHIATRIC HISTORY</th>
<th>JUV. COMM.</th>
<th>PROBATION ADMISSION</th>
<th>JUV. HISTORY</th>
<th>OTHER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>MEDICAL HISTORY</th>
<th>JAIL TERMS</th>
<th>PRISON TERMS</th>
<th>ESCAPES</th>
<th>SEX OFFENSES</th>
<th>STATUS</th>
<th>RECOMMEND.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DISP DATE</th>
<th>PROB/TERM</th>
<th>JAIL</th>
<th>FINE</th>
<th>COSTS</th>
<th>OVERSIGHT</th>
<th>RESTITUTION</th>
<th>SUPPORT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**SPECIAL NOTES**

JAN  | FEB  | MAR  | APR  | MAY  | JUN  | JUL  | AUG  | SEPT | OCT  | NOV  | DEC |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**FIELD NOTES**

ADDRESS CHANGE

EMPLOYMENT

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
Appendix G

Notice of Termination Form
"DIVERSION PROGRAM"

NOTICE OF TERMINATION

COMPLIANCE_______ NON-COMPLIANCE_______ (return for prosecution)

DATE: ______________

DEFENDANT: ________________' ________________' ________________'.
(last) (first) (middle)

ADDRESS: __________________________________________________ ZIP__________.

TELEPHONE: __________________________.

CASE NUMBER: ________________ . CODE: ________________ .

DATE ENTERED PROGRAM: ________________ .

NUMBER OF COMPLETED APPOINTMENTS: ________________ .

COMMENTS: (completion of program, involvement with CJS, violation of terms, etc.).

________________________________________
SIGNATURE:

________________________________________
DIVERSION PROGRAM DIRECTOR
<table>
<thead>
<tr>
<th>Group</th>
<th>Total Group</th>
<th>Larceny Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>17-21</td>
<td>569 (.42%)</td>
<td>364 (.39%)</td>
</tr>
<tr>
<td>22-26</td>
<td>232 (.17%)</td>
<td>143 (.15%)</td>
</tr>
<tr>
<td>27-31</td>
<td>150 (.11%)</td>
<td>107 (.11%)</td>
</tr>
<tr>
<td>32-36</td>
<td>108 (.08%)</td>
<td>81 (.09%)</td>
</tr>
<tr>
<td>37-41</td>
<td>70 (.05%)</td>
<td>53 (.06%)</td>
</tr>
<tr>
<td>42-46</td>
<td>63 (.05%)</td>
<td></td>
</tr>
<tr>
<td>47-51</td>
<td>53 (.04%)</td>
<td>33 (.03%)</td>
</tr>
<tr>
<td>52-56</td>
<td>41 (.03%)</td>
<td>27 (.03%)</td>
</tr>
<tr>
<td>57-61</td>
<td>29 (.02%)</td>
<td>16 (.01%)</td>
</tr>
<tr>
<td>62-66</td>
<td>29 (.02%)</td>
<td>16 (.01%)</td>
</tr>
<tr>
<td>67-80</td>
<td>16 (.01%)</td>
<td>16 (.01%)</td>
</tr>
</tbody>
</table>

**Five Year Report**

**Total Group: 1,345**

**Average Age: 28**

**Larceny Group: 936 (.70%)**

**Average Age: 30**

<table>
<thead>
<tr>
<th>Age Range</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>17-21</td>
<td>569 (.42%)</td>
</tr>
<tr>
<td>22-26</td>
<td>232 (.17%)</td>
</tr>
<tr>
<td>27-31</td>
<td>150 (.11%)</td>
</tr>
<tr>
<td>32-36</td>
<td>108 (.08%)</td>
</tr>
<tr>
<td>37-41</td>
<td>70 (.05%)</td>
</tr>
<tr>
<td>42-46</td>
<td>63 (.05%)</td>
</tr>
<tr>
<td>47-51</td>
<td>53 (.04%)</td>
</tr>
<tr>
<td>52-56</td>
<td>27 (.03%)</td>
</tr>
<tr>
<td>57-61</td>
<td>16 (.01%)</td>
</tr>
<tr>
<td>62-66</td>
<td>16 (.01%)</td>
</tr>
<tr>
<td>67-80</td>
<td>16 (.01%)</td>
</tr>
</tbody>
</table>

**Sex:**

- Female: 612 (.45%)
- Male: 733 (.55%)

**Race:**

- White: 1,068 (.79%)
- Black: 237 (.18%)
- Other: 40 (.03%)

**Marital Status:**

- Single: 748 (.56%)
- Married: 311 (.23%)
- Divorced: 173 (.13%)
- Separated: 87 (.06%)
- Widowed: 26 (.02%)

**Education:** (average 11.6)

- Under 9: 69 (.05%)
- 9-10: 73 (.05%)
- 11-12: 155 (.11%)
- 13-14: 224 (.17%)
- 15-16: 607 (.45%)
- 17-18: 97 (.07%)
- 19-20: 58 (.04%)
- Over 20: 62 (.05%)

**Employed:** 529 (.39%)

**Unemployed:** 816 (.61%)

**Sex:**

- Female: 519 (.55%)
- Male: 417 (.45%)

**Race:**

- White: 686 (.73%)
- Black: 218 (.23%)
- Other: 21 (.03%)

**Marital Status:**

- Single: 476 (.51%)
- Married: 246 (.26%)
- Divorced: 128 (.14%)
- Separated: 62 (.07%)
- Widowed: 24 (.03%)

**Education:** (average 11.5)

- Under 9: 57 (.06%)
- 9-10: 47 (.05%)
- 10-11: 118 (.13%)
- 11-12: 153 (.16%)
- 12-13: 404 (.43%)
- 13-14: 71 (.08%)
- 14-15: 39 (.04%)
- Over 15: 47 (.05%)

**Employed:** 302 (.32%)

**Unemployed:** 634 (.68%)

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
OFFENSE CODE:

LARCENY---------936
POSS.STOLEN PROP--18
FIREARMS/KNIFE----11
DISORDERLY--------67
EMBEZZLEMENT------11
ASSAULT & BATTERY--77
TRAFFIC----------42
OTHER*-----------183

*  (minors in possession, open intoxicants, NSF, marijuana, etc.)

REFERRALS:  1,345

COMPLETIONS---------976
REJECTS IN PROGRAM---203
REJ.PRIOR TO PRO.----51
ABEYANCE-------------10
DECEASED-------------2
ACTIVE--------------103

FISCAL YEAR FINANCIAL/REFERRAL BREAKDOWN

YEAR         JULY 82------JUNE 83            1/2 YEAR
$22,854       $9,835----$13,019          $9,835--$13,019
314 referrals 146 ref--166 ref
JULY 83------JUNE 84
$24,442       $11,355--$13,087          $11,355--$13,087
290 referrals 139 ref--151 ref
JULY 84------JUNE 85
$27,678       $11,735--$15,943          $11,735--$15,943
242 referrals 121 ref--121 ref
JULY 85------JUNE 86
$28,225       $14,406--$13,819          $14,406--$13,819
232 referrals 125 ref--107 ref
JULY 86------JUNE 87
INCOMPLETE     $10,827--INCOMPLETE      $10,827--INCOMPLETE
110 ref--INCOMPLETE

The City Diversion Program began February 16, 1982 and has operated from the District Court for the past 5 (five) years. The program has generated $120,360 and has operated at no expense to the taxpayer. If you have any questions please contact my office.

Thank you for providing the opportunity to demonstrate that a well-organized, proficient system can operate without placing a burden on the citizens of this City, County and State.
Appendix I

Typical Counseling Sessions
EMPATHETIC COUNSELING

TYPICAL COUNSELING SESSION

The following three counseling sessions which were recorded, appear in total as they were transcribed. Session one is the first instance that a potential client has to observe and listen to what a period of diversion will or will not do about the pending criminal charge. The potential client, at this point, knows very little about diversion, benefit or detriment, except what has been briefly explained by the City Attorney, at a legally mandated pre-trial conference. The second counseling session takes place about a month later and has no structure which is planned by the counselor. The one-to-one meeting is typical empathetic process based upon the congruent or integrated relationship of client and counselor. The third meeting is a follow-up session where the counselor checks the clients' community status.

This client interviewed is a 20-year-old male, employed as a laborer. He lives with his parents and is considering marriage. The client, whose interview is recorded for use in this paper, was successfully terminated from diversion status after a period of four months and has not been involved with other criminal activity.

COUNSELOR: The last time you were here you spoke with the prosecuting attorney and he sent you to see me. Did he tell you anything about the program?
CLIENT: No, he didn't.

COUNSELOR: What did he tell you?

CLIENT: That if I came here the case would be dismissed.

COUNSELOR: That's close. The City Diversion Program is an alternative to prosecution. You can come here or go to court. Diversion means that you're headed toward court and we change your direction. The program lasts from six months to a year, requires you to report in once a month, and if in six months you are cooperative, keep your appointments, pay the fee, and do not encounter any other problems with the law, I will go back to the prosecuting attorney and request that he dismiss the case. Once the case has been dismissed, I can have the records removed from the police station. No police record, court record reflects that a case has been dismissed and you won't have to go back to court. But it's a one time only thing. Given the choice between prosecution and coming here, which would you rather do?

CLIENT: I think I would rather come here.

COUNSELOR: Wise decision. Now, I'm not your judge or jury, but do you think that you could be convicted of the charge?

CLIENT: What do you mean?

COUNSELOR: Did you do what they said you did? Did you shoplift?

CLIENT: Oh, yes, yes, I did.
COUNSELOR: Today all we're going to do is go through the paperwork to get you enrolled into the program. The first form is the Referral Criteria and Terms of the program. You have to be a legal adult, a resident of the county or vicinity, all cases with the exception of crimes of violence unless the prosecutor feels otherwise. Referrals should be limited to first-time offenders. Is this the first time you have ever been in trouble?

CLIENT: Yes.

COUNSELOR: Persons participating in the program must be willing to accept responsibility for their actions. That doesn't mean that you're pleading guilty, it just means that you understand and accept the responsibility for the charge. Now, let's drop down here to the Terms: Admission of responsibility in the present offense -- that's what we've just talked about -- the length of involvement in program shall be one year with possible termination at six months for exceptional behavior. That means if in six months you are cooperative, keep your appointments, pay the fee, and don't get in any trouble with the law, you could get out of the program in six months. There is a fee of $175 to participate in the program that is payable as you go through the program. Subsequent legal involvement will result in a return for prosecution.
That means while you are in this program your case is being held out of court. If you get in any other trouble and a warrant charging you with a misdemeanor or felony is issued, I will return the case to court. If you cannot keep an appointment with me, I want you to call me. I'll point out to you at this time, I am not here on Fridays and that I don't have a secretary. So, if you try to call me and you don't get an answer give it about fifteen minutes and call me back. I may be in the building but not right here by the phone. It is your responsibility. Do you understand all that?

CLIENT: Yeah.

COUNSELOR: Number three, "You have the right to talk with a lawyer and have him present with you before or during any questioning." Did you understand that?

CLIENT: Yeah.

COUNSELOR: Number four, "If you want a lawyer but cannot afford one, one will be appointed to represent you at public expense." Did you understand that when the police officer asked you that?

CLIENT: Yeah.

COUNSELOR: Number five, "If you waive your right to remain silent and later wish to stop answering questions, the questions will stop." Did you understand that?

CLIENT: Yeah.
COUNSELOR: And, number six, "If you waive your right to have a lawyer present and later change your mind, the questioning will stop until you have talked with a lawyer." Did you understand that?

CLIENT: Yeah, I did.

COUNSELOR: These last two questions are called the Waiver. Now, I'm not asking you the questions, only if you understand them when the police officer asked them. "Do you understand each of these rights that I have explained to you?"

CLIENT: Yes.

COUNSELOR: "Are you willing to give up these rights and answer my questions at this time?"

CLIENT: Yes.

COUNSELOR: Sign that at the bottom and date it. This is your copy. Okay, the next form is the contract for the program. I'm going to go over these rights with you and I will give you a copy when we are done. First I will briefly go through the first three paragraphs. Number one, says that you have been sent here to be evaluated to see if you are eligible for the program. Which you are. Number two, says that the program is voluntary. You don't have to come here if you don't want to, but it is an alternative to going to court. Number three, says that as we go through this form we will be discussing your Constitutional Rights and
whether or not you want to be considered for the program. Question number one, "Do you understand the purpose of my talking with you at this time?"

CLIENT: Yes.

COUNSELOR: Okay, write "yes" here. Number two, "Do you understand that any decision you make must be made freely and voluntarily?"

CLIENT: Yes.

COUNSELOR: Number three, Do you understand that you have been accused of violating the law by larceny?"

CLIENT: Yes.

COUNSELOR: Number four, "Do you understand that you are presumed to be innocent of this violation of the law until you either plead "guilty" or are found "guilty" in a court of law?"

CLIENT: Yes.

COUNSELOR: Number five, "Do you understand that you have the right to answer in court any accusations made against you?"

CLIENT: I'm not sure what that means.

COUNSELOR: That means that any time you are charged with a criminal offense you have a right to answer that accusation in a court of law.

CLIENT: Oh, okay, I see.

COUNSELOR: Number six, "Do you also understand that if you were to go to trial for this offense, you would have the
following Constitutional Rights:

A) Your right to be tried by a jury or court for this offense.

B) Your right to ask questions of your accusers or any witnesses.

C) Your right to bring witnesses into court to testify for you, your right to testify for yourself or remain silent, and your right not to have your silence used against you."

That means that a jury cannot find you guilty based upon your silence. They must determine your guilt or innocence based upon the testimony or evidence given. Do you understand all three of these A, B, and C?

CLIENT: Yes.

COUNSELOR: Number seven, "Do you understand you are now temporarily giving up these rights by participating in this program for a period of up to one year from this date?

CLIENT: I thought you said the program was only six months.

COUNSELOR: It is if you keep your appointments, pay the fee, and don't encounter any problems with the law. The longest it could last is one year; do you understand?

CLIENT: Yeah, I see.

COUNSELOR: Okay, number eight, "Do you consent to a confidential investigation of your personal and family background by the City Diversion Program, understanding that any information given by you personally will not be
divulged for use against you as evidence in any possible future criminal prosecution for this offense?"

CLIENT: I don't understand this part. Are you going to be contacting my family?

COUNSELOR: No, that means that I'll be asking you personal questions; such as: "How are things going at home?" "Are you gettin' along with your family?"

CLIENT: Oh, okay.

COUNSELOR: The next one is number nine which states that I will be keeping a record of your participation in the program. This is not a police record but it is our way of knowing that you had been in Diversion before because Diversion is a one-time only deal.

CLIENT: Okay.

COUNSELOR: Number ten, states that you always have the right to an attorney anytime you're charged in a criminal offense.

CLIENT: Okay.

COUNSELOR: Number eleven, is very important. It talks about your right to a speedy trial. You have a right to a speedy trial but if you're going to be here you won't be going to trial. Therefore, I am asking you to give up that right while you're here.

CLIENT: Oh, okay.

COUNSELOR: Number twelve says, "Do you understand all the
questions?"

CLIENT: So far.

COUNSELOR: Number thirteen, is the longest sentence in the world asking you if you wanna be here as opposed to going to court.

CLIENT: Yes, yes, I do.

COUNSELOR: Okay. Then on this next part I want you to sign your name on the long lines. I, __________________, have been advised of and understand my legal rights and the nature of the criminal offense for which I am charged. I understand that by participating in the City Diversion Program I am morally obligating myself to live a law-abiding life. I understand that if my application is accepted by the City Diversion Program, I am entitled to the following rights and benefits.

Number one, you have a right to withdraw from the program at any time and have your case heard in court if that's what you wanna do. Do you understand that?

Okay, then sign your name here. Note: MONIES PAID INTO THE PROGRAM ARE NOT REFUNDABLE AND ARE USED TO SUPPORT THE PROGRAM, that means that money generated by this program stays in this program. It's run at no expense to the tax payers. Number two, this case can be held in abeyance or out of court for a period of up to one year. If you successfully participate, you demonstrate that there is no need to go to court in
the public interest. Do you understand?

CLIENT: I think so.

COUNSELOR: Sign here. Number three, once you complete the program the case against you will be dismissed. They cannot take it back to court. Sign your name. Number four, did they take you to jail?

CLIENT: No.

COUNSELOR: Number four, says that if they did take you to jail that we would petition your records out of the jail once you completed the program. It also means that once you complete the program, I will remove your police record from the police station and you won't have a police record. Do you understand that?

CLIENT: Yeah.

COUNSELOR: Okay. Just put your initials here. Okay, this next part deals with your responsibilities in the program. Number one, says that you accept responsibilities for your behavior in the present offense. Number two, says that you accept the responsibilities for not violating the law. That means that if you are charged with another offense, I could return this case to the court.

CLIENT: You mean if I get a parking ticket I have to go back to court?

COUNSELOR: No. We're talkin' about being charged with a misdemeanor or a felony. Number three, you accept
your responsibility for keeping your appointments with me or anybody else I might send you to see. It's your responsibility to keep the appointments. I'm not going to call you or write you. We've already discussed this. Number five, financial responsibility, your only financial responsibility here is the $175 fee. There are no hidden costs or anything that would come up later except, number five, responsibility for restitution. Do you know what restitution is?

CLIENT: I'm not sure.

COUNSELOR: Restitution means that if there's anything broke, damaged, or needs to be replaced, you'll take care of that. There isn't any in your case, but I want to make sure that you understand what it means. Number six, says that you have the responsibility to inform the adult family relatives with whom you reside about your participation in the program. That's your responsibility not mine. Number seven, has to do with a release of confidential information. If I were to send you to a drug or alcohol program, you would be required to sign a release so that I could receive their reports. If you understand and agree with what we've discussed, I'd ask you to sign right here where it says "applicant".

CLIENT: Okay.
COUNSELOR: Here's your copy of the contract. Now, when they arrested you, did they tell you that they could have charged you with a felony?

CLIENT: I think they mentioned that.

COUNSELOR: In the State of Michigan, Larceny is considered a felony and the most a judge could do to you, if you were convicted, is put you in the state's penitentiary for up to four years. They could have charged you with a state misdemeanor, which says that the most the judge could do is put you in the county jail for up to one year. Do you know the difference between a felony and a misdemeanor?

CLIENT: I'm not sure.

COUNSELOR: A felony you can go to prison. A misdemeanor you can go to jail. Instead of charging you with either one of those, they chose to charge you with a local ordinance. That law says that the most a judge could do is a $500 fine, 90 days in jail, two years probation or any combination of the three. I don't know what the judge would do, but I guarantee you that he would probably fine you more than $175. And, if you were convicted, there's always the possibility that you would go to jail. If you go through this program you won't have a record of being convicted and there won't be a police record. Do you understand everything?
CLIENT: Yes.

COUNSELOR: I want to set an appointment for next month. What's the best time of day, morning or afternoon?

CLIENT: Morning. I go to work at three in the afternoon.

COUNSELOR: July 7th, at 11 a.m. Do you understand everything?

CLIENT: Yes.

COUNSELOR: Be cooperative, keep your appointments, pay the fee, don't encounter any trouble with the law, and six months down the road we'll close this case out.

END OF FIRST INTERVIEW
Hello, Mr. ____ , how are you today?
I'm all right.
How's your health?
Okay.
How's your mental health?
I'm doing fine.
Are you working?
Yeah.
How many hours are you working a week?
40.
How are things going at home?
It's okay.
Is everybody in good health in your family?
As far as I know.
Well, is anybody in the hospital? Or are there any major problems?
Oh, no, not at all.
Have you had any contact with the law since I last saw you?
No.
That's good. What I'd like to discuss with you today is what happened that brought you here. Let's go back to the scene of the crime. What store was this at?
The Fair Store in the Eastland Mall.
The day you went in the store were you with someone or were you by yourself?
CLIENT: By myself.

COUNSELOR: Do you remember why you went there?

CLIENT: I was just looking around for somethin' for my girlfriend.

COUNSELOR: Did you plan on buying anything in there or were you just browsing?

CLIENT: I was just lookin' at stuff. I didn't plan on buying anything.

COUNSELOR: What did they accuse you of taking?

CLIENT: A little stuffed animal.

COUNSELOR: Where did you put it?

CLIENT: I just carried it.

COUNSELOR: So, you tried to carry it out of the store in your hand?

CLIENT: I was just walkin' around being Mr. Cool and thought that I could walk out the door with it.

COUNSELOR: So, you didn't buy anything while you were there.

CLIENT: No.

COUNSELOR: You just walked out the door and the people from the store, store security, stopped you?

CLIENT: Yes.

COUNSELOR: How did they treat you?

CLIENT: What do you mean?

COUNSELOR: Did they push you around? Did they give you a hard time? How did they treat you?

Client: Oh, all right. They treated me okay.
COUNSELOR: Did they take you to the back security office?
CLIENT: Yeah.
COUNSELOR: Police officer came in? How did he treat you?
CLIENT: He treated me all right.
COUNSELOR: Did you think you were going to jail?
CLIENT: I wasn't sure.
COUNSELOR: Were you scared?
CLIENT: A little.
COUNSELOR: Okay, so the police officer gave you a ticket to appear in court, but he didn't take you to jail and book you.
CLIENT: No.
COUNSELOR: Have you ever seen the inside of a jail?
CLIENT: No.
COUNSELOR: Have you ever seen a dirty restroom at a gas station?
CLIENT: Yeah.
COUNSELOR: Well, that's close to what the jail is like. Did you have enough money to pay for the stuffed animal?
CLIENT: Yeah.
COUNSELOR: Why didn't you pay for it?
CLIENT: I thought I could get away with it.
COUNSELOR: Had you ever shoplifted before?
CLIENT: No.
COUNSELOR: Never?
CLIENT: Well, once when I was younger.
COUNSELOR: What was it that you took?
A pack of gum.
Did you get caught?
No.
When you got caught at the Fair Store, did you think about the consequences before you tried to steal?
Well, no, it just looked easy like nobody was watching.
What's the chances of something like this happening?
Never.
Did you grow wiser from your experience?
Yeah.
Okay, let's set up an appointment for next month.

END OF SECOND INTERVIEW
COUNSELOR: How are we doing today, Mr. _______

CLIENT: Pretty good. How are you?

COUNSELOR: I'm doing fine. How are things going at home? Are you still on Menominee?

CLIENT: Yeah, things are goin' pretty good.

COUNSELOR: Family's in good health? Getting along with your parents?

CLIENT: Yeah.

COUNSELOR: How many hours are you working?

CLIENT: 40

COUNSELOR: No over time?

CLIENT: No.

COUNSELOR: Have you had any contact with the law?

CLIENT: No, I've been being good.

COUNSELOR: Been back to the Fair Store since I last saw you?

CLIENT: No.

COUNSELOR: Why?

CLIENT: I don't know, it wouldn't be right.

COUNSELOR: Bill, I think that it's important for you to go back to Fair Store and deal with what has happened. I think that if you avoid the store you're not dealing with this realistically. So, I'm going to encourage you to return to the store at some point in time. Will you do that?

CLIENT: Okay. I think I understand what you're getting at.

COUNSELOR: Any major problems or upsets?
CLIENT: No.

COUNSELOR: Do you got any plans comin' up for next month?

CLIENT: We're going to Cedar Point around the holiday weekend.

COUNSELOR: That won't be any problem. I'm going to set your appointment for early in the month. Do you want it in the morning or in the afternoon?

CLIENT: About the same time.

COUNSELOR: Do you want to pay something toward this?

CLIENT: Uh, $20.

COUNSELOR: There are two questions I'll always ask you. Have you been in any trouble with the law? And, if you're going to pay something toward the fee. Okay?

CLIENT: I understand.

COUNSELOR: Do you understand everything? Do you have any questions?

CLIENT: No.

COUNSELOR: Okay, then we'll see you next month on the 8th, at 11:00 in the morning. Take care and drive in straight lines.

END OF THIRD INTERVIEW
Appendix J

Counselor Profile
DIVERSION COUNSELOR PROFILE

The diversion program counselor is the sole program employee and responsible for enforcement of all terms of the diversion agreement between the client and the program. His primary duty is counseling the client to program completion employing the methods as defined in the study. He is a contract employee of the city and is compensated on a monthly basis regardless of the number of clients being serviced. The fee associated with the program is remitted to the city and those proceeds are used to compensate the counselor.

The counselor is a graduate of the University of Michigan with the degree of Bachelor of Science in psychology. He is trained in the empathetic counseling method as developed by Rogers as well as other methods of counseling.

He was born in the county where the program functions and attended public school through the 10th grade before dropping out to enlist in the United States Army. He served two years in the military police and obtained a general education high school diploma prior to completing his military service. Although he was involved with various substance abuse situations while attending the University, he was never arrested. He earned all of his college expenses and it took him six years to complete the four year degree in psychology. Upon graduation in 1981, he was employed with the county pre-bail service program which is a jail-
defendant treatment and release service. When the diversion program was started, he left his previous position to become the diversion counselor.

He has been with the program from the starting date and conducts all counseling, schedules all appointments, and institutes all return to prosecution requests to the City Attorney for violation of terms and conditions of the contract of diversion. Each client is responsible to him and he is responsible to each client for their progress and program completion.

His background and experience are well suited to the position of counselor of first offender misdemeanants. He appears to relate to the young people who he services; and, they relate to him in a positive fashion. Should a replication of this study be undertaken, a person of similar background and experience would be an asset. The slang expression "street-smart" can be used to describe his background. He demonstrates a caring for the client and an empathetic approach to counseling.
Appendix K

Financial Considerations
FINANCIAL CONSIDERATIONS

The design of this study by intent placed the start of the diversion process after the pre-trial conference, thereby not interjecting any new methods or steps into the normal criminal justice system. Under usual and established procedures, one of four processes must be instituted at the pre-trial prosecution and defendant conference:

1. The prosecutor and the defendant can agree to dismiss the pending charge for any number of reasons; the primary reason being that the prosecutor is not in a legal position to prove the charge.

2. The prosecution and defendant can agree that the defendant plead to a reduced charge, this process is referred to as a plea bargain.

3. The prosecution and the defendant can agree upon setting the case for a jury or non-jury trial in which case a date is selected for trial.

4. The prosecution and defendant can agree to a referral of the defendant to prosecution diversion, in which case a meeting date is set between the defendant and the diversion counselor.

If option four of referral to diversion is selected by the defendant and prosecutor, then the other three options are negated and the diversion process, as established, is started for the defendant. Several agencies within the community are financially affected by the selection of diversion over option two, a plea agreement, or option three, a trial. Selection of option one, a dismissal of the charge, has no financial impact on the community or the defendant.
Selection of option two or three will require the expenditure of funds by the defendant and the criminal justice system (CJS):

**OPTION TWO - POTENTIAL EXPENSE FOR PLEA AGREEMENT**

<table>
<thead>
<tr>
<th>DEFENDANT</th>
<th>CJS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney Fee</td>
<td>Court time (plea)</td>
</tr>
<tr>
<td>Fine and Costs</td>
<td>Prosecution time (plea)</td>
</tr>
<tr>
<td>Judgement Fee</td>
<td>Court personnel time</td>
</tr>
<tr>
<td>Probation Fee</td>
<td>Probation Officer time</td>
</tr>
<tr>
<td>Jail Time (reimbursement to county if employed)</td>
<td>Jail occupancy time</td>
</tr>
</tbody>
</table>

**OPTION THREE - POTENTIAL EXPENSE FOR TRAIL**

<table>
<thead>
<tr>
<th>DEFENDANT</th>
<th>CJS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney Fee</td>
<td>Prosecution time (trial)</td>
</tr>
<tr>
<td>Fine and Costs</td>
<td>Witness Fees</td>
</tr>
<tr>
<td>Judgement Fee</td>
<td>Police time (trial)</td>
</tr>
<tr>
<td>Probation Fee</td>
<td>Court personnel time</td>
</tr>
<tr>
<td>Jail Time (reimbursement to county if employed)</td>
<td>Probation Officer time</td>
</tr>
<tr>
<td>Witness Fees</td>
<td>Jail occupancy time</td>
</tr>
<tr>
<td></td>
<td>Jury time (trial)</td>
</tr>
</tbody>
</table>

**OPTION FOUR - POTENTIAL EXPENSE FOR DIVERSION**

<table>
<thead>
<tr>
<th>DEFENDANT</th>
<th>CJS</th>
</tr>
</thead>
<tbody>
<tr>
<td>$175.00 Diversion Fee</td>
<td>None</td>
</tr>
</tbody>
</table>

The joint defendant and prosecutor selection of Option Four results in no costs to the community and only the payment of $175.00 by the defendant to the diversion program to defray diversion oversight expense. This single fee of $175.00 is much
less financial liability than the potential costs involved to the defendant had Option Two or Option Three been instituted. And, Option Four diversion does not cost the community any expense, allowing for city tax base revenues to be used in another fashion.

Under Option Four, if the defendant is indigent, the diversion fee may be waived by the counselor or a payment plan made available. The $175.00 diversion program fee may be paid to the program by working in the community, as a public service, if the defendant cannot raise the funds on a time-payment basis. If otherwise qualified, no rejection of a potential diversion defendant is permitted because of his lack of monies, under terms of the diversion program requirements and conditions. All proceeds are used for the benefit of the program. The bulk of these monies is used by the city to pay the counselor, and the balance is used for supplies and support services. The studied diversion program has generated more funds each year of operation than the expenditures which are required for program maintenance. The city holds all excess proceeds in the city general fund and may use such excess monies as the city council deems appropriate.

The program of misdemeanor diversion as detailed in this study, is a financial success of considerable magnitude. And, the community has benefitted in ways which can not be quantified in terms of dollar calculations. The police remain on duty in the community as opposed to being in court as witnesses. The prosecutor or city attorney has more time to prosecute the criminal who is in need of prosecution and, the court is free to
pursue business involving more pressing need. Just exactly what financial gains the prosecution and the defendant do in fact receive is not known and was not the prime consideration in conducting this study. Financial concerns are important and deserve much more research time and review than this study of individual misdemeanants could afford to allocate. The topic of financial considerations involved with a prosecution diversion program is worthy of its own study. The program studied generates more than enough funds than needed to operate the program (see Appendix H).
BIBLIOGRAPHY


Diversion is a mixed bag—With success/failure depending...


Harris, J. (1982). The effects of paraprofessional
counselor-client matching on rearrest in a youthful offenders' pretrial diversion program. *Dissertation Abstracts International*, 43, 1890A. (University Microfilms No. 82-23137)


People v. Lombardo, 301 Mich. 451, 3 N.W.2d. 839 (1942).


Criminal Justice and Behavior, 6(1), 31-33.


Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.