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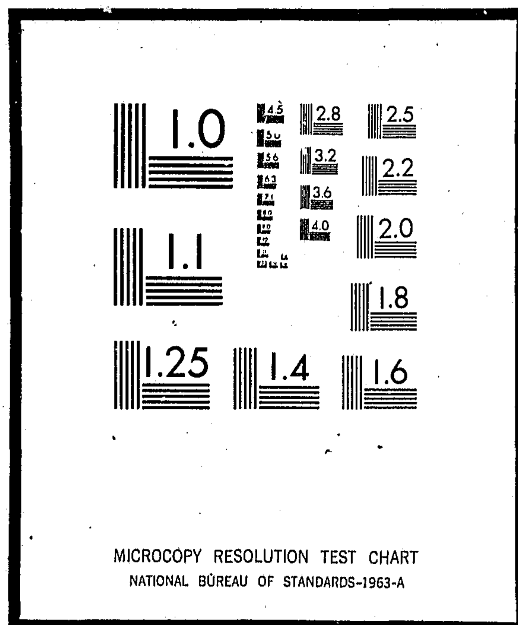

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STATE OF CALIFORNIA
OFFICE OF CRIMINAL JUSTICE PLANNING

Executive Director
Lou Palumbo

CALIFORNIA CORRECTIONAL SYSTEM INTAKE STUDY

PROJECT NO. 1593-E

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JULY 1974

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PREFACE

This research project was undertaken for the California Office of Criminal Justice Planning (OCJP). Funding was provided through OCJP grant #1593-E. Responsibility for the study was vested in:

Anthony L. Palumbo, OCJP Executive Director
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The study involved part-time efforts of many researchers, including Public Systems incorporated staff members, selected special consultants, project advisory board, and consultants from the California Youth Authority.

The broad objectives of the study were: (1) to document the many facets of the process through which offenders pass prior to entering the correctional system (viz., the intake system); (2) to evaluate the potential for increased diversion programs; and (3) to make recommendations for the improvement of the intake process.

The study should be useful to practicing professionals and administrators in the various criminal justice agencies involved in the intake process. It should also provide a basis for future local and state planning efforts and for developing legislation to enhance intake and the criminal justice system in general in the State of California.

The opinions and recommendations expressed in this report are those of the professional project study team and do not necessarily represent the concurrence of OCJP, the members of the advisory committee, or the various agencies contacted during the study.

ACKNOWLEDGEMENTS

This study of the intake processes through which offenders must pass prior to entering the correctional system in California could not have been successfully undertaken without extensive cooperation and assistance. Special thanks are extended to Messrs. Alan Breed and George Solesby of the California Department of the Youth Authority for their cooperation; also to the CYA regional community services supervisors, Messrs. Ron Hayes, Bill Scully, and George Smith, for their assistance in coordinating field activities.

The organizations and their various representatives forming the project advisory board deserve specific recognition. These organizations were:

California Probation, Parole and Correctional Association

Chief Probation Officers of California

District Attorney and County Counsel Association

Regional Criminal Justice Planning Directors Association

Association for Criminal Justice Research

California Public Defenders Association

Conference of California Judge

California Peace Officers Association

Dr. Tim Fitzharris, executive director of CPPCA, was instrumental in bringing the study to fruition and in advising on the study throughout its progress.

Appreciation is also expressed to the people from the counties of Contra Costa, Marin, San Mateo, Placer, Stanislaus, Los Angeles, and San Diego, who participated in the various facets of the study.

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RECOMMENDATIONS

RECOMMENDATION 1. Every law enforcement agency chief executive should provide, for both line and middle management personnel, written guidelines and on-going training to expand on those guidelines in police decision making.

RECOMMENDATION 2. The Bureau of Criminal Statistics should, with participation by the various police agencies, adopt a uniform definition of arrest and other police decision alternatives and attempt to have all law enforcement agencies comply with them in implementing and reporting such decisions.

RECOMMENDATION 3. To the degree possible, each police agency should implement regular feedback and evaluation procedures to provide up-to-date information on the cost effectiveness of various decision alternatives.

RECOMMENDATION 4. A general principle at all intake decision points should be that no one should be moved further into the formal justice system unless there is sufficient evidence to justify such a decision. The burden of proof should be on the system, rather than on the individual, to justify further movement into the system.

RECOMMENDATION 5. The Juvenile Court Law should be amended to require that juvenile probation officers always make a formal recommendation as to disposition (assuming a finding is made), as is required by law of adult probation officers when preparing presentence reports.

RECOMMENDATION 6. Probation officers should retain sole authority for filing 601 and 602 W&I petitions in juvenile courts, but should make regular use of district attorneys to assist them in evaluating evidence and deciding what charges to file as well as to present the evidence in contested cases where the minor is represented by counsel.

RECOMMENDATION 7. Legislation should be developed regarding the detention of a minor to resolve the existing conflict between Section 635 W&I and the case decisions discussed above.

RECOMMENDATION 8. Section 701 W&I should be amended to clearly require bifurcated hearings, at least to the extent of specifying that the jurisdictional and dispositional or social study portions of the probation officer's investigation be prepared as separate documents and prohibiting the court from reading the latter until and unless a finding has been made.

RECOMMENDATION 9. Each law enforcement agency should spell out specific policy and procedure guidelines to encourage maximum use of citations for eligible misdemeanants.

RECOMMENDATION 10. Each law enforcement agency should spell out specific criteria to minimize the degree of penetration of minor or marginal offenders into the justice system and to impose the least restriction on the freedom of offenders consistent with adequate protection of society; guidelines should be established to provide "jail O.R." routinely for eligible offenders.

RECOMMENDATION 11. Each law enforcement agency should implement routine data collection procedures which would enable administrators to evaluate departmental operations regarding intake decision making; specific data regarding release [849 (b) P.C.] should be collected and analyzed.

RECOMMENDATION 12. Every county should implement a countywide O.R. program geared at releasing all defendants who are as likely to appear in court as those who post bail. This should include those charged with felonies. While the primary criterion for O.R. release should be likelihood to appear in court, serious threat to the community should also be considered.

RECOMMENDATION 13. Every county should attempt to implement supervised O.R. programs for higher risk offenders similar to the Des Moines, Iowa program.

RECOMMENDATION 14. 1000 P.C. diversion should be granted routinely to those defendants who are (1) eligible, and (2) willing to accept and cooperate with the program recommended by the probation department.

RECOMMENDATION 15. Probation staff should recommend that defendants placed on diversion be released from such programs and the charges dismissed at the earliest reasonable time.

RECOMMENDATION 16. All prosecuting attorneys should formulate initial screening policies that incorporate the thrust of Standard 1.1 proposed by the National Advisory Commission on Criminal Justice Standards and Goals in its report on the Courts.

RECOMMENDATION 17. Each prosecutorial agency should implement routine data collection procedures to enable administrators to evaluate agency operations and to provide other criminal justice agencies with feedback information regarding prosecutorial decision making.

RECOMMENDATION 18. The Bureau of Criminal Statistics should include, as part of its routine data gathering and annual publishing of data, information on the intake and sentencing processes of the lower courts.

RECOMMENDATION 19. Each county should implement a court bail program whereby defendants may post bail directly with the court and receive back all but a necessary handling fee if they keep their court appearances.

RECOMMENDATION 20. Lower courts should request probation presentence reports at least in all cases where they are considering imposing jail sentences of six months or more unless they already have obtained such a report within the last year or the defendant is already in the formal correctional system.

RECOMMENDATION 21. Section 23102.3(b) of the California Vehicle Code should be amended to specify that presentence investigations on second time drunk drivers are to be prepared by the county probation department.

RECOMMENDATION 22. Courts should not place defendants on formal probation without first requesting a presentence report.

RECOMMENDATION 23. The State Judicial Council and the presiding judges of each bench should make increased efforts to provide regular training, both of the conference type and by means of written guidelines, geared at providing more consistency in sentencing for similar types of offenses and offenders.

RECOMMENDATION 24. Diversion should not take the place of decriminalization through legislative changes.

RECOMMENDATION 25. Diversion programs should not be used where release from the system would have been the disposition.

RECOMMENDATION 26. The Office of Criminal Justice Planning should undertake a program to establish at least minimal diversion standards for the statewide application of diversion alternatives, on both the juvenile and adult levels.

RECOMMENDATION 27. The Office of Criminal Justice Planning should develop a diversion evaluation master plan. The plan should be a broad, scientifically valid, experimental design, which would lead to a better understanding of the efficacy of diversion.

RECOMMENDATION 28. Specific projects should be funded to evaluate the effectiveness of various modes of diversion for various types of offenders against not only more formal criminal justice processing, but also against even less restrictive handling (e.g., no treatment at all or "counsel and release"). These projects should receive priority over duplicated diversion projects in different counties.

RECOMMENDATION 29. Police-level diversion for juveniles should be more fully evaluated; major questions to be answered revolve around the relative value of police-provided as opposed to police-referral service.

RECOMMENDATION 30. Prior to the funding of a potential diversion program, operational guidelines should be written, specifying clearly: the objectives of the program, client eligibility criteria, the specific program evaluation methodology, and the means by which current program information is to be made available to diversion decision makers.

RECOMMENDATION 31. Diversion programs should have client performance reviews at explicit times, with justification for retention in the program at each review. In general, diversion programs should be for a maximum of one year.

RECOMMENDATION 32. Defense counsel should always be available at the request of the defendant (or, in the case of minors, of his parent or guardian) at all stages of diversion processing.

RECOMMENDATION 33. Legislation should be drafted which would enable successful diversion clients to have appropriate dispositions listed in their criminal arrest record, i.e., to show clearly that the charge(s) were dismissed.

RECOMMENDATION 34. State and local governments should make available the funds essential to allow communities to develop the range of inpatient and outpatient services necessary to handle the common drunk outside of the criminal justice system. At the same time, the State should consider adopting the Uniform Alcoholism and Intoxification Act.

RECOMMENDATION 35. As soon as reasonably adequate alternatives to the jail (or alternatives that are at least as adequate) can be developed, the legislature should repeal legislation which makes common drunkenness a crime.

RECOMMENDATION 36. Laws governing the use, possession, manufacture, or sale of marijuana should be made similar to those laws governing alcohol.

RECOMMENDATION 37. All laws which prohibit private sexual behavior between consenting adults, including prostitution and homosexuality, should be repealed by the legislature.

RECOMMENDATION 38. All laws prohibiting public or private gambling should be repealed.

RECOMMENDATION 39. Every effort should be made to maximize the development of community-based alternatives to the juvenile justice system, particularly for those youths whose behavior is not such that it would constitute a crime for an adult.

RECOMMENDATION 40. Every effort should be made to maximize the development of diversion alternatives (to routine processing) within the juvenile justice system for these types of youths.

RECOMMENDATION 41: Detailed research should be conducted to explore the effectiveness of alternatives, by a variety of measures (including cost, recidivism, and stigma), of the most promising types of such alternatives both within and outside of the juvenile justice system.

RECOMMENDATION 42. The "escalation clause" of 602 W&I, i.e., the provision allowing courts to designate a 601 W&I case by mere repetition of the 601 W&I behavior, should be repealed.

RECOMMENDATION 43: The latter portion of 601 W&I ("who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life") should be repealed.

RECOMMENDATION 44. State and local governments should initiate immediate and long-range planning and funding efforts to make available the whole range of mental health services needed in correctional programs and facilities.

RECOMMENDATION 45. When a negotiated guilty plea is entered, the court record should contain a clear statement of the precise conditions under which it is entered and the court's reason for accepting it.

RECOMMENDATION 46. To maximize equality of justice, each prosecutor's office should have a written set of guidelines governing the plea negotiations of all staff in that office.

RECOMMENDATION 47. Each judicial bench should establish clear time limits after which plea negotiations may no longer be accepted, except in unusual circumstances and with the approval of judge and prosecutor.

RECOMMENDATION 48. No plea negotiations should be accepted unless the defendant or minor has had the opportunity for counsel and, if he has counsel, should be conducted only in the presence of counsel.

RECOMMENDATION 49. Absolutely no pressure or inducements should be utilized to encourage a defendant or minor to enter into a plea negotiation.

RECOMMENDATION 50. The court should not enter into plea bargains but should carefully review any such negotiations as outlined by the National Advisory Commission on Criminal Justice Standards and Goals.

RECOMMENDATION 51. Juvenile court processing should clearly distinguish between minors alleged to have committed specific serious criminal acts (602 W&I), and those alleged to have exhibited pre-delinquent behavior (601 W&I).

RECOMMENDATION 52. Detention of juveniles prior to a hearing should be minimized; the use of adequate shelter facilities, such as foster homes, group homes, and other physically non-restricting situations should be encouraged whenever possible.

RECOMMENDATION 53. All counties should provide minimum security facilities and programs--community correctional centers--for appropriate sentenced offenders.

RECOMMENDATION 54. Police departments should maintain only those facilities necessary for short-term processing of offenders immediately following arrest; other detention and correctional facility responsibilities should be handled by county or regional agencies.

RECOMMENDATION 55. Law enforcement agencies should make maximum use of citations in lieu of pre-arraignment confinement; programs that permit non-adjudicated defendants to be released on their own recognizance in lieu of monetary bail should be expanded.

CHAPTER ONE

INTRODUCTION

Crime, and society's reaction to and handling of it, continues to be one of the primary concerns of almost every citizen. Rocked with regularity by earthquake-size crimes such as the "Zebra" killings and SLA assassination and kidnaping and the almost daily tremors of the Watergate aftermath, the public is constantly reeling in confusion over the causes and pervasiveness of crime at every level of society and the seemingly futile efforts to fight it.

This study has no more solutions for these overall problems than any other study or individual. However, it does address a specific portion of the criminal justice apparatus in California, viz., the correctional intake system, and makes a number of recommendations that it is believed would improve that part of the criminal justice system and, hopefully, thereby would enable other parts of the system to function more effectively.

This introductory chapter provides a brief statement of the study background and objectives, an overview of the correctional intake system as a whole, and a summary of the methodology used.

STUDY BACKGROUND

Along with other facets of the crime problem, the intake portion of the correctional system has, during the past few years, been the source of growing concern and controversy. The failure of the overall correctional system to reduce crime effectively, the concern over the labeling and stigmatization of the criminal justice machinery, the exorbitant costs of that machinery, the trends to handle many "offenders" in other types of programs, the requestioning of the purpose and scope of corrections, the wide disparity in intake decision making among agencies and jurisdictions, the increasing safeguards on individual rights, and numerous other issues have focused attention again and again on those processes that lead to formal handling by the correctional system.

As far as the study staff is aware, there has never been a systematic examination of correctional intake procedures and processes in California. The 1971 California Correctional System Study, performed under the auspices of the State Board of Corrections, originally was intended to encompass intake as well as other correctional issues but, due to budget and time constraints, the intake system had to be eliminated. The scope of that major study was limited to that part of the correctional system from adjudication or sentencing through discharge. However, from the inception of the study, criminal justice officials and workers throughout the State voiced considerable concern over the elimination of the intake system from the study's focus. Hence, the very first recommendation of the study staff was that:

> "The State of California should immediately undertake a study of the intake process in the entire correctional system. Included in such a study should be the intake process involving both adults and juveniles, the use of citations, bail and O.R. (i.e., release of persons on their own recognizance), housing of unsentenced offenders, and the need for diverting certain categories of behavior out of the correctional system into some other more appropriate system."[1]

In July, 1972, the California Probation, Parole and Correctional Association formally requested Governor Reagan to initiate such a study of the intake system. The Governor subsequently requested the California Council on Criminal Justice (since renamed the Office of Criminal Justice Planning) to consider this request. The Council did plan and fund such a study--although on a much smaller scale than many had hoped for originally. In August, 1973, the study contract was awarded.

STUDY OBJECTIVES

As defined by the California Council on Criminal Justice in their Request for Proposals, the major objectives of this study were:

(1) "To provide a detailed report to correctional administrators, Council staffs, regional criminal justice planning staffs, and others concerning the process at each of the decision points through which an offender passes before entering the correctional system, and to make recommendations."

[1]Footnote references appear at the end of the report.

(2) "To adequately document to officials of government, legislators, and the public the potential for increased use of diversion for the purpose of minimizing the penetration into the criminal justice system of persons whose behavior is essentially non-criminal or marginally criminal and for the purpose of moving such persons out of the formal criminal justice system into an alternative, and to make recommendations."

(3) "To thoroughly describe the impact on correctional programs which takes place as a result of detaining alleged but non-adjudicated offenders in custodial settings operated by correctional agencies, and to make recommendations."

The first major thrust of the study was the development of models of the intake decision process which currently exists. It was immediately clear that the adult and juvenile processes are very different in many aspects. Hence, separate descriptive models have been developed for each. Furthermore, the process includes points of discretion involving law enforcement, probation, prosecution and courts, so each of these agencies has been investigated in some detail. Separate Juvenile and Adult Intake models, with a discussion of major decision points, alternatives, and influences on decision making, are presented in Chapters Two and Three.

The concept of diversion has become increasingly popular with many criminal justice personnel, particularly those from corrections, in the last few years--although it is also challenged by many, notably some law enforcement officials. Because of the existing controversy and the tremendous potential of diversion, study staff have devoted a major portion of the study resources to a systematic investigation and analysis of diversion, both in theory and practice. A comprehensive discussion of diversion is provided in Chapter Four.

The RFP specifically asked for an examination of the potential for greater diversion of "victimless" offenders and juveniles whose behavior is not illegal for adults, but noted that dependent children (as defined by Section

600 W&I) were not to be included in the study. Because of the importance and complexity of this issue, Chapter Five is devoted to the question of inappropriate clientele.

Several other critical intake issues which required special consideration emerged during the course of the study. These issues, along with the question of the impact of unsentenced jail inmates on correctional programs for the sentenced inmate, are addressed in Chapter Six.

INTAKE PROCESS OVERVIEW

The California Correctional System Study pointed out that in 1970 there were approximately 274,000 persons in the formal correctional system on any one day and that the annual cost for handling these offenders exceeded $220,000,000.[2] This correctional population represents about one fifth of the number of arrests in a given year although these offenders probably account for more than one fifth of the total arrests due to multiple arrests of the same person. In any event, it is clear that the arrest and intake machinery acts like a giant sieve which sorts out the vast majority of offenders prior to adjudication and sentence.

Exhibits 1-1 and 1-2, which are flow charts of the Juvenile Intake and the Adult Intake Process respectively, present an oversimplified picture of this sieve. Each process consists of a complex series of decision points and alternatives that are discussed in detail in Chapters Two and Three. In both the juvenile and adult systems, the police are normally the first point of contact with the offender. Their options generally consist of releasing the person, diverting him into an alternative program to the justice system, citing him, or arresting and booking him. In the juvenile network, probation personnel make the next series of decisions which include similar alternatives of release, diversion, or further penetration into the system (in or out of custody) by means of filing a petition for a court hearing. The juvenile court then determines issues of guilt and disposition. In the adult system, the prosecution attorney plays a role similar to that of probation in the juvenile system with regard to the decision of requesting a formal court hearing. Again, questions of guilt and sentence are resolved by the court, often assisted in the latter decision by a report from the probation department (as is also the case in the juvenile system).

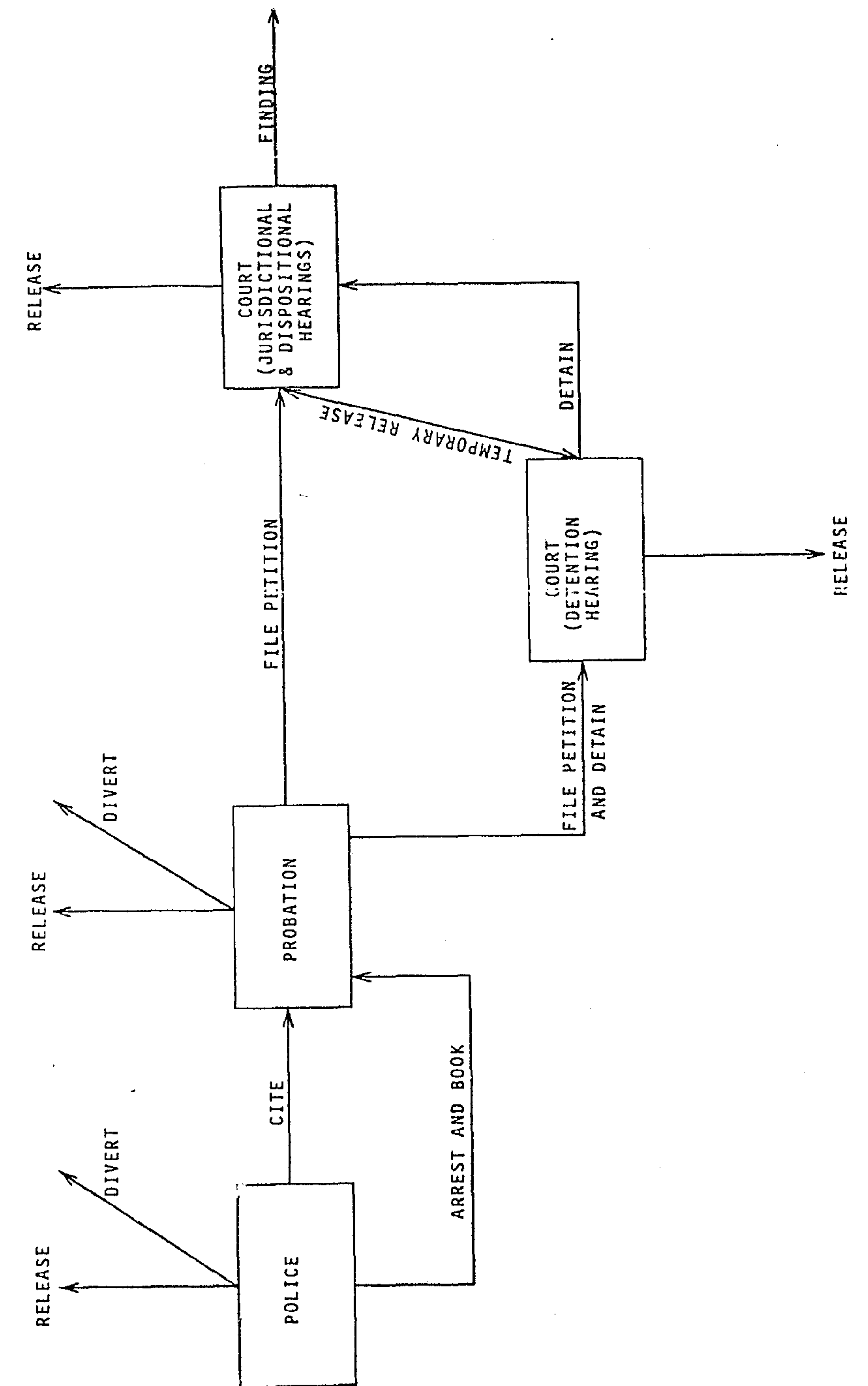


Exhibit 1-1. JUVENILE INTAKE PROCESS

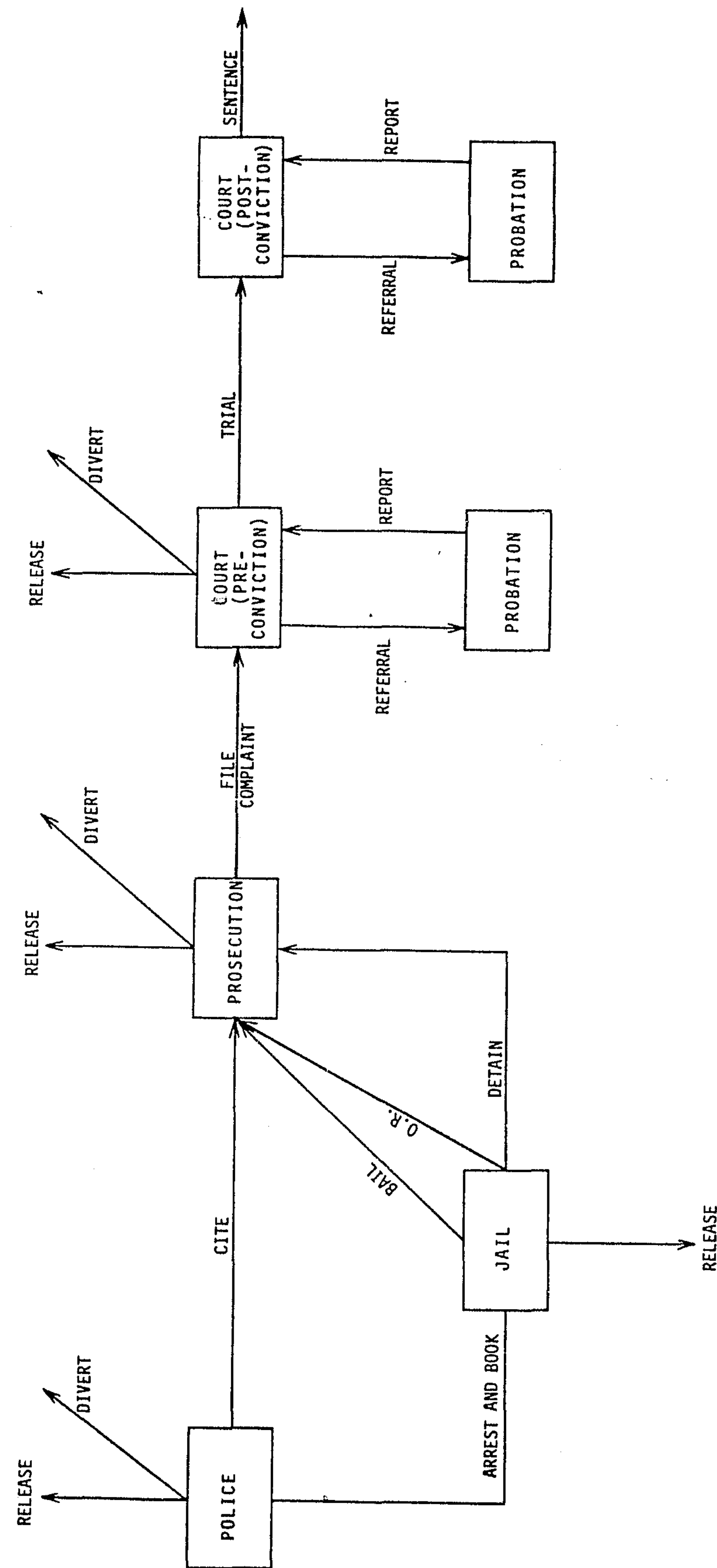


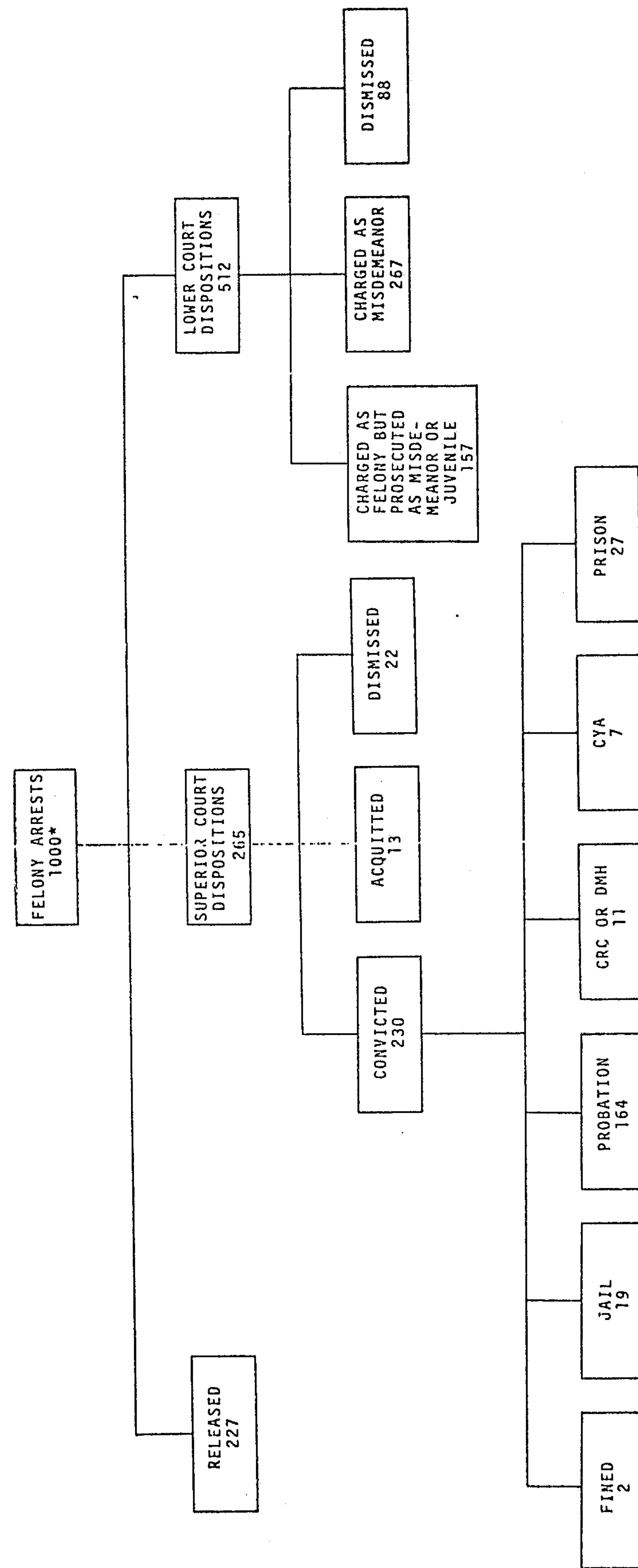
Exhibit 1-2. ADULT INTAKE PROCESS

As an example of this sieve-like action of the intake process, there were 353,000 juvenile arrests in 1972; 161,000 initial referrals to probation for screening; 48,000 initial petitions filed with the juvenile court; and 29,000 initial declarations of wardship by that court.[3,4] Thus, only 8% of juvenile arrests resulted in initial declarations of wardship (although many arrests were doubtlessly of the same individuals and of youths who had already been made wards of the court). A more detailed example of the adult system for handling felony arrests is shown in Exhibit 1-3. Of each 1,000 felony arrests in 1972, only 230 or 23% were convicted and sentenced in superior court although another 42% were charged in lower court (with the dispositions being unknown). As the Bureau of Criminal Statistics points out: "Felony arrests are reviewed and screened from the time of arrest to release or court sentence. Each set of agencies administering criminal justice reviews the defendant's alleged crime and culls out the innocent and the less serious offender."[5]

From this funneling phenomenon, two major questions emerge. First, why do so many arrestees drop out of the criminal justice apparatus short of conviction and sentence? Secondly, how are decisions made that remove these masses of people from the system at various points along the continuum? These two questions will also be addressed in detail in Chapters Two and Three on the Juvenile and Adult Intake Processes. However, it may be noted at this point that the major reasons for arrestees dropping out of the system at various stages revolve primarily around the sufficiency of evidence, the seriousness of the offense, the perceived threat the offender poses to the community, the person's prior record and background, his attitude, the biases of the decision maker, community expectations, and the availability of alternatives to more formal processing through the criminal justice apparatus. With regard to the latter variable, the further a person penetrates the justice machinery, the fewer are the alternatives available.

Another point that is readily apparent is the wide disparity in decision making between counties (and agencies, or even branch offices within counties). For example, of the seven sample counties in this study, the percent of felony arrests resulting in superior court conviction and sentence varied from 16% to 35%, i.e., more than a 100% differential. Release at the police level pursuant to 849(b) P.C. varies tremendously throughout the state; selected studies show rates of release of felony arrestees from 5% to 37%.[6]

Exhibit 1-3. FELONY ARREST DISPOSITIONS, 1972



*Based on 1000 arrests; some subtotals are inconsistent due to rounding.
SOURCE: Bureau of Criminal Statistics, Crime and Delinquency in California: 1972, p. 38.

While many criminal justice personnel (as well as those from other fields) stress the importance of individualized decision-making, i.e., tailored to the individual offender, gigantic discrepancies in decision making at each point in the process make it apparent that many other factors besides the offender and his alleged crime affect the decisions that are made. It is hoped that the rest of this report will add to the knowledge we currently have about these decisions that have such momentous and often irreversible impact on the lives of those involved.

STUDY METHODOLOGY

The study team's approach to the collection of data and formulation of recommendations consisted of careful review of existing studies and other relevant literature on the topics under study, initial "brainstorming" meetings with several groups of criminal justice personnel, extensive use of questionnaires and interview schedules, efforts to obtain specific information on successful or promising diversion and other intake programs throughout the State, computer analysis of questionnaire returns, and the assistance of a select Advisory Board.

Since the study was to be representative of the intake system throughout California, CCCJ selected eight sample counties. Because of the refusal of a key department in one of those counties to participate in the study, the final sample consisted of the following seven counties: Contra Costa, Los Angeles, Marin, Placer, San Diego, San Mateo and Stanislaus. This sample represents roughly 50% of the total population and of the arrests in the State.

Detailed questionnaires on decision making and specific intake issues were sent to all of these counties' adult and juvenile probation staff who spent 25% or more of their time on intake assignments (except Los Angeles County where this sampling criterion was applied to selected regional offices of the Probation Department). Similar law enforcement questionnaires were distributed to the Sheriff's Departments, the largest city police department, and one other representative police department in each sample county. The actual sampling scheme was designed to provide optimal representation from each stratum in the law enforcement population. This resulted in a 50% sample from some of the smaller agencies with the average sample for the seven counties being 11%. The total sample amounted to 350 probation and 1,270 law enforcement staff.

A separate questionnaire on general intake issues was distributed to all sheriffs, chief probation officers, district attorneys, and public offenders in the State, as well as selected police chiefs and superior, lower, and juvenile court judges.

The response from probation staff was quite good (84%) while only 46% of the law enforcement questionnaires were returned. The return rate of the law enforcement questionnaires was low primarily because of the reluctance of some of the larger departments to commit the time necessary for providing the requested number of responses; other departments felt that the subject matter of the questionnaire was not appropriate for line police officers' opinions. The general intake issues questionnaire, which was mailed to officials throughout the State, had an overall response rate of 71%, with each type of agency contributing approximately the same percentage.

CHAPTER TWO

THE JUVENILE INTAKE PROCESS

This chapter discusses in some detail the major decision points, alternatives available, and influences on those decisions for each of the four decision-making agencies or individuals involved in the juvenile correctional intake process. As is the case with the adult intake system, these decision makers include police, probation, prosecution and courts. In describing California's methods for processing juveniles through this apparatus, two major aspects will be examined with regard to each of the four decision-making groups: (1) the critical decision points and alternatives available at each point, augmented by process flow data showing how juveniles are handled at each decision point, insofar as such data is available; and (2) a discussion of what actually <u>does</u> and what <u>should</u> influence decision makers in selecting specific alternatives.

POLICE

The past several years have seen a dramatic change in philosophy relative to the handling of juveniles in the criminal justice system. This change has reached all segments of the criminal justice community but has had perhaps the most significant impact on the police as the first point of contact.

OVERVIEW OF DECISION POINTS AND ALTERNATIVES

Exhibit 2-1 provides a simplified diagram of the police decision-making process with juveniles. Admittedly, some of the preliminary decision points prior to the field apprehension decision (e.g., decisions as to whether or not to respond to a request for service, to become involved with observed incidents, to conduct a preliminary investigation, or to seek a warrant) are omitted for the sake of simplicity. Those decisions will be discussed in the following chapter on the Adult Intake Process. Additionally, since the alternatives are virtually identical at both points, the field apprehension and the station apprehension decisions will be discussed together.

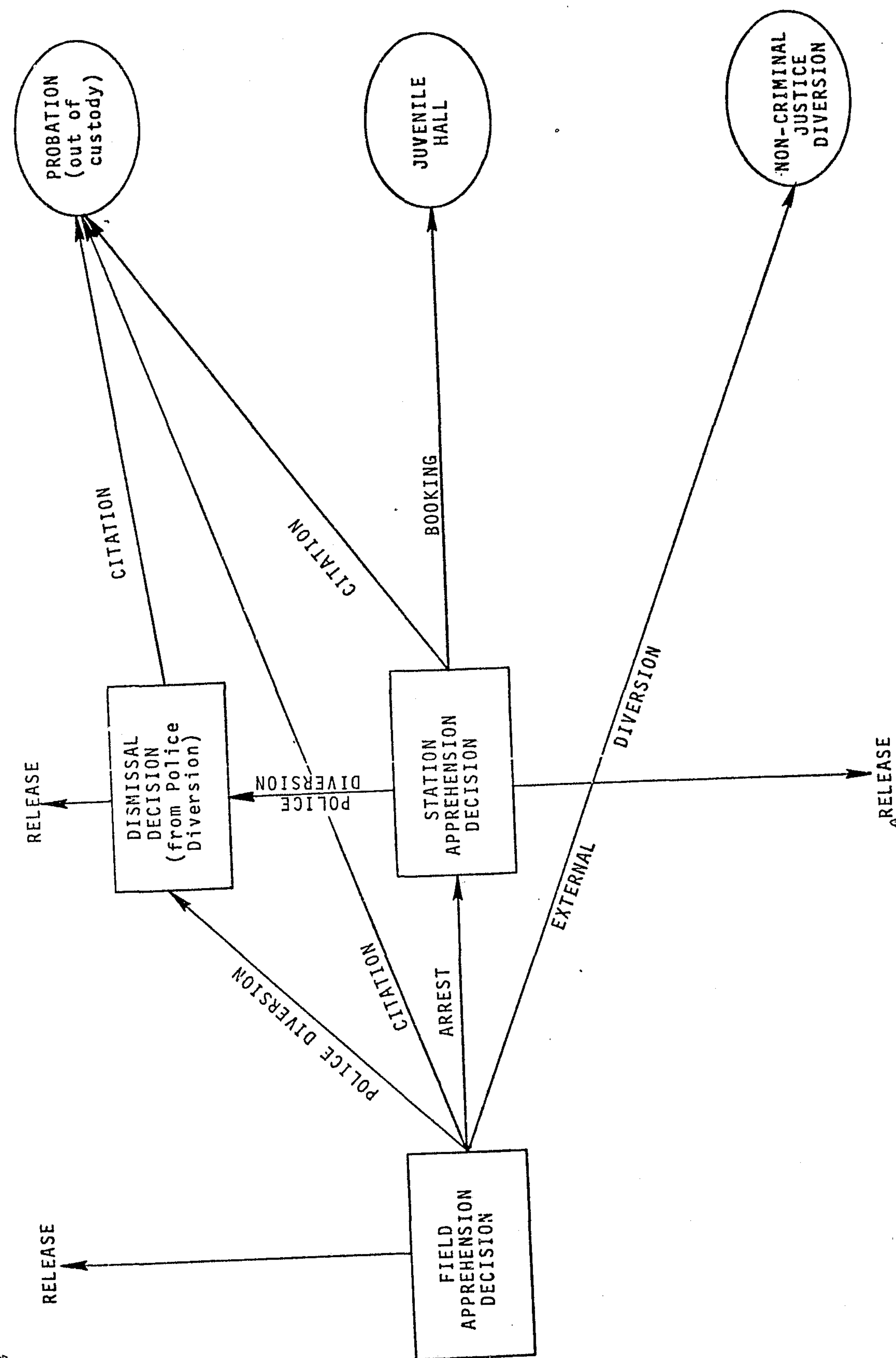


Exhibit 2-1. POLICE JUVENILE INTAKE PROCESS

Before examining the decision-making process, it is significant to note the types of behavior for which police typically arrest juveniles. Exhibit 2-2 reveals that, in 1972, 53% of all juvenile arrests were for "delinquent tendencies" (i.e., acts, such as incorrigibility and runaway, that are illegal only for juveniles), 18% were for minor law violations, and 29% for major law violations as defined by the Bureau of Criminal Statistics. Thus, over half of law enforcement time and resources devoted to arresting juveniles were spent on processing persons who could not be arrested if they were 18 years old; less than 30% of such police resources were devoted to "major crimes" committed by the juveniles.

Once the police focus on a juvenile as a possible subject of arrest, the alternatives available include release (sometimes called "counsel and release"), diversion to a non-criminal justice program or facility, diversion to a program operated by that police agency itself (such as informal supervision for a few weeks or months), citation to appear before the probation department, or arrest and direct in-custody referral to juvenile hall.

Unlike adult arrest decision making, Juvenile Court Law prescribes a specific philosophy or guiding principle that governs every such decision. Section 626 W&I declares:

> "In determining which disposition of the minor he will make, the officer shall prefer the alternative which least restricts the minor's freedom of movement, provided such alternative is compatible with the best interests of the minor and the community."

Unfortunately, data are not readily available to indicate what percent of minors are released, counseled or reprimanded and released, or referred to non-criminal justice diversion projects when an arrest could have been made. This problem is further exacerbated by the wide variation in definitions of arrest between agencies. For example, one agency may report virtually every juvenile contact with an official action (including counseling and release or a referral to some other agency) as an arrest while another may report as arrests only those contacts for 602 W&I offenses culminating in referral to probation. Such inconsistency obviously makes it impossible to compare arrest statistics.

Exhibit 2-2. JUVENILE ARRESTS: 1969-1972

OFFENSE	1969		1970		1971		1972	
	#	%	#	%	#	%	#	%
Total	389,394	100	382,935	100	379,454	100	353,232	100
Law Violations	162,044	42	166,613	44	171,096	45	167,119	47
Major	100,161	26	100,396	26	103,217	27	103,347	29
Homicide	227	---	182	---	235	---	321	---
Robbery	4,270	1	4,436	1	5,137	1	6,271	2
Assault	3,842	1	4,374	1	5,246	1	6,374	2
Burglary	33,725	9	33,640	9	35,842	9	36,085	10
Grand Theft	3,249	1	3,641	1	4,692	1	5,343	2
Auto Theft	17,624	5	17,009	4	16,764	4	15,861	4
Forcible Rape	505	---	455	---	501	---	644	---
Drug Laws	36,719	9	36,659	10	34,800	9	32,448	9
Minor	61,883	16	66,217	17	67,879	18	63,772	18
Misdemeanor Assault	8,608	2	8,308	2	9,464	2	9,743	3
Petty Theft	49,174	13	53,855	14	54,034	14	49,493	14
Weapons	2,643	1	2,481	1	2,543	1	2,562	1
Drunk Driving	1,027	---	1,176	---	1,440	---	1,691	---
Hit and Run	431	---	397	---	398	---	283	---
Delinquent Tendencies	227,350	58	216,322	57	208,358	55	186,113	53

SOURCE: Bureau of Criminal Statistics, Crime and Delinquency in California, 1972.

While the precise quantitative nature of police dispositions is generally unknown, there does seem to be some evidence of a trend toward more informal types of handling. Exhibit 2-2 reveals that the total number of juvenile arrests has dropped each of the last three years and that this is due primarily to the decline in arrests for delinquent tendencies. This would suggest police are handling more youthful offenders, particularly 601 W&I types, by alternatives other than arrest. In both 1971 and 1972, 40% of all police arrests were handled within the police department (i.e., by release or some informal program), 56% were referred to probation, and the remaining 4% referred to some other agency. In other words, the police are handling two out of every five juvenile arrestees without utilizing the resources of another agency or moving the youth further into the criminal justice machinery.

With regard to diversion, some police agencies (e.g., Berkeley) have had their own informal supervision programs for many years. Many other departments are now attempting one or both of the following approaches. The first is to develop specialized juvenile units that can provide crisis or short-term counseling or other direct services and/or encourage the family to obtain help for a problem youngster from a local community resource. The second approach is to train the beat officer to handle more juvenile acting-out behavior by on-the-scene counseling, family involvement, or direct referral to a diversion program--rather than by arrest.

The attitude of both administrative and line police personnel toward the diversion of juveniles seems to be increasingly positive. One demonstration of this is the rapidly growing number of diversion programs, which police either run themselves or participate in with other agencies or community groups. Further evidence of the support of such programs, at least under certain conditions, is evident in the law enforcement questionnaire responses received in the study. As seen in Exhibit 2-3, 56% of line staff and 49% of sheriffs and police chiefs responding to questionnaires favored the expansion of juvenile diversion efforts while only 24% and 19%, respectively, thought they should be curtailed or eliminated. However, the vast majority felt that the police should be involved in screening decisions as to which juveniles were given an opportunity for diversion and that there should be definite "pull-back" mechanisms for bringing youth who fail in these diversion programs back into the criminal justice system for further processing. Approximately half also believed that the police should be at least one of the agencies involved in the actual providing of services to these youth.

Several specific examples of diversion programs operated by or participated in by law enforcement agencies are discussed in Chapter Four.

Exhibit 2-3

LAW ENFORCEMENT VIEWS OF JUVENILE DIVERSION

	Sheriffs & Police Chiefs	Law Enforcement Staff
Current Use of Diversion Programs:		
Under-utilized	25%	29%
Appropriate extent	28%	22%
Over-utilized	23%	21%
No opinion	25%	28%
Future Use of Diversion Programs:		
Expand	49%	56%
Keep as they are	25%	21%
Curtail	12%	15%
Eliminate	7%	9%
No opinion	7%	---
Should Police Take Part in Diversion Screening:		
Yes	83%	89%
No	17%	11%
Should Police Take Part in Providing Diversion Services:		
Yes	46%	55%
No	54%	45%
Should the Criminal Justice System Retain "Pull-back" Ability for Divertees Who Fail:		
Yes	97%	93%
No	2%	4%
No opinion	2%	4%

INFLUENCES ON DECISION MAKING

A number of studies have been conducted on both juvenile and adult decision making by police, although most of this literature deals specifically with the decision of whether or not to arrest a suspect. Because of the similarity in the data of these studies, the factors found to affect the police handling of both youth and adults are summarized and follow. The specific results of the questionnaires and interviews of this project regarding influences on decision making are discussed in Chapter Three.

Numerous studies of police decision making, mostly in the last decade, suggest a rather large number of factors which influence use of discretion. The most critical variables appear to be the alleged offense, expectations and limitations of the law, agency administrative policy, other criminal justice agencies, local politics, the public in general, the complainant in particular, characteristics of the subject, and biases of the officer himself. The last two variables, which are of paramount importance, may also be viewed in terms of the interaction between officer and suspect. Finally, a variety of practical concerns, some completely unrelated to the offense, have been shown to be significant variables.

Some offenses, such as routine parking meter infractions, result in virtually automatic police decisions[1]; however, most involve a high degree of discretion. Westley, in his famous study, Violence and the Police, points out not only the high likelihood of arrest but also of illegal or questionable means to effect such an arrest when the offense is a felony, especially a serious one. Not only does the police force as a whole need to keep in public favor by having a high "clearance" rate for serious crimes, but: "Each man obtains prestige and a greater chance for promotion by the publicity that attends the apprehension of a felon."[2] relatively minor white-collar crime and many types of private vice are given little emphasis, Westley claims "the sex criminal is the object of brutality and blackmail upon the part of the police."[3]

Reiss asserts that "the police regard themselves as the 'thin blue line' maintaining law and order in the community."[4] Hence, they tend to feel a strong moral and legal responsibility to enforce the law. From another point of view, the law (particularly case law relating to police procedures) acts as a curb on police decision making. It is a common observation that many police feel handcuffed by the series of appellate court rulings prohibiting unconstitutional practices of interrogation and of search and seizure.

Beyond the law itself, departmental policy often limits the use of discretion and may even eliminate it. Wilson describes one of the most influential variables as "the tastes, interests, and style of the police administrator."[5] Examples of formal policies might be misdemeanor citation standards or guidelines concerning citizen arrest procedures. However, policies are often much less formal and simply reflect the personal philosophy of the chief administrator or other officials in the chain of command. Whether policies are formal or informal, the degree to which an officer follows them is often quite discernible and his on-the-street decisions are subject to review by his sergeant and/or other superiors.[6] Decisions not to invoke the law are the major exception to this; such decisions "are generally of extremely low visibility and consequently are seldom the subject of review."[7]

Goldman, in a study of Chicago juvenile police practices, found that officers were strongly influenced by their perceptions of the juvenile court--although for quite different reasons. Many police were reluctant to refer minors to court because it "would result in an official record which would interfere in the future with the boy's possibilities of obtaining employment or enlisting in the armed services."[8] However, many other officers were similarly hesitant to use the juvenile court system but because they felt the court was too lenient and hence "there was no value in sending the boys to the court, because they were immediately released by the intake staff or at best may be removed from the community for a few months."[9] Piliavin and Briar, in a similar California study, pointed out that officers employed a wide range of discretion with juveniles both because official police policy stressed that the disposition of minors should not be based solely on the offense and because they were reluctant to subject certain youths to the stigmatization resulting from arrest.[10] Similarly, the practices of the Probation Department (with minors) and the District Attorney (with adults) greatly affect police decisions. If the police feel that their cases will not be prosecuted effectively, they are less likely to bother with the paperwork and other time-consuming processes involved in arrest and booking.

Wilson also noted that two of the most potent influences on the police are "local politics" and "the demands the City places on them."[11] As mentioned earlier, it is essential that the police maintain a favorable image with the public and the community political structure. They depend on these groups for financial support, for information and cooperation in prosecuting the vast majority of crimes, for general good will, and, in the case of sheriffs, for re-election.

With regard to the complainant, Black found that the attitude and preferences of the person reporting the crime were of major significance. In a study of one department, he determined that the police did not file a single official report in cases where unofficial handling was requested by the complainant.[12] Also, the more deferential the complainant was to the officer, the more likely was the officer to comply with his request in handling the matter. Reiss also indicated that the police are less likely to make an arrest when the complainant was a family member or friend as such individuals often do not later follow through by signing a complaint.[13]

In those decisions where the officer has any discretion at all, numerous studies have suggested that two of the most important variables are characteristics of the suspect and biases of the officer. These may be best viewed in terms of interaction between officer and subject.

Piliavin and Briar concluded that officers based their decisions not only on the offense and prior record of a youth, but also on their evaluation of his character.[14] Character, in turn, was determined from "cues which emerged from the interaction between the officer and the youth," cues such as "group affiliation, age, race, grooming, dress, and demeanor."[15] In another very similar article on San Francisco gang youth, Werthman and Piliavin described how individual attributes and, subsequently, interaction with the police often determine how a juvenile is handled.[16] When searching for a suspect or simply "cruising" a neighborhood, police are drawn to certain types of individuals, e.g., those with "hostile looks and furtive glances."[17] Similarly, "Certain kinds of clothing, hair, and walking styles seem intrinsically to trigger suspicion."[18] After a suspect was detained, the researchers found that "the most important factor affecting the decision of juvenile officers is the <u>attitude</u> displayed by the offender..."[19] A "good" kid (i.e., one who was cooperative, respectful, and showed proper remorse and law-abiding attitudes) was often released for offenses where "punks" or "trouble-makers" (i.e., those who exhibited undesirable attitudes were arrested). "If a boy shows no signs of being spiritually moved by his offense, the police deal harshly with him."[20] The researchers concluded that "A 'delinquent' is therefore not a juvenile who happens to have committed an illegal act. He is a young person whose moral character has been negatively assessed."[21]

Several other studies support these findings. Cicourel, in another California research project, discovered that juvenile officers were strongly influenced by the style and speed with

which a youth confessed.[22] Goldman stressed that "defiance on the part of a boy will lead to juvenile court quicker than anything else."[23] The President's Commission on Law Enforcement and Administration of Justice asserted that "Demeanor appears to affect police disposition after arrest as well as arrest in the first instance."[24] Harlow also emphasized the importance of individual "cues" to "determine what behavior shall be considered unseemly, who is to blame for conduct that is agreed to be wrong, and which persons are most likely to cause further trouble."[25] Those who most often fit these cues are the young, the poor, and the minorities.

Discussion of the interaction between officer and suspect leads one to look at the officer as well. As Skolnick points out, police not only are highly influenced by certain suspect characteristics but they also tend to stereotype certain types of individuals as having those undesirable characteristics and attitudes; in fact, stereotyping is a common part of the police subculture.[26] Partly from their own backgrounds and partly from experiences (often rather negative) as law enforcers, they develop their own viewpoints and biases which become part of their "armory of investigation."[27] As they must frequently make quick, "hunch" decisions, police--as anyone else--inevitably rely in part on their biases and stereotypes. In addition to those persons who fit the criminal stereotype by appearance and demeanor, police tend to focus more often on minorities, particularly Blacks. In a San Diego study, Lohman <u>et al</u>, discovered that minorities, especially Blacks, were "over-represented" in field interrogation stops.[28] Werthman and Piliavin found that "Negro gang members are constantly singled out for interrogation."[29] Skolnick reported that Oakland Police involved in deciding whether or not to arrest persons with traffic warrants were far more likely to arrest Blacks, particularly if they were unemployed and seemingly unstable in terms of residence.[30] On the other hand, it is often unclear in these and other studies whether minorities are stopped and arrested proportionally more often than Caucasians simply because they are minorities or because they also are perceived as having other negative characteristics, such as poor attitudes, lack of social stability, etc. As Skolnick suggests, it is likely that lack of co-operation is more significant than race.[31] Finally, the decision making of a police officer is also influenced by any potential threat he perceives to himself[32] and by the need he feels to maintain respect.[33] As Reiss stresses, "an officer responds to a challenge to his authority by asserting authority...The police code prohibits 'backing down'."[34]

One other group of people who are the subject of stereotypical decision making are females. As Reckless and Kay point out, "Police are much less willing to make on-the-spot arrests of or to 'book' and hold women for court action than men."[35] They describe this as due to a "chivalry factor" which influences police in the handling of nearly all types of women except prostitutes, where reverse discrimination occurs. Another exception is young girls. There is a far higher proportion of girls to boys arrested than is the ratio of women to men. The authors argue that this is due to society's solicitous concern for minor females rather than a perception of them as more of a danger than adult females.[36]

In conclusion, existing studies indicate that the police officer is highly influenced by a conglomeration of factors, many of which might be lumped into practical considerations. As Wilson asserts: "The decision to arrest, or to intervene in any other way, results from a comparison...of the net gain and loss to the suspect, the neighborhood (society), and the officer himself."[37] Many of these gains and losses have already been discussed; e.g., accountability to his superiors and the public, possible negative impact on the suspect, threat to the officer's safety or self-image. Others include such little known considerations as being near the end of one's shift or facing the prospects of having to go to court on one's day off. Overall, however, the patrolman must make numerous decisions based on an extremely complex "evaluation of the costs and benefits of various kinds of actions."[38] Generally he must make them alone and often quite quickly.

The preceding discussion of what various studies have found to be major influences on police decision making emphasizes the need for two important aids.

First, in view of the tremendous amount of discretion given to police and the serious consequences of their decision making, it is imperative that department heads spell out, as clearly as feasible, criteria for line and middle management personnel to follow. These guidelines for the use of discretion should be flexible enough to allow for individualized rather than rigid decision making. They should also address the problems of both the beat officer who must make the initial on-the-street decision and supervisors or other staff who are responsible for reviewing many of these decisions before they are finalized or lead to further movement of the person into the justice system. Furthermore, the guidelines should include the current philosophy in juvenile law defined in Section 626 W&I and appearing on the following page.

"In determining which disposition of the minor he will make, the officer shall prefer the alternative which least restricts the minor's freedom of movement, provided such alternative is compatible with the best interests of the minor and the community."

These guidelines must, finally, reflect current legislation and legal rulings, community concern, and other factors which are appropriate in making arrest and other police decisions.

Secondly, there is a severe need for more initial and ongoing training for both line patrol and supervisory personnel in the use of discretion. Regardless of how clear written guidelines are, the beat officer must still interpret them in countless situations that vary daily. Of all criminal justice personnel, the police officer must make decisions most quickly and with the least amount of information. Hence, it is imperative that one of the most critical skills considered in hiring, promoting, and training law enforcement personnel be their ability to use discretion appropriately. Historically, the officer has been given at best a few weeks' academy training, with very little of it devoted to the use of discretion, then handed a badge and gun and told to go out and enforce the law and protect people's rights. In many areas of society today, he also quickly finds that the people he is supposed to protect are less than enthusiastic to have him around. Initial and ongoing training in basic psychology and sociology, community relations, and the proper use of authority is a far more valuable tool than a shotgun and mace. To provide "real life" situations the officer will have to handle on the street, some departments use psychodrama or role playing as a valuable training technique--an aid that might be adopted by other agencies.

RECOMMENDATION 1. *Every law enforcement agency chief executive should provide, for both line and middle management personnel, written guidelines and ongoing training to expand on those guidelines in police decision making.*

As mentioned earlier, there is considerable variability in the definition of arrest (as well as other decision alternatives such as diversion) among agencies. To overcome this problem and to facilitate consistent reporting and evaluation of decision making, the following recommendations are made.

RECOMMENDATION 2. *The Bureau of Criminal Statistics should, with participation by the various police agencies, adopt a uniform definition of arrest and other police decision alternatives and attempt to have all law enforcement agencies comply with them in implementing and reporting such decisions.*

RECOMMENDATION 3. *To the degree possible, each police agency should implement regular feedback and evaluation procedures to provide up-to-date information on the cost effectiveness of various decision alternatives.*

PROBATION

Although the police handle the largest numbers of delinquents, probation staff are by far the most involved in juvenile justice decision making in terms of the variety and complexity of decisions made. As with the police, the following discussion focuses on the critical decision points involving probation staff and the factors that most influence staff in making decisions.

OVERVIEW OF DECISION POINTS AND ALTERNATIVES

Exhibit 2-4, Juvenile Probation Intake Process, presents a simplified picture of the juvenile probation decision-making process from initial referral through either court disposition or removal from the system. It might be noted that there are four major decision points (some of which actually involve a series of decisions or decision reviews) that will be examined in some detail; viz., the initial referral decision, the filing of a petition decision, the dismissal from informal handling decision, and the decision as to what disposition to recommend to the court. An indication of the flow of youths through the system is given in Exhibit 2-5.

Initial Referral Decision

Referrals to juvenile probation may be made by law enforcement agencies, schools, parents or relatives,

Exhibit 2-4. JUVENILE PROBATION INTAKE PROCESS

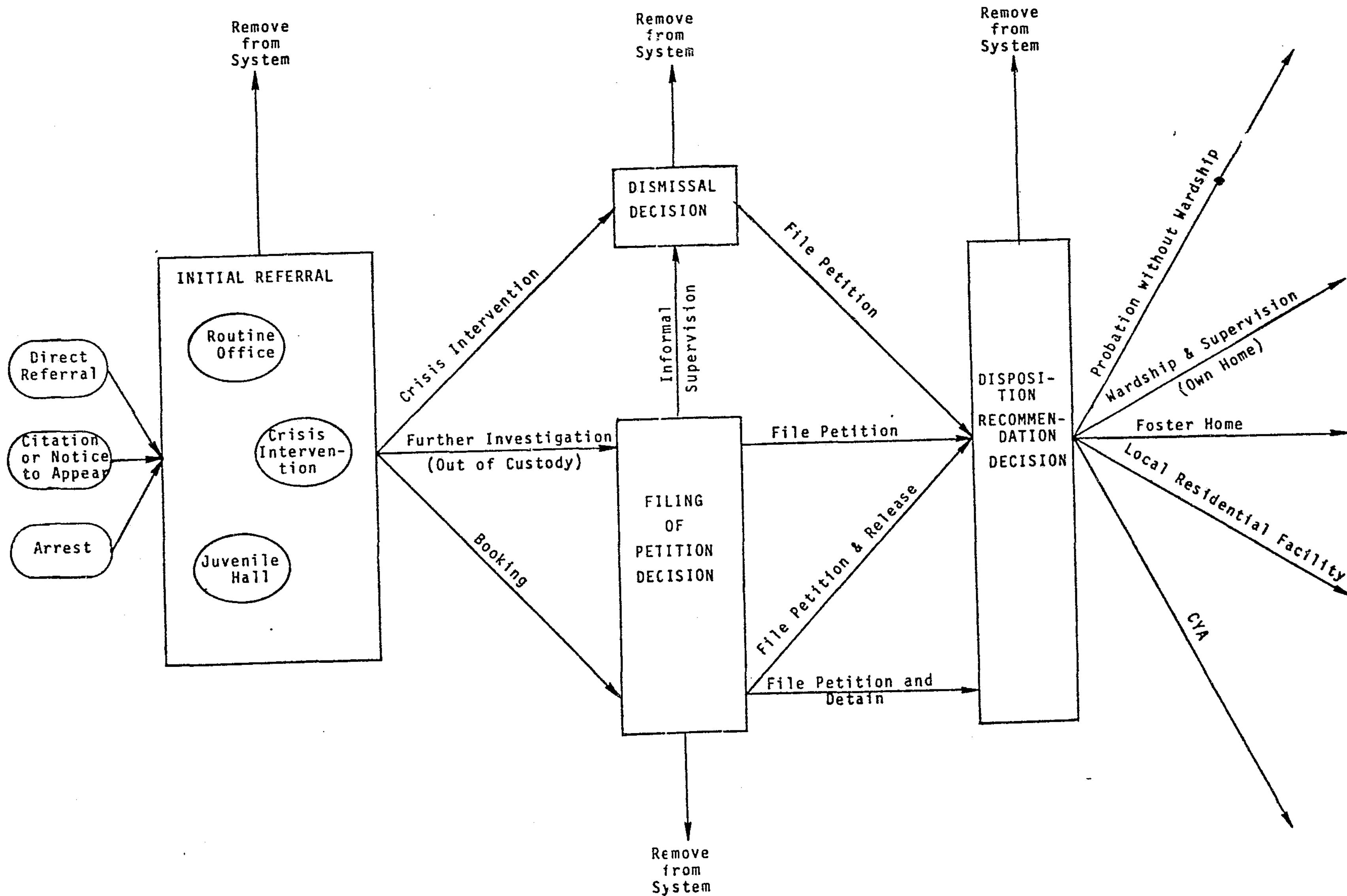
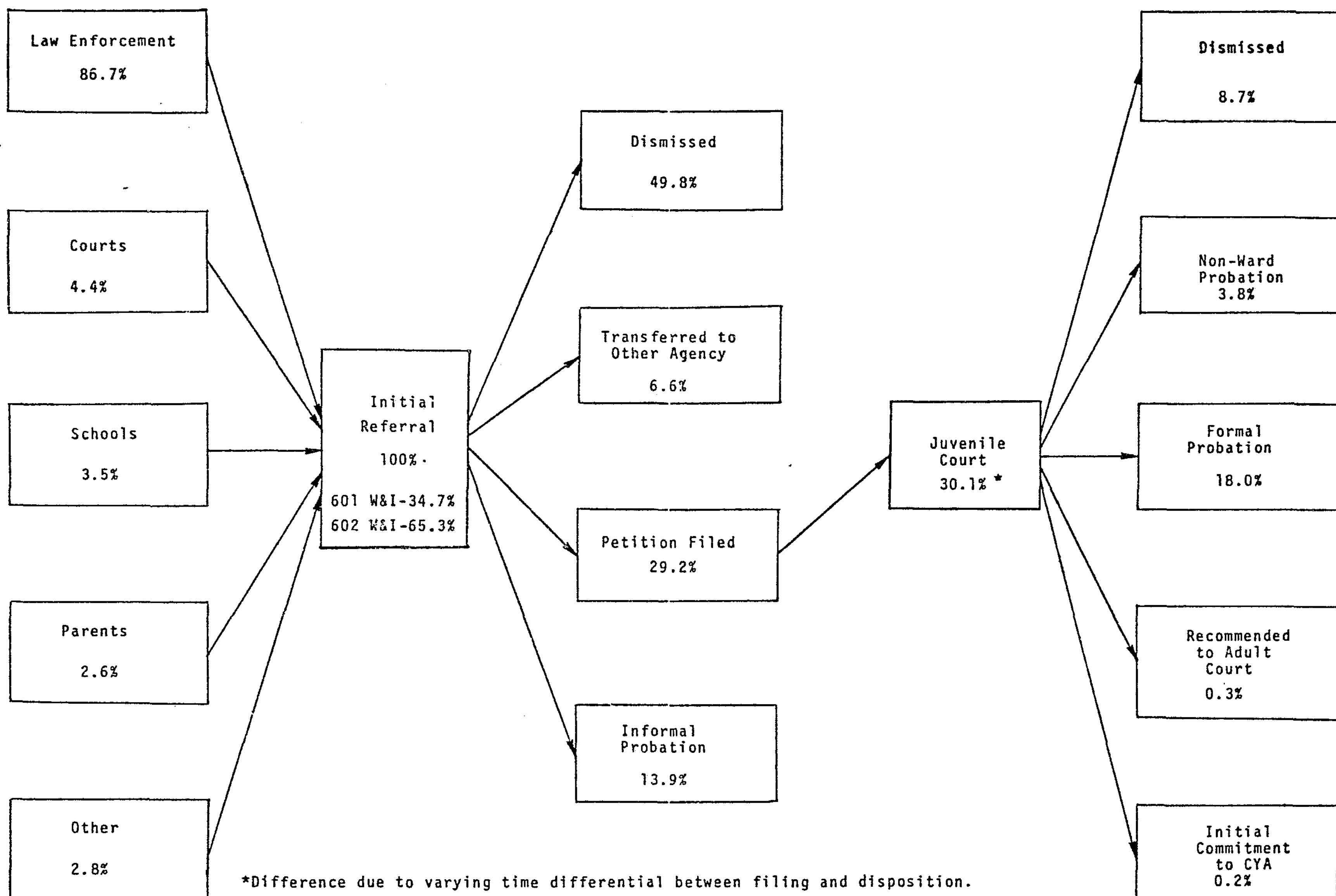


Exhibit 2-5. FLOW OF INITIAL REFERRALS TO JUVENILE PROBATION: 1972



*Difference due to varying time differential between filing and disposition.

Adapted from: Crime and Delinquency in California 1972: Adult and Juvenile Probation, Bureau of Criminal Statistics, Sacramento.

courts, probation department staff, other concerned citizens or the minor himself. Exhibit 2-5 gives the percent of youth referred for the first time from each major source during 1972. By reviewing similar data for the past decade, it is apparent that the vast majority of delinquents are consistently referred by law enforcement and that, while the number of youth involved has more than doubled in that time, the percentage of those referred by various sources has scarcely changed. The type of referral may be either police citation (similar to a traffic ticket) or notice to appear (626 W&I), arrest, or direct referral from a non-police source. While many police agencies are greatly increasing the use of citations and/or notices to appear, the standard police technique for referring juveniles to probation is still arrest, booking, and transportation to juvenile hall. For example, of the 197,983 juveniles referred in 1972 by police to probation, 139,841 or 71% were taken to juvenile hall.[39]

Basically, a minor may be referred to one of three sections or components of the juvenile probation system (depending on the particular department): the juvenile hall, routine office units, or, an increasingly common alternative, special crisis intervention units. Since any of these three components may be the focus of initial probation contact with the minor and because all three can immediately refer the minor to any of the others, they are all included in one decision-making "box" in Exhibit 2-4. Once a minor is referred to probation, in or out of custody, the primary decision which must be made by probation staff is essentially the same as that made at every other decision point, viz., whether or not to move the minor further into the juvenile justice system.

The common alternatives at this point of initial referral are to remove the youth from the system, to detain him in juvenile hall pending further investigation, to continue the investigation with the minor out of custody (i.e., residing with his family or, at times, in a temporary alternative placement), or to provide crisis intervention. Crisis intervention normally refers to efforts to provide immediate and intensive counseling, usually involving the whole family, geared at preventing confinement in juvenile hall and encouraging the family to resolve its problems by itself

or by referral to a non-criminal justice agency. This rapidly expanding alternative usually deals with 601 W&I type cases (incorrigibility, truancy, runaway, etc.) and selected minor offenders (such as first offenders arrested for being under the influence of alcohol or drugs). Results of these programs (discussed in Chapter Four, Diversion) are encouraging.

Filing of Petition Decision

For those minors who are either booked into juvenile hall or whose cases are retained by the probation department for further investigation, a decision must be made as to whether or not a petition will be filed, bringing them before the juvenile court. In many jurisdictions, the district attorney is consulted on at least some of these decisions, primarily to ascertain what specific allegations should be made, how strong the evidence is, etc. However, only the probation officer can file a petition (650 W&I). Petitions may allege that a minor falls within 601 W&I (is a "pre-delinquent") or 602 W&I (has committed some act that would be a crime for an adult).

Alternatives available at this point are removal from the system (which may include referral to a non-criminal justice agency), informal supervision for up to six months per 654 W&I, or filing of a petition. If the latter alternative is selected and the minor is in custody, another decision must be made whether or not to request a detention hearing and recommend that the minor continue to be detained until final disposition of the case. Exhibit 2-6 shows decisions made by probation officers at this point for the entire state and the seven sample counties in 1972. The wide disparity in decision making between counties is readily apparent. Exhibit 2-7 indicates these same types of decisions for the state as a whole from 1963 to 1972. While the percentage of cases granted informal supervision has remained substantially the same, the proportion of cases closed or referred to other agencies has risen from 46% to 57% and those on which petitions were filed have dropped from 42% to 28%. This probably reflects both an increased awareness of the need to have stong "proof" of allegations due to the stronger role of defense attorneys and a tendency to keep as many minor offenders out of the system as possible. This latter argument

Exhibit 2-6

DISPOSITION OF INITIAL JUVENILE REFERRALS TO PROBATION FOR STATE AND 7 SAMPLE COUNTIES: 1972

State and Counties	Initial Referrals	Referral Reason		Disposition			
		601 W&I	602 W&I	Dismissed	Transferred to Other Agency	Informal Supervision	Petition Filed
State	160,904	35%	65%	50%	7%	14%	29%
Los Angeles	30,763	26%	74%	36%	---	21%	43%
San Diego	12,038	41%	59%	65%	---	9%	27%
Marin	1,151	40%	60%	61%	8%	3%	28%
Contra Costa	4,661	32%	68%	51%	10%	8%	31%
San Mateo	3,067	29%	71%	51%	---	4%	45%
Stanislaus	2,594	40%	61%	61%	---	13%	26%
Placer	1,321	44%	56%	51%	27%	8%	14%

Adapted from: Crime and Delinquency in California, 1972: Adult and Juvenile Probation, Bureau of Criminal Statistics, Sacramento.

Exhibit 2-7

DISPOSITION OF INITIAL JUVENILF REFERRALS TO PROBATION FOR STATE: 1963-1972

YEAR	TOTAL	Closed or Referred to Other Agency		Informal Supervision		Petition Filed	
		#	%	#	%	#	%
1963	78,750	36,141	46	9,208	12	33,401	42
1964	90,907	43,875	48	12,803	14	34,229	38
1965	96,673	47,955	50	13,104	14	35,614	37
1966	104,786	53,053	51	14,389	14	37,344	36
1967	122,782	62,325	51	16,675	14	43,782	36
1968	141,061	72,113	51	19,260	14	49,688	35
1969	158,335	77,935	49	22,422	14	57,978	37
1970	158,944	84,343	53	21,564	14	53,037	33
1971	168,690	93,591	55	21,794	13	53,305	32
1972	160,904	90,806	57	22,344	14	47,754	28

SOURCE: Bureau of Criminal Statistics, Crime and Delinquency in California: Adult and Juvenile Probation, various years.

is supported by 1972 data which shows that, of youth referred for "delinquent tendencies," 66% were closed or referred to other agencies while only 23% had petitions filed; this contrasts with a closure or outside referral rate of 51% and a filing rate of 34% for minors referred for specific "crimes."[40]

With regard to the number of minors detained until their court (jurisdictional) hearing, Los Angeles County estimates that approximately one third of the minors brought to juvenile hall by the police are released without a detention hearing and 10% to 20% of those minors held are released at their detention hearing (normally within three court days after arrest).

Dismissal From Informal Handling Decision

For those minors referred to crisis intervention programs (which normally last no more than six counseling sessions) or placed on informal supervision (normally for six months), a decision must be made to remove them from the system or to file a petition. As an example of crisis intervention staff decision making, Alameda County reports a 601 W&I petition filing rate of only 4.2% on nearly 4,000 cases handled between September, 1971 and November, 1973. Sacramento County data reveal a petition filing rate of 3.7% by their crisis intervention program compared to a rate of 19.8% for a control group which handled similar cases in traditional manners.[41] With regard to informal supervision, counties around the state rather consistently filed petitions on 16% of these cases in 1970, 16% in 1971, and 14% in 1972.[42]

Recommendation as to Court Disposition

This decision consists of two parts: (1) a recommendation as to whether or not the court should make a finding that the allegation(s) of the petition are true, i.e., that the minor falls within 601 or 602 W&I; and (2) a recommendation as to disposition, assuming that a finding is made. Juvenile court law does not require the probation officer to make either of these recommendations (while adult criminal law does require him to make a recommendation as to disposition of referred cases). However, it is common, though not universal,

practice for juvenile probation officers to make both such recommendations, particularly the latter. In those courts where jurisdictional and dispositional hearings are truly bifurcated, i.e., occur on different days, these recommendations are made in separate reports--with a dispositional report normally being prepared only if a finding is made.

Alternative recommendations available for disposition vary considerably, with the most common ones being shown in Exhibit 2-4. While data on probation recommendations are difficult to obtain, Exhibit 2-13 (in a following section on the Juvenile Court) indicates statewide court dispositions (normally highly correlated with probation recommendations) for some of the most frequently used alternatives, again for 1963-1972. The most striking finding is that the rate for dismissing petitions has doubled, from 14% to 28%. This is almost assuredly due to the stronger emphasis on juvenile court. As would be expected, wardship and CYA commitment rates have dropped appreciably during the same period (although there is some indication that they are currently rising).

Summary

While some evidence of this is implied, if not evident, in the above discussion and data, clearly the most significant difference in the handling of juveniles over the past decade has been directly due to the increasingly adversary nature of the juvenile court system. The Gault[43] and other decisions which have mandated many legal rights and safeguards for juveniles, the tightening of rules of evidence and the degree of proof necessary to make a finding, the provision almost routinely of defense counsel, and the general emphasis throughout society on protecting individual rights have vastly altered the traditional "parental" or equity nature of juvenile courts to that of an adversary system which is, in many areas, almost identical to that of the criminal courts. The knowledge of the more stringent demands on "proving" a case to obtain a finding has doubtlessly influenced the decision making of juvenile probation staff at every level. Evidence of this, gathered during the study, is shown in the following sections.

However, as inferred earlier, another gradual shift in philosophy has also made almost a simultaneous impact on decision making. Partly propelled by the probation

subsidy program with its emphasis on local handling of offenders and strongly influenced by the increasingly vocal concern about labeling and further criminalization by the system itself and by the corresponding emphasis on local responsibility for handling its youth, more and more communities have been developing viable alternatives to the formal juvenile justice system. These alternatives have enabled probation staff to divert greater numbers of youth from traditional channels that swept them further into the system.

Although the mechanics of the subsidy program are currently being challenged, it is expected that these trends toward the development of alternatives will continue in the foreseeable future. With the increased protection of juveniles' rights and the encouragement of families and communities to handle their own youth, probation departments will experience further role confusion and will need to re-examine increasingly their scope and place in society. Failure to look ahead, failure to be flexible, failure to develop a stronger credibility and accountability to the community may prove disastrous.

INFLUENCES ON DECISION MAKING

Relatively little research has been done on the factors which influence probation officers in making either disposition decisions or recommendations to the court. The few studies conducted in the area of juvenile probation decision making present conflicting evidence which, probably more than anything else, underscores the complexity and wide variation in such decision making.

Terry, in a five-year study of over 9,000 juvenile offenses, sought a correlation between sex, ethnic background, or socio-economic status and the severity of disposition by police, probation, or juvenile court officials, but found none.[44] On the other hand, Cohn conducted a detailed study of probation recommendations in the Bronx Children's Court and found the most important determinants to be "the child's personality, his family background, and his general social adjustment.[45] Seriousness of the delinquent act had only "secondary significance." Cohn also concluded that probation officers were often unaware of which criteria they were treating as most important; she argued that

often the most influential variables were not "objective" factors normally written in court reports, but subjective judgments and opinions of the investigator. Gross, too, found that, while probation officers in his study ranked the three most significant factors as the child's attitude toward the offense, family data, and previous delinquent history, the deputy himself was a major variable.[46] Briar, Piliavin _et al._, in testing a variety of professionals dealing _with_ youths, found that unfavorable judgments about delinquents were often made in response to stereotypes, such as language, demeanor, and appearance.[47] Since stereotypes are a function of the perceiver as well as the perceived, they, too, concluded that the former is obviously a major variable in his own decisions. Going a step further, Wilkins and Chandler found a surprising lack of consensus among deputies on the value of specific information in arriving at a decision, again emphasizing that most persons have a highly individualized style of decision making.[48]

Finally, other researchers have stressed that the agency orientation has a great impact on individual staff decision making, both formally and informally.[49]

In an effort to obtain additional and current information about the comparative impact of various factors on probation decision making, the sample 200 juvenile intake officers given questionnaires in the current study were asked to rate the influence of selected variables. Exhibits 2-8 through 2-11 summarize the results of this survey in terms of (1) the influence probation officers felt these factors actually _did_ have on their decision making, and (2) how much _influence_ they felt they _should_ have. The data are broken down by total staff, _line_ worker, and supervisors/administrators--for all four of the critical decision points being discussed. The cautions of some of the above-mentioned researchers, stressing that persons are often unaware of (if not unwilling to admit) many factors that most influence their decision making, should be kept in mind when reviewing these questionnaire results.

Initial Referral Decision

As is the case for all decisions except that of dismissal after crisis intervention or informal supervision, threat to the community was consistently rated by

juvenile intake staff as the most important variable--by all groups and in response to both questions of what <u>does</u> influence and what <u>should</u> influence decision makers (see Exhibit 2-8). Protection of the minor was a clear second priority with most of the other factors listed also being rated as strong influences, both in practice and in theory. Department policies and philosophy, school or job status, and community attitudes were rated as moderate influences and the decision maker's own philosophy and attitudes as the only low priority item. Compared to some of the previously discussed research, this low rating is rather suspect. A related trend that applies to every question and all levels of staff is the consistent feeling that the decision maker's own philosophy, attitudes, and biases have stronger influence on decision making than they should have. There is also considerable evidence that the need for counseling or other probation services and the availability and appropriateness of crisis intervention programs should be given more weight than they actually receive in the decision making at initial referral.[50] Supervisors and administrators, as they did for the other decision-making points to be discussed, rated the attitudes of the community and the individual deputy higher than did the line workers. Based on the above perceived importance of the need for counseling and the availability of crisis intervention programs, present juvenile law, and current concepts regarding the processing of juveniles, the following recommendation is made:

> RECOMMENDATION 4. *A general principle at all intake decision points should be that no one should be moved further into the formal justice system unless there is sufficient evidence to justify such a decision. The burden of proof should be on the system, rather than on the individual, to justify further movement into the system.*

This is consistent with the philosophy of the California Correctional System Study that corrections should always select the least restrictive alternative consistent with adequate protection of the public.[51] Because of the presumption of innocence during the entire intake process, this principle is even more appropriate at those decision points. With regard to the juvenile probation officer's initial intake decision, this means that he

Exhibit 2-8. JUVENILE PROBATION OFFICERS' RATINGS OF INFLUENCES ON DECISIONS MADE AT INITIAL REFERRAL

Factor	*Does Influence Decisions**			*Should Influence Decisions**		
	Total Staff	Line Workers	Supervisors & Administrators	Total Staff	Line Workers	Supervisors & Administrators
Threat to Community	9.1	9.0	9.2	9.2	9.1	9.4
Protection of Minor	8.4	8.5	8.0	8.8	8.7	8.8
Parents (attitudes, stability, etc.)	8.2	8.2	7.6	8.2	8.3	7.4
Present Offense (nature)	8.2	8.2	7.9	8.2	8.2	7.7
History of Social Stability (school, family ties, etc.)	8.0	8.1	7.5	7.9	7.9	7.3
Minor's Attitudes	7.9	8.0	7.4	8.3	8.3	7.6
Need for Counseling or Other Probation Services	7.9	8.1	6.8	8.6	8.7	8.2
Previous Agency Contacts with Minor	7.9	7.8	8.0	7.8	7.7	8.0
Prior Record	7.9	7.8	8.3	8.0	7.9	8.2
Present Offense (strength of evidence	7.8	7.6	8.0	7.6	7.5	7.6
Availability and Appropriateness of Crisis Intervention Program	7.7	7.7	7.6	8.2	8.3	8.4
Department Policies and Philosophy about such Decisions	7.3	7.2	7.2	---	---	---
Current School or Job Status	6.2	6.3	5.8	6.9	6.8	6.5
Community Attitudes	5.6	5.5	6.1	6.0	5.7	6.8
Your Own Philosophy, Attitudes, Biases, etc.	5.0	4.9	6.3	4.5	4.4	4.9

*Mean ratings on scale of 1 to 10. Ratings of 0-5 may be considered as "weak", 5.1 to 7.5 as "moderate", and 7.6 to 10 as "strong" influences.

should totally remove the youth from the system either if there is insufficient evidence that the minor falls within Sections 601 or 602 W&I or if there is no need to retain him in the system for the protection of himself or the community. Even if there is sufficient evidence to file a 601 or 602 W&I petition, but the youth is only a minor threat to himself or the community, diversion alternatives such as crisis intervention, informal supervision, or referral to appropriate non-criminal justice resources should be considered. Similarly, the benefit of the doubt should be decided in the youth's favor if there is question whether or not he should be detained under 628 W&I.

Filing of Petition Decision

Exhibit 2-9 reveals that questionnaire responses regarding actual and appropriate influences on decisions of this nature were almost identical to those for the initial referral decision. Threat to the community was clearly weighted most heavily. Department philosophy and policies were perceived by all levels of staff to be substantially more of an influence than they should be--a trend that seems to fit the views of juvenile probation staff at all decision points.[52] However, where adult supervisors and administrators consistently felt that department policies both did and should influence every decision considerably more than line workers believed was appropriate, their juvenile peers tended to view this factor as of equal or sometimes less importance than did their subordinates. Also in sharp contrast, juvenile administrators consistently assigned a heavier weight than did juvenile line workers to the importance of the individual decision maker's views while their adult counterparts did the exact opposite. Finally, supervisory/administrative staff consistently asserted that more attention should be given to community attitudes than their subordinates felt was appropriate.

Guidelines similar to those mentioned for the previous decision would appear appropriate here. The least restrictive alternative, consistent with adequate protection of the public, should be selected with the benefit of the doubt being resolved in the minor's favor. To justify filing a petition, there should be, in addition to sufficient evidence, substantial indication both that the best interests of the minor or

Exhibit 2-9. JUVENILE PROBATION OFFICERS' RATINGS OF INFLUENCES ON DECISIONS CONCERNING THE FILING OF A PETITION

Factor	Does Influence Decisions*			Should Influence Decisions*		
	Total Staff	Line Workers	Supervisors & Administrators	Total Staff	Line Workers	Supervisors & Administrators
Threat to Community	9.2	9.1	9.5	9.1	9.1	9.0
Present Offense (nature)	8.6	8.6	8.0	8.3	8.3	7.9
Present Offense (strength of evidence)	8.3	8.2	8.3	8.0	7.9	8.1
Minor's Attitudes	---	---	---	8.1	8.1	7.5
Previous Agency Contacts with Minor	8.1	8.0	8.3	7.8	7.7	8.1
Prior Record	8.1	8.1	8.4	8.1	8.1	8.2
Need for Counseling or Other Probation Services	8.0	8.2	7.1	8.4	8.5	7.7
History of Social Stability (school, family ties, etc.)	7.9	7.9	6.9	7.8	7.7	7.6
Parents (attitudes, stability, etc.)	7.9	7.9	7.1	8.0	8.1	7.0
Availability and Appropriateness of Alternative Programs to the Formal Juvenile Probation System	7.8	7.9	7.8	7.9	7.9	7.9
Department Policies and Philosophy about such Decisions	7.5	7.6	7.2	6.9	6.9	6.9
Current School or Job Status	6.3	6.3	5.9	6.6	6.6	6.2
Community Attitudes	5.7	5.7	5.8	5.8	5.4	6.7
Your Own Philosophy, Attitudes, Biases, etc.	5.1	5.0	6.0	4.7	4.5	4.9

*Mean ratings on scale of 1 to 10. Ratings of 0-5 may be considered as "weak", 5.1 to 7.5 as "moderate", and 7.6 to 10 as "strong" influences.

the community would be served by bringing the matter before the juvenile court and that a less restrictive or formal alternative would not achieve the same results.

Dismissal From Informal Handling Decision

As seen in Exhibit 2-10, the factor selected as most important in influencing this decision was the minor's adjustment while receiving this informal handling (i.e., crisis intervention or informal supervision). This was followed closely by the minor's attitudes, his need for further counseling or other probation services, and the threat he presents to the community. Supervisors and administrators, however, said that threat to the community and need for probation services should be ranked even higher than the minor's adjustment. There was feeling that prior record should be given more weight than it actually receives and, again, that departmental and individual philosophies are stronger influences than they should be.[53] Overall, as with the previous two decision points, there is generally close agreement in the views of line workers and of supervisors and administrators.

In line with the earlier decision-making points, it is the study staff's view that dismissal from informal handling should occur as soon as is reasonably possible--both to minimize possible labeling or other negative influences of the justice system and to save unnecessary expense to the taxpayers in dealing with minor offenders. While some youth will obviously fail in these programs, filing of a formal petition should not be initiated unless there is substantial indication both that the attempted informal program has not been successful in keeping the minor from continuing to fall within 601 or 602 W&I and that the best interests of the minor or the community would be served by bringing the matter before the juvenile court.

Recommendation as to Court Disposition

Once again, threat to the community is perceived as by far the most important influence by all levels of staff (see Exhibit 2-11). Supervisors and administrators feel, as they have consistently, that community attitudes and views of the individual decision maker should be

Exhibit 2-10. JUVENILE PROBATION OFFICERS' RATINGS OF INFLUENCES ON DECISIONS TO DISMISS MINORS AFTER CRISIS INTERVENTION OR INFORMAL SUPERVISION

Factor	Does Influence Decisions*			Should Influence Decisions*		
	Total Staff	Line Workers	Supervisors & Administrators	Total Staff	Line Workers	Supervisors & Administrators
Minor's Adjustment While Receiving Crisis Intervention	9.1	9.1	9.2	9.0	9.1	8.4
Minor's Attitudes	8.9	8.9	8.7	8.8	8.8	8.4
Need for Further Counseling or Other Probation Services	8.7	8.7	8.4	8.8	8.8	8.5
Threat to Community	8.6	8.5	8.4	8.9	8.9	8.5
Parents (attitudes, stability, etc.)	8.3	8.3	8.2	8.1	8.2	6.8
History of Social Stability (school, family ties, etc.)	7.9	7.9	7.4	7.8	7.9	6.7
Availability and Appropriateness of Alternative Programs to the Formal Juvenile Probation System	7.6	7.5	8.3	7.7	7.8	7.7
Department Policies and Philosophy about such Decisions	7.3	7.3	6.9	6.7	6.7	6.4
Present Offense (nature)	7.0	6.9	6.5	7.2	7.1	6.9
Current School or Job Status	6.9	7.0	6.7	7.2	7.2	6.6
Previous Agency Contacts with Minor	6.8	6.7	6.1	7.0	7.0	6.8
Prior Record	6.8	6.8	6.5	7.3	7.2	7.3
Present Offense (strength of evidence)	6.7	6.5	6.3	6.5	6.4	6.7
Community Attitudes	5.5	5.3	6.0	5.5	5.4	5.6
Your Own Philosophy, Attitudes, Biases, etc.	5.1	5.1	5.5	4.7	4.7	5.1

*Mean ratings on scale of 1 to 10. Ratings of 0-5 may be considered as "weak", 5.1 to 7.5 as "moderate", and 7.6 to 10 as "strong" influences.

Exhibit 2-11. JUVENILE PROBATION OFFICERS' RATINGS OF INFLUENCES ON DECISIONS REGARDING DISPOSITIONAL RECOMMENDATIONS TO THE COURT

Factor	Does Influence Decisions*			Should Influence Decisions*		
	Total Staff	Line Workers	Supervisors & Administrators	Total Staff	Line Workers	Supervisors & Administrators
Threat to Community	9.0	9.0	9.1	9.0	9.0	9.0
Need for Counseling or Other Probation Services	8.5	8.6	8.1	8.6	8.7	8.2
Perceived Effectiveness of Available Alternatives	8.5	8.5	8.3	8.4	8.5	8.2
Minor's Attitudes	8.4	8.4	7.6	8.4	8.5	7.6
History of Social Stability (school, family ties, etc.)	8.2	8.3	7.6	8.1	8.2	7.4
Parents (attitudes, stability, etc.)	8.1	8.1	7.3	8.2	8.2	7.5
Present Offense (nature)	8.0	8.0	7.8	8.0	8.1	7.1
Prior Record	8.0	7.9	8.2	7.9	7.9	7.9
Previous Agency Contacts with Minor	7.9	7.6	7.8	7.6	7.6	7.4
Current School or Job Status	7.2	7.2	6.9	7.0	7.1	6.4
Department Policies and Philosophy about such Decisions	7.1	7.1	6.7	6.7	6.6	6.7
Present Offense (strength of evidence)	7.0	6.8	6.8	7.1	7.0	6.8
Philosophy of Court about such Decisions	5.9	5.8	6.2	5.9	5.8	5.7
Community Attitudes	5.7	5.6	6.3	5.4	5.1	6.3
Current Workload of Available Alternatives	5.7	5.7	5.9	5.3	5.2	5.7
Your Own Philosophy, Attitudes, Biases, etc.	5.3	5.2	6.3	4.7	4.6	5.1
Cost of Available Alternatives	4.6	4.4	5.4	4.4	4.3	4.9

*Mean ratings on scale of 1 to 10. Ratings of 0-5 may be considered as "weak", 5.1 to 7.5 as "moderate", and 7.6 to 10 as "strong" influences.

considered more strongly than line workers feel is appropriate--although both groups believe these factors should be only weak to moderate influences. Management also indicated that both prior record and philosophy of the courts are, in fact, given more weight than line workers believe is the case, although management does not believe this is appropriate. As with all the previous decisions, all staff tend to perceive departmental and personal views and philosophy as having more impact than they should.[54]

RECOMMENDATION 5. The Juvenile Court Law should be amended to require that juvenile probation officers always make a formal recommendation as to disposition (assuming a finding is made) as is required by law of adult probation officers when preparing presentence reports.

While this is often, if not routinely, done by most departments, it should probably be made a part of the Juvenile Court Law as it is one of the probation officer's greatest areas of expertise and as it is invaluable for the courts (often not trained in behavioral sciences or the assessment of correctional strategies) to receive such advice.

Since the range of alternatives at this decision point is so wide and complex, no attempt will be made to spell out criteria for each. However, once again, the basic principle should be to recommend the alternative that is least restrictive to the individual while adequately protective of both the minor and the community.

PROSECUTION

Traditionally the district attorney had no role in the juvenile court. This was because of the equity, non-adversary nature of juvenile hearings. The probation officer normally decided which youth should be brought before the court and presented the evidence, in a rather informal manner, assisted by questioning from the judge himself. Emphasis, according to the parens patriae philosophy, was on what was best for the minor although the youth's threat to society was certainly considered as well. Even in the latter instance, however,

restriction of the youth's freedom (such as by placing him in a foster home or a public training school) was viewed as a method of long-range rehabilitation.

Within the last few years, particularly since the Gault[55] decision, the juvenile court has clearly become more and more of an adversary proceeding. This trend, together with its pros and cons, will be discussed in some detail in Chapter Six. However, the key factor here is the increasing role of the district attorney both in screening cases for sufficiency of evidence and in presenting contested cases in court, especially when the minor is represented by an attorney.

OVERVIEW OF DECISION POINTS AND ALTERNATIVES

By law, the district attorney is given no decision-making power in juvenile court. Only the probation officer can file a petition to bring a minor before the court. However, because of the almost routine presence of defense counsel in contested cases and the more rigorous demands on the type and sufficiency of evidence needed to sustain an allegation, many probation departments consult regularly with the district attorney as to whether or not they have evidence to file a petition and, if so, what charges should be filed. Some counties virtually always follow the advice of the district attorney on these issues so that, in effect, the district attorney is the one who makes these decisions--with one major exception. The probation officer is the one who has complete authority over the initial phases of screening that determine whether or not a minor is even considered as a subject to be brought before the court. In other counties, the district attorney is rarely involved in juvenile court matters.

Some law enforcement officials have expressed displeasure with the probation department retaining this power and have suggested that the district attorney should conduct all screening and should make all decisions relative to juvenile court intake--as is the case in the adult criminal courts. Others have recommended that the district attorney have concurrent authority to file a petition, i.e., to file one if the probation department does not but the prosecution feels it is appropriate.[56] Probation officials generally oppose such suggestions, asserting that they are better qualified to evaluate not necessarily

sufficiency of evidence but the minor's attitudes, family environment, treatment needs, etc., and, hence, whether or not filing of a petition is the best approach to use with each specific youngster. Juvenile probation officers responding to the staff questionnaire strongly acknowledged the need for the district attorney in juvenile court in some capacity. Only 8% felt the district attorney should have no role at all in such proceedings; 59% believed that the district attorney should play an advisory role and/or present the evidence in court; 16% supported the notion of concurrent ability to file a petition; and, surprisingly, 17% asserted that the district attorney should make all decisions regarding the filing of 602 W&I petitions.

Study staff support the majority view of juvenile probation officers. The district attorney unquestionably is needed to assist in evaluating evidence in many cases prior to filing of a petition and in presenting that evidence at least in contested cases when the minor is represented by counsel, the district attorney "shall, with the consent or at the request of the juvenile court judge, appear and participate in the hearing to assist in the ascertaining and presenting of the evidence." However, it is the study staff's strong belief that, just as prosecution attorneys are better trained in evaluating and presenting legal evidence, probation officers are best qualified to evaluate minors, their families, their attitudes, their needs, and the other subjective factors relevant to the best choice of diversion or correctional strategies needed in each case, including whether or not a minor should be brought before the court. Section 655 W&I already provides a check on the probation officer's decision making by allowing any citizen (certainly including a police official or the district attorney) to request that the court review the probation officer's decision. If the court deems it appropriate, it may then order the probation officer to file a petition.

> *RECOMMENDATION 6. Probation officers should retain sole authority for filing 601 and 602 W&I petitions in juvenile courts, but should make regular use of district attorneys to assist them in evaluating evidence and deciding what charges to file as well as to present the evidence in contested cases where the minor is represented by counsel.*

INFLUENCES ON DECISION MAKING

Probably because of the relatively new role of district attorneys in juvenile court, no data was found that clearly indicates what influences the district attorneys in making specific recommendations to the probation officer relative to the filing of petitions. Presumably, the criteria would be those of Section 700 W&I relative to the degree of evidence needed to establish jurisdiction, viz.:

> "proof beyond a reasonable doubt supported by evidence, legally admissible in the trial of criminal cases, must be adduced to support a finding that the minor is a person described by Section 602, and a preponderance of evidence, legally admissible in the trial of civil cases must be adduced to support a finding that the minor is a person described by Section...601 (emphasis added)."

It is doubted if many other factors, such as prior history or current attitudes or stability of the minor or his family, are strongly considered, if they are considered at all.

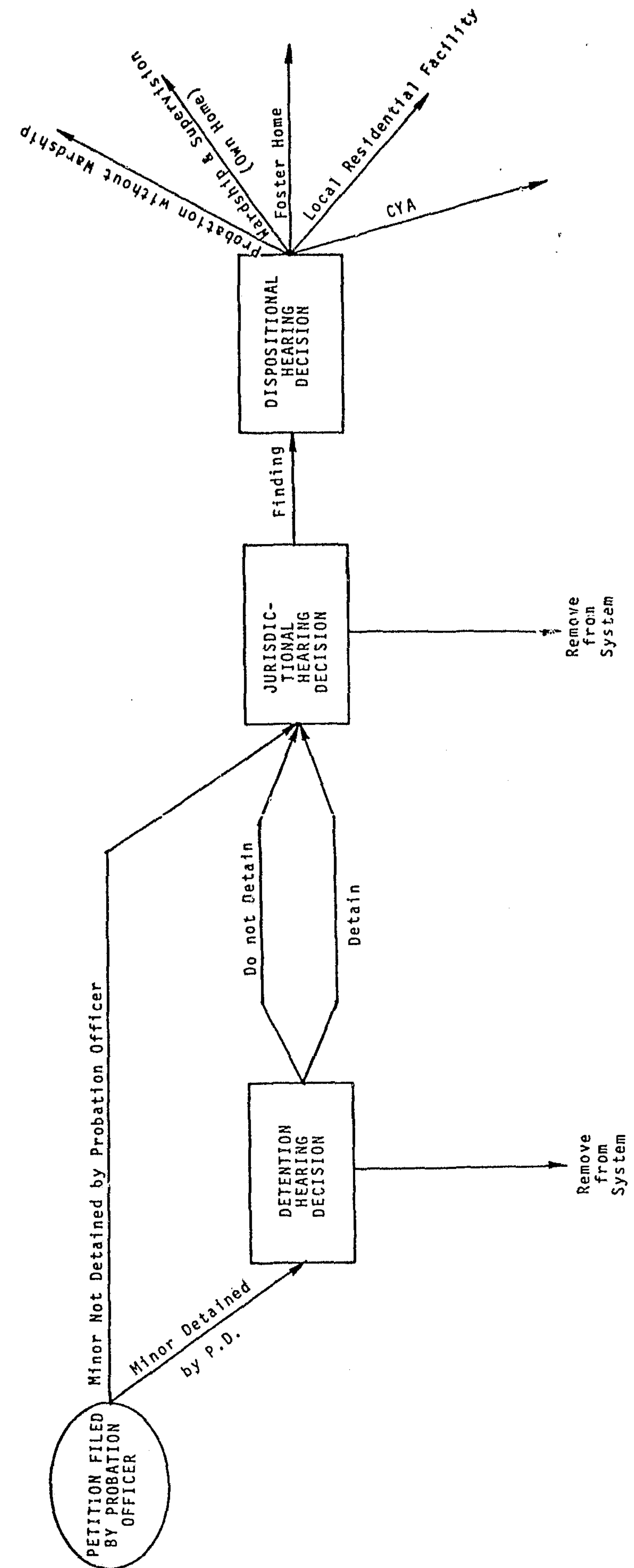
COURTS

While a judge does not become involved in juvenile matters unless a formal petition is filed by the probation officer, he is then unquestionably the key decision maker in the juvenile justice system. Only a judge (or referee) can keep a minor detained more than three judicial days. Only a judge can find a youth "guilty" of any offense. Only a judge can take a minor from the home of his parents. In many counties, a juvenile is not considered to have a formal "record" unless he has been made a ward by the court. Hence, it is apparent that the court plays by far the most critical role in the juvenile justice system both in terms of restricting a minor's freedom and in placing a label or stigma on him that may follow him the rest of his life.

OVERVIEW OF DECISION POINTS AND ALTERNATIVES

Exhibit 2-12 indicates the Juvenile Court Intake Process in terms of the role played by the court itself. It is

Exhibit 2-12. JUVENILE COURT INTAKE PROCESS



evident that there are three points, all of them involving formal hearings, at which the court must make a decision: (a) the detention hearing, (b) the jurisdictional hearing, and (c) the dispositional hearing.

Detention Hearing

All minors detained by the probation officer must have a detention hearing within three judicial days after arrest or, more accurately, within one day after a petition is filed. At this point, the court has three alternatives: (a) dismiss the case and remove the minor from the system, (b) order the minor detained until a formal jurisdictional hearing to determine if the petition can be sustained, or (c) release the minor from custody but still require him to appear for a jurisdictional hearing. Unlike the adult system, the court, if it continues the matter for a jurisdictional hearing, must set that hearing within a rather short period as specified by Sections 636 and 657 W&I.

Little data is available on how often minors are detained. As mentioned earlier, Los Angeles County estimates 10% to 20% of those youth brought to a detention hearing are released pending their jurisdictional hearing.

A curious finding emerged from the two groups of criminal justice personnel responding to a question regarding the appropriateness of juvenile court detention orders. Ten percent of the top criminal justice officials who answered the question felt that minors were ordered detained too often and 32% believed they were not detained often enough; the remaining 58% thought minors were detained "to the appropriate extent." By contrast, only 4% of juvenile probation staff felt that minors were detained too often and 52% complained that they were not held as often as they should be. This variation is probably due to the fact that probation officers are the ones who request the detention hearing in the first place, but it does question the often-stated belief that probation officers are the most liberal or "soft-hearted" members of the criminal justice system.

Jurisdictional Hearing

At times the jurisdictional hearing is combined with the detention hearing. However, normally it is a separate hearing at which the minor may either plead to the allegation or request a formal court trial. Whereas a decade ago attorneys were a rarity at such hearings, they now represent most youth, particularly if the minor denies the allegation. In fact, 700 W&I mandates the court to appoint counsel, if the minor does not have one, "unless there is an intelligent waiver of the right to counsel by the minor." At this hearing, the court has only two alternatives: make no finding and remove the minor from the system or make a finding that the minor falls within Section 601 or 602 W&I. In the latter instance, the court will then hold a dispositional hearing to determine what should happen to the youngster.

Whereas the court sometimes played a dual role of hearing the evidence and, at the same time, acting as interrogator and presenter of evidence, a relatively recent California Appellate Court decision specifically prohibited the latter role. In re Ruth H.,[57] a 1972 case, declared that the minor's constitutional right to due process was violated when a juvenile court referee assumed the dual role of presenting the case and judging contested matters of fact and law.

Exhibit 2-13 illustrates the percent of total initial petitions filed that were dismissed from 1963-1972. While the total number of petitions has risen considerably during that time, the percent of cases dismissed has doubled from 14% to 28%. As mentioned previously, this is almost assuredly due to the greater emphasis on juvenile rights, the increased role of defense attorneys, and the more rigorous legal criteria for making a finding.

Dispositional Hearing

The timing of this hearing varies from county to county. A sizeable number of jurisdictions conduct it immediately following a finding of 601 or 602 W&I while others continue the matter to a separate date. Traditionally, probation departments submitted statements on both jurisdictional and dispositional (social study and recommendation)

Exhibit 2-13. JUVENILE COURT DISPOSITIONS RESULTING FROM INITIAL PETITIONS FOR DELINQUENT ACTS: 1963-1972

YEAR	TOTAL (Less Transfers)	Petition Dismissed		Non-Ward Probation		Wardship		Remand to Adult Court		CYA	
		#	%	#	%	#	%	#	%	#	%
1963	34,753	5,006	14	4,185	12	24,597	71	220	1	745	2
1964	35,234	4,808	14	4,633	13	24,842	71	279	1	672	2
1965	36,759	5,240	14	4,828	13	25,646	70	333	1	712	2
1966	38,757	6,259	16	5,270	14	26,247	68	337	1	644	2
1967	43,007	7,968	19	5,552	13	28,311	66	600	1	576	1
1968	48,707	10,163	21	6,500	13	30,535	63	1,018	2	491	1
1969	58,374	13,909	24	7,800	13	35,451	61	797	1	417	1
1970	54,716	14,300	26	6,965	13	32,158	59	914	2	379	1
1971	54,147	14,483	27	7,068	13	31,449	58	894	2	253	1
1972	49,788	13,940	28	6,170	12	28,907	58	509	1	262	1

SOURCE: Bureau of Criminal Statistics, Crime and Delinquency in California; Adult and Juvenile Probation, various years, Sacramento.

issues in the same report. Many still do, while others do not prepare a social study until after a finding has been made. Whichever technique is used, it is critical that the court not read the social study, which includes the minor's prior history and the probation officer's assessment of him and the offense, until and unless a finding is made. Failure to follow this procedure violates Section 701 W&I which prescribes that: "At the (jurisdictional) hearing, the court shall first consider only (emphasis added) the question whether the minor is a person described by Sections...601 or 602."

The separation of jurisdictional and dispositional decision points is commonly referred to as a bifurcated hearing. A California Court of Appeal in 1968 commented on this procedure as follows:

> "Where the commission of a crime is alleged as the jurisdictional fact and the allegation is disputed, the court's error in receiving the social study before the jurisdictional hearing goes so directly to the fairness of the hearing that the resulting adjudication is not saved by article VI, section 13, of the California Constitution"[58] (which provides that judgment is not to be set aside where the error did not cause a miscarriage of justice.

In the juvenile probation staff questionnaire, 61% of the respondents felt that the jurisdictional and dispositional hearings should be held on completely separate days with the social study being prepared only after a finding is made. An additional 25% asserted that the two hearings should be kept separate, although on the same day, with the judge reading the social study only after a finding is made. Surprisingly, 14% preferred what appears to be an illegal alternative of holding the hearings immediately one after the other with the court reading the probation officer's social study before the jurisdictional hearing.

Exhibit 2-5 indicated the major types of dispositional decisions made by juvenile courts in 1972 and their relationship to the previous steps in the intake system. Of nearly 50,000 initial petitions filed in 1972, 28% were dismissed, 12% placed on probation as non-wards, 58% declared wards and placed under local supervision, 1% remanded to adult court, and .5% committed to the Youth Authority.[59]

INFLUENCES ON DECISION MAKING

Perhaps due to the traditional atmosphere of awe and reverence surrounding the courts and their highly protected prerogatives, judicial decision making remains the least studied and least known of the criminal justice components. While some data is available on the frequency with which certain types of decisions are made by individual judges or total county benches, very little is known about how they arrive at specific decisions, i.e., what influences them most.

With regard to the first two decision points, viz., the detention and jurisdictional hearings, the criteria for judicial decisions are fairly well spelled out in the law. The third type of decision, viz., disposition of youths who have been found to fall within 601 or 602 W&I, is a purely subjective one in which the judge has almost absolute personal discretion.

Detention Hearing

Section 635 W&I declares that the court must release a minor at his detention hearing unless:

> "it appears that such minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee the jurisdiction of the court...(emphasis added)."

Thus, the burden of proof is clearly on the court to justify detention, rather than on the minor to justify why he should not be held.

The most debated of the above four reasons for detaining a minor is the somewhat vague phrase: "matter of immediate and urgent necessity for the protection of such minor or the person or property of another." On August 24, 1970, the California Supreme Court, in the case In re William M.,[60] ruled unanimously that:

> "The probation officer must present a prima facie case that the minor committed the alleged offense; otherwise the court will lack the 'immediate and urgent necessity' for detention of a youth charged under Section 602. In addition the probation officer must state facts upon which he based his decision not to release the minor prior to the detention hearing."

Hence, when the "immediate and urgent necessity" clause is used as a basis for detaining a minor, the court must hold a mini-jurisdictional hearing. Even if a prima facie case is presented that the minor committed the alleged offense, this still leaves the judgment of whether or not said offense and whatever else is known about the youth amount to an "immediate and urgent necessity" up to the discretion of the court.

However, the case In re William M. complicates this issue even further. In elaborating on the question of "protection of such minor or the person or property of another," the Supreme Court further stated:

> "The Juvenile Court Law and section 635 (W&I) as properly construed, do not permit the detention of juveniles for the protection of society in situations in which an adult would be entitled to bail pending trial (emphasis added). Section 635, however, does provide ample authority for the detention of children for their own protection...."

This raises one of the most controversial issues in the trend toward protecting the rights of minors and making the juvenile court more similar to the adult criminal court system, viz., the right to bail.

If a juvenile cannot be detained "for the protection of society in situations in which an adult would be entitled to bail," then one must ask when is an adult so entitled. In a landmark decision (In re Underwood)[61] on April 18, 1973, the California Supreme Court ruled that, aside from capital offenses:

> "The purpose of bail is to assure the defendant's attendance in court when his presence is required, whether before or after conviction....Bail is not a means... for protecting the public safety (emphasis added)."

One might infer from In re William M. and In re Underwood taken together that a minor cannot be ordered detained merely for the protection of society. However, the existing legislation of 635 W&I still stands and no case law has completely clarified this issue.

> *RECOMMENDATION 7. Legislation should be developed regarding the detention of a minor to resolve the existing conflict between Section 635 W&I and the case decisions discussed above.*

Jurisdictional Hearing

As quoted in the previous section of Prosecution, 700 W&I asserts that the criterion for a finding of 601 W&I is "a preponderance of evidence, legally admissible in the trial of civil cases" while the criterion for a 602 W&I finding is "proof beyond a reasonable doubt supported by evidence, legally admissible in the trial of criminal cases...." The latter standard includes such case law rulings as rights against self-incrimination and illegal search and seizure, although some of these safeguards (notably the rights under Miranda and Gault) have been codified in Juvenile Court Law for 601 W&I cases as well.

As mentioned earlier, the court must not consider social history or any other information about the minor other than whether he falls within Section 601 or 602 W&I. However, it is our understanding that this is not rigidly followed in all areas of the State.

> *RECOMMENDATION 8. Section 701 W&I should be amended to clearly require bifurcated hearings, at least to the extent of specifying that the jurisdictional and dispositional or social study portions of the probation officer's investigation be prepared as separate documents and prohibiting the court from reading the latter until and unless a finding has been made.*

It might be noted that this recommendation is consistent with the standards of the National Advisory Commission on Criminal Justice Standards.[62]

Dispositional Hearing

As in the adult system, the final disposition decision is one totally up to the discretion of the court. Unlike the adult system, where there are minimum and maximum sentences for every offense, the juvenile court judge can select virtually any disposition he chooses.

Because of the esoteric nature of these decisions and the lack of legal or other criteria for making them, very little is known about how they are reached. Since it is well known that there is a high correlation between most types of recommendations made by probation officers and judicial decisions, it might be assumed that they are influenced by many of the same factors outlined in the earlier section on Juvenile Probation.

CHAPTER THREE

THE ADULT INTAKE PROCESS

While in many respects similar to the juvenile intake apparatus, the adult system differs primarily in terms of its greater formality and the much stronger role of the prosecution attorney. At many points, there is less discretion and fewer viable alternatives in dealing with adult offenders. For example, police or other decision makers cannot as readily release someone to his family with a reasonable assumption that the family will be responsible for that offender. Diversion programs and their degree of use at various points in the adult intake system are much more limited. Where juvenile records, even serious ones, are confidential and can be formally sealed, adult records are public records that can never be removed. Hence, the stigmatization of an adult arrest or conviction is far greater. For example, it is routine for employers, military recruiters, many licensing or certification boards, etc., to inquire into adult arrest or conviction records. Finally, the prosecution aspect of the adult system is handled entirely by trained attorneys. In summary, the system is totally an adversary one.

As in the previous chapter, this chapter examines the intake decision process and influences on it from the point of view of the police, probation, prosecution, and courts.

POLICE

> "In the justice system the police stand as the essential gateway for the entrance of the raw materials to be processed."[1]

The concept of "curb-side justice" has been used to illustrate the extreme power bestowed on the police officer. Although all laws are written as though they were to be enforced totally, the police make daily decisions as to which laws they will enforce, when, on whom, and in what manner. Obviously, their discretion is limited to some degree by such factors as legislation, case law, and community expectations. However, as the first point of contact with the

offender, they have the most alternatives of any decision makers in the criminal justice system. The police officer alone (with few exceptions) can propel someone into that system. Because of the labeling and other negative consequences of his decision to arrest, the effect on police-community relations, the impact on the rest of the system, and related cost effectiveness issues, the police officer must use this discretion with the wisdom of a Solomon.

OVERVIEW OF DECISION POINTS AND ALTERNATIVES

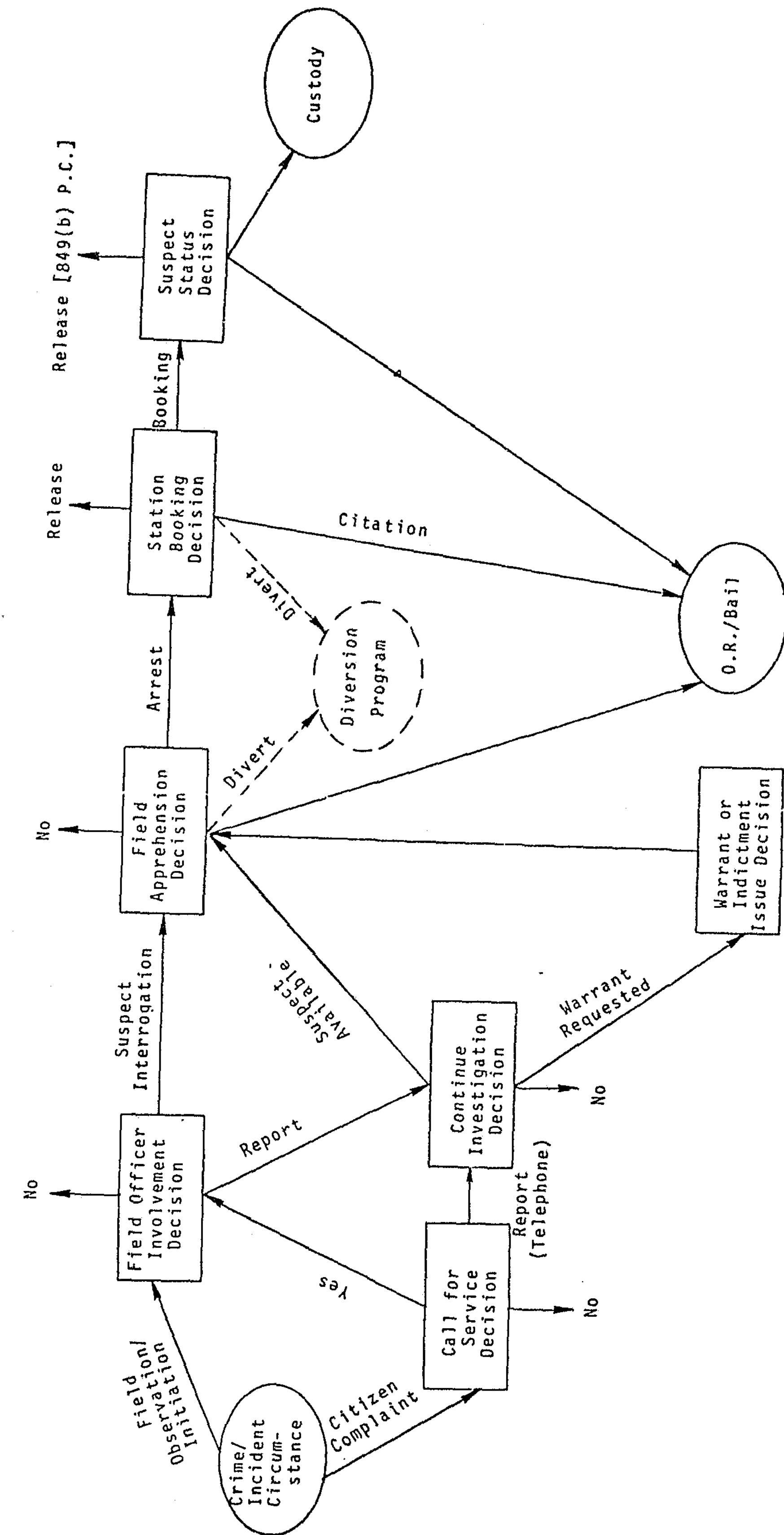
Once a decision has been made that police involvement in a given circumstance is appropriate, the investigating officer may have to make a series of complex decisions. These decision points begin with the field contact and continue through to a final disposition of the suspected offender. The following section will examine each of the relevant decision points and the alternatives available at each point. An overview of this process may be seen in Exhibit 3-1.

Field Officer Involvement Decision

The field officer is generally the determining factor as to whether or not the police become involved in any given incident or circumstance. Should he deem it inappropriate for any police involvement, then no further action will be taken by the police agency. If police involvement is appropriate and the incident involves a criminal offense, the officer must decide how he is to terminate the field confrontation. This decision is made subsequent to a field observation made by the officer or upon his response to a complaint. Occasionally the decision relative to police involvement may be made by the person receiving the citizen complaint at the police station. However, unless the complaint seems obviously fictitious, a field officer is normally dispatched to investigate the matter.

If the officer decides that involvement is proper, he is generally faced with selecting one of three usual alternatives. First, he may prepare a report when a criminal act has been committed and the suspect is unknown or not readily available for contact. This report would then be forwarded for further consideration at the "Continued Investigation Decision." Second, the officer may continue his investigation by conducting an interrogation of a known suspect. This decision will lead the officer to the

Exhibit 3-1. POLICE ADULT INTAKE DECISION POINTS AND ALTERNATIVES



next decision point, the Field Apprehension Decision. Third, the officer may involve informal diversion action. Such action is further described in the section relating to the diversion decision. A fourth alternative, arrest, may be considered. This alternative is generally considered when a criminal act was actually observed by the officer and, in essence, replaces the now unnecessary suspect interrogation alternative.

It is relevant to discuss the field interrogation operation (FI) at this point. This is a practice utilized by many police agencies to record information from field observations made by an officer. This procedure is generally used when the officer encounters an individual under circumstances believed to be unusual or suspicious. Examples would be an individual observed walking in a commercial area at 3 a.m. or an occupied automobile parked in a residential neighborhood with the occupant displaying no apparent reason for his presence.

The field interrogation is entirely a discretionary matter. The field officer makes the sole determination as to whether or not to invoke this practice. The generally accepted criteria and authority are found in Section 647(e) P.C. This section requires a person to identify himself and account for his presence and actions when the public safety demands such identification. Without further definition, such as in departmental policies, the officer is left to determine what circumstances threaten the public safety sufficiently to warrant the stopping, questioning, and recording of information to a citizen. While this field interrogation process is not a separate entity in the intake process, it is a controversial aspect of the field officer involvement decision and hence worthy of some comment here. Several studies are currently being conducted to clarify the utility of the FI process.

Continue Investigation Decision

This decision point is usually within the purview of the detective division. Generally, field reports are received and reviewed, resulting in the decision as to whether or not further investigation is warranted. Critical criteria are probable cause to believe a crime has been committed and that a specific suspect committed the crime. If a suspect is identified, this information may be transmitted to field officers who must then make the

Field Apprehension Decision. Another alternative is to request a warrant from the prosecutor. The decision to seek a warrant or indictment is made after further investigation and concurrence by a district attorney. The warrant or indictment is sought only after identification of the suspected offender.

Field Apprehension Decision

This police decision point is reached once a suspected offender has been identified and confronted. The alternatives available to the field officer are to release the subject, effect an arrest and issue a citation, divert the subject to a formal diversion program, or to physically detain the subject. Not all of these alternatives will be available in each case. Several statutes mandate the action to be taken by the officer. For example, Section 40302 of the California Vehicle Code requires an officer to arrest and incarcerate a suspected offender who has violated any one of six specified offenses.

If sufficient cause exists for the arrest, the officer may effect the arrest and follow one of three courses of action. He may issue a citation to the offender for a later appearance in court, send the offender to a formal diversion program, or further detain him. The option to issue a citation is defined in both the Penal and Vehicle Codes and most local ordinances.

The alternative of diversion at the police level is extremely limited when the offender is an adult because of the paucity of formal programs into which the offender may be placed. The only formal programs available at this point are those under 647(ff) P.C. by which common drunks may be placed in a detoxification center and those under 5150 W&I by which a mentally disturbed person may be placed under psychiactric care. Such action may divert the offender from any further proceedings in the criminal justice system.

The formal diversion of an adult offender requires the establishment of probable cause to effect an arrest. In most instances, police officers will effect the arrest prior to diverting an adult offender. There is considerable controversy whether the police responsibility

extends to determining the appropriateness of diverting a suspected offender. This is discussed in Chapter Four on Diversion.

The decision to arrest and further detain a suspected offender is made once sufficient probable cause is found and the nature of the offense suggests incarceration or further interviewing at the station. The decision to incarcerate may be made in the field or following subsequent interviewing at the station. The immediate decision to incarcerate eliminates the next decision point and the officer is then concerned with the suspect's status. The alternatives available at this point are discussed in detail under "Suspect Status Decision."

Station Booking Decision

Once the suspected offender has been taken to the station for further interviewing and evaluation of evidence, the officer has several alternatives. He may release the subject if further investigation casts doubts on the probable cause to detain further; he may divert the offender if programs are available; he may release the offender on a citation to appear later (if the offense is a misdemeanor); or he may decide to book the offender in a jail facility. It might be noted that release may be a suspension of criminal justice system processing pending further review or an outright release from the system. The decision to release an offender on citation is based upon the same criteria as apply at the Field Apprehension Decision point. This should center primarily around the question of whether or not the offender is likely to flee the jurisdiction.

Suspect Status Decision

At this point the suspected offender is actually incarcerated; the decisions and alternatives available to the police are limited. The police offer recommendations and supporting documentation relative to the continued detention of the suspect or the release of the suspect on his own recognizance (O.R.). Police officers will normally recommend continued detention of a suspect if they believe there is a likelihood that the offender will continue his criminal behavior, cause harm to another, flee the jurisdiction or otherwise represent a threat to the community or himself.

The police officer may also release a suspect on a citation at this point. This is commonly called "police O.R." or "jail O.R." While in most cases such a release would have been determined at an earlier decision point, occasionally the field officer will determine the need for actual booking prior to release on citation. This decision may be based on the need to obtain the fingerprints and/or photograph of the suspect for further investigation or to reduce the likelihood of the suspect successfully fleeing the jurisdiction.

Another alternative available to the police at this point is the complete release of the suspect pursuant to Section 849b P.C. Such a release negates the arrest and changes the apprehension to a detention only. This release is invoked when further investigation clears a subject of criminal involvement or when further prosecution is deemed inappropriate (by the police or the prosecutor). Factors influencing the decision to release a suspect after booking are considered in the next section.

INFLUENCES ON DECISION MAKING

The previous chapter summarized key findings in earlier studies on police decision making. In general, the literature indicates little difference in the predominant factors that influence decisions made about juveniles or adults. In an effort to identify further the factors that influence police decisions with adults and to what extent that influence exists, this study surveyed approximately 575 law enforcement officers throughout California. Twenty-five factors were identified which were believed to influence to some degree the decisions made by police at the line level. The officers were asked to rate the influence or importance of these factors relative to the decision to arrest, the decision to seek a warrant, the decision to release a detained suspect pursuant to Section 849(b) P.C., and the decision to release a suspect on a citation prior to or after the booking process.

Exhibit 3-2 lists the factors that the officers were asked to rate and reflects the average influence or importance at each decision point. Not every factor is applicable to all decision points. Therefore, no rating factor is shown where the factor does not apply to a particular decision point.

Exhibit 3-2. LAW ENFORCEMENT OFFICERS' RATINGS OF INFLUENCES ON VARIOUS DECISIONS

Factors	Decision to Arrest	Decision to Seek Warrant	Decision to Release 849b	Decision to Cite Prior to Booking	Decision to Cite After Booking
The establishment of sufficient cause to arrest	8.6	6.4			
Officer's opinion as to the seriousness of the offense	7.1	6.1			
Legally dictated actions which reduce the latitude of discretion	6.4		7.6	7.9	7.9
The seriousness of the offense according to community standards	6.1		6.5	7.1	7.2
Departmental policy regarding specific actions to be taken	5.8	6.3	7.7	8.4	8.5
The probability of prosecution, including the victim's willingness to prosecute	5.5	6.4	7.7	6.7	6.7
The demeanor or attitude of the suspect	4.9	4.2	5.2	6.4	6.3
The suspect's previous criminal history and/or present status in the criminal justice system (e.g., probation, parole)	4.5	5.0	6.8	8.0	8.0
Prior knowledge of, or past contacts with, this particular suspect	4.2	4.7	6.5	7.2	7.1
The availability of the suspect for future contact	4.0		6.9	8.2	8.0
The demeanor and status of the victim	3.2				
Suspect potential to provide police intelligence information	3.1		5.8	5.6	5.5
The opinions of fellow officers regarding this type of offense	3.0				
Lack of suitable alternatives to arrest (e.g., if appropriate diversion or citation programs were available, arrest may not have been made)	2.9		4.7	4.7	4.5
Other criminal justice agency policies (such as D.A. and courts)	2.9	6.6	5.3	4.4	4.3
The sex, race, and age of the suspect	2.4	2.7	2.9	3.2	3.1
The apparent social status of the suspect	2.2	3.0	3.1	3.4	3.5
Time of day	2.1				
Holding time constrictions	2.0		6.0	5.3	5.8
Officer's work backlog at the time of contact	1.9	3.5			
Time of the suspect contact in relation to the end of tour of duty	1.8				
Inability to locate the suspect		7.3			
Case subject to legal technicalities or legal interpretation		6.9			
The period of time between the offense and the identification of the suspect		6.7			
The suspect's residential location (outside of your immediate jurisdiction or county)		6.0			

The following discussion examines the most significant factors influencing the choice of alternatives at each critical decision point. The discussion begins at the field apprehension decision point as it is here that the officer makes first contact with the suspect and must decide to arrest or release him. It should be stressed that all references to the survey results are simply indications of what the respondents said influenced their decision making. As has repeatedly been stressed in the literature of decision making, people are often unaware or unwilling to indicate what really influences them or how much.

Decision to Arrest

The purpose of arrest is prosecution. The decision to arrest is primarily a police decision although the prosecutor and the court are involved in the decision to issue an arrest warrant. The decision to arrest must be predicated on probable cause--the belief that a crime has been committed and the person to be arrested committed the offense (836 P.C.). Arrest on "suspicion" or for purely investigatory purposes is of doubtful legality. While the decision to arrest is generally made at the Field Apprehension Decision point, previous discussion relating to alternatives indicated that this decision may be postponed to a later decision point. While this is a possibility, it should be understood, particularly in the case of adults, that the decision to arrest is made prior to prolonged physical detention. This is necessitated by the legal requirements for detention of a suspected offender.

It should be noted that the degree of discretion in effecting an arrest ranges from NO discretion, in the case where a warrant has been issued, to GREAT discretion, as when a juvenile offender is involved. The most significant factor influencing this decision was rated by respondents as the ability to establish probable cause to effect an arrest as defined by Section 836 P.C.

Once the officer has determined that probable cause to arrest exists, he is further influenced by his perception of the seriousness of the offense. As a human being, the officer is not exempt from assigning certain moral considerations to criminal offenses. The officer's determination of the seriousness of an offense is based on

his own experiences and beliefs and the perceived seriousness assigned by the community. The community utilizes several vehicles for making their desires known relative to the resources and effort they prefer to be exerted in dealing with specific types of deviant behavior. The police officer will consider these indicators in determining the seriousness of an offense and the alternative he should select. While the total survey results rated the officer's own opinion of the seriousness of the offense 7.1, respondents from Los Angeles County agencies rated it 6.7 and the remaining officers rated it 7.4.

Other moderate influences reported by the survey sample were, in order: legally dictated actions (such as warrants or mandates to arrest certain Vehicle Code violators), community views of the offense, department policy, and the probability of prosecution.

Presently, few departments have extensive specific policies which prescribe actions to be taken by officers in given circumstances. The larger departments, in general, have more policies and are more aware of the policies as a factor in the decision to arrest. Response from Los Angeles County law enforcement agencies ranked departmental policy higher (6.8) than did the rest of the respondents (5.1), resulting in the sample average of 5.8. With regard to the probability of prosecution, the officer is naturally influenced by his previous experiences with the prosecuting attorney's office as well as the willingness of the victim to prosecute. For example, if the officer is investigating a complaint of petit larceny and the victim indicates an unwillingness to prosecute, the officer is likely to release the suspect without arrest. Likewise, if complaints have been refused in similar minor offenses by the prosecuting attorney's office, the officer is likely to release the suspect. As a study of prosecution by Cole indicated, "The police are dependent upon the prosecutor to accept the output of their system; rejection of too many cases can have serious repercussions affecting the morale, discipline, and workload of the force."[2]

The survey showed that officers claimed the demeanor of the suspect had little influence on their decision in considering arrest (total sample 4.9; Los Angeles 4.5; other agencies 4.2). The reader should be cautioned to

consider this in its proper perspective. This factor, commonly referred to as the "attitude test," is initially given secondary consideration by an officer. After he has considered the more significant factors and determined the existence of probable cause for the arrest, the attitude of the suspect becomes a primary consideration in selecting an alternative. The increased influence of this factor should be noted in Exhibit 3-2 relative to consideration for release of a suspect on citation. Contrary to popular belief, survey respondents claimed that the time of contact with the subject, relative to the officer's end of tour and the workload of the officer, had almost no influence on their decision to arrest.

Decision to Divert

In the case of adult offenders, diversion alternatives available to a police officer are extremely limited. A very informal type of diversion may be made at the Field Officer Involvement Decision point. For example, an officer may make such a decision by suggesting, during an investigation of a family dispute, that the parties seek professional counseling at a later date. This action is frequently taken, as the experience of most officers dictates that prosecution of such cases is highly unlikely. The wife who insists that her husband be arrested at night is often just as anxious to get him out of jail the following day and usually refuses to prosecute. The impact of crisis intervention units on adult offenders has not been sufficiently tested to evaluate their effectiveness. It is reasonable to consider that such units may change informal diversion to something more formal as more cooperation between police and social service agencies is accomplished.

Another informal type of diversion frequently employed at this point involves the common drunk. The officer may establish necessary cause to arrest but may choose to release the offender to a responsible party, usually a relative, or even take him home.

The aforementioned "diversion" efforts are strictly informal yet numerically, the most common. The only legally prescribed diversion programs usable by the police, as mentioned earlier, involve detoxification facilities for drunks and psychiatric emergency wards for the mentally

disturbed. Major criteria in selecting these alternatives are probably availability of space, the officer's knowledge of the person's prior history, and the suspect's cooperation with the police.

While the extent of either formal or informal diversion is unknown, some counties have indicated that the alternate placement of drunks in detoxification centers has resulted in the need to hire civilians to provide maintenance services in the jails traditionally performed by revolving-door alcoholics. Severe problems remain with the lack of adequate diversion alternatives for mentally disturbed and other types of offenders, discussed in Chapter Five on Inappropriate Clientele.

Survey results indicate that police are substantially more conservative about the use of diversion for adults than for juveniles. Where over half of those questioned favored the expansion of juvenile diversion programs (which already are used far more extensively than those for adults), only about one third supported the expansion of such programs for adults and roughly another third wanted them curtailed or eliminated. With regard to other aspects of diversion, Exhibit 3-3 shows that, as with juveniles, the vast majority of law enforcement officials feel that they should participate in screening adults for diversion and that there should be "pull-back" mechanisms for reinstating criminal proceedings against those who fail in such programs. Again, about half thought that police should be one of the agencies involved in providing diversion services.

It is suspected that some of the resistance to expanded use of diversion for adults is due simply to the lack of effective programs and that if such programs existed and the police had a say in screening candidates, they would be far less hesitant to use them, at least for minor offenders.

Decision to Seek a Warrant

One might reasonably ask why, once a suspect is identified, an arrest is not made immediately. Why do the police seek arrest warrants rather than effect an immediate arrest? The most frequent reason for seeking a warrant relates to the police ability to locate a suspect. This appeared to be the most significant factor reported in the survey. Obviously, if the police are not able to immediately locate a suspect, it is beneficial to obtain an arrest warrant and

Exhibit 3-3. LAW ENFORCEMENT VIEWS OF ADULT DIVERSION

	Sheriffs & Police Chiefs	Law Enforcement Staff
Current Use of Diversion Programs:		
Under-utilized	20%	20%
Appropriate extent	30%	18%
Over-utilized	36%	35%
No opinion	14%	27%
Future Use of Diversion Programs:		
Expand	30%	37%
Keep as they are	30%	24%
Curtail	28%	24%
Eliminate	8%	16%
No opinion	5%	---
Should Police Take Part in Diversion Screening:		
Yes	83%	88%
No	17%	12%
Should Police Take Part in Providing Probation Services:		
Yes	46%	54%
No	54%	46%
Should the Criminal Justice System Retain "Pull-back" Ability for Divertees Who Fail:		
Yes	100%	94%
No	---	3%
No opinion	---	3%

enter such into an automated system. After this is done, the likelihood of subsequent arrest is greatly enhanced. Any future police contact with the suspect will generally provide the officer with information about the warrant, which will enable him to effect the arrest.

Another primary consideration of the officer is legal technicalities, notably in the areas of search and seizure. Occasionally, when an officer is uncertain what violation to charge or desires a review of the evidence to be sure of reasonable cause for arrest, he will seek the advice and concurrence of a prosecuting attorney prior to making an arrest. This procedure allows for prosecutorial and judicial review of the incident and evidence to establish and substantiate probable cause for arrest.

Another factor considered by the police and closely related to the former is the time lapse between the incident and identification of the suspect. If the time lapse is significant, the police tend to validate their reasonable cause to arrest by utilizing the review procedure previously described.

Other factors rated as having at least a moderate influence on the seeking of a warrant were relevant policies of the courts and district attorney, establishment of sufficient cause to arrest, probability of prosecution, department policy, the officer's opinion of the seriousness of the offense, and the suspect's residence outside the involved agency's jurisdiction. Comparing Los Angeles County responses to the rest of the study county agencies shows two significant differences in factor importance: existing departmental policies (Los Angeles 6.7; other agencies 6.0) and prior contact with the suspect (Los Angeles 4.3; other agencies 5.0).

Decision to Cite Prior to Booking

A decision whether or not to issue a citation must be made in cases involving misdemeanors. Section 853.6 P.C. gives the police the authority to release a suspect on his/her written promise to appear (citation). This is a discretionary decision as no requirement is imposed that mandates such release. The most significant influence, according to the survey results, is the existence of departmental policies (Los Angeles 9.0; other agencies 7.0).

In response to 853.6 P.C., many police agencies established policy that set general parameters for officer discretion. When such policy exists, it obviously affects the officer's decision considerably.

The availability of the suspect for future contact is also considered extremely important. This relates primarily to the officer's perception of the likelihood that the suspect will appear as promised. If it is believed that the suspect may not appear as required, the officer will usually book the suspect at the jail facility. To determine the likelihood of appearance, many agencies have established criteria to assist the officer in making his decision. It is generally assumed that a suspect living locally, employed, with a family, and no previous criminal record will appear as required.

The next most important factors as rated by the survey respondents were, in order: prior criminal history, legal restraints on discretion, prior knowledge of suspect, community attitudes about the offense, probability of prosecution, and the demeanor of the suspect. Three of these factors were rated significantly differently by officers in Los Angeles County from the rest of the sample county respondents:

Factor	Los Angeles County	Other Sample Counties
Legal Restraints	8.3	7.6
Prior Suspect Knowledge	6.8	7.5
Demeanor of Suspect	5.9	6.8

The apparent social status, sex, age, and race of the arrestee were consistently rated as having little influences on the officer's discretion.

Decision to Cite After Booking

The criteria to release a suspect on a citation following booking (i.e., "jail O.R.") were rated essentially the same as described above, except that "holding time constrictions" was rated slightly higher, as might be expected. The question then arises as to why police officers would elect to book a suspect prior to releasing him. As mentioned previously, the booking process to issuing a

citation is often used to obtain the fingerprints and/or photographs of the suspect to facilitate further investigation and to maximize the likelihood of obtaining his presence in court in the future.

Realizing that officers might employ this procedure to intimidate a suspect, several police agencies now require that an officer show cause why a misdemeanant is booked prior to release. Some police agencies, on the other hand, have responded in quite the opposite manner and require the booking of a subject prior to release. This inconsistency is one example of serious inequality of justice in the intake system.

There is also a potential problem of one police agency granting this type of release after the arresting agency has declined to use it. For example, Section 853.6 P.C. allows the booking deputy or his superior to release a misdemeanant on citation. We believe such a problem would be greatly reduced if the local agencies adopted reasonable and consistent policies relative to use of citation release.

Decision to Release Pursuant to Section 849(b) P.C.

The decision to release a suspect pursuant to Section 849(b) P.C. may be made subsequent to arrest. This section states:

> "Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:
>
> (1) He is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.
>
> (2) The person arrested was arrested for intoxication only, and no further proceedings are desirable.
>
> (3) The person was arrested only for being under the influence of a narcotic, drug, or restricted dangerous drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable."

Questionnaire respondents asserted that the strongest influencing factors in the use of 849(b) P.C. were the existence of departmental policy and the sufficiency of evidence to seek prosecution. Where clear departmental policies exist, officers are aware of certain requirements and expectations, and some consistency is established. This is evident in the fact that Los Angeles County agencies rated departmental policies at 8.4, compared to the other agencies' rating of 7.2.

Next in importance, in the view of responding police officers, were "legally dictated actions" that limit their use of discretion. These mandates relate to constrictions imposed both by law and prosecuting attorneys. California law requires that complaints be filed within 48 hours of arrest. The decision to release a suspect subsequent to arrest is generally made following the refusal of the prosecuting attorney to proceed further. Typically, in California 20 to 25% of felony arrestees are released without a complaint being filed.[3] While the data are not readily available, estimates indicate that half or more of these releases occur as a result of the prosecutor refusing to file a complaint. Specific data relative to the decision to release pursuant to 849(b) P.C. and the factors influencing the decision are seriously lacking. Exhibit 3-4 provides sample data for Part I arrests.[4] The last two columns show the use of 849(b) P.C. In this case, 37% of the arrestees are released, 58% of which are due to denial of a complaint by the district attorney's office. Although this data is probably not representative of the state, the magnitude suggests a need for improved statewide data collection pertaining to 849(b) P.C. release decisions, both by law enforcement and prosecution.

Summary

As was stressed in the preceding chapter on the Juvenile Intake Process, police officers daily must make decisions that affect the lives of those they contact years beyond the point of contact. Aside from such dangers as the internalization of a delinquent or criminal self-image, development of a "reject the rejectors" attitude, and the jeopardizing of police-community relations, the police must be continually concerned with defining their role

Exhibit 3-4. DISPOSITION OF ADULT ARRESTS

SEVEN MAJOR OFFENSES
LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
JULY-OCTOBER 1973

	Total Arrests	Disposition (%)				
		Felony Filed	Misdemeanor Filed	Turned over to Other Agency	D.A. Denied Complaint	Other Reason
Part I Offenses	3443	23.6	31.6	7.8	21.3	15.7
Aggravated Assault	1150	14.8	46.3	0.8	27.4	10.6
Burglary	1050	31.1	29.3	5.4	18.2	15.9
Grand Theft Auto	517	15.3	15.1	29.2	13.5	26.9
Robbery	438	30.8	21.0	6.6	24.4	17.1
Grand Theft	172	29.6	31.4	8.7	16.9	13.4
Rape	73	42.5	9.6	1.4	20.5	26.0
Homicide	43	79.1	---	4.7	11.6	4.7

SOURCE: Los Angeles Sheriff's Department, Management Staff Services Bureau

CONTINUED
1 OF 3

in society, remembering the purpose of their existence, and exercising just use of the tremendous discretion and power given them by the community.

Police administrators must accept their responsibility as policy makers and trainers. They must maintain current guidelines for their staff in the use of discretion at all key decision points. They must assure that their staff are trained and skilled in both on-the-spot and review decision making. Reflecting the concerns of citizens across the country, the American Bar Association in a recent publication[5] stressed that police discretion must be structured and controlled. This is not to say that it should be hamstrung, but rather, that police administrators should provide policy that defines parameters and training that teaches how to operate effectively yet justly within those parameters. A similar emphasis on the use of citations is shown in the Standards and Goals report: "Every police agency immediately should make maximum use of State statutes permitting police agencies to issue written summonses and citations in lieu of physical arrest or prearraignment confinement."[6]

> *RECOMMENDATION 9. Each law enforcement agency should spell out specific policy and procedure guidelines to encourage maximum use of citation for eligible misdemeanants.*

One well known example of such a policy is that of the Oakland Police Department, which has been copied by a number of other agencies and was recently recommended for adoption throughout Alameda County.[7] This policy commonly called the "Oakland Plan," asserts that every misdemeanant will be given a field citation per 853.6 P.C. unless:

(1) He requires medical care or is unable to care for himself.

(2) There is a likelihood the offense would continue or the person or property of others would be endangered.

(3) The person cannot or will not furnish adequate identification.

(4) Prosecution of that or another offense would be jeopardized.

(5) There is a reasonable likelihood the person will not appear in court.

(6) The person demands to be taken before a magistrate or refuses to sign the citation.

The subject must, however, return for fingerprinting the following day. If the field officer does not issue a citation, he must specify his reason according to the above criteria on the arrest report.

> *RECOMMENDATION 10. Each law enforcement agency should spell out specific criteria to minimize the degree of penetration of minor or marginal offenders into the justice system and to impose the least restriction on the freedom of offenders consistent with adequate protection of society; guidelines should be established to provide "jail O.R." routinely for eligible offenders.*

Study staff strongly support the policy of some law enforcement agencies (exemplified by the "Oakland Plan" for citations) that require their personnel to justify why they take a more restrictive course of action over a less restrictive one, e.g., why they arrest and book a misdemeanant rather than citing him or why they detain an offender in jail rather than granting "jail O.R." per Section 853.6(i) P.C.

Finally, there is virtually no data available as to either the frequency of alternatives selected at each decision point or their cost effectiveness. Given the importance of the intake decisions by the police to the rest of the criminal justice system, this "flying blind" tradition can no longer be afforded. As recommended in Chapter Two, it is essential that police agencies routinely gather data on the frequency and cost effectiveness of the alternatives selected by their staff at each decision point to allow for more meaningful evaluation and planning.

> *RECOMMENDATION 11. Each law enforcement agency should implement routine data collection procedures which would enable administrators to evaluate departmental operations regarding intake decision making; specific data regarding release [849(b) P.C.] should be collected and analyzed.*

PROBATION

> "The special province of the correctional expert in these (intake) determinations is in assessing an offender's need for and susceptibility to various sorts of correctional treatment."[8]

In contrast with the juvenile intake system, probation officials are not involved in adult prosecution. Aside from O.R. screening in some counties, they are normally not even involved in the intake process unless specifically asked for information by a court. Their primary role is one of assisting the courts in dispositional decision making, generally at the point of either diversion or sentence.

OVERVIEW OF DECISION POINTS AND ALTERNATIVES

Adult probation officers are given no legal authority to make any decisions in the intake process. However, they do frequently make recommendations to the court which require a decision in the sense of selecting from alternative recommendations available. Exhibit 3-5, entitled Adult Probation Intake Process, outlines the major types of recommendations made by many adult probation departments and the normal alternatives available at each "decision" point. These consist of: (1) pretrial release recommendations; (2) recommendations for or against diversion and, later, for or against dismissal of the charges; (3) pre-conviction (131.3 C.C.P.) or other special screening decisions prior to a finding of guilty; and (4) presentence recommendations. Except for the last type of decision making, adult probation involvement in the other type of programs has been relatively recent and still varies markedly between counties.

Pretrial Release Recommendations

Pretrial release refers here to release-from-custody programs under 1318.1 P.C. when such programs are operated by the probation department (often they are run by other agencies or volunteers). These programs sometimes provide information relevant not only to the granting of release on own recognizance (O.R.) but also to the reduction of bail. In some programs, staff make formal

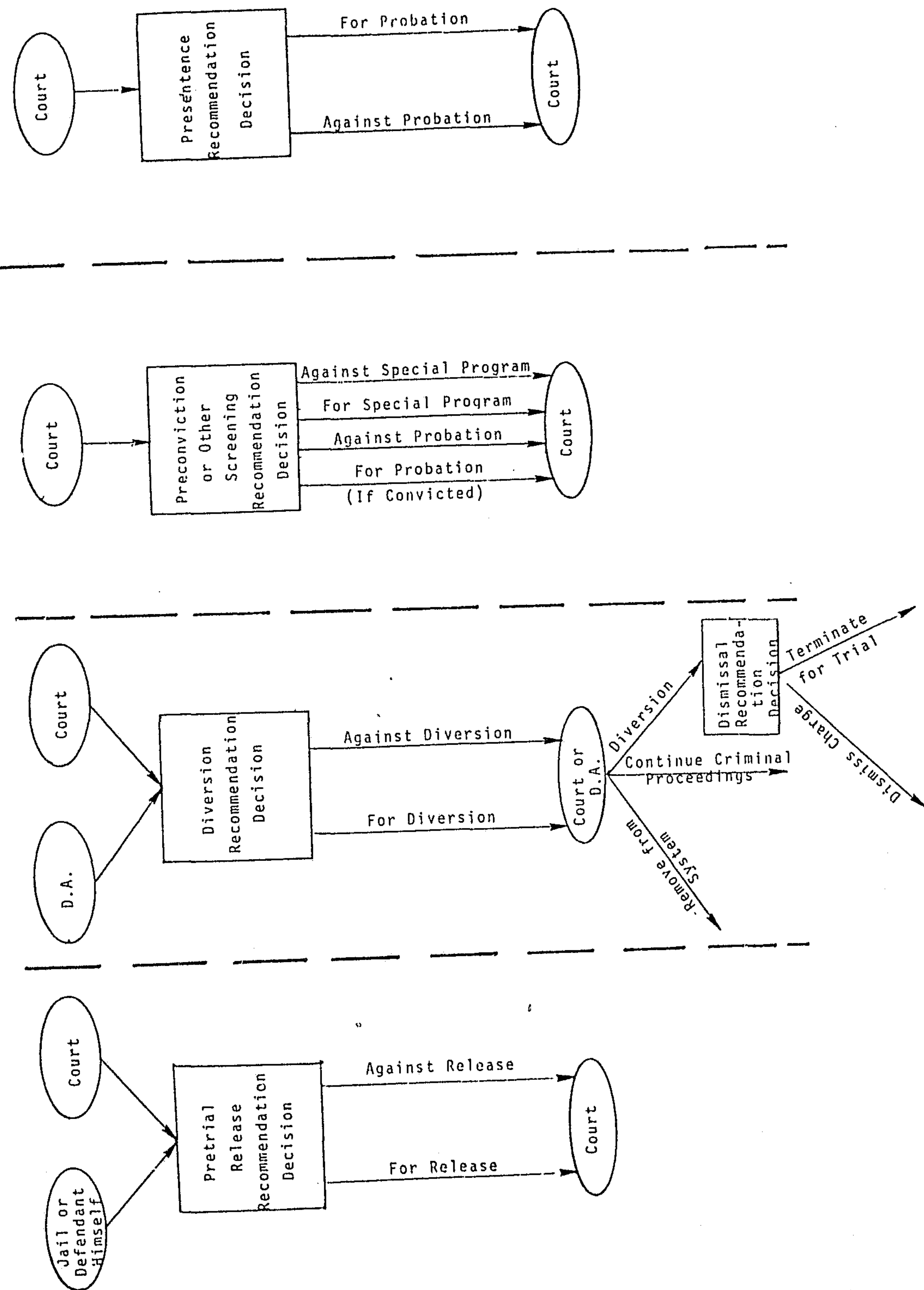


Exhibit 3-5. ADULT PROBATION INTAKE PROCESS

recommendations as to whether or not the defendant should be released. In others, a point system (such as the Vera scale or an adaptation) is used to predict the likelihood of appearing in court. In still other programs, staff simply provide relatively objective information to the court without any type of recommendation. Normally these programs function after law enforcement agencies have declined, in effect, to release the person under 853.6a P.C. (on-the-street citation) or 853.6i P.C. ("jail O.R."). Marin County has a unique project, involving both Probation and Sheriff's Department staff in making joint "jail O.R." decisions prior to arraignment. Fresno County Probation Department operates an "honor release" program in which individuals are considered for release within 24 hours of booking.

Defendants in custody usually refer themselves to these pretrial release programs which are normally well publicized within the jail. Jail staff, attorneys, the courts, or other persons may also refer defendants for such screening.

Unfortunately, detailed data about these programs, most of which are relatively new, is often not maintained. Particularly difficult to obtain is data regarding recommendations by probation officers and how often these recommendations are followed. Two examples are available of O.R. recommendations on "high risk" cases, although these programs are not operated by probation staff.

Since 1965, the Los Angeles County Superior Courts have had their own O.R. program for defendants charged with felonies. Of over 62,000 such inmates investigated by court O.R. staff between January, 1965, and October 1973, favorable recommendations were made in 28% of the cases. Of these favorable recommendations, O.R. was actually granted 85% of the time and formally refused in only 2% of the cases (the others were disposed of in other ways such as bail or dismissal of the charges). During that nine-year period, the cumulative failure-to-appear rate of released defendants charged with felonies was 7%. Furthermore, it is estimated that the program has saved the county approximately $11.5 million in custodial costs.[9]

Exemplifying the potential of an expansive pretrial release program is the nationally known Des Moines, Iowa, Community Corrections Project.[10] Using a typical O.R.

program modeled after the Vera system, Des Moines judges in the late 1960's were granting O.R. to 67% of those defendants who did not post bail; of these, only 2.4% failed to appear for trial. After establishing a special "supervised O.R." program for higher risk defendants in the early 1970's, the courts have been granting this type of release to approximately 58% of those denied normal O.R.--which only a 2% FTA rate. This resulted in a drop of the Polk County average daily jail population from 135 in 1970 to 65 in early 1973.[11] Indicating the high correlation between staff recommendations and court decisions, Des Moines judges declined to grant O.R. to only four "high risk" defendants for whom project staff recommended such release during the second year of the project.[12]

By comparison, one Bay Area probation-run pretrial release program, which interviews only selected misdemeanants and does not make recommendations, reports that approximately 33% of those interviewed are granted O.R. with a FTA rate averaging about 5%.

Diversion Recommendations

While probation actually began as a type of diversion in 1841 under John Augustus, diversion has re-emerged as a popular trend only in the last few years, particularly on the adult level. As will be discussed in Chapter Four, the term "diversion" is used differently by almost all agencies and authors. However the term is defined, it is clear that increasing numbers of adult diversion efforts are being made throughout the State. While several major studies are currently being conducted, there is at present very little data about either the decision making or the success of such programs.

The only legally mandated adult diversion program, 1000 P.C. for selected minor drug offenders, began in January, 1973. The Bureau of Criminal Statistics, in its initial report on this program, indicated that about 2,000 cases are placed on this type of diversion each month under probation department supervision.[13] Using rather crude methods of estimating, the Bureau asserts that "One half of the adults diverted would not have been referred to probation departments if the Drug Diversion Program had not been signed into law." There is no clear

evidence to prove this is the case; however, the implications of placing so many persons in a correctional program who might have otherwise been handled differently (e.g., released outright) demand careful study.

If a defendant is legally eligible, the process for diversion under 1000 P.C. is rather routine and virtually automatic. The district attorney advises him of his right to be considered; if the defendant agrees, the court refers him for a probation report. If the defendant demonstrates a willingness to participate in an appropriate program, the probation officer almost always recommends diversion and the court and district attorney normally follow this recommendation. Once granted diversion, which can last from six months to two years, the defendant is assured of having the charge dismissed if he complies with the terms of his diversion program, including no new convictions. One large Bay Area county reports a success rate of 78%, meaning eventual dismissal of the charges. Failure in the program means reinstitution of criminal proceedings.

Careful study of alternative diversion programs, including a variety of measures of success and failure, is extremely critical if the criminal justice system is to operate in a manner other than "flying by the seat of its pants."

Preconviction or Other Special Screening Recommendations

While referrals by the court to the probation department for special evaluation or screening prior to conviction are infrequent, the most common type of preconviction referral is under 131.3 C.C.P. This section allows the court to request a probation report and recommendation on any defendant at any time after arrest. It is often used to assist the court in deciding whether to accept a reduced plea, particularly for registerable offenses (such as certain narcotic and sex crimes). The probation officer makes a conditional recommendation for or against probation (i.e., contingent on the defendant's being found guilty), as is often done with juvenile dispositional recommendations. This section could also be used to evaluate defendants for diversion programs.

Some jurisdictions also have other types of pre-conviction screening programs [such as the court liaison and TASC (Treatment Alternatives to Street Crime) "pre-trial intervention" programs for drug users in Northern Alameda

County] which involve evaluations and recommendations by the probation department. Such programs allow not only for evaluation but for the actual initiation of treatment services or referrals to appropriate resources, provided the defendant is willing, at a very early point in the criminal justice process. While it can be abused (as can diversion programs), the opportunity to become involved in a re-integrative program prior to conviction can be used as a constructive lever to motivate an offender to accept help. In fact, this is the basic philosophy behind TASC, a federally funded program for opiate users. The implication, of course, is that involvement in such programs will result in a more favorable disposition by the court.

Presentence Recommendations

The criminal courts must refer all convicted felons and may refer any convicted misdemeanants to the probation department for investigation, evaluation, and recommendation as to disposition prior to sentencing. This is the traditional and by far the most common decision making process in adult probation. By marked contrast with the juvenile system where probation staff have traditionally made virtually all decisions between booking and conviction, adult probation officers have normally been involved only after the point of conviction. In recent years, adult probation staff have tended to become involved in more screening and decision making prior to conviction while juvenile staff have given some of their traditional intake responsibilities to the district attorney. While both trends seem to be increasing, neither is without strong resistance on the part of some officials and citizens.

Exhibit 3-6 indicates, for the last ten years for which data is available, the trends in both probation recommendations and superior court concurrence or lack of agreement with those recommendations. Two striking facts are that, during that decade, probation officers recommended probation 50% more often and that judges followed those recommendations with the same high degree of consistency. The rise in favorable recommendations is most likely due both to the incentives of the probation subsidy program and the general shift in philosophy with regard to the value of state prison. The consistent, almost total

Exhibit 3-6. PROBATION OFFICER RECOMMENDATIONS AND COURT CONCURRENCE FOR SUPERIOR COURT CASES: 1961-1970

Year	Total	Probation Recommendations				Court Concurrence With Probation Recommendation		
		For Probation #	For Probation %	Against Probation #	Against Probation %	Total	For Probation	Against Probation
1961	24,356	9,822	40	14,534	60	90%	97%	85%
1962	21,236	8,711	41	12,523	59	88%	97%	83%
1963	23,343	10,126	43	13,217	57	87%	97%	79%
1964	22,862	10,177	45	12,685	55	87%	97%	79%
1965	25,201	11,326	45	13,875	55	88%	97%	80%
1966	25,825	12,071	47	13,754	53	87%	96%	79%
1967	25,577	14,258	52	13,319	48	85%	97%	72%
1968	30,805	17,857	58	12,948	42	86%	96%	72%
1969	37,832	23,794	63	14,038	37	85%	97%	66%
1970	40,163	24,228	60	15,935	40	81%	96%	57%

backing of favorable recommendations by the judiciary in these serious cases suggests a high degree of credibility with and trust in probation staff by individual judges. A seemingly puzzling trend is the sharp drop in following recommendations against probation, i.e., courts by 1970 were following formal recommendations to deny probation only a little more than half the time. One interpretation of this could be that the bench has become much more liberal than probation staff. A more likely explanation is that, while probation officers made many formal recommendations against probation for felons who were technically ineligible for probation under 1203 P.C., they were pointing out in their evaluations of defendants that they felt many of them would be reasonable risks for probation if the courts wished to make exceptions on the issue of eligibility.

Information on lower court cases is difficult to obtain. In 1970, a sample of 37 counties showed that probation officers recommended probation 74% of the time and that the courts followed these favorable recommendations 97% of the time; they followed recommendations to deny probation in 88% of the cases--again indicating a high degree of trust in the judgment of probation staff.[14]

Summary

By marked contrast with the juvenile justice system where probation staff have traditionally made virtually all decisions between booking and conviction, adult probation officers have normally been involved only after the point of conviction. This is part of the reason for the scarcity of data concerning adult probation decision making, even of the most elementary flow chart variety, other than for presentence recommendations.

In the past few years, an interesting paradox has occurred in the justice system. On the one hand, adult probation staff have become much more involved, at least in many counties, in screening and decision-making roles prior to conviction. In fact, indicative of the above-mentioned credibility between the criminal courts and probation staff, the judiciary has sometimes insisted that new programs prior to conviction be administered by probation personnel. One recent example is

the TASC program in a Bay Area county where the federal government wanted to place this program under health care services but the courts refused to support the program unless it was placed under probation. On the other hand, as a result of judicial decisions and departmental policy changes, juvenile probation staff have been giving more and more of their traditional tasks to the district attorney (with regard to prosecution) and to a myriad of community programs (for delivery of diversion and other treatment services). This paradox probably reflects at least two major trends within the justice system. First, there has been increased acceptance on the part of criminal justice personnel that adults, like juveniles, are often appropriate subjects for informal handling with primary emphasis on meeting treatment needs rather than punishment. Secondly, on the juvenile level, there has been both concern on the part of some law enforcement officials, who are pushing for increased involvement of the district attorney, with perceived "soft" handling of juveniles and, at the same time, disenchantment on the part of many citizens with the perceived overly harsh or at least ineffective "treatment" of their youth by the formal juvenile justice system.

As was stressed in the section on juvenile probation, failure of adult probation personnel to develop stronger credibility with the community, while not losing the trust of the judiciary, or failure to implement and provide clear feedback on the success of preconviction programs may well result in both a weakening of their professional stature and a removal of various programs from adult probation.

INFLUENCES ON DECISION MAKING

As with juvenile probation decision making, there is a paucity of reliable data on what really influences adult probation staff in making decisions (which are usually in the form of recommendations to the court). However, there have been a few significant studies on presentence recommendations. Before discussing the results of the current study staff's efforts to pinpoint the major determinants of such decision making, the results of some earlier relevant research will be briefly summarized.

The Federal Probation San Francisco Project, in examining nearly 400 probation presentence reports on federal court referrals, found that the factors most related to deputies' recommendations were, in order of significance: prior

record, confinement status prior to judgment, number of prior arrests, offense, longest period of employment, occupation, number of months employed, income, longest period of continuous residence, military history, residence to place of offense, number of aliases, marital status, legal representation, use of weapon or violence, family criminality and plea.[15] All of these factors were statistically significant at the .001 level. A further "decision-game" experiment within this project involved probation officers selecting cards with specific topical information on individual cases until they were able to arrive at and then "confirm, modify or reject" their recommendation on the case.[16] In every instance, the cards labeled "offense" and "prior record" were selected. After those two variables, deputies chose the following topical cards, in order of frequency, more than half the time: "psychological/psychiatric" (information), "defendant's statement," "defendant's attitude," "employment history," "age," and "family history." While the San Francisco Project revealed a number of objective factors statistically correlated with recommendations, the researchers pointed out that much objective data routinely gathered on each offender is "seemingly of minor significance in making a decision."

Norris, in a study of 387 adult presentence recommendations in a California probation department, found, like the San Francisco Project, a high correlation between recommendations and a variety of factors related to the present offense, prior criminal history, and general indices of social stability.[17] However, he also found a high correlation with a series of probation officers' feelings or perceptions about the defendant such as the threat he presented to the community, his remorse and cooperation, his desire and need for counseling and supervision. When the deputies who made these recommendations were independently asked to rank a list of factors "in terms of their importance in influencing your recommendation," they gave the highest ratings, by priority, to: present conviction, threat to community, record of arrests, desire for help, employment history, and degree of cooperation.[18]

As noted in the section on juvenile probation decision making, other studies have stressed the importance of the decision maker himself. A number of parole studies have also underscored the extremely powerful impact on decision making of agency or officer policy and orientation.[19]

As with juvenile staff, 250 adult intake deputies in the sample counties were asked to rate the influence of selected variables in terms of (1) their actual impact on their own decision making, and (2) how significant their impact should be. Exhibits 3-7 through 3-10 reveal the responses of total adult probation staff, line workers only, and supervisors/administrators. Once again, it should be remembered that these responses reflect only the stated views of probation staff, not necessarily the actual impact of these variables on the five decision points discussed.

Pretrial Release Recommendations

Interestingly, adult probation officers, particularly supervisors and administrators, said that the threat a defendant presents to the community has slightly more impact on their recommendations regarding pretrial release than does the defendant's likelihood to appear in court. As Exhibit 3-7 also indicates, line workers felt that threat to the community should receive proportionally an even greater weight over likelihood to appear in court than they perceive actually to be the case. This suggests that many adult probation officers believe rather strongly in preventive detention. Little difference was shown in responses from Los Angeles County and the other sample agencies. While these two factors received by far the strongest ratings, a series of other variables related to prior record, present offense, general indices of stability, and the defendant's attitudes are all rated as strong influences, although many staff felt some of these items received too much weight. As will be seen, threat to the community is also considered by far the most important factor in making presentence recommendations and the second most important in decisions regarding diversion.

As is the general trend with all types of adult probation decisions, staff tend to feel that philosophy and/or attitudes of the probation department, the courts, the community, and particularly, the decision maker himself influence decisions more than they should. In fact, attitudes of the decision maker himself is ranked as a weak influence on every decision--although this is disputed by the findings of several other studies.[20] However,

Exhibit 3-7. ADULT PROBATION OFFICERS' RATINGS OF INFLUENCES ON PRETRIAL RELEASE RECOMMENDATIONS

Factor	Does Influence Decisions*			Should Influence Decisions*		
	Total Staff	Line Workers	Supervisors & Administrators	Total Staff	Line Workers	Supervisors & Administrators
Threat to Community	9.5	9.5	9.5	9.3	9.4	8.9
Likelihood to Appear in Court	9.4	9.5	9.0	9.1	9.2	8.8
History of Social Stability (job, family ties, etc.)	8.5	8.5	8.6	8.0	8.1	7.9
Prior Record	8.3	8.4	8.3	8.3	8.5	8.0
Present Offense	8.2	8.3	7.7	8.2	8.3	7.8
Previous Agency Contacts with Defendant	7.8	8.0	7.3	7.8	8.1	7.0
Current Employment Status	7.7	7.6	7.5	7.1	7.2	6.6
Current Living Situation	7.7	7.6	7.5	7.7	7.8	7.2
Defendant's Attitudes	7.6	7.6	7.5	7.7	7.8	7.2
Department Policies and Philosophy about such Decisions	7.0	6.8	7.6	6.5	6.3	7.1
Community Attitudes	6.0	6.0	6.0	5.8	5.8	5.6
Philosophy of Courts about such Decisions	5.8	5.8	5.8	5.7	5.7	5.7
Your Own Philosophy, Attitudes, Biases, etc.	4.6	4.7	4.4	3.8	4.1	2.9

*Mean ratings on scale of 1 to 10. Ratings of 0-5 may be considered as "weak", 5.1 to 7.5 as "moderate", and 7.6 to 10 as "strong" influences.

as might be expected, supervisors and administrators consistently believe (for all types of decisions) that departmental policies and philosophy both do and should have more impact than line workers feel is the case.

Another slight tendency seen throughout the four decision-making tables is that supervisors and administrators rate many factors as having less influence, both in practice and ideally, than line workers rate them.

Criteria for O.R. or even bail reduction are highly controversial. With regard to court O.R., 1318 P.C. seems to make it clear that this is an option on the court's part, not a right of a defendant. The legal criterion specified in that section is that "it appears...that such defendant will surrender himself to custody as agreed" (i.e., will appear in court and surrender himself into custody if so ordered at a later time). One chief public defender interpreted the recent Townsend Decision as meaning that "a court should release a person upon his own recognizance unless it can be established that there is a substantial risk that the defendant will not appear for further court appearances."[21] On the other hand, many persons, including high level administrators and legislators, have indicated a strong interest in implementing preventive detention policies for "high risk" defendants.

Since the early Vera Foundation studies on O.R. releases, considerable evidence has been gathered in various research projects that allows for highly accurate prediction of likelihood to appear in court. One of the most recent and comprehensive such projects was the "Pretrial Release Program" in Santa Clara County.[22] Since a consistent finding has been that the failure-to-appear rate for persons who are O.R.'d is about the same as for those who post bail, every county should implement such a program throughout the county.

> *RECOMMENDATION 12. Every county should implement a countywide O.R. program geared at releasing all defendants who are as likely to appear in court as those who post bail. This should include those charged with felonies.*

RECOMMENDATION 12 (continued). *While the primary criterion for O.R. release should be likelihood to appear in court, serious threat to the community should also be considered.*

RECOMMENDATION 13. *Every county should attempt to implement supervised O.R. programs for higher risk offenders similar to the Des Moines, Iowa program.*

Whatever criteria are used for O.R. decisions, it should be pointed out that denial of O.R. does not take away the constitutional right to bail for all but capital offenses. However, similar criteria might be adopted with regard to the amount of bail set.

Diversion Recommendations

Somewhat surprisingly, as seen in Exhibit 3-8, adult probation officers felt that the primary factor in determining whether or not a defendant should be granted diversion is his legal eligibility. The fact that this is perceived as even more important than the threat he presents to the community, his attitude toward diversion, prior record, etc., infers a very strong belief in the concept of diversion virtually as a right--at least for some defendants. However, probation officers in Los Angeles County did rank "threat to the community" slightly higher than "legal eligibility" (8.4 to 8.1), which means that the other sample counties perceive legal eligibility even more significantly than depicted in Exhibit 3-8.

Apart from assigning top priority to legal eligibility, the remaining questionnaire responses reflect many of the same trends as in pretrial release decision making. Philosophy of the courts, probation department, and individual decision makers were perceived as being more influential than they should be. Aside from legal eligibility where they had essentially the same view, supervisors and administrators felt that every listed variable does and should receive less weight than line workers believed was appropriate--with the exception of departmental policies and philosophy, which they rated considerably higher than line workers did and higher than most other variables.

Exhibit 3-8. ADULT PROBATION OFFICERS' RATINGS OF INFLUENCES ON DIVERSION RECOMMENDATIONS

Factor	Does Influence Decisions*			Should Influence Decisions*		
	Total Staff	Line Workers	Supervisors & Administrators	Total Staff	Line Workers	Supervisors & Administrators
Legal Eligibility	9.2	9.1	9.3	9.1	9.1	9.1
Threat to Community	8.9	9.1	8.1	9.0	9.1	8.4
Defendant's Attitude toward Diversion	8.7	8.7	8.3	8.7	8.7	8.6
Prior Record	8.6	8.8	8.0	8.4	8.6	7.7
Existence of Local Community Program of Potential Benefit to Defendant	8.1	8.1	7.8	8.5	8.6	8.0
Defendant's Attitudes in General	8.0	8.1	7.5	7.7	7.8	7.2
Present Offense	7.8	8.1	6.7	7.8	8.0	6.7
Previous Agency Contacts with Defendant	7.8	8.0	6.9	7.7	8.0	6.3
Department Policies and Philosophy about such Decisions	7.0	6.9	7.3	6.6	6.4	7.3
History of Social Stability (jobs, family ties, etc.)	6.9	7.0	6.4	7.0	7.1	6.4
Current Living Situation	6.3	6.4	5.9	6.4	6.5	5.8
Philosophy of Courts about such Decisions	6.0	6.1	5.5	5.6	5.7	5.1
Current Employment Status	5.7	5.8	5.4	5.8	5.9	5.3
Community Attitudes	4.8	4.9	4.3	4.9	5.1	4.6
Your Own Philosophy, Attitudes, Biases, etc.	4.5	4.8	3.9	3.6	3.9	2.8

*Mean ratings on scale of 1 to 10. Ratings of 0-5 may be considered as "weak", 5.1 to 7.5 as "moderate", and 7.6 to 10 as "strong" influences.

RECOMMENDATION 14. 1000 P.C. diversion should be granted routinely to those defendants who are (1) eligible, and (2) willing to accept and cooperate with the program recommended by the probation department.

Recommendations regarding the granting or denial of other types of diversion programs will be made in Chapter Four.

Dismissal (from Diversion) Recommendation

Clearly the most important factor, as viewed by all levels of staff, with regard to dismissal from a diversion program is compliance with the conditions of that program (see Exhibit 3-9). The other variables consistently viewed as key factors in making this decision were, in order of priority, threat to the community, commission of a new offense while on diversion, and need for further counseling or other services. Los Angeles County showed no differences from the remaining sample counties in ranking these factors.

Supervisory-administrative staff again felt all the listed factors should be considered less significant than line workers believed was appropriate--except for compliance with the conditions of diversion and, once again, departmental policies.

RECOMMENDATION 15. Probation staff should recommend that defendants placed on diversion be released from such programs and the charges dismissed at the earliest reasonable time.

1000 P.C. defendants are required to appear in court for a progress report at least every six months. It is the study staff's view that these persons should be dismissed from diversion at their first progress report (or at any subsequent progress report) unless the system can justify the need to retain them longer. Since diversion is intended for relatively minor offenders and since its whole purpose is to minimize penetration into the criminal justice system, there seems to be no point in holding these individuals in the system and making the taxpayers support such programs any longer than necessary.

Exhibit 3-9. ADULT PROBATION OFFICERS' RATINGS OF INFLUENCES ON DIVERSION DISMISSAL RECOMMENDATIONS

Factor	Does Influence Decisions*			Should Influence Decisions*		
	Total Staff	Line Workers	Supervisors & Administrators	Total Staff	Line Workers	Supervisors & Administrators
Compliance with Conditions of Diversion	9.4	9.4	9.4	9.5	9.5	9.6
Threat to Community	8.3	8.6	7.4	8.8	9.0	7.9
Whether or Not a New Offense, However Minor, has been Committed	8.0	8.0	7.9	8.2	8.3	7.5
Need for Further Counseling or Other Services	7.8	7.9	7.3	7.8	7.9	7.5
Defendant's Attitude While Under Diversion Supervision	7.2	7.4	6.4	7.6	7.6	7.2
Department Philosophy and Policies about such Decisions	6.4	6.3	6.7	6.3	6.0	7.0
Your Own Philosophy, Attitudes, Biases, etc.	3.8	3.9	3.5	3.2	3.5	2.6

*Mean ratings on scale of 1 to 10. Ratings of 0-5 may be considered as "weak", 5.1 to 7.5 as "moderate", and 7.6 to 10 as "strong" influences.

Preconviction or Other Special Screening Recommendations

Because of the infrequency and uniqueness of these types of referrals, no questions about them were included in the staff questionnaire. Criteria used in arriving at recommendations for referrals such as under 131.3 C.C.P. are probably highly similar to those for diversion and, particularly, presentence recommendations.

It would appear worthwhile for counties to explore additional ways to use the special screening recommendations both to obtain information that might be helpful in arriving at the best judicial decision and to initiate referral to the types of services or programs needed by certain defendants at the earliest possible point. This is contingent upon the existence of legal safeguards to assure that any information revealed by defendants when referred to probation departments by such special mechanisms cannot be used against them in court.

Presentence Recommendations

Exhibit 3-10 shows that, as with juvenile dispositional recommendations, all levels of staff strongly perceived threat to the community as the most important consideration. Consistent with the Federal Probation San Francisco Projects[23] and the Norris[24] study of adult presentence investigations, staff also indicated that their recommendations were strongly influenced by the defendant's prior record, the present offense, the defendant's attitudes and need for probation services, and general social stability. Los Angeles County shows essentially the same ranking as the other sample counties.

Supervisors and administrators again tended to place somewhat less importance on nearly all factors than line workers did. They agreed with their subordinates that too much weight was being given to the deputy's own attitudes. However, they felt that departmental and also community attitudes should be given more consideration than line workers felt was appropriate, but, curiously, not the philosophy of the courts.

As has generally been the case with all decision factors considered by both adult and juvenile staff, there is not much difference in the way they perceive various factors influencing them and how much they feel these

Exhibit 3-10. ADULT PROBATION OFFICERS' RATINGS OF INFLUENCE ON PRE-SENTENCE RECOMMENDATIONS

Factor	Does Influence Decisions*			Should Influence Decisions*		
	Total Staff	Line Workers	Supervisors & Administrators	Total Staff	Line Workers	Supervisors & Administrators
Threat to Community	9.6	9.6	9.6	9.6	9.7	9.6
Prior Record	8.8	8.8	8.7	8.7	8.8	8.4
Present Offense	8.7	8.7	8.6	8.6	8.7	8.3
Need for Counseling or Other Probation Services	8.6	8.7	8.4	8.6	8.6	8.4
Defendant's Attitudes toward Probation	8.5	8.6	8.4	8.5	8.6	8.0
Previous Agency Contact with Defendant	8.3	8.5	7.9	8.3	8.4	7.8
Legal Eligibility	8.2	8.4	7.3	8.4	8.6	7.7
Defendant's Attitudes in General	8.0	8.0	8.0	7.9	7.9	7.8
Availability and Appropriateness of Alternatives to Probation	7.8	7.8	7.8	7.9	7.9	8.1
History of Social Stability (job, family ties, etc.)	7.7	7.7	7.8	7.7	7.6	7.8
Current Employment Status	6.9	7.0	6.6	6.7	6.7	6.7
Current Living Situation	6.9	7.0	6.7	6.9	6.9	6.8
Department Policies and Philosophy about such Decisions	6.9	6.8	7.4	6.5	6.3	7.0
Community Attitudes	5.9	5.8	6.1	5.9	5.8	6.3
Philosophy of Courts about such Decisions	5.9	5.8	6.0	5.6	5.6	5.3
Cost of Alternatives	4.6	4.6	4.1	4.6	4.6	4.6
Your Own Philosophy, Attitudes, Biases, etc.	4.6	4.6	4.6	3.5	3.8	2.9

*Mean ratings on scale of 1 to 10. Ratings of 0-5 may be considered as "weak", 5.1 to 7.5 as "moderate", and 7.6 to 10 as "strong" influences.

variables actually should influence them. The major exceptions to this, quite consistently, have been the philosophy and attitudes of the decision maker himself and, for line workers, department philosophy and policies; in both instances, the feeling is that these variables have more impact than they should.

As in the case of juvenile dispositional recommendations, the variety of alternatives and the complexity of the problem make it difficult to spell out what should govern the selection of each alternative. Again, the study staff's major recommendation is to select that alternative involving least penetration into the criminal justice system and which is least restrictive while adequately considering protection of the community, the primary goal and responsibility of the criminal justice system.

PROSECUTION

> "As the nexus of the adjudicative and enforcement functions the prosecutor has been called the most powerful single individual in local government. If he doesn't act, the judge and the jury are helpless and the policeman's word is meaningless."[25]

Unlike the juvenile court system where he has little or no power, the prosecuting attorney in many respects is the most powerful decision maker in the adult court system. Acting both as a screening agent to assure adequacy of evidence and as the representative of the people in criminal court, the prosecuting attorney reviews and determines whether or not to formally pursue all accusations of criminal behavior.

OVERVIEW OF DECISION POINTS AND ALTERNATIVES

There are three major decisions made by the prosecuting attorney: initial screening of charges or accusations, decisions relative to the filing of a complaint, and decisions regarding grand jury indictments. As with police and juvenile probation officers, many of these decisions actually consist of a whole series of related decisions. Exhibit 3-11 presents a simplified flow chart of the role of the prosecution in the adult court

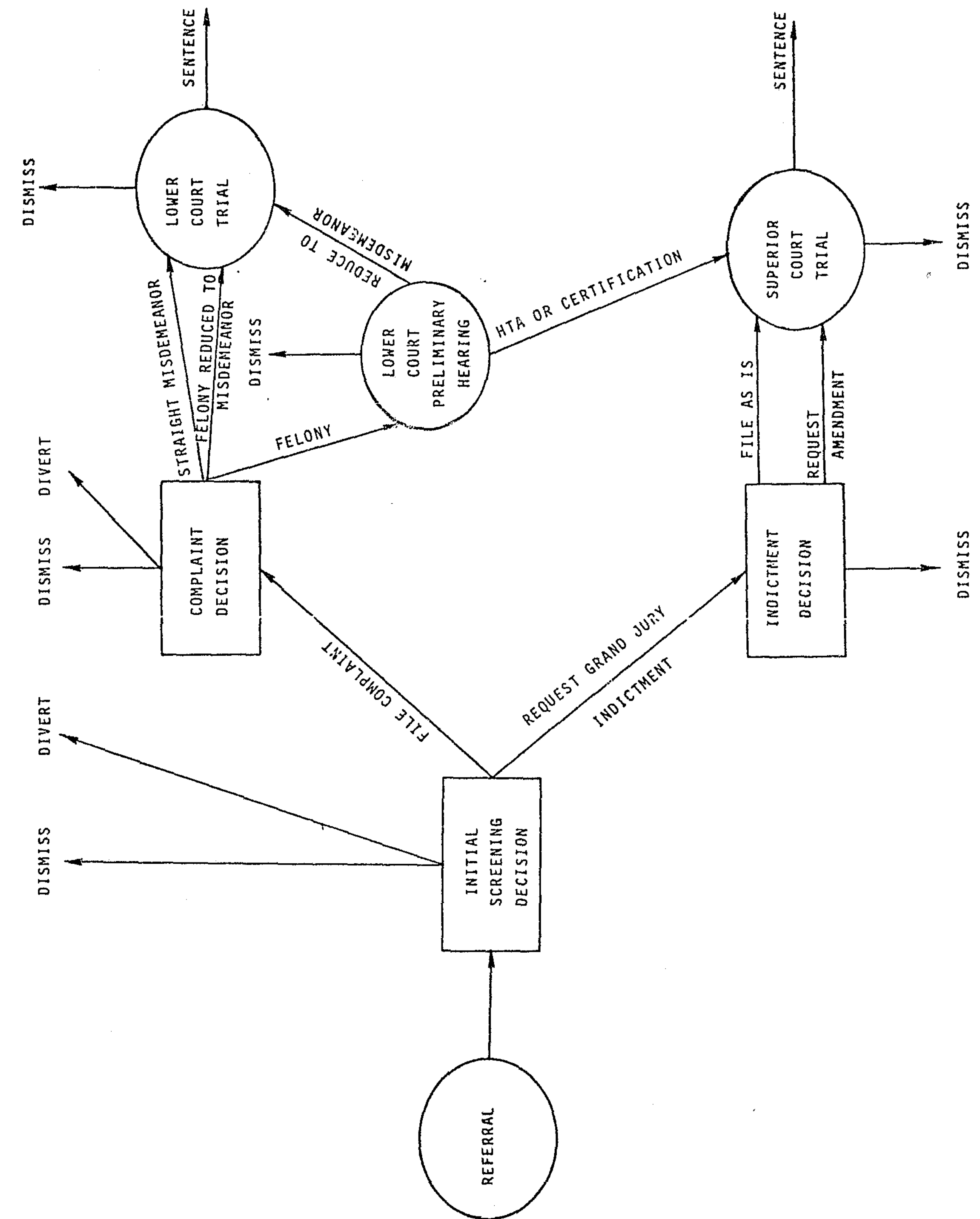


Exhibit 3-11. ADULT PROSECUTION PROCESS

system. Since most prosecution is handled by the county district attorney, that title is often used in this section except where city prosecutors are referred to specifically.

Initial Screening Decision

As the controlling agency over criminal cases brought before the court, the district attorney can either dismiss a charge, handle the matter informally (as by a citation hearing or by diversion where such programs exist), or initiate the process of bringing the matter to trial. The only well-known diversion program prior to a court hearing is that in San Bernardino County, which will be described in Chapter Four. If a decision is made to bring the person further into the criminal justice system, the district attorney can either file a complaint in lower court or request a grand jury indictment. Only felony matters may be taken before the grand jury for indictment.

In 1972, indictments were requested in approximately 4% of all felony filings--0.5% in Los Angeles and 6.5% for the rest of the State. This varied greatly with the type of offense, e.g., 14% of homicide cases originated through indictment while less than 1% of the auto thefts and burglaries did.[26]

With regard to complaints, the district attorney exercises tremendous discretion, which varies markedly by offense and county. As an example, Exhibit 3-12 shows that Los Angeles County consistently files a higher percent of cases as misdemeanors, both for drug and non-drug arrests, than the rest of the State. Further illustration of both the screening out of even serious cases and the wide variation by offense type is presented in Exhibit 3-13, showing handling of Part I arrests made by the Los Angeles County Sheriff. At least 28% of these arrests referred to the District Attorney were dismissed and at least 41% more were filed as misdemeanors. In total, only about one out of four Part I arrests were prosecuted even initially as felonies. By offense, referrals resulting in misdemeanor filings varied from 0% for homicide to 52% for aggravated assault, while those ending in complaint denials ranged from 13% for homicide to 31% for assault, robbery and

Exhibit 3-12. MISDEMEANOR FILINGS FOR SELECTED FELONY OFFENSES, 1966 - 1970

	Drug Arrests	% Filed as Misdemeanors	Non-Drug Arrests	% Filed as Misdemeanors
State 1966	18,278	11.5	89,066	19.6
Los Angeles 1966	11,269	12.7	42,416	23.2
State Less 1966 Los Angeles	7,009	9.6	46,650	16.3
State 1967	31,938	12.5	99,145	20.1
Los Angeles 1967	16,630	15.1	48,214	23.5
State Less 1967 Los Angeles	15,308	9.7	50,931	16.9
State 1968	47,628	12.8	112,811	17.0
Los Angeles 1968	28,833	15.5	55,495	19.0
State Less 1968 Los Angeles	18,795	8.7	57,316	15.1
State 1969	66,870	8.8	121,446	17.6
Los Angeles 1969	33,743	11.4	57,848	22.2
State Less 1969 Los Angeles	33,127	6.6	63,598	13.4
State 1970	79,356	9.4	125,579	17.6
Los Angeles 1970	36,825	11.9	58,254	24.2
State Less 1970 Los Angeles	42,531	7.2	67,325	11.9

SOURCE: Crime and Delinquency: 1970, BCS, Tables I-8 and I-9.

Exhibit 3-13. PART I ARRESTS AND REFERRALS
Los Angeles County Sheriff's Department (July - October, 1973)

Arrest Offense	Number Arrested	*Maximum Number Referred to D.A.	% of Maximum Referrals Filed as Misdemeanor	% of Maximum Referrals in Which Complaint Denied
Homicide	43	39	0	13
Rape	73	53	13	28
Robbery	438	334	28	32
Aggravated Assault	1150	1019	52	31
Burglary	1050	826	37	23
Grand Theft	172	134	40	22
Auto Theft	517	227	34	31
TOTALS	3443	2632	41	28

*The actual number may be less, since referrals include those cases in which the Sheriff's Department went directly for a misdemeanor filing without seeking a felony complaint.

SOURCE: Los Angeles County Sheriff's Department, Management Staff Services Bureau

auto theft. A different decomposition of this data, including police release and transfer to another law enforcement agency, was provided in Exhibit 3-4.

Indictment Decision

An indictment decision refers to the prosecutor's decision after an indictment has been returned by the grand jury. There are only two choices. He may file that indictment in superior court with the charges determined by the grand jury or he may amend the charges if he feels the evidence justifies such amendment. The latter alternative is apparently used rarely.

Complaint Decision

If the decision is made to file a complaint, the District Attorney may still later change his mind at any point before conviction and ask the court to dismiss the matter or, in the case of persons eligible under 1000 P.C., to place the defendant on formal diversion. If he wishes to go to trial, the district attorney's alternatives then depend on whether he pursues the charge as a misdemeanor or felony. If the charge can be only a misdemeanor, he will then ask for a trial in a lower court. If it can be either a felony or a misdemeanor (often called a "wobbler"), he may either ask that it be tried as a misdemeanor in lower court by authority of Section 17(b)(4) P.C. or request a preliminary examination to see if there is sufficient evidence that the defendant committed a felony thereby requiring a superior court trial. The 13% drop in superior court felony prosecutions between 1971 and 1972 was felt by the Bureau of Criminal Statistics to be largely due to extensive use, particularly in Los Angeles, of the relatively new 17(b)(4) P.C. law by the District Attorney.[27] This process is viewed as saving considerable time and court costs and often providing a more appropriate disposition, especially for defendants with no prior record or only a minor one.

In the case of offenses prosecuted as felonies, about 10% plead guilty at their preliminary hearing and are certified directly to superior court for sentence.[28] If the court holds a person to answer at this hearing, he is then sent to superior court for trial. In this event, the District Attorney must file a formal information

in superior court within fifteen days. He has discretion, however, to file the information on the same charge(s) to which the lower court held the defendant to answer or to file any other "offense or offenses shown by the evidence taken before the magistrate to have been committed" (739 P.C.). In other words, both the criminal complaint and the lower court judge's commitment to superior court are subject to revision when the District Attorney files the information. In fact, the District Attorney retains discretion to amend the information itself at a later date, prior to conviction, within the constraints of the Penal Code.

If there is a city prosecutor with jurisdiction over the location of the alleged offense, such city prosecutor is the one who controls misdemeanor filings. Hence, the district attorney may either file a felony complaint or refuse to file. In the latter case, he might choose to recommend a misdemeanor filing, although neither the police nor the city attorney would be bound by such a recommendation. The police would then have the option of referring the case to the city attorney or dropping the case. If they refer it, the city attorney would then decide if he wanted to file a misdemeanor or drop the case. A new policy on felony arrests has been instituted by the Los Angeles Police Department in the "wobbler" area of discretion. Whereas prior to 1974, the police would routinely request a felony complaint from the district attorney on all felony arrests, the police are now screening some felony cases themselves and going directly to the city attorney with requests for misdemeanor complaints. It will be interesting to note the effects this exercise of police discretion may have on the prosecutorial phase of the intake process.[29]

Plea Bargaining

While the plea bargaining process is one that may occur at any point after the filing of a complaint or indictment and hence no single decision point represents plea bargaining on Exhibit 3-11, a few comments are appropriate at this point. Because a special section will be devoted to plea bargaining in Chapter Six, the discussion here will be brief. Essentially, as the representative of the people, the prosecutor may for reasons "in the interest of justice" (which are often simply expediency and cost savings) allow the defendant to plead guilty to a charge less severe than the one he is facing. This is, in fact, one

of the most frequent types of discretion used by the district attorneys in most counties. It is consistently estimated that fewer than 10% of defendants go to trial and that a high percent those pleading guilty do so as part of a "deal." As will be noted later, plea bargaining is also the source of much criticism by both conservative and liberal groups, primarily because of its compromise nature. While some argue that it places unjust pressure on many defendants to plead guilty, others assert that without it the court system would simply collapse.

A variation of or, perhaps more accurately, an alternative to plea bargaining in felony matters is the submission of the transcript (SOT) from the preliminary hearing. This obviously requires the consent of the defendant because of his constitutional right to a trial by jury. Sometimes termed a "slow plea," this process amounts to a court determination of guilt or innocence based solely on the evidence of the preliminary hearing transcript. SOT is used infrequently in most of the State, but Los Angeles County relies on it for a significant portion of its trials as seen below:

	Superior Court Dispositions, 1972[30]				
	Dismissed	SOT	Guilty Plea	Court Trial	Jury Trial
Los Angeles	7.7%	22.1%	61.7%	4.6%	4.0%
State less Los Angeles	8.9	0.7	79.4	2.0	8.9

If one compares the percentage of cases handled by guilty plea and SOT combined, Los Angeles becomes much more consistent with the rest of the State: 83.8% in Los Angeles versus 80.1% for the balance of the State.

A recent pilot program in Los Angeles County addresses this question of the volume of cases decided by SOT. The District Attorney in Los Angeles tested policies in Van Nuys and Pomona Superior Courts and five downtown Los Angeles Superior Courts that provided for no sentence bargaining[31] and no trials by SOT. Several significant effects were noted. The conviction rates in Van Nuys and

Pomona came closer together--Van Nuys dropped from 90% in 1972 to 88% in 1973 under the new policy while Pomona rose from 84% to 85%.[32] Commitments to state institutions rose slightly in both courts, while narrowing the difference between them from 1.1% to 0.2%. The number of court trials jumped substantially.

	1972	1973
Van Nuys (Court Trials)	1.6%	6.1%
Van Nuys (Jury Trials)	4.2	7.9
Pomona (Court Trials)	7.3	9.6
Pomona (Jury Trials)	4.8	12.2
Downtown (Jury Trials)	9.0	18.8

The impact of the increased number of trials on court resources could be substantial when such a policy is implemented countywide. However, in the words of the District Attorney, Joseph Busch, "We believe that the results of these pilot studies indicate that such changes do achieve greater equality of justice."

INFLUENCES ON DECISION MAKING

With the exception of the area of plea bargaining, there have probably been fewer studies on the discretion or decision making of the prosecutor than of any other participant in the criminal justice system. The limited scope of this study precluded the development of statistically valid measures of the factors which influence the prosecutor's decision making. Hence, the following sections discuss current concepts from the literature, liberally annotated as a result of interviews with prosecutorial staff in the study counties.

One rather significant study by George Cole, which examined the King County Prosecuting Attorney's Office in Seattle, will be summarized.[33] Cole described the prosecutor's role as that of a central participant in an exchange system. The prosecutor must obtain his information for decisions almost entirely from others (the

police) and must make those decisions with continual awareness of the needs and desires of others (notably the courts, defense attorneys, and the public). The three major types of influences on the prosecutor's decision making, according to Cole, are evidential, humanitarian, and organizational.

The most critical factor, at least initially, is the adequacy of evidence. Dependent almost entirely on the thoroughness of police work for this information, a prosecutor will normally be highly reluctant to file a complaint if he does not view the evidence as both sufficiently clear and admissible to obtain a conviction.

Apart from the question of evidence, "The prosecutor is able to individualize justice in ways which can benefit the accused, the victim and society."[34] He may consider, in determining whether the matter warrants prosecution and the cost of a trial, such personal factors as "the character of the accused, his status in the community, and the impact of prosecution on his family."[35] He may also weigh the consequences for the victim, e.g., in child molest or rape cases.

The most complex and unexamined set of influences fall into what Cole calls "organizational" considerations. The prosecutor must constantly keep in mind that he is an elected official and that, as such, he must continually retain a favorable image in the community. If the community demonstrates a high tolerance level for certain types of behavior (e.g., "victimless crimes"), he is unlikely to devote large amounts of manpower and resources to prosecuting such offenses. Conversely, those acts which the public strongly condemns (e.g., homicide and other violent acts not committed in heat of passion) are likely to be given high priority by the prosecutor's office all the way through the court process. For example, the prosecutor is far less inclined to accept any type of bargain that would not include a prison commitment for a premeditated murder or series of rapes or armed robberies. Similarly, he must maintain good relationships with those agencies or individuals with whom he carries out his role. This includes the police on whom he depends for solid cases, the defense attorneys who can make him utilize considerable resources, and the courts who pass judgment on the

cases he presents. A cardinal rule, in King County, pertaining to all of these "organizational" influences was: "To cover the prosecutor from criticism, it is believed that the safest measure is to prosecute."[36]

Initial Screening Decision

The decision of whether or not to initiate the formal court process and, if so, at what level is the most critical for the prosecutor. Decision to dismiss cases at this point may result in considerable hostility on the part of the police and/or the public. Decision to file a complaint or seek an indictment generally places a label on the defendant that he is never able to erase--even if he is found not guilty. It also means that a considerable investment in time and money must be spent on that case--normally with an already heavy court workload and a limited budget.

A decision not to prosecute effectively ends the case--unless additional evidence is subsequently presented. Such a decision by the prosecution to dismiss is officially recorded as being due to one of the following by the Los Angeles County Sheriff's Department.[37]

- Lack of evidence.
- The arrest was illegal, due to lack of probable cause to arrest.
- Victim refuses to cooperate.
- Other witnesses uncooperative or unavailable.
- The arrest violated due process; e.g., improper search and seizure or improper advisement of rights at arrest (or no advisement at all).
- Grant of immunity to defendant in return for necessary testimony.
- Defendant unavailable for prosecution (already serving sentence, on trial for more serious offenses, cannot be extradited, or cannot be located).
- Interest of justice and other discretionary refusal to prosecute.

It might be noted that the first five variables relate to strength of evidence and its likelihood of holding up in court. This supports Cole's findings that adequacy of evidence is normally the first consideration in making the initial screening decision.[38] Without sufficient evidence, the prosecutor may suffer considerable embarrassment and loss of esteem by having his cases thrown out of court. The sixth factor listed, viz., "grant of immunity to defendant in return for necessary testimony" is a type of discretion unique to the prosecution and essentially amounts to a decision that it is more valuable to attempt to use the defendant's testimony to convict a presumably more serious offender than to prosecute the first defendant. The last item noted is a vague, catch-all explanation that underscores the esoteric nature of prosecution decision making.

Filing of a complaint is normally selected for reasons similar to the ones found by Cole. Sufficient evidence and the feeling that the interest of justice would be best served by prosecution are probably the strongest determinants. The "interest of justice" is, of course, an extremely vague concept that can apply to almost anything. The least that it implies in a decision to file a complaint is probably the prosecutor's belief that the community would want the case brought to trial. Other factors doubtlessly include the perceived seriousness of the offense, the defendant's prior record and current status in the criminal justice system (e.g., repeaters are more likely to be prosecuted), the prosecutor's perception of the threat the defendant poses to the community, recommendations of the police, and, normally to a lesser extent, current workload and the total cost of prosecution.

The consultants strongly endorse the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals' report[39] on the Courts relative to appropriate screening of cases at this initial phase. That Commission takes a strong stand for maximum screening of defendants totally out of the criminal justice system at this point. It argues that defendants should be removed from the system in either of the following circumstances:[40]

(1) "if there is not a reasonable likelihood that the evidence admissible against him would be sufficient to obtain a conviction and sustain it on appeal."

(2) "when the benefits to be derived from prosecution or diversion would be outweighed by the costs of such action."

The Commission goes on to itemize many of the "costs" that must be weighed which encompass most of the variables already mentioned in this section.

> *RECOMMENDATION 16. All prosecuting attorneys should formulate initial screening policies that incorporate the thrust of Standard 1.1 proposed by the National Advisory Commission on Criminal Justice Standards and Goals in its report on the Courts.*

The decision to seek a grand jury indictment, as noted earlier, is used rarely except for homicide and unusual cases where it is felt important not to publicize the fact of an impending charge either because of its "shocking" nature or because the defendant might flee.

Indictment Decision

Discretion after return of a specific indictment by the grand jury is rarely exercised by the District Attorney. However, if he feels strongly that additional or modified charges are appropriate, based on evidence presented to the grand jury or new evidence subsequently available, he may amend the indictment. The District Attorney's interpretation of the strength of evidence combined with his conviction that prosecution on more serious charges is vital in the interests of justice are probably essential variables before he would change the indictment charges.

Complaint Decision

Once a complaint is filed, the likelihood of dismissal or diversion (except 1000 P.C. cases where the defendant is statutorily eligible) falls markedly. However, a fair number of complaints are dropped at various stages prior to conviction, normally for reasons related to weakening of the evidence. Further investigation may substantiate a defendant's alibi, reveal

illegal police techniques of gathering evidence or obtaining a confession, or unveil problems with the testimony of witnesses. Probably the most frequent reason for dismissing a charge is as part of a deal whereby the defendant pleads to another charge.

With regard to diversion under both 1000 P.C. and the San Bernardino County model, there are normally clear legal or administrative policy criteria which determine the District Attorney's decision or recommendation.

When a decision is upheld to proceed with a complaint, variables influencing the type of charge (i.e., felony or misdemeanor) probably are highly similar to those already mentioned in Cole's article and the above discussion under "Initial Screening Decision."

Summary

The prosecuting attorney is the pivotal and probably most powerful person in the adult intake system. Yet, his decision making is the least studied and, next to the court's, least visible. Anyone who frequents the courts will almost daily hear the prosecutor request that charges be dropped "in the interest of justice" without the remotest indication of what that means. Such decisions in some cases compared to decisions to prosecute in other seemingly similar cases do nothing to dispel the adage that "justice is blind."

> *RECOMMENDATION 17. Each prosecutorial agency should implement routine data collection procedures to enable administrators to evaluate agency operations and to provide other criminal justice agencies with feedback information regarding prosecutorial decision making.*

COURTS

> "We are running a machine. We know we have to grind them out fast."[41]

The above quote from a California trial judge illustrates the growing phenomenon of "assembly line justice." Of the many workers on the assembly line, the courts are

generally "perceived as holding the greatest amount of leverage and influence."[42] Their role is probably closest to that of the inspectors along the assembly line who can reject or allow objects to continue further along the line. In spite of their independence and power, however, they too are influenced by many factors other than the appearance of the object being processed.

OVERVIEW OF DECISION POINTS AND ALTERNATIVES

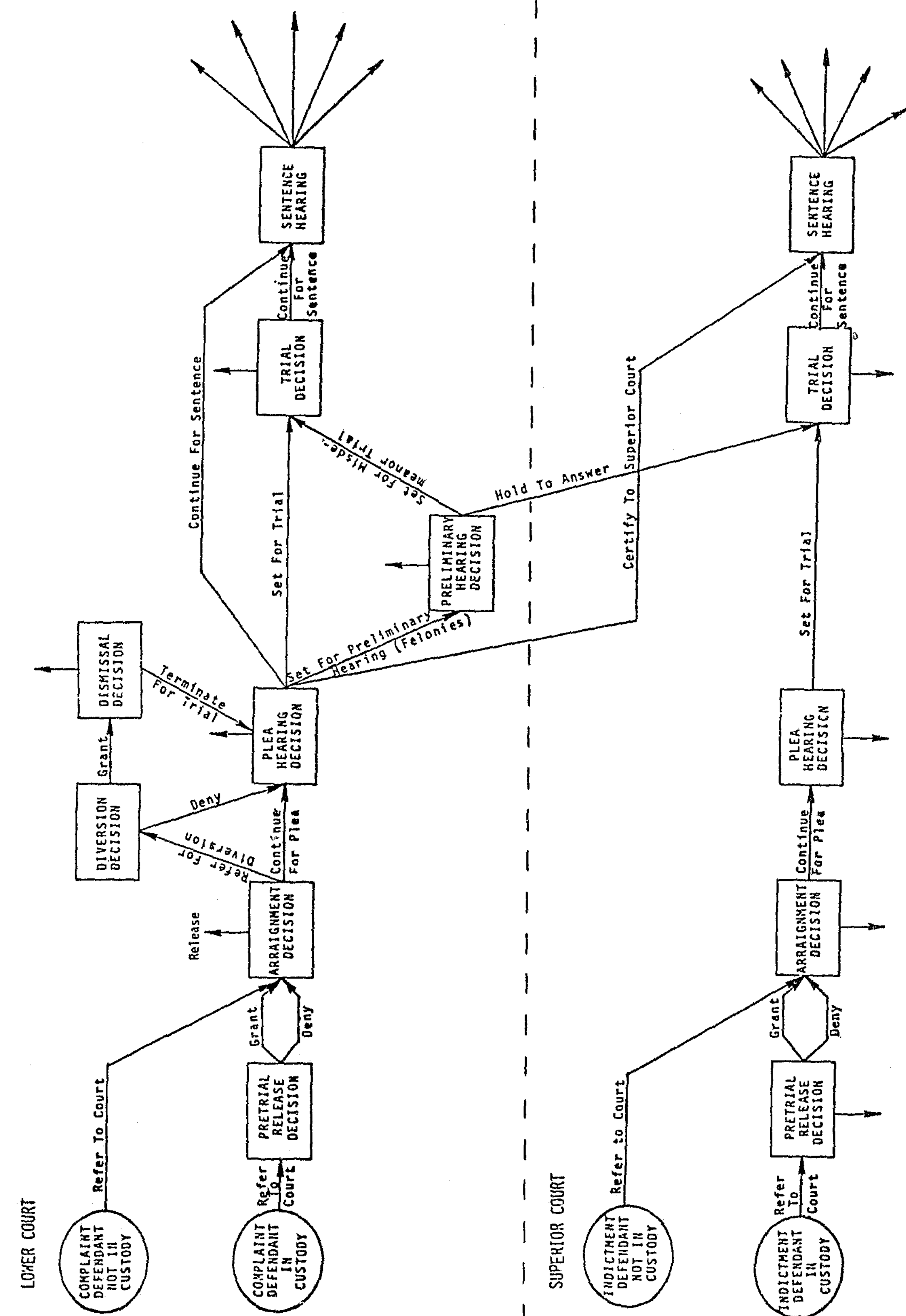
The courts are involved in numerous decisions from shortly after arrest (sometimes even before) through conviction and sentencing. Most of the critical decision points, for both lower and superior courts, are diagrammed in Exhibit 3-14. For the sake of simplicity, these will be grouped into four major decisions: (1) pretrial release, (2) diversion, (3) trial, and (4) sentence.

Pretrial Release Decision

When a suspect is arrested, booked and denied any type of release by a law enforcement agency, he has the constitutional right to bail on all but capital offenses. Counties have traditionally had a predetermined bail schedule for misdemeanants set by the judges of the county under mandate of 1269b(c) P.C., a practice that was extended to felonies by the 1973 legislature. Hence, the court's role in pretrial release decision making is normally limited to motions to raise or reduce bail and requests for O.R. These issues may be raised prior to arraignment and at any other time before sentence.

With regard to O.R., many jurisdictions report a very high rate of releases for misdemeanants. In some counties, such as Santa Clara and Marin, this function has been virtually handed over to other staff. However, only the court can release a felony suspect on O.R. Precise data on this type of judicial decision is difficult to obtain, although some indications are available. From July, 1972 to July, 1973, Santa Clara County judges released approximately 15% of eligible felons within an average of six hours after they were jailed; many others were released at later stages after more information was obtained by the pretrial release staff.[43] In Los Angeles County, 24% of some 62,000 felony suspects interviewed

Exhibit 3-14. CRIMINAL COURT INTAKE PROCESS



by the Superior Court O.R. staff between January, 1965 and October, 1973 were granted an O.R. while many others posted bail before such a decision was made.[44] Because of differential eligibility standards between counties and incomplete data on such actions as eligible defendants posting bail before an O.R. decision is made or being O.R.'d at a later point, the only clear fact about this type of decision seems to be that substantial numbers of persons charged with felonies can be safely released by O.R. and/or reduced bail. On the other hand, there is a need to continually evaluate the success of such programs and to further refine the accuracy of criteria used to predict likelihood to appear in court.

Diversion Decision

At present, the only formal diversion program in which the courts are involved is 1000 P.C. diversion of certain minor drug offenders. The Bureau of Criminal Statistics, in its first report on 1000 P.C., indicated that over 10,000 adults had been placed in this type of diversion program by 49 of California's 58 counties as of August 31, 1973.[45] They estimated that, at this rate, approximately 24,000 defendants would be diverted annually. Unfortunately, there is no indication of the number of defendants denied diversion or for what reasons defendants who are statutorily eligible might be denied.

Trial Decision

This decision actually incorporates a whole series of hearings and decisions relative to the determination of guilt or innocence. Often, there are separate hearings for arraignment, plea, preliminary examination (for felonies), various motions and continuances, and the trial itself. Exhibit 3-14 shows the normal order and relationships between most of these hearings. In 1972, of 56,586 felony defendants disposed of in superior court, 8% were dismissed, 5% acquitted, and 87% convicted (72% by guilty plea and 15% by trial).[46] The average length of time between filing of a felony case and sentence was two and a half months.[47] Of 51,441 felony complaints terminated in lower courts in the same year, 45% were prosecuted as misdemeanors under 17 P.C., 17% were refiled or allowed to plea to a

misdemeanor, and 38% were dismissed.[48] A traditional gap in data gathering has been with regard to lower court cases, particularly misdemeanor complaints. In view of the much greater volume of misdemeanors compared to felonies and lower courts compared to superior courts, a tremendous amount of data valuable for planning and evaluation is thus habitually missing.

Sentencing Decision

Exhibit 3-15 indicates the sentences imposed on superior court defendants in 1972, by type of offense. What perhaps stands out most is the frequent use of probation even for very serious offenses. Probation was granted to 71% of convicted superior court defendants in 1972, compared with only 46% in 1962.[49] Conversely, prison commitments dropped in half from 24% in 1962 to 12% in 1972.[50]

While all of the same dispositions available for felons can be used for misdemeanants (with the exception of prison), lower courts often use more alternatives to the formal correctional system. Some examples are volunteer work, public service projects, fines, and/or probation. Once again, virtually no information is available from the Bureau of Criminal Statistics on lower court sentencing practices aside from the fact that about 33,000 defendants were granted probation by lower courts in 1972.[51]

> RECOMMENDATION 18. *The Bureau of Criminal Statistics should include, as part of its routine data gathering and annual publishing of data, information on the intake and sentencing processes of the lower courts.*

INFLUENCES ON DECISION MAKING

As stressed in the section on the juvenile court, very little is known about what influences individual judges in exercising the extreme power they hold over the lives of the defendants before them. There are some legal guidelines, of varying degrees of clarity, that will be mentioned under specific decision points. Before proceeding with that discussion, however, some data that is known about these decision makers will be summarized.

Exhibit 3-15. COMMITMENTS OF FELONY DEFENDANTS CONVICTED AND SENTENCED IN CALIFORNIA SUPERIOR COURTS: 1972

	Total		Prison		CYA		Probation				Jail		Fine		Civil Commitment			
							Straight		With Jail						CRC		Mental Hygiene	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
TOTAL	49,024	100	5,664	12	1,515	3	17,606	36	17,318	35	4,062	8	436	1	2,084	4	339	1
Homicide	1,050	2	564	10	38	3	144	1	292	2	10	0	0	0	2	0	0	0
Robbery	2,756	6	1,253	22	331	22	197	1	756	4	30	1	0	0	184	9	5	1
Assault	3,704	8	394	7	105	7	1,343	8	1,417	8	384	9	25	6	17	1	19	6
Burglary	7,342	15	732	13	380	25	1,874	11	3,046	18	741	18	7	2	553	27	9	3
Theft and Forgery	11,868	24	822	15	352	23	4,278	24	4,513	26	1,415	35	47	11	437	21	4	1
Forcible Rape	364	1	145	3	18	1	35	0	96	1	1	0	0	0	0	0	69	20
Other Sex Offenses	1,366	3	93	2	17	1	574	3	389	2	59	1	12	3	2	0	220	65
Drug Law Violations	16,038	33	827	15	185	12	7,532	43	5,629	33	841	20	203	47	818	39	3	1
Opiates	3,243	7	421	7	40	2	810	5	1,240	7	68	2	4	1	660	32	0	0
Marijuana	6,650	14	154	3	54	4	3,816	22	2,122	12	309	8	148	34	45	2	2	1
Dangerous Drugs	5,726	12	235	4	90	6	2,688	15	2,155	12	403	10	51	12	103	5	1	1
Other	419	1	17	0	1	0	218	1	112	1	61	2	0	0	10	0	0	0
Weapons	631	1	107	2	11	1	227	1	167	1	89	2	21	5	9	0	0	0
Traffic	956	2	21	0	4	0	388	2	421	2	87	2	20	5	15	1	0	0
Escape	1,084	2	549	10	37	2	80	0	148	1	240	6	0	0	30	1	0	0
Kidnap	87	0	40	1	9	0	9	0	24	0	0	0	0	0	0	0	5	1
Other	1,778	4	117	2	28	2	925	5	420	2	165	4	101	23	17	1	5	1

SOURCE: BCS, Adult Prosecution: 1972, pp. 39-41.

While claims are often heard that the courts, as well as other criminal justice decision makers, are most punitive with the poor, with minorities, with those not represented by counsel or poorly represented, etc., there have been few scientific efforts to ascertain what really affects judicial decision making. Perhaps this is due in part to the traditional atmosphere of reverence and awe surrounding the courts. In any event, most of the information that is available on judicial decision making comes not from rigorous research designs but from statements made by judges themselves. The majority of this information concerns the sentencing decision although it probably also applies to other points where the court can use discretion beyond deciding issues of fact or law. In general, the bench is concerned with the same types of factors which influence law enforcement and particularly correctional officials. The latter point is supported by the high correlation between probation dispositional recommendations and actual sentences imposed by the court shown previously in Exhibit 3-6.

Probably reflecting the views of a substantial proportion of his colleagues, Judge Talbot Smith described the following variables, generally discussed in probation reports, as "factors controlling in sentence": likelihood of satisfactory adjustment in the community, work record, family situation, need for vocational training, correlation of disposition of individual offender with others, and protection of the public.[52]

Judge Harlan Grooms also stressed the importance of the social factors contained in probation reports for equitable sentencing. In fact, he asserted: "Without the presentence reports, the trial judge would have to grope his way along--like one in a darkened corridor without lamp or candle."[53] However, while the author nods politely in the direction of individualizing justice, he reveals personalized stereotypes which seem to defeat the purpose of a probation report and contradict his earlier statements. He declares, rather categorically, that "these individuals" (defendants) have "lost their sense of value" and "everything to them is black or white." He continues that "equal and exact justice" is "the polestar" of judicial decision making and that the court must make

the punishment fit the crime--even if the offenders have "thick hides and short memories." The final two influential variables he adds are the judge's own conscience and the costs of sentence to the taxpayer.[54]

In another article, Judge Irving Kaufman points out the importance of individualized treatment but clearly indicates that protection of society must be the court's primary concern.[55] He goes on to list such vague determinants as "justice," "deterrence," and "public attitudes toward crime," frankly admitting that there is no scientific guide for sentencing.

Judge William Campbell again points to information in the presentence report as crucial to judicial decision making.[56] However, he too suggests that the precise factors that influence the court are vague and elusive by asserting that the probation officer, in preparing his report for the judge, "should gather <u>any</u> information which is reasonably reliable and accurate...<u>any</u> information regardless of source that will increase the judge's understanding of the offender."

As a final point, Cole asserts that "Judges are probably under less pressure from bureaucratic norms than are other participants in the criminal justice system, yet in actual practice they too feel the demands for efficiency and order."[57] He elaborates that each judge feels pressure from his peers as well as from the public to process his share of the workload and not create an expensive backlog. In brief, the courts, like every other component of the justice apparatus, must consider the impact of their decisions on the rest of the system and on the taxpayer. A judge cannot forget that he, too, is an elected official.

Pretrial Release Decision

As indicated in the Adult Probation section, the Penal Code specifies that the granting of O.R. is: "purely discretionary and permissive. This article does not give any defendant the right to be released on his own recognizance" (1318.2 P.C.). The only legal criterion mentioned is that "it appears to the court or magistrate that such defendant will surrender himself

to custody as agreed" (1318 P.C.). However, just as probation staff felt that threat to the community does and should affect this decision more than likelihood to appear in court, it is probable that the courts also weigh this factor extremely heavily.

Study staff agree with the views of the National Advisory Commission on Criminal Justice Standards and Goals on the issue of pretrial release and hence repeat their standards here:[58]

> "Release on (O.R.) should be made whereever appropriate. If a defendant cannot appropriately be released on this basis, consideration should be given to releasing him under certain conditions, such as the deposit of a sum of money to be forfeited in the event of nonappearance, or assumption of an obligation to pay a certain sum of money in the event of nonappearance, or the agreement of third persons to maintain contact with the defendant and to assure his appearance.
>
> "Participation by private bail bond agencies in the pretrial release process should be eliminated.
>
> "In certain limited cases, it may be appropriate to deny pretrial release completely."

The Commission does not specify what "appropriate" standards for release might be. Study staff's view on this issue was enunciated in Recommendation 12, viz., that the primary consideration should be likelihood to appear in court but that serious threat to the community should also be considered. This is presumably what the Commission was considering with its last statement above about the complete denial of any type of pretrial release to certain offenders. Recommendation 13 also urged the implementation, where feasible, of a supervised release program for higher risk defendants, similar to the Des Moines Community Corrections Program.[59] With regard to the

issue of bail, successful precedent has been set by other states, including Illinois and Pennsylvania, for the posting of bail directly with the court, with all but a small handling fee being returnable to the defendant.

RECOMMENDATION 19. Each county should implement a court bail program whereby defendants may post bail directly with the court and receive back all but a necessary handling fee if they keep their court appearances.

Diversion Decision

Once again, it is suspected that the courts are influenced by the same factors shown significant in the probation survey. Legal eligibility probably is and should be the primary criterion, followed by threat to the community. Recommendations 14 and 15 in the Adult Probation section contain criteria for granting and dismissing from diversion. As will be discussed in Chapter Four, diversion should be no more restrictive of a person's rights than necessary (particularly since he has not been found guilty) and should be terminated at the earliest reasonable point. There is a definite danger that 1000 P.C. or other types of diversion programs are or may be utilized to place persons in what amounts to a new type of correctional system. Certainly no one should be placed on diversion as a compromise or a weak prosecution case or instead of complete dismissal from the system.

A new arrest and certainly a new conviction would be grounds for unsuccessful termination of diversion, as would serious failure to meet any of the specific conditions of diversion. Some of the most common examples would be failure to participate in a drug program ordered by the court, dirty urinalysis tests, or absconding. Satisfactory compliance with the conditions of diversion should automatically result in dismissal of the charge.

Trial Decision

The only criterion throughout the entire arraignment, pretrial, and trial proceedings should be the question

of guilt or innocence, based on evidence legally admissible in a criminal trial. Section 1096 of the Penal Code defines the principles to be followed in determining guilt:

> "A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal, but the effect of this presumption is only to place upon the state the burden of proving him guilty beyond a reasonable doubt."

Nowhere else in the criminal justice system is the presumption of innocence so clearly mandated and the burden of proof so heavily set on the system as in this decision process. It is to insure the proper exercise of this awesome responsibility that a trial must be either conducted or, in the case of trial by jury, at least presided over by a trained legal expert who officially and objectively represents the mutual interests of both society and the individual defendant.

Sentencing Decision

Sentencing is the most individualized decision in the entire intake process and the least visible in terms of the factors that influence it. The wide range of variables and philosophy that were hinted at by the statements of the handful of judges referred to above may be multiplied by the large numbers of judges who impose sentences. The variation in judicial decision making between counties is evident in any statewide sentencing data. For example, county superior court benches during 1972 varied in their use of probation from 33% to 82% and in commitment to prison from 6% to 33%.[60] Even within counties, it is not unusual for judges from the same bench to argue vehemently with each other over sentencing practices and for defense and prosecution attorneys to "shop" for judges who are most likely to impose a sentence they consider favorable. One of the best known examples of this judicial variation is the results of the probation subsidy study program. County probation programs began with widely different opportunities to receive state subsidy

(because of the differential decision making during the "base years" on which the subsidy is based) and have faced constant change in the financing of their subsidy programs (because of markedly different patterns of sentencing each year).

As has been mentioned earlier, there is generally a high correlation between probation recommendations and sentencing practices, suggesting that both groups of decision makers are influenced by largely the same variables. While some claim that this may be due to probation officers' slanting their reports to recommend what they think the judges want to hear, it is more likely that there are some commonly accepted key variables that influence the decisions of both prosecution officers and judges. The literature suggests that these factors tend to center around the present offense, the defendant's prior record, various indices of stability, and the subjective impressions of the decision maker about the defendant.[61]

Whether or not there are certain critical variables that judges focus on in arriving at their sentencing decisions, the fact remains that there is a disturbingly high variation between judges looking at similar information. On the one hand, it is important to individualize sentencing, as well as other decisions. On the other hand, the degree of variation mentioned above indicates obvious inequality of treatment. Some have suggested that sentencing be taken away from courts and given to correctional agencies with staff trained in the behavioral sciences and treatment strategies. Study staff tend to agree with the National Advisory Commission on Criminal Justice Standards and Goals in opposing the removal of the judiciary from the sentencing process. As the Commission declares:[62]

> "Since sentencing affects individual liberty, the involvement of a judicial officer attuned to the need to protect the offender against unjustified detention as well as to impose adequate punishment to meet society's needs is essential."

Because of the serious consequences of sentencing and the obvious need to make such decisions based on all the relevant information available, courts should make

regular use of probation reports before imposing sentences that require significant incarceration or other deprivation of liberty. The American Bar Association's Standards Relating to Sentencing Alternatives and Procedures, the National Council on Crime and Delinquency's Model Sentencing Act, and the American Law Institute's Model Penal Code all emphasize the need for thorough presentence probation reports.[63] The ABA's Standards call for such reports in every case where incarceration for one year or more is possible, where the defendant is under age 21, or where the defendant is a first offender. NCCD's Model Act urges mandatory use of presentence reports for all crimes which may include commitment for more than six months. The ALI's Model Code would require such investigation and reports for all cases where the conviction is a felony, the defendant is under 22, or the defendant will be placed on probation or sentenced to an extended term of imprisonment.[64] California law currently requires a probation report in all felony cases but makes it optional in misdemeanor matters. The only exception is a recent law mandating presentence investigation on all second time drunk drivers (23102.3(b) V.C.). Whereas some county lower court benches utilize this process very frequently, especially when they are considering jail, others rarely refer misdemeanants to probation prior to sentence.

> RECOMMENDATION 20. *Lower courts should request probation presentence reports at least in all cases where they are considering imposing jail sentences of six months or more unless they already have obtained such a report within the last year or the defendant is already in the formal correctional system.*

Because of the vagueness of the law requiring presentence investigations for persons convicted a second time of drunk driving, a debate has ensued in some counties over which agency should prepare those reports. It would appear that this is a traditional function of probation departments and one at which they are the most highly skilled. In addition, probation departments often have background information on many of these persons already and are the agency that will have to supervise them if they are granted probation. Hence, there seems no point in assigning this task to some other agency.

RECOMMENDATION 21. Section 23102.3(b) of the California Vehicle Code should be amended to specify that presentence investigations on second time drunk drivers are to be prepared by the county probation department.

Another related concern is that some courts place persons on probation without having first requested a presentence report. This process is often called "summary probation." Probation staff frequently complain that many of these grants of probation are inappropriate and that a presentence investigation would have made this evident. Hence, this procedure seems to be a waste of taxpayer money and the limited resources available to probation staff.

RECOMMENDATION 22. Courts should not place defendants on formal probation without first requesting a presentence report.

With regard to the problem of disparity in sentencing, even for the same types of offenses or offenders, there is an ongoing need for judicial training, especially for new judges and those returning to the criminal court bench after significant absences. The State Judicial Council has been arranging for some training of this type in recent years but apparently not enough.

RECOMMENDATION 23. The State Judicial Council and the presiding judges of each bench should make increased efforts to provide regular training, both of the conference type and by means of written guidelines, geared at providing more consistency in sentencing for similar types of offenses and offenders.

CHAPTER FOUR

DIVERSION

This chapter describes diversion as an issue in the intake process. The chapter begins with an attempt to define and utilize concepts consistently and precisely. A literature review of diversion indicates widespread overlapping of many related yet distinct concepts. The body of this chapter relates a history of the formal and informal use of diversion, provides some elaboration of the current pressures towards diversion in the intake system and gives a description of the major diversion models currently operating within California. The major issues concerning the use and misuse of diversion are emphasized. The chapter concludes with tentative recommendations regarding the planning, funding, and implementation of future diversion efforts.

DEFINITIONS

For clarification, the following definitions are presented.

Diversion is the halting or suspending of the further legal penetration into the criminal justice system of an alleged law violator, and the referring of that person to an alternative program. Diversion occurs between the points of initial police contact (for a legally proscribed act) and the adjudication or conviction decision.

- Primary diversion occurs when the criminal justice system retains jurisdiction over the person and can pull him back into its formal process if it deems such action appropriate. The alternative program may be either a criminal justice or non-criminal justice program; the defining characteristic is the pullback mechanism. Using this definition, diversion for drug users under 1000 P.C. is primary diversion, whether supervision and/or treatment is provided by the probation department or by a community-based residential facility; the charge is

held in abeyance until "successful" completion of the diversion program. Informal supervision of a juvenile by a police department can be primary diversion if the police retain the prerogative to refer the youth to probation if he does not cooperate with their program.

- Secondary diversion occurs when the criminal justice system refers the person to a criminal justice or non-criminal justice program but cannot pull the client back into the system for the same alleged law violation. In essence there are "no strings attached" to the secondary diversion program. An example is a police referral to a family service agency for an "incorrigible" juvenile in lieu of taking him to juvenile hall or citing him to the probation department. Another example is the transporting of a drunk to a detoxification center instead of jail.

Diversion is distinguished from outright Release, in that there always is a referral to another agency.

At any point as an alleged offender moves through the system, criminal justice agents have the discretion to completely release the offender without referral and without pullback on the same alleged offense. Most juveniles detained by the police, for example, are released to their parents; official disposition may read "counsel and release" or "reprimand and release." Prosecutors often release for reasons of insufficient evidence, lack of a signed complaint, and/or the "interests of justice."

Referral[1] involves active efforts by an agency to attach an alleged offender to an alternative program. A police officer may refer a youth to a community-based youth service bureau by providing the address and phone number to the minor. A police officer refers a drunk to an alcoholic detoxification center by physically transporting him there.

Absorption[2] defines those community efforts to handle alleged offenders without or prior to official police contact. Communities have occasionally pressured schools to handle their own truancy problems, instead of referral to police. Families with sufficient resources may handle their incorrigible youngsters by referral to private psychiatrists or transfer to private schools instead of taking them to juvenile hall.

Prevention is distinguished from both absorption and diversion in that programs are initiated to avoid or "prevent" any legally proscribed behavior; absorption and diversion efforts are instituted after illegal behavior has occurred. Recreational and educational programs, designed to "keep kids off the streets" and teach youth about the dangers of drug abuse, for example, are primarily prevention efforts. Police may divert youth to those same programs, however.

Perhaps the most difficult distinction comes in the gray area between minimizing penetration[3] and diversion. Minimizing penetration refers "to efforts to utilize less drastic means or alternatives at any point throughout official criminal or juvenile justice processing."[4] Diversion halts or suspends processing either completely or for a specified time period. Pretrial release programs aimed at increasing the use of bail or release on O.R. do not halt or suspend the process, but they do utilize less drastic alternatives to official processing and are therefore efforts to minimize penetration into the justice system. (Incarceration alternatives, both adult and juvenile, are not discussed in this diversion chapter.) A further confusion arises as "minimizing penetration" is often one of the stated objectives of diversion programs. The helpful distinction is whether or not the program halts or suspends formal processing.

HISTORY OF DIVERSION

Informal alternatives to the formal justice system have always existed; many have become formal or institutionalized parts of the system. The idealized justice model of arrest-conviction-imprisonment has been consistently circumvented by such practices as securing sanctuary, judicial reprieve, the "best interests of justice," etc. Probation itself can be traced to the "common-law practice of suspending sentences temporarily...[then] courts began to suspend sentences indefinitely, permitting convicted offenders to

remain at large on good behavior."[5] Volunteers began to assist offenders during the suspension period at least forty years before the first statutory provision for probation with publicly paid officers was enacted in Massachusets in 1878.[6] Probation, initially a community-based alternative to incarceration for less serious or first offenders, is now an institutionalized part of the formal official justice process.

The entire juvenile justice system was initially promulgated as a humanitarian, treatment-oriented alternative to punitive adult processing for all juvenile offenders. The first statute that established this alternative was the 1899 Illinois Juvenile Court Act which enacted special court proceedings for protecting children, and vested authority in the new court to appoint probation officers. The now controversial expansion of the definition of delinquency (to include status offenses as well as violations of criminal statutes) was articulated in the subsequent 1901, 1905, and 1907 amendments: to the 1899 definition of jurisdiction as any child "who violates any law of this state or any city or village ordinance," was added the "omnibus clause," offenses of "frequenting places where any gaming devices are operated," "incorrigibility," "growing up in idleness or crime," "running away from home," "loitering," "using profanity."[7]

Although probation was never limited to juveniles before or after 1899, the use of probation "had been sporadic and desultory until it became tied with the juvenile reform movement. It then spread to every state that enacted juvenile court legislation."[8] The new juvenile justice treatment alternative to punitive adult processing thus bound together expanded jurisdiction ("omnibus clause" behavior) with an innovative medium-supervision program (extensive use of probation as an additional alternative to either institutionalization <u>or</u> <u>release</u>).

The juvenile justice treatment alternative which was to offer a less formal, more humane approach to juvenile offenders is now the institutionalized system which has generated so much criticism. Current juvenile diversion efforts are aimed at providing alternatives to the very system which was promulgated as an alternative. Recently writers have questioned these early efforts to divert and minimize penétration;[9] the issues as to whether expanded jurisdiction and additional social control mechanisms were really humanitarian/treatment motivated are still absolutely relevant for current diversion efforts.

CURRENT PRESSURES FOR DIVERSION

BROAD DISCRETION/WIDE DISPARITIES

The recent expansion of formal diversion efforts for both adults and juveniles was encouraged by the general recognition that broad discretion and informal preadjudication dispositions were inherent aspects of the criminal justice system. The classic studies by Lafave, Piliavin and Briar, Goldman, Lohman, Wahl and Carter[10] indicate the maze of objective and subjective factors affecting criminal justice agents' decision making. Among these factors are the nature of the instant offense, the circumstances of its commission, the demeanor and attitude of the accused (and the parents of the accused, if a juvenile), the perceived character and social status of the accused, the attitude of the victim, the philosophy, attitude and bias of the decision maker, and the bureaucratic exigencies of agency pressures and policies. The ambiguous definitions of legally proscribed behavior and the community pressures for differential enforcement encourage the varied use of discretion, resulting in a lack of system uniformity. Certain types of offenders are provided with special handling by the system (e.g., white, middle-class youth are much more likely to be reprimanded and returned to their parents than are poor Blacks, for similar offenses). The recognition of the system's inherent biases has created the pressure to divert on the basis of explicit criteria which would more equitably affect all offenders.

LARGE VOLUME OF CASES

The huge volume of cases becomes a critical internal factor which stimulates diversion efforts. The "very nature of the justice system, in fact, requires that considerable discretion be used by those operating the various component parts of the system if the system is not to be 'swamped' by its own activity."[11] In 1967, the President's Commission on Law Enforcement and Administration of Justice stated that discretionary judgment provides "a necessary steam valve in the juvenile justice system...Neither police ranks nor the number of judges and auxiliary staff of juvenile courts has expanded at a rate commensurate with the increase in recorded delinquency..."[12]

The volume of cases largely results from "violations of moral norms or instances of annoying behavior rather than dangerous crimes."[13] Sample statistics to support this are shown in Exhibit 4-1.

	Boys	Girls	Total
1972 Actual Juvenile Arrests	262,933	90,299	353,232
% Juvenile Delinquency Major Offense	34.7	13.4	29.3
% Juvenile Delinquency Minor Offense	17.2	20.6	18.0
% Delinquency Tendencies	48.1	66.0	52.7

SOURCE: Bureau of Criminal Statistics, Crime and Delinquency in California: Crimes and Arrests 1972, Sacramento, May 1973.

Exhibit 4-1. JUVENILE ARRESTS 1972

Observations from this and other BCS data[14] include:

- 53% of all reported juvenile arrests are related to 601 W&I "delinquent tendency" behavior.
- 66% of all reported female juvenile arrests are related to 601 W&I.
- 30% of all reported adult misdemeanor arrests are for drunk/disorderly conduct.
- 47% of all non-traffic adult misdemeanor arrests are for drunk/disorderly conduct.
- 10% of all non-traffic adult misdemeanor arrests are for petty theft.
- There are almost as many (92%) drunk (misdemeanor) arrests as total felony arrests.

The above data support the conclusion that the criminal justice system is sagging under the pressure of non-delinquent juvenile offenders and minor adult offenders. Diversion assumes that if alternatives are created for these offenders, criminal justice resources can be more suitably reallocated to the official handling of more serious and less tractable offenders.

LOWER COSTS OF DIVERSION

Cost anlyses of diversion processing vs. formal justice processing are extremely rare. However, there are some

tentative figures which indicate considerable cost savings for diversion.

- A benefit-cost analysis of the Washington, D.C. Project Crossroads considered the money saved due to reduction of future offenses by the participants (based upon comparison of participants with a control group), the money saved in processing offenders by diversion rather than by traditional methods, and the money earned by the offenders due to their higher employment rates and higher wages earned. Benefits were compared to the operation costs of diversion. The analysis concludes that "measured by the benefits to society as a whole, this diversion program seems to be an economically worthwhile alternative to traditional criminal processing."[15]

- The Youth Development and Delinquency Prevention Administration of the U. S. Department of Health, Education and Welfare (YDDPA) has estimated that by 1977, with a juvenile diversion rate of 25% (25% of those youth now being referred to probation by the police will be diverted), "almost $1.5 billion could be saved in official court costs...."[16]

- Using the YDDPA estimates of probation costs, the Los Angeles Sheriff's Department has figured a total savings of $651,700 for the diversion of an estimated 689 youth away from the formal probation and court system. Subtracting the estimated increase in the Sheriff's costs (for operating the diversion program) of $88,762, the net annual savings to county government is $562,938.[17]

- A relatively sophisticated cost-benefit analysis has been performed on the Dade County, (Florida) Pretrial Intervention Diversion Program.[18] This provides the following summary costs for 125 program cases and 125 regular (probation/incarceration) cases:

Pretrial Intervention Cost per client	$695
Probation/Incarceration Cost per client	$876

Thus, there is an apparent 21% of savings in cost associated with the pretrial diversion program. In the second year of the program it was estimated that program costs dropped from $695 to $500 due to an increased number of clients (still maintaining a caseload of only 20-25 clients). This represents a saving of 43% over the traditional processing.

MINIMIZE PENETRATION--REDUCE STIGMA

A major stimulus for diversion is the increasingly acute frustration with the ineffectiveness of the current system. "If evidence could convince us that current criminal and juvenile justice and correctional practices were effective in altering socially disapproved behavior, it is possible that we would continue to support such treatment of troublesome persons. However, the best of current evidence points strongly in the opposite direction."[19] Nationally, more than three fourths of the felonies processed in criminal courts are committed by repeaters; recidivism rates are highest for offenders discharged from prison at the expiration of their sentences, lower among parolees and lowest among probationers.

In California recent studies have shown similar findings. Based on 1969 felony arrests in a five-county region of central California,[20] 28.8% of the felony arrestees had no prior record, while 32.6% had major or prison records. The Bureau of Criminal Statistics OBTS project[21] shows, for 1971, 28.9% of the felony arrestees in that twelve-county summary had no prior record, while 42.9% had major or prison records. (By BCS definition, a major record includes convictions with jail sentences of 90 days or longer.) Evidence of continued insertion of juveniles into the system is found in the fact that of 188,326 petitions filed in California juvenile courts in 1972, 15% were for juveniles who were already under court jurisdiction. Of those currently under court jurisdiction, 40% were classified as having delinquent tendencies whereas 35% of the initial petitions were for delinquent tendencies.[22] Diversion therefore occurs because of "our official concern that the justice and correctional process may contaminate rather than rehabilitate the offender."[23]

For at least a decade, social science theorists have been emphasizing a labeling theory to explain the contamination effects of criminal justice processing.[24] The stigma-labeling analysis indicates that "the public responds to a

person informally and in an unorganized way unless that person has been defined as falling into a clear category. The official labeling of a misbehaving youth as delinquent has the effect of placing him in such a category. This official stamp may help to organize responses different from those that would have arisen without official action. The result is that the label has an important effect upon how the individual is regarded by others. If official processing results in an individuals's being segregated with others so labeled, an additional push toward deviant behavior may result...official intervention may further define the youth as delinquent in the eyes of neighbors, family members, and peers, thus making it more difficult for him to resume conventional activities."[25] Other authors have examined the possible responses to labeling; for example, Lemert's theory of secondary deviance[26] and Korn and McCorkle's reject the rejectors theory.[27]

The structural and procedural systems of society ensure that when the offender is officially labeled, society's agencies, schools, and police lower their level of tolerance of any further deviance. The curfew violator who is an identified parolee may go into detention; the non-labeled offender will frequently go home. A 601 W&I (pre-delinquent) becomes a 602 W&I case (delinquent) for additional 601 W&I (pre-delinquent) behavior. The complete change of category (601 to 602) and hence in the way the case can be handled is a classic example of increased stigma for the same behavior. As stigma increases, the offender penetrates further into the correctional apparatus, and he is subject to a greater degree of segregation with others of his kind. From special school, to local detention, to institutionalization; each step invites further identification with the subculture of the criminal/deviant. So again, his anti-adult, anti-social peer-oriented values are reinforced and confined, and the positive social-producing influences of the majority society are removed further from him.[28]

Practitioners' and theorists' recognition of the justice system's failure to correct and the increased likelihood of failure the farther one is inserted into the system, due largely to the social structural assurance of failure generated by labeling, have resulted in current efforts to utilize the least restrictive alternative at each decision point. The <u>California Correctional System Study</u>,[29] 1971, articulated the general principle that the burden of proof must rest on the system to retain an offender; the least restrictive alternative commensurate with community safety should always be the choice of

preference; to this end, each criminal justice subsystem should have wide dispositional latitude, alternatives, and services available at each decision point.

Diversion offers some of these additional alternatives at several points in the justice system. The study team's survey of criminal justice officials throughout the state reflects the demand for diversion: 66% of all the responding criminal justice officials feel public drunkenness should be handled in diversion programs; 54% feel that any "victimless" behavior should be handled in diversion programs; 60% feel that all juvenile status offenses (601 W&I) should be handled in diversion programs.

Diversion may produce less stigma and, hence, more success than formal processing. Planners are beginning to weigh the social and fiscal costs of official processing against those of diversion. Planners and administrators must also begin to recognize the alternative "of taking no action at all;"[30] diversion raises the issue of the right to no treatment for behavior that is questionably labeled as illegal.

PROGRAM DESCRIPTIONS

The factors of the recognition of the widespread disparity in the use of discretion by criminal justice agents--the pressures of an increasing volume of cases, the potential fiscal and social savings of diversion, the minimization or elimination of labeling--have generated a burgeoning of programs. Diversion proponents "are advocating that prejudicial disposition [which has always occurred informally and invisibly] be made a conscious and clearly defined policy, that the processes of diversion be given some procedural regularity, and that decisions be made on the basis of explicit and predetermined criteria."[31] The following program descriptions are attempts to formalize the diversion process. Programs are grouped into four major categories relative to the stage where each occurs in the justice system: (1) prior to police contact (technically, absorption); (2) at the time of police contact; (3) at the time of filing criminal complaint; and (4) at the time of court processing. A simplified schematic of the process stages where the various programs occur, along with several example programs, is given in Exhibit 4-2. At each stage, decisions are made to release offenders from the system completely, to process offenders on to the next stage, or to divert offenders into alternative programs. The programs shown are only examples of those considered as promising by study staff and are by no means inclusive.

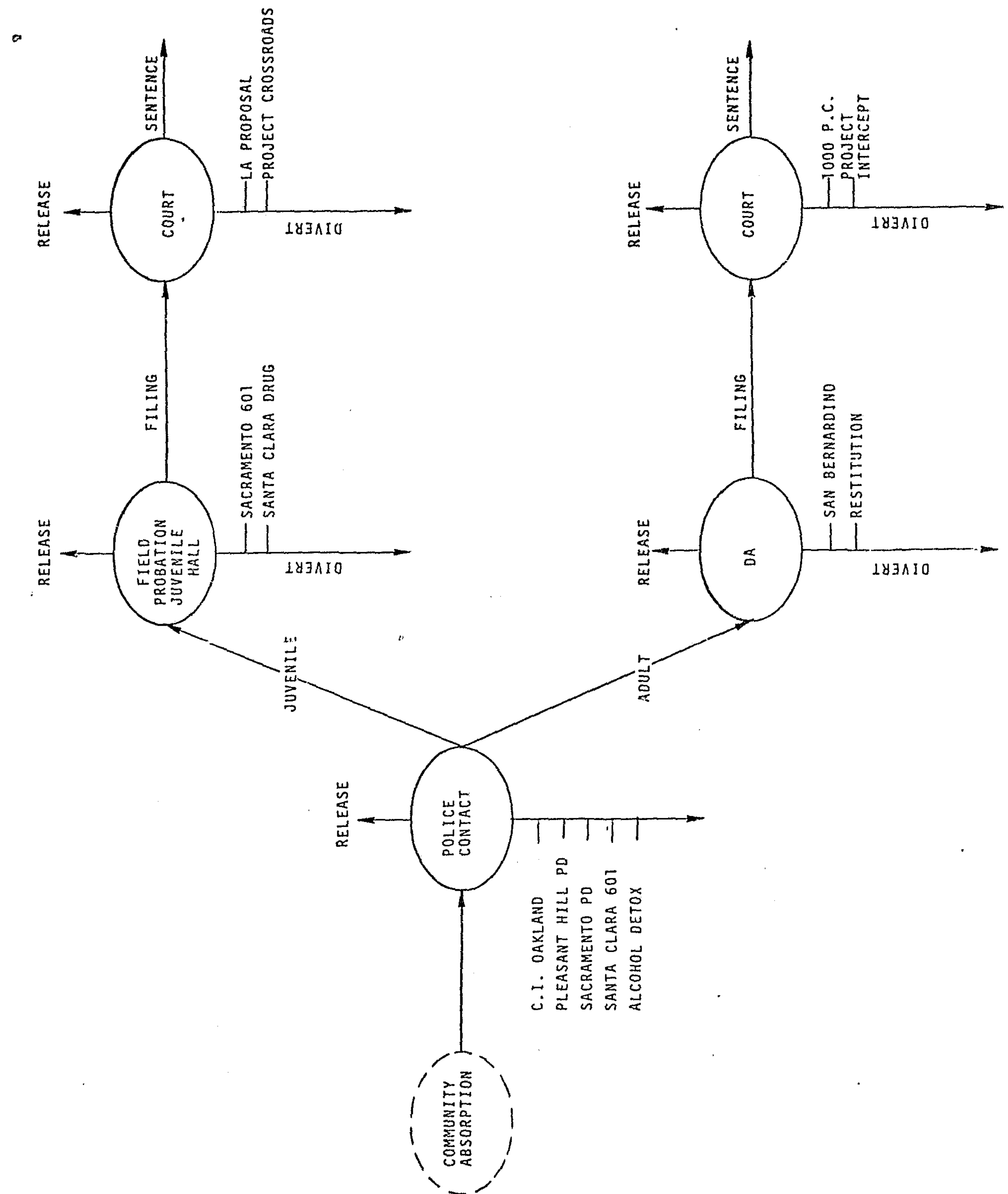


Exhibit 4-2. THE DIVERSION PROCESS - SAMPLE PROGRAMS

COMMUNITY ABSORPTION

Community absorption refers to those community efforts to handle alleged offenders without or prior to police contact. It defines the ultimate goal of many diversion theorists. However, community absorption is not technically diversion since it occurs prior to formal criminal justice agency contact. Communities have differential abilities to control their delinquency rates by absorption. Lemert indicates that "such differences are largely a function of differences in police organization and in the degree to which they are integrated in a cultural sense with the community areas whose populations they police. They are also associated with cultural differentiation of the police themselves and with variable policies of departments as to what kinds of deviance will or will not be adjusted internally."[32]

Police rôle largely can be determined by a politically and socially powerful community. The greater the cultural integrity of a community, the more control it has over its institutions, education, economics. The greater the level of understanding and agreement between community and police definitions of who and what needs control, the lower the rate of official delinquency.[33] Powerful privileged communities have low rates of delinquency because they have been "diverting" their children out of the system, through their ability to absorb and/or normalize behavior. Competent communities "...have been diverting their trouble-making youths out of care by official agencies and into alternative channels. Plainly, they reduce official delinquency by the simple method of meeting the problem by unofficial means. Employment of this method is made possible, however, by the highly developed 'institutionalized power' characteristic of such competent communities...in such communities the police, courts, and other law enforcement agencies on the local level are very conscious of, and responsive to, the opinions and wishes of local citizens regarding how the law is enforced..."[34] (Emphasis added.)

In privileged communities, absorption is a common alternative for much of the 601 W&I behavior of juveniles. Parents generally have the social and fiscal resources to affect their community institutions. The recent interest in alternative schools is primarily a function of upper middle-class youth dissatisfaction with public education; their parents have the money and the power to force institutional change or set up their own institutions. Low status, lower class youth have similar complaints about public education; their parents, however, do not have the resources to provide instant alternatives. Youth respond by acting out and by

being truant. Parents of "incorrigible" or drug-using youth can enlist a plethora of private therapy treatment modes--if they have the financial and social resources--often avoiding police or probation contact entirely. Parents without these resources do not have these alternative options--their youths are inserted into the criminal justice system.

Schools have a huge potential capacity to absorb behavior problems, truance, and minor criminal acts that occur on campus. Absorption occurs, differentially, however, as schools continue to maintain and institutionalize privilege.[35] In small, upper middle-class areas the tax base and the parents' influence generate creative, innovative individualized teaching methods. Children who act out are immediately given specialized attention, efforts are made to identify strengths, and programs are created to enable successful achievement. In urban, low-income communities, schools respond to failure and behavior problems by tracking, "special classes," continuation-vocation schools and, ultimately, suspension and dismissal. Negative labeling occurs early in the school system; weaknesses and "social-psychological inadequacies" are identified; special programs are designed to lump all problem youth together separate and apart from the school achievers. Failure and referral to criminal justice are frequent.

Victims too can absorb illegal behavior--especially in wealthy communities where destroyed property can easily be replaced. Carter's study of two middle-class white communities revealed that "vandalism and malicious mischief such as breaking windows, stealing bicycles, knocking over mailboxes, and discoloring swimming pools are seldom reported to the police, but instead are matters for restitution and settlement between parents, or they are written off against homeowner's insurance policies."[36] Poor communities are less able to absorb property losses and tend to rely more on police.

DIVERSION AT THE POLICE CONTACT STAGE

Police basically have three options available at the point of contact with legally proscribed behavior: release, further processing, diversion. These decisions may or may not be made instantaneously; they may be made in the field or at the station and over some period of time. If diversion is the chosen alternative, there are apparently two major diversion models operating in Calfornia today. In one model, trained police are providing much of the direct

service to youth; in the other model, police use community resources and refer to non-justice agencies for direct services.

Police-Provided Service

Pleasant Hill Police Department Youth Services Bureau

The first youth service bureau to be affiliated with a local police department was started in July, 1971, in Pleasant Hill (Contra Costa County), California. The project's major objective, quoted from the project grant request, was to "absorb the juvenile problems of the community and divert 500 arrested youths out of the formal criminal justice system." As in most police diversion programs, diversion was to provide an alternative to booking the arrested youth at juvenile hall or citing him to the probation department.

Officers in this community have redefined their role to include social responsiveness, intake and referral services, and to use many of the tools of social science. An estimated 90% of the youth arrested are brought into the station and are issued citations to appear at the youth service bureau. The bureau consists of trained police and civilian staff and sees all cited youth and their families at least once. Staff offers counseling, tutoring, job assistance; they decide the amount and kind of service a juvenile requires. Staff provides informal and formal guidance to youth who require more than a stern reprimand. A youth may be required to come in to see his counselor once or twice a week for a three- or four-month period.

This diversion alternative was designed to offer an option to juvenile hall or other probation processing. It has definitely succeeded. It has also apparently provided an additional option for handling those youth who were formerly reprimanded and released. A comparison of the department's handling of juveniles is provided in Exhibit 4-3, which shows departmental referrals for fiscal 1971 (prior to the diversion program) compared to fiscal 1972 (the first year of the program).[37]

The objective of diverting 500 youths was essentially satisfied. This was accomplished by decreases in referral rates to the juvenile hall of 29% and to the probation department of 93% along with the greatly expanded use of the youth service bureau and the other agencies.

Arrest Disposition	Base Year 1971	First Project Year 1972	Net Change
Referred to Juvenile Hall	194	137	- 57
Referred (cite) to Probation Department	202	14	-188
Referred to Youth Service Bureau	4	460	+456
Referred to Other Agency	6	24	+ 18
Reprimanded and Released	444	182	-262
TOTAL ARRESTS	850	817	- 33

Exhibit 4-3. PLEASANT HILL PROJECT

The table also reveals what has emerged as a significant diversion issue. Pleasant Hill experienced a 59.1% decrease in the reprimand and release disposition. Youth who were formerly completely released from the justice system are now being shunted into diversion programs. Many practitioners and diversion advocates, recognizing the trend, support its continuation and feel that if service can be provided at initial police contacts, subsequent contacts can be avoided. Critics point out that when diversion affects those formerly released, it only serves to expand the network of social control and does not act as a system alternative. No diversion project reviewed has had the evaluation mechanism to prove the value of diversion instead of release.

Sacramento Police Department Youth Services Division

The Sacramento Police Department Youth Services Division has operated an in-house and in-school counseling program since August, 1971. The project recognizes that family dysfunction often culminates in youth delinquency; officers are trained in crisis intervention counseling to intervene in the family breakdown. Emphasis "is placed on etiology and rehabilitation rather than detention and rehabilitation," under the assumption that crisis counseling is a way to avoid stigma, detention and further justice processing.

The youth services officers screen all juvenile arrests made by the department. Any youth who is not on probation or parole and who has not committed a psychologically or criminally serious offense is

eligible for counseling services. Parents are contacted and counseling sessions set up in lieu of processing on to probation. Officers are also assigned time to work in each of the high schools and junior high schools in the city of Sacramento. Their work in the schools is largely preventive, as they feel that trained police officers are best able to recognize pre-delinquency symptoms and provide on-the-spot counseling.

Officer training consists of 100-plus hours in crisis counseling with families, pre-delinquents and first offenders. The officers receive an introduction to and overview of delinquency literature, dynamics of delinquent behavior, culturally relative concepts of deviance. Training in counseling theories and techniques is provided, in addition to special emphasis on drug abuse problems, alcoholism, suicide, and family dysfunction.

For the period August 1, 1971, through September 30, 1973, juvenile arrests totaled 9,740. Of that number, 3,142 (32%) entered the youth services program. Project data indicates that the total number of recidivists in that period was 267; the total recidivism rate was 8.5% compared to 20% rate prior to program inception. Of 859 major offenders (essentially felony offenses for adults) taken into the program, 66 or 7.68% were subsequently re-arrested for a major charge. Of the 859 major offenders taken into the program, 105 or 12.22% were subsequently rearrested for a major or minor charge.

Police Family Crisis Intervention

Police have always found family disturbances one of the most difficult problems to handle. Some authorities claim these situations are among the most dangerous for a police officer and that more officers have been killed responding to these crises than in any other type of situation. Not only does the appearance of an authority figure, particularly if he uses an authoritarian approach, often escalate the violence of these situations (e.g., by all family members turning on this new "outsider"), but family members often refuse to sign a complaint the following day. In an effort to cope more

effectively with these complex and troublesome episodes, several departments have developed trained crisis intervention teams to assist in the resolution of family conflict on the scene. If further relief is indicated, police will refer to a community agency.

Some police departments hire a full-time social worker as part of the crisis intervention team; some use community relations male and female units; others have on-call services of psychologists. The thrust of this crisis intervention capability is to provide immediate relief and avoid the necessity of further justice processing. Oakland has developed one of the more extensive crisis intervention programs. As a result of this program (and others, which make cause and effect evaluation difficult) police-community relations have improved and many incidents have been averted which probably would have led to arrest previously.

Bell Gardens Youth Services Bureau

This program is aimed at juvenile delinquency prevention and control. It is an inter-disciplinary program coordinated by the police department. The initial objectives of the program included: a reduction in the number of local juveniles being placed in detention and/or processed by juvenile court by 20%; a reduction in the incidence of youth arrests; a reduction in crimes committed by juveniles; the provision of counseling and guidance for pre-delinquent youth. An evaluation of the program's first year showed a 63% reduction in juveniles being detained and/or processed in juvenile court.

Staff consists of a probation officer, a social services worker, four youth counselors, a supervising counselor/consultant, male and female juvenile police officers, and a police lieutenant. Three police resource officers, who teach criminal justice-related courses at the high and junior high schools, are also assigned to the bureau. The bureau provides individual and group counseling regarding crisis intervention, career development, parent-child relationships, job training and placement. Staff are primarily concerned with the best interests of the youth of the community, and all decisions and dispositions are made with that consideration.

Santa Clara County Pre-Delinquent Diversion Project

One of the major efforts in police diversion has been undertaken by the twelve law enforcement jurisdictions within Santa Clara County. Project proponents stated that in 1971, of the 2,712 delinquent tendency (601 W&I) arrests in Santa Clara County that were referred to probation, 71% were closed at intake. It seemed evident that instead of referring to probation, law enforcement agencies could provide referral services themselves, avoiding further processing.

The initial objective of the program was to reduce the expected 601 W&I referrals to probation by 66% during the first project year, 1972-73. Law enforcement agencies were to increase emphasis on family responsibility for solving the 601 W&I type of problem; potentially this would reduce overall police involvement in all family matters. The diverted youth would not have any probation record, and the project would create and expand services for youth. Funding for the project would be awarded commensurate with the degree of reduction in 601 W&I referrals. Funds received would be used to purchase services from private and public non-justice agencies.

The project was a joint probation and police effort. Probation provided four full-time staff to identify and develop a comprehensive network of agencies to which police could refer. The participating officers received forty hours of training in community resources, social service agencies, family systems, and therapy.

In the first project year, 2,906 601 W&I arrests were made in the county; 1,904 or 65.5% were diverted through this program. It is interesting that, of the remaining 1,002 referred to probation, 55% were still closed at probation intake. The overall recidivism rate for the diverted 601's was 24.3% (as compared with a 48.5% rate found for a one-year cohort sample of pre-program 601's).[38] Project evaluators indicate this suggests that diversion away from the justice system was more effective in helping 601's avoid further trouble.

Another measure of program outcome was the degree to which police were aware of and used community resources. Prior to the program's inception, the police throughout the county were aware of approximately fifteen community

resource agencies, although these agencies were seldom utilized. After the first year, police were aware of and consistently used eighty-nine agencies in the county. Parents were used as a "resource" in 35.4% of the cases--it is unclear whether this only duplicates the former reprimand and release to parents' disposition.

Cost benefits were significant. The projected probation costs for handling 601's without the program were $754,292 and 23,068 personnel hours. The actual costs of the diminished number of referrals were $261,564 and 6,995 hours. Savings amounted to $492,727 and 16,073 personnel hours; subtracting police program costs, net savings were $289,716.

Drug Abuse Prevention Education Program, West San Fernando Valley Mental Health Service, Los Angeles County Department of Mental Health, Los Angeles Police Department

This project started in October, 1970, in the west San Fernando Valley area of Los Angeles. Youth aged 11-18 arrested for experimental drug offenses are eligible for referral to a community family drug counseling program in lieu of probation processing. Parents and youth must agree to go to at least four counseling sessions on family relations, school problems, and peer group activities. Counseling is provided by psychiatric social workers and trained volunteer para-professionals.

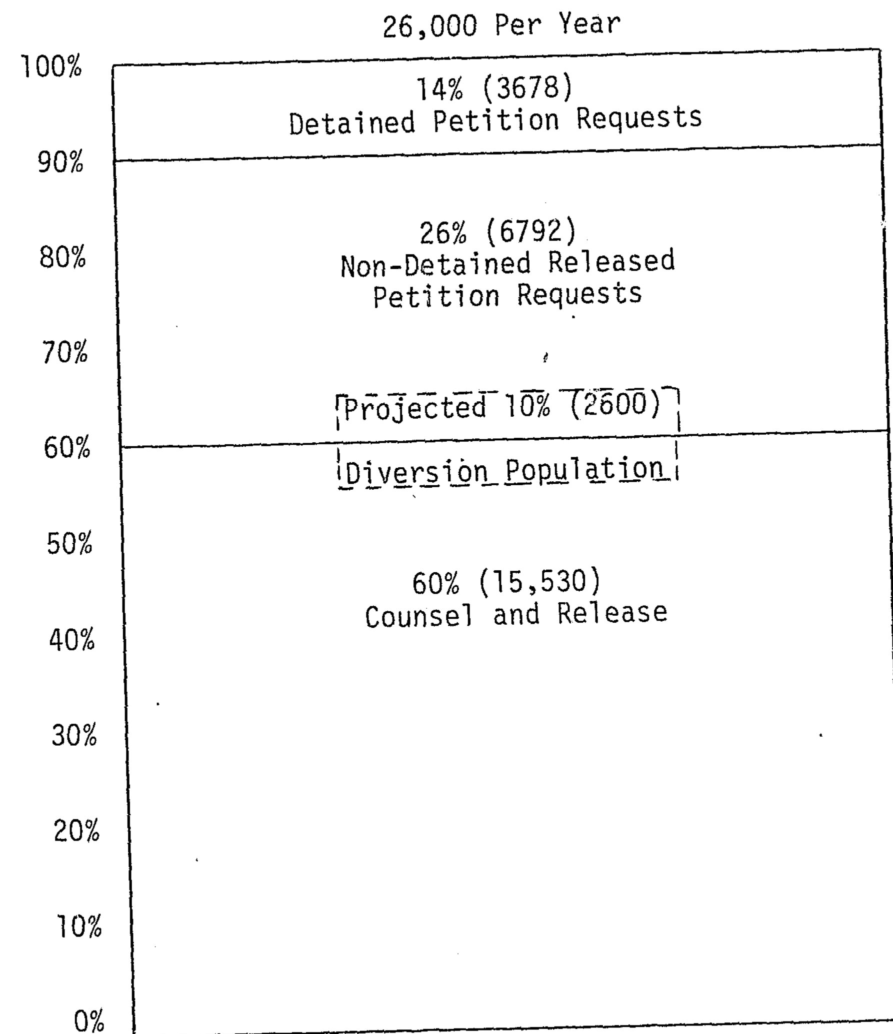
Between October, 1970, and February, 1973, juvenile narcotics officers made over 300 referrals to the program. Of a sample of 32 referrals in late 1970, 75% had no rearrests fifteen months later; of 163 referrals in 1971, only 19% had any rearrest record within a year.

Los Angeles County Sheriff's Department Juvenile Referral and Resource Development Program

The Los Angeles County Sheriff's Office has one of the largest diversion projects operating in the state. The program began in 1970 and has diverted over 3,000 youth in eighteen months of operation. Exhibit 4-4 shows the approximate dispositions of the annual 26,000 juvenile arrests: 60% are

Exhibit 4-4

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
JUVENILE ARREST DISPOSITIONS



SOURCE: Los Angeles County Sheriff's Department

normally counseled and released; 26% are cited to the field probation department with a request for petition; and 14% are booked at the Intake and Detention Center (juvenile hall). The target population for diversion comes from both those youth who would otherwise have been cited to field probation and those youth who would otherwise have been counseled and released. Note that this constitutes a combination of diversion and prevention, since the counsel and release youth who are diverted would normally have been removed completely from the system at this time. The reason for providing treatment for these youths is their apparent need, not the legal severity of the offense in which they are presently involved.

Juveniles are cited to trained juvenile officers who normally have one interview with the youth and parents. Officers have a regionalized listing of referral resources updated bimonthly. A recent sample of 1,800 diverted youth showed the variety of divertable offenses: 43% were 601 W&I offenses, 28% were drug law violations, 17% were property crimes, and 8% were crimes against persons. The department claims to have met its objectives of reducing recidivism to 40% for diverted youth; improving diverted youth's compliance to parental authority, and attitudes toward family relationships; and improving the youth's self-understanding.

The department is extremely active in the development and testing of diversion concepts. They are currently implementing a $50,000 pilot project to provide for direct purchase of service to local community agencies to handle referrals. Agencies will receive a flat amount for intake services and a bonus amount if they can keep the youth from re-arrest for a six-month period. Agencies will be evaluated by the department for suitability for the program; sheriff's staff are seeking small community facilities, para-professional staff, with agressive outreach and follow-up services.[39]

The experimental design to be used will provide the ability to evaluate the effectiveness of the various options since four random groups will be formed; juveniles who are sent to probation, juveniles who are counseled and released, juveniles who are referred to other existing agencies, and juveniles for whom services are purchased through this new pilot project.

Alcohol Detoxification Center

Under the provisions of Section 647.(ff) P.C., passed in 1971, a person arrested for drunkenness may be brought to a designated county facility (alcohol detoxification center) by the arresting officer. Such a procedure is considered placing the person in voluntary civil protective custody; no prosecution can arise from the placement.

There are several reasons for this decriminalization of drunkenness, including reduction in police officers' time, better rehabilitation potential, and elimination of court proceedings. Public drunkenness accounts for a large proportion of criminal justice resources. California Municipal Courts handled 154,553 intoxication cases[40] in fiscal 1971-72; this represented 33% of the non-traffic criminal cases before the municipal courts.

In order to encourage the use of this procedure, OCJP has supplied funding for the support and expansion of existing alcohol treatment centers, as well as funding some completely new programs. The State Office of Alcohol Program Management has begun preliminary evaluations of the effectiveness and impact of some of these programs. One study is a socio-legal study of the application of the 647(ff) option based on the inebriate's social status (i.e., are middle-class drunks taken home more often than they are taken to a hospital or to jail). The counties covered in this study are San Francisco, Alameda, Contra Costa, San Joaquin, Sonoma, and Yolo. In a separate four-county study (Sacramento, San Mateo, Santa Clara, and Monterey) of OCJP funding centers, the Office of Alcohol Program Management is analyzing the volume of cases brought to detoxification centers, the number of persons arrested and taken to jail, and the reasons for not choosing a detoxification center.

Some preliminary findings in the San Mateo evaluation are worth noting. OCJP funding for San Mateo commenced in late October, 1973, and the facility was expanded at that time from eight to sixteen beds. The center is located at Crystal Springs Rehabilitation Hospital, in the central district of the county. Apparently distance from the scene of the arrest to the hospital is the single factor in the decision of whether or not to arrest. The heaviest usage is by police departments in

the central part of the county. The county jail is located in the southern part of the county so the police departments there find arrest more convenient in many instances. Two police departments with large volumes of drunk arrests are in the extreme northern end of the county and participate only minimally. Providing more widely distributed facilities may be necessary in order to make the program a viable option for all departments. The funds being made available through SB204 (Gregorio and Deukmejian 1973) should provide some assistance to the development of more facilities and programs.

DIVERSION AT THE PROSECUTION STAGE

For juveniles, probation officers make the decisions whether or not to file cases in juvenile court. Filing decisions for adults are made by the district attorney. Both juvenile probation and adult prosecution are currently using diversion alternatives; both have basically the same three options at this filing stage: to release, to file and process on to the courts, or to divert. Project descriptions follow which illuminate some of the major diversion trends.

Sacramento County Probation Department 601/602 W&I Diversion Projects

The Sacramento County Probation Department's crisis intervention projects, starting in October, 1970, were designed to test whether juveniles charged with 601 behavior could be better handled through short-term, family crisis therapy at the time of referral, rather than traditional probation processing. The resultant model has since been implemented in several counties. Sacramento's research design and project data are perhaps the best of the juvenile diversion projects investigated.

The project deputies have been trained in family therapy crisis intervention techniques. For four days a week (specific days were rotated monthly) all 601's who are booked at the juvenile hall receive crisis intervention counseling with their parents, one to two hours after booking. The session emphasizes familial control over familial problems; parents are urged to take their youths home and to attend subsequent therapy sessions. If parents absolutely refuse to take their youths, alternative

temporary placement is arranged with friends or relatives if at all possible. All therapy sessions after the initial one are voluntary.

The project experimental design includes a control group as well as the experimental (project) group. The control group consists of all 601's booked at the juvenile hall on the other three days of the week. Regular probation intake units handle these cases. Cases remain project or control for all subsequent behavior offenses--unless a petition is filed on a project case and then it is transferred to a regular unit.

In 1972, a similar project was implemented for minor 602's booked at juvenile hall. Project cases are handled with the same family treatment techniques; eligible offenses are petty theft, drunk, disorderly, all drug possession, receiving stolen property and non-damage auto theft. Ineligible offenses are robbery, burglary, grand theft auto, drug offenses, offenses involving violence or sexual assault. Again, the control cases are handled by regular intake units three days a week with the project cases being handled four days a week.

The results of the projects are impressive, not only as they appear to substantiate the value of diversion, but also as the experimental design is sound, with no inherent biases between the project and control groups to confound the results. Exhibit 4-5 shows the results of the first twelve months of the 601 project.[41] All of the results show statistical significance. For example, consider the hypothesis that there is <u>no difference</u> between the project and control groups with <u>regard to</u> re-bookings (as either 601 or 602). The data indicates that this hypothesis must be rejected at the .005 level. This means (roughly) that there is less than one chance in 200 that the recidivism results could be as different as they are, if, in fact, there is no difference in the re-booking rates for the different programs.

The results of the first seven months of the 602 project are given in Exhibit 4-6. The evaluators concluded that in terms of recidivism, "while the project techniques have some effect on the less serious behavior they have more on the more serious behavior."[42] There is no question that the data does support this. Based on a simple Chi-square test, the difference between the project and control groups with the 601/602 recidivism is significant at the 0.05 level; with the 602 recidivism, at the 0.01 level; and with serious 602 recidivism, at the 0.005 level.

Exhibit 4-5

SACRAMENTO PROBATION DEPARTMENT 601
DIVERSION PROJECT FIRST TWELVE MONTHS EVALUATION

	Project	Control
Number of cases handled	674	526
Petitions filed (as a result of initial handling)	3.7%	19.8%
Re-bookings*--602 offense only--601 or 602 offense	22.4% 46.3%	29.8% 54.2%
Overnight detention required	13.9%	55.5%
Average detention nights	0.5	4.6
Average supervision hours	14.2	23.7
Average handling cost	$ 13.60	$189.60
Average detention cost	$113.60	$214.27
Placement cost	$ 61.43	$157.76
Total average cost per youth	$274.01	$561.63

*Cases handled during first four months with re-bookings during a seven month follow-up period.

Exhibit 4-6

SACRAMENTO PROBATION DEPARTMENT
602 DIVERSION PROJECT FIRST SEVEN MONTHS EVALUATION

	Project	Control
Number of cases handled	218	211
Petitions filed (as a result of initial handling)	0%	29.4%
Petitions filed (as a result of initial and subsequent handling)	14.7%	42.2%
Re-bookings 602 offense only 601 or 602 offense	 22.9% 25.7%	 33.2% 35.1%

Santa Clara County Juvenile Probation Department Drug Abuse Program

This diversion project is a structured alternative for youthful drug users. Youths are selected at probation intake if they are charged with a petitionable and provable drug case and the charge is uncontested. To be eligible youth must not be currently/or have been previously on 601/602 probation or informal probation; they must not represent a serious community threat (e.g., drug sales) or suicide/homicide risks; there must be no concurrent serious non-drug charges.

If a youth is eligible, and he and his parents agree to participate, an informal supervision contract is made to attend six evening two-hour sessions, once a week, with one or both parents. Those youths who refuse the diversion or fail to complete the program are returned to intake for routine processing.

The night sessions have lecture and discussion formats with probation officers, guest speakers, youth and paraprofessional facilitators. The emphasis is on education about family dynamics and drug abuse and attempts to assist parent-youth communication.

The program's explicit criteria of "petitionable," "provable," and "uncontested," are unique among diversion programs. These are absolutely crucial criteria for diverting offenders and should be a part of every diversion plan funded by OCJP.

Placer County Probation Department Alternatives Through Action

The "Alternatives Through Action" program is a part of the intake and court unit of the probation department. Two deputy probation officers, known as diversion officers, devote full time to the program which was initiated in 1972.

The primary goals of the program are (1) reduce length of stay in juvenile hall of youngsters arrested under provisions of Section 601 of the Welfare and Institutions Code and reduce the number of petitions filed in juvenile court on their behalf and (2) initiate early intervention with youngsters and/or families identified as "problems" that might otherwise require official probation department and juvenile court action at some later date.

The reduction in detention and number of petitions filed under provisions of 601 W&I has been estimated at 30%. This has been accomplished through the implementation of the following:

(a) departmental priority being placed on complete release rather than filing juvenile court petitions on 601 W&I bookings in juvenile hall

(b) increased intake services to include night and weekend coverage

(c) emphasis on referring cases to other community agencies

(d) availability of follow-up services and counseling (Section 654 W&I) rather than filing a petition in juvenile court.

The major thrust of the program, and that which makes it somewhat controversial, pertains to the department's seeking referrals of youngsters and/or families who are actively experiencing problems. Youths and their families come to the probation department on a voluntary basis and usually are not known to the police on any kind of "official basis." The probation department solicits these referrals from schools, police agencies, other community agencies, families and youth themselves (youths sometimes refer friends), that may need assistance or are experiencing problems. The approach is non-authoritative. The individual must be willing. Usually problems are family related, involving a 9-12 year old, caused possibly by a disruption in the family (i.e., divorce, neglect, abuse, alienation) that may be affecting the youngster. Some of the youth's needs are legal, medical, (i.e., treatment for venereal disease), financial, and recreational in nature.

The diversion officer assigned to this unit is able to provide the following services:

(a) crisis intervention and individual counseling

(b) conjoint family therapy (scheduled weekly)

(c) referral to medical, legal, community services agencies for assistance

(d) sponsorship and development of community programs, recreation athletic leagues, rap sessions

(e) academic assistance--tutoring services

(f) other programs necessary to meet youth needs.

Primarily as a result of this active outreach component, substantial increase in the number of 601 W&I referrals to the probation department was experienced in the project year. In the base year, 1971-1972, 601 W&I referrals to probation totaled 362 cases, or 18% of all referrals to probation. In 1972-1973, 601 W&I referrals totaled 555, or 32% of all referrals to probation. Although total 601 W&I referrals increased, petition filings decreased. Of the 601 W&I referrals in 1971-1972, 77 or 16% had petitions filed; of the 601 W&I referrals in 1972-1973, 46 or 8% had petitions filed. Apparently as a result of the identification and outreach program, more youths are being processed, but the processing is informal with emphasis on parent effectiveness and non-justice agency referrals.

San Bernardino County Probation Department and District Attorney's Office Deferred Prosecution Program

In San Bernardino's program for adults, operating since January, 1973, diversion occurs prior to filing of criminal charges for selected alleged offenders, away from further court processing and directly into probation supervision.

The program involves a contractual agreement between the District Attorney, the Probation Officer, and the defendant and his attorney in which the defendant agrees to abide by certain terms and conditions of diversion for a specific time in exchange for an agreement by the District Attorney that criminal charges will not be filed.

If selected and willing, the defendant is placed in an intensive supervision program, in a caseload of no more than thirty-five. The period of supervision does not exceed the statute of limitations governing the original offense and usually averages seven months. When the defendant successfully completes the period of diversion to the satisfaction of the Probation Officer and the District Attorney, the case materials are closed and record-keeping agencies are notified that no complaint will be issued as a result of the original arrest.

The stated goals of the program are first, to reduce courtroom congestion and operating costs and second, to give certain offenders a chance to make a successful adjustment on diversion without the stigma of a criminal conviction.

The initial step is the arrest of the defendant by a law enforcement agency and an application for filing of a complaint. A deputy district attorney is assigned on a rotating basis as "complaint checker" and screens the case. If the case meets the criteria for the program and the defendant is willing, it is forwarded to the probation department with the incident report and available information on prior record.

A probation officer then conducts an investigation of the defendant's circumstances and background. If he is considered an acceptable case, the program is offered to the defendant and his attorney, and they sign a contract which sets out the terms of diversion and length of the diversion period. It is mandatory that the defendant be represented by private counsel or the public defender at this stage.

The materials are then returned to the district attorney, who makes the final decision whether prosecution will be deterred. In this decision he is assisted by a review committee consisting of the district attorney, the supervising probation officer, and a liaison officer representing the arresting agency originally involved in the case. If the case is not accepted, a complaint is issued and the defendant is prosecuted on the original charge. If the case is accepted, the case materials are returned to the probation officer and supervision begins. Client selection is based on the criteria listed in Exhibit 4-7.

From January 1, 1973, through November, 1973, a total of 442 defendants were screened for the program. Of these, 242 or 59% were accepted and placed on diversion. During this time, only eleven of the candidates failed to meet the conditions of diversion and were prosecuted.

Restitution Programs

Many arrests are made in which the most logical, and probably the most effective, long-run alternative is to forego formal prosecution in lieu of restitution

Exhibit 4-7. CLIENT SELECTION CRITERIA FOR THE DEFERRED PROSECUTION PROGRAM

Exclude	Consider	Include
All felony offenses involving violence or threat of violence	Battery	Petit Theft
Offenses against minor children	Disturbing the peace, including neighborhood disturbances.	Insufficient fund checks** (total under $100.00)
Sex related offenses	Unlawful intercourse*	Any alternative felony where it would be filed as a misdemeanor**
Sale of narcotic or drug cases	Crimes against property** (other than arson)	
All narcotic and drug cases where offense is profit motivated	Furnishing cases involving narcotics and drugs where the quantity is small and no profit motive is involved**.	
Drug and narcotic offenses that may be considered under 1000 P.C.		
Misuse of public funds		
Cases where defendant is mentally ill		
Routine motor vehicle violations		

*Where the age of the participants is close to another.
**Where there is no prior criminal record or serious juvenile record and, where property is involved, restitution can be arranged.

being made by the offender. For example, if a complaint for a fraud offense involves a defendant with few priors, the defendant indicates a willingness to make restitution, and the victim is willing to accept this resolution of the complaint, the prosecutor's office could enter into an agreement for the suspension of criminal prosecution on the condition that restitution is made.

This type of diversion program, operated within the criminal justice system through the office of the prosecutor, has been in operation in Chicago and Detroit for several years. Both have been successful. In Chicago for example, only about 9% of the 10,000 cases handled annually by the Fraud and Complaint Division of the Cook County State Attorney's Office ultimately lead to formal prosecution.[43] Monies recovered in this program total approximately $1,500,000 a year.

DIVERSION AT THE COURT STAGE

Since the juvenile justice system allows many more alternatives prior to the court level of processing than the adult system, most juvenile projects have attempted earlier intervention. There have, however, been a few court-level juvenile efforts--most significantly, Project Crossroads in Washington, D.C. Project Crossroads serves both juvenile and municipal courts for young adults, ages 16-26; it generated a model for the other adult court-intervention Department of Labor programs described later.

Juvenile

There has been some activity in California to generate court-level diversion for juveniles. One proposal from Los Angeles County recognizes two targets for diversion: drug possession and 601 W&I behavior. The proposal suggests that the court is inundated with drug petitions lacking sufficient legal evidence as demonstrated by the fact that dismissal rates for drug cases are significantly higher than the average rate. For example, the dismissal rate for all 601 and 602 W&I petitions filed in Los Angeles in 1972 was 35.5%. This rate reflects an increased use of defense attorneys, insufficient legal evidence, and failure of witnesses to appear. Drug cases, however, which rely primarily

on police testimony, have an average dismissal rate of 50%. The total number of drug petitions in 1972 and their dismissal rates for initial/new filings, is shown in Exhibit 4-8.

Exhibit 4-8

LOS ANGELES COUNTY JUVENILE DRUG PETITIONS 1972

	No. Petitions Filed 1972	Dismissal Rate
Marijuana	1,089	53.3%
Heroin	70	43.6%
Dangerous Drugs	477	46.9%
Other Drugs	422	50.5%
Liquor	724	34.7%
Glue, Gas	248	40.0%
	3,030	

It is recognized that the solution to this "very high rate of overfiling" requires action by many segments of the justice system; the proposal suggests that the court itself could reduce the adjudication calendar by 1,000 drug cases per year by use of proper diversion procedures.

The other target category for juvenile diversion in Los Angeles County is 601 behavior. The proposal cites the thinking of most practitioners that 601's should be handled outside the court machinery. It notes that the Superior Court of Los Angeles County, in its "Report of the Special Reform Committee--February, 1971," recommends that Section 601 of the W&I Code should be eliminated. The report states, "The experience of the Juvenile Court judges has been that the intrusion of the Court often accentuates and perpetuates the family schism that is characteristic of the 601 case." The significant extent of 601 justice activity is noted: of 98,631 juvenile arrests in 1972, Los Angeles County. 43% were for 600 W&I (dependency) or 601 W&I behavior; 7,157 601 youth were booked into juvenile hall; 18% of the detention hearings concerned 601 behavior.

The diversion mechanism proposed to reduce drug and 601 W&I cases utilizes a short court report to be filed with every 601 petition and selected drug petitions, for perusal at the arraignment hearing. The report would include: (1) statement of problem; (2) why court action is necessary

as opposed to non-court probation jurisdiction; (3) prior and current counseling intervention; (4) efforts made by probation to refer family to appropriate counseling agency; (5) religious preference (to be used for subsequent referral purposes).

At the arraignment hearing, the court will review the probation officer's report and discuss the issues with the parties (youth and parents), if they agree to waive counsel for this purpose. If all parties and the court agree, every effort will be made to make a direct referral to a counseling agency, with proper stipulation being signed and with the matter being continued three months. At the end of the continuance period, a hearing will be held to review a progress report from the counseling agency and a disposition of the case will be made. Cases will then be terminated, terminated with referral for 654 W&I supervision (informal probation) or set for full court hearing with counsel if the problem has not been alleviated. The proposal estimates that at least 1,000 cases a year can be handled in this manner, thereby avoiding an adjudication hearing with full court staffing, saving trial and attorney time.

This proposal raises the issue of diversion used in lieu of prosecution on weak cases. Parents and youth waive their right to counsel and may be pressured into accepting diversion in cases which would have been dismissed if taken through court.

Adult - 1000 P.C.

The Campbell-Moretti-Deukmejian Drug Abuse Act of 1972 established special proceedings for certain minor narcotics and drug abuse cases. The stated objectives of the program are:

(1) to decriminalize specific drug statutes for first-time drug offenders

(2) to reduce court workload

(3) to provide for the rehabilitation of first-time offenders.

Eligible defendants are diverted from further processing at the arraignment hearing; the probation department provides a suitability report/recommendation and the district attorney and court must concur in the diversion decision.

Incorporated into the Penal Code as Section 1000, this "drug diversion" law provided the courts, beginning in January 1973, the option of assigning qualified defendants (as defined in the statute) to a rehabilitative program prior to trial and adjudication. For the duration of the diversion period, (not less than six months nor more than two years), the criminal proceedings are suspended. At the conclusion of the diversion period, the judge rules on the defendant's performance in the diversion program. If he rules that performance was satisfactory, the original criminal charges are dismissed. Otherwise the defendant is liable to prosecution on the original charge and on any other criminal charges that may have arisen during the diversion period.

The effects of the new drug diversion law are complex and not fully understood. However, based on statistics compiled through August 31, 1973, BCS analysts have made some preliminary observations.[44] Based on a 10% sample (not including Los Angeles County): 83% of those diverted were white; almost 60% were in the 20-24 year old age bracket; 75% were charged with possession of marijuana; 10% had a prior narcotic or drug arrest (although almost none was convicted); and 5% were on probation at the time of arrest.

One of the main goals of drug diversion is the reduction of court workloads. According to BCS, approximately 50% of those diverted would not have been placed under probation department supervision if there were no diversion law. How would these cases have been handled in the absence of diversion, quoting from the BCS report:

> "Most of the adults...would have either been placed under the supervision of the court...or the case would have been dismissed for lack of evidence...Presumably this program was initiated to divert cases from the system of criminal justice. However, in some cases where there is lack of evidence to convict, the individual is diverted into a neo-justice system instead of leaving the system."[45]

The initial legislative funding for 1000 P.C. provided $14.1 million for diversion programs. However, one aspect of the program is an increased workload, mostly investigative, for the probation departments. BCS estimates that the additional probation clients will require an expenditure of at least $2.25 million a year, in terms of 107 full-time professional positions and 27 new clerical positions.

Several evaluation projects are currently under way throughout the State to assess the value of the drug diversion program. Sonoma County has compared a "control" group (arrestees who would apparently have been eligible for diversion prior to program inception) with a group of divertees. For the control group, 20% had presentence reports and the median disposition was $65 fine and one year summary probation. It is not possible to draw reliable conclusions regarding recidivism, but the diversion group appears to have a significantly lower arrest and conviction rate.[46] A longitudinal comparison of similar arrestees in Stanislaus County before and after the diversion program shows that approximately 40% of the "would have been eligible" arrestees were re-arrested within six months compared to a six-month re-arrest rate of 29% for those in the diversion program.[47]

One aspect of the drug diversion procedure that has not been clarified in the first year of the law's operation is the role of the district attorney. In Section 1000(b), the law says, "The district attorney shall review his file to determine whether or not (the eligibility criteria) are applicable to the defendant." With regard to the actual decision on whether or not to divert, Section 1000.2 P.C. reads in part, "The defendant's case shall not be diverted <u>unless the district attorney concurs with the court's determination that the defendant be so referred</u> though such concurrence is not necessary with respect to the program to which the defendant is referred (emphasis added)." These two sections raise the issue of whether determining a defendant's eligibility and the actual granting of diversion are executive or judicial functions. Should granting diversion be classified primarily as a decision to forego or suspend prosecution (a decision of the district attorney), or should diversion be thought of as a type of adjudication and imposition of sentence (the province of the judge)? A definitive court test of this question has not been made yet. Hence, courts and district attorneys have approached the use of diversion cautiously.

One recent case decided in the California Supreme Court has addressed the question of the respective functions of the judge and the district attorney. In the case of <u>People vs. Tenorio</u>[48] the California Supreme Court decided unanimously that Section 11718 of the Health and Safety Code violated the California Constitution's separation of powers.

The superior court trial judge in the case had dismissed the allegation of a prior conviction without the prior approval of the prosecutor, in direct violation of Section 11718. He then granted probation, made possible precisely by the dismissal of the alleged prior since Section 11530 P.C. provides two-year minimum sentence for convictions with one prior. On appeal, the California Supreme Court ruled that "The history from and after the 1850 Legislature, however, is clear: No decision, and no legislation, prior to the adoption of Section 11718 P.C. denied that the judiciary has that power to dismiss which was originally codified in the forerunner of Section 1385 P.C. The prosecutor has never been able to 'exercise' the power to dismiss a charged prior--he has only been able to invite the judicial exercise of that power."[49] In the view of the supreme court, the law requiring the district attorney to move for dismissal of the prior conviction in order for the judge to be able to dismiss such prior is an unconstitutional encroachment on the judicial power to dismiss. To quote Justice Peters in Tenorio, "When the decision to prosecute has been made, the process which leads to acquittal or to sentencing is fundamentally judicial in nature." Clearly the diversion procedure could qualify as part of the "process leading to acquittal or sentencing." If the supreme court found this to be the case, then the district attorney's concurrence in the granting of diversion would probably be considered an unconstitutional encroachment on the judicial power, following the Tenorio reasoning. On the other hand, the supreme court might view diversion as a decision not to prosecute, which would certainly be the prerogative of the district attorney, and hence Tenorio would not apply.

Since the issue has not been definitely decided, California district attorneys and judges have had to work out diversion procedures on a county-by-county basis. The Los Angeles County District Attorney's Office has established a policy whereby they attach a notice to the case folder when it is sent to the municipal court arraignment judge, if they feel the defendant may be eligible for diversion [as per Section 1000(b) P.C.]. However, they leave the final decision on eligibility and the actual diversion decision up to the court. This policy was established primarily to avoid a confrontation on the constitutional issue of separation of powers in the absence of a ruling on whether Tenorio is directly applicable to drug diversion or not. Other counties are also approaching the issue with uncertainty.

A key feature of drug diversion is the judicial discretion involved. Since an eligible defendant is not automatically diverted, the decision to divert becomes one more element in the plea-bargaining equation. In many cases, a deal is made for diversion. The court extracts concessions from the defendant and his counsel in return for approval of diversion. This might include the waiver of search test (i.e., a motion under 1538.5 P.C. to challenge the legality of the search that produced the prosecution's evidence), a pledge of restitution of the costs incurred, or the imposition of various conditions by the probation officer to which the defendant has been assigned (as would normally occur after conviction). Many judges and probation officers require the defendant to waive all rights under the Fourth Amendment for the duration of the diversion period as a condition of diversion. The police can search the diversion client at any time without the constitutional restraints of a search warrant or probable cause, and the client will have no legal recourse to challenge the search. The opportunity for injustice is obvious. In addition, if the searches under such a practice turn up some evidence of a new alleged offense, the defendant is at a great legal disadvantage in defending both the original divertible offense and the new charges.

Several problems have emerged since drug diversion has been enacted. Defendants are often forced to choose between an expensive court trial and a possible acquittal (usually based on a technically illegal arrest or weak prosecution case) or an inexpensive plea-bargained diversion disposition. It appears that most defendants are choosing diversion and many are being saddled with restrictions otherwise used only with convicted offenders. In some cases, lengths of diversion are not specified at the time of diversion. A ten percent sample (not including Los Angeles County) of those persons diverted prior to June 30, 1973, showed that 176 persons (45.3% of the 389 in the sample) had been diverted for an unspecified length of time.[50]

U.S. Department of Labor, Manpower Administration, Pretrial Intervention Programs

The U.S. Department of Labor sponsored two experimental demonstration court-intervention projects in 1968: Project Crossroads in Washington, D.C., and the Manhattan Court Employment Project in New York City. Both projects have now become integral components of their court systems, with local funding replacing federal monies.

The model generated from these first two projects was used in establishing nine subsequent Department of Labor programs in Atlanta, Baltimore, Boston, San Jose, Santa Rosa, Hayward, Cleveland, Minneapolis, San Antonio. The three California sites of Project Intercept were all operational by June, 1971. All following data comes from ABT Associates, Inc., Third Interim Progress Report.[51]

The program staff screen defendants detained by the court prior to each day's arraignment. If an eligible defendant wants to participate in the program, the counselor (with the approval of the prosecuting attorney) makes a recommendation to the judge in arraignment court for a continuance of the case to permit the defendant to participate in the project. After an average of 90 days of project participation, the counselor and defendant return to court. Depending upon the quality of participation, the Project recommends:

(1) Dismissal of pending charges based on satisfactory project participation and demonstrated self-improvement.

(2) Extension of the continuance to allow the program staff more time with the person (usually an additional 30 to 90 days).

(3) Return of the defendant to normal court processing, without prejudice, because of unsatisfactory performance in the program.

Eligibility criteria vary greatly from project to project, dependent largely on the preferences of the local district attorneys and judges. At least the following factors are considered: sex, age, residence, employment status, previous record. As the major thrust of the program is employment training and job placement, target defendants are those who are unemployed, underemployed, school dropouts, low income, or welfare recipients. Program staff includes both paid personnel and volunteers, with special emphasis on the para-professionals with backgrounds similar to those of the offenders. Staff members provide counseling and personal assistance, employment and training placement, and educational services.

The results of the program are impressive, although the experimental design and control is weak. Of a total national group of 2,684 participants terminated from pretrial programs as of February, 1973, 76% were returned to court with favorable recommendations. Only 10% of these were not granted dismissals by the court.

Arrests that led to program participation for the 2,684 participants studied were varied. 15% were accused felons, predominantly burglary and drug-related offenses. Projects varied greatly, with Hayward reporting no felony participants, Boston 35%, and 70% in Atlanta. Half of all participants were involved in charges of larceny or theft. Second in frequency were charges involving alcohol or drugs, followed by autho theft and related offenses. Significantly, charges involving crimes of violence (simple and aggravated assault, robbery) involved 5% of all participants.

Of the studied participants, 51% were referred to one/more jobs during the project period and 43% (1,156) were placed in jobs at least once. Job placement varied greatly from project to project, dependent upon employment/school status upon entry into the project. Generally, wages received from project-placed jobs were higher than on those jobs held in the twelve months prior to intake.

Probably the re-arrest data is of most interest to criminal justice planners. Unfortunately, the control group was not adequate to make valid comparisons. Of the total 2,684 terminated participants in the study, 10% were re-arrested during their involvement with the program; adjusting for those arrested but dismissed/acquitted, the rate is 8%. Of the 1,316 favorable terminations on whom three-month post-program data was available, 68 (5%) were re-arrested. During the second three-month follow-up, 35/806 (4%) respondents were re-arrested.

Comparing the favorable and unfavorable participant characteristics, ABT Associates found the overall proportions of felons and misdemeanants equivalent within the two groups, "indicating no greater likelihood of project 'failure' among those charged with more serious offenses."

CRITICAL ISSUES AND RECOMMENDATIONS

Diversion is both a popular new theory and a very old practice. It is based on the assumption that formal criminal justice system processing is often cancerous to the offender and hence programs which are less restrictive, less stigmatizing and less punitive may provide a better overall solution. In addition, it is normally less expensive than formal criminal justice processing and reduces the workload of courts and other justice personnel. The following recommendations, based on the

discussions within this chapter, are made to provide direction to planners, legislators, and practitioners regarding the formulation, funding, and implementation of diversion programs.

DIVERSION CONCEPTS AND PHILOSOPHY

Funding bodies of future diversion projects need to address several crucial issues related to diversion. Probably the most fundamental area of concern is related to the differential capacities of communities to absorb illegal behavior compared to formal processing. If much delinquency is currently being handled, treated, or overlooked in some communities, why are other communities continuing to criminalize, label and officially process? Diversion is apparently a compromise solution between the two types of community responses--a solution, however, which often maintains some form of alternate social control and some of the bad/sick conceptions about delinquency.

Criminal justice practice must catch up with criminological theory on the generation of crime and delinquency. The kinds of behavior that communities are now absorbing and that police-stage diversion projects are addressing are the kinds of behavior most theorists understand to be common reactions of adolescence in industrialized technological societies.[52] Certainly, 601 W&I behavior, (truants, runaways, incorrigibles, waywardness, curfew, beyond control, "in danger of leading an idle, dissolute, lewd, or immoral life") is not "criminal", yet juvenile justice processing, by definition, labels and treats such behavior as delinquent or exhibiting a "delinquent tendency." The "success" which diversion projects have had with minor 602 W&I offenders, as well as the knowledge that in many communities minor 602 W&I behavior is absorbed, is additional evidence that official handling may not be necessary at all for many youthful offenders.

Criminal justice practice still tends to cling to a medical treatment model of crime and delinquency: criminal behavior is a result of individual dysfunction, to be treated by doses of individual personal casework.[53] Yet social science evidence "suggests that official response (emphasis added) to the behavior in question may initiate processes that push the misbehaving juveniles toward further delinquent conduct, and, at least, make it more difficult for them to re-enter the conventional world."[54]

The same danger applies to diversion programs as well as more formal criminal justice processing. As Smith states, there is ample research to indicate that:

> "many of the correctional problems, including delinquency, result from a cultural intolerance of diversity and variability and the overly restrictive boundaries that are placed on acceptable behavior. An understanding of this basic intolerance of diversity is increasingly apparent in the United States today. It is a prerequisite to the recognition of the major weakness in our efforts to prevent and control crime and especially in the current emphasis on diverting offenders from the criminal justice system to agencies of civil and social control. Criminal statutes may be revised to legalize public drunkenness, vagrancy, victims of sex offenses, etc. Control and surveillance of minor violations may be achieved without arrest, and health and welfare services may be made accessible to those who need them. All such measures may result in fewer persons entering the criminal justice system, but as long as the mainstream of America views deviation narrowly as evidence of pathology requiring some form of control, whether punitive or rehabilitative, diversion is likely to remain largely a technique of enforcing conformity by alternate means."[55] (Emphasis added.)

What is at issue here is the right to no treatment; it is an issue which must be resolved by those responsible for setting guidelines for diversion. From initial project evidence previously noted, many youth who would otherwise have been counseled and released are currently being diverted into some kind of program. Proponents argue that is not a problem as diversion is voluntary. Yet, "is a referral by a youth service bureau voluntary where the alternative is being processed as a juvenile offender with an omnipresent threat of a reformatory in the background?"[56] The same concerns apply to adults placed on 1000 P.C. diversion who would otherwise have had their cases dismissed.

Criminal justice over-reliance on diversion:

> "may prevent recognition of the fact that for much of what is now labeled as deviance, the problem is not how to treat it but how to absorb or tolerate it...not all deviant behavior requires treatment, whether in or out of the criminal justice system, yet the mere presence of a functioning mechanism of community services, with none of the more obvious drawbacks of the penal system, is likely to result in the 'treatment' of many more individuals by official agencies."[57]

Diversion efforts, then, must not be substituted for "the more fundamental reform of reducing juvenile court jurisdiction by statutory amendment."[58]

> RECOMMENDATION 24. *Diversion should not take the place of decriminalization through legislative changes.*

> RECOMMENDATION 25. *Diversion programs should not be used where release from the system would have been the disposition.*

> RECOMMENDATION 26. *The Office of Criminal Justice Planning should undertake a program to establish at least minimal diversion standards for the statewide application of diversion alternatives, on both the juvenile and adult levels.*

Diversion should not be used as a compromise for decriminalization of certain offenses. Minimally, public drunkenness, marijuana use, private adult sexual behavior, and gambling should be decriminalized. (This is discussed further in Chapter 5.) The Office of Criminal Justice Planning's primary efforts must support these legislative reforms. When diversion programs are instituted without explicit policy positions on these issues of decriminalization, they tend to increase the network of social control rather than offer viable options to justice processing. Study staff realize that decriminalization will not be immediate; however, a fundamental understanding of the interplay between diversion and decriminalization is crucial for planners.

Minimum statewide diversion standards are essential for equitable justice processing. In some counties, all juvenile offenses are potentially divertible; in other counties, no diversion options exist. At the very least, OCJP should insure that each county has the capacity to divert certain target populations: e.g., 601 W&I offenders, public drunks, and at least minor first-time misdemeanants. Along with the designated target populations, explicit policy should require that diversion will not replace the "counsel and release" or other dismissal options. Although apparently expedient in many cases, the application of corrective controls through a diversion program--even a "voluntary" program--when, in the absence of the diversion alternative the charges would be dropped, is contrary to justice as defined by our society. Diversion should normally serve as a less restrictive form of control over an offender's behavior, where the only other options available are more restrictive processing.

EVALUATIVE RESEARCH

Planners and administrators must address the lack of evaluative research on almost all diversion projects. Even the projects with the best designs and data cannot reliably demonstrate that the "treatment" received by participants was the reason for the program's success. Study staff found at least fifty different treatment modes being utilized in diversion projects across the State. At the same time, most projects represent a "success" rate relative to some form of traditional processing. Perhaps what is generating the "success" is not the family therapy, the drug abuse lecture, the school counseling, the trip to the museum, the employment training, the court of peers, or the supervision by probation officers. Success rates probably have more to do with the changed response of the system, rather than any change in offender's behavior that resulted from treatment. People who run diversion programs tend to become advocates for their clients--whether they are police, probation officers, or community para-professionals. They have a stake in their clients' success and may overlook or avoid processing many subsequent minor offenses. These conclusions are subjective and cannot be empirically tested with available data; they do, however, concur with similar conclusions about CYA's Community Treatment Programs.[59]

Another self-generating success factor is that diversion decision makers are diverting the "cream", e.g., the first-time adult offender and the juvenile whose behavior would not be illegal if he were 18--those offenders who most probably would "self-correct" anyway. As England stressed,[60] it is the selection mechanism itself that generates the success, rather than the impact of any form of treatment.

> *RECOMMENDATION 27. The Office of Criminal Justice Planning should develop a diversion evaluation master plan. The plan should be a broad, scientifically valid, experimental design, which would lead to a better understanding of the efficacy of diversion.*

> *RECOMMENDATION 28. Specific projects should be funded to evaluate the effectiveness of various modes of diversion for various types of offenders against not only more formal criminal justice processing, but also against even less restrictive handling (e.g., no treatment at all or "counsel and release"). These projects should receive priority over duplicated diversion projects in different counties.*

A comprehensive undertaking of the value of diversion is lacking and must be undertaken by a long-range integrated approach to evaluation. An essential feature of any funded evaluation methodology must relate to the relative value of diversion programming as opposed to no treatment; the validity-proven effects of the "treatment" must be distinguished from the effect of the unhooking of the system. All subsequent diversion projects should be funded as an integrated part of the master plan. This master plan should represent a sound research approach which would lead to a better understanding of causal relationships in correctional treatment. It should stress traditional evaluation design concepts such as control and experimental groups, random selection, etc. Knowledge gained from programs in other states should obviously also be considered in developing research and funding guidelines. Although it is well recognized that a complete knowledge of treatment effectiveness will never be attained, much can be accomplished through the implementation of a diversion program evaluation master plan. Conversely, failure to attempt a systematic evaluation approach to diversion will perpetuate the tunnel vision posture and practices of the criminal justice system.

The recommendation regarding evaluation of diversion against both more and less formal processing is only one facet of the broad evaluation suggested by the development of a master plan. It is singled out to emphasize the fact that diversion, by definition, is a less formal approach than further official criminal justice system processing. If an offender is placed in a program when he otherwise would have been released from the system, the program is being utilized for control rather than diversion. The effect of this type of application of a "diversion" program should be distinguished in the evaluation of the program. The current 1000 P.C. drug diversion program is an apparent example in that there seems to be a significant number of arrestees "diverted" who, prior to the program, would not have been filed on by the district attorney.

There are other specific examples of evaluation efforts which should be undertaken to determine the utility of diversion. Relatively few carefully designed programs should be able to provide some knowledge of program effectiveness. Only after program effectiveness has been determined should the myriad of similar programs be funded, each of these program implementations being a "better" approach to the particular problem. The concept of "success" or "failure" of programs should be examined and systematized. Further questions that should be addressed in the diversion evaluation master plan should include:

> Are differences in "success" due to the behavior associated with differential handling (i.e., the decision maker)?
>
> Does it make a difference who screens the offender to decide program eligibility?
>
> Does it make a difference who provides the program services (e.g., primary vs. secondary diversion)?
>
> Is the duration of the diversion program significant to the success (or failure) of the client?
>
> What are the differential impacts of each program on different types of adult and juvenile clients?
>
> Can other types of clients be safely placed on diversion, i.e., can the eligibility criteria be broadened?

Within the evaluation master plan, the relative value/ success of both police diversion models discussed earlier should also be explored. One model uses police officers in a direct service capacity: interviewing, evaluating, diagnosing, counseling. This model has some real benefits in that beat officers have no hesitation about referral to an in-house service center; it also enhances communication within the police department and maximizes referral accountability. Probably one of the most significant benefits is that the police officer can be seen by the community and by himself in a new, service-oriented role which ultimately could reduce alienation between police and community. However, some critics have stressed that this model is in essence creating a secondary probation department, attached to the policing agency. Rather than providing an alternative to justice system processing, this model duplicates and confuses the already fragmented and overlapping juvenile justice system.

The other model, where emphasis lies in assessment and referral to community agencies, recognizes the essential "gate-keeper" function of law enforcement. It enlarges the police role to include intake, evaluation and referral and forces increased community awareness and knowledge of resources. The crucial facet of this approach is in the training of officers in how to refer which youth to which resources. It is incumbent upon project planners to develop a mechanism which will provide officers with up-to-date information on all possible resource agencies. Often only a handful of resources are known and utilized within a community. In addition, resources to be used must be evaluated in terms of the needs of the youth--not solely in terms of the needs of the police department. Although there has been relatively little experience with this police-referral model for diversion, the potential of such programs appears to be great, particularly if the program has accountability and responsive feedback mechanisms built into it.

RECOMMENDATION 29. Police-level diversion for juveniles should be more fully evaluated; major questions to be answered revolve around the relative value of police-provided as opposed to police-referral service.

OPERATIONAL GUIDELINES

The operational aspects of every planned diversion program must be spelled out in detail for the benefit of all concerned: the funding agency, the potential clients, related criminal justice agencies, and reviewing/evaluating personnel. Planning and funding at the local and state level should be done in cooperation with the formal correctional system agencies "for community corrections based on a total system concept that encompasses the full range of offenders' needs and the overall goal of crime reduction."[61]

RECOMMENDATION 30. Prior to the funding of a potential diversion program, operational guidelines should be written, specifying clearly: the objectives of the program, client eligibility criteria, the specific program evaluation methodology, and the means by which current program information is to be made available to diversion decision makers.

If a diversion program is to be accepted and utilized, its operation must be clearly understood by those responsible for referring clients to it. This includes knowledge of the program objectives and goals, types of offenders who are appropriate, what the measures of success are, <u>and</u> a routine feedback of information regarding the program to those decision makers who are responsible for operating and for diverting offenders to the program. To the degree possible, all agencies involved in using or running a diversion program should have some say in the formulation of these guidelines to assure their commitment to the program.

Written guidelines must insure periodic review of policies and decisions. Decision makers should be forced to state in writing the basis for or against a diversion decision for every offender. All parties involved in diversion options should receive a formal statement of what is expected for satisfactory program performance.

RECOMMENDATION 31. Diversion programs should have client performance reviews at explicit times, with justification for retention in the program at each review. In general, diversion programs should be for a maximum of one year.

As with the formal correctional system, the burden of proof must rest on the system to retain an offender in diversion. Although there is little concrete evidence yet of the success of diversion as a function of the program duration (see Recommendation 27), results have been demonstrated for traditional correctional programs which indicate a positive correlation between sentence length and recidivism (i.e., the longer the sentence the higher the recidivism rate).[62] Since diversion is not purported to be punitive, relatively short diversion programs would appear to be the most effective so that contact with the criminal justice system remains minimal.

CLIENT RIGHTS

The issue of coercion is often dismissed by criminal justice personnel because program participation is "voluntary." Yet, as in a community referral made by police, how voluntary is it when accompanied by the information that "you could go to CYA for what you've done." Similarly, "...diversion through the prosecutor's office may be non-voluntary, due to the implicit threat that the prosecutor might otherwise seek the maximum penalty allowed by law."[63]

Although admission of guilt is technically unnecessary, there is some indication that project participation implies guilt, and sentencing for a subsequent charge may as a consequence, be more severe. Files and statements made to intake officers in charge of diversion could possibly be opened for inspection by courts and prosecutors. Defendants are questioned about their guilt/innocence and this testimony could become part of the court record. Legal rights may be compromised by a procedure which often does not require defense attorneys' presence at all stages of diversion processing: privilege against self-incrimination, the right to confront and cross-examine one's accusors, right to a speedy trial, right to a trial by jury. From a defendant's point of view, there may be tremendous pressure to accept what seems to be a less restrictive program instead of demanding a trial which has an uncertain outcome. Also, if diversion has been offered by a district attorney, a defendant who refuses may feel the prosecution will retaliate and request a harsher sentence.

CONTINUED

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Aspects of actual programs have also become issues. In San Bernardino's program, defendants receive an average of seven months on intensive supervision. This may greatly exceed the amount of "treatment" a similar non-diversion defendant would receive. In many programs, defendants must agree to waive all Fourth Amendment rights of search and seizure for the entire program period, as is the case with many convicted probationers. If a defendant "fails" in a diversion program, it is highly unlikely that the court and prosecutor would proceed as if diversion never happened, although that is a written guideline of several projects.

The use of pre-plea investigations by probation and prosecution to determine suitability for diversion has been questioned. The American Bar Association Standard states that probation reports should not be initiated until after adjudication of guilt. The investigation represents an unwarranted invasion of privacy if the defendant pleads innocent and is later acquitted; information obtained could be self-incriminating and prejudicial to a trial.[64]

To assure that diversion is not abused, any arrestee should have the right to an attorney at all stages of diversion proceedings and should have the right to the same legal protections as a probationer at a hearing alleging he violated the terms of his diversion.

> RECOMMENDATION 32. *Defense counsel should always be available at the request of the defendant (or, in the case of minors, of his parent or guardian) at all stages of diversion processing.*

It is clear that an offender's record, in itself, can present a severe handicap to the successful reintegration of the offender. Thus, one of the explicit reasons for diversion is to eliminate the obtaining and recording of a conviction. However, if the diversion program is to be successful in this context, it must be made clear what specific effect the successful completion of the program will have on the individual's arrest record. 1000 P.C. provides for this; all diversion programs--at whatever stage they occur in the criminal justice process--should have similar specific procedures for recording the successful completion of the voluntary program as the disposition. Many defendants remain unaware

that the arrest is never deleted from the criminal record; each diversion program participant should be provided with a written copy of the terms of the program and the right to dismissal of charges upon successful completion of the program.

RECOMMENDATION 33. Legislation should be drafted which would enable successful diversion clients to have appropriate dispositions listed in their criminal arrest record, i.e., to show clearly that the charge(s) were dismissed.

CHAPTER FIVE

INAPPROPRIATE CLIENTELE FOR THE CRIMINAL JUSTICE SYSTEM

INTRODUCTION

One of the most controversial issues related to the intake system is what types of behavior are not appropriate to warrant involvement of the criminal justice apparatus. Many laws, most of them of statutory or regulatory origin rather than from English common law (which was the main foundation stone for American criminal law), are being increasingly questioned and attacked by large segments of the citizenry as well as by many public officials. Most of these laws which are being challenged on many fronts--though by no means unanimously--fall into two categories: (1) "victimless" offenses which many argue hurt no one other than, perhaps, the person engaging in the behavior, and (2) "omnibus clause" behavior which, while legal for adults, has been defined as illegal for minors. The second type of behavioral proscriptions for minors only may also be argued to be "victimless" crime. A third type of behavior that will be discussed overlaps all types of deviant behavior, viz., that committed by mentally ill or psychologically disturbed offenders.

The reasons why these types of behavior were determined to be crimes are too complex to deal with in detail in this report. However, in the following sections some of the main reasons will be mentioned briefly, together with arguments for both removing and retaining them in the criminal justice system.

Before proceeding, however, it is important to stress the large proportion of arrests and, hence, criminal justice processing costs that official handling of these kinds of behavior entails. The National Council on Crime and Delinquency claims that more than one half of all arrests and commitments to local institutions nationwide are for "crimes without victims."[1] As seen in Exhibit 5-1, 40% of adult felony arrests in California are for drug law violations, of which more than half of the arrests involve marijuana. Another 38% of felony arrests are for theft types of crimes. Law enforcement officials generally estimate that from 50% to 90% of theft offenses are drug-linked, i.e., are committed to obtain money to buy drugs. Hence, it would appear that

Exhibit 5-1: ADULT FELONY ARRESTS: 1972
SELECTED OFFENSES ONLY*

Total	240,231		100%	
Drug law violations	95,251		40%	
Marijuana		52,027		22%
Dangerous drugs		23,652		10%
Heroin and other narcotics		15,637		7%
Other		3,935		2%
Major theft (robbery, burglary, grand theft, forgery)	92,389		38%	

Exhibit 5-2: ADULT MISDEMEANOR ARRESTS: 1972
SELECTED OFFENSES ONLY*

Total	746,975	100%
Drunk	211,252	28%
Drug law violations	17,889	2%
Prostitution and other sex	11,172	1%
Gambling	5,623	1%
Non-support	5,002	1%
Petty theft	44,888	6%

Exhibit 5-3: JUVENILE DELINQUENCY ARRESTS: 1972
SELECTED OFFENSES ONLY*

Total	353,232		100%	
Delinquent tendencies	186,113		52%	
Drug law violations	32,448		9%	
Marijuana		21,034		6%
Dangerous drugs		6,663		2%
Heroin and other narcotics		1,180		--
Other		3,571		1%
Theft (robbery, burglary, grand theft, petty theft)	113,053		32%	

*SOURCE: Bureau of Criminal Statistics, Crimes and Arrests: Reference Tables 1972, Sacramento, pp. 5-7.

over half of all felony arrests in California are related to one type of "victimless" behavior, viz., use of drugs. Exhibit 5-2 indicates that 28% of all misdemeanor arrests are for abuse of another type of drug, viz., alcohol. Combined with other types of "victimless" behavior, this represents approximately one third of all misdemeanor arrests--not counting minor thefts that may be drug-related. In addition, 30% of misdemeanor arrests are for drunk driving and another 23% for "other misdemeanors and traffic custody cases,"[2] at least some of which could be construed as the result of the "victimless" abuse of alcohol.

With regard to juveniles, Exhibit 5-3 reveals the rather shocking fact that over half (52%) of juvenile arrests involve behavior for which adults could not be arrested. An additional 9% of juvenile arrests are for drugs, principally marijuana, and about one third of all juvenile arrests for theft--again, many of which may be presumed to be linked to purchase of drugs.

Early in the present study, attempts were made to elicit, both from the literature and from criminal justice personnel, those types of behavior currently within the scope of the criminal justice system over which there was known debate as to the appropriateness of their being retained in that system. These types of behavior were then incorporated in questionnaires sent to large numbers of probation and law enforcement personnel within the sample counties and to many other top criminal justice officials in the other counties. The responses to these questionnaires are summarized in Exhibit 5-4 which will be referred to frequently in the following sections.

CRIMES WITHOUT VICTIMS

Schur defines victimless crime as "the willing exchange, among adults, of strongly demanded but legally proscribed goods or services".[3] Most of these types of behavior involve acts which certain powerful segments of the population have at some time defined as immoral and/or undesirable. The basic question that has been raised by opponents since the passage of such laws is, "Ought immorality as such to be a crime?"[4]

Proponents of such laws obviously believe, often vehemently, that they are essential to preserve minimal levels of morality and acceptable conduct, to discourage the progression of violators to more serious types of crimes, to promote the inculcation of proper behavioral standards

in our young and to protect them from those who would take advantage of them, to protect persons from harming themselves, to minimize the power of organized crime, and, generally, to uphold the moral fiber of our country.

Those who challenge or outright oppose such laws, in addition to questioning society's right to legislate private morality, argue that efforts to enforce such prohibitions are patently unsuccessful and often lead to further criminalization both in order to afford some of these services or goods and by their nourishing of organized crime. Others claim that such laws are enforced selectively, primarily against minorities and the poor, and often lead to corruption within the criminal justice machinery.[5] Still others question the priority, or even the logic, from a taxpayer's point of view, of devoting half of our apprehension machinery to these types of "offenders," thereby sapping limited law enforcement manpower and resources from dealing more effectively with those types of crimes that involve clear social harm. Finally, it has been pointed out that many of the so-called "crimes without victims" were not illegal in this country until relatively recently, that some are legal in certain states but not others, and that some are legitimate in many other countries today.

Clearly, a majority of California citizens are not at the point of desiring to remove all "crimes without victims" from our penal codes. Exhibit 5-4 illustrates the response of various types of criminal justice personnel; the majority are not in favor of legalization of "victimless" crimes in general. However, public momentum seems to be moving increasingly in this direction, particularly for certain types of such behavior. In one of the strongest and clearest positions by a nationally recognized group of experts in the field of criminal justice, the Board of Trustees of the National Council on Crime and Delinquency, in a 1970 policy statement, asserted:

> "Laws creating 'crimes without victims' should be removed from criminal codes. They are based not on harm done to others but on legislatively declared moral standards that condemn behavior in which there is no victim or in which the only one hurt is the person so behaving. The most common examples of such so-called crimes are drunkenness, drug addiction, homosexual and other voluntary sexual acts, vagrancy, gambling, and prostitution, and, among children, truancy and running away from home--acts which, if committed by an adult, would not be considered crimes."[6]

One recent example of similar thinking by a California group representing a wide range of average citizens was a recommendation by the Alameda County Labor Council to the California Labor Federation to call for the elimination of criminal sanctions for such "victimless" acts as prostitution, sexual acts between consenting adults in private, gambling, drunkenness, vagrancy and the possession of drugs for personal use.[7] A current candidate for the State Attorney General's Office claimed that $125 million a year could be saved if California law enforcement could stop duplication and prosecution of "victimless" crimes.[8]

A considerably more moderate view than those mentioned above is that of the National Advisory Commission on Criminal Justice Standards and Goals. In addition to urging outright decriminalization of alcoholism and vagrancy, that Commission recommended:

> "that States reevaluate their laws on gambling, marijuana use and possession for use, pornography, prostitution, and sexual acts between consenting adults in private. Such reevaluation should determine if current laws best serve the purpose of the State and the needs of the public.
>
> "The Commission further recommends that, as a minimum, each State remove incarceration as a penalty for these offenses, except in the case of persistent and repeated offenses by an individual, when incarceration for a limited period may be warranted."[9]

One of the most perplexing and realistic concerns of those who have some doubt but are not necessarily rigidly opposed to decriminalization of certain types of behavior is: "How would these persons receive the help they often need, e.g., so they would not harm themselves?" One alternative to this problem was offered by the famous British Wolfenden Report in 1957, viz., the alternative of doing nothing.

"Unless a deliberate attempt is to be made by society, acting through the agency of the law to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business."[10]

Essentially, this is the alternative tabulated in the first category of responses in Exhibit 5-4, entitled "Repeal laws now." For those who might be inclined to eventually remove certain types of behavior from the criminal law if other alternative programs were available to assist or handle them, the second category, "Develop alternatives and then repeal laws," is included in the same exhibit. It might be noted that, when grouped together, a majority of the responding criminal justice personnel favored at least this method of dealing with "victimless" crimes. A third category, "Handle in Diversion Programs," was also added in an effort to see how many additional persons had at least some reservations about processing them through the criminal justice apparatus in traditional manners similar to the handling of persons who commit offenses that clearly represent social harm.

PUBLIC DRUNKENNESS

Undoubtedly, the most classic example in this country of a catastrophic attempt to enforce the moral code of a few on the entire nation through criminalization was the Volstead Act, prohibiting the use of alcohol.[11] Not only has a law rarely been so ignored, but the indirect results of the Act spawned a criminal system never equaled in power in this country, viz., organized crime. Even after the repeal of Prohibition, by far the most common type of "crime" has continued to be common drunkenness. As recently as 1966, drunks constituted 44%, or nearly half, of all misdemeanor arrests in California.[12]

In 1967, the prestigious President's Crime Commission reported that "Most of the experts with whom the Commission discussed this matter (alcoholism), including many in law enforcement, thought that it should not be a crime."[13] Citing the lack of legal safeguards for many persons accused of drunkenness, the exorbitant police time and cost in processing them, and the unsuccessful approach of "revolving door" treatment in jails, the Commission strongly recommended that "Drunkenness should not in itself be a criminal offense."[14]

Exhibit 5-4

CRIMINAL JUSTICE STAFF VIEWS ON HANDLING OF MARGINAL TYPES OF OFFENDERS

Behavior	Repeal Laws Now				Develop Alternatives and then Repeal Laws				Handle in Diversion Programs			
	Top C.J. Officials	Law Enforcement	Adult Probation	Juvenile Probation	Top C.J. Officials	Law Enforcement	Adult Probation	Juvenile Probation	Top C.J. Officials	Law Enforcement	Adult Probation	Juvenile Probation
1. Public Drunkenness	9%	3%	17%		47% (56%)	30% (33%)	51% (68%)		10% (66%)	13% (46%)	5% (73%)	
2. Use of Marijuana	14	6	35		14 (28)	7 (13)	14 (49)		14 (42)	3 (16)	23 (72)	
3. Use of Dangerous Drugs	2	--	5		11 (13)	3 (3)	16 (21)		7 (20)	1 (4)	12 (33)	
4. Use of Opiates	2	1	2		10 (12)	2 (3)	17 (19)		5 (17)	1 (4)	10 (29)	
5. Gambling (private)	59	45	77		10 (69)	12 (57)	5 (82)		1 (70)	3 (60)	1 (83)	
6. Gambling (public)	27	22	47		16 (43)	16 (38)	18 (65)		1 (44)	1 (39)	-- (65)	
7. Prostitution	29	23	52		20 (49)	18 (41)	24 (76)		-- (49)	2 (43)	1 (77)	
8. Homosexuality	38	22	67		18 (56)	11 (33)	10 (77)		3 (59)	6 (39)	1 (78)	
9. Any Private Sexual Behavior Between Consenting Adults	69	68	90		8 (77)	9 (77)	5 (95)		2 (79)	3 (80)	1 (96)	
10. Any "victimless" Behavior (i.e., does not harm others)	25	15	36		24 (49)	20 (35)	33 (69)		5 (54)	6 (41)	5 (74)	
11. Mentally Ill Offenders	10	7	12	18%	21 (31)	19 (26)	32 (44)	30% (48%)	12 (43)	17 (43)	3 (47)	12% (60%)
12. 600 W&I (dependent and neglected youth)	16	5		21	36 (52)	12 (17)		37 (58)	12 (64)	27 (44)		4 (62)
13. 601 W&I (truancy)	17	2		10	31 (48)	11 (13)		39 (49)	13 (61)	32 (45)		27 (76)
14. 601 W&I (runaway)	13	3		8	35 (48)	10 (13)		35 (43)	14 (62)	31 (44)		23 (66)
15. 601 W&I (incorrigible)	7	--		5	28 (35)	9 (9)		36 (41)	12 (47)	18 (27)		15 (56)
16. Any Juvenile Behavior Not Illegal for Adults	18	5		11	29 (47)	13 (18)		37 (48)	13 (60)	22 (40)		19 (67)

Second columns under the same heading in parentheses reflect cumulative percentages.
[Italicized percentages are over 50%.]

However, noting that the main opposition to such legal change was the lack of adequate alternative programs, the Commission simultaneously stressed the need for "comprehensive treatment programs, to include detoxification and necessary medical facilities, as well as extended aftercare resources and, for some, supportive residential housing."

In 1971, the San Francisco Committee on Crime emphasized the inordinate amount of time and money spent on the chronic drunk. In the Committee's words:

> "The futility and savagery of handling drunkenness through the criminal process is evident. The cost to the city of handling drunks in that way cannot be determined with exactness. Only approximation is possible. The Committee's staff has computed that in 1969 it cost the city a minimum of $893,500. The computation was that $267,196 was spent in making the arrests and processing the arrested person through sentence, and that roundly $626,300 was spent in keeping the drunks in county jail at San Bruno. And these figures do not include the costs to the city when a drunk is taken to San Francisco General Hospital from either the city prison or county jail. While our staff has concluded that it costs the city between $17 and $20 to process each drunk from arrest through sentencing, an estimate by a police officer assigned as liaison to the Drunk Court put the cost at $37 per man through the sentencing process."[15]

The 1973 report of the National Advisory Commission on Criminal Justice Standards and Goals also recommended that "public drunkenness in and of itself no longer be treated as a crime."[16] In addition, the Commission urged all states to "give serious consideration to enacting the Uniform Alcoholism and Intoxification Act,"[17] developed by the National Conference of Commissioners on Uniform State Laws. Thus far, at least nine states and the District of Columbia have enacted this law and it has been endorsed by the American Bar Association. The Uniform Act calls for the items discussed on the next page.

> "the development of a department in the State government to deal with alcoholism. It authorizes police officers to take a person incapacitated by alcohol into protective custody rather than arrest him. The act provides for a comprehensive program for treatment of alcoholics and intoxicated persons--including emergency, inpatient, intermediate, outpatient, and followup treatment--and authorizes appropriate facilities for such treatment."[18]

Within the last few years, an ironic twist has occurred in the handling of alcoholics in California. On the one hand, there has been a strong tendency by many officials and citizens to view alcoholism more and more as an illness or medical problem than as a crime. For example, the legislature, in 1971, finally passed Section 647ff P.C., mandating law enforcement to begin treating drunks as sick persons rather than as criminals. That law states that, when a police officer arrests a person for being under the influence of alcohol, the officer "if he is reasonably able to do so, shall place the person, or cause him to be placed, in civil protective custody"; it continues that such a person "shall be taken" to a facility approved for 72 hour treatment and evaluation when such a facility is available. Recent case law has been supporting the legislative intent of this statute by, in effect, prohibiting the criminal prosecution of all persons taken into custody solely for public intoxication.[19] On the other hand, while there has been strong legislative and court momentum to decriminalize common drunkenness, another series of mental health laws has, in effect, made it almost impossible either to force an alcoholic to accept medical help or, even if he is willing, to find room in an appropriate facility or program. First of all, the Lanterman-Petris-Short Act[20] has virtually removed the involuntary mechanism for placing alcoholics in detoxification or follow-up programs against their will. Secondly, state hospitals which traditionally cared for many severe and/or chronic alcoholics have been closing. Thirdly, local communities have not developed the alternative programs essential to enable mass diversion of drunks from the jail.

There has been a 36% decrease (from 44% to 28%) in the proportion of misdemeanor arrests for drunkenness between 1966 and 1972,[21] reflective of some efforts to divert these persons from the jail. However, as seen in Exhibit 5-4, criminal justice officials are by no means

satisfied that it would be appropriate at this time to remove drunks completely from the sphere of the criminal justice system. For example, only 3% of some 570 law enforcement officers polled felt that this should occur. In fact, while a majority of probation and other criminal justice personnel believe that drunkenness should be decriminalized after alternative programs are developed to handle them, two thirds of the law enforcement sample believed this would still not be appropriate. Nevertheless, this would appear the inevitable direction that the legislative and judicial branches of government and probably an increasing proportion of the public will insist on. The main question is not whether drunkenness should be decriminalized, but what types of alternative programs are necessary in each community and how quickly they can be implemented.

> RECOMMENDATION 34. *State and local governments should make available the funds essential to allow communities to develop the range of inpatient and outpatient services necessary to handle the common drunk outside of the criminal justice system. At the same time, the State should consider adopting the Uniform Alcoholism and Intoxification Act.*

The services referred to here need not all be under medical supervision; other types of programs (such as Alcoholics Anonymous and Salvation Army) have proven a capability of treating many alcoholics in a non-medical setting, although medical resources should be available as required. Additionally, this does not mean that the police are not suitable personnel to pick up and deliver drunks to these resources, although there is no reason why a separate "civilian service" could not also play this role if a community so desires.[22] Since many communities are planning or considering new or modified jail facilities, some of the funds necessary to develop needed alcoholic programs may be a gradual tradeoff for additional jail cells and staffing.

> RECOMMENDATION 35. *As soon as reasonably adequate alternatives to the jail (or alternatives that are at least as adequate) can be developed, the legislature should repeal legislation which makes common drunkenness a crime.*

To facilitate such efforts, consideration should be given to setting a legislative deadline (of perhaps two or three years at most) at which time such legislation would automatically be repealed.

DRUG USE

By comparison with alcoholism, drug use is a far more complex and controversial issue. Like alcohol, its prohibition has resulted not only in widespread disregard for the law, but also in the nationwide flourishing of organized crime.[23] Unlike alcohol, its high cost (at least of addictive drugs) has pressured heavy users to engage in widespread theft and more than occasional violence, often called "crimes of panic," simply to secure a steady supply of drugs. To understand the stringent laws against drug use, however, one must know something of the organized efforts of certain federal law enforcement groups to dramatize the evils, real or potential, connected with this type of "vice".[24] The abysmal failure of such efforts--in fact, their creation of the opposite effect--has been paralleled only by the Volstead Act.

For reasons that are indeed complex, the degree of drug use and the related extent of drug arrests have skyrocketed in the past few years--in spite of the concerted effort of law enforcement to warn people of the "pernicious" evils of such abuse and the correspondingly stringent laws passed to deter drug users. For example, the rate of felony drug arrests in California per 100,000 population more than quadrupled between 1966 and 1971.[25]

Even before this ballooning use of drugs, Wilkins, a noted British criminologist, asserted in 1965 that, if Britain wanted to generate a narcotics problem of the magnitude of the United States, it should adopt the latter's policy of suppression and punishment.[26] Packer lists what he perceives as the results of the American handling of drug abuse over the last half-century:

> "1. Several hundred thousand users have been severely punished.
> 2. Immensely profitable narcotics traffic has developed.
> 3. It has enriched organized crime.
> 4. It has increased acquisitive crime (burglary and robbery) substantially.

5. Millions of dollars have been spent on repressing drugs.
6. Unconstitutional police practices have become habitual because of the difficulty in detecting narcotics offenses.
7. The burden of the law has fallen on minorities.
8. Narcotics research has been stunted.
9. The medical profession has been terrified into neglecting the treatment of addicts.
10. An entrenched enforcement bureaucracy has frustrated all but the most marginal reforms.
11. Legislation has automatically been extended from narcotics to marijuana and other soft drugs, thereby aggravating the problem."[27]

With the possible exception of amelioration of marijuana laws in some jurisdictions, there has been little change in these negative results since Packer's article was written in 1968.

With the increasing evidence that marijuana is apparently no more harmful than alcohol,[28] public opinion has been swaying toward legalization of this drug or, at the very least, much less punitive reaction to it by the law. For example, a statewide survey of public opinion in California completed by Field Research Corporation for the Los Angeles Times in November, 1973, found that 51% of the general public favored at least easing the present legal penalties against marijuana;[29] this contrasts with a similar survey in 1969 which revealed that only 25% of the population favored this step.[30] A 1972 New York study by the National Commission on Marijuana and Drug Abuse found that only 15.5% of probation officers interviewed favored criminal law as a means to control adult use of marijuana; only 9% of the sample favored controls for possession of this drug.[31] Two nationwide Gallup polls asking the question, "Have you ever used marijuana?" in 1969 and again in 1972, showed that the number of respondents admitting such use almost tripled in those three years.[32] An initiative to legalize marijuana in 1972, Proposition 19, gained approximately 33.5% support of California voters;[33] by now, the proportion would probably be higher. Since the numbers of marijuana users and those willing to legalize it are particularly concentrated among the young, it is probably only a matter of time before a clear majority of the public would support its legalization. For example, a 1973 survey of over 300,000 freshmen across the country by the American Council on Education showed 48% favored legalization of marijuana (compared to 19% of a similar group in 1968).[34] In the above-mentioned study for the Los Angeles Times in November, 1973, a strong majority of respondents between 18 and 29 years felt that marijuana is no more dangerous than alcohol and that it should be legalized.[35]

The analogy between alcohol and marijuana could be the basis for legalization: sale should be controlled (as, for example, liquor sales are controlled by the ABC); cultivation for one's own use (as with wine) would be legal; and use and possession would be as with alcohol. Perhaps legalization would also provide the incentive to develop reliable tests for the determination driving "under the influence" of marijuana.

Removal of the stigma of "criminal" from so many thousands of persons each year and savings in tax dollars in processing these individuals through a system that obviously does not deter them or their peers would seem to justify taking this step now.

> RECOMMENDATION 36. *Laws governing the use, possession, manufacture, or sale of marijuana should be made similar to those laws governing alcohol.*

Use of dangerous drugs and, particularly, opiates is another question. It is highly unlikely that the general public would favor repeal of laws governing use of these drugs in the near future. The data in Exhibit 5-4 is one clear example of this; less than 20% of all respondents even favored handling such persons in diversion programs. However, two questions should continually be raised: (1) "How much is the public willing to pay to apprehend, treat or punish, and accept the escalating costs of related theft and violent crimes in order to keep use of these types of drugs illegal?" and (2) "How effective are such efforts?" As Morrison points out: "We should learn that in our system of private enterprise, when there is a demand for any commodity, there will be someone ready to supply that commodity."[36]

PRIVATE SEXUAL BEHAVIOR BETWEEN CONSENTING ADULTS

The results shown in Exhibit 5-4 would seem to imply that a substantial majority of even "conservative" California citizens favor immediate repeal of any laws which prohibit such sexual behavior. However, there was apparently

considerable confusion or inconsistency among the respondents in defining what "any private sexual behavior between consenting adults" means. While almost three quarters of the total questionnaire favored immediate repeal of any such legal prohibitions, only a minority of "top criminal justice officials" and of law enforcement officers favored decriminalization of either prostitution or homosexuality--even if alternative programs to handle them were established. However, apart from the law enforcement responses from the sample counties, a majority of other criminal justice officials (including many law enforcement department heads outside the sample counties) did favor decriminalizing these two types of sexual "deviance" if alternative programs were developed for them.

Legislative efforts have often been made and will continue to be made to repeal prostitution and homosexuality laws. Certainly, public concern with these types of behavior has been declining. Organized groups of homosexuals are increasingly outspoken in attacking any type of discrimination against them. Prostitutes have even talked of "unionizing." With declining public concern has come, at least in most communities, far less effort on the part of law enforcement to seek out and arrest persons engaging in these types of behavior. The major exception is when some top police or government official suddenly decides he wants to "clean up" his town. However, by and large, the formerly common police techniques of peering through holes in lavatories or using undercover "tennis shoe squads" to stand around public urinals for hours waiting for some homosexual to make an "advance" have disappeared. Efforts to limit the visability of prostitution are a more common occurrence, as exemplified by the recent case of a police administrator arrested for soliciting an undercover policewoman in one of the sample counties. However, even here, large scale programs of this type usually occur when the "streetwalker" variety of prostitute becomes somewhat of a public nuisance so that citizens complain and officials feel obligated to at least temporarily "enforce the law."

In view of the increased tolerance for homosexuality and prostitution, and the facts that the former is difficult to detect and the latter legally available by crossing borders at either end of the State (and even within the State until a few decades ago), there seems no point in expending taxpayers' money and negatively stigmatizing such persons any longer. Legalization of prostitution could also provide increased tax revenue for the State.

RECOMMENDATION 37: *All laws which prohibit private sexual behavior between consenting adults, including prostitution and homosexuality, should be repealed by the legislature.*

This would not, however, remove the authority of police to act (e.g., pursuant to 415 P.C. or 650½ P.C.) on a citizen complaint if he or she is aggressively approached and harassed by someone trying to persuade him or her to engage in such activity. Health laws might be enacted simultaneously to require regular V.D. checkups, and perhaps registration, of prostitutes.

GAMBLING

Laws and enforcement of laws against gambling have always been highly inconsistent. It is not uncommon for police, district attorneys, and judges who arrest, prosecute, and sentence persons for either private or public gambling in California to engage in similar behavior themselves by such means as private card games, sports "pools", and/or trips across the state border to areas where all types of gambling are legal. Even within California, it is legal to participate in certain highly similar types of gambling such as horse-racing and selected card games in many cities.

Apart from the altruistic concern that individuals not squander their paychecks on such "vice," the main law enforcement objection to gambling appears to center around fears that organized crime would be strengthened by legalizing games of chance. In view of the well-known links between organized crime and gambling in other states (and some of the gambling in this state), this is certainly a realistic concern. This is probably the major reason why less than a quarter of the law enforcement respondents to the questionnaire, as seen in Exhibit 5-4, favored legalization of public gambling right now and only 38% would favor its legalization even if alternative programs were developed to aid those for whom gambling is a problem. Their views (and, even more so, the views of other criminal justice personnel) were considerably more liberal toward private gambling; probably because this is not nearly as likely to be controlled by organized crime. In fact, a majority of the total respondents indicated that they would favor repealing laws against private gambling <u>at this time</u>.

While study staff share the concern that organized crime could gain considerable control over public gambling in California, this by itself does not seem sufficient reason to prosecute persons for such activity--any more than lending institutions should be outlawed because "loan-sharking" operates out of some of them. Rather, the emphasis should be placed on careful licensing of public gambling institutions, checks on their "cheating" of customers, methods of collecting debts, etc. Some would even argue that legalization of gambling (as well as other "crimes without victims") would greatly weaken organized crime by reducing the need for their special services. From another tack, State-run lotteries have been proposed by some high-level state officials as one way to increase revenue for the State; in fact, it is well known that the State of Nevada's financial income is highly dependent on this source of revenue--with a significant proportion of it provided by Californians. Most basically, however, it is felt that persons who want to gamble will do so one way or another and that this type of "victimless" behavior should not be subject to criminal sanction.

RECOMMENDATION 38: All laws prohibiting public or private gambling should be repealed.

"OMNIBUS CLAUSE" BEHAVIOR FOR MINORS

One of the most perplexing questions related to the juvenile justice system today, in addition to how adversary it should be, is what should its jurisdictional scope be, i.e., what youth should be within its domain?

Prior to the first juvenile court's establishment in Chicago in 1899, most youths who broke the law were treated in essentially the same manner as their elders. However, in English common law, while minors as young as ten were sometimes executed,[37] those under seven years of age were considered incapable of forming "criminal intent" and, hence, of committing a crime. Additionally, the King, as parens patriae (father of his country), was responsible for the care of certain children who needed special protection. These two precedents, viz., the principle that children under a certain age were not responsible for their acts and the belief that certain other youth needed special protection, provided a major basis for the juvenile court movement. What rapidly occurred after the creation of the first juvenile court was a broadening of

the scope of the court's jurisdiction, as parens patriae, to bring numerous types of children under its umbrella. In addition to neglected and dependent youth, many other types of minors who were viewed as engaging in conduct that might be harmful or might lead to serious delinquency were absorbed within the court's jurisdiction under the theory that the court acted in a "preventive" role and was concerned primarily with the welfare of those youth. This constituted a variety of "omnibus clause" definitions of delinquency, i.e., lumping of many acts under the broad label of "delinquency" that would not be unlawful if committed by adults. Examples of such behavior included smoking, using vulgar language, staying out late, hanging around undesirable locations, missing school, leaving home without permission, and "incorrigibility."[38]

For several decades juvenile courts flourished--together with their broad definitions of youth over whom they should have jurisdiction, their concern with separating youngsters from older criminals, and their emphasis both on prevention of crime and individualized rehabilitation of children who transgressed the law. However, at least for the last ten years, there has been growing dissatisfaction with the results of the juvenile justice system and escalating attacks on both its methods of operation and the scope of youth over whom it should have jurisdiction. The President's Crime Commission, in 1967, leveled a host of criticisms at the juvenile justice system:

> "The postulates of specialized treatment and resulting reclamation basic to the juvenile court have significantly failed of proof, both in implementation and in consequences."
>
> "Nor has the juvenile court had the reclaiming and preventing effects its founders anticipated. It has been reported that one third of all delinquency cases involved repeaters."
>
> "In addition to the ineffectiveness of court-ordered action, there are serious negative implications of a delinquency label."
>
> "A further source of concern about court intervention is based on the assertion of many who have observed adjudicated and unadjudicated delinquents that, with or without intervention, most of them if given time and leeway will simply grow out of trying ways."

"Thus, for reasons stemming from undesired as well as inadequate impact, reconsideration of the juvenile court's jurisdiction is in order."[39]

Many other authorities have joined in this attack. Lemert,[40] Martin,[41] and many others have stressed the inadequate protection of the rights of minors that has resulted from the "informal atmosphere" of the juvenile courts. Others have emphasized the system's stigmatizing and pressuring toward "secondary deviance" (i.e., further deviance in response to how one is treated by the system);[42] its racial-cultural-political biases;[43] the "partial exchange of masters" that occurs when the court replaces the role of parents and other social institutions in the care and raising of children;[44] the "injustice" of subjecting to punishment or to treatment those who pose no serious threat either to themselves or to others;[45] and the escalating effect of formal handling. With regard to this latter point, California juvenile courts, in 1966, sent 80 minors to the Youth Authority by reclassifying them from 600 W&I (dependent or neglected) to 602 W&I (law violators) without bringing them back to court for rehearings.[46] While it is hoped this no longer occurs, it is still clearly legal to change the status (and, hence, type of institutional handling) of a 601 W&I youth (e.g., truant or incorrigible) to 602 W&I by simply finding that he has repeated his truant or incorrigible behavior.

There have also been significant attempts to respond to these criticisms and shortcomings. The famous Gault decision[47] and other related court decisions have underscored the need to vigorously protect the rights of minors. Different categories have been established in many states, including California, to distinguish delinquents clearly from those engaging in behavior that is perhaps undesirable but not really socially harmful. New York calls these latter youth PINS (persons in need of supervision); Illinois describes them as "minors otherwise in need of supervision"; while California places them in the category of 601 W&I (essentially, "pre-delinquents"). At least in theory, these individuals are not considered "delinquents" and are supposed to receive a different type of handling, even more oriented to "treatment" or "rehabilitation."

However, as pointed out by Glen, "the ostensible trend toward separation of criminal from non-criminal jurisdictional bases for dealing with children is a hoax."[48] For example, one study showed that 48% of 9,500 children in state and local detention programs had no record of

criminal acts.[49] Another study revealed that 40% to 50% of youth in correctional institutions nationwide are PINS or pre-delinquent cases and that they are mixed indiscriminately with delinquents in most institutions.[50] The latter report also claims that PINS are likely to receive harsher dispositions than delinquents.

Because of the host of problems associated with "omnibus clause" definitions of many types of behavior as "delinquent" or "pre-delinquent" acts, the President's Crime Commission asserted:

"Therefore, and in view of the serious stigma and the uncertain gain accompanying official action, serious consideration should be given complete elimination of conduct illegal only for a child" (emphasis added).[51]

Similarly, the 1970 White House Conference on Children recommended:

"as a first step (in overhauling juvenile justice), children's offenses that would not be crimes if committed by adults--runaway, truancy, curfew violation, incorrigibility--should not be processed through the court system, but diverted to community resources...."[52]

With regard to California's 601 W&I laws, a ruling by a three judge U. S. District Court panel in the case of Gonzales vs. Maillard stated:

"1. That the portion of Cal. Welf. & Inst. Code § 601 (West 1966) which reads "or who from any cause is in danger of leading an idle, dissolute, lewd or immoral life" is unconstitutional; and

2. That enforcement, by arrest, adjudication or otherwise, of the portion of Cal. Welf. & Inst. Code § 601 referred to in paragraph one, against the named plaintiffs, members of their class, or against any other person, is hereby permanently enjoined."[53]

The controversy was not mooted by the dropping of charges against the youths involved, since they and the class represented by them face continued use of the statute against them. An appeal was filed on April 9, 1971 by the California Attorney General; as yet no ruling has been given on the appeal (U.S. Supreme Court Docket No. 1565).[54] As further evidence of the dissatisfaction with keeping these types of youth under formal jurisdiction of the juvenile court, the "Report of the Special Reform Committee" of the Los Angeles County Superior Court in February, 1971 recommended that Section 601 W&I be eliminated from the Juvenile Court Law. The California Correctional System Study also urged that "pre-delinquents" (i.e., 601 W&I cases) no longer be supervised by probation departments.[55]

Study staff found this one of the most difficult issues on which to take a clear position. While many authorities have been arguing for the removal of 601 W&I youths from the jurisdiction of the juvenile court, Exhibit 5-4 shows that the sample of all types of criminal justice personnel responding to the staff questionnaire were clearly opposed to immediate repeal of this law. In fact, no group of respondents had a majority which favored removal of truancy, running away, incorrigibility, or "juvenile behavior not illegal for adults" as a whole from the juvenile justice system, even if alternative programs were developed to handle them first. Going a step further, law enforcement officials still opposed and the other two groups of respondents were far from overwhelmingly favoring even the handling of such youth in diversion programs. Hence, it would appear that California criminal justice personnel are clearly not in agreement with the primarily theoretical arguments advanced by many other authorities. Study staff themselves were torn between the impressive arguments for decriminalizing such behavior and the concern that adequate alternatives to handle these often severe problem types of behavior do not exist in most areas of the State. Additionally, there is no evidence to suggest that the handling of 601 W&I type youth by non-juvenile justice agencies or groups would be any more or even as effective as is currently the case. Hence, a series of compromise recommendations is made.

RECOMMENDATION 39: Every effort should be made to maximize the development of community-based alternatives to the juvenile justice system, particularly for those youths whose behavior is not such that it would constitute a crime for an adult.

RECOMMENDATION 40: Every effort should be made to maximize the development of diversion alternatives (to routine processing) within the juvenile justice system for these types of youths.

RECOMMENDATION 41: Detailed research should be conducted to explore the effectiveness of alternatives, by a variety of measures (including cost, recidivism, and stigma), of the most promising types of such alternatives both within and outside of the juvenile justice system.

RECOMMENDATION 42: The "escalation clause" of 602 W&I, i.e., the provision allowing courts to designate a 601 W&I case by mere repetition of the 601 W&I behavior, should be repealed.

RECOMMENDATION 43: The latter portion of 601 W&I ("who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life") should be repealed.

MENTALLY ILL OFFENDERS

Staff in all components of the criminal justice system, from juvenile halls to adult jails and prisons to probation and parole, have consistently stressed that one type of offender for whom the system is grossly lacking in resources is the mentally ill offender. The California Correctional System Study of 1971 repeatedly underscored the scarcity of such resources throughout the system and the increasing concern of correctional staff with this problem.[56] A study of probation and parole departments, later in the same year, by the California Probation, Parole and Correctional Association found that mental health services were rated as one of the most seriously needed and least available resources for correctional clientele.[57]

Unfortunately, the situation has, at least in many communities, steadily deteriorated. Exacerbated by the mental health system's closure of resources more and more to all but voluntary clients, correctional institutions and programs have increasingly become the wastebasket for the severely mentally disturbed offender. Juvenile and adult

staff, in both institutional and field service programs, are often ill-equipped to handle these individuals. Worse yet, institutions, in particular, frequently aggravate the problems of mentally disturbed persons.

While many criminal justice staff feel that these offenders should be handled in special alternative or diversion programs, as seen in Exhibit 5-4, such alternatives generally do not exist--unless, perhaps, the person will enter a program or facility voluntarily. Hence, the justice system has no option but to handle the bulk of these offenders as best it can.

Study staff feel strongly that this dilemma is a gross injustice both to criminal justice staff and to these offenders with serious mental or psychological problems. It is incumbent on both the State and local communities to make available specialized housing and programs, properly trained staff, and other needed resources either within or as easily accessible adjuncts to correctional facilities and programs. Failure to meet this obligation will result in increased aggravation of these individuals and danger to the community and should be severely censured by the courts, legislature, and general public.

> RECOMMENDATION 44: *State and local governments should initiate immediate and long-range planning and funding efforts to make available the whole range of mental health services needed in correctional programs and facilities.*

CHAPTER SIX

OTHER IMPORTANT INTAKE ISSUES

In addition to the questions of diversion and clients who are inappropriate for the criminal justice system, three other special issues related to intake are plea bargaining, the extent to which the juvenile court should be adversary in nature, and the effect of the non-adjudicated offender on local correctional programs.

PLEA BARGAINING

INTRODUCTION

Plea bargaining, often called plea negotiation, is the process whereby a juvenile or adult charged with an offense gives up his constitutional right to trial in exchange for conviction on a less serious charge or sentence less stringent than the maximum prescribed by law. The conditions under which this occurs vary widely between counties and individual courts within counties. Sometimes the prosecutor indicates the specific recommendation he will make to the court as to disposition. Other times, the court itself will either indicate a specific disposition or at least the limits surrounding the disposition. In still other cases, the minor or defendant simply pleads guilty to a lesser charge with the hope that this will bring a less severe sentence.

While the exact extent of plea bargaining is unknown, it is apparent that it is used quite extensively in most jurisdictions. Both in California Superior Courts and in criminal courts generally across the country, approximately 80% to 90% of all convictions are by plea.[1] Authorities generally agree that a very large percentage of these guilty pleas are the result of plea bargaining.

ARGUMENT FOR THE ABOLITION OF PLEA BARGAINING

While virtually no one seems totally satisfied with plea bargaining as a system in either the adult or juvenile courts, most critics have attacked specific flaws or dangers in the system rather than suggesting that it be totally abolished. The primary nationally recognized group that has

called for a complete end to plea negotiations is the National Advisory Commission on Criminal Justice Standards and Goals. The Courts Task Force of that Commission lists the following as some of the major criticisms of plea bargaining: (1) "Danger to Defendant's Rights," (2) "Danger to Court Administration," and (3) "Danger to Society's Need for Protection."[2]

Danger to Defendant's Rights

If plea bargaining is used in such a manner that a defendant is pressured to plead guilty to charges of which he is not guilty (e.g., by implication that he will receive a harsher penalty than if he demands a trial), it is clearly an unjust system. It is uncomfortably common that criminal justice officials, such as probation officers, are told by clients that they are really not guilty and that they pled guilty "because my attorney told me to." Project STAR, in a 1972 survey of 3,400 criminal justice practitioners in four states (including California) found some rather damaging information on this issue. Sixty-one percent of the respondents expressed the opinion that it was probable or somewhat probable that most defense attorneys "engage in plea bargaining primarily to expedite the movement of cases."[3] Thirty-eight percent agreed that it was probable or somewhat probable that most defense attorneys involved in plea negotiations "pressure client(s) into entering a plea that (the) client feels is unsatisfactory."[4]

A further frequent example of inequality of justice is the well known "shopping around" phenomenon common to plea bargaining. Individual prosecuting attorneys and judges have widely varying practices as to how easily they will make a deal and what types of deals they will accept. This results in defendants accused of the same offenses and with similar backgrounds receiving widely divergent dispositions and defense attorneys attempting to deal with those prosecutors or judges who are likely to offer the best bargain.

Finally, many critics stress that this process results in a type of "horse trading" rather than determination of issues on the evidence of each case.

Danger to Court Administration

In most jurisdictions, bargains may be made up to the last minute. It is quite common, for example, to arrive at a

negotiated plea on the day the matter is scheduled for trial (or, at times, even in the middle of trials). These last-minute bargains create havoc in a court system that is already under heavy criticism for its seemingly interminable delays and time wasting.

If a trial is called off at the last minute, there is considerable inconvenience to witnesses, jurors, family members, etc., who may have taken off work. Additionally, since court calendars must be scheduled in advance, a canceled trial may leave a large amount of valuable court time empty since no other matters were likely to have been scheduled for that time. The net result of last-minute plea bargaining is a waste of time for many persons coming to trial and in valuable court time that could have been devoted to other cases.

Danger to Society's Need for Protection

Not only may bargain justice result in violation or jeopardy to the rights of the defendant, but it may also negate adequate protection of the public. Society has a right to be protected from those who pose a serious threat to it. Many critics of plea bargaining point out that it nearly always results in some mitigation of the severity of punishment or the stringency of controls placed on the offender. Such persons argue that "Plea bargaining results in leniency that reduces the deterrent impact of the law."[5]

Probation officers generally object to deals that have been made prior to referral of cases to them for presentence report. If a firm bargain has been made, they ask, what is the point of spending the time and money to prepare a probation report and recommendation to the court since it will be unheeded anyway. This adds to the ritualistic and "gamelike" image of the court process.

As the National Advisory Commission underscores, not only may a defendant receive a sentence that is less severe than that which is appropriate to the crime and the protection of society, but "The plea negotiation system also endangers society's interest in protection by making the correctional task of rehabilitation more difficult."[6] Defendants who feel that they have been "shafted" by one part of the criminal justice system are not likely to place a high degree of confidence in another part of that system that now says it is interested in helping them. One of the

clearest illustrations of this point was made by the finding of the New York State Special Commission on Attica:

> "What makes inmates most cynical about their preprison experience is the plea-bargaining system...
>
> "the large segment of the prison population who believe they have been 'victimized' by the courts or bar 'are not likely to accept the efforts of another institution of society, the correctional system, in redirecting their attitudes'."[7]

ARGUMENT FOR RETAINING PLEA BARGAINING

While some officials want to completely abolish plea bargaining, most perceive it as a necessary evil, essential to prevent the courts from bogging down hopelessly. However, most of these persons have serious concerns about the possible abuse of this system and wish to impose safeguards to assure that the process adequately protects the rights of the individual defendant and of society. This is the interim position of the National Advisory Commission on Criminal Justice Standards and Goals, the basic stance of the President's Crime Commission and the American Bar Association, and the trend of appellate court decisions.

The President's Crime Commission felt that "Plea negotiations can be conducted fairly and openly, can be consistent with sound law enforcement policy, and can bring a worthwhile flexibility to the disposition of offenders."[8]

While cautioning about the possible abuses of this system, the Commission stressed its potential benefits:

> "The negotiated guilty plea serves important functions. As a practical matter, many courts could not sustain the burden of having to try all cases coming before them. The quality of justice in all cases would suffer if overloaded courts were faced with a great increase in the number of trials. Tremendous investments of time, talent, and money, all of which are in short supply and can be better used elsewhere, would be necessary if all cases were tried. It would be a serious mistake, however, to assume that the guilty plea is no more than a means of disposing of criminal cases at minimal cost. It relieves both the defendant and the prosecution of the inevitable risks and uncertainties

> of trial. It imports a degree of certainty and flexibility into a rigid, yet frequently erratic system. The guilty plea is used to mitigate the harshness of mandatory sentencing provisions and to fix a punishment that more accurately reflects the specific circumstances of the case than otherwise would be possible under inadequate penal codes. It is frequently called upon to serve important law enforcement needs by agreements through which leniency is exchanged for information, assistance, and testimony about other serious offenders."[9]

The American Bar Association, in its Standards Relating to Pleas of Guilty, took a similar tack of urging improvement rather than abolition of plea bargaining.[10] A variety of appellate and U.S. Supreme Court decisions have upheld the constitutionality of plea negotiations providing the defendant's plea was intelligent and willing--even if he subsequently claimed his innocence.[11]. The California Supreme Court in the 1970 decision of People vs. West affirmed the legality of plea bargaining and outlined a number of safeguards that should be taken.[12] The Court found:

1. The fact that a conviction by guilty plea was obtained through plea bargaining does not render such a plea involuntary (i.e., plea bargaining is a legitimate means for obtaining a voluntary guilty plea).

2. An acceptable plea to a lesser offense requires "reasonable relationship" to the crime charged.

3. Under Section 1192.5 P.C. (adopted 1970), the plea bargain should be read into the court record and it may specify either or both of the following:

   a) The maximum sentence to be imposed, insofar as a jury would have such power in a jury trial on the charge to which the guilty plea is entered.

   b) Probation and/or suspended sentence, powers which are vested in the trial judge for specified crimes.

4. Also under 1192.5 P.C., when the court approves a plea bargain, the court shall inform the defendant:

   a) The bargain is not binding on the court.

   b) The court may, in probation hearing or when pronouncing judgment, withdraw its approval.

   c) In such cases, the defendant will be allowed to withdraw his plea of guilty.

5. Certain other sections of the Penal Code which apply to pleas of guilty [e.g., appeal of legality of search under 1538.5 (m) P.C.] shall also apply to pleas of nolo contendere, as per 1016 P.C.

Moreover, the California legislature has encouraged plea bargaining through revision of Penal Code Section 17, passed in 1969. Under 17b (4), the prosecutor has the option, on all "wobbler"[13] offenses booked as felonies, of filing either misdemeanor or felony charges. Analogous discretion is granted to the municipal court judges under P.C. 17b (5), whereby they may accept a plea of guilty to a misdemeanor on a "wobbler" case filed as a felony by the prosecutor or they may even treat the case as if the defendant had been arraigned on a misdemeanor.

In summary, most standard-setting bodies, appellate courts, and the California legislature have supported the process of plea bargaining both as constitutional and as one practical solution to the time, manpower, and financial limitations of the court system. The major emphasis is generally placed on assuring adequate safeguards for the defendant and society. The nature of possible safeguards will be discussed in more detail but first the results of various staff surveys on plea bargaining will be summarized.

VIEW OF PLEA BARGAINING BY CRIMINAL JUSTICE PERSONNEL: SURVEY RESULTS

Exhibits 6-1 and 6-2 indicate how various groups of California criminal justice officials felt about plea bargaining in both the juvenile and adult systems, respectively.

With regard to juvenile plea bargaining, a strong majority of law enforcement staff and department heads as well as

Exhibit 6-1

VIEWS OF PLEA BARGAINING FOR JUVENILES BY CRIMINAL JUSTICE PERSONNEL

	Law Enforcement Staff	Law Enforcement Dept. Heads	Juvenile Probation Staff	Chief Probation Officers	Judges	District Attorneys	Public Defenders
EXTENT OF USE							
Too many cases	81%	53%	60%	19%	5%	11%	0%
Generally the right number of cases	13	25	21	58	67	59	39
Too few cases	2	5	2	3	5	11	56
No opinion or not familiar	4	18	18	19	25	19	5
APPROPRIATENESS OF USE							
Is used appropriately	12	21	18	39	54	54	56
Tends to be unjust for defendants	2	2	4	3	0	0	0
Tends to be unjust for society	48	33	13	9	4	15	0
Tends to be unjust for both defendants and society	18	23	51	21	4	4	11
Not used in county	1	2	4	12	29	8	28
No opinion or not familiar	19	19	10	15	8	19	5
WHO SHOULD BE INVOLVED							
No one (i.e., shouldn't be used)	35	39	46	39	32	0	12
Courts, D.A.'s and defense attorneys	15	15	6	3	4	28	29
D.A.'s and defense attorneys	4	6	8	3	4	16	6
Probation and defense attorneys	3	8	2	13	8	4	18
D.A.'s, defense attorneys, and probation	7	8	12	10	0	0	0
Courts, D.A.'s, defense attorneys and probation	35	25	26	32	52	36	35
HOW SHOULD IT BE USED							
Should not be used	40	38	50	42	32	5	13
As deemed appropriate by courts and other parties involved	21	16	16	19	24	32	6
Limited to D.A. recommendations not binding on court	16	20	14	13	0	18	0
Courts able to make dispositional promises but then unable to change	1	4	0	0	0	5	13
Courts able to set limits on sentence but then unable to change	4	5	1	0	0	0	6
Courts able to make conditional promises subject to change--provided defendant can withdraw plea	20	18	19	26	44	41	62

Exhibit 6-2

VIEWS OF PLEA BARGAINING FOR ADULTS BY CRIMINAL JUSTICE PERSONNEL

	Law Enforcement Staff	Law Enforcement Dept. Heads	Juvenile Probation Staff	Chief Probation Officers	Judges	District Attorneys	Public Defenders
EXTENT OF USE							
Too many cases	81%	81%	75%	71%	27%	14%	11%
Generally the right number of cases	13	14	19	17	64	82	72
Too few cases	2	3	1	6	9	4	17
No opinion or not familiar	4	2	6	6	0	0	0
APPROPRIATENESS OF USE							
Is used appropriately	8	16	13	25	74	76	78
Tends to be unjust for defendants	2	2	3	0	0	3	5
Tends to be unjust for society	73	59	33	39	13	17	0
Tends to be unjust for both defendants and society	15	24	47	33	13	0	17
Not used in county	0	0	0	0	0	3	0
No opinion or not familiar	4	0	5	3	0	0	0
WHO SHOULD BE INVOLVED							
No one (i.e., shouldn't be used)	38	43	28	15	5	3	5
Courts, D.A.'s and defense attorneys	23	26	21	18	23	38	56
D.A.'s and defense attorneys	5	7	6	12	14	24	11
Probation and defense attorneys	0	0	0	0	0	0	0
D.A.'s, defense attorneys, and probation	4	7	5	8	14	3	5
Courts, D.A.'s, defense attorneys and probation	29	17	41	47	45	31	22
HOW SHOULD IT BE USED							
Should not be used	39	41	28	17	9	12	6
As deemed appropriate by courts and other parties involved	17	7	5	8	14	27	0
Limited to D.A. recommendations not binding on court	20	29	13	22	0	19	0
Courts able to make dispositional promises but then unable to change	1	3	0	0	0	0	12
Courts able to set limits on sentence but then unable to change	4	5	0	0	0	0	6
Courts able to make conditional promises subject to change--provided defendant can withdraw plea	20	14	55	53	77	42	76

juvenile probation staff viewed it as being used too often and unjustly. Chief probation officers, judges, and district attorneys felt it was generally used in the right number of cases while public defenders thought it should be used more often. In terms of justice, a majority of judges, district attorneys, and public defenders (i.e., those most heavily involved in the process) felt it was used appropriately while relatively few law enforcement and probation personnel shared this opinion. Roughly 40% of law enforcement personnel and chief probation officers and nearly half of line probation staff asserted that plea bargaining should not be used in the juvenile justice system. About a third of the judges agreed with this view while very few district attorneys and public defenders wanted it abolished. Although those wishing to remove plea bargaining from the juvenile system represent a minority, they are a very significant minority, particularly among police and probation personnel. Of those believing plea bargaining should be used, the consistent majority view was that courts, prosecution, defense, and probation should all be involved and that the courts should be able to make conditional promises subject to change--provided the minor could also withdraw his plea. Overall, direct court personnel had the most faith in plea bargaining while large numbers of police and probation staff and department heads had serious reservations about its usage in the juvenile justice system.

For the most part, views toward the use of this process for adults were rather similar. However, significantly more persons in almost every category felt that plea bargaining was used too often. Higher percentages of law enforcement and probation personnel described the process as unjust, particularly for society, while three out of four judges, D.A.'s and public defenders perceived it as a just system. About 16% of chief probation officers, 28% of probation line staff, and 40% of law enforcement personnel felt plea bargaining should not be used; however, very few judges, D.A.'s, or public defenders agreed. As in the juvenile system, the predominant view of those favoring plea bargaining was that it should be conducted in a manner that would allow the courts to change conditional promises they had made as to disposition provided the defendant could also withdraw his plea and ask for a trial.

The rather large number of officials, particularly police and probation officers, who expressed the view that plea bargaining should be abolished and that it tends to be unjust for society and/or the defendant underscores the

need to at least build very careful safeguards into the entire process.

STRENGTHENING SAFEGUARDS FOR PLEA BARGAINING

Study staff concur with the majority view of standard-setting bodies, appellate courts, and criminal justice officials toward plea bargaining, viz., that it presents definite dangers (discussed above) but that these dangers can be controlled and that the advantages of this system, given these controls, outweigh its negative aspects. Essentially, study staff support the "interim" recommendations of the National Advisory Commission on Criminal Justice Standards and Goals which, in turn, reflect the major concerns of most criminal justice personnel. These standards will be summarized here. For more elaboration and reasoning behind these standards, the reader is referred to the Courts report of the above Commission.[14]

> RECOMMENDATION 45. *When a negotiated guilty plea is entered, the court record should contain a clear statement of the precise conditions under which it is entered and the court's reason for accepting it.*

> RECOMMENDATION 46. *To maximize equality of justice, each prosecutor's office should have a written set of guidelines governing the plea negotiations of all staff in that office.*

> RECOMMENDATION 47. *Each judicial bench should establish clear time limits after which plea negotiations may no longer be accepted, except in unusual circumstances and with the approval of judge and prosecutor.*

The purpose of this recommendation is to avoid last-minute deals which create havoc with the scheduling of court calendars.

> RECOMMENDATION 48. *No plea negotiations should be accepted unless the defendant or minor has had the opportunity for counsel and, if he has counsel, should be conducted only in the presence of counsel.*

> RECOMMENDATION 49. *Absolutely no pressure or inducements should be utilized to encourage a defendant or minor to enter into a plea negotiation.*

> RECOMMENDATION 50. *The court should not enter into plea bargains but should carefully review any such negotiations as outlined by the National Advisory Commission on Criminal Justice Standards and Goals.*[15]

ADVERSARY NATURE OF JUVENILE COURT PROCEEDINGS

INTRODUCTION

Juvenile Courts have moved a long way from the original parens patriae philosophy to their present, more legalistically-oriented adversary stance. The early goals of the Juvenile Court were investigating, diagnosing, and prescribing treatment--not adjudging guilt or fixing blame. This emphasis on sociological jurisprudence has resulted in a lack of due process protection. "In the exuberant belief that court-ordered social service would be a cure-all for the problem of juvenile crime, strict legal procedures and attorneys were usually excluded from the Juvenile Court process."[16] Because the question of whether or not the Juvenile Court is a legal agency established for the protection of the community or a social agency established for the care and protection of minors has a significant effect on the intake process, it is considered here as a separate key intake issue.

JUVENILE RIGHTS

Since the Juvenile Court has often failed to live up to its promise of rehabilitation, its procedures have been severely criticized, particularly by appeal courts. One such attack was the Gault[17] decision from the United States Supreme Court in 1967, in which several rights previously accorded only to adults were extended to juveniles. The rights specifically delineated were: right against self-incrimination, right to counsel, right to notice of charges, right to confrontation and cross-examination of witnesses, right to a transcript of proceedings, and right to an appellate review. The main point in Gault was that basic constitutional safeguards in criminal cases apply to juveniles. The right against self-incrimination has been further reinforced in California by the 1968 Court of Appeal Teters[18] ruling which specifically extended the provisions of the 1966 United States Supreme Court Miranda[19] decision. The California Supreme Court declined to hear the Teters case.

Three questions left unanswered by Gault relate to the standard of proof required to sustain criminal allegations in juvenile cases, the right to trial by jury and the right to bail. The first of these was addressed by the United States Supreme Court in its 1970 Winship[20] decision. In a 6-3 opinion written by Justice Brennan, it was decided that Gault should be extended.

> "In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault... We therefore hold, in agreement with Chief Judge Fuld in dissent in the Court of Appeals (New Yorker), 'that where a 12-year old child is charged with an act of stealing which renders him liable to confinement for as long as six years, then, as a matter of due process...the case against him must be proved beyond a reasonable doubt.'"

According to Brennan's quotation of Fuld, a key factor is the defendant's liability to confinement. With respect to California law, it is not clear that Winship would apply in 601 W&I cases where the minor was not subject to CYA commitment. However, a California Court of Appeal did rule in 1970 (prior to Winship) that:

> "Even though the amended petition was filed under Section 601, the minor rightly may demand that proof of the allegation of the commission of felonies must meet the same standards as if the petition was brought under Section 602, namely a preponderance of evidence legally admissible in the trial of criminal cases."[21]

This contradicts Section 701 W&I which states:

> "...However, proof beyond a reasonable doubt supported by evidence, legally admissible in the trial of criminal cases, must be adduced to support a finding that the minor is a person described by Section 600 or 601."

Thus, while the standard of proof required for 602 W&I is clearly defined, the same is not true for 601 W&I allegations.

The right to a jury trial for a juvenile is an issue which was addressed by the United States Supreme Court in 1971

in McKeiver vs. Pennsylvania.[22] Although the court was badly split, it held that a jury trial for juveniles is not a constitutional requirement. The possibility was left with the states, since Justice Blackmun in McKeiver noted: "If, in its wisdom, any State feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that feature."

The question of the right to bail has plagued the adult criminal justice system for decades. Some of the same issues are involved in the detention of juveniles. It is often argued that a minor does not have the right to liberty but rather has the right to be in custody of his parents and the juvenile law is written so as to take this right away only in very restricted circumstances. However, since the most common reason for detention (other than the unwillingness of the parents for release) appears to be that the minor is a threat to himself or the community, it has been argued that this punitive detention is in violation of due process rights.[23] The application of right to bail to juveniles has been questioned by the Advisory Commission on Goals and Standards:

> "In view of the recognized inadequacies of the bail system as it is now generally practiced for adults, it would be more prudent in juvenile justice to pursue some of the new developments in the area of bail program alternatives such as release on own recognizance, or release to a third party, than to impose an essentially faulty and discriminatory system on the juvenile process."[24]

STUDY RESULTS

During the conduct of the present study, the issue of the adversary aspect of juvenile court was addressed in three ways: personal interviews with involved criminal justice officials, questionnaires to juvenile probation intake staff in the seven study counties, and questionnaires to senior criminal justice officials throughout the remainder of the state. Responses to the pertinent aspects of the questionnaires are tabulated in Exhibit 6-3.

Thus, it can be seen that 28% of the respondents felt that juveniles should have all the rights of adult defendants, including right to bail and trial by jury, while 72% felt they should not. Public defenders were the only group in

Exhibit 6-3

SURVEY RESULTS FOR JUVENILE COURT QUESTIONS (%)

	Juvenile Probation Officers Seven Study Counties		Senior Criminal Justice Officials Throughout California					All Responses
	Los Angeles County	Other Counties	Law Enforcement	Probation	District Attorney	Public Defender	Courts	
1. SHOULD JUVENILES HAVE ALL THE RIGHTS OF ADULT DEFENDANTS:								
Yes	28	37	34	15	17	53	12	28
No	72	63	66	85	82	47	88	72
2. SHOULD THE JUVENILE COURT:								
Become Totally Adversary Like Adult Courts	21	15	16	6	14	29	4	15
Become Adversary in Most Respects	54	43	35	53	29	47	46	44
Return to Being Non-Adversary	25	42	49	41	57	24	50	41
3. DO THE JUVENILE COURTS DETAIN MINORS IN JUVENILE HALL:								
Too Often	3	5	3	14	8	33	8	8
To the Appropriate Extent	34	54	31	74	61	67	88	52
Not as Often as They Should	63	41	66	12	31	0	4	40

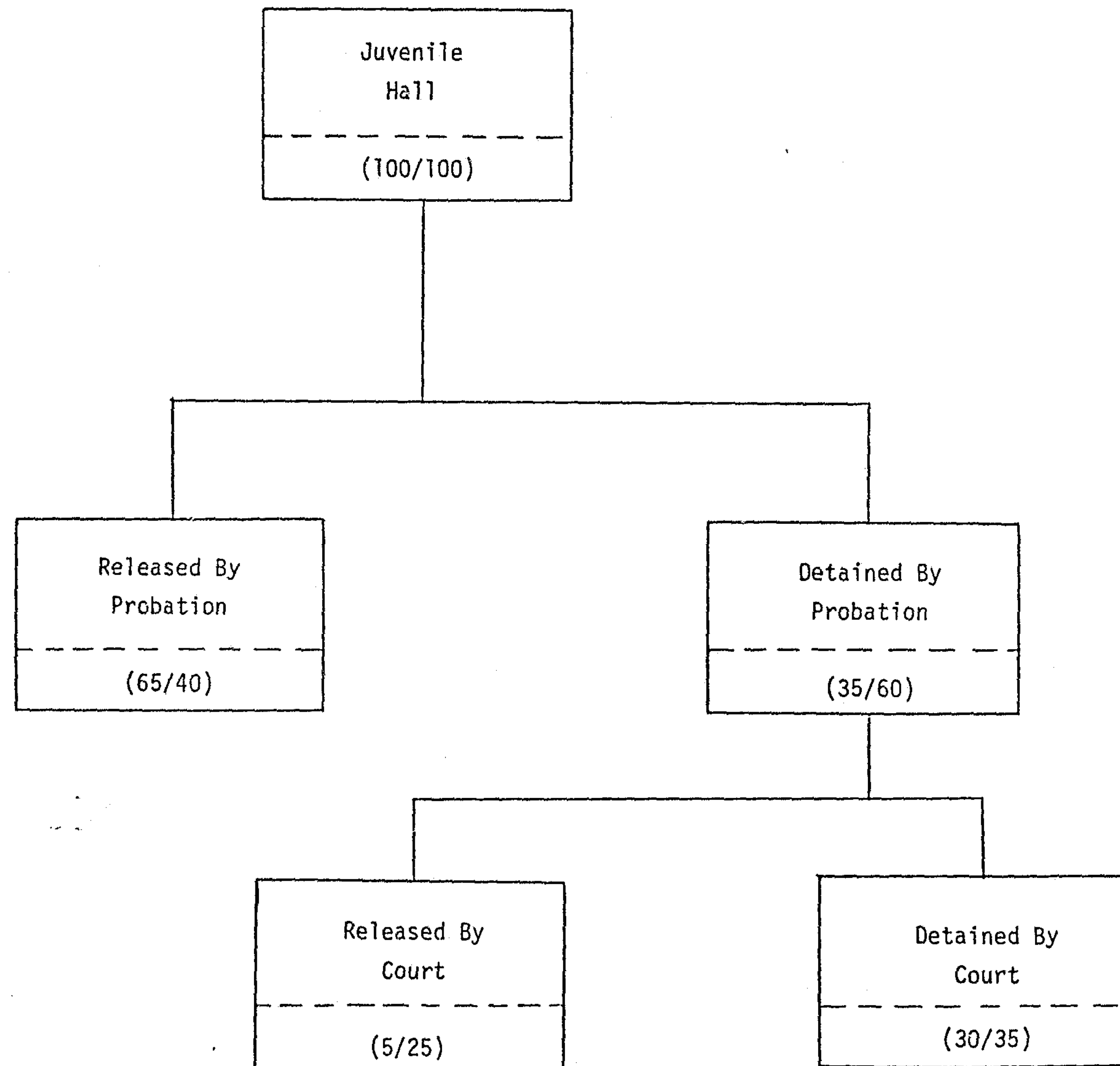
which the majority felt juveniles should have all adult rights. Only 15% of the respondents felt that it should return to the original non-adversary philosophy. Regarding the question of detention by the Juvenile Court at the detention hearing, only 8% felt that the court detained the minor too often; 40% of the respondents felt that the court did not detain as often as they should. Significant differences are apparent between the various classes of respondents.

There is an obvious dichotomy in the juvenile system regarding the treatment of 601 and 602 W&I allegations. As was observed earlier, Gault and Winship have defined due process rights for those juveniles accused of serious crimes; however, equivalent rights are not necessarily afforded to youths alleged to have commited offenses which are not defined by the Penal Code (e.g., 601 W&I). For example, the detention decisions made by juvenile hall intake unit and the juvenile court judge appear to be greatly influenced by the section of the W&I code under which the minor was arrested. Typical release/detention rates for 601 and 602 W&I arrestees are shown in Exhibit 6-4 (These rates vary widely from county to county; the ones shown are a composite). Thus, of 100 minors brought to juvenile hall on 601 W&I allegations, 65 are released pursuant to Section 628 W&I, while 35 are detained at the hall; however, at the detention hearing typically 30 (of the 35) are further detained (Section 636 W&I). The processing of 602's is considerably different: typically 60 percent are detained initially at the hall yet more than half of these are released by the court. Presumably the aforementioned due process rights regarding criminal allegations are responsible for the high proportion of release at the detention hearing for 602 W&I allegations. One result of this is the erosion of respect for "justice" in the mind of the detained 601 W&I offender: he must remain in the hall while the far more serious offender is released.

As a part of the questionnaires in the seven study counties, juvenile probation staff were specifically asked to indicate whether they felt each of the seven criteria in Section 628 W&I for detaining a minor was clear and appropriate. Of those responding, 88 percent felt that criteria 5 ("The minor is likely to flee the jurisdiction of the court") was clear and appropriate; only 77 percent felt that "The minor is physically dangerous to the public because of a mental or physical deficiency disorder or abnormality" was a clear and

Exhibit 6-4

TYPICAL PROCESSING
OF 601/602 W&I ARRESTEES



NOTE: Numbers in parentheses indicate typical percentage flows of 601/602 minors.

appropriate criterion for detention. Responses regarding clarity and appropriateness of the other criteria were between 77 and 88 percent.

> RECOMMENDATION 51. *Juvenile court processing should clearly distinguish between minors alleged to have committed specific serious criminal acts (602 W&I), and those alleged to have exhibited pre-delinquent behavior (601 W&I).*

Study staff essentially concurs with the philosophy proposed by the National Advisory Commission on Criminal Justice Standards and Goals regarding the court handling of juveniles:

> "The objective of reform should not be to render the court processing of juveniles indistinguishable from the processing of adult criminal defendants. Rather, it should be to improve the effectiveness of the court process as part of a rehabilitative juvenile justice system and to strike a reasonable balance between the need to maintain flexibility and the need to prevent unjustified findings of delinquency, neglect, or dependency."[25]

Juveniles should only be institutionalized upon a determination of delinquency and a finding that no other disposition would suffice. Further, the determination of delinquency should require proof that "...the juvenile has committed an act that, if commited by an adult would constitute a criminal offense."[26] Pre-delinquent minors (i.e., "conduct illegal for children only") should not be institutionalized in "facilities traditionally utilized for the detention of children believed to have engaged in relatively serious antisocial conduct."[27] The processing of these pre-delinquent juveniles should stress rehabilitation, not punishment and deterrence.

> RECOMMENDATION 52. *Detention of juveniles prior to a hearing should be minimized; the use of adequate shelter facilities, such as foster homes, group homes, and other physically non-restricting situations should be encouraged whenever possible.*

THE NON-ADJUDICATED OFFENDER

In California, as in the rest of the country, local detention/correctional facilities are utilized to confine both adjudicated and non-adjudicated offenders. The sequence of decision points through which the offender passes and the factors which affect these decisions have been discussed extensively in Chapter Three. An overview of the process as it relates to local detention facilities is shown in Exhibit 6-5. Thus, there are four possible reasons for which an offender is incarcerated:

- not yet arraigned
- arraigned and awaiting trial
- convicted and awaiting further legal action
- serving a jail sentence.

There is another possibility, being held for other authorities. Since decisions relating to this category are typically outside of the local jurisdiction, it is not shown in Exhibit 6-5.

A summary of some of the characteristics of jail populations and facilities is provided in Exhibit 6-6. The facilities included in the study from which the data was taken[28] include all local detention facilities. Although the data is from 1970 and several facilities have since changed, a good perception of local incarceration is presented. Tabulations are made for the United States, California, and the main geographic areas being considered in this study.

Slightly over one half (52%) of the jail population in California was actually serving a sentence at the time, compared to 43% for the country as a whole. Los Angeles County had only 42% of the inmates who were serving a sentence, while Placer and Stanislaus Counties (combined) had 63%. Less than one facility in four (24%) throughout the state contained educational facilities or programs, and only 43% provided recreational facilities or programs.

However, in considering the effect which the non-adjudicated offender has relative to programs for the sentenced prisoner, it is important to distinguish between those facilities which have both types of inmates and those facilities which only house sentenced offenders. Obviously, the non-adjudicated offender has no impact on the correctional programs offered in those facilities which have only sentenced inmates, except possibly for the overall county budget allocations.

Exhibit 6-5

DETENTION DECISION SEQUENCE

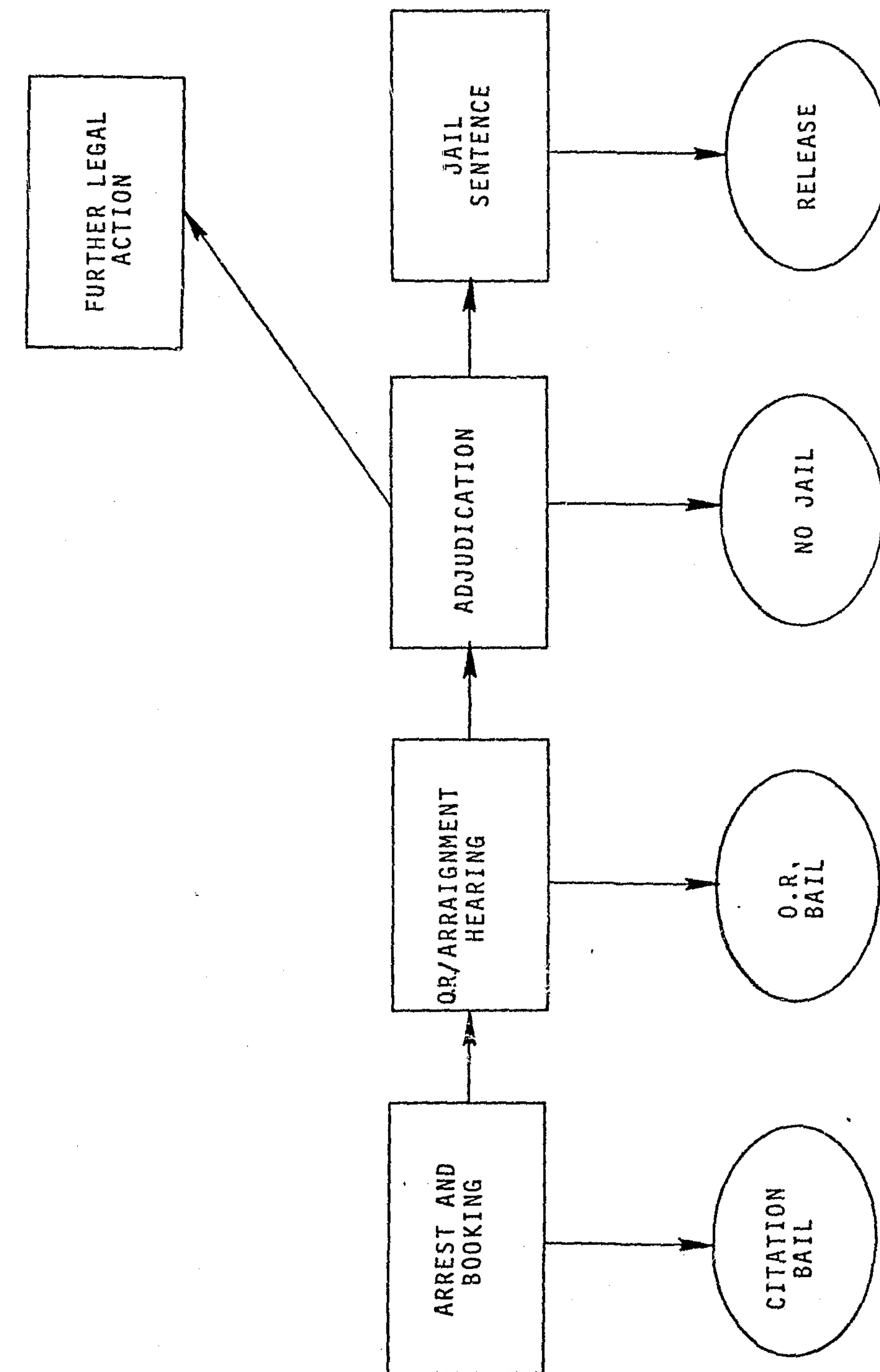


Exhibit 6-6

JAIL POPULATION/FACILITY COMPARISONS

	United States	California	Los Angeles County	San Diego County	Contra Costa Marin and San Mateo Counties	Placer and Stanislaus Counties
Total Inmate Population	160,863	27,678	10,285	1572	989	445
Adult Male Population (%)	90.3	93.1	90.9	98.5	94.2	92.8
Adult Female Population (%)	4.8	6.2	8.5	1.2	5.7	6.1
Juvenile Population (%)	4.9	0.7	1.6	0.3	0.1	1.1
Persons Held for Other Authorities or Not Yet Arraigned (%)	17.1	12.4	10.9	24.7	10.6	7.9
Persons Arraigned and Awaiting Trial (%)	34.6	33.6	44.2	28.0	34.0	27.0
Convicted Persons Awaiting Further Legal Action (%)	5.4	2.2	2.8	0.2	5.9	1.8
Persons Serving Sentences (%)	42.9	51.8	42.1	47.1	49.5	63.3
Number of Jails	4037	166	29	9	8	3
Ratio of Inmates to Full-Time Equivalent Employees	5.6:1	6.1:1	5.6:1	5.2:1	5.7:1	10.6:1
% of Jails Containing Educational Facilities/Programs	10.8	23.5	20.1	88.9	37.5	0
% of Jails Containing Recreational Facilities/Programs	13.6	42.8	51.7	88.9	75.0	33.3
% of Jails Containing Medical Facilities	51.0	63.9	72.4	88.9	50.0	100.
% of Jails Containing Visiting Facilities	74.0	77.7	86.2	100.	87.5	100.

SOURCE: The California Jail Study, 1973, California Council on Criminal Justice, September, 1973.

In the seven specific counties under consideration in the study, 65% of the sentenced inmates are housed in "correctional facilities," i.e., facilities which retain only offenders who have been adjudicated and sentenced. The remaining 35% are inmates in facilities which have both adjudicated and non-adjudicated offenders. Population comparisons for these "jail" facilities are given in Exhibit 6-7. The sentenced offenders now become a distinct minority in these facilities, ranging from 20% in Los Angeles County to 43% in Placer/Stanislaus.

The existence of the high proportion of non-adjudicated offenders has a significant impact on correctional programs in these facilities, to the extent that programs do not exist in many of them. This is primarily due to the excessive resources which are tied up by the non-adjudicated offender during his period of detention (classification, segregation, emotional problems, numerous visits, etc.).

The actual pressure of the sentenced offender in the "jail" facility is typically the result of one of two factors:

- The county does not operate an appropriate "correctional" facility (honor farm, camp, rehabilitation center, etc.).
- The offender is considered to be too much of a risk to be assigned to a minimum security facility.

Many of the smaller counties have only one local detention facility and hence inherently have both sentenced and unsentenced offenders in the facility. Counties which operate minimal security facilities for unsentenced offenders still cannot remove them completely from the more secure jail facilities, since many of them are classified as being inappropriate for minimal security handling.

> RECOMMENDATION 53. *All counties should provide minimum security facilities and programs--community correctional centers--for appropriate sentenced offenders.*

This recommendation is consistent with the standards proposed by the National Advisory Commission.[29] It provides the mechanism for attempting to reintegrate suitable offenders away from the repressive atmosphere associated with the usual county jail. Staffing patterns could be

Exhibit 6-7

POPULATION COMPARISONS FOR FACILITIES HOLDING BOTH ADJUDICATED AND NON-ADJUDICATED PRISONERS

	Los Angeles County	San Diego County	Contra Costa Marin San Mateo	Placer Stanislaus
Total Inmate Population	7445	1145	629	285
Persons Held for Other Authorities or Not Yet Arraigned (%)	15.1	33.9	16.7	12.3
Persons Arraigned and Awaiting Trial (%)	61.1	38.4	53.4	42.1
Convicted Persons Awaiting Further Legal Action (%)	3.9	0	9.2	2.8
Persons Serving Sentences (%)	20.0	27.7	20.7	42.8

SOURCE: adapted from The California Jail Study, 1973, California Council on Criminal Justice, September, 1973.

determined locally, but in general should stress the objectives of the community corrections concept as the chief criteria.[30] The determination of offender appropriateness should be done by a decision-making group which would follow and direct the inmate's program through the local correctional system.[31]

RECOMMENDATION 54. Police departments should maintain only those facilities necessary for short-term processing of offenders immediately following arrest; other detention and correctional facility responsibilities should be handled by county or regional agencies.

The implementation of this recommendation would remove many local police department jails from the detention/ correctional system.[32] In conjunction with the previous recommendation, this would provide the opportunity for sentenced offenders to be assigned to an appropriate local correctional program/facility.

Another aspect of the problem concerning the effect of the presence of non-adjudicated offenders on correctional programs for sentenced offenders is the reason for the initial detention of offenders. Was there an alternative to incarceration? Although this same question has been discussed elsewhere in the report (see Recommendations 9, 10, 12, 13, 39, 40), it is considered again now from the perspective of the detention system as well as the individual.

As can be seen in Exhibit 6-5, non-adjudicated offenders can be reduced in number through three alternatives: citation, bail and O.R. Questionnaire responses from ranking criminal justice officials throughout the state showed that they were almost exactly divided as to whether police on-the-street citation programs were under-utilized or used to the appropriate extent (2% felt that they were over-utilized or should not be used). One third of the law enforcement officials felt citations were under-utilized, with two thirds feeling they were used appropriately. Of the other officials (CPO's, D.A.'s public defenders and judges), more than 60% felt that citations were under-utilized. On the question of O.R. release from jail, 32% of the statewide sample felt they were under-utilized, 47% felt they were used appropriately, and 21% felt they were over-utilized. For law enforcement officials only, these responses were 12%, 42%, and 46% respectively, while for the remaining officials the responses were 42%, 50%, and 8% respectively.

RECOMMENDATION 55. Law enforcement agencies should make maximum use of citations in lieu of pre-arraignment confinement; programs that permit non-adjudicated defendants to be released on their own recognizance in lieu of monetary bail should be expanded.

More extensive use of citation and O.R. release--in appropriate cases--would reduce the average daily jail population considerably throughout the state.[33] Thus, as well as for the "reduced penetration" aspects described earlier, these practices would also provide for better control of detention and correctional resources.

FOOTNOTE REFERENCES

CHAPTER ONE

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[2] Ibid., p. 50.

[3] Bureau of Criminal Statistics, Crimes and Arrests: 1972, p. 7.

[4] Bureau of Criminal Statistics, Adult and Juvenile Probation: 1972, p. 81.

[5] Bureau of Criminal Statistics, Crime and Delinquency in California: 1972, p. 38.

[6] See, for example: Bureau of Criminal Statistics, Offender-Based Criminal Statistics in 12 California Counties, September, 1972, in which Stanislaus County shows a 5 percent police release rate for all felony arrests in 1971; Offender-Based Transaction Statistics Study - Region N, Sunnyvale: Public Systems Incorporated, December, 1973, in which a five-county central-valley area is shown to have a release rate of 23%; and a personal communication with Lt. A. J. Hansen, Los Angeles Sheriff's Department, January, 1974, revealing that, over a four-month tabulated period in 1973, 37% of the Part I adult arrestees were released.

CHAPTER TWO

[1] Jerome Skolnick, Justice Without Trial, N.Y.: John Wiley and Sons, 1966, pp. 80-86.

[2] William Westley, Violence and the Police, Cambridge: MIT Press, 1970, p. 64.

[3] Ibid.

[4] Albert Reiss, The Police and the Public, New Haven: Yale University Press, 1971, p. 1.

[5] James Q. Wilson, Varieties of Police Behavior, Cambridge: Harvard University Press, 1968, p. 83.

[6] Ibid; see also, J. G. Fisk, The Police Officer's Exercise of Discretion in the Decision to Arrest: Relationship to Organizational Goals and Societal Values, Institute of Government and Public Affairs, UCLA, 1974.

[7] Joseph Goldstein, "Police Discretion Not to Invoke the Criminal Process," in Criminal Justice: Law and Politics, ed. by George Cole, Belmont: Duxbury Press, 1972, p. 59.

[8] Nathan Goldman, "Police Selection of Juvenile Offenders," Unpublished Ph.D. Dissertation, Department of Sociology, University of Chicago, 1950, p. 138.

[9] Ibid., p. 140.

[10] Irving Piliavin and Scott Briar, "Police Encounters with Juveniles," in Juvenile Delinquency: A Book of Readings, ed. by Rose Giallombardo, N.Y.: John Wiley and Sons, 1967, p. 443.

[11] Wilson, op. cit., p. 83.

[12] Donald Black, "Police Encounters and Social Organization," Unpublished Ph.D. Dissertation, University of Michigan, 1968, pp. 188-194.

[13] Reiss, loc. cit.

[14] Piliavin and Briar, loc. cit.

[15] Ibid., p. 445.

[16] Carl Werthman and Irving Piliavin, "Gang Members and the Police," in The Police, ed. by David Bordua, N.Y.: John Wiley and Sons, 1967, pp. 56-98.

[17] Ibid., p. 80.

[18] Ibid.

[19] Ibid., p. 74.

[20] Ibid.

[21] Ibid., p. 72.

[22] Aaron Cicourel, The Social Organization of Juvenile Justice, referred to in Werthman and Piliavin, ibid.

[23] Nathan Goldman, The Differential Selection of Juvenile Offenders for Court Appearances, NCCD, 1963, p. 106.

[24] President's Commission on Law Enforcement and Administration of Justice, Police Task Force Report, 1967, p. 180.

[25] Eleanor Harlow, Problems in Police-Community Relations, NCDD, 1969, p. 17.

[26] Skolnick, op. cit., pp. 81-83.

[27] Ibid., p. 83.

[28] Joseph Lohman, et. al., "The Police and the Community," report submitted to the President's Crime Commission, 1966, p. 127.

[29] Werthman and Piliavin, op. cit., p. 56.

[30] Skolnick, op. cit., pp. 80-86.

[31] Ibid., p. 88.

[32] Ibid., p. 83.

[33] Werthman and Piliavin, op. cit., pp. 56-98; Wayne LaFave, Arrest: The Decision to Take a Suspect into Custody, Boston: Little, Brown and Company, 1965, pp. 69-72.

[34] Reiss, op. cit., p. 150.

[35] Walter Reckless and Barbara Kay, "The Female Offender," report submitted to the President's Crime Commission, 1967, p. 16.

[36] Ibid., pp. 17-18.

[37] Wilson, op. cit., p. 84.

[38] Ibid., p. 84.

[39] Bureau of Criminal Statistics, Crimes and Arrests: 1972, p. 75 and Adult and Juvenile Probation: 1972, p. 119.

[40] Bureau of Criminal Statistics, Crime and Delinquency in California in 1972: Adult and Juvenile Probation, Sacramento, p. 95.

[41] Roger Baron and Floyd Feeney, "Preventing Delinquency Through Diversion; The Sacramento County Probation Department 601 Diversion Project," Second Year Report, Davis: University of California, July, 1973.

[42] Bureau of Criminal Statistics, Crime and Delinquency in California, 1970, 1971, 1972; Adult and Juvenile Probation, Sacramento.

[43] 387 U.S. 1.

[44] Robert Terry, "Discrimination in the Handling of Juvenile Offenders by Social-Control Agencies," Journal of Research in Crime and Delinquency, 4(2):218-30, July, 1967.

[45] Yona Cohn, "Criteria for the Probation Officer's Recommendations to the Juvenile Court Judge," Crime and Delinquency, 9(3):437, July, 1963.

[46] Seymour Gross, "The Prehearing Juvenile Report: Probation Officers' Conceptions," Journal of Research in Crime and Delinquency, 4(2):212-17, July, 1967.

[47] Scott Briar et. at., "Social and Clinical Judgments About Delinquent Youth," Unpublished studies of the School of Social Work at the University of California, Berkeley, 6-63, p. 225; Irving Piliavin et. al., "Social and Clinical Judgments About Delinquent Youth," Unpublished studies of the School of Social Work, Berkeley: University of California, 6-64, pp. 33-34.

[48] Leslie Wilkins and Ann Chandler, "Confidence and Competence in Decision Making," British Journal of Criminology, 5(1):27-8, January, 1965.

[49] Briar et. al., op. cit., p. 297.

[50] In comparing the "does influence" and "should influence" factors, three statistically significant differences are noted for the total staff ratings at this decision point. These are: need for counseling and other probation services, availability and appropriateness of crisis intervention programs, and current school or job status. The statistical significance is based on a two-sided likelihood ratio test with a confidence interval of 95%. In each case, the factor should influence the decision more than it does.

[51] Correctional System Study, California Board of Corrections, Sacramento: 1971.

[52] Two factors have statistically significant differences regarding "does" and "should influence" the filing of petition decisions for total staff ratings: department policy has too much influence while need for counseling should have more influence.

[53] Departmental policy shows a statistically significant difference in that it is felt that it should play a more important role than it does.

[54] Personal philosophy shows a statistically significant difference in that it is felt that it plays a more important role than it should in making dispositional recommendations.

[55] 387 U.S. 1.

[56] Controlling Crime in California, Report of the Governor's Select Committee on Law Enforcement Problems, Sacramento: 1973, p. 18.

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