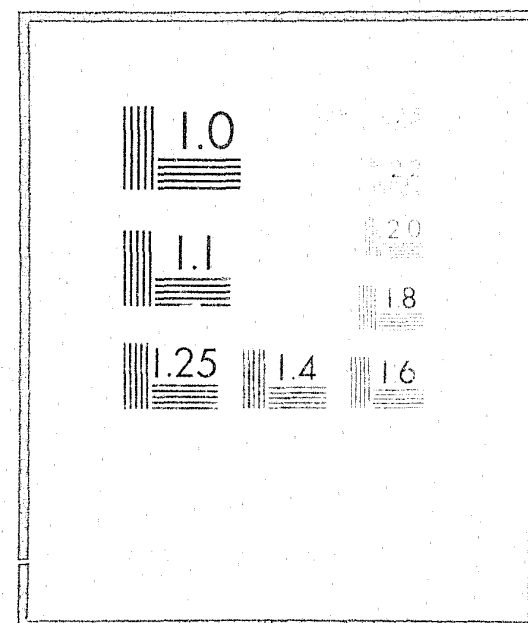


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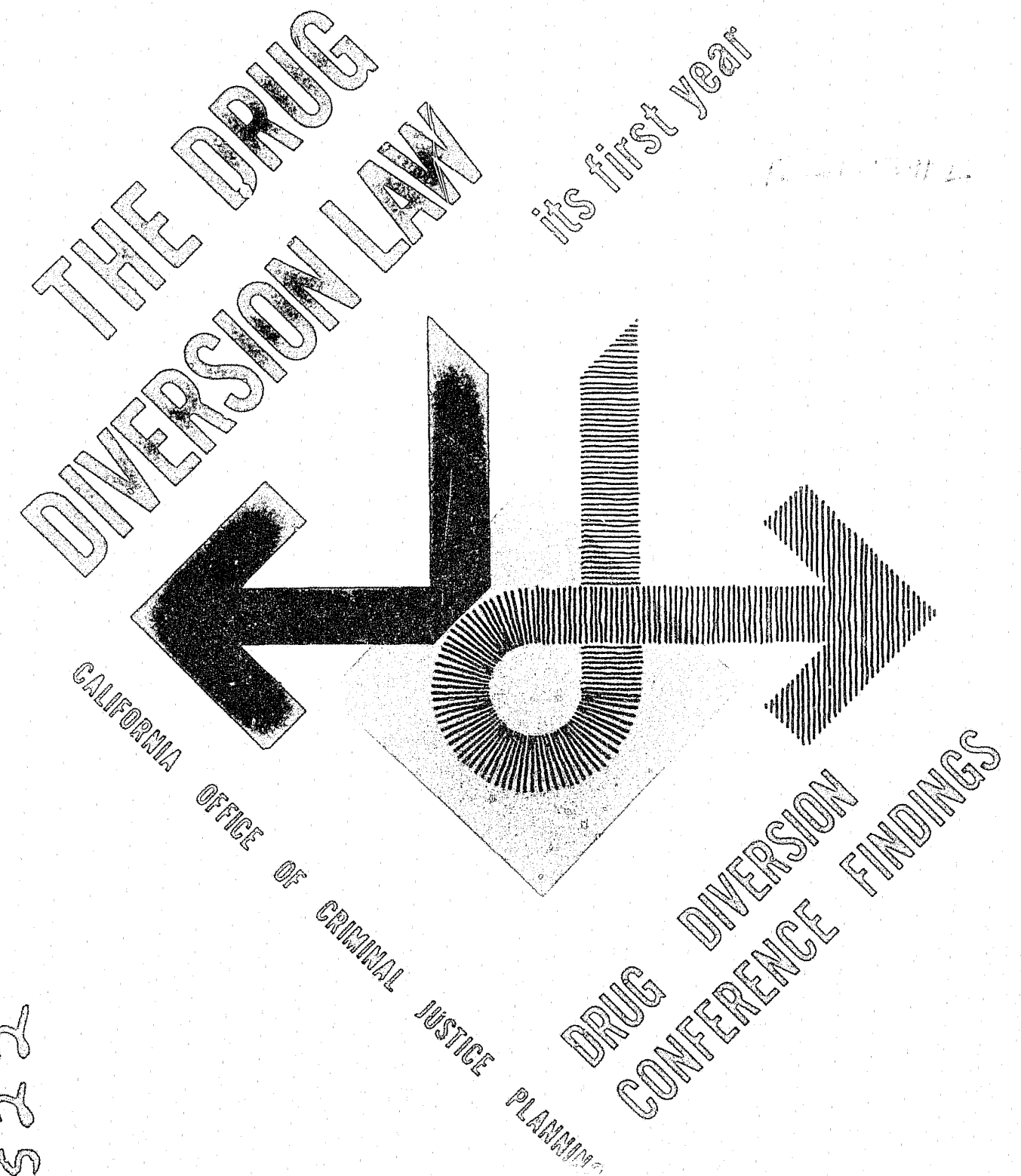
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NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE  
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## FOREWORD

This report is a summary of opinions expressed by participants in the statewide Drug Diversion Conference held in Santa Rosa on March 28 and 29, 1974. Funded by the Office of Criminal Justice Planning (formerly CCCJ), the conference and findings were planned as input to the Legislature during its deliberations on the question of renewal and modification of Penal Code Section 1000-1000.4, part of Chapter 2.5, entitled "Special Proceedings in Narcotics and Drug Abuse Cases," of Senate Bill 714. Incorporated into the Conference findings are study results, recommendations and data available from state and county reports. Among these will be the excellent report of consultants Robert Berke and Michael Dillard whose recommendations were adopted by the State Drug Abuse Prevention Advisory Council (DAPAC report).

ACKNOWLEDGMENTS

Without the enthusiastic participation of representatives from thirty California counties and eight state offices, the Drug Diversion Conference would not have been the success it was. Program speakers and discussion group facilitators deserve a special thank you for their stimulating contributions. William Wilder, Rodney J. Blonien, Dr. Sanford J. Feinglass, Leo Owen and Dayle C. Carlson were most helpful, and the encouragement of District Attorney John W. Hawkes was invaluable. Numerous individuals and groups in Sonoma County assisted in conference planning. Finally, I wish to thank James Driscoll, Dr. Homero Yearwood, the staff and students of California State College, Sonoma, for their unstinting service in recording and participating in the Drug Diversion Conference.

Santa Rosa  
June 1974

KENNETH B. BUDMAN, Ph.D.  
Sonoma County Diverter Officer  
Conference Director

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## THE DRUG DIVERSION LAW

On April 27, 1972, the California Legislature received a special message on drug abuse from Governor Ronald Reagan. Within his proposed comprehensive drug abuse program were the administration's thoughts about drug diversion:

The program I am proposing will divert first-offense users or possessors of drugs from the criminal justice system. Because of the mistakes they have made in playing with drugs, the lives of young people have been blighted. The criminal record which accompanies them through life is often a millstone around their necks.

For that person arrested as a first offender for the possession of drugs, we propose to develop a system, through administrative handling, which will place him in an appropriate treatment program in his own community. Where public safety will not be compromised and the interest of the law-abiding citizen is not jeopardized, such diversion can properly be urged. Of all the categories of people who engage in drug abuse, our chance for successful rehabilitation is best with the first-time drug abuser.

We should not continue to clog our criminal justice system nor saddle our young with a criminal record if there is a legitimate alternative. Some communities have considered it, but because their drug abuse treatment facilities have been inadequate or nonexistent, they have abandoned such an approach. Our statewide drug abuse program will assure the availability of treatment programs so that criminal justice diversionary programs can be made possible.

(1972 Journal of the Assembly, vol. II, pg. 2369)

These ideas were shaped into Penal Code Section 1000-1000.4, a section of Senate Bill 714, and signed by the Governor on December 15, 1972. Designated an urgency statute, it went into effect immediately. Because it was to be an experimental program, a clause was included which automatically repeals the law on January 1, 1975. Penal Code Section 1000 reads as follows:

### Chapter 2.5. SPECIAL PROCEEDINGS IN NARCOTICS AND DRUG ABUSE CASES

Section 1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for violation of Section 11500, 11530, 11555, 11556, 11910, or 11990 of the Health and Safety Code and it appears to the district attorney that all of the following apply to the defendant:

- (1) The defendant has no prior conviction for any offense involving narcotics or restricted dangerous drugs.
- (2) The offense charged did not involve a crime of violence or threatened violence.
- (3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.
- (4) The defendant has no record of probation or parole violations.

(b) The district attorney shall review his file to determine whether or not paragraphs (1) to (4), inclusive, of subdivision (a) are applicable to the defendant.

Section 1000.1. (a) If the district attorney determines that this chapter may be applicable to the defendant, he shall advise the defendant or his attorney of such determination. If the defendant consents and waives his right to a speedy trial the district attorney shall refer the case to the probation department. The probation department shall make an investigation

and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior narcotics or drug use, treatment history, if any, demonstrable motivation and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendation to the court.

(b) No statement, or any information procured therefrom, made by the defendant to any probation officer which relates to the specific offense with which the defendant is charged, which is made during the course of any investigation conducted pursuant to subdivision (a), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation, with respect to the specific offense with which the defendant is charged.

Section 1000.2. The court shall hold a hearing and, after consideration of the probation department's report and any other information considered by the court to be relevant to its decision, shall determine if the defendant consents to further proceedings under this chapter and waives his right to a speedy trial and if the defendant should be diverted and referred for education, treatment, or rehabilitation. The defendant's case shall not be diverted unless the district attorney concurs with the court's determination that the defendant be so referred though such concurrence is not necessary with respect to the program to which the defendant is referred. If the court does not deem the defendant a person who would be benefited by diversion, or if the district attorney or the defendant do not consent to participate, the proceedings shall continue as in any other case.

The period during which the further criminal proceedings against the defendant may be diverted shall be for no less than six months nor longer than two years. Progress reports shall be filed by the probation department with the court not less than every six months. If the defendant is arrested and convicted of any criminal offense during the period of diversion, the case for which he has been diverted shall be referred to the court for arraignment and disposition as if he had not been diverted and the case is a regular criminal matter. If the defendant has performed successfully in the education or treatment program, at the end of the period of diversion, the charges shall be dismissed.

Section 1000.3. Any record filed with the Bureau of Criminal Identification and Investigation shall indicate the disposition in those cases diverted pursuant to this chapter.

Section 1000.4. This chapter shall remain in effect until January 1, 1975, and on such date is repealed.

By the end of August, 1973, over 10,000 defendants had been diverted statewide.

By the end of March, 1974, there were well over 20,000 individuals diverted into a program of education, treatment or rehabilitation.

## CONFERENCE PARTICIPANTS

### Participant Selection

Funding for the Drug Diversion Conference was originally planned for room and board for two days and nights and travel to and from the conference for 75 people. Therefore, with 58 counties and numerous agencies involved in diversion in each county, a method of selecting participants was necessary. If only one individual were invited to represent a small county, it was felt that the probation officer handling that county's program would be most familiar with eligibility and suitability screening as well as with education and treatment programs and the divertees themselves. Based on the Bureau of Criminal Statistics' breakdown of divertees by county, probation officers from 40 counties were invited. Judges, district attorneys, public defenders and drug treatment directors were selected with a view toward diversity and representation from large and small counties, north and south. Additionally, it was felt that participation by state officers and legislators actually involved in revising the law would be valuable for direct input into their deliberations.

Several participants noted the fact that neither representatives from law enforcement nor divertees were included. It was decided in the planning stages that Penal Code Section 1000 begins with the filing of the complaint, rather than the arrest. Hopefully the district attorneys would be able to represent some of the views of law enforcement agencies. And finally, Department of Health surveys indicate that in most counties responding there has been no significant difference in number of drug cases being filed. Since drug treatment counselors, public defenders and probation officers would undoubtedly speak about and for their clients, divertees were not invited to the conference.

### Conference Participants

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Probation Department  
Los Angeles County



### III

#### CONFERENCE PROGRAM

##### Program Objectives

- To evaluate Penal Code Section 1000 in its first year of operation as an experimental program in the various counties.
- To discuss its effects on the Criminal Justice System, the community and the divertees.
- To propose recommendations to the Legislature for revising Penal Code Section 1000.
- To chart courses of action toward evaluating court diversion as an alternative to prosecution, incarceration or probation of selected drug law violators.

##### Sponsoring and Assisting Agencies

Office of the Sonoma County District Attorney  
California State College, Sonoma  
with the assistance of:  
North Bay Regional Criminal Justice Planning Board  
Sonoma County Probation Department  
Sonoma County Drug Abuse Council  
North Bay Human Development Corporation  
in cooperation with:  
State Office of Narcotics and Drug Abuse  
Office of the Attorney General  
Institute for Social Concerns, Mills College, Oakland

##### Program

###### Wednesday Evening, March 27th

7:00 - 11:00 Informal Reception

###### Thursday, March 28th

8:30 - 9:30 Registration  
9:30 - 10:00 Welcome and Orientation  
JOHN W. HAWKES, Sonoma County District Attorney  
DR. THOMAS A. McGRATH, President, California State College, Sonoma  
KENNETH B. BUDMAN, Ph.D., Sonoma County Divorter Officer -  
Conference Director  
10:00 - 10:45 Intent of Penal Code Section 1000  
RICHARD K. TURNER, Former Assistant Legal Affairs Secretary,  
Governor's Office

10:45 - 11:00 Coffee Break  
11:00 - 12:30 Seven small group discussions - has diversion worked as intended?  
12:30 - 2:00 LUNCH  
2:00 - 2:45 The legal aspects of diversion  
JOHN W. HAWKES, Sonoma County District Attorney  
RICHARD JANOPAUL, Deputy Public Defender, San Francisco  
HON. DICKRAN TEVRIZIAN, Judge, Los Angeles Municipal Court  
2:45 - 3:45 Seven small group discussions - the legal questions surrounding Penal Code  
Section 1000  
3:45 - 4:00 Coffee Break  
4:00 - 5:30 Proposed revised legislation - questions and analysis  
RODNEY J. BLONIEN, Deputy Attorney General  
6:15 - 8:00 Wine tasting and hors d'oeuvres

###### Friday, March 29th

8:30 - 10:00 Symposium on education, awareness and treatment for divertees  
DR. SANFORD J. FEINGLASS, Director, Institute for Social Concerns,  
Mills College - Moderator  
JOHN M. SULLIVAN, Counselor, Drug Alternatives Program, Sacramento  
County  
MARVIN MESSEX, Drug Abuse Coordinator, Santa Barbara County  
SHARON BEHRENS, Assistant Substance Abuse Coordinator, Kings  
County  
GEORGE E. SWANSON, Supervising Probation Officer, San Mateo County  
CHARLES PENNELL, Coordinator, DEFY Program, San Diego County  
BARBARA LIEFERT, Psychiatric Social Worker, Drug Abuse Council,  
Sonoma County  
10:00 - 10:15 Coffee Break  
10:15 - 11:45 Seven Small Group Discussions, Divertees and Programs  
11:45 - 1:15 LUNCH  
1:15 - 2:15 An overview of diversion - questions and discussion  
ROBERT BERKE, Consultant to the State Drug Abuse Prevention Advisory  
Council, and Deputy Public Defender, Los Angeles County  
2:15 - 2:30 Coffee Break  
2:30 - 4:00 Summary of Conference Findings  
DR. SANFORD J. FEINGLASS, Director, Institute for Social Concerns,  
Mills College

## CONFERENCE PRESENTATIONS

### RICHARD K. TURNER - Intent of PC 1000

An original draftsman of the administration law, Richard Turner spoke about the conception of the drug diversion program. He recalled the motivation of those with whom he worked. The administration had been unhappy with the apparently undiminished drug abuse problem in California. The existing more-or-less piecemeal programs were considered far from successful. According to Turner, the law was "conceived out of almost frustration" for lack of other approaches to solving the drug problem. On a limited basis, a few states or smaller jurisdictions had tried diversion, or deferred prosecution, and reported some success. Nevertheless, for a state the size of California, a drug diversion experiment would be a dramatic change in criminal procedures. Turner acknowledged that the law had to be "written with politics in mind" as part of the Governor's legislative package.

Discussing the intent of Penal Code Section 1000, Turner suggested that diversion would hopefully reduce recidivism by breaking into the cycle of the typical drug abuser who was merely slapped on the hand and/or sent to probation. "It was our experience," he asserted, "that the average first time casual drug abuser was receiving nothing from society for his problem, if indeed he had a problem, other than going through the court process." For those who continued to abuse drugs, this was a "revolving door process" which tied up the courts and ignored the problem.

The law would allow "one bite for the first offender," said Turner, and was intended primarily for the casual user or abuser. Expressing some doubts about the inclusion of eligible heroin addicts or other serious offenders, he noted that their suitability for diversion has been left to the discretion of district attorneys, probation officers, and the courts. When questioned about plea bargaining involving drug sales charges, Turner asserted that the intent was clearly to preclude diversion for these heavier offenders.

The actual diversion program was deliberately "left to the imagination of the counties," said Turner. It was hoped that local communities would foster new ideas to "individualize the attention" given to defendants coming before the court. Neither expensive state drug programs nor traditional criminal processing had been effective in reducing drug abuse. In discussing the role of probation departments, Turner was of the opinion that formal probation or intensive supervision were not intended for divertees, nor, apparently, were search and seizure provisions or other criminal justice procedures used in handling defendants on probation. He suggested that a monitoring role for probation departments was more in line with the intent of the law.

One question debated at length throughout the conference concerned the time of diversion. Turner believed it "an oversight that the law does not specify that diversion should occur at or near arraignment," before pretrial motions. It was intended that defendants be kept out of court as much as possible. However, he said, this experimental law was not

expected to immediately clear the court calendars and reduce the workload of the various elements of the criminal justice system.

Turner acknowledged the numerous problems with the current law, but believed, with many, that it is "a step in the right direction." He noted that Penal Code Section 1000 had gone through the Legislature with remarkable ease, without careful scrutiny, and had the blessings of the district attorney's lobby and many leaders in law enforcement. Turner concluded that the drug diversion law "was a good faith effort by a law enforcement-oriented administration to solve a problem which was really one of despair at the time . . . . It may not be the best solution of that problem, but until a better one is suggested, I think at least this one is worth a try."

### JOHN W. HAWKES - The Prosecution

"Diversion is not part of the historic function of the district attorney," said John Hawkes, Sonoma County District Attorney. However, he acknowledged that the initial reluctance has been largely overcome by early signs of success. "It appears to be a good program," noted Hawkes, but he cautioned that "the easiest way to ruin or to end a good program is to overexpand it and cause problems."

In discussing the district attorney's role in the implementation of Penal Code Section 1000, Hawkes asserted that the primary responsibility of the prosecutor is protection of the public safety. The decision to prosecute is weighed against risks to the community. He described the defendant with violence in his past who is eligible for diversion, but who the district attorney feels may require criminal justice supervision. This individual should not be diverted, not only because of prosecutor caution, said Hawkes, but because the credibility of the diversion program would also be jeopardized.

Therefore, Hawkes asserted, the district attorney determines who should be prosecuted, and for what offenses. "Veto power should not be subject to an adversary proceeding." Since the District Attorney concurrence provision of PC 1000 was declared unconstitutional by the California Supreme Court, Hawkes' remarks were most relevant to the initial eligibility determination. He agreed with Turner that diversion should occur close to the time of arraignment, not only to relieve court congestion but to assure that the defendant's motivation is at its peak of receptivity. In precluding pretrial motions, Hawkes did not feel that constitutional rights were at issue. The end results of diversion are the same as a 1538.5 dismissal, he said, with the added advantage that a divertee has an opportunity for help.

Hawkes mentioned some possible changes and some problems with the current law. He suggested that automatic referral to the Probation Department might save some court time, although the lack of time for an adequate record check by the prosecutor is a problem at the beginning. On the whole, however, Hawkes expressed satisfaction with PC 1000 in its intent, implementation and tentative success.

### RICHARD JANOPAUL - The Defense

A deputy public defender from San Francisco, Richard Janopaul appealed for sensitivity to the defendant as a person. While diversion under Penal Code Section 1000 begins with



arraignment, the program of education for defendants begins with their detention on the streets. Janopaul suggested that a defendant's knowledge of the arbitrary enforcement of drug laws, combined with a possible questionable search, followed by arrest, jail and family and job troubles even before the arraignment, should not be ignored when the defendant is considered for diversion. A person's hostility should not be interpreted as a lack of demonstrable motivation, nor should it be necessary that gratitude and contriteness be a *quid pro quo* for diversion.

The public defender's point in focusing on the defendant's experience was to object to a recent district court's ruling that diversion was intended to be an alternative to use of the criminal justice system. The decision included a denial that pretrial motions could be exercised as a matter of right before diversion is accepted by a defendant. Janopaul contended that the defendant had already become heavily involved in the criminal justice system on the prosecution side, and therefore should not be denied his chance to respond in court on his own behalf, in order to be diverted. "The overriding purpose of diversion is treatment," declared Janopaul, not "courtroom efficiency." His conclusion was based on another district court ruling which was in direct opposition to the decision he opposed.

Educating the defendant to accept and understand reality is, according to the public defender, one of his primary responsibilities. He argued that continued negative procedures against the defendant, such as denying him a search and seizure hearing, or forcing him to waive his Fourth Amendment rights on diversion, amount to "reverse rehabilitation," and are counterproductive. "Two messages are given to a defendant," said Janopaul. "The court says, we trust you to be diverted, to be treated . . . to be rehabilitated; the court is also saying, we do not trust you, so we authorize police searches of your person, your home, your automobile, during the day or night, with or without reasonable cause, even though you have not been convicted of anything."

Janopaul concluded with the thought that diversion will be a "good experience" if the criminal justice system can be sensitive to the "real things happening to real people."

#### JUDGE DICKRAN TEVRIZIAN - The Court

Municipal Court Judge Dickran Tevrizian of Los Angeles suggested that the drug diversion program has been a "partial success," and has been more effective in the smaller counties than in larger ones. In discussing the current law, he cited the omission of "under the influence" charges and agreed with Janopaul that a defendant should have the right to pretrial motions before accepting diversion. The Judge further claimed judicial prerogative in the decision as to who is diverted (Tenorio).

Three specific practices have subverted the intent of the law, he argued. Penal Code Section 1000 is not for the hard core drug user who needs "a club or sentence over his head" to motivate him. "I don't feel that the court should delegate the responsibility to the public when it's dealing with hard core drug offenders," he asserted. Judge Tevrizian further challenged the practice of diverting a burglar or shoplifter who happens to possess some grass. "In our county," he chided Janopaul, "the word is out among the public defender's clients

that if you get caught on a burglary charge, make sure you have one marijuana cigarette on you so that you can ask for diversion." And finally, he agreed with Turner that plea bargaining a sales charge down to possession and then diverting the defendant was not intended by the Legislature.

Speaking from his Los Angeles experience, Judge Tevrizian recommended improving probation supervision and structuring treatment programs to the needs of divertees. He suggested that "treatment" is not necessary for every case, but a program should be based on a careful investigation into the divertee's needs and whether he will benefit. The importance of careful screening was emphasized in relation to two significant ideas: first is the Judge's recommendation that the entire record of the incident be expunged two years after diversion is completed; and second, he noted that in Los Angeles, once a defendant is diverted, his case becomes "old and stale," and he rarely if ever faces prosecution on that case.

Nevertheless, he said, "I think the concept is a very good concept; I think that it is probably conceptually one of the best pieces of legislation that has come out of Sacramento in a long time. However, the practical application leaves much to be desired." Judge Tevrizian concluded with the strong desire to see the law renewed after careful legislative consideration of modifications based on this past year's experience.

#### RODNEY J. BLONIEN - Proposed Revised Legislation

Deputy Attorney General Rodney Blonien briefly traced the history of Penal Code Section 1000 and discussed the numerous questions arising from its implementation. Optimistic about its potential benefits, praising the innovation shown by some counties, Blonien called the law "a great idea," though an "imperfect law, it can be the basis from which to grow."

The specific proposed revisions made by Blonien will be discussed along with others in another section. However, the general ideas presented and the questions they evoked helped clarify the issues surrounding the intent of the law. After reviewing the objectives of drug diversion, as interpreted in the Governor's message and in the statements of legislators, Blonien answered questions about priorities of intent. If attitude changes and modification of behavior are important objectives, should they take precedence over the desire to unclog the courts? This question had been touched on by other speakers as well as by numerous participants.

Blonien's proposal that diversion must take place ten days from arraignment, or at least prior to any pretrial motions, met with objections from several treatment and defendant-oriented participants. The Deputy Attorney General suggested that allowing the defendant to fight his case before accepting diversion would subvert the intent to reduce court dockets and keep the defendant out of the criminal justice system. He did not believe that use of criminal justice resources was significantly decreased by current practices statewide.

While proposing the addition of several drug possession and use-related charges to eligibility criteria, Blonien also recommended restrictions on who could be diverted. In anticipation of the Supreme Court ruling against the district attorney concurrence provision, he proposed that a revised statute would have to give the prosecutor greater control at the

outset. Thus a defendant would not be eligible if he possessed a deadly weapon, if he were a past felon, if he had a pending felony or if he had been diverted previously. Also the district attorney may exclude a defendant previously convicted of a misdemeanor which "reflects a propensity for violence or excessive criminality." Exception was taken to some of these restrictions by a few participants who argued that too many defendants who could benefit from a program would be denied diversion. Going back to the intent of the law, Blonien responded that diversion is "not equipped to handle the person with a weapon," nor can the program be considered "a panacea for every drug problem."

In discussing the role of probation, Blonien pointed out the importance of careful screening, as had Judge Tevrizian, in making the program work. In counties where diversion case loads have simply been added to regular case loads, without the defendant being investigated by an officer experienced in drug abuse problems, the divertees are often not given the appropriate attention many of them need. The defendant with grass may actually be a poly-drug user, asserted Blonien -- "marijuana may be just the tip of the iceberg." Therefore, he strongly recommended that the state fund a training program for probation officers who will be handling diversion cases. This might be a partial solution to the great variety and unevenness in diversion effectiveness throughout the state, he said.

Blonien agreed basically with Turner on the monitoring function of probation as opposed to the full supervision given divertees by many counties. Removing the defendant from the criminal justice system once he is carefully screened would conform more fully to the intent of the law to utilize community resources for drug education, treatment and rehabilitation. He further observed, based on extensive field interviews, that some divertees demonstrate stability and minimal drug involvement and appear to require no particular program. He proposed that a revised law stipulate this alternative. Such an individual would benefit from the diversion process by receiving no conviction, and yet would not have to burden valuable community resources unnecessarily.

Blonien proposed that all records of the arrest and disposition be purged five years from the date of arrest, as contrasted with Judge Tevrizian's recommendation for expungement after two years. Several participants expressed the opinion that five years was too long a wait for the successful divertree to realize the full intended advantage of the program.

On the whole, the Deputy Attorney General touched on the major problems in the current law, proposed solutions and generated continued enthusiastic discussion among the participants.

## DRUG TREATMENT PROGRAMS

A panel of six drug treatment directors and counselors presented sketches of the drug education and treatment program in each of their counties. Dr. Sanford Feinglass of Mills College's Institute for Social Concerns acted as moderator. John Sullivan and Barbara Liefert discussed their two different multimodality programs which evaluate and treat nearly all the divertees in Sacramento and Sonoma Counties, respectively. Charles Pennell described his self-contained provider agency for San Diego County divertees. George Swanson of the San Mateo County Probation Department told of his extensive education program attended by the large majority of divertees. Marvin Messex, Drug Abuse Coordinator for Santa Barbara

County, noted that he interviews divertees and assigns them to various agencies for counseling or community service. Sharon Behrens of Kings County described their program in which she conducts encounter and awareness groups for divertees.

The variety of points covered by the speakers makes summarizing difficult. However, a number of conclusions based on their individual experiences reflected the general thoughts among many probation officers and drug treatment workers. Most of the panelists, for example, referred to the hostility of divertees and the necessity of dealing with this hostility before a positive program of education or treatment could be effective. There was agreement with Janopaul's remarks regarding the powerful educative thrust of the prediversion experience beginning with detention, search and arrest.

The panelists expressed general satisfaction with their programs, which is one reason they were selected as panelists. However, several implied that they would have some difficulty in assessing the success of their efforts to either modify behavior or prevent the use of illicit substances by divertees. Chuck Pennell suggested that 60% of the divertees probably gained little from his program, while George Swanson characterized the vast majority of his divertees as productive people who are casual marijuana smokers. Marvin Messex, who does much of the screening himself, stated that 80% of his divertees are lightweight pot smokers, most of whom are placed into community service situations to fulfill their diversion. While these opinions indicate that the diversion program is dealing primarily with the casual user, as intended, there was some concern with the basic assumption in the law that if a person is diverted, he or she needs help.

However, in Sacramento, the Drug Alternatives Program does assume that the divertree is "in stressful circumstances," said John Sullivan. He or she is therefore given the responsibility to participate in a structured treatment-oriented situation which focuses on his or her total life style. Urinalysis testing is required of all divertees, said Sullivan, who has found that a significant proportion of marijuana users are also using speed or barbiturates. In contrast to this more formalized approach, Barbara Liefert of Sonoma County's Drug Abuse Council talked of her reliance on careful screening, followed by an attempt to individualize the divertree's commitment, whether it be residential treatment, rap sessions, continuation in college, or community service. Several panelists agreed with Rod Blonien's observation that some divertees need no program, and would benefit most by what Barbara Liefert called "benign neglect" combined with the offer of assistance if needed.

Funding was a subject discussed by all the panelists. While "dollar-wise" counties got 714 money in the early part of 1973 to fund treatment programs, others waited a long time. The San Mateo County Probation Department did not receive its money until March, 1974. George Swanson felt doubly burdened because he observed a considerable increase in arrests, instead of police diversions, since the implementation of P.C. 1000. This situation and the bureaucratic processing of divertees was actually increasing the number of people falling into the criminal justice system, he suggested.

Several of the speakers noted the importance of good communications and trust between the probation department and the treatment program. Some counties have formal or informal procedures which facilitate exchange of ideas regarding individual divertees. The divertree is probably more likely to be placed in the appropriate treatment modality or other

program if the placement is considered by both the probation officer and the treatment counselor.

Many of the panelists mentioned the availability of detoxification, methadone, residential or psychiatric treatment for the small number of diverttees heavily involved in drugs. In Sacramento and Sonoma Counties, the centralized treatment agencies are able to handle individuals habituated or addicted to drugs, although Sacramento does not normally divert addicts. Barbara Liefert discussed the diversion of heavy users who are a greater risk to the statistical success of the overall program, but who might experience the greatest individual benefit if they are treated noncriminally and succeed. This point of view was reiterated by other participants professionally trained to treat drug abusers, in contrast to "treating or educating" social drug users.

The problems approached by the speakers in their brief presentations were some of the most challenging areas of discussion throughout the conference.

#### ROBERT BERKE - An Overview

Robert Berke, now a deputy public defender in Los Angeles, and Michael Dillard, a deputy public defender in Sacramento, were commissioned as consultants to the State Drug Abuse Prevention Advisory Council to survey the statewide drug diversion program. In conjunction with sending questionnaires to judges, district attorneys, public defenders and probation officers, the consultants interviewed people involved in the program in the ten counties diverting the largest number of defendants.

Included in their report is a discussion of each provision and procedural step of the statute, how the law has been implemented in the various counties overall, and how the law should be modified to conform with survey findings and the experience of a year. Besides a model revised statute, the widely distributed report contains descriptions of the diversion practices in the ten largest counties and the results of statewide surveys. This commendable effort by Berke and Dillard was adopted by the State Drug Abuse Prevention Advisory Council. It is expected to assist in legislative discussions regarding continuation and modification of Penal Code Section 1000, and will undoubtedly serve as a valuable guide to county officials.

At the Drug Diversion Conference Robert Berke highlighted some of the findings in his study, particularly those areas of controversy, confusion and lack of clarity of intent and language. In discussing the time for diversion, for example, Berke agreed with the position of Richard Janopaul and Judge Tevrizian that a defendant should be allowed to exercise pretrial motions without jeopardizing his opportunity to be diverted. This was based on three lines of thought. First: there have been less 1538.5 motions under diversion, said Berke, and of the district attorneys responding to the survey, 86% believed that court time was being saved, despite the fact that 55% of the respondents said diversion could occur at any time in the proceedings before trial. Second: Berke contended that the 1538.5 motion is basically a defense lawyer's decision, and should not be construed as evidence of a defendant's lack of diversion motivation or suitability for a program. Third: the defendant should not have to give up constitutional rights of protection against illegal searches in order to be diverted, since diversion is not the same as outright dismissal.

Berke focused on the necessity for careful evaluations of all potential diverttees, including the apparently casual marijuana user. "Maybe the bust is a cry for help," he suggested, or the defendant is "getting sloppy," a sign that he needs assistance. Berke noted from field interviews that "skin checks" and careful screening can uncover heavy drug users among marijuana offenders.

Once diversion is granted, diverttees are variously treated and supervised depending on county policies. Berke argued against imposing probation forms of supervision, surveillance and conditions on diverttees, who have not been convicted of crimes. The DAPAC report recommended that diversion supervision by probation departments should be employed solely to assure that the diverttee is attending the assigned treatment program, and that diversion conditions be imposed only in cases where their purpose is to assist the treatment program.

Berke criticized the huge drug education classes in some counties which provide no individual attention to diverttees, generally discredit the intent of the law, and "are considered a joke" among diverttees as well as criminal justice personnel. The primary reason this type of situation exists, said Berke, is not lack of concern for diverttees, but lack of funds. Citing the example of Los Angeles, with thousands of diverttees, he noted that no 714 money had been received by the diversion education program, and a fee of \$10 per person is charged just to keep these massive classes going. In this light, adequate funding is necessary to allow for thorough probation investigations and small-group type counseling and outpatient treatment programs for diverttees with these needs.

Berke touched on many other problems experienced under the current statute in his presentation. His views, reflected in the DAPAC study, are incorporated into other sections of this report.

#### DR. SANFORD J. FEINGLASS - Diversion in Perspective

The Drug Diversion Conference was fortunate to have in attendance Dr. Jack Feinglass, nationally renowned expert on drug problems, and director of the Institute for Social Concerns at Mills College. Dr. Feinglass served on the President's Marijuana Commission and is currently working with a national task force on drug abuse prevention. Observing the diversion program from outside the criminal justice system, he was able to provide valuable perspective on the various problems confronted by conference participants.

The heart of the matter, said Dr. Feinglass, is whether drug abuse will be dealt with as a criminal problem or a medical problem. Much of the conflict he observed at the conference revolved around this question. The intent of the diversion law, suggested Dr. Feinglass, seems to be a middle position. He described the historical perceptions of the drug abuse problem and applied these perceptions to the discussions he heard at the conference. For example, the "legal-moral" approach to the problem, generally that of the prosecutor, perceives the drug user as a social deviant who chose to break the law. The response to this behavior is punishment, and if this is unsuccessful the man or woman is then seen as somehow less than moral. Although this hard line has softened considerably in the last decade, it remains strongly ingrained in social and legal thinking.

The "enlightened medical" approach is a treatment-oriented understanding that an individual's drug abuse is a chronic disease requiring long-term treatment. The psychologist must expect relapses, but hopes that ultimately behavior can be modified without the substitution of other dependencies. At this point in time, however, Dr. Feinglass observed that the various responses to the drug abuse problem --- punishment, medical isolation, treatment, education --- have not cured the problem.

This unhappy conclusion has led to attempts at redefining the problem, and what he called the "social-cultural" approach. From a public policy standpoint, the two areas of concern are public safety and public health. "To whom is the taking of drugs a problem, and why?" he asked, and what kinds of behavior result from taking drugs or seeking drugs? Once the problem is more clearly defined, the modes of public intervention become readily apparent. Dr. Feinglass discussed the "social-cultural" approach as the realization that "there are a multiplicity of causes" of drug abuse, of which many are environmental and beyond the control of the individual. Therefore the education and treatment function is aimed at defining lifestyles, values and patterns of risk-taking behavior. The state of the treatment art today is a combination of the "enlightened medical" and "social-cultural" models.

Dr. Feinglass observed a wide spectrum of expectations for the diversion program among conference participants. As professional disciplinary values vary, so vary the standards for measuring success. While the diversion statute includes both criminal justice and drug abuse objectives, and the "legal-moral" approach conflicts with the treatment approaches, there are bound to be disagreements among prosecutors and mental health workers. Dr. Feinglass found that part of the problem lies in the diverse definitions of drug abuser, casual user, addict, education and treatment.

In the area of drug education, he suggested that telling divertees the "truth" is presenting a built-in bias which is called propaganda and is probably recognized as such. Perhaps more significant are the concepts of "success" and "treatment" as they are commonly understood. "There is a certain prostitution of the word 'treatment'," asserted Dr. Feinglass, which has all but predetermined that drug treatment would fail. One cannot realistically expect a twenty-year junkie to be transformed by treatment into a naive, innocent, virginal, abstinent citizen, he declared. Instead of demanding total abstinence of the use of mind-altering drugs as the measure of success, he urged that the public health concept of "preventing the next harmful step from occurring" should be adopted as a more valid standard of success.

In terms of the diversion program, such a public health standard requires that the criminal justice system exercise patience and discretion in the matter of an individual's "progress" in treatment. Demanding total abstinence as a condition of diversion may be setting up a proportion of the divertees for failure, and would undermine the best of treatment programs.

Dr. Feinglass related this point to the opposing views expressed by conference participants. Again, is diversion a criminal justice measure or a treatment program? As this bold experiment is currently unfolding, Dr. Feinglass suggested that many of the objectives stated at the conference do not appear to be fulfilled. He did not hear from criminal justice personnel that either time or expense were being reduced. Based on the highly selective identification of divertees, he did not believe that recidivism would be a good measure of success, since recidivism would be very low among this category of offenders anyhow. Success in terms of criminal

justice expectations have been minimal; therefore, Dr. Feinglass proposed that the important legislative intent regarding treatment and rehabilitation be emphasized.

He made two general recommendations for legislative consideration. First: the Legislature should be made aware of the great diversity and heterogeneity of drug users -- the exceptions so often discussed at the conference indicate the need for a broad outlook. Second: a rewriting of the diversion statute calls for clarification of the goals and objectives of the program. Legislative intent, which one conference participant likened to an abstract painting, should be conceptually formulated more carefully.

In conclusion, Dr. Feinglass observed that the drug diversion program has great significance as an alternative procedure. Its experimental nature on a large scale can be used as a basis for expanding the options available to the criminal justice system.

## PARTICIPANT DISCUSSION

Small group discussions were held on Thursday morning, Thursday afternoon and Friday morning with facilitators encouraged to follow a general outline of ideas addressed by previous speakers. However, the discussions tended to range over a broad spectrum of diversion problems, concepts and recommendations which are not easily summarized from group to group. Since each session was recorded on sensitive expletive-deleting tape, the concerns of the participants have been extracted and arranged into subject categories. The discussion will be supplemented by findings from reports and studies currently available.

### Divertible Offenses

Throughout the discussions participants assumed that particular changes would be made in a revised law regarding specific divertible charges. No consensus was taken on these code sections, but all of them should be considered.

#### Recommended Charges Added:

647(f) PC	(drug intoxication)
11550 H&S	(being under the influence of a controlled substance)
11358 H&S	(cultivation of marijuana for personal use)
381 P.C.	(glue sniffing)
4230 B&P	(unlawful possession of a prescription drug)
4143 B&P	(unauthorized possession of a hypodermic needle)

#### Recommended Charges Removed:

11383 H&S	(possession of chemicals to manufacture methamphetamine)
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Although some of these sections have been omitted in the DAPAC report and Rod Blonien's recommendations, they all fit the intent of the law. Diverting the first offender with a few marijuana plants was widely believed to be within the intent of the law. "A cultivator may be less involved in the illicit drug scene than his friend who purchases marijuana from a dealer," suggested one conference participant. Should 11358 H&S be excluded from the eligible sections, it was recommended by many that district attorneys be encouraged to consider the possibility of filing a simple possession charge for offenders who are otherwise eligible.

### Eligibility Criteria

Several drug treatment people were interested in expanding the population eligible for diversion. Their concern was "treatment readiness" of defendants who are either drug involved or on the fringe of serious criminality. From a mental health point of view, the signal that a person wants help, and would most benefit from treatment, may come on his second or third offense, or it may come when he is most "at risk" and carrying a gun.

Nevertheless, there was the general feeling among participants that the current law has to be carefully evaluated before it is expanded to include offenders who appear to be greater risks to society. As was pointed out by numerous district attorneys, judges and probation officers, treatment is available to criminally processed offenders as well as to divertees. While the mental health professional will argue that a defendant's commitment to treatment may be greater where coercion is minimized, it was pointed out that the burden of responsibility for treatment success is still placed on the defendant on probation or diversion.

The day before the conference began the Supreme Court ruled on the **Sledge** and **On Tai Ho** cases involving Penal Code Section 1000. The **Sledge** case affirmed the statutory powers of the district attorney to decide who would be eligible for referral to the probation department for possible diversion. The **On Tai Ho** decision voided the statutory provision in P.C. 1000 requiring the concurrence of the district attorney in actually diverting the defendant. Anticipating these decisions, Rod Blonien proposed to augment the district attorney's authority to exclude riskier offenders at the eligibility screening. Conference participants did not strongly oppose his recommendations. In discussions many agreed that convicted felons are not subjects intended for diversion, nor are many defendants with misdemeanor records reflecting a propensity for violence. Except as noted above there were no objections to the exclusion of violent offenders or those possessing a deadly weapon. This statutory tightening was also recommended by William Wilder, Director of the State Office of Narcotics and Drug Abuse (SONDA).

Rod Blonien's recommended exclusion of defendants with probation or parole revocations, instead of violations, was received as an acceptable clarification of questions regarding technical probation violations in the eligibility screening. In addition, virtually nobody disagreed with the proposal to allow a defendant only one opportunity to be diverted.

It was recommended by Judge Tevrizian and argued at length in the DAPAC report that defendants charged with, or involved in, "convenience sales" of drugs to support their own habits should be considered for diversion. Surprisingly, this controversial proposal was not confronted by participants in the discussion groups. In a survey sent out by the Attorney General's office, however, only a small number of respondents would include for diversion consideration a defendant charged with possession with intent to sell. It appears that the expanded list of divertible offenses above was satisfactory to participants.

Another point of concern introduced by Judge Tevrizian was the diversion eligibility of defendants charged with a divertible offense and a nondrug offense in the same complaint. Several judges and district attorneys argued that these defendants should be excluded from diversion, particularly where the nondrug offense is not related to drugs or drug abuse. The alleged burglar who happens to possess marijuana, for example, should be regarded primarily as a burglary suspect. The seriousness of the nondrug offense is important to this decision. In cases where a first time shoplifter is caught with marijuana, the opinion among participants was divided. One prosecutor said that his standard procedure is to sever the charges, convict on the shoplifting charge and divert, or perhaps dismiss the drug offense.

It was argued by other participants that convicting the lightweight first offender would not necessarily be the best solution. If the penalty for shoplifting is a light fine and summary probation, perhaps the best deterrent to further criminal behavior for both the drug user and shoplifter would be the counseling and supervision the defendant would receive in the diversion program. Allowing the first offender a second chance to maintain a clean record and to be



processed in a noncriminal manner, some observed, might be worth trying for offenders with lightweight multiple charges. The current statute does not preclude this procedure.

#### Time of Diversion

When should diversion be offered and at what stage in the proceedings must it be accepted or rejected by the defendant? Richard Turner, Rod Blonien, John Hawkes and William Wilder all argued that the intent of the law to save court time supports the recommendation that diversion must be accepted prior to any pretrial motions. It was their contention that allowing a 1538.5 (suppression of the evidence) hearing for diversion-bound defendants would result in no saving to the criminal justice system.

The current statute does not designate a time in the proceedings when diversion would no longer be available to the defendant. In two cases heard on appeal, strikingly opposite decisions were reached. One district court upheld the ruling in *Morse v. Municipal Court* that diversion "is designed to avoid utilization of the criminal justice system." A defendant who rejects diversion when it is offered before pretrial motions has no right to diversion once his other remedies are exhausted. In the second case, *People v. Reed*, another district court asserted that rehabilitation is the overriding purpose of diversion. The defendant in that case was granted diversion after he was found guilty in a jury trial, but prior to sentencing. Thus it appears that clarification is necessary. In practice, most district attorneys follow a policy of discouraging if not excluding pretrial motions. One deputy district attorney said his office policy is to continue the offer of diversion after a 1538.5 hearing only in those cases in which "the bust was questionable."

Many conference participants discussed the hostility of divertees who are convinced they were illegally searched. One senior probation officer said the majority of 300 divertees he had interviewed complained about the circumstances of their arrests. Whether, statewide, more weak cases are being filed and shunted into diversion is a matter of speculation, although several participants believed this to be true in their counties. The point made was that hostility and resentment may ultimately be related to continued drug use and abuse, anti-social behavior, and recidivism. Therefore hostility must be dispelled first if benefits are to result from either the education or treatment program, or the proffered "second chance."

It was widely asserted and implied by participants that the existence of the criminal law against possessing marijuana does not breed respect for law among a large segment of the population. Those aspects of a diversion law which tend to further alienate the noncriminal offender generally being diverted should be questioned and closely scrutinized. In those cases in which a defendant knows he was innocent of the charges, or he was improperly searched, the risk of his rejecting diversion to fight his case may be too great to him. But where does this leave his attitude?

The proposal to prevent all pretrial motions in a revised diversion law should be weighed against the attitudinal effects of denying defendants what they believe to be their rights. Judge Tevrizian, Richard Janopaul, Robert Berke and the DAPAC report recommended that the offer of diversion be continued after the defendant has tested the evidence against him. An article by Bryant L. Young, "Diversion of Drug Offenders in California," 26 *Stanford Law Review* (April 1974) 923-944, presents several arguments on this and other related matters pertaining to Penal Code Section 1000.

#### Suitability Investigation

A probation officer was surprised one evening at a meeting of his drug education class to find that three of his divertees approached the two guest leaders from Synanon and asked how they could be accepted there -- they were ready to do something about their heroin addiction. To be sure, the original screening in the probation department had been inadequate. In the DAPAC report the questionnaire to probation departments included the following question and response:

Do you believe that most defendants fully reveal their past involvement with drugs during the interview?

Yes	14
No	18
Unknown	5

Another question and response reveals that "regular intake probation officers" do the diversion investigations in most counties. There is no intention here to criticize probation officers, who bear the greatest uncompensated workload of the diversion program and who, probably at the highest level, had little or no input into formation of the law. But without expertise in drug problems and insight into drug-involved defendants, probation officers may let the problem drug abuser with only a marijuana charge slip through the diversion opportunity without being confronted.

In talking of divertees, two points were made over and over at the Drug Diversion Conference. The first was that a large percentage, if not a large majority, of divertees are relatively normal, productive, well-balanced individuals who enjoy smoking marijuana. But the reverse side of the coin was the observation that a significant minority of apparent social marijuana users are involved in abusing dangerous drugs, narcotics, or frequently, alcohol. Distinguishing between the two groups is a paramount necessity.

Drug abuse prevention and rehabilitation are clearly part of the intent of P.C. 1000. A comparison was made between the past and the present treatment of first time drug offenders. A control group was set up of 1972 defendants in Sonoma County who would probably have been diverted if the law had existed then. It was found that less than 4% of those in the control group were ordered by the court to attend a drug program. In contrast, under diversion, all offenders are investigated and ordered into some program. Therefore it can be concluded that the criminal justice system is no longer ignoring the problem, at least in Sonoma County.

According to conference participants from Sacramento County, where the probation department has a special drug diversion unit, "skin checks" and vigorous interviews lead to detection of covert drug use and problems. Representatives from other counties too found that a definite proportion of those charged with marijuana offenses are much more heavily drug involved when the surface is scratched. In counties where hundreds of defendants are processed like regular probationers and then attend crowded education classes, there is the uneasiness expressed by Judge Tevrizian of Los Angeles that drug abuse problems are not being solved. This apprehension may stem in part from inadequate screening. When participants compared notes in their discussion groups, the variables regarding divertree drug involvement were enlightening. If 85-90% of the divertees in one county are treated as social



marijuana users, and only 65-70% are so identified in another county, the difference may be significant.

In short, the necessity for effective screening was widely affirmed by conference participants. As one drug treatment coordinator remarked, "We owe every divertee a careful screening since he has been taken into the system and the law mandates this purpose." It was strongly recommended by William Wilder, Rod Blonien, Robert Berke and the DAPAC report that special training should be offered to, if not required of, probation officers charged with the task of investigating drug offenders. Regional seminars funded by the state should be set up to train intake probation officers in drug abuse detection and investigative and interview techniques. As Blonien suggested, this effort would undoubtedly cure some of the unevenness and variety found in implementation of the current law. Probation officers attending the conference responded favorably to this proposal.

An alternative to using specially trained probation officers might be a screening process which uses the expertise of a drug consultant or counselor. Numerous conference participants were interested in this procedure adopted by Sonoma County. A potential divertee is interviewed and investigated by the probation officer who then sends him to the drug abuse counselor for a second interview. The counselor has no information about the divertee, and does an independent evaluation to discover the individual's drug involvement and his or her needs. The probation officer and the drug abuse counselor compare notes, evaluate the individual's needs and decide on a program. The probation officer then completes his report for the diversion hearing in court.

#### Confidentiality

Concern about violation of confidentiality was not a significant matter of discussion at the Drug Diversion Conference. Rod Blonien's recommendation that the statute's confidentiality statement be extended to include the defendant's revelations throughout the diversion period, to both drug treatment workers as well as probation officers, was apparently well received. It was pointed out by a couple of participants that the personal information provided in the report should not be used by prosecutors if diversion is denied and criminal proceedings continued. Possible abuse of such information by district attorneys was discussed at some length by the DAPAC consultants.

#### Diversion Supervision

Supervision of divertees by probation departments varies enormously from county to county. Robert Berke presented some highlights of his findings. In the ten most populated counties, the procedures range from those of San Diego County, which does virtually no supervision, to Riverside County, which heavily supervises divertees through office visits, field visits, phone and mail contacts. In most counties, as indicated by the DAPAC report, actual supervision by probation departments is minimal, with mail or phone calls the primary mode of contact. However, this is not the case in those counties, such as Alameda County, where the "community program" is a formal or informal one-to-one relationship between divertee and probation officer.

Among conference participants there was a surprising lack of discussion of probation's role in supervising divertees. Observing the increased workload assumed by probation

departments, there was some thought that a monitoring rather than a supervision function would be most appropriate. In discussing the intent of P.C. 1000 to process divertees outside the criminal justice system, both Richard Turner and Rod Blonien recommended a monitoring role. Based on observations in several counties, the Bureau of Criminal Statistics "Initial Report" estimated that perhaps 50% of the diversion cases would have received only court probation rather than formal probation if there had been no diversion law. Alameda County suggested a higher figure. In Sonoma County a 1972 control group study indicated that 89% received no probation supervision.

The point to be made about diversion supervision as with numerous other diversion procedures is that the law is intended to be rehabilitative rather than punitive. Some probation officers expressed concern about the "free bite" idea which they feel is diluting respect for law enforcement and the criminal justice system. Thus probation-oriented supervision with surveillance methods assures the divertee that he or she is not getting away with anything by having chosen diversion. A contrasting view treats the divertee like other minor misdemeanants, trusts the treatment programs, and does not impose punitive measures. Most counties fall somewhere in between.

Philosophy and style may be more important than procedures, however. Whereas one probation officer or department may require 15 contacts with a divertee as a surveillance measure, another county may consider the contacts a strong indication of concern and positive reinforcement. In studying the intent of Penal Code Section 1000, it behooves probation departments as well as other elements in the system to assure that the drug diversion experiment is appropriately tested as a new procedure.

#### Courtesy Supervision

Probation officers participating in the conference strongly supported an amendment to mandate courtesy supervision for a mobile divertee population. It was observed that travel and place of residence should not be a factor in the decision to grant diversion to one individual but not to another. If the probation role is one of monitoring rather than actually supervising divertees, the probation burden caused by transfers would not be as great as it has been in many counties. However, a careful evaluation of the defendant should not be eliminated in the diversion decision because of his out-of-county residency.

#### Diversion Conditions

The punitive and nonpunitive modes are seen in the imposition of conditions on divertees. Two conference participants observed that their courts required the potential divertee to admit his guilt openly, while the Department of Health survey in the DAPAC report indicated that a defendant maintaining his innocence can negatively affect probation's decision to recommend diversion. This appears to go beyond the spirit and intent of the law.

The most significant question regarding diversion conditions is the legality and the purpose of requiring a divertee to waive his Fourth Amendment rights by consenting to submit his person or property to search and seizure without a warrant. Since the divertee has not been convicted of a crime, imposing this condition may not be legal, according to some participants including public defenders. As Richard Janopaul revealed, the expression of a lack of trust and the negative psychological effect of search and seizure may be counter-

productive to the educative and rehabilitative purpose of diversion. According to Robert Berke, the imposition of search and seizure is closely related to the extent of probation supervision in many counties.

An exception is Sacramento, where one judge had always imposed search and seizure as a measure for detection and punishment. Admittedly a "tough judge," he described the "socially crucifying" nature of search and seizure for a divertee whose friends are afraid to invite him to parties. The arguments against this, he said, are leading me to "rethink my position." As one participant suggested, "the person needing search and seizure is probably unsuitable for diversion."

Others had different ideas. Although one probation officer asserted that he knew of only one of 625 divertees who was rearrested because of the search and seizure condition, he believed it "keeps people on their toes" and "keeps them aware that contraband is illegal." Another probation officer involved in treatment programs agreed, suggesting that search and seizure is a "therapeutic tool" for awareness, and used with discretion, is a practical method of "reality therapy." Several participants questioned the "discretion" aspect when law enforcement has *carte blanche* to search the divertee at will. Most believe that the only reason search and seizure should be imposed is if it is part of the treatment; otherwise, by its intimidating nature, it undermines the positive, noncriminal aspect of the diversion program.

Most conference participants were sympathetic to the nonpunitive outlook for probation supervision and the imposition of conditions. The DAPAC report recommended that no conditions unrelated to education, treatment or rehabilitation be imposed. When questioned about search and seizure, Richard Turner responded with the opinion that search and seizure, like formal probation, was not intended for divertees. A statement of intent on this matter is strongly suggested as a method of creating more statewide uniformity in the handling of divertees.

#### Education, Treatment or Rehabilitation

At no point in the implementation of Penal Code Section 1000 has there been greater variety among 58 counties than in the community programs afforded divertees. It has been said by some that this is the best part of the statute because it gives counties and probation departments great flexibility and a chance to use local talent and imagination. As discussed in the DAPAC report, however, in many counties this lack of guidelines has wrought confusion and hence cynicism regarding the whole diversion program. Before discussing the programs and problems participants confronted together at the conference, it might be helpful to examine who the divertees are.

#### The Divertees

From discussions, and several county reports, it appears that the typical divertee is a 19 year-old, single caucasian male high school graduate currently working or going to school who has had no prior involvement with the criminal justice system. Charged with possession of marijuana during a nighttime vehicle stop, the young man has experimented or may now be experimenting with dangerous drugs and may be using or abusing alcohol. This portrait should not overshadow the rest of the diversion spectrum which includes, in many counties, some

heroin addicts, doctors, lawyers or businessmen using dangerous drugs, and people on the brink if not already involved in more serious criminal activities.

#### Education

"It's a myth that treatment or education is helpful for a majority of divertees," asserted one senior probation officer. The typical divertee described above may or may not benefit from an educational or counseling situation. Several mental health professionals expressed the view that valuable treatment resources are being used inappropriately for people who will not change their lifestyles or habits and who are probably not benefiting in any measurable way by the diversion program.

Proponents of this position perceive that the normal, productive individual who smokes marijuana socially and shuns the idea of narcotics or dangerous drugs is not a person who needs diversion except to maintain a conviction-free record. In field interviews the DAPAC consultants as well as Rod Blonien found this opinion to be widespread among drug treatment workers. Blonien proposed in a revised statute that

if it is determined that the defendant is only a recreational or experimental user of marijuana, and the probation department does not find that the defendant is in need of treatment, this recommendation shall be made to the court. In all other cases, the probation department, in its report to the court shall recommend a treatment program.

One probation officer who supervises a large metropolitan diversion education program suggested that the real objectives are undefined, at best. In another urban area the drug treatment director doubted the efficacy of mandated treatment for 80% of the lightweight marijuana users with whom he works. Still another drug abuse coordinator summed it up this way: "We are concerned if they are using other things besides marijuana -- if not, then there is not much we can do." He expressed great concern about the overwhelming number of marijuana users who he did not know quite how to treat. "I don't want to take care of people who have it together," he said.

On the other hand, some probation officers felt that many young first time offenders would benefit from counseling aimed at clarifying their values, the decisions they are making and the direction their lives are taking. Where community resources available to divertees include vocational counseling and training, job referral agencies, schools, churches and service organizations, the alternatives can be tailored to their individual needs. As more than one officer observed, the two requirements justifying this increased administrative processing of first time offenders should be - 1) defusing the hostility of divertees, and - 2) careful screening for underlying difficulties.

#### Treatment

Most of the discussion at the conference centered around the majority of divertees --- the lightweight marijuana users. Opinion was divided on the merits of diverting heavily addicted defendants. As indicated in the DAPAC report, most counties have made no strict policy decisions on whether or not to divert heroin addicts. Demonstrable motivation of the defendant and available resources have been important factors in the decision. With the eligibility addition of defendants charged with 11550 of the Health and Safety Code, some counties which have routinely provided the mandatory 90-day jail sentence for heroin addicts charged with this offense will probably have to reevaluate their diversion policies.

Some treatment workers expressed the opinion that noncriminal processing of addicts has in their experience been yielding beneficial results in the diversion program thus far. Voluntary commitment to treatment, they say, is a more positive step for the addict than court-mandated treatment. The opposite view was advocated by a number of probation officers who would subscribe to the opinion stated in a report of the Santa Clara County Adult Probation Department: "Many violators of Sections 11350 and 11377 of the Health and Safety Code who are addicts or heavy users can be diverted and should not be. Although they need help, it should be manifested in a different manner." (emphasis added)

In the area of treatment for divertees, the focus was on the ten to forty percent whose involvement with dangerous drugs, heavy marijuana and/or alcohol, or heroin chipping, is, or may become, a roadblock to their adequate functioning. This group would also include those divertees who are experiencing nondrug-related difficulties in lifestyle and social or psychological adjustment. As a practical matter, the rehabilitation intent of the statute in relation to drug abuse and the criminal justice system seems most appropriate for this middle category of divertees between casual marijuana users and addicts. Careful screening was seen as fundamental to appropriate treatment assignments for these individuals.

The DAPAC survey portrayed a lack of outpatient counseling resources among many of the large counties, particularly where mental health departments do not share responsibility in the diversion program. Conference participants whose programs possess flexibility, multifaceted treatment modalities and other alternatives, seemed most satisfied with their programs. For example, Orange County has mental health area offices, each of which provides a wide variety of services for an extensive, sprawling population. Sacramento and Sonoma Counties have centralized, multimodality drug treatment organizations which can also individualize programs for divertees. These models among others were generally believed to be more flexible, innovative and consonant with the intent of the diversion statute.

A number of probation officers whose diversion programs are primarily products of their own departmental resources were not totally satisfied, and expressed the opinion that the treatment program should be handled in the community, not in the probation department. Harking back to the intent of the law, they suggested that probation programs, no matter how well organized, are still maintaining people in the criminal justice system who would not have remained there. More than one officer, however, argued that personal counseling with a probation officer is as valid a program as treatment with a community resource. It was suggested that probation's extensive ties to outside agencies allow great flexibility in programs for divertees.

Nevertheless, one recommendation made by the DAPAC consultants should be underlined.

County Mental Health Departments should play major roles in planning, developing and coordinating "community" diversion treatment and education programs, and where such services do not exist, Mental Health itself should assume the responsibility of providing them.

Many conference participants expressed the need for state funding of community treatment programs on the basis of utilization of resources. They further agreed that probation workload increases should receive funding on a similar basis.

## Revocation of Diversion

There is universal concern that the current statute does not provide enough flexibility or discretion in the revocation of diversion and the reinstitution of criminal proceedings. Penal Code Section 1000 specifies that arrest and conviction of any crime is the only criterion for this procedure. Nevertheless, Department of Health surveys in the DAPAC report indicate that counties have taken it upon themselves to revoke diversion cases for many other reasons. Among these are: 1) unsatisfactory performance in the treatment program, 2) divertee not benefiting in the program, 3) continued use of controlled substances, and 4) noncooperation with the probation officer.

Many believe that a divertee's arrest and conviction for some minor misdemeanors does not warrant revocation if the divertee is performing satisfactorily in the treatment program. However, it was proposed that a revocation hearing should be held on the above listed grounds as well as in cases where, according to Rod Blonien, "the divertee is charged with the commission of a felony and the case has been bound over to Superior Court, or the defendant is convicted of a misdemeanor which reflects the defendant's propensity for violence or criminality." The only automatic revocation, in Blonien's view, should occur with the divertee's conviction of a felony.

These changes were apparently satisfactory to those participants who urged statutory clarification. However, there is one point suggested by Dr. Jack Feinglass' remarks about treatment success and objectives which bears discussion: since the diversion program accepts people who are more than minimally involved with drugs, demanding immediate total abstinence may be setting too high a standard for these divertees. As Dr. Feinglass indicated, an abuser of drugs may be making progress and benefiting in a program by reducing his or her usage, and by dealing with underlying causes of drug abuse at the same time. Where there is communication between the probation officer and drug treatment worker regarding these individuals, it might be most appropriate for the probation officer to use discretion in invoking the revocation provisions of a revised statute. For cases where medical and psychological rehabilitation is a distinct opportunity, a number of treatment workers suggested that trust and cooperation are essential between the community and the criminal justice system.

## Expunging Criminal Records

There was great concern among conference participants that the criminal record of the diverted offender, despite dismissal under section 1000.3, would still be a hardship in his future. Under the current statute, it appears that there is only partial relief from the situation originally criticized by the Governor: "The criminal record which accompanies them through life is often a millstone around their necks." Although the law restricts the distribution of CII records, many professional and licensing agencies are able to find out about an individual's past. It was therefore proposed by many that the arrest and dismissal entries on a successful divertee's rap sheet be entirely expunged. Judge Tevrizian, agreeing with the recommendation of the DAPAC consultants, proposed that all records be automatically expunged two years from the date the charges are dismissed.

Expunging records after two years was seen as an appropriate solution to the problem by many participants, although the possibility of "double diversions" was discussed by some district attorneys. It was brought up at the conference that a current amendment to Senate

Bill 530, the probable legislative vehicle for continuation of the diversion program, stipulated the expunging of records five years from the date of arrest. This much lengthier wait for the former diverttee to receive the full benefit of the program was strongly criticized by Robert Berke and many others. For young offenders already in the job market or planning a career, it is felt that clearing their records would occur too late.

### Criminal Justice Resources

Opinion varied considerably as to whether diversion is saving court time and resources. As for actual court appearances, the DAPAC report and surveys indicate that with decreased pretrial motions, even in counties which allow diversion at any stage of the proceedings, some court time is being saved. With heavy reliance on the probation diversion investigation, the amount of time a judge spends on each case appears to be less.

The diversion program has decreased the workload among district attorneys, at least the legal casework involved. Some participants felt that paperwork has increased because of forms, retaining files on "hold" for the diversion period, and reinstituting prosecution for cases which have failed. Overall, however, it appears that some district attorney hours are being freed for other cases.

Probation work statewide has been increased extensively by the diversion program. It was stated more than once that "the current law expects a lot of probation departments." The amount of this work depends a great deal upon the availability and use of community resources for education, counseling and treatment, and upon the local decision regarding the extent of probation supervision and surveillance. Probation monitoring instead of supervising, combined with the funding of outside programs, would reduce probation work considerably. When discussing methods of streamlining the process, however, participants almost unanimously agreed that the investigation by an experienced probation officer should not be in any way diminished. Unless, as in some counties, a drug treatment professional is conducting an investigation as part of the probation report, it was felt that careful screening by the probation department is essential.

### Marijuana

The criminal status of marijuana use and possession was not ignored by conference participants in their discussion groups. Some of the most enthusiastic proponents of the diversion program thought that it may be an interim position between current marijuana laws and ultimate decriminalization. One probation officer surmised that the statute itself is intended, in part, to provide some practical experience and evidence for a future decision on marijuana. One advocate for decriminalization suggested that great success of the diversion program might postpone the decision.

Several conference participants felt that a person's marijuana smoking is not a clear indication of either current or future criminality or drug abuse other than that criminality related to marijuana possession itself. The somewhat sketchy statistical evaluations to date can support conflicting positions on the marijuana issue. For example, it appears that the majority of diverttees in most counties are noncriminal, social marijuana users who are uninvolved with dangerous drugs or narcotics, although many may have experimented with

pills. Some would argue that the lack of treatment need and serious life problems for most marijuana users leads to the conclusion that the criminal laws against marijuana should be abolished.

On the other hand there is an undefined proportion of those who are charged with marijuana possession who use or abuse dangerous drugs or narcotics. From a mental health point of view it is diverttees in this category who can benefit most from education and treatment. It can thus be argued that the criminal classification of marijuana possession is a valuable tool for uncovering many users of narcotics or dangerous drugs who may become a threat to themselves as well as to society.

While the marijuana issue should not cloud the real purposes and benefits of diversion, the opportunity to evaluate the current marijuana laws should not be overlooked by students of the diversion law and treatment programs. As long as vast numbers of marijuana smokers are brought into the criminal justice system, and then referred to professionally trained treatment personnel, it may be a valuable undertaking for the Department of Health to plan for studies evaluating empirical data regarding marijuana and its users within the diversion program.

### Evaluation

Has diversion been successful? What about recidivism? Court dockets? Treatment? Reduction of drug abuse? Conference participants by and large expressed the belief that while the program is achieving some of its intended objectives, there is a distinct lack of concrete evidence useful to legislators and other decisionmakers. There are studies currently in progress in some counties to measure various aspects of the program, from treatment effectiveness to court and criminal justice workloads to recidivism.

Evaluating treatment is probably the most difficult task. In a statewide survey conducted by the Attorney General's office, 69 of 110 (63%) respondents answered affirmatively when asked: "Do you feel that the Diversion Program is effectively rehabilitating drug users?" It was clear at the conference, even among drug treatment directors who are satisfied with their programs, that they are unable at this time to offer more than "feelings" that they are being effective. They pointed out that the majority of diverttees seem to require no "treatment," and without extensive psychological measurements of attitudes and possible attitude changes, predictions of their future drug abuse or criminal behavior are unreliable at best. Nevertheless, any appraisal of the education and treatment portion of the diversion statute should consider the fact that thousands of young offenders, many of whom have never been confronted about their decisions, values and behavior, are being evaluated and enlightened about alternatives.

Another related point is the "treatment success" of programs for lightweight offenders compared to the success rate for programs which treat the minority of more heavily involved drug offenders. It will undoubtedly be a "self-fulfilling prophesy," as one probation officer asserted, that the educational programs which cost the least amount per diverttee will be able to show the lowest rate of recidivism because of the nature of their clients. This should not discourage funding for more intensive programs aimed at diverttees who need treatment and who may individually gain the greatest benefit from diversion.

Aside from evaluating the education and treatment of divertees, most conference participants observed that the real proof in Sacramento of diversion's success or failure revolves around recidivism rates. Diversion will be deemed a viable alternative to prosecution if the processing of first time offenders outside the criminal justice system keeps them from returning to the system more successfully than has traditional processing. As the DAPAC consultants recommend, "a basic recidivism study appears essential." They proposed that a control group of comparable cases prior to diversion be identified and then compared with the diversion group for recidivism.

A study of this nature was done in Sonoma County. A control group of 1972 first time drug offenders was selected on the basis of current eligibility criteria. Rap sheets were run on these individuals, and a recidivism comparison was made for a time period equivalent to that of 1973-74 divertees. It was found that 12.3% of the individuals in the control group had returned to the criminal justice system with convictions, while only 4.2% of the divertees had been rearrested and convicted. While the two groups were small--106 in the control group and 120 divertees--a recidivism rate three times as large for the control group is an indication that diversion has been a useful tool to the criminal justice system in Sonoma County. It is, of course, too early to form definitive conclusions about recidivism.

The general opinion among conference participants was that the recidivism rate for divertees in other counties is similar to that of Sonoma County. In the Santa Clara Probation Department report mentioned earlier, 3.8% or 41 of 1099 divertees were rearrested and convicted in 1973. A survey by the Los Angeles County Probation Department was done on 934 cases which had received the first progress reports. It was found that 4% had been rearrested and convicted, and that 1.5% had been rearrested and were still involved in adjudication. On the surface these figures seem low, but in order to calculate the full recidivism effect of diversion, these rates should be compared to a number of different probation categories as well as to a control group.

At this time it is too early to evaluate P.C. 1000 as a complete success or failure. Aside from the lack of concrete analysis, it has taken many counties up to a year to properly fund programs and establish satisfactory procedures among the various criminal justice and drug treatment agencies. In several counties which have worked through initial difficulties, there may be some secondary benefits from the diversion program. One drug abuse coordinator mentioned the increased credibility of treatment agencies in the eyes of criminal justice leaders and workers, and on the other side the better understanding of law enforcement, prosecution and the courts by community workers. In some counties reduction of the "We" and "They" communication barrier has occurred. Another drug treatment director spoke of a rebirth of drug education planning and evaluation of its real objectives. There is some evidence within the criminal justice system that the drug diversion program, as an experimental process, is one of the currents carrying leaders toward an overall reexamination of procedures, objectives and values.

## CONCLUDING REMARKS

Trust, communication, training and a certain amount of uniformity are essential elements in making the diversion program work well within counties and throughout the state. It was acknowledged early in the conference that in small counties, where district attorneys are on a first name basis with probation officers and drug treatment directors, there is much greater confidence that suitable people are being diverted and that the whole program is being treated seriously. For example, a convicted felon sometimes slips through the prosecutor's screening early in the case, and he may be referred for diversion before a rap sheet becomes available. If lines of communication are open between the investigating probation officer and the district attorney, and some policies have been agreed upon, the unsuitable defendant is less likely to be diverted over the objection of the prosecution.

The ultimate objectives of each agency are the same - elimination of recidivism and drug abuse. To that end it is essential to encourage interagency communication about diversion procedures, the divertees and their treatment. County and regional conferences would be a way to clarify policies and ideas, particularly in light of the various high court decisions regarding P.C. 1000, and the expected changes to be made in the statute. Intensive training sessions for investigating probation officers in the area of drug abuse problems would be a valuable tool for creating greater uniformity and assigning divertees to appropriate programs.

How has the diversion program been successful? Thousands of people who use or abuse illicit drugs have been offered an opportunity for assistance. Thousands of primarily young offenders are not now saddled with drug convictions on their records. Thousands of people have received a more positive experience with the criminal justice system than they would have received without the diversion program. There is some initial evidence that recidivism is being reduced. And finally, under the banner of the diversion program, community agencies and resources have become more significantly involved in the effort to prevent criminal behavior.

**THE OVERWHELMING MAJORITY OF COUNTIES REPRESENTED AT THE DRUG DIVERSION CONFERENCE STRONGLY RECOMMEND THE CONTINUATION OF A DRUG DIVERSION PROGRAM IN THE STATE OF CALIFORNIA.**



## COLLATED CONFERENCE CRITIQUE

## Program Content

1. How well did the conference deal with the objectives described in the program brochure?
  - (19) Quite Well
  - (12) Adequately
  - ( 1) Not very well
  - ( ) Quite poorly
2. Did the program confront the important questions about Penal Code Section 1000?
  - (22) Quite thoroughly
  - ( 8) Adequately
  - ( 1) Marginally
  - ( 1) Poorly
3. The conference program increased my understanding of the intent of Penal Code Section 1000.
  - (21) Considerably
  - ( 8) Moderately
  - ( 4) Very Little
4. The conference program increased my understanding of the legal aspects of Penal Code Section 1000.
  - (17) Considerably
  - (13) Moderately
  - ( 2) Very little
5. The conference program increased my understanding of drug education and treatment programs.
  - (15) Considerably
  - (13) Moderately
  - ( 4) Very little
6. The conference program increased my awareness of various procedural problems and solutions in the implementation of Penal Code Section 1000.
  - (19) Considerably
  - ( 9) Moderately
  - ( 5) Very little
7. Comments about the program content: Excellent speakers. The fact that all proceedings were taped was good. Careful selection of those invited assured success of the program. Legal panel (Judge, D.A. & P.D.) was excellent. Good legal content. Groups were too constrained

by the provided format. Disappointed that the significant role played by probation in the process was virtually ignored. Did not confront the divertee-what their positions may be. Content struck high points which needed to be aired. Content well designed. Diversity of program implementation surprising. Guidelines used were great. Good hand-out material. Timing and format well planned, logical, sequential. Speakers were well prepared. A. G. Rod Blonien particularly good. Would have liked to hear law enforcement reaction to diversion. Really liked drug treatment panel. Importance of proper planning for drug users. Need more information on funding resources. Inclusion of A.G. and DAPAC recommendations were key features. Intent of P.C. 1000 too variable. Neglected the "people" aspect with inordinate emphasis on "legalism" - (which was great) - perhaps our interests too broad to be satisfied. Speakers were the high point. Panel on treatment should have been smaller, more in-depth and with questions after.

## Program Format

1. Did the method of presentations, followed by longer small-group discussions, serve the objectives of the program?
  - (21) Quite well
  - ( 9) Adequately
  - ( 1) Marginally
  - ( 1) Poorly
2. How valuable were the presentations for stimulating participant input and discussion?
  - (23) Quite Valuable
  - ( 6) Of some value
  - ( 1) Of little value
  - ( 1) None
3. Describe the small group discussions as a vehicle for stimulating thought and input of participants.
  - ( 9) Excellent
  - (16) Good
  - ( 6) Fair
  - ( ) Poor
4. How would you change the format? (check one or more)
 

Presentations	Group Discussions
( 4) More and Longer	( 5) More of them
( 1) Less of them	( 3) Less of them
( 3) Less structured	( 3) Less structured
( 1) More structured	( 6) More structured
(19) Fine the way it was	(17) Fine the way it was
5. Comments about the program format: Good mix of formal and informal contacts. Should be a program with the recognized leaders in treatment/education with questions from



all present. Add one of the question sessions in lieu of the small group discussions. Presentation on treatment was too long and repetitive. One weak link was Friday morning panel (too superficial and general). Good mixture of large group/small group. Well planned and carried out. Regret lack of probation role review. A significant area of budget and funding was omitted. Very well done. Groups should have changed each time. Small group informative but occasionally strayed from purpose. Question and answer sessions should follow group discussions. Group discussions good for people who are afraid to speak up in main audience. The format for the small groups seemed to have little bearing on the speakers' remarks. Presentations should have been longer, more varied and structured by topic.

#### Overall Evaluation

1. Aside from the knowledge obtained in planned sessions, how valuable was informal contact with others involved in the implementation of Penal Code Section 1000?

- (29) Quite valuable
- ( 2) Moderately valuable
- ( ) Of little value

2. As a result of your conference experience, are there any recommendations you might make in your own department or county to improve the implementation of Penal Code Section 1000?

Encourage SB714 funding for probation department education program. Expand use of P.C. 1000 to cover more serious drug users. More extensive treatment alternatives including job counseling. Stabilize program throughout the state. Plan to ask a lot of questions of a number of people. Talk more about possible alternatives. The "official" explanation of intent proves highly rewarding and informative. Will have to digest what I have been exposed to first. Larger counties having organizational problems which are result of communications. Procedures used elsewhere we could use effectively. Getting the intent of P.C. 1000 to personnel within my department. Increase informality of interagency communications. No longer firmly committed to consistency. Real value in adapting to both county and individual defendants' needs. Continue to study, evaluate, make changes only where experience shows need for change. Clarify intent of P.C. 1000. Review recent changes. Emphasize the duties of D.A. in eligibility process. There will have to be cooperation and liaison between mental health and probation to improve programs. Familiarize all Judges with diversion programs and strive for uniformity among them. Encourage within-county seminars with all 5 criminal justice agencies participating (DA, Judges, Public Defender, Probation Officers and Treatment Workers.)

3. Should the taxpayers' money be used for another conference with similar objectives next year?

Yes - 26      No - 1

Why?

More feedback. New statistics. To see if diversion is working as well as anticipated. Expansion and treatment approaches. Diversity of practices. Free exchange of ideas is helpful in formulation of methods. Possibly bring out a statewide system. Evaluate where we are. Updating information. Better understanding and cooperation. It will give us a full year of

experience. If you pay \$3,000 for a car, you'd better put out a few bucks from time to time to keep it running right. P.C. 1000 needs both repair and maintenance. To enable us to talk and to keep us honest. To see if we have begun to consider the human element in diversion. Maintain uniformity. Education of professional personnel is essential for obtaining support necessary for effective implementation. Participants learned an incredible amount by comparing their programs with others. Interchange of ideas, experiences, programs was extremely valuable for all participants. Better and more communication is mandatory. Exchange of ideas and the statewide interchange is important.

#### 4. Other comments:

People who participated were genuinely concerned with the problem that P.C. 1000 is trying to deal with. Decriminalize marijuana. Well worth the time. Providing discussion topics to group leaders was helpful. Input from law enforcement should have been provided. The conference should have included a panel discussion by divertees. The issue of decriminalization/legalization should have been confronted more directly. Each county implements P.C. 1000 as they interpret the law. Good job well done. Comfortable facilities and good planning led to more productive use of time. Excellent information about variety of diversion programs. Too many trying to correct the ills of their department. Drug user lost in shuffle. Santa Rosa extremely inconvenient and costly - Sacramento would have been more appropriate for conference because it would have enhanced legislative awareness of it, attracted more speakers and resulted in more impact.

VIII

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**END**